HANDBOOK ON

Intellectual Property Rights

3nd Edition

Basic information on concepts related to Intellectual Property Rights

I never did anything by accident, nor did any of my inventions come by accident; they came by work. ***Thomas A. Edison***

Origiin IP Solutions LLP

securing innovation ...

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Aim of this document is to give basic and broad idea on Intellectual Property Rights and it shall not be taken as legal advice.

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A. Introduction

The term *Intellectual Property (IP),* as the name suggests, means product of the mind or the intellect. In our day-to-day life we come across various forms of Intellectual property such as television, personal computer, microwave oven, refrigerator, vehicles, weighing machine, cereals for breakfast, pasteurized milk in tetra pack, paints and even a design on the bed sheet. Practically, everything that we use is a product of man's ingenuity, knowledge and skill, besides labor and capital and it falls under some kind of IP that has to be recognized and registered before it could be lawfully commercialized in a given jurisdiction.

The concept of Intellectual Property will be well appreciated if we understand what is meant by the term property. Legally speaking, the term '***Property'*** essentially means a bundle of rights flowing from the concept of '***ownership'*** and '***possession'***. The right of ownership and possession is an integral part of the property that assures the owner, the right to dispense with the property in a manner he or she deems fit, whether to use or not to use, exclude others from using, or to transfer the ownership. IP is divided into two main classes, *Industrial Property*, which includes patent, trademark, industrial design, and geographic indications of source; and *Copyright*, which includes literary and artistic works such song, book, films, musical works, drawings, paintings, photographs and sculptures etc.

With this concept in the mind, ***Intellectual Property Right (IPR)*** can be defined as the right held by a person over the creation of his mind. Intellectual Property acquires legal rights in the form of patent, copyright, trademark, industrial design etc depending upon its type and its capability to fulfill statutory requirements. It gives the creator an exclusive right over the use of his/her creations for a certain period of time, after which rights cease to exist.

The Constitution of India makes no specific mention of Intellectual Property as such, hence, IP as a form of property can be put under Article 300A dealing with property and be entitled to a legal right, such as:

- ✓ Freedom to acquire, hold and dispose off property - Article 19;
- ✓ Protection from deprivation of property – Article 31; and
- ✓ Property could be possessed or acquired for public purpose only by law and only on payment of compensation – Article 32.

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Patent: Tin Can opener

British merchant Peter Durand made an impact on food preservation with his Tin can patented in 1810. In 1813, John Hall and Bryan Dorkin established the first commercial canning factory in England. The Tin cans were so thick they had to be hammered open. As cans became thinner, it became possible to invent dedicated can openers. In 1858, Ezra Warner of Waterbury, Connecticut patented the first can opener. The U.S. military used it during the Civil War. In 1866, J. Osterhoudt patented the Tin can with a key opener that can be found on sardine cans. The inventor of the familiar household can opener was William Lymann who patented a very easy to use can opener in 1870, the kind with the wheel that rolls and cuts around the rim of a can. The Star Can Company of San Francisco improved William Lyman's can opener in 1925 by adding a serrated edge to the wheel.

Fraunhofer: MP3 technology

In 1987, the Fraunhofer (a German company) started to work on perceptual audio coding and finally devised a very powerful algorithm that is standardized as ISO-MPEG Audio Layer-3 or MP3.

B. Why do you need to know about IP?

Knowledge is Power!

In today's dynamic and competitive business environment, Intellectual Property is the key elements needed to maintain a competitive edge in the market. IP as an asset is an integral part of the business process, hence, effective acquisition, management, and protection of Intellectual Property can create the difference between success and failure in businesses today. IP, an intangible asset comprises the knowledge, skills, which business can convert into usable resources to generate a competitive advantage.

Awareness of IP is critical to fostering innovation. Without protection of ideas, businesses would not reap the full benefits of their inventions and would focus less on research and development. Also, there are possibilities where it can be copied or misused by others, or accidently/unintentionally third party's IP can be incorporated in the work, affecting business adversely.

Hence, knowledge and awareness of Intellectual Property Rights (IPR) is important for every company, which is focused on research and innovation, in order to make sure that IP generated is secured appropriately and adequately.

Ignorance of IPR can be extremely detrimental in case an organization is using someone else IP with or without the knowledge of its existence. This may lead to unnecessary litigations/infringement proceedings, resulting in financial and reputation loss. In order to minimize risks of IP infringement, clearance search shall be done.

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Interesting fact

Anant Electronics and Futuristic Concepts Media Ltd were using 'Digital Transmission System' technology to manufacture VCDs without knowing that in India, Philips had a patent protection on the same technology. Delhi High Court ordered the two Indian companies to stop manufacturing the VCDs that infringed Philip's 'Digital Transmission System.

Using technology protected by others can drive a company out of business.

Hence, knowledge of IPR is important not only to protect your own IP but also to avoid infringement others IP.

Apple vs VirnetX

In November 2012, Apple has been ordered to pay US$368.2 million in damages for infringing four patents (U.S. Patent Nos. 6,502,135, 7,418,504, 7,921,211 and 7,490,151) used in its FaceTime video calling service. The company was sued by VirnetX which had registered a number of video related patents between 2002 and 2011.

VirnetX is a small Internet security software and technology company, with patented technology for secure communications including 4G LTE security. The Company's patent portfolio includes 20 US and 26 international patents and over 100 pending applications, out of which four U.S. Patent Nos. 6,502,135, 7,418,504, 7,921,211 and 7,490,151 patents relate to its FaceTime video calling service.

Apple had argued that it was using different technologies in its Facetime services. However, Apple tried to invalidate Virnetx patents and denied any infringement.

The victory however strengthens VirnetX application to the US International Trade Commission which is currently investigating if it should impose an import ban on Apple products infringing the patents. Such a ban would affect Apple's entire line of iPhone smartphones and iPad tablets. VirnetX is a small company, having reported revenues of just US$36,000 from patent royalties in the first half of this year, according to analysis by Bloomberg News.

This is infact an excellent case to understand strength of protection and enforcement of patent as a tool to obtain competitive edge in market as well as use it for revenue generation.

Before anything else, preparation is the key to success.
- Alexander Graham Bell

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C. Why does IP need protection?

Your company's intellectual property, whether it is in the form of patents, trade secrets or just employee know-how, may be more valuable than its physical assets. Intellectual property (IP) protection plays a key role in the innovation system and economic development of an organisation.

Generation of IP usually involves huge investment in terms of money, talent, time, manpower and hence, it becomes important to protect it in order to prevent duplication by others as well as to have ownership and exclusive rights over it. Exclusive rights that flow by owning IP act as an incentive or reward, which are considered critical to encourage stimulation advances. Commercialization of IP can be a great source of revenues for an orga

Interesting facts:

The combined value of Wipro's brands, patents, trademarks and rights was around Rs.180 crore in the year 2009.

New York University hauled in $157 million in 2006 by charging licensing fees to use faculty inventions. Stanford University, a distant second that year, collected $61 million.

Ananth Krishnan, Chief Technology Officer, TCS said, "We have started using patents to protect our revenues and also to minimize risk to our business. The monetization of our IP will gradually increase with time and is already happening."

Royalties from inventions were estimated at $150 billion/year worldwide (in 2002) and were expected to grow at 30% p.a. for the subsequent 5 years.

> My principal business consists of giving commercial value to the brilliant, but misdirected, ideas of others.... Accordingly, I never pick up an item without thinking of how I might improve it.
>
> - **Thomas Edison**

D. Trade-Related Aspects of Intellectual Property Rights

The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) is an international agreement administered by the World Trade Organization (WTO) that sets down minimum standards for many forms of IP regulation. It was negotiated at the end of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) in 1994.

Specifically, TRIPS contains requirements that nations' laws must meet for: copyright, including the rights of performers, producers of sound recordings and broadcasting organizations; geographical indications,

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including appellations of origin; industrial designs; integrated circuit layout-designs; patents; monopolies for the developers of new plant varieties; trademarks; trade dress; and undisclosed or confidential information. TRIPS also specify the enforcement procedures, remedies, and dispute resolution procedures.

India is also a member of the World Trade Organization (WTO) and complied with the obligations contained in the TRIPS Agreement and amended/enacted IP laws in 2005. Provision for product patent was incorporated in the Patent Act, 1970 after this amendment.

Martin Cooper: Cell Phone

Martin Cooper successfully used the first cell phone in 1973 while crossing the street in NYC. The phone was as big as a brick and cost $3500. Today, there are more cell phones in the world than land lines (regular phones).

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E. Different forms of IP

Intellectual Property Rights, as a collective term, includes following independent IP rights which can be used for protecting different aspects of an inventive work for multiple protection:-

a) *Patent*
b) *Copyright*
c) *Trademark*
d) *Industrial Design*
e) *Semiconductor integrated circuit layout design*
f) *Undisclosed information or Trade secret*
g) *Geographical Indication*
h) *Plant varieties and farmer's rights*
i) *Traditional knowledge*

5.1 *Patent*

The word *patent* originates from the Latin *patere*, which means "to lay open" or disclose, meaning that when a patent application is filed, the invention shall be disclosed. A patent is a powerful business tool for companies to gain exclusivity over a new product or process, develop a strong market position and earn additional revenues through licensing. Patent is a set of exclusive rights granted by a state (national government) to an inventor or their assignee for a limited period of time in exchange for a public disclosure of an invention. Patent rights are territorial i.e. the patent granted in India is valid only in India. To have protection in other countries, inventor is required to file patent application separately in other countries too.

Life of a patent is 20 years from date of filing, subject to various conditions. Once this time is lapsed patent ceases to be in force and third party (ies) may use it without consent of a patent holder. There are various factors, such as, oppositions, payment of renewal fee, timely prosecution etc that affect validity of a patent. However, in rare circumstances, Central Government may revoke a patent in public interest.

Government of India revoked the patent granted to a leading biotechnology company, Avesthagen on the grounds of being mischievous and prejudicial to the public. This patent was granted in April 2012 for "synergistic ayurvedic/ functional food bioactive composition". The patent was for the composition consisting of jamun, lavangpatti and chundun and this composition was to be used for treatment of diabetes. The patent was revoked with respect to Section-66 of Patents Act, 1970 which says:

The government revoked the patent using a "rarest of rare" provision in the Patents Act saying it was an "integral part" of traditional medicine. It has said that the patent was "mischievous to the state and generally prejudicial to the public" as the treatment was an "integral part" of ayurveda, unani and siddha system of medicine.

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Pegasys patent revoked

In November 2012, Intellectual Property Appellate Board (IPAB) has revoked a patent granted in India to Roche for Pegasys, a medicine used to treat Hepatitis C for the reason that there was no evidence that the drug is superior to existing treatments. The order followed an appeal filed by a Mumbai-based non-profit organisation, Sankalp Rehabilitation Trust, challenging the rejection of its post-grant opposition by the Indian Patent Office (IPO). The Trust provides treatment to and rehabilitation support, for injecting drug users (IDUs).

The appeal was against a decision delivered by IPO in March 2009, which rejected the Trust's post-grant opposition against the grant of patent for Pegasys (Peg-Interferon a2a). The appeal is allowed through the IPAB's order now as IPAB deemed that there was no evidence to suggest that the drug was any better than existing treatments and also the fact that it was too highly priced for the Indian public.

