Intellectual Property & Assets

International Business

T. Y. B. Com (B&I) – Sem VI

Index

1. Introduction

1.1 Definition: What is Intellectual Property?

- '**Intellectual property**' (IP) refers to legal property rights over creations of the mind, both artistic and commercial, and the corresponding fields of law.
- Under intellectual property law, owners are granted certain exclusive rights to a variety of intangible assets, such as musical, literary, and artistic works; ideas, discoveries and inventions; and words, phrases, symbols, and designs.
- The majority of intellectual property rights provide creators of original works economic incentive to develop and share ideas through a form of temporary monopoly.
- Examples of intellectual property:
    - Copyrights
    - Trademarks
    - Patents
    - Industrial Design Rights
    - Trade Secrets
- According to the World Intellectual Property Organisation (WIPO), intellectual property laws exist for primarily two reasons:

  "One is to give statutory expression to the moral and economic rights of creators in their creations and to the rights of the public in accessing those creations. The second is to promote creativity, and the dissemination and application of its results, and to encourage fair trade, which would contribute to economic and social development."

1.2 Types: Copyrights, Trademarks, Patents, & Trade Secrets

- **Copyright:**

  - Copyright is a legal concept that gives the creator of an original work exclusive rights for a certain time period in relation to that work, including its publication, distribution and adaptation; after which time the work is said to enter the public domain.

  - Copyright has been internationally standardized, lasting between fifty to a hundred years from the author's death, or a finite period for anonymous or corporate authorship. In most of the world, the default length of copyright is the life of the author plus either 50 or 70 years.

  - Several exclusive rights typically attach to the holder of a copyright:
    - to produce copies or reproductions of the work and to sell those copies (mechanical rights; including, sometimes, electronic copies: distribution rights)
    - to import or export the work
    - to create derivative works (works that adapt the original work)
    - to perform or display the work publicly (performance rights)
    - to sell or assign these rights to others
    - to transmit or display by radio or video (broadcasting rights)

- **<u>Trademark</u>:**

  - A trademark, identified by the symbols ™ (not yet registered) and ® (registered), or mark is a distinctive sign or indicator used by an individual, business organization or other legal entity to identify that the products and/or services to consumers with which the trademark appears, originate from a unique source of origin, and to distinguish its products or services from those of other entities.
  - A trademark is a type of intellectual property, and typically a name, word, phrase, logo, symbol, design, image, or a combination of these elements.
  - The essential function of a trademark is to exclusively identify the commercial source or origin of products or services, such that a trademark, properly called, indicates source or serves as a badge of origin.
  - The owner of a registered trademark may commence legal proceedings for trademark infringement to prevent unauthorized use of that trademark.
  - A registered trademark confers a bundle of exclusive rights upon the registered owner, including the right to exclusive use of the mark in relation to the products or services for which it is registered. The law in most jurisdictions also allows the owner of a registered trademark to prevent unauthorized use of the mark in relation to products or services which are identical or "colourfully" similar to the "registered" products or services, and in certain cases, prevent use in relation to entirely dissimilar products or services. The test is always whether a consumer of the goods or services will be confused as to the identity of the source or origin.

- **Patent**:

  - A patent is a set of exclusive rights granted by a state to an inventor for a limited period of time in exchange for a disclosure of an invention.
  - A patent application must include one or more claims defining the invention which must be new, inventive, and useful or industrially applicable. In many countries, certain subject areas are excluded from patents, such as business methods and mental acts. The exclusive right granted to a patentee in most countries is the right to prevent others from making, using, selling, or distributing the patented invention without permission.
  - The term patent usually refers to a right 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 thereof. A patent is not a right to practice or use the invention. Rather, a patent provides the right to exclude others from making, using, selling, offering for sale, or importing the patented invention for the term of the patent, which is usually 20 years from the filing date subject to the payment of maintenance fees. A patent is, in effect, a limited property right that the government offers to inventors in exchange for their agreement to share the details of their inventions with the public. Like any other property right, it may be sold, licensed, mortgaged, assigned or transferred, given away, or simply abandoned.

