



**INTERNATIONAL JOURNAL OF  
PHARMACEUTICAL SCIENCES**  
[ISSN: 0975-4725; CODEN(USA):IJPS00]  
Journal Homepage: <https://www.ijpsjournal.com>



## Review Article

# Intellectual Property Rights

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### ARTICLE INFO

Received: 19 Feb 2024  
Accepted: 23 Feb 2024  
Published: 04 March 2024

#### Keywords:

Intellectual, Property, Rights

#### DOI:

10.5281/zenodo.10776712

### ABSTRACT

Any original work of human mind, whether it be artistic, literary, technological, or scientific, is considered intellectual property (IP). The legal right granted to an inventor or creator to keep their idea or innovation secret for a predetermined amount of time is known as intellectual property rights, or IPR.[1] For a certain amount of time, these legal rights grant the inventor/creator or his assignee the sole right to make full use of their innovation.

### INTRODUCTION

Any original work of the human mind, including those in the arts, sciences, literature, technology, or other fields, is considered to be the subject of intellectual property (IP). Intellectual property rights (IPR) are the legal privileges granted to the inventor or creator to safeguard their work for a predetermined amount of time (Singh, 2004). The term "intellectual property" refers to a broad category of legally recognised rights resulting from various forms of intellectual innovation or other relationships to ideas (Kinsella, 2001). The notion behind the phrase intellectual property is that the subject matter is a creation of the mind or intellect, and therefore intellectual property rights

are subject to legal protection just like any other type of property. Since different countries have different intellectual property rules, it is necessary to pursue or secure IP rights in each of the relevant jurisdictions independently. In light of the evolving trade environment, which is characterised by increased global competitiveness, high innovation risks, and short product cycles, intellectual property rights (IPR) have gained significance. Science, technology, the arts, culture, traditional knowledge, and biological resources are all advanced by intellectual property. This review's goal is to explain the ideas behind intellectual property rights. [1]

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Relevant conflicts of interest/financial disclosures: The authors declare that the research was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.



## **Historical Background of Intellectual Property:**

The term "intellectual property rights" (IPR) refers to the ownership rights that individuals have over the works of their creative minds. The administrative processes and rules governing intellectual property (IPR) originated in Europe. In the fourteenth century, patents were increasingly common. Italy is where copyrights were originally recognised. The Indian Patent Act dates back more than 150 years (Singh, 2004). The first was the 1856 Act, which was modelled after the British patent system and established the 14-year patent period. Several further acts and modifications followed. In India, George Alfred De Penning submitted the first patent application in 1856. In 1847, a legislation passed under the rule of the East India Company brought copyright law to India. The copyright was granted in accordance with the 1847 enactment for the duration of the author's lifetime plus seven years after death. In order to make changes to the law pertaining to inventions and designs that were consistent with those made to UK law, new legislation was adopted in 1888. All prior laws pertaining to patents and designs were repealed in 1911 with the introduction of the Indian Patents and Designs Act, 1911. With the passage of this Act, the Controller of Patents became the first person to oversee patent administration. This Act was modified in 1920 to allow for reciprocal agreements to be made with the UK and other nations in order to secure precedence. The statutory Trademarks Law of India was first passed in 1860. In India, there was no official trademark law prior to 1940. Many issues with infringement, the law of passing off, and other issues were resolved by using Section 54 of the Specific Relief Act, 1877, and the registration was undoubtedly decided by getting a declaration of trademark ownership under the Indian Registration Act, 1908.

## **World Intellectual Property Organization:**

A specialised UN agency is the World Intellectual Property Organisation (WIPO). It is committed to creating a fair and open worldwide intellectual property (IP) system that encourages innovation, rewards creativity, and aids in economic growth while protecting the public interest. With a mission from its Member States to advance IP protection globally via intergovernmental cooperation and partnership with other international organisations, WIPO was formed by the WIPO Convention in 1967. Geneva, Switzerland serves as its corporate headquarters. [2][3]

## **WIPO and WTO:**

By signing a cooperation agreement with the World commerce Organisation (WTO), WIPO enlarged its mandate and further illustrated the significance of intellectual property rights in the administration of globalised commerce. It calls for collaboration on the TRIPS Agreement's implementation, including notice of laws and regulations, legal-technical support, and technical aid in favour of poor nations. A cooperative endeavour to assist poor nations in upholding their TRIPS responsibilities until the year 2000 was started in July 1998. It should be noted that WIPO now oversees 24 treaties, three of which are administered jointly with other international organisations. Through its member States and secretariat, WIPO also executes a robust and diverse programme of work that aims to:

- coordinating national intellectual property policies and laws,
- Services for international applications for industrial property rights are provided,
- information about intellectual property is exchanged,
- developing nations and other countries are given legal and technical assistance,
- private intellectual property disputes are made easier to resolve,



- Information technology is used to store, access, and use valuable intellectual data are all provided. [2][3][4]

### **Legislation Covering IPRs in India:**

#### **Patent:**

The patent Act, 1930

Act was last amended in March 1999.