It is interesting to note that the said patent, granted to Roche in 2006, was the first product patent on a medicine in India under the new Trips-mandated product patent regime for medicines. The patent granted a monopoly to Roche to market pegylated interferon alfa2a. Patients with chronic Hepatitis C, who need a six- month course of treatment of Roche's product, have to purchase it at a cost of approximately Rs. 4,36,000 (available at a discounted price of Rs. 3,14,496). Again, it has to be taken in combination with ribavarin, which alone costs Rs. 47,160.

Swiss giants Roche are likely to appeal the decision to the Supreme Court.

Gordon Gould: Laser

Laser stands for Light Amplification by the Stimulated Emission of Radiation [LASER]. The idea for a laser was first hatched by Albert Einstein in 1917; however, Gordon Gould did not invent the first light laser until 1958. The laser inspired over then different kinds of lasers to follow.

Vacuum Cleaner

The first manually powered cleaner using vacuum principles was the 'Whirlwind', invented in Chicago in the year 1868 by Ives W. McGaffey. The machine was lightweight and compact, but was difficult to operate because of the need to turn a hand crank at the same time while pushing it across the floor. McGaffey obtained a patent for his device on June 5, 1869 and enlisted the help of The American Carpet Cleaning Co. of Boston to market it to the public. It was sold for $25, a high price in those days. It is hard to determine how successful the Whirlwind was, as most of them were sold in Chicago and Boston, and it is likely that many were lost in the Great Chicago Fire of 1871. Only two are known to have survived, one of which can be found in the Hoover Historical Center.

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5.1.1 History of patent system

The first ever patent in the world was granted to a Germen engineer in 1323 in Venice, Italy for his model grain mill which could cater storage needs of entire Venice. In United States the first patent was granted in 1787 for specially designed grain elevator. In England grants in the form of "letters patent" were issued by the sovereign to inventors, A grant of 1331 to John Kempe and his Company is the earliest authenticated instance of a royal grant made with the avowed purpose of instructing the English in a new industry.

In India first patent statute was passed in 1857 but a proper Patent legislation was passed in the year of 1970 in the form of Patent act, 1970 which is considered as a landmark step for industrial development in India. Main purpose of this Act was to encourage inventions in India and facilitate commercialization of the inventions without undue delay.

Patents are important to:

- ✓ Encourage industrial development by granted legal rights to the inventors;
- ✓ Encourage complete disclosure of invention by disclosing the best mode of working the invention;
- ✓ Prevent duplication of research as published patent applications or the patents are available to be referred by the researchers to guide them on state of art;
- ✓ Focus on commercial relevance of the invention;
- ✓ Prevent exploitation of researchers by giving them recognition as inventor and providing them royalty when invention gets commercialized;
- ✓ Provide an important source of technical information as patents are granted for the inventions and inventors shall disclose the best mode of working the invention with help of associate drawings and experimental data.

Indian Patent Office is administered under superintendence of Controller General of Patents, Designs, Trademarks and Geographical Indications. It functions under Department of Industrial Policy and Promotion, Ministry of Commerce and Industry with Head Offices at Kolkata and branch offices in Chennai, Mumbai and Delhi.

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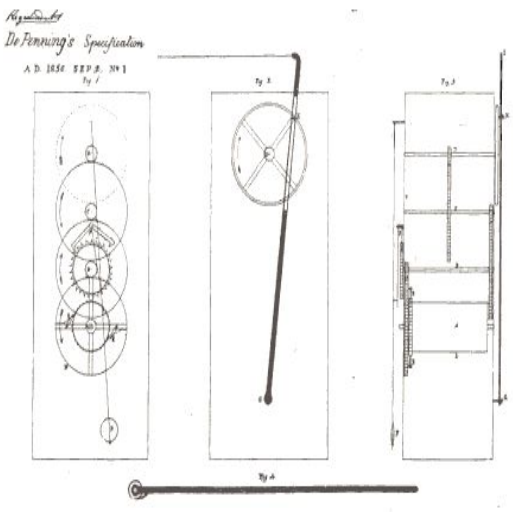

In India the first patent was granted in the year 1856, to George Alfred of Calcutta, a civil engineer, for his innovative 'Efficient Punkah Pulling Machine'

5.1.2 Innovation Vs Invention

Innovation may or may not be an invention, even if invention is the mother of necessity.

There is a thin line between ***invention*** and ***innovation*** which people usually tend to confuse with. An invention is the development of a new device, process or method such as an electric bulb whereas innovation is when the invention successfully meets a market opportunity, for example ***Post-it®***. An invention is useful only to the inventor unless it is offered to the public, however niche that public may be. If the invention improves some product, process or service for the public, then that invention transforms into an innovation.

Some of the main reasons why companies innovate include:

- To improve manufacturing processes in order to save costs and improve productivity;
- To introduce new products that meet customer needs;
- To remain ahead of the competition and/or expand market share;
- To ensure that technology is developed to meet actual and emerging needs of the business and its clients; and
- To prevent technological dependence on other companies' technology.

In today's economy, managing innovation within a company requires a good knowledge of the patent system in order to ensure that the company draws maximum benefit from its own innovative and creative

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capacity establishes profitable partnerships with other patent holders and avoids making unauthorized use of technology owned by others.

One of the classic examples of innovation is Post-it. In 1968, Dr. Spencer Silver, a chemist at 3M in the United States, was attempting to develop a super-strong adhesive, but instead he accidentally created a "low-tack", reusable, pressure-sensitive adhesive. For five years, Silver promoted his invention within 3M, both informally and through seminars, but without much success. In 1974, one of his colleagues, Art Fry, came up with the idea of using the adhesive to anchor his bookmark in his hymnbook. Fry then developed the idea by taking advantage of 3M's officially sanctioned "permitte launched the product in stores in 1977 in four cities under the name "Press 'n disappointing. A year later, in 1978, 3M issued free samples to residents of Boise the people who tried them said that they would buy the product. On April 6, 198 US stores as "Post-It Notes". In 1981, Post-its were launched in Canada and Europe.

In 2003, the company came out with Post-it Brand Super Sticky notes, with stronger glue that adheres better to vertical and non-smooth surfaces. Standard Post-it Brand notes have only partial adhesive coating on the back, along one edge. Similar products are used for specialized purposes with full adhesive coating; the US Post Office uses such yellow address labels to forward mail.

It is very interesting to note that the yellow color was chosen by accident because a lab next-door to the Post-it team had scrap yellow paper, which the team initially used for experimentation.

Zipper

An early device superficially similar to the zipper, "an Automatic, Continuous Clothing Closure", was patented in the United States by Elias Howe in 1851. Unlike the zipper, Howe's invention had no slider, instead a series of clasps slid freely along both edges to be joined, with each clasp holding the two sides together at whichever pair of points along them it was located. The true zipper was the product of a series of incremental improvements over more than ***twenty years****, by inventors and engineers associated with a sequence of companies that were the progenitors of Talon, Inc. This process began with a version called the "clasp locker", invented by Whitcomb L. Judson of Chicago (previously of Minneapolis and New York City), and for which a patent (No. 504,038) was first applied for on Nov 7, 1891. It culminated in 1914 with the invention, by Gideon Sundback, of the "Hookless Fastener No. 2", which was the first version of the zipper without any major design flaws, and which was essentially indistinguishable from modern zippers.*

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5.1.3 Why should you file patent?

Short product cycles and increasing competition put enormous pressure on companies to become innovative and/or obtain access to other company's innovations, so as to become and remain competitive in domestic and export markets. The exclusive rights provided by a patent may be crucial for innovative companies to prosper in a challenging, risky and dynamic business climate.

Some of the key reasons for patenting inventions include:

- Patents provide strong market position and competitive advantage. You can either exploit invention yourself or license your invention tor even assign your rights;
- Licensing of patents to others may provide access to new markets, which are otherwise inaccessible;
- Licensing and assignment, though depend upon numerous factors and shall be worked our carefully, may fetch huge revenues for the company;
- By obtaining patent protection you can prevent others from patenting the same invention;
- Ownership of patents may enhance your ability to raise capital to take a product to market & attract venture capitalists;
- If your company is interested in technology owned by others you may use your company's own patents to negotiate cross-licensing agreements, by which your company and the other party agree to authorize each other to use one or more of your respective patents under conditions specified in the agreement;
- A patent is a powerful tool to take legal action against imitators and free technology riders;
- Business partners, investors, shareholders and customers may perceive patent portfolios as a demonstration of the high level of expertise, specialization and technological capacity of your company.

Milk Bottle

The New York Dairy Company is credited with having been the first company to mass-produce glass bottles for the distribution of milk. Prior to that, milkmen would fill a customer's own jugs with milk; unpasteurized milk was delivered up to four times a day due to its short shelf life. The first patents for the Lester Milk Jar holds a milk container on January 29, 1878.

Lewis P. Whiteman holds the first patent for a glass milk bottle with a small glass lid and a tin clip (US patent number 225,900, filed on January 31, 1880). The next earliest patent is for a milk bottle with a dome type tin cap and was granted September 24, 1884 to Whitemen's brother, Abram V. Whiteman (US patent number 305,554, filed on January 31, 1880).

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5.1.4 Checklist: Filing for a patent

Filing for a patent is a very exciting time for any organization or an individual inventor. Invention results from an innovative mind and putting it into prototype may require long hours of hard work and of course, funds and resources to see the process through to its completion. For individual inventor, it is a pleasure to be called as an inventor, whereas for a business organization, there may be various reasons to file for a patent. Some of the reasons for it could be filing for a patent may add to the number of applications filed in a given financial year or it might be for securing invention before it becomes publicly known or before commencing the public relations activities / a new product launch or commercialization or often getting application number before talking to investors especially in case of start-ups.

Though there are several factors which determine purpose and use of filing for a patent, in order to actually realise benefits of filing a patent application it is critical to analyse following prime factors:

Is invention really worth a patent?

If invention is not in market, often inventors feel that it is novel and there is no need to perform patent search. Patents are a great source of technical information and it makes lots of sense to check them to assess state of art before filing for a patent. Patent law expects invention to be novel, inventive and industrially useful, hence, before proceeding with filing a patent application, make sure that invention fulfils these criteria. Though patent officers are final authorities to decide on patentibility of the invention but still such assessment of patentibility can certainly be done with help of a patent attorney who knows subject matter well. Even if the search reveals that invention is not novel, results of a patent search gives you fairly a good idea and roadmap on how much is already done by others and how to develop your invention further

Provisional or complete application

Provisional application shall be filed if invention is at the stage of idea or if it is critical to claim earliest priority date or if funds need to be arranged in short period of time. However, if experimental results or prototype is ready, it is good idea to file complete application to save cost of drafting provisional application. Often patent attorney will take longer time to draft complete application and therefore, if date of filing is critical, one may opt for provisional application

Where to file?

It is worth noting that if inventor is resident of India, he shall either file application first in India and wait for 6 weeks before foreign filing or take permission from Indian Patent Office for foreign filing. If one fails to do so, he may be punishable with imprisonment for a term which may extend to two years, or with fine, or with both. For foreign filing of patent application, one may select either filing PCT application or convention application. However, countries where the patent application shall be filed shall be selected very carefully and one shall file only in the countries where there is a market. Filing without reason in undesired jurisdictions results in wastage of money and time

Commercialization option

Work out on commercialization options as soon as you file application because technology is growing really fast and losing upon the time may not fetch desired attention in the market. You may either opt for commercializing on your own in case you have capacity and willingness to manufacture and sale invention

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or transfer your rights to someone who has capacity to commercialize your invention. You may transfer your rights by means of license or assignment that shall be in writing and executed in the form of a valid deed.