- **<u>Trade Secret</u>:**
  - A trade secret is a formula, practice, process, design, instrument, pattern, or compilation of information which is not generally known or reasonably ascertainable, by which a business can obtain an economic advantage over competitors or customers.
  - Features of a trade secret:
    - is not generally known to the public;
    - confers some sort of economic benefit on its holder (where this benefit must derive specifically from its not being generally known, not just from the value of the information itself);
    - is the subject of reasonable efforts to maintain its secrecy.
  - Trade secrets are by definition not disclosed to the world at large. Instead, owners of trade secrets seek to keep their special knowledge out of the hands of competitors through a variety of civil and commercial means, not the least of which is the use of non-disclosure agreements (NDA) and non-compete clauses. In exchange for the opportunity to be employed by the holder of secrets, an employee will sign an agreement not to reveal his or her prospective employer's proprietary information. Often, the employee will also sign over rights to the ownership of own intellectual works produced during the course (or as a condition) of their employment. Violation of the agreement generally carries the possibility of stiff financial penalties. These penalties operate as a disincentive to revealing trade secrets. Similar agreements are often signed by other companies with whom the trade secret holder is engaged, e.g. with the trade secret holder's vendors, or third parties in licensing talks or involved in other business negotiations.

1.3 Need to Protect Intellectual Property

- According to the World Intellectual Property Organisation (WIPO), intellectual property laws exist for primarily two reasons:
  - To give statutory expression to the moral and economic rights of creators in their creations and to the rights of the public in accessing those creations.
  - To promote creativity, and the dissemination and application of its results, and to encourage fair trade, which would contribute to economic and social development.
- The main objective of intellectual property is to stimulate technological progress, to the benefit of society.
  - **Financial Incentive**

    Intellectual property rights grant exclusive rights to intellectual creations; they grant ownership over creations of the mind. These exclusive rights allow owners of intellectual property to reap monopoly profits. These monopoly profits provide a financial incentive for the creation of intellectual property, and pay associated research and development costs.
  - **Technology Diffusion**

    Technology diffusion occurs if intellectual property is licensed or sold, conversely technology can equally be prevented from being shared, should the owner wish not to sell or license.
  - **Economic Growth**

    The legal monopoly granted by IP laws are credited with significant contributions toward economic growth. Economists estimate that two-thirds of the value of large businesses in the U.S. can be traced to intangible assets. Likewise, industries which rely on IP protections are estimated to produce 72 percent more value per added employee than non-IP industries.

2. Intellectual Property in India

- The Intellectual Property Office (IPO), India defines 'Intellectual Property' as:
  - Intellectual Property is the Property, which has been created by exercise of Intellectual Faculty. It is the result of persons Intellectual Activities. Thus, Intellectual Property refers to creations of mind such as inventions, designs for industrial articles, literary, artistic work, symbols which are ultimately used in commerce.
  - Intellectual Property rights allow the creators or owners to have the benefits from their works when these are exploited commercially. These rights are statutory rights governed in accordance with the provisions of corresponding legislations. Intellectual Property rights reward creativity & human endeavor which fuel the progress of humankind.
  - Intellectual property is classified into seven categories i.e . (1) Patent (2) Industrial Design (3) Trade Marks (4) Copyright (5) Geographical Indications (6) Lay out designs of integrated circuits (7) Protection of undisclosed information/Trade Secret according to TRIPs agreements.

- The Office of the Controller General of Patents, Designs & Trade Marks (CGPDTM) is located at Mumbai. The Head Office of the Patent office is at Kolkata and its Branch offices are located at Chennai, New Delhi and Mumbai. The Trade Marks registry is at Mumbai and its Branches are located in Kolkata, Chennai, Ahmedabad and New Delhi. The Design Office is located at Kolkata in the Patent Office.

