

Treaties for IPR Protection

1. Berne Convention
2. Madrid Agreement
3. Budapest Treaty

1. Berne Convention:-

- ❑ Berne Convention was formulated in the year 1886
- ❑ For the protection of Literary and Artistic works.
- ❑ “To protect, in as effective and uniform a manner as possible, the rights of the authors in their literary and artistic works” is the aim of the Convention (WIPO, 2017).
- ❑ Berne Convention protects literary works, artistic works, dramatic works, musical works and cinematographic works and it also protects derivative works based on other pre-existing works, such as translation, adaptations, arrangements of music and other alterations of a literary or artistic work.
- ❑ Berne Convention states the duration of the copyright protection as 50 years after the author's death.
- ❑ The Berne Convention was revised several times to cope up with the technological challenges that is, first revision took place in Berlin in 1908, followed by the revision in Rome in 1928, in Brussels in 1948, in Stockholm in 1967, and in Paris in 1971 .

- ❑ Basic principles of Berne Convention are, “national treatment”,
- ❑ according to which works originating in one of the member States are to be given the same protection in each of the member States as these grant to works of their own nationals,
- ❑ There is “automatic protection”, according to which such national treatment is not dependent on any formality that is, protection is granted automatically and is not subject to the formality of registration, deposit or the like, and
- ❑ There is “independent of protection”, according to which enjoyment and exercise of the rights granted is independent of the existence of protection in the country of origin of the work.
- ❑ It is administered by WIPO.

Madrid Agreement

It concerning the international registration of marks (retail chain) came into force 1989 and was meant for repression of false or deceptive indications of source of goods.

Main features of Madrid Agreement are as follows:

1. An applicant must be national member country. A person having his domicile or real and effective industrial or commercial interest in such country is also eligible. It may be noted that this would be governed by the national laws of the country in question.
2. A mark to be registered in member states should be first registered at the national level in the country of origin of the applicant. The first registration is called 'basic registration'.
3. The country having given the basic registration can only transmit the request for international filling to the international bureau of the WIPO along with the list of the courtier in which protection is being sought. There is no provision for directly filling a request under the agreement.
4. It is required that the country of origin has to be a member state. The role of the office of the country of origin is not only to send the application for international registration but also to certify that the mark, which is the subject of the international registration, is the mark, which has been registered in the country of origin.

5. For each application, a fee has to be paid for each designated country and WIPO. The fee paid for the designated country is called the 'complementary fee'.
6. The international bureau notifies the international registration to the offices of the designated countries and publishes it in a monthly periodical called 'The WIPO Gazette of International Marks'
7. If the basic registration is cancelled for some reasons, in the country of the origin, during the first five years, the international registration automatically stands cancelled in all designated countries.

Madrid protocol

- It relates to the Madrid Agreement concerning the international registration of marks entered into force on December 1, 1995 and came into operation on April 1, 1996
- Under this, a person can file a single trade mark application at their national office that will provide protection in multiple countries.

It has the basic features of Madrid Agreement.

The protocol was formed to remove some of the features of the Madrid Agreement, which posed some obstacles to accessions by several countries which are mentioned below:

1. For the international registration, it is essential to first register a marks at the national level. The time required for obtaining a mark at the national level. The time required for obtaining a mark at the national level varies from country to country. Hence some parties suffer.
2. Within one year designated member country has to examine and issue a notice of refusal by giving all the grounds for refusal. The period was considered short.
3. A uniform fee designation o a member country. This was found inappropriate for countries with high level of national fees.
4. An international registration is linked to the basic registration during initial five years and the former get cancelled if latter is cancelled. The fact, that grounds under which a marks is cancelled in the country of origin need not necessarily exist in every other designated country, is overlooked.
5. The only working language of Madrid Agreement is French.

Budapest Treaty

- It is an international convention governing the recognition of microorganisms deposits in officially approved culture collections for the purpose of patent applications in any country that is a party to it.
- Because of the difficulties and on occasion of virtual impossibility of reproducing a microorganism from description of it in a patent specification, it is essential to deposit a strain in culture collection centre for testing and examination by others.
- The treaty was signed in Budapest in 1973 and later amended in 1980.
- India has become a member of this treaty with effect from December 17, 2001.

Types of Intellectual property

What are the legislations covering IPRs in India?