Is it safe to commercialize?

I am sure most of patent practitioner will agree with me that it is really tough to convince and communicate to the inventors that after filing for a patent, when they actually plan to launch the product in market, it is necessary to check if they are not infringing third party (ies) intellectual property rights. Clearance search, also called as freedom-to-operate search is extremely necessary to minimize risk of infringement of third party (ies) patent rights upon product launch.

5.1.5 What is an Invention?

An invention often means a unique or novel device, method, composition or process. However, the term ***Invention*** as defined in **Section 2** of The Patent Act, 1970 –

'A new product or process involving an inventive step and capable of industrial application' where:

- **New or novel** means product or process which has not been anticipated by publication in any document or used in the country or elsewhere in the world before the date of filing of patent application with complete specification i.e., the subject matter has not fallen in public domain or it does not form part of the state of the art. Since novelty is one of the prime requirements of patenting, before filing for a patent, it is important to check if your invention is novel or not. It can be done by performing a novelty search wherein patents/patent applications, non patent literature is searched.

- **Inventive step** means a feature of an invention that involves technical advance as compared to existing knowledge or having economic significance or both and that makes the invention not obvious to a person skilled in the art.

Inventive step is defined in the Section 2(1)(ja) of India Patents Act , 1970 as under:

'Inventive step' means a feature of an invention that involves technical advance as compared to the existing knowledge or having economic significance or both and that makes the invention not obvious to a person skilled in the art.'

The Supreme Court laid down the following criteria for assessing inventive step in M/s. Bishwanath Prasad Radhey Shyam Appellant v. M/s. Hindustan Metal Industries,

"*It is important that in order to be patentable, an improvement on something known before or a combination of different matters already known, should be something more than a mere workshop improvement; and must independently satisfy the test of invention or an 'inventive step'. To be patentable the improvement or the combination must produce a new result, or a new article or a better or cheaper article than before. The combination of old known integers may be so combined that by their working interrelation they produce a new process or improved result. Mere collection of more*

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than one integers or things, not involving the exercise of any inventive faculty, does not qualify for the grant of a patent."

In Canadian General Electric Co. Ltd., v. Fada Radio Ltd. A.I.R., 1930. PC.I., it was observed that under the general law of patents, an invention which consists of a small inventive step but having regard to the conditions of the art, constitute a step forward, be good subject matter for a patent.

In Gillette Industries Ltd., v. Yeshwant Bros. A.I.R., 1938. Bom. 347, it was held that mere simplicity was not necessarily an objection to the subject matter of an invention, though matters of ordinary skilled designing or mere workshop improvements were not inventions. When the invention is just an automatic or obvious extension of prior art, the invention lacks in inventive step.

To judge the inventive step, the question to be answered is-
*"**Would a person with ordinary skills in the art have thought of the alleged invention?**"*
*If the answer is '**No**', then the invention is **non- obvious**.*

- **Capable of industrial application** means that the invention is capable of being made or used in an industry. As defined in Section 2 (1) (ac) of the Patents Act, 1970:

  "*Capable of Industrial application*", in relation to an invention, means that the invention is capable of being made or used in an industry.

  If the subject matter is devoid of industrial application, it does not satisfy the definition of "invention" for the purpose of the Act. The purpose of granting a patent is not to reserve an unexplored field of research for an applicant. Methods of testing are generally regarded as capable of industrial application if the test is applicable to the improvement or control of a product, apparatus or process which itself is capable of industrial application. It is therefore advisable to indicate the purpose of the test if this is not otherwise apparent. An invention for a method of treatment of the human or animal body by surgery or therapy or of diagnosis practised on the human or animal body is not taken to be capable of industrial application. Parts /pieces of the human or animal body to be used in transplants are objected as not being capable of industrial application.

Because ideas have to be original only with regard to their adaptation to the problem at hand, I am always extremely interested in how others have used them....
- **Thomas A Edison**

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5.1.6 Top 10 Myths regarding patents

There are lots of myths associated with patents, some of them are as follows:

Myth 1: Patents are to be filed by big companies for high technology area and our invention is too simple.

Reality: Irrespective of simplicity of the invention, patent may be granted to an invention provided it fulfills the criteria of patentability such as novelty, industrial utility and non-obviousness. An invention can be as simple as a paper pin, toothbrush or a pencil, yet patentable.

Myth 2: Invention is safe if kept secret.

Reality: Keeping your invention safe is good idea but it shall be opted for if you are confident that it is not so easy to reverse engineer the secret. If you fail to maintain secrecy and someone reverse engineers the invention, you fail to claim rights over it if you have not protected the invention lawfully.

Myth 3: Invention has no commercial value

Reality: Life of a patent is 20 years from date of filing and companies fail to realize true value of the invention. What today looks simple may not be so in coming years.

Myth 4: Invention is not new and not really worth a patent.

Reality: Invention must undergo prior art search from an expert in order to assess its novelty as well as patentability before filing for a patent.

Myth 5: Invention is only an idea and workable model is not yet ready.

Reality: Though the system of patent requires the best mode of working the invention at the time of filing complete application, provisional application can certainly be filed when invention is at the stage of idea and prototype or workable model is not ready.

Myth 6: If novelty search has been done, it is not important to go for clearance search before commercialization of the invention.

Reality: Aim and process of performing novelty and clearance search is entirely different. Novelty search is done to ensure that invention is novel by checking invention against all existing knowledge. However, clearance search takes into consideration all legally enforceable patents/applications that you might infringe while manufacturing the product for which component (s) has been invented by you. Clearance search is done country or jurisdiction wise taking into consideration only valid or legally enforceable patents or the applications.

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Myth 7: My invention is novel and patentibility/novelty search is not needed.

Reality: For various reasons, patent and non-patent search is highly recommended before you decide to file for a patent. A great amount of technical knowledge is disclosed in the form of patents and you might be unaware of such patents as very few patented inventions see the market. In such a case, you might assume your invention to be novel. Therefore, it is a good idea to get search done by an expert. Even though the invention turns out to be not novel or anticipated, you get to see the patents that are close to your invention, based on which you may further fine tune your invention. Infact, patent search shall be done at the time of conception of idea itself to validate novelty of such idea.

Myth 8: Global patent can be applied for.

Reality: There is nothing called Global patent so far. PCT application is one of the options available for international filing, but at the end of PCT, you again have to file in individual countries.

Myth 9: If you apply for a patent, nobody can use your invention.

Reality: Patent is a tool that may be used by you to prevent third parties from using your invention. However, it is not a guarantee that nobody will use it.

Myth 10: Getting a patent is a long process and I won't be able to market product till it is granted.

Reality: In order to commercialize the product you don't need to wait till the grant, you may commercialize it soon after application is filed and you get date of filing (also called as priority date) from patent office.

5.1.7 Can idea be patented?

As per law, only inventions can be patented though there is no express mention in The Patent Act 1970 that ideas can or cannot be patented. The line between idea and invention is very thin because all inventions are ideas before they mature to breakthrough patentable inventions. In order to get a patent, the invention needs to be novel, industrially useful and non-obvious to a person skilled in the art. If we talk about idea, the idea can also be novel, industrially useful and non-obvious to a person skilled in the art. So where is the difference between idea and real invention for assessment of patentability?

Apart from the basic requirements of patentability, according to Section 10, The Patents Act, 1970, every specification, whether complete or provisional, shall describe the invention and shall begin with the title sufficiently indicating the subject matter to which invention relates. It further states that every complete specification shall fully and completely describe the invention and its operation or use and the method by which it is to be performed. Additionally, the complete specification shall also disclose the best method of performing the invention which is known to the applicant and for which he is entitled to claim protection.

This clearly indicates the in addition to fulfilling basic requirement of patentability; the invention shall also have capability of being performed practically. Now if the idea has capability of being performed and the inventor has a process of how the idea works, the idea may get matured into invention and it can certainly be filed for a patent. Since the complete specification requires the best mode of performing the invention

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to be disclosed, one can file provisional application with idea and subsequently work on the invention to identify the best mode of working and within 12 months of filing provisional application, the complete specification may be filed.

Further, the preamble for description of provisional application says that “the following specification describes the invention” whereas the preamble for description of complete application says that “the following specification particularly describes the invention and the manner in which it is to be performed”, indicating that the complete process needs to be disclosed only at the time of filing complete specifications.

For example, one has an idea pertaining to mobile application security system and has expertise to transform idea into an invention. With such idea provisional application can be filed and later complete specification can be submitted which fully and particularly describe the invention and its operation or use and the detailed method of performing the same. Failure to disclose the best mode of performing the invention can lead to invalidation of the patent or patent application a result of post-grant opposition/revocation or pre-grant opposition respectively in the ground that the complete specification doesn’t sufficiently and clearly describe the invention or the method by which it is to be performed. Therefore, before filing for a idea patent analyse critically whether the idea has capability to be performed or not.

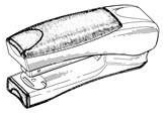
5.1.8 Is your invention too simple to file a patent?

Sometimes new inventions seem so straightforward and simple that you would hardly believe them to be worthwhile. But often the simplest solution to a problem is the one that has the broadest appeal. Don't overlook your new inventions just because they are simple. Any invention whether simple or complex, if fulfils the above criteria of patentability may be awarded a patent.

paper clips which is nothing but a piece of wire bent into a certain shape but still there have been numerous patents on different paperclip designs over the years.

Rubber band, patented in 1845 by Stephen Perry, is probably the only invention which doesn’t find any improvement upon its basic rubber band design.

Stapler, invented in the 1800s has evolved over the years and each variation has been patented various times. The mechanism behind the stapler is so useful that today we even have medical staplers, which are used to staple tissue together during surgery.



If you've ever dealt with a mess of cables coming out of your TV or your computer, you know how useful these Cable ties devices are. Hundreds of variations exist today, including cable organizers made with Velcro, plastic cases, and so on.

All the examples above show that patent is not always a result of high and complicated technology products and processes but the simple inventions do get

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a patent provided they are new/novel, industrially useful and sound non-obvious to a person skilled in the art. So, watch out the work or research you are doing, you may have something patentable. If it fulfills the criteria of patentability, probably you need to file a patent application for it!

> **Imagination is more important than knowledge**
> **- Albert Einstein**

5.1.9 General precautions before filing a patent application

So now, it's time to file for a patent! Great, but before you or your company plans to file a patent application, below mentioned instructions have to be followed strictly:

- ✓ Maintain strict confidentiality of the invention because an invention has to be novel on the date of filing. Your own disclosure in the form of publication, display on website etc can prevent you from getting a patent;
- ✓ Do not disclose the invention to anyone till a patent application has been filed or an NDA (Non-Disclosure Agreement) is signed between the two parties;
- ✓ Don't commercialize the invention till the patent application is filed;
- ✓ Keep thorough record of all the stages of development with dates;
- ✓ Document your invention systematically; and
- ✓ Define names of the inventor's right in the beginning to prevent disputes later.

