

Intellectual Property is a broad categorical description for the set of intangible assets owned and protected by a company or an individual so that they are not exploited or used without consent. The different types of Intellectual Property Rights in India are designed to protect the interests of the inventor of certain products of human intellect.

Recent technological developments, the value added to intellectual property and their injudicious use have taught us to identify and diligently protect intellectual property. Producing intellectual property requires heavy investment in terms of mental capability and skilled labour, making its protection important. Although intellectual property is an intangible asset, in many cases it can prove to be far more valuable than a company's physical assets.

Types of Intellectual Property Rights in India

Indian law recognizes 4 (four) major types of intellectual property rights, which will be discussed in detail in this article. For any entity to secure proper protection of their intellectual property, it is advisable to work with experienced intellectual property lawyers.

1. Trademarks

Trademarks are any phrases, symbols, logos, slogans, product packaging, or designs that distinguish the origin of goods or services. Section 2(zb) of the Trade Marks Act of 1999 defines a trademark to mean a mark that may be graphically represented and distinguishes one person's goods or services from those of others, including the product's shape, packaging, and colour combination. A trademark is often associated with a company's brand. For example, the logo and the brand name of "Coca-Cola" are owned by the Coca-Cola Company.

Several benefits of a trademark include:

1. Identification of the source of the goods and services;
2. Providing legal protection to the brand;
3. Guarding goods/services against counterfeiting and fraud.

While trademarking a certain word or phrase does not confer ownership of the word, it enables the owner of such a trademark the right to determine how that particular word or phrase can be used with respect to specific goods and services. The key to obtaining trademark protection is to understand how the specific categories of goods and services the mark shall cover. It is advised to avoid seeking trademarks that are merely descriptive of goods and services but are rather unique, easier to protect and more likely to qualify for trademark protection.

As soon as the trademark is applied, one can start using the same. A trademark can be used as "TM" for Goods, "SM" for Services and "®" for Registered Trademarks. These symbols enable the consumer/competitors to know that the brand proclaims the right to a particular good or service.

It is suggested for any trademark holder to actively take action against the infringers in order to protect the interests and the reputation of the company.

2. Copyrights

Copyright is a person's legal right to commercially exploit their original, tangible creative work, and it prevents others from duplicating or reproducing it without permission. Copyright preserves the expression of a concept rather than the concept itself. Section 13 of the Copyright Act, of 1957, protects original literary, dramatic, musical, and aesthetic works, as well as cinematograph films and sound recordings.

Organizations can claim ownership of a work of an employee as the Indian Law allows ownership through "work made for hire". Copyright Act provides copyright to owners with exclusive rights to reproduce the work, prepare imitative work, distribute copies of a copyrighted work, transfer ownership or license to use the work and perform and display the work in public to name a few.

3. Patents

A "patent" is an intellectual property right that protects any innovation. It is an exclusive privilege that protects the rights of the inventor and prevents unauthorized use and theft of the registered patent by third parties. A patent is a monopoly granted to the inventor on his creation for a set time, allowing him to economically use and exploit it in the market to the exclusion of others.

The term "invention" is defined as any new and useful thing, whether it be art, process, method, or manner of manufacture, the machine, apparatus, or another article, or any substance produced by a manufacturer, including any new and useful improvement of any such thing, and an alleged invention under Section 2(1)(j) of the Patents Act, 1970.

To receive a patent, one's idea must meet the following requirements;

1. The subject matter must be patentable;
2. The idea must be 'new' and 'useful' and;
3. The idea must be 'non-obvious'.

While patents are the most common type of intellectual property rights that come to people's mind when they think of IPR protection, patents can be expensive to obtain and maintain..

4. Design

The term “design” is defined in Section 2(d) of the Designs Act, 2000 as only the features of shape, configuration, patterns or ornaments applied to any article by any industrial process or means, whether manual mechanical or chemical separate or combined, that appeal to and are evaluated solely by the eye in the finished article. The Designs Act, 2000 allows the registration of two-dimensional or three-dimensional characteristics of design, configuration, pattern, decoration, or line or color composition applied to any product.