1. Patents: The Patents Act, 1970 as amended in 1999, 2002 and 2005
2. Design: The Designs Act, 2000
3. Trade Mark: The Trade Marks Act, 1999
4. Copyright: The Copyright Act, 1957 as amended in 1983, 1984 and 1992, 1994, 1999
5. Layout Design of Integrated Circuits: The Semiconductor Integrated Circuits Layout Design Act, 2000
6. Protection of Undisclosed Information: No exclusive legislation exists but the matter would be generally covered under the Contract Act, 1872
7. Geographical Indications: The Geographical Indications of Goods (Registration and Protection) Act, 1999
8. Plant Varieties: The Protection of Plant Variety and Farmers' Rights Act, 2001

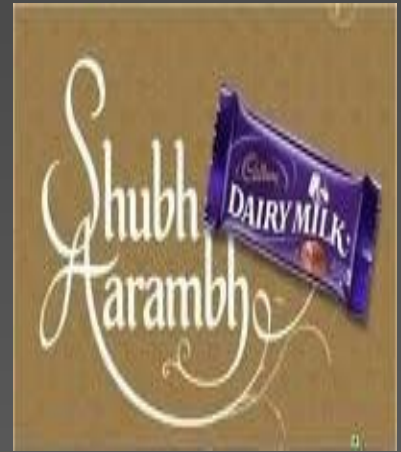
Trademarks and Service Marks:

- ❑ A trademark or service mark is a word, name, symbol, or device used to indicate the source, quality and ownership of a product or service.
- ❑ A trademark is used in the marketing is recognizable sign, design or expression which identifies products or service of a particular source from those of others.
- ❑ The trademark owner can be an individual, business organization, or any legal entity.
- ❑ A trademark may be located on a package, a label, a voucher or on the product itself. For the sake of corporate identity trademarks are also being.



- ❑ In addition to words, trademarks can also consist of slogans, design, or sounds. Trademark provides guarantee of quality and consistency of the product or service they identify.

Companies expend a great deal of time, effort and money/ in establishing consumer recognition of and confidence in their marks



- ❑ A trademark registration is valid for 10 years and may be renewed for additional ten year periods thereafter as long as the mark is in used in interstate commerce.
- ❑ To maintain a mark the registrant is required to file an affidavit with the, Patent and Trademark Office (PTO) between the fifth and sixth year after registration and every ten years to verify the mark is in continued use.
- ❑ Marks not in use are then available to others.
- ❑ A properly selected, registered and protected mark can be of great value to a company or individual desiring to establish and expand market share and better way to maintain a strong position in the marketplace.

2. Copyrights:

- ✓ Copy right refers to a document which grants exclusive right to the author /creator to publish and sell literary or musical or artistic work.
- ✓ Copyright is a form of protection provided by U.S. law (17 U.S.C 101 et seq) to the authors of "original works of authorship" fixed in any tangible medium of expression.
- ✓ The manner and medium of fixation are virtually unlimited.
- ✓ Creative expression may be captured in words, numbers, notes, sounds, pictures, or any other graphic or symbolic media.
- ✓ The subject matter of copyright is **extremely broad, including literary, dramatic, musical, artistic, audiovisual, and architectural works.**
- ✓ Copyright protection is available to both published and unpublished works.
- ✓ Copyright protection is available for more than merely serious works of fiction or art.
- ✓ Marketing materials, advertising copy and cartoons are also protectable.
- ✓ Copyright is available for original working protectable by copyright, such as titles, names, short phrases, or lists of ingredients.
- ✓ Similarly, ideas methods and processes are not protectable by copyright, **although** the expression of those ideas is.

- ✓ Copyright protection exists automatically from the time a work is created in fixed form.
- ✓ The owner of a copyright has the right to reproduce the work, prepare derivative works based on the original work (such as a sequel to the original), distribute copies of the work, and to perform and display the work.
- ✓ Violations of such rights are protectable by infringement actions.
- ✓ Nevertheless, some uses of copyrighted works are considered “fair use” and do not constitute infringement, such as use of an insignificant portion of a work for noncommercial purposes or parody of a copyrighted work.
- ❑ **Federal Registration of Copyrights:** The works are protected under federal copyright law from the time of their creation in a fixed form.
- ❑ Registration, however, is inexpensive, requiring only a \$30 (present \$85) filing fee, and the process is expeditious.
- ❑ In most cases, the Copyright Office processes applications within four to five months.
- ❑ Copyrighted works are automatically protected from the moment of their creation for a term generally enduring for the author’s life plus an additional seventy years after the author’s death.
- ❑ The policy underlying the long period of copyright protection is that it may take several year for a painting, book, or opera to achieve its true value, and thus, authors should receive a length of protection that will enable the work to appreciate to its greatest extent.

3. Patents:

- A patent for an invention is the grant of a property right to the inventor, issued by the United States Patent and Trademark Office.
- Generally, the term of a new patent is 20 years from the date on which the application for the patent was filed in the United States or, in special cases, from the date an earlier related application was filed, subject to the payment of maintenance fees.
- U.S. patent grants are effective only within the United States, U.S. territories, and U.S. possessions.
- Under certain circumstances, patent term extensions or adjustments may be available.
- The right conferred by the patent grant is, **in the language of the statute and of the grant itself, “the right to exclude others from making, using, offering for sale, or selling”** the invention in the United States or Importing the invention into the United States.
- What is granted is not the right to make, use, offer, for sale, sell or import, but the right to exclude others from making, using, offering for sale, selling or importing the invention.
- Once a patent is issued, the patentee must enforce the patent without aid of the USPTO.