5.1.10 Things to be done before you meet patent attorney

Deciding upon patent attorney is not easy. In case of patents, it is important to check technical background and experience of attorney. Patent is a highly technical document, therefore, if attorney is not experience or technically qualified, it reflects badly on draft of the application. If you are planning to get your application filed through an attorney, it is imperative to check if attorney is registered patent agent with Indian Patent Office. The list of authorized patent agents is available at official web site of Indian Patent Office.

However, be prepared well before you fix first meeting with patent attorney.

1. Make sure that you have an NDA in place so that you can disclose comfortable:
2. Document your invention systematically to save time during discussions:
3. Carry model/prototype (if any) with you so that explanation of invention becomes easy:
4. Be precise and to the point during discussions so that you don't divert from the purpose of meeting: and
5. Have clarifications on the cost involved so that you can plan your finances.

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5.1.11 Who can file a patent?

A Patent can be filed by the:

- Inventor himself.

True and first inventor is a person who invents an invention for the first time himself and is an inventor in real sense. The first importer of an invention into India, or a person to whom an invention is first communicated from outside India cannot be called as first and true inventor.

- Assignee of inventor such as a company, the inventor is working for.

Illustration

Rahul is a student doing research in a University and has an invention to be patented. As per policy of the University, the ownership of all Intellectual Property generated by the students belongs to the University. In such a case, Rahul has to assign his rights on the invention to the University. Rahul becomes "assignor" and University is "Assignee". However, if the University (assignee) further assigns its patent right to a company, such company becomes assignee and University becomes assignor. Company can also be called as assignee of the assignee.

- Legal representative of the inventor.

Legal representative means a person who in law represents the estate of a deceased person. For example, after father's death, son is father's legal representative.

> **I never see what has been done; I only see what remains to be done.**
> **- Marie Curie**

5.1.12 Prime stages of a Patent Application till Grant

Obtaining patent in India involves following stages:

- **Filing** application (provisional or complete specification): Application is required to be either filed in national office first or in case applicant desires to file in foreign country without/before filing in India, foreign filing permission is needed from Indian Patent Office.
- **Publication** (after 18 months from date of filing application): Application is published on official website of Indian patent office. Any person may oppose the published application on statutory grounds.
- **Examination** of the application happens after the request for examination is made and application is being published. Based on examination, Examination Report is sent to the applicant that shall be replied and all discrepancies shall be complied with within a time frame of 12 months.
- **Grant or Rejection** of the patent.

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5.1.13 Rights of the Patent Owner/Patentee and infringement

If a patent is for a product, the owner has ***right to prevent*** third parties from making, using, offering for sale, selling, importing the patented product and if a patent is for a process, owner has right to prevent third parties from selling, offering for sale, selling the product, importing the product manufactures by using the patented process.

Section 48: Rights of patentee

Subject to the other provisions contained in this Act and the conditions specified in section 47, a patent granted under this Act shall confer upon the patentee-

(a) Where the subject matter of the patent is a product, the exclusive right to prevent third parties, who do not have his consent, from the act of making, using, offering for sale, selling or importing for those purposes that product in India;

(b) Where the subject matter of the patent is a process, the exclusive right to prevent third parties, who do not have his consent, from the act of using that process, and from the act of using, offering for sale, selling or importing for those purposes the product obtained directly by that process in India:

Patent rights are strictly confined to the territory of India as mention in Section 48 which means that having a patent in India gives legal protection only in India and use of such patent in any other country without the consent of the patent holder is not deemed to be infringement. Therefore, the patentee shall file patent application in all other countries separately where he wants to seek protection.

The term 'infringement ' has not been defined in this Act but with respect to rights of the patentee mentioned in Section-48, the meaning of "Infringement" can be interpreted as "Violation of patent rights of the patentee" i.e.,

(a) Where the subject matter of the patent is a product, infringement takes place when someone makes, uses, offers for sale, sells or imports the patented product in India without consent of patentee.
(b) Where the subject matter of the patent is a process, the infringement takes place when someone uses that process, offers for sale, sells or imports for those purposes the product obtained directly by that process in India.

5.1.14 Certain acts that are not deemed to be infringement

A patent gives exclusive rights to the patentee to use, sell, manufacture and import the product into the country where the patent is granted. While a process patent gives the rights to exclusively use the process and prevents everyone else to use, sell and manufacture the product that is developed through this process. Any violation to these rights without the permission from the patentee would cause patent infringement. However there are certain exceptional Acts where the use of patented invention without

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consent of the patentee doesn't constitute infringement. Section 107 of Indian Patents Act details such exceptions.

In certain countries including India, the generic drug makers are allowed to use the patented invention without the consent of the patentee for development and submission of information required under law. This provision is called Bolar-like provision or Regulatory provision. This provision came into existence from the case of Roche Products v. Bolar Pharmaceuticals. Roche is a discovery based pharmaceutical whereas Bolar is a genetic drug maker. Roche holds a patent over the drug Valium. Bolar intended to submit an Abbreviated New Drug Application (ANDA) to the FDA for a similar drug containing the same active ingredient as to Valium.

Hence Bolar used the patented chemical in its experiments, before its patent expiry in order to determine if the generic version is bioequivalent to Valium. Roche responded to this by filing a suit for patent infringement. The District court of Eastern District of New York declined Roche's appeal saying that no infringement had taken place owing to the experimental nature of Bolar's work. The Court of Appeal for the Federal Circuit however disagreed with Bolar's argument as it intended to sell its generic product in competition with Roche's Valium, soon after its patent expiry and stated that the exemption does not apply to experiments which have commercial objective. Bolar argued that such violation of exemption would extend the monopoly of Roche over Valium even after its patent expiry. Thus in 1984, in response to Roche v Bolar judgement, and in an attempt to promote competition by simplifying authorisation for generics while maintaining appropriate protection for the interests of research-based pharmaceutical manufacturers, the US Congress passed the Drug Price Competition and Patent term Act (known as Hatch-Waxman Act). This law permits the use of patented products in experiments for the purpose of obtaining FDA approval and it established the modern system for FDA approval of generic drugs.

Another instance where an exception made for infringement is in the case of Parallel import. A parallel import is said to occur when a product sold by a patent holder in one country is exported by a buyer to another country with the price for the same patented product being higher. The purpose of the parallel import is to check the abuse of patent rights and to control the price of the patented product. Pharmaceutical companies follow the practice of differential pricing of drugs according to the purchasing capacity of the prospective consumer in a target country. As a result, the same drug may be expensive in a developed country and relatively cheap in developing countries. This principle of differential pricing forms the basis of parallel trade. It enables countries in which drugs are expensive to import them from cheaper markets.

On March 23, 1995, a decision regarding parallel imports was delivered by the Tokyo High Court. BBS Kraftfahrzeug Technik A.G. ("BBS") of Germany held both German and Japanese patents for certain aluminum automobile hubcaps. The hubcaps were legitimately purchased in Germany by a Japanese company which was engaged in the export of the relevant goods to Japan where an affiliated Japanese company was engaged in the sale of the goods. These two companies were virtually under the same management when the goods were imported into Japan for sale at a price lower than that charged by BBS dealerships in Japan. Subsequently, BBS filed suit for patent infringement in Tokyo District Court in June of 1994. The district court found that the two companies had infringed the BBS Japanese patent. However, on appeal the judgment in favor of BBS was reversed. In reversing the district court, the High Court held

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that the patentee's right to enforce its Japanese patent against the imported goods had been exhausted since the patentee had legally transferred title to a rightful purchaser of the patented product.

By enlarge though the patentee enjoys exclusive rights for his product/process, Indian Patent Act also contains certain exceptions for the public benefit and prevent the abuse of patent rights by the patentee.

"Education is what remains after one has forgotten everything he learned in school"

- Albert Einstein

5.1.15 Foreign filing of patent application

Under section 39 of the Patent Act 1970; patent application shall be either, **Filed in India** or **Foreign Filing Permission (FFP)**[1] shall be taken from Indian Patent Office. However, if patent application if filed in India, foreign filing shall be done before expiry of 12 months from the date of priority.

Foreign filing of application can be of 2 types:

A. Convention application; and

B. PCT application.

E.1.15.1 Convention application

When application is filed directly in the country which is member of Paris Convention is called as convention application. It shall be filed within 12 months from date of priority. For example, if you file in India and then directly file in USPTO, the application filed in USPTO is called as Convention Application.

E.1.15.2 PCT application

Patent Laws vary from country to country and there is nothing like **'World Patent'** or '**Global Patent'**. However, there is an **International Patent Filing** system to file for a patent in multiple countries which is called as **PCT (Patent Co-operation Treaty)** system and the application is called as a **PCT application** or **International Application**. It is worth noting that PCT is only a filing platform to enable applicant file for a patent in multiple countries and does not grant patents. Patents are granted only by the national offices.

The PCT is an international treaty, administered by the World Intellectual Property Organization (WIPO), between more than 125 countries which are members of the Paris Convention for the Protection of Industrial Property. PCT does not grant a patent, but makes it possible to seek patent protection for an invention simultaneously in each of a large number of countries by filing a **single International Patent Application** instead of filing several separate national or regional patent applications. The grant of patents remains under the control of the national or regional patent Offices, which is called as the 'national phase' of an international application.

A brief outline of the PCT procedure includes the following steps:

[1] FFP is not needed in case the application is filed first in India.

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- **Filing application in national office**: The application is typically filed in national office. Within 12 months of filing in national office, PCT application may be filed either online with International Bureau or at the receiving office (national office).

- **Filing PCT application:** Filing an international application (or PCT application), complying with the PCT formality requirements with prescribed fees.

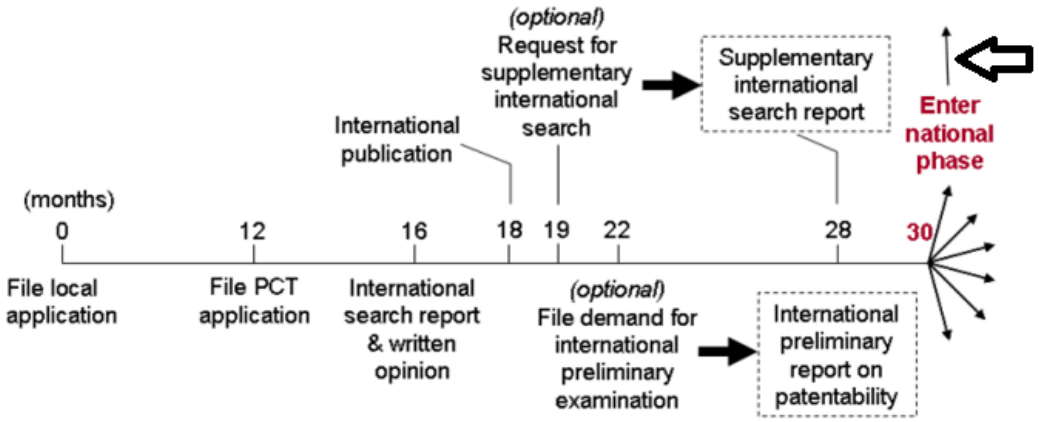
- **International Search:** A search *or International Search is* made by an authorized International Searching Authority (ISA) to find out the most relevant prior art documents regarding the claimed subject matter. The search results in an International Search Report (ISR), together with a written opinion regarding patentability.