- The Offices of The Patent Information System (PIS) and National Institute of Intellectual Property Management (NIIPM) are at Nagpur.
- The Controller General supervises the working of the Patents Act, 1970, as amended, the Designs Act, 2000 and the Trade Marks Act, 1999 and also renders advice to the Government on matters relating to these subjects.
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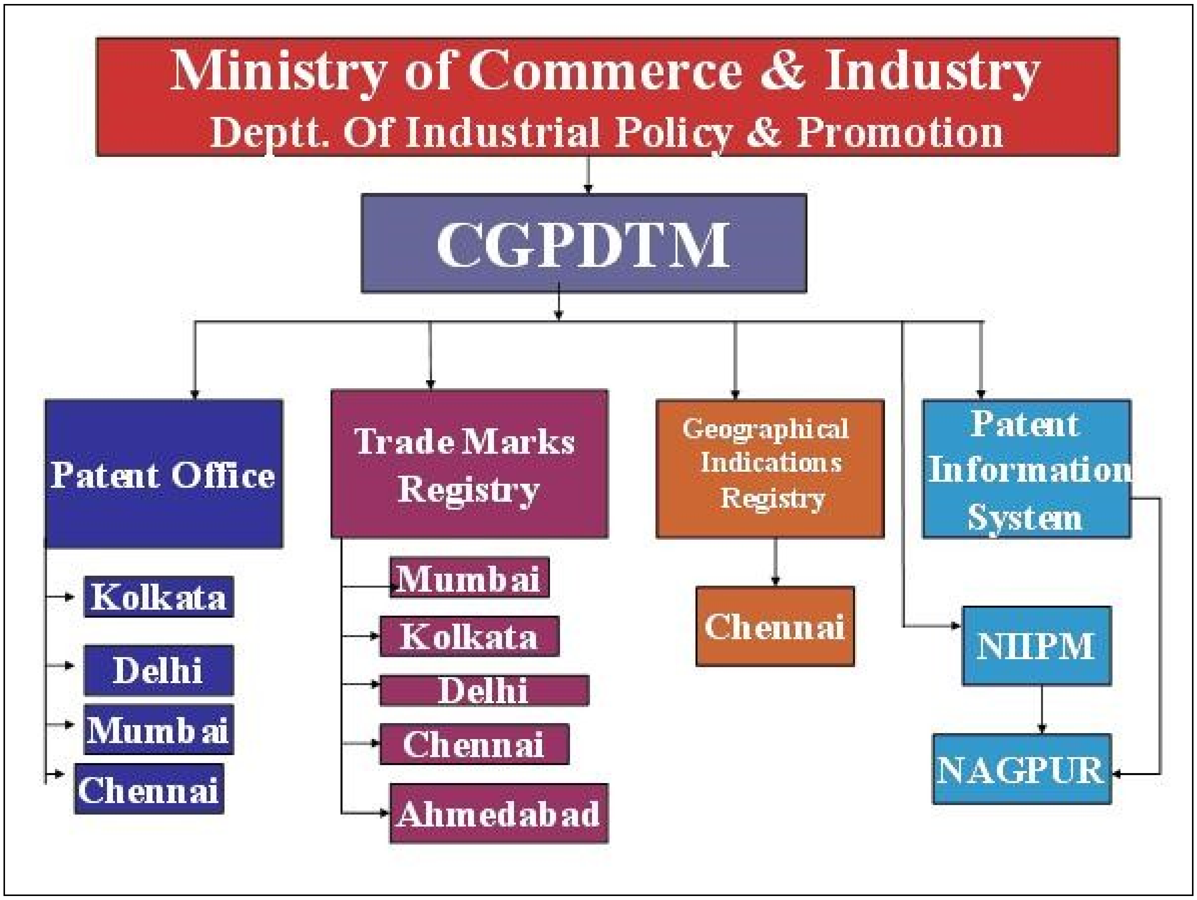

2.1. Intellectual Propery Law

- **Trademarks:**

  The Indian law of trademarks is enshrined the new **Trade Marks Act, 1999** that came into force with effect from September 15, 2003. The old Trade and Merchandise Marks Act, 1958 was repealed at the same time. The new Trademarks Act of 1999 is in line with the WTO recommendations and is in conformity with the TRIPS Agreement (Agreement on Trade-Related Aspects of Intellectual Property Rights) to which India is a signatory.

- **Patents:**

  Patents in India are governed under the the **Patents (Amendment) Act, 2005**. However, patent law in India stretches back to 1972, with the enforcement of the Patents Act, 1970.

- **Designs:**

  Industrial designs refer to creative activity which result in the ornamental or formal appearance of a product and design right refers to a novel or original design that is accorded to the proprietor of a validly registered design. Industrial designs are an element of intellectual property. Under the TRIPS Agreement, minimum standards of protection of industrial designs have been provided for. As a developing country, India has already amended its national legislation to provide for these minimal standards. The existing legislation on industrial designs in India is contained in the new **Designs Act, 2000**.

- **Copyrights:**

  Copyright law in India is stipulated within the provisions of the **Copyright Act, 1957**.