#### **Design:**

The design act 1911.

A new designate 2000 has been enacted the earlier design act 1911

#### **Trade Mark:**

The 1958 Trade and Merchandising Marks Act. The previous Trade and Merchandise Mark statute of 1958 has been suspended by the new trademark statute of 1999 (enforcement is pending).

#### **Copyright:**

The copyright act 1957 as amended in 1983, 1984, and 1992, 1994, 1999 and the copyrights rules 1958 Layout design or integrated

#### **Circuits:**

the semiconductor integrated circuit layout act 2000. (Enforcement pending) protection Fig.

No. 5 of undisclosed information.

No exclusive legislation exists but the matter would be generally covered under the contract act 1872.

#### **Geographical indications:**

the geographical indications or goods (registration and protection) act 1999. [5][6]

### **Types of IPR:**

#### **1. Patent**

There are many ways to preserve the creative work of the human mind, and the major reason for doing so is that doing so is a clear way to stimulate the creative process. Many different types of creative activity protection have emerged, including some that are particularly relevant to industrial growth. Among them are patents. In general, a patent is a monopoly award that gives the inventor control over the output and, up to a certain point, the price

of the patented goods. The patent system's primary economic and commercial argument is that it encourages investment in industrial innovation. Innovative technology keeps the stock of a country's valuable, marketable, and industrial assets growing. It is possible to date the earliest patent grant to 500 B.C. It was the gastronome-dominated city—and maybe the first—to give what is now known as a patent right to advance culinary art. Because it granted exclusive sales rights to any confectioner who created a delectable dessert first. The practise took on the term "monopoly," a Greek portmanteau word from mono (alone) and polein (selling), when it spread to other Greek towns and to other crafts and goods. Exclusive property rights granted by monarchs and other authorities to private persons extend back to the 14th century, though their uses have changed through time. History demonstrates that monopoly rights for inventors were routinely used in Venice throughout the 15th century to promote invention. The invention's usefulness and novelty were key factors in determining whether to issue a patent privilege. The inventors had a deadline by which they had to exploit their innovation commercially. The German princes of the 16th century gave prizes to those who created new arts and devices while also taking into account their usefulness and originality. Early regulations in the American colonies were largely intended to provide protected domestic markets to foreign manufacturers in order to encourage them to start new businesses there. By the late 15th century, the English monarchs had begun to employ monopoly privilege more frequently to reward royal favourites, to maintain allegiance, and to maintain control over the industry, but not to promote inventions. A Statute of Monopolies was passed by the English Parliament in 1623, and it recognised the inventors' patent as a legitimate monopoly that should be distinct from other monopoly rights. With the exception of the first and actual inventor



of a new product, the Statute prohibited the issuance of monopoly powers. [7][16][17]

- **Patents Act, 1970**

The Patents Act of 1970 remained in effect until December 1994 for almost 24 years without any modifications. The fundamental tenet of the Act, which is a turning point in India's industrial growth, is that patents are granted not just to give the patentee a monopoly on importing the patented item into the nation, but also to encourage inventions and ensure that they are quickly implemented on a commercial scale. The aforementioned philosophy is being put into practise through compulsory licencing, registration of only process patents for food, medicine or drug, pesticides, and substances produced by chemical processes, which include items like alloys, optical glass, semi-conductors, inter metallic compounds, etc. in addition to chemicals as they are typically understood. However, it should be remembered that some goods, such as those used in agriculture and horticulture, atomic energy discoveries, and all living beings, are not subject to patent protection. Therefore, it was anticipated that the Patents Act of 1970 would strike a suitable balance between the advancement of technology, the public interest, and the unique demands of the nation, on the one hand, and appropriate and effective patent protection, on the other. [12][14][16]

- **2. Copyright**

Copyrights safeguard creators' expression of ideas intended for mass transmission, including those of authors, artists, and other creators. It does not protect the concept itself; just the way it is expressed. Any society's or nation's ability to develop depends on its citizens' innovation. 14, 38 Therefore, copyright supports these kinds of activity.