Design protection guarantees one the exclusive right to use a design, including making and selling in the market, importing, exporting or using the product in which the protected design is incorporated. Third parties can also use the design provided the owner grants permission to use the same.

IPRs are critical for every business and have become the cornerstone for crucial investment decisions. Since IPRs are exclusive rights, striking a balance between the interests of innovators and the interests of society as a whole is always challenging. King Stubb & Kasiva is recognized amongst the top law firms in India, with PAN India presence offering full spectrum of legal services and has an in-house team of IPR lawyers in India to support all IPR-related matters for its clients.

The different forms of IPRs in India are governed by various legislations such as:

- The Trade Marks Act, 1999
- The Copyright Act, 1957
- The Patents Act, 1970
- The Designs Act, 2000

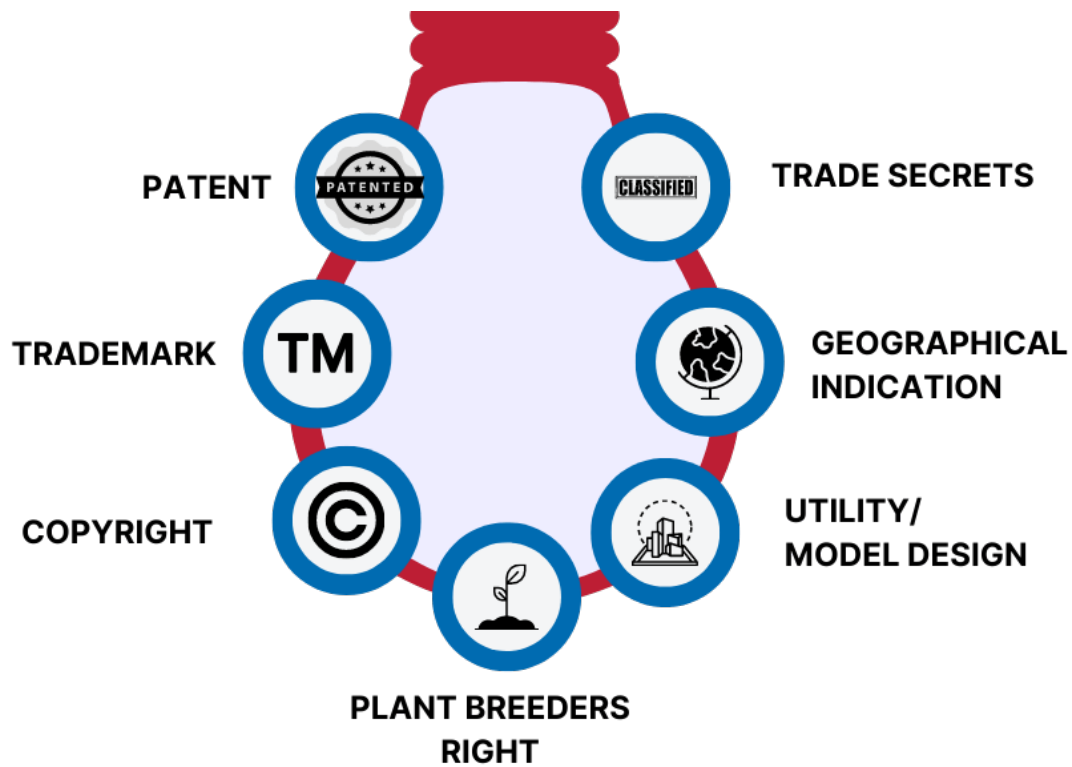
These different forms of IPRs are categorized in a consistent manner around the world.

Trademarks

Copyrights

Patents

Design



IPR IN INDIA

Conclusion

The different types of IPR in India gives freedom to individuals and organizations to seek intangible asset protection. India has ratified many conventions and treaties to provide international recognition and protection to the various forms of IPRs. Several conventions have compelled India to enact new legislation in order to safeguard products that represent India's heritage, agricultural history, and flora. The courts in India have recognized the importance of avoiding deliberate infringement of IP rights and have begun awarding inventors large punitive damages.