2.2. Patents, Designs, & Trademarks

- **Patent**

  Under the Patents (Amendment) Act, 2005, a ***'Patent'*** is a statutory right for an invention granted for a limited period of time to the patentee by the Government, in exchange of full disclosure of his invention for excluding others, from making, using, selling, importing the patented product or process for producing that product for those purposes without his consent.

- **Design**

  Under the Designs Act, 2000, ***'Design'*** means only the features of shape, configuration, pattern or ornament or composition of lines or colour or combination thereof applied to any article whether 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 does not include any mode or principle or construction or any thing which is in substance a mere mechanical device.

- **Trademark:**

  As per the Trade Marks Act, 1999, a ***'trademark'*** is a visual symbol which may be a word signature, name, device, label, numerals or combination of colours used by one undertaking on goods or services or other articles of commerce to distinguish it from other similar goods or services originating from a different undertaking.

3. Case Study: The Coca-Cola Co.

- **Copyright**:

  - Coca-Cola owns copyright in the design of its bottles, the design of its logos, its advertising, and generally anything it creates that can be considered an original work requiring creative effort. For example, the famous Coca-Cola logo and script design is an original artistic creation that is protected by copyright law. In other words, the right to copy the logos and script design is limited by copyright law.

- **Trademark**:

  - The Coca-Cola company holds registered trade-marks in its logo and script design. Even the distinctive shape of the Coke bottle is trade-marked. These things are trade-marks because they are distinctive marks used by the company to identify its goods and services as being uniquely Coca-Cola's.

  - Trade-mark protection gives Coca-Cola the right to stop competitors from passing off their goods and services as Coca-Cola's, and to be compensated for any damage Coca-Cola may suffer as a result of this unfair competition. Trade-mark protection also protects consumers by prohibiting confusing trade-marks in the marketplace. To prove trade-mark violation, Coca-Cola would have to show that the competitor has actually used its trade-mark as a trade-mark. If a newspaper prints the name "Coca-Cola" in a news story, that is not a trade-mark violation. But if the name "Coca Cola" appears on a soft drink bottle then that is a trade-mark violation. The effect of this may be to confuse people into thinking they are getting a Coca-Cola product when they are not.

- **<u>Patents</u>:**
  - Like many companies, the Coca-Cola company creates various inventions to assist with its business. Many of these are patented, even the ones that are not particularly unique, since an invention does not have to be totally unprecedented to be patented; it just needs to have some element of novelty.
  - For example, the Coca-Cola company owns a patent on a method of making "barrier coated plastic containers." Obviously no one has the exclusive right to make plastic containers, but Coca-Cola has the exclusive right to use the particular method of making those containers that they describe in their patent.

- **<u>Trade Secrets</u>:**
  - The formula for making Coca-Cola is a trade secret. The formula is extremely valuable to the company as a secret; it would be all but useless to the company if it were known to its competitors (since they would all start to copy it), it is known only to a select few people within the Coca-Cola company, and the company takes special precautions to make sure that the formula does not get out. In other words, it fulfils the essential criteria for a trade secret: The company takes special effort to keep it a secret, and that secrecy creates value.

- The original formula for making Coca-Cola was patented in 1893. But when the formula changed, the company did not choose to patent the formula again. The reason for this is simple: if Coca-Cola were to patent its formula, the formula would become known to others, and once the patent expired, anyone could use it. It is possible to copyright a formula, but that would also make it known to the public. And in any case, copyright would only protect the formula as a piece of literary expression; it would not protect the basic ideas that make the formula unique. By keeping the formula a secret, Coca-Cola can protect the formula and keep it to itself indefinitely.

4. Conclusion

The field of intellectual property and intellectual property law assumes unprecedented significance in today's world, owing to the explosive growth of the internet and the transition to a knowledge-based economy. In such a scenario, it is necessary for organizations and individuals to acquaint themselves about their rights pertaining to intellectual property and assets, in order to gain competitive advantages. To stay competitive, an organization needs to protect many things that are intangible and therefore harder to protect than tangible assets. No single regime of law, no single type of legal protection, can give a company all the protection it needs for its intangible assets. But with these types of protection taken together, and properly used, an organization can protect its intellectual property against its competitors.

Thus, it is evident that many corporate battles of the post-industrial, knowledge-driven economy of the 21st century will be fought in the domain of intellectual property, and intellectual property law will turn out to be an engaging & progressive domain in the legal sphere.