  The ISR is normally provided by the ISA to the applicant 9 months after filing of the application in the event of a first filing and 16 months after the priority date in the event of a subsequent filing (i.e., claiming the priority of a first filing).

- **International Publication:** After the expiration of 18 months from the filing date or priority date, the content of international application is published by International Bureau at WIPO (World Intellectual Property Organization).

- **International Preliminary Examination:** An 'International Preliminary Examining Authority (IPEA), at request, carries out an additional patentability analysis.

- **National Phase:** after the end of the PCT procedure, patent application enters national (or regional) patent Offices of the countries in which you want to obtain them such as US, UK etc.



PCT is simpler, easier and more cost-effective way to protect invention is large number of countries.

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Henry Ford—Assembly Line

Henry Ford grew up on the Ford Farm in Michigan. As a boy he did chores on the farm and would whisper to the animals, "Someday somebody will invent an easier way to do this." He hated doing chores and would rather be inventing. When he was 10 years old he would buy clock wheels and make clocks work all by himself. He became a machinist at age 16 and worked for Edison Company. At age 18 he developed a prototype for the gasoline engine and began his first car. The assembly line made it possible to make cars more efficiently so that they could be affordable for all.

5.2 *Copyright*

Copyright is a set of exclusive rights granted to the author or creator of an original work, including the right to copy, distribute and adapt the work. These rights can be licensed, transferred and/or assigned. Copyright lasts for a certain time period after which the work is said to enter the public domain. Copyright applies to a wide range of works that are substantive and fixed in a medium. The Indian Copyright Act, 1957 governs the copyright protection in India.

Copyright gives protection for the expression of an idea and not for the idea (patent system provides protection for implementation of an idea). For exa textbooks on physics covering various aspects like mechanics, heat, optics etc are covered in several books by different authors, each author will have a cop by him/her, provided the book is not a copy of some other book published earl

The total term of protection for literary work is the author's life plus sixty years. For cinematographic films, records, photographs, posthumous publications, anonymous publication, works of government and international agencies the term is 60 years from the beginning of the calendar year following the year in which the work was published. For broadcasting, the term is 25 years from the beginning of the calendar year following the year in which the broadcast was made.

5.2.1 Is registration required?

India is a member of the Berne Convention, an international treaty on copyright. Under this convention, registration of copyright is not an essential requirement for protecting the right. It would, therefore, mean that the copyright on a work created in India would be automatically and simultaneously protected through copyright in all the member countries of the Berne Convention. The moment an original work is created, the creator starts enjoying the copyright. However, an undisputable record of the date on which a work was created must be kept. When a work is published with the authority of the copyright owner, a notice of copyright may be placed on publicly distributed copies.

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For example:

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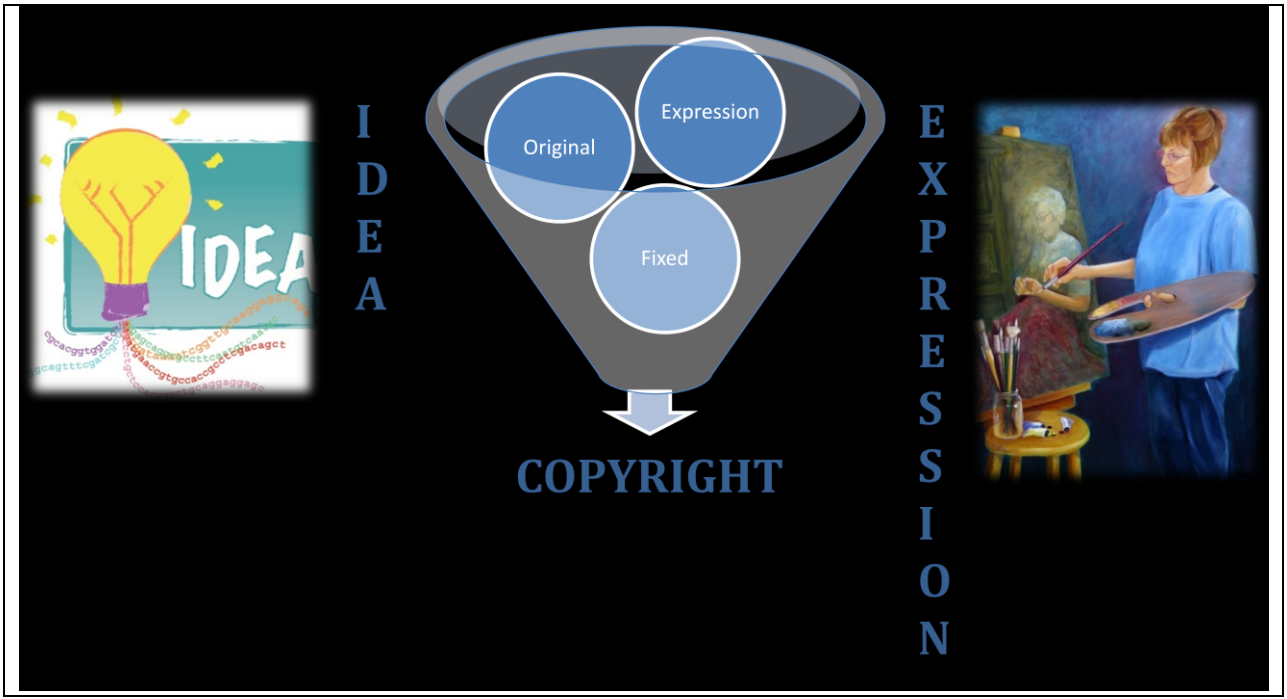
However, there are certain advantages of registering the work under copyright law such as the registration of copyright is authentic proof of ownership and can be produced in the Court as an evidence of ownership. In India the work can be registered at Copyright Registry, New Delhi.

5.2.2 Criteria of protection

To qualify for the copyright protection the work should fulfill following requirements:

Idea-expression dichotomy

The idea-expression divide or idea-expression dichotomy limits the scope of copyright protection by differentiating an idea from the expression or manifestation of that idea. Copyright law protects the expression of ideas, not the ideas itself. For example there are hundreds of movies based on love stories. Here idea is love story, which is not protected by copyright law. Expression of idea when expressed by different directors in different way is considered as different expression and hence gets protection under copyright law. Each expression and each movie will have individual copyrights.



The idea of an anthropomorphic mouse may have at the same time struck many artists around the world but it was Walt Disney who shaped Mickey Mouse. Thus Mickey Mouse is a protectable expression and anybody who creates an anthropomorphic mouse wearing red suspenders looking like Mickey Mouse

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would infringe upon copyright. The idea of an anthropomorphic mouse can be used by any artists around the world to create unique expressions of this idea.

Original/Creative

In order to be original, the work should originate from the mind of the author and not copied from anywhere else. Originality, for copyright purposes, means the work is a result of independent, creative effort by the author. This applies whether the work is literary, musical, painted or drawn, or is photographed. The work must not, in whole or in part, be copied from earlier works.

Fixation

Work should be fixed in some form and should not be abstract or imaginative e.g., if it is a song or drama it should be recorded, if it is a computer program it should be written. In other words, a medium where it is able to be perceived reproduced or otherwise communicated for a period of more than transitory duration.

5.2.3 What works are protected by Copyright?

Indian Copyright Act, 1957 provides protection to following categories of works:

"**Literary work**" includes computer program, tables and compilations including computer and databases.

"**Dramatic work**" includes recitation, scenic arrangement & work capable of being performed by action.

"**Musical work**" means a work consisting of music and includes any graphical notation of such work but does not include any words or any action intended to be sung, spoken or performed with the music. A musical work need not be written down to enjoy copyright protection.

"Artistic work" includes a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality; a work of architecture; and any other work of artistic craftsmanship.

"**Cinematograph film**" means any work of visual recording on any medium produced through a process from which a moving image may be produced by any means and includes a sound recording accompanying such visual recording and "cinematograph" shall be construed as including any work produced by any process analogous to cinematography including video films.

"**Sound recording"** means a recording of sounds from which sounds may be produced regardless of the medium on which such recording is made or the method by which the sounds are produced. A phonogram and a CD-ROM are sound recordings.

5.2.4 Term of protection

Term of protection in case of original literary, dramatic, musical and artistic works is 60-year period which is counted from the year following the death of the author. In the case of cinematograph films, sound recordings, photographs, posthumous publications, anonymous and pseudonymous publications, works of

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government and works of international organizations, the 60-year period is counted from the date of publication.

5.2.5 Who owns the copyright in a work?

Copyright protection subsists from the time the work is created in a fixed and tangible form. The general rule is that the person who creates a work is the author of that work. The copyright in the work of authorship immediately becomes the property of the author who created the work. Only the author or those deriving their rights through the author can rightfully claim copyright. However, there is an exception to this principle. The copyright law defines a category of works called "works made for hire." If a work is "made for hire," the employer, and not the employee, is considered the author. An employer may be a firm, an organization, or an individual.

In the case of works "made for hire", where an author has created the work while in his/her capacity of employee, the employer and not the employee is considered to be the author and copyright holder.

Employee is a person who works under direction of employer, uses equipment of employer and gets salary & other benefits. The work done after office hours without directions of employer is not considered work for hire and author is owner of the work

5.2.6 Rights of copyright owner

Copyright law gives following rights to the owner of work:

- To reproduce work;
- To Issue copies;
- To Perform in public or communicate to public;
- To make cinematographic film or sound recording in respect of the work;
- To make translation of work;
- To make adaptation of work; and
- Sell or give on hire, or offer for sale or hire any copy of program.

Violation of any of the rights is called as infringement for which there could be either a civil or criminal offence. Reproduction of the work (making copies) is the most common type of infringement that takes place in day to day life. For electronic and audio-visual media, unauthorized reproduction and distribution is occasionally referred to as piracy or theft.

Examples

- Taylor Bradford obtained an interim injunction from the Calcutta High Court restraining Sahara TV from broadcasting a locally produced television serial, "Karishma-The Miracles of Destiny". Although an authorized mini-series had been broadcast worldwide, Taylor Bradford argued that she had never authorized Sahara to make or produce any serial or film based on the novels and that the series in question amounted to a reproduction of her copyright works.

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- A copyright infringement case was filed against the Ram Gopal Varma for using the word 'Nishabd' that was protected under the copyright act by a Bengali Film Maker.
- CBI officials in New Delhi nabbed Shekhar Verma, a former employee of Geometric Software Solutions Company and a computer engineer from the IIT, Kharagpur for stealing $60 million worth of source code of a software product of Geometric Software's US-based client, SolidWorks, and trying to sell them to other companies for a fortune.
- Delhi High Court awarded Microsoft damages of Rs 19.75 Lakhs in a civil copyright infringement case where Yogesh Popat and M/s Dyptronics Pvt Ltd, Mumbai were found indulging in loading of pirated or unlicensed software onto hard disk drive of assembled computers and selling to customers.
- Bangalore police arrested three software engineers for illegally copying software from employer, Ishoni Networks India Private Limited, Bangalore. They started a company, Ample Wave Communication Network and were using illegally copied code of Ishoni Networks at their company. Police seized four computers, four CPUs, four keyboards, one server and one laptop from the accused.
- Eight officials of the Radiant Software Ltd, Bangalore were arrested for using pirated version of Oracle software to train students. The police seized the company's hardware and pirated software, valued at Rs 100 million in Madras, and Rs 20.70 million in Bangalore. Later, the offices were also sealed for further investigation. It was found that Radiant was not authorized to impart training in Oracle software.