The works of literature and art listed below are included in

- **Copyrights:**

39, 40 Literary and scholarly works include plays, novels, poetry, newspapers, pamphlets, magazines, journals, and other publications.

- **Musical work:**

Songs, musical instruments, choruses, soloists, ensembles, etc.

- **Artistic works:**

such as painting, drawings, sculpture, architecture, advertisements, etc. Photographic work: portraits, landscape, fashion or event photography, etc.

- **Motion pictures:**

Film, drama, documentary, newsreels, theatrical presentations, television broadcasts, cartoons, video tapes, DVDs, and other cinematography works are included.

- **Computer programs:**

computer software, databases connected to them, maps, and technical drawings In India, following the creator's passing, literary, theatrical, musical, and creative works are protected by copyrights for a period of 60 years. A photograph, a motion picture, or a sound recording's copyright period is 60 years from the start of the year after the year in which it is published or made available. In addition to this, the author also receives moral rights for its works. [8][9][10][11]

- **3. Geographical Indication**

Geographical or local origin applications to identify commodities for commercial purposes are not a recent development. "The term Geographical Indication (GI) has been chosen by WIPO to include all existing means of protection of such names and symbols, regardless of whether they indicate that qualities of a given product are due to its geographical origin (such as appellations of origin) or they merely indicate place of origin of a product (such as indication of source)." Certain agricultural products have especial qualities that are influenced by geographical climate or soil. Basmati, Alphonso Mango, Nagpur Orange, Champagne, Havana, Darjeeling Tea, Arabian Horses, etc. are some well-known examples of



names that are identified globally for their product having special quality and registered as GI. Similar to this, some features of the goods are tied to human elements and their talents in the fields of handicrafts, textiles, etc. Masters or developers of that ability who are native to a certain place or locale with the ideal environment are responsible for building and maintaining the reputation of items. By specific tribe or location, the talent is customarily passed down from one generation to the next with much care and compromise. A few well-known examples of geographical indications for top-notch workmanship include the Dhaka muslin, Venetian glass, China silk, Mysore silk, Chanderi sari, Kanchipuram silk saree, Kullu shawls, Solapur chaddar, Solapur Terry Towel, Kashmiri handicrafts, etc.<sup>7, 37</sup> Under the Geographical Indication of Goods (Registration and Protection) Act of 1999 and the Geographical Indication of Goods (Registration and Protection) Rules of 2001, such items may be registered in India. The Controller General of Patents, Designs, and Trade Marks, the registrar of GI, is in charge of enforcing the GI statute. The national government has created. Right holders from all Indian jurisdictions can register their GI with the "Geographical Indication registry" in Chennai. According to these regulations, GI protection is provided for 10 years, with the option of renewal for a further 10 years from time to time. [16]

#### **4. Industrial Design Right**

An intellectual property right known as a "industrial design right" guards the aesthetics of non-purely functional items. An industrial design is the production of a three-dimensional shape, arrangement, composition, or combination of pattern and colour that has aesthetic value. A two- or three-dimensional pattern used to create a product, industrial good, or handcraft is known as an industrial design. There is a process for an international registration under The Hague Agreement Concerning the International Deposit

of Industrial Designs, a treaty overseen by WIPO. The majority of WIPO member nations' national laws stipulate that a design must be new in order to be eligible for registration. An applicant may submit a single international deposit application to WIPO or the national office of a treaty-party government. The design will subsequently be safeguarded in as many treaty members as needed. The Designing and Printing of Linen Act established the first design rights in the United Kingdom in 1787, and they have since extended. A patent can be granted after an industrial design right has been registered. [5][13][14]

- **Duration of design rights**

The length of registered design rights varies by jurisdiction and ranges from 15 to 50 years. Members of the WIPO Hague system are required to disclose the length of time their design rights are protected. [5]

#### **5. Plant Varieties**

The right to utilise a new variety of a plant for commercial purposes is known as a plant breeder's right or a plant variety right. The variation must, among other things, be original and distinct, and for registration, consideration is given to the appraisal of the variety's propagation material. Plant variety rights (PVR), also known as plant breeders' rights (PBR), are privileges granted to the creator of a new variety of plant. For a period of time, these privileges allow the creator to have sole control over the propagation material (such as seed, cuttings, divisions, and tissue culture) and harvested material (cut flowers, fruit, and foliage). With these rights, the breeder has the option to either commercialise the variety alone or provide licences to others. A variety must be brand-new, distinctive, uniform, and stable in order to be eligible for these exclusive rights. [6]