❑ There are three types of patents:

1. Utility patents may be granted to anyone who invents or discovers any new and useful process, machine, article of manufacture, or composition of matter, or any new and useful improvement there of
2. **Design patents** may be granted to anyone who invents a new, original, and ornamental design for an article of manufacture
3. **Plant patents** may be granted to anyone who invents or discovers and asexually reproduces any distinct and new variety of plant.

- ✓ Patents are governed exclusively by federal law
- ✓ To obtain a patent, an inventor must file an application with the Patent and Trademark Office (PTO) (the same agency that issues trademark registration) that fully describes the invention.
- ✓ Patent prosecution is expensive, time consuming and complex.
- ✓ Costs can run into the thousands of dollars, and it generally takes over two year for the PTO to issue a patent.
- ✓ Patent protection exists for twenty years from the date of filing of an application for utility and patents and fourteen years from the date of grant for design patents.
- ✓ After this period of time, the invention fall into the public domain and may be used by any person without permission.
- ✓ The inventor is granted an exclusive but limited period of time within which to exploit the invention.
- ✓ After the patent expires, any member of the public is free to use, manufacture, or sell the invention.
- ✓ Thus, patent law strikes a balance between the need to protect inventors and the need to allow public access to important discoveries.

4. Trade Secrets:

- ❑ A trade secret consists of any valuable business information.
- ❑ The business secrets are not to be known by the competitor.
- ❑ There is no limit to the type of information that can be protected as trade secrets
- ❑ Example: Recipes, Marketing plans, financial projections, and methods of conducting business can all constitute trade secrets.
- ❑ There is no requirement that a trade secret be unique or complex;
- ❑ thus, even something as simple and nontechnical as a list of customers can qualify as a trade secret as long as it affords its owner a competitive advantage and is not common knowledge.
- ❑ If trade secrets were not protectable, companies would no incentive to invest time, money and effort in research and development that ultimately benefits the public.
- ❑ Trade secret law thus promotes the development of new methods and processes for doing business in the marketplace.

- **Protection of Trade Secrets:** Although trademarks, copyrights and patents are all subject to extensive statutory scheme for their protection, application and registration, there is no federal law relating to trade secrets and no formalities are required to obtain rights to trade secrets.
- Trade secrets are protectable under various state statutes and cases and by contractual agreements between parties.
- Example: Employers often require employees to sign confidentiality agreements in which employees agree not to disclose proprietary information owned by the employer.
- If properly protected, trade secrets may last forever.
- On the other hand, if companies fail to take reasonable measures to maintain the secrecy of the information, trade secret protection may be lost.

- Thus, disclosure of the information should be limited to those with a “need to know” it so as to perform their duties, confidential information should be kept in secure or restricted areas, and employees with access to proprietary information should sign nondisclosure agreements. If such measures are taken, a trade secret can be protected in perpetuity.
- Another method by which companies protect valuable information is by requiring employee to sign agreements promising not to compete with the employer after leaving the job.
- Such covenants are strictly scrutinized by courts, but generally, if they are reasonable in regard to time, scope and subject matter, they are enforceable.

5. Geographical Indications Of Goods:

❑ Geographical Indications of Goods are defined as that aspect of industrial property which refers to the geographical indication referring to a country or to a place situated therein as being the country or place of origin of that product.

❑ What is a Geographical Indication?

- It is an indication
- It originates from a definite geographical territory.
- It is used to identify agricultural, natural or manufactured goods
- The manufactured goods should be produced or processed or prepared in that territory.
- It should have a special quality or reputation or other characteristics

❑ Examples of Indian Geographical Indications –

- Solapur Chaddar , Solapur Terry Towel
- Basmati Rice , Darjeeling Tea
- Kanchipuram Silk Saree
- Alphonso Mango ,Nagpur Orange

❑ Laws relating to Geographical Indication of Goods;

- Geographical Indications of Goods (Registration and Protection) Act, 1999 and The Geographical Indications of Goods (Registration and Protection) Rules, 2002 deal with registration and better protection of geographical indications relating to goods.
- The primary purpose of this Act is to provide legal protection to Indian Geographical Indications which in turn boost exports.
- Registration of Geographical indication promotes economic prosperity of producers of goods produced in a geographical territory.
- According to the Act, the term 'geographical indication' (in relation to goods) means "an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods, one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be".

❑ Registration of Geographical Indication

- The registration of a geographical indication is not compulsory; however, it offers better legal protection to facilitate an action for infringement.
- The registered proprietor and authorized users can initiate infringement actions.
- The authorized users can exercise the exclusive right to use the geographical indication.
- The registration of a geographical indication is valid for a period of 10 years.
- It can be renewed from time to time for further period of 10 years each.
- If a registered geographical indication is not renewed it is liable to be removed from the register.





























