5.2.7 Moral Rights of an Author

The author of a work has the right to claim authorship of the work and to restrain or claim damages in respect of any distortion, mutilation, modification or other acts in relation to the said work if such distortion, mutilation, modification or other act would be prejudicial to his honor or reputation. Moral rights are available to the authors even after the economic rights have been assigned to someone else. It is interesting to note that moral rights are independent of the author's copyright and remains with him even after assignment of the copyright.

In Amar Nath Sehgal vs Union of India (UOI) case, the moral rights of an artist over his work were put to test in the Delhi High Court, in 1992, in what was to become a 13-year legal battle, finally settled in 2005. Mr. Amar Nath Sehgal, India's best known and internationally renowned sculptor and painter was commissioned by the Government for the creating bronze mural for the most prominent International Convention Hall in the Capital of the Country. The Bronze sculpture of about 140ft. span and 40ft. sweep took five years to complete and was placed on the wall of the Lobby in the Convention hall. This embellishment on a national architecture became a part of the Indian art heritage. In the year 1979, when government pulled down the sculpture from the walls of 'Vigyan Bhawan' and dumped it in the storeroom, Mr. Seghal filed a petition in the Delhi High Court for recognition and enforcement of his moral rights on the work of art.

Mr. Seghal contended that the mutilation of the work was prejudicial to his reputation as it reduced the volume of the corpus of his work. He further argued that where the right to integrity is violated, the remedy is not limited to injunction or damages. Mr. Sehgal prayed for the relief of permanent injunction for restraining UOI from further distorting or mutilating the mural and a sum of Rs. 50 lac as

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compensation for humiliation, hurt, injury and loss of reputation caused to him. Mr. Sehgal also prayed for a decree of delivery-up, directing UOI to return the mural to him and also bear the cost of such restoration.

Recognizing the moral rights of the Mr. Sehgal over the Mural, Pradeep Nandrajog J. ruled:

"mural whatever be its form today is too precious to be reduced to scrap and languish in the warehouse of the Government of India. It is only Mr. Sehgal who has the right to recreate his work and therefore has the right to receive the broken down mural. He also has the right to be compensated for the loss of reputation, honor and mental injury due to the offending acts of UOI".

The Court passed mandatory injunction against the UOI directing it to return the mural to Mr. Sehgal within two weeks from the date of judgment. Court passed a declaration transferring all the rights over the mural from UOI to Mr. Sehgal and an absolute right to recreate the mural and sell the same. The Court also granted damages to the tune of Rs.5 lacs and cost of suit to Mr. Sehgal against UOI.

5.2.8 What is Copyright Infringement?

Anyone who exploits any of the exclusive rights of copyright without the copyright owner's permission commits copyright infringement. In order for a court to determine that a copyright in a work has been infringed it must find that:

(1) The infringing work is "substantially similar" to the copyrighted work, and
(2) The alleged infringer had access to the copyrighted work -- meaning they actually saw it or heard it. There are no clear rules for deciding when "substantial similarity" exists between two works. Courts look for similarities in appearance, sound, words, format, layout, sequence, and other elements of the works.

In case of infringement, copyright owner can enforce his rights in the form of:

- **Civil remedies**: Injunction, damages or account of profit
- **Criminal remedies**: Imprisonment, fine or both

5.2.9 How to register copyright?

Copyright comes into existence as soon as a work is created and no formality is required to be completed for acquiring copyright. However, facilities exist for having the work registered in the Register of Copyrights maintained in the Copyright Office of the Department of Education. The entries made in the Register of Copyrights serve as *prima-facie* evidence in the court of law. The Copyright Office has been set up to provide registration facilities to all types of works and is headed by a Registrar of Copyrights and is located in New Delhi. Separate applications should be made for registration of each work and the requisite fee prescribed should accompany each application.

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5.3 *Trademark/Service mark*

A Trademark is a distinctive sign, which identifies certain goods or services as those produced or provided by a specific person or enterprise. It can be any word, name, symbol, or device, or any combination that is used to:

- ✓ Identify and distinguish the goods/services;
- ✓ Indicate the source;
- ✓ Symbol of good will;
- ✓ Guaranties consistency in quality;
- ✓ Makes purchasing decisions easy; and
- ✓ Advertises & creates an image.

Some famous Trademarks: Nike, Reebok, Coca-cola, Pepsi etc.

Trademarks may be a single word or a combination of words, letters, and numerals etc. It may also consist of drawings, symbols, three dimensional signs such as shape and packaging of goods, or colors used as distinguishing feature. The main function of a trademark is to enable consumers to identify a product (whether goods or service) of a particular company so as to distinguish it from other identical or similar products provided by competitors. Consumers who are satisfied with a given product are likely to buy or use the product again in the future. For this, they need to be able to distinguish easily between identical or similar products.

Collective Marks

Collective marks are owned by an association whose members use them to identify themselves with a level of quality. For example: the mark 'CPA', used to indicate members of the Society of Certified Public Accountants.

Certification Marks

Certification marks are given for compliance with defined standards. For example: **ISO 9000**.

Well known Trademarks

Well-known trademark in relation to any goods or services means a mark which has become so to the substantial segment of the public which uses such goods or receives such services. It is commonly granted to famous trade marks in less-developed legal jurisdictions.

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Service Marks

Service Marks means service of any description that is made available to potential users and includes the provision of services in connection with the business of industrial or commercial matters such as banking, communication, education, financing, insurance etc.

Term of a registered Trademark

The initial registration of a trademark is done for a period of ***Ten years*** but may be renewed from time to time for an unlimited period by payment of the renewal fees.

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5.4 *Industrial Designs*

Industrial design as per The Designs Act, 2000 means the features of shape, configuration, pattern, ornament or composition of lines or colors applied to any article - whether in two dimensional or three dimensional or in both forms - by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye; but it does not include any mode or principle of construction or anything which is in substance a mere mechanical device. In this context an article means any article of manufacture and any substance, artificial, or partly artificial and partly natural; and includes any part of an article capable of being made and sold separately.

The industrial designs are applied to a wide variety of products of industry or handicraft such as watches, jewellary, fashion, industrial and medical implements etc. The existing legislation on industrial designs in India is contained in The Designs Act, 2000 which serves its purpose well in the rapid changes in technology and international developments.

Term of Industrial Design

The total term of a registered design is 15 years. Initially the right is granted for a period of 10 years, which can be extended, by another 5 years before the expiry of initial 10 years period. The proprietor of design may make the application for such extension even as soon as the design is registered.

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5.5 *Semiconductor integrated circuit layout design*

Semiconductor Integrated Circuits (IC) Layout Design Act 2000 provides protection for semiconductor IC layout designs. IC Layout design includes a layout of transistors and other circuitry elements and includes lead wires connecting such elements and expressed in any manner in a semiconductor IC. Semiconductor IC is a product having transistors and other circuitry elements, in which are inseparably formed on a semiconductor material or an insulating material or inside the semiconductor material and designed to perform an electronic circuitry function. In order to get registration the IC Layout design has to be:

- ✓ Original;
- ✓ Not commercially exploited anywhere in India or in a convention country;
- ✓ Inherently distinctive; and
- ✓ Inherently capable of being distinguishable from any other registered layout design can't be registered as IC layout design.

The design not exploited commercially for more than 2 years from date of registration of application is treated as commercially exploited for the purpose of Semiconductor Integrated Circuits (IC) Layout Design Act 2000.

Term of an IC layout design

The term of protection is **10 years** from the date of filing or from the date of first commercial exploitation anywhere in any country whichever is earlier.

5.6 *Trade secret or undisclosed information*

A trade secret refers to data or information relating to the business which is not generally known to the public and which the owner reasonably attempts to keep secret and confidential. Trade secrets generally give the business a competitive edge over their rivals. Almost any type of data, processes or information can be referred to as trade secrets so long as it is intended to be and kept a secret, and involves an economic interest of the owner.

A trade secret could be a formula, practice, process, design, instrument, pattern, or compilation of information used by a business to obtain an advantage over competitors or customers. All trade secrets are confidential in nature but every confidential information may not be called trade secrets.

Usually companies' don't realize how and when the trade secret was created during the course of their business activities. Sometimes companies may think that they don't have trade secrets until they are asked to invite competitors in and show them client lists and marketing plans, talk to employees and observe the way they do business. Then it becomes obvious that they have something to protect.

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Henry Ford who insisted that parts for his cars be delivered to his factory in a wooden crate of a particular size. As it turns out, a piece of that crate was the perfect size for the floorboard in the Model. Henry figured out how to get a car part for free, and that's a trade secret.

Intellectual property being intangible in nature requires registration in order to obtain ownership. At the time of registration the owner has to completely disclose IP which he/she wishes to protect and register. Trade secrets and confidential information is a very unique form of IP that may lose its value once it is disclosed and hence it is not registered. Therefore, the only way to protect it is to keep it confidential and not to disclose to anyone. Hence it becomes extremely important to take precautionary measures to protect all such IP.

Legal Framework in India

There is no specific law in India that protects trade secrets and confidential information. Nevertheless, Indian courts have upheld trade secret protection on the basis of principles of equity, and at times, upon a common law action of breach of confidence, which in effect amounts to a breach of contractual obligation.

The law of trade secrets is derived from the basic principles of the law of torts, restitution, agency, quasi-contract, property and contracts. There are sound economic reasons for trade secret protection. Failure to protect obligations of confidentiality could inhibit both the quantity of information exchanged and its quality. The 'owner' of the secret will in most cases have expended substantial resources to discover the secret and hence has a clear economic interest in its remaining secret. In addition, the economic rationale behind such protection is to offer an incentive to invest in the creation of information.

In India it is possible to contractually bind a person not to disclose any information that is revealed to him/her in confidence. In one case, the Delhi High Court has also upheld that a claim that disclosure of information would amount to breach of confidence is not defeated by the fact that other people in the world already knew the information. The Supreme Court of India has also upheld a restrictive clause in an employment contract, which imposed constraints on the employee to not reveal or misuse any trade secrets that he or she has learnt whilst in employment.

The remedies available to the owner of trade secrets would be to obtain an injunction preventing a third party from disclosing the trade secrets, return of all confidential and proprietary information, and compensation for any losses suffered due to disclosure of trade secrets.

Peculiar features of trade-secret are:

All trade secrets are confidential in nature but all confidential information may or may not be trade secret. Peculiar features of trade secret are:

- Usually there may or may not be any defined legal framework to protect it but misappropriation may be an offence. In India there is no legal framework to protect it but it is protected under contract law or law of torts etc.

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- It is not disclosed like other forms of IP and it loses its value in the market once secret is disclosed and there is no way to retrieve it back
- It's very crucial for business (trade secret).
- The duration not fixed as in case of patent or copyright. Life of a trade secret is as long as it is kept a secret. Once secret is out, value is lost forever.
- It's easily misappropriated because it represents nothing more than information, which can be memorized, scribbled down, e-mailed or copied onto some tangible medium and then quietly removed from company premises
- Once trade secret is disclosed in public, its value is lost forever- One cannot "un-ring the bell"
- It's often overlooked as intellectual property asset and most of the times companies fail to identify and assess its value properly
- The creation of trade secret is never announced in public
- The validity of trade secret is only proved in case of litigation

Independent creation of a trade secret is not infringement. If company X has a trade secret and company Y creates an identical trade secret independently without stealing it from company X, there is no misappropriation of trade-secret.