This has increased the significance of IP lawyers in India as although punitive damages are rarely awarded by courts when they are, they serve as a deterrent in addition to compensating for genuine losses. As a result, Indian courts take a highly balanced approach to IPR concerns. Lastly, when we look at what are the different types of IPR, these rights can be exercised concurrently in several countries. Because these rights are associated with something fresh or distinctive, they cannot be utilized to safeguard knowledge that is already in the public domain. It is feasible to keep enhancements and changes made to well-known things.

FAQs

What is the importance of intellectual property rights?

Consumers may make informed decisions regarding a product's efficacy, dependability, and safety thanks to strong IPRs. When IPRs are used, products are genuine and of the high quality that customers have come to recognize and expect. If someone uses your concept, logo, or other intellectual property without your permission, you have the legal right to sue them. You can even

franchise your company or license your work to others in exchange for royalties with the help of King Stubb, and Kasiva's IPR practice. Finally, IPRs strengthen markets and customers' reliance on comfort and confidence. What is the difference between a patent and a copyright?

Trademarks protect brands, logos, and catchphrases; and

Copyright - It serves authors, it protects creative works and It applies to photography, art, and music.

Patents protect new ideas, methods, or scientific discoveries; It serves inventors, and grants them an exclusive right to exploit the invention and it applies to technologies and medical devices.

What is the Significance of Intellectual Property Protection in India?

In the modern era, intellectual property rights have a significant impact on international trade. In this digital age, the possibility of creative ideas being taken without the author's permission has increased. Strong intellectual property restrictions are required since they contribute to the state's economy in general. IPR is one method of protecting intangible assets that are still available to the public and easily replicable by anyone. IP theft is increasingly a widespread occurrence in the digital era, which is bad for business. King Stubb and Kasiva provide filings, IP Crimes, and other services for numerous IPRs.

What is the procedure for patent registration in India?

The first step is to do a thorough search of existing patents to guarantee that the innovation is original and has not been patented previously.

Following the completion of the search, a patent application must be filed with the Indian Patent Office. The application should include a full description of the invention, its benefits, and possible applications. It is also advised that drawings or diagrams that illustrate the invention be included. The investor must wait for the patent to be examined and awarded after filing the application. It is critical to be in touch with the patent office throughout.

What is IP litigation?

Legal disputes and cases involving IPRs such as patents, trademarks, copyrights, and trade secrets are referred to as IP litigation. It entails settling disputes between two or more parties over the use, ownership, or infringement of intellectual property. Intellectual property litigation can be complicated and expensive, requiring specialized legal knowledge and evidence collecting. Filing lawsuits, responding to litigation, conducting discovery, negotiating settlements, and defending clients in court or before administrative bodies are all examples of activities that may fall under this category. The conclusion of intellectual property litigation can have serious ramifications for the parties involved, including the loss of intellectual property rights, financial damages, or injunctions prohibiting the particular activity.

What is the legal framework for trade secret protection in India?

The Indian legal system emphasizes the significance of preserving trade secrets, which are defined as proprietary information that is not widely known and provides a corporation with a competitive advantage. While there is no explicit statute or law in India guaranteeing trade secret protection, businesses can nevertheless pursue legal action under the Indian Contract Act, 1872, which recognizes the enforceability of non-disclosure agreements and confidentiality terms. Furthermore, in different court instances, the

Indian judiciary has acknowledged trade secret protection and given injunctions to preserve such proprietary information. In the event of a breach, companies can also pursue civil remedies such as damages and injunctions to protect their trade secrets. Companies can protect their competitive advantage and avoid unlawful disclosure of confidential information by taking legal procedures to protect trade secrets.

Can foreign entities apply for intellectual property rights in India?

Yes, foreign entities can apply for IPRs in India. Under the Patent Act of 1970, even a foreigner or foreign business can file for a patent in India if they meet the essential standards. Similarly, the Trade Marks Act, 1999 allows foreign people and corporations to file for trademark registration in India. The Copyright Act, 1957 makes no distinction between Indian and foreign persons, and international entities can seek copyright protection in India. However, international corporations may be required to comply with additional restrictions and formalities, such as appointing an Indian agent for the service of process in some situations.

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