#### **A variety is:**

- New if it hasn't been put on the market in the nation receiving protection for more than a year; distinct if it varies from all other kinds





known to science in at least one significant botanical quality, such as height, maturity, colour, etc.;

- If the traits of the plants within a variety are consistent from plant to plant, the plant is said to be uniform;
- Stable if the traits of the plant are genetically fixed and hence carry over from one generation to the next, or after a reproductive cycle in the case of hybrid types.
- The breeder must also assign the variety a "denomination" that is deemed appropriate; this designation serves as the variety's generic name and must be used by anybody who advertises the variety.
- Plant variety rights are often issued by national agencies following inspection. The plant variety office receives the seed and grows it for one or more seasons to ensure that it is unique, stable, and uniform. Exclusive rights are awarded for a predetermined amount of time (usually 20/25 years or 25/30 years for trees and vines) if these tests are successful. Payment of yearly renewal fees is necessary to keep the rights.
- Breeders may file a lawsuit to protect their rights and get compensation for any violation. Rights granted to plant breeders include anti-infringement protections that are not recognised by patent law. A common exception is made for farm-saved seed. However, this does not always apply to brown-bag sales of seed. Farmers may keep this produce in their own bins for their own use as seed. Without the breeder's express consent, no additional sales for propagation are permitted. Breeders are also permitted to utilise protected varieties as sources of initial variation to generate new kinds of plants (1978 Act), or for other experimental reasons (1991 Act) under the breeders' exemption (also known as the research exemption). In the

event that the national interest necessitates it and the breeder is unable to supply the demand, there is also a mechanism for forced licencing to provide public access to protected varieties.

- Concerns exist over how plant breeder's rights and patent rights interact. The overlap of these rights has given rise to legal disputes in Australia, the US, and Canada. Patents and plant breeders' rights were ruled to overlap rather than be mutually exclusive in each of these situations. As a result, protections against the infringement of plant breeders' rights, such as the conserved seed exemption, do not also protect against the infringement of patents that cover the same plants. Similar to patents on plant varieties, which only permit the patent owner to forbid creating, using, or selling (first-sale, but not resale) the patented invention, actions that violate the rights of plant breeders, such as exportation of the variety, would not necessarily violate a patent on the variety. [13][14]

## 6. Trade Marks:

Around 3000 years ago, Indian craftsmen used to carve their mark on their jewellery or creative creations. The trademark becomes crucial with industrial integration. There were trademarks in use in antiquity. the component of the contemporary world of global trade. A trade mark is a distinguishing symbol or emblem that indicates that a certain product is created or offered by a certain person, business, or industry. Service marks, like trademarks, set apart businesses that offer services from their rivals. A firm may use a variety of trademarks to identify its various goods, but it also uses its trade name to set itself apart from other businesses. 8 Trademarks and trade names assist businesses in building their brand awareness, reputation, and consumer trust. Consumers typically rely on trademarks in situations where it is challenging to rapidly



evaluate a product or service to verify its quality. 21-22 In order to stand out from the competition, a certain demographic of buyers places a high value on brand prestige, even for products of comparable quality. Words make up a trademark or service mark. Letters and numbers, drawings, logos, symbols, phrases, images, designs, names, last names, geographical names, slogans, etc. are all examples of ways to differentiate one product or service from another. There are some further "non-traditional trademarks" in addition to these. [8][15][17]

- **Indian Trademarks Act :**

According to the Indian Trademarks Act, any mark that is distinctive—that is, able to set one company's goods and services apart from another—and able to be graphically represented—can be registered as a trademark. 27 There is no need to restrict the validity of trademarks because they do not give any exclusive rights that may be used. However, if there were no time restriction, there would be an excessive amount of registered trademarks that would be useless. 11 The original term of a trademark registration in India is for 10 years, after which it must be periodically renewed. At the Trade Mark Registry Office in Mumbai (the main office), Delhi, Kolkata, Ahmadabad, and Chennai, the applicant may submit an application for trademark registration. [8]

- **7. Trade Dress:**

Trade dress is a legal term of art that typically refers to visual and aesthetic qualities of a product's look or packaging (or even the design of a building) that identify the product's source to customers.