Confidential Information vs. Trade Secret

The terms "Confidential Information" and "Trade Secret" are used synonymously and usually confused with each other. Confidential information is the information which company would like to keep secret. It may or may not be essential for the business. In other words, all trade secrets are confidential in nature but all confidential information cannot be termed as trade secret. Please refer to the definition for particular requirements for a trade secret.

Confidential Information or Trade Secrets could be either technical or business in nature.

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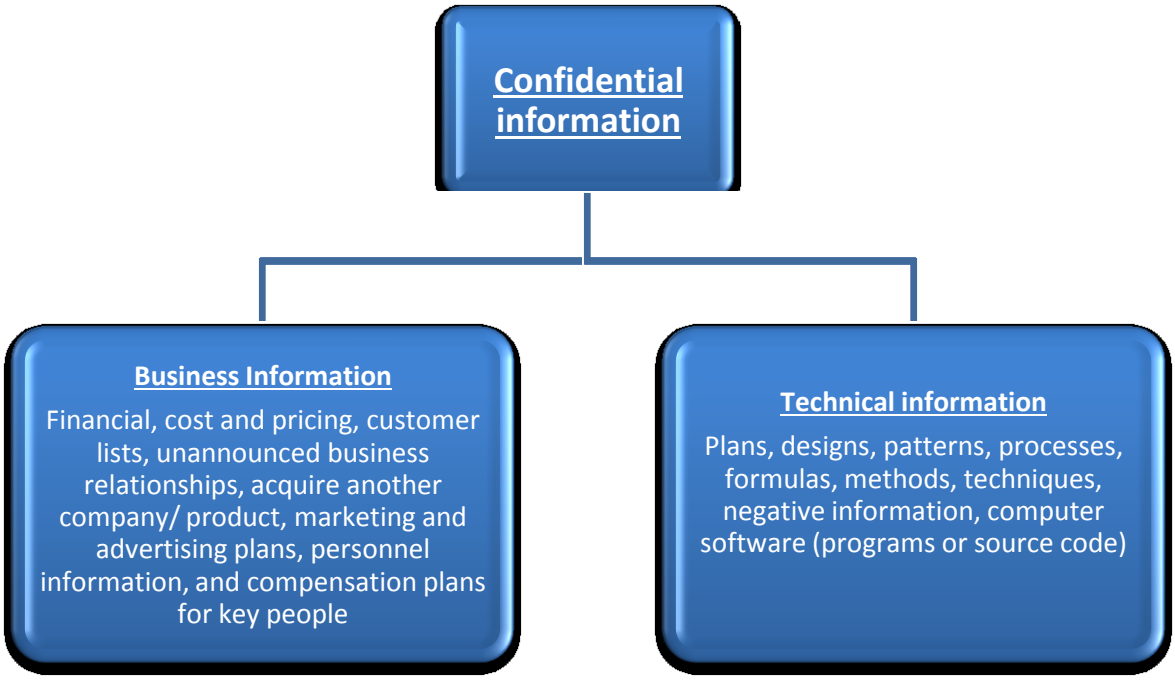


Requirements to be a trade secret

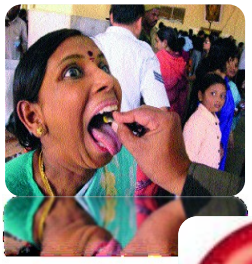
All confidential information cannot be called as trade secret until it qualifies following requirements:

- It should not be in public;
- It should have commercial value; and
- Owner should have taken enough measures to protect it.

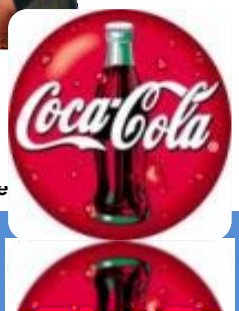
In addition to above factors some courts have considered the amount of effort or money expended by the information owner in gathering the information in the first place. Judges and juries sometimes have a hard time refusing protection for a trade secret; as an example, a list of customer leads or a soft drink formula that was obtained through years of hard work.

Examples of trade secret:

- The fish medicine for chronic asthma patients, a traditional treatment known only to Bathini Gowd brothers of Hyderabad. The medicine is given out only once a year on an auspicious day determined by astrological calculations.



- The Coca-Cola formula is The Coca-Cola Company's secret recipe for Coca-Cola. As a publicity, marketing, and intellectual property protection strategy started by Robert W. Woodruff, the



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company presents the formula as a closely held trade secret known only to a few employees, mostly executives.

Coca Cola has been taking stringent measures to protect the secrecy of its formulation and it is believed that the formulation makes it the most popular soft drink in the world.

***IMPORTANT**: Confidential information should always be clearly communicated to be "confidential". Such information cannot be proved to be so if not communicated to be confidential and appropriate measures have not been taken to protect it.*

But, also remember that even if the document is not labeled or communicated as "confidential" and from its contents it looks confidential to an educated person like you, it is your implied duty to maintain its confidentiality and do needful to safeguard it.

5.7 *Other Forms of IP*

6.1 Geographical indication

A Geographical Indication (GI) is a sign used on goods that have a specific geographical origin and possess qualities or a reputation that are due to that particular place. Most commonly, a geographical indication consists of the name of the place of origin of the goods.

A geographical indication not only assures quality and uniqueness but also allows producers to obtain market recognition and a premium price. A Geographical Indications Registry with all India jurisdictions operates in Chennai, as per the Geographical Indication of Goods (Registration and Protection) Act 1999.

Darjeeling Tea is among the around 36 Indian products registered with the **GI re**

Other protected GIs include: Pochampally Ikat (Andhra Pradesh); Chanderi saree (Guna, Madhya Pradesh); Kotpad Handloom fabric (Koraput, Orissa); Kota Doria (Kota, Rajasthan); Kancheepuram silk (Tamil Nadu); Bhavani Jamakkalam (Erode, Tamil Nadu); Mysore Agarbathi (Mysore, Karnataka); Aranmula Kannadi (Kerala); Salem fabric (Tamil Nadu); Solapur terry towel (Maharashtra); Mysore silk (Karnataka); Kullu shawl (Himachal Pradesh); Madurai Sungudi (Tamil Nadu); Kangra tea (Himachal Pradesh); Coorg Orange (Karnataka); Mysore betel leaf (Karnataka); Nanjanagud banana (Karnataka); Mysore sandalwood oil (Karnataka); Mysore sandal soap (Karnataka); Bidriware (Karnataka); Channapatna toys & dolls (Karnataka); Coimbatore wet grinder (Tamil Nadu); Mysore rosewood inlay (Karnataka); Kasuti embroidery (Karnataka); Mysore traditional paintings (Karnataka) and Orissa Ikat (Orissa).

Term of GI protection

The registration of a GI shall be for a period of **10 years** but may be renewed from time to time for an unlimited period by payment of the renewal fees.

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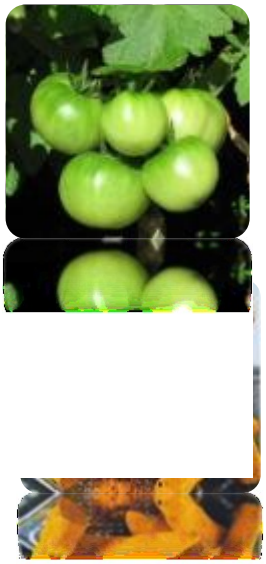
6.2 Plant variety & farmer's rights



The Protection of Plant Variety and Farmer's Rights Act, 2001 provides for the establishment of an effective system for protection of plant varieties, the rights of farmers and plant breeders and to encourage the development of new varieties of plants.

6.3 Traditional knowledge

Traditional knowledge (TK) generally refers to the matured long-standing traditions and practices of certain regional, indigenous, or local communities. Traditional knowledge also encompasses the wisdom, knowledge, and teachings of these communities. In many cases, traditional knowledge has been orally passed for generations from person to person. Some forms of traditional knowledge are expressed through stories, legends, folklore, rituals, songs, and even laws. Other forms of traditional knowledge are often expressed through different means.

How and where do we start?

IP protection today has become a key factor for economic growth and advancement in the high technology sector. IP is a valuable asset for any organization that believes in innovation, research and development and can be used as a powerful tool to generate revenues. The process of creation, protection and exploitation of IP effectively starts from the awareness of IP & clear understanding of fundamentals of IPR. As the development of new products and processes involves high investment in terms of money, time and human resources therefore it is essential to protect them under appropriate legal framework.

Generation of new ideas and creation of IP needs a conducive environment within the organization to facilitate the employees not only to disclose the ideas but also give them assurance that they will get due credit and recognition for their contribution for developing IP. Good IP Discloser form and operational IP Committee within an organization are few of the very effective measure to ensure generation of new and innovative ideas from the employees. The procedure for step-wise implementation of IP process may vary from one organization to another depending upon the area and goal of business and the business strategies.

The typical procedures to be followed may comprise of the following steps:

- ✓ Awareness of Intellectual Property Law to make sure that IP is protected properly and organization refrains from using IP of third party (ies) accidently or otherwise.
- ✓ Maintaining IP hygiene within organization to make sure that IP processes are followed strictly by everyone.
- ✓ Understanding the requirements of patentability in detail, especially by R & D group who need to understand the importance of prior search before planning and investing in research activity.

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- ✓ Developing culture of innovation within an organization. Having good invention disclosure modes and means within an organization assist and encourage employees to innovate and get due credit for their contribution in generating and materializing the idea.
- ✓ Performing IP audit periodically to know gaps in the IP processes as well as identification of IP. Complete review of contracts such as Non-Disclosure Agreements with freelancer or employment agreements is essential.
- ✓ Implementing procedures to maintain confidentiality of the inventions for which the organization may decide to file patents.
- ✓ Having procedures to make sure that IP of the organization is secure when employees resign/terminated from the employment. It's equally important to make sure that a new employee doesn't bring confidential information from his/her prior employer.
- ✓ Protecting IP developed in the organization and exploring methods and options to exploit the same.

Define your IP Strategies

Developing and maintaining an effective IP strategy is a challenging but essential step in preparing to take an innovation to the market. A patent must be regarded as a strategic asset aimed at improving the competitive advantages and the earning capacity of a company. The term patent strategy is typically used to describe the plan used to develop patents with strategic value in complex competitive relationships. A good patent strategy should cover both the present needs, as well as future developments. Ideally, for any product or product based solutions company, its business strategy and its Intellectual Property protection strategy should complement each other. This is one of the most critical foundation blocks for an organization that strives to be leader in its domain.

Importance of patent search

Patent prior-art is any relevant information related to the invention that refers to the knowledge existing prior to the invention or the technology, which has been made available to the public. This knowledge may be in any form such as patent, scientific literature, publications (such as journal articles, proceedings of conferences, data books and display information from technical exhibitions), public discussions or news from anywhere in the world. Patent search or prior art search results can be used to achieve various aims, it may assist in assessing patentability of the invention or designing R & D or devising patent strategies or getting patent landscape overview or to assess infringement risks before product launch.

Prior art search:

- ❖ Prevents reinventing the wheel;
- ❖ Provides ideas to refine and improve the invention or technology;
- ❖ Helps to identify whether the invention has significant improvement over existing inventions or not;
- ❖ Points out the boundaries of the invention that will protect an inventor from infringing other patents;
- ❖ Increases the knowledge base of the inventor;
- ❖ Provides inspiration to the inventor in new technologies.

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Types of Prior Art Searches

There are different types of prior art searches for different purposes at different stage. Generally prior art search can be classified in to five main types:

1. Patentability or Prior Art Search (PAS);
2. Freedom to operate or clearance search or Right to Use search (FTO);
3. Validity or Invalidity or Enforcement Readiness search;
4. State of the Art search;
5. Technology Landscape Analysis.

1. Patentability Search/Prior Art Search (PAS)

Patentability Search or Prior Art Search is also known as "Novelty search". Timely patent search is an important not only to assess chances of getting a patent but also to plan research and development in an organization and know competitors in the same area of technology. It is good idea to perform patent search at the stage of idea itself to save time, money and to have better quality of research output.

PAS is conducted under following circumstances:

- Any information from patent or non-patent literature already disclosed to the public, in any form or disclosed in any part of the world cannot be patented. Therefore, before preparing a patent application, PAS is performed in order to have clarity on the inventions patented already so that patent can be drafted in a better manner.

- During the initial stage of product or process development PAS is done to identify whether anyone else has publicly disclosed a similar inventive concept prior to a Critical Date[2]. For example, if a biotechnology firm is planning to work on genetically modified bacteria to produce insulin on commercial level, it is essential to perform PAS before starting the research. If such organism is already patented or available otherwise, it is not worth to re-work on the same and waste time, resources and money. Instead the company can take license or divert research in a different direction.

PAS usually does not have any time limitation; the period varies from yesterday to 200 years back. Patent search is done world-wide or globally even though patent rights are territorial. A publication related to the invention in US is enough to destroy novelty and prevent an inventor patenting the same invention in India even though there is no valid patent granted in India

2. Freedom to operate (FTO)

FTO search is also known as "Clearance search" or "Right to use searches". This search is conducted prior to launching a new product. For example, if a company plans to launch a new product in UK region, there may be relevant patent which the company is likely to infringe by commercializing the product (may or may not be patented). If the company launches the product without FTO and infringing the patent of third

[2] Critical Date refers to the date of the initial placing on sale, publication, or public display or commercial use of an invention.

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party, the consequences of the same may be fatal leading to Court litigation and loss of finances and reputation. FTO analysis shall be done in such circumstance to check patents that are in force in UK to ensure that the company is not infringing any patent (s) of third party. FTO is usually done jurisdiction wise as IP rights are specific to different jurisdictions, and FTO analysis should relate to particular countries or regions where a company wants to operate. If the company plans to launch a product in US, FTO is required to be done in US alone but if the product has to be exported to four other countries, FTO shall be done in other four countries as well.

FTO analysis focuses on patent claims and the report must include the legal status of the identified relevant patent. FTO search is limited by time period of last 20 years (term of in-force patents). The search will require in-depth analysis of the claims and legal status of patents identified in the search. FTO search is conducted not only on issued patents, but also on the pending patent applications to prove that the proposed product or process does not infringe any valid patent of others.

3. Invalidity/Validity Search

Patent Validity search or Patent Invalidity Search is a comprehensive prior-art search performed after patent issuance. The purpose of validity/invalidity search is to determine whether a patent issued on a invention is valid or not in view of prior art that was already published as of the priority/filing date of the patent application. The principle of the search is to either validate or invalidate one or more claims of a patent. In other words, when a search is conducted to validate the claims of a given patent, it is called Patent Validity Search and when it determined to invalidate the claims of a given patent then it is called Patent Invalidity Search. Both the searches are identical except for the desired outcome. This search also includes the non-patent literature. Patent invalidity/validity search is mainly conducted to win the infringement case or overcome the possible risk of infringement.

For example, a company A has a product which infringes patent of company B. Company B sued company A for infringement. In this case, the company A will conduct Invalidity Search to invalidate company B's patent. In another case, an applicant or patentee who has the concern that their patent may infringe another patent, may conduct a validity/invalidity search to validate or invalidate the concerned patent.

Another example where Validity Search proves useful is in licensing negotiations. In assessing the value of a licensed patent, a licensee is about to receive, he/she may want to conduct a Validity Search to determine the strength of the patent. Upon receiving the results, the licensee can then adjust its minimum royalty payments according to the findings before he/she enters into the license agreement

4. State of the Art search

The state of the art patent search is the broadest and most general of all the patent searches. It is essentially a market survey that should ideally find out what technology already exists and then built on it. State of the Art search is conducted by a company who is considering entry into a new technology area, in order to gain an overall perspective of a particular technical field. This search helps in identifying the competitors and also shows the trend of the technology in a specific identified area. The search is performed to gather and categorize the patents in a specific area and will be limited to last twenty years only.

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5. *Technology* landscape

Technology landscape is a continuation search of State of the Art which requires a further deep analysis to understand the technology evolution, major players, current and upcoming competitors and changes in the timeline trend. The main purpose of technology landscape is to identify the white space or gap in the technology. This type of search provides a comprehensive scope to plan future R&D, leading to innovative projects to bring out new products/process in an industry. The main purpose of technology landscape study is to understand the technology trend, strength of the competitors, to learn latest technology advancement and analyze the patent activity related to technology of interest. Based on technology landscape analysis, appropriate IP strategy, complaint with business strategy is devised for the companies because a good IP strategy is a critical part of business plan and growth at any stage.

Technology landscape is not limited to patent activities, but also includes non-patent literature and other market information. There is no time limitation on this type of search as it is technology specific.

6. *How can Origiin help you?*

We, at ***Origiin***, provide complete solution and services to knowledge based companies and academic institutions, enabling them to know the legal framework and identify, protect and manage their IP in an effective manner.

a. Value Proposition

Origiin is a diverse group of professionals with a common set of core values. Transparency, honesty, responsiveness to our Customer's needs and requirements are the basic tenets on which Origiin is founded. We consider these as extremely critical components for long term successful business relationships. We are committed to serve our clients by providing cost-effective, timely and high-quality services.

b. Origiin Team

Origiin has a team of skilled patent agents and patent attorneys from various areas of technology. We have so far provided quality services to a large number of companies from diverse areas of technology such as IT, software, electronics & telecommunication, engineering, pharmaceuticals, telemedicine and biotechnology etc.

c. Our promise

We understand how critical is protection of IP for company and promise to make our customers feel "***safe and secure***" with our s and solutions. We enable clients to realize long term value and b exploiting and managing it in best possible manner.

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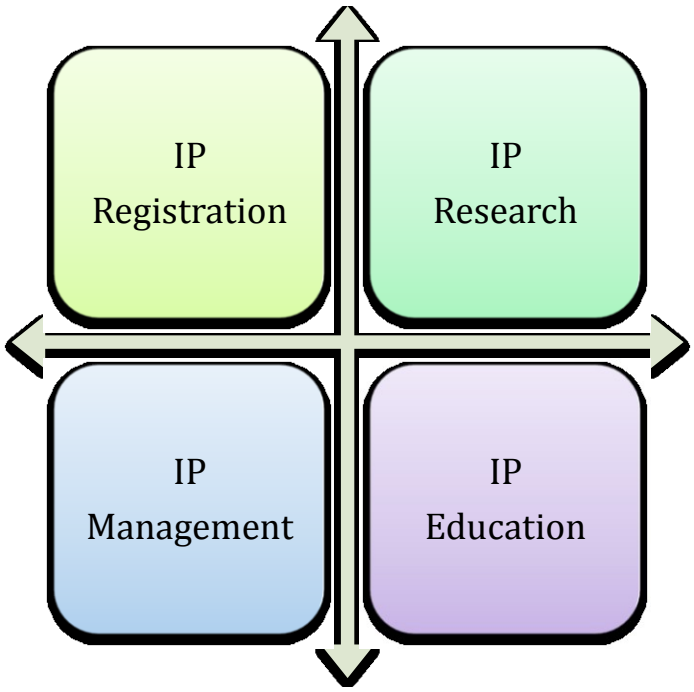
d. Our services and solutions



i. IP Protection and Registration

I. **Patents**, which protect inventions such as Mechanical Apparatuses, Medical Devices, Chemical products or processes, Embedded Systems, Hardware etc.
II. **Copyright**, which protects artistic, cinematographic, musical and literary works such as software code, scripts, logos etc.
III. **Trademark**, which protect brand names, logos, slogans, and other words or symbols that distinguish your products from those of your competitors
IV. **Industrial Design**, which protects the design applied on an article of manufacture such as shape of a bottle, dress design, patterns etc containing some aesthetic value.

ii. IP Research

I. Patentability/Prior Art Search
II. Freedom-to-Operate analysis
III. Technology Landscape Analysis
IV. Validity/Invalidity Analysis
V. Claim Mapping

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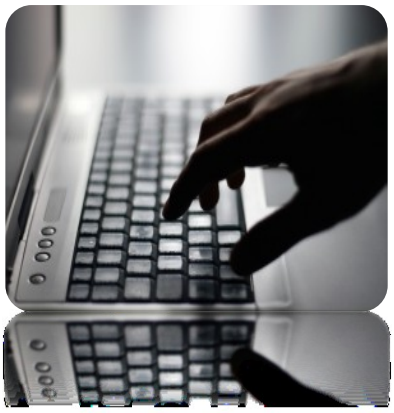
iii. IP Management

I. IP Audit and complete review of IP process including assessment of internal agreements
II. Devising IP strategy and IP Policy
III. IP License agreements
IV. IP Valuation & Due Diligence



iv. IP Education

Origiin IP Academy has been actively involved with several programs on IP for corporate, students and academics.

I. In-house customized sensitization program on IPR for corporates
II. Certificate course on patent specification drafting
III. Certificate course on Freedom to Operate Analysis
IV. Certificate course on Validation/Invalidation search
V. Certificate course on Patent Landscape Analysis and State of Art Search
VI. Certificate course on Patentability Search
VII. Indian Patent Agent Exam training [Distance education, online, class-room mode]

Go to www.origiinipa.com for more details.

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Disclaimer

Aim of this document is to give broad idea about Intellectual Property Laws and should be considered as a legal advice.

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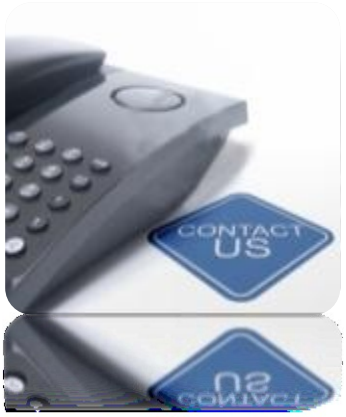

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About Origiin

Origiin Intellectual Property Solutions LLP provides Intellectual Property (IP) Solutions specifically in the area of registration of Patent, Copyright, Trademark and Industrial Designs. Origiin also offers services in the area of patent and trademark searches, trainings on Intellectual Property Law, drafting of contract and license agreements.

Whom we serve

- Multinational Corporations
- Medium and Small size Companies
- Start-up companies
- Academic Institutes and Universities
- Legal firms
- Indian LPOs
- Individual Inventors

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