- **India:**

A new legal definition of a trade mark was adopted by the new Trade Marks Act, 1999, which went into effect in September 2003. This definition information is private, as long as they take appropriate precautions to keep it that way.

includes practically all of the components of trade dress as it is defined under US law.

- **United Kingdom:**

Trade clothing may be protected as attire in the UK under the passing-off legislation. A common law defence for defending an unregistered trademark is passing off. Passing off can cover things like attire, packaging, company plans, advertising themes, and marketing strategies.

- **United States:**

The purpose of trade dress protection is to shield customers from items that copy the packaging or outward look of rival brands, preventing them from making erroneous purchases. For instance, the design of a magazine cover, the look and decor of a chain of Mexican restaurants, and the way wine bottles are displayed in a wine shop can all be protected trade dress. However, the shape, colour, and arrangement of the materials used to create a children's clothing line can be protected trade dress (though the design of the clothing itself is not protected). [18]

- **8. Trade Secret:**

A trade secret is a formula, practise, method, design, instrument, or pattern compilation of information that is not widely known or easily ascertainable and that enables a firm to gain a competitive edge over rivals and clients. There is no official government protection provided; each company is responsible for protecting its own trade secrets (Coca-Cola's soft drink formula is an example of a trade secret). The precise terminology used to describe a trade secret and the specific kinds of information that are covered by trade secret protection vary by jurisdiction. These definitions all have three characteristics: Information that is not commonly known by the public is referred to as a trade secret; gives its bearer a financial advantage because the

According to article 39 of the TRIPS Agreement, also known as the Agreement on Trade-Related Aspects of Intellectual Property Rights, a trade

secret is defined in international law by these three criteria.

**A trade secret, as defined by 18 U.S.C. 1839(3)(A),(B) (1996), has three components:**

1. Information;
2. Reasonable measures taken to protect the information;
3. Which derives independent economic value from not being publicly known.

An essential but unnoticed part of a company's intellectual property (IP) is its trade secrets. They

may make a sizable contribution to a company's market capitalization, which measures its worth. This contribution is difficult to quantify since it is unseen. Patents are an obvious improvement, but they take time and are inappropriate for internal developments. An internal scoreboard gives insight into the costs and hazards of employees quitting to work for or launch rival businesses. [19]

## INTELLECTUAL PROPERTY RIGHTS AND DOCUMENTATION

### Documentation:

A document that demonstrates intellectual property rights is known as an intellectual property document. A legal document describing who is the owner or who has the rights to intellectual property.

The following are legal proofs of intellectual property:

Trademark

License

Proof of Patent

Copyright Ownership

Trademark License:

A trademark is a distinguishable symbol, pattern, or phrase. A trademark licence is a record that attests to the trademark's registration.

Example:

<http://tsdr.uspto.gov/documentviewer?caseI=sn86213358&docId=ORC20150317005801#docdex=0&page=1>

Proof of Patent:

An invention's inventor is given a set of rights known as a patent. A document serving as proof that the innovation has a patent is known as a proof of patent.

Example: <http://www.google.com/patents/US2026082>

Copyright Ownership:

An original work's creator is awarded legal rights known as copyrights.

A document proving ownership of a unique work is known as a copyright ownership document.

Example: [http://www.copyright.gov/docs/certificate\\_sample.pdf](http://www.copyright.gov/docs/certificate_sample.pdf). [5]

Intellectual property rights are crucial for the growth of a society that is knowledge-based. The IPR is a fundamental requirement to participate in both local and international competitive commerce, since it is virtually impossible to foster a creative environment without the diffusion of IPR knowledge and application. IPR must be taught in the foundational educational system, and

policymakers must encourage IPR registration by supporting creators and innovators. India has all the resources in terms of readily available raw materials, inexpensive labour, and committed, imaginative, and creative human capital. There is little question that India and other emerging nations would utilise their fair part of international trade by investigating intellectual property rights.





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**HOW TO CITE:** Prajakta Pujari, Sonali Magdum, Kajal Shinde, Darshani Taral, Prajakta Chougule, Sadhana Pujari, Ravina Kamble, Dhanshree Rajput, S. S. Patil, Intellectual Property Rights, *Int. J. of Pharm. Sci.*, 2024, Vol 2, Issue 3, 69-77. <https://doi.org/10.5281/zenodo.10776712>

