

3. IPR Issues for Entrepreneurs

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Intellectual Property Rights (IPRs) for Entrepreneurs

With advent of time, the competition for entrepreneurs is increasing and they need to have competitive edge over others to sustain in the business. Intellectual Property Rights (IPRs) are one of the strategic tools which can help entrepreneurs to remain competitive and if exploited properly IPRs can help entrepreneurs either to take first mover's advantage or be the market leaders. Following chapter discuss about meaning and different types of IPRs, procedure for filling, validity period and other related details.

What are IPRs

IPRs are the rights granted to the inventors of intellectual property. The way there are physical property rights which are owned and protected by the owners of physical property, the creator or inventor of some intellectual piece also owns the rights for that creation or invention and all these rights are governed under IPRs. With the help of IPRs, the inventor or creator of an intellectual property can protect the property from theft or unauthorized use. There are different forms of IPRs, which are stated and discussed further in the chapter. Broadly the IPRs may be divided into two groups:

A. Industrial Property

- (i) Patents
- (ii) Trademarks
- (iii) Industrial Designs
- (iv) Trade Secrets
- (v) Geographical Indications

B. Copyrights

- (i) Literary works
- (ii) Artistic works

Types of IPRs

1. **Patents:** Patents are the exclusive rights granted to an individual for his/her invention (not discovery). The invention may be of any product or process or both, which offers an innovative (new) and non obvious method of doing something or it provides a new and non obvious solution to any problem in a technical manner.

a) **Product Patent:** Product patent is granted to the owner of the product inventor, which means that no other person than the inventor can manufacture that product with the same process or different process.

Ex. The functioning valve used in food and cosmetic products by companies like Heinz and Gerber was invented and got patented by Paul Brown in the year 1991.



Source: www.heinz.com (accessed on 5.11.2020)

b) **Process Patent:** Process patent is granted to the inventor of any particular process and not the end product. Any other individual can manufacture the same product with any other process.

Example for Product and Process patent both: A process for preparing tender coconut wine through fermentation of tender coconut water from tender coconuts ripened 7 months or below and further claims the produced wine to be highly healthy, hygienic and nutritional beverage (Indian patent number

209015, source: <https://www.allindianpatents.com/patents/209015-tender-coconut-wine>, accessed on 5.11.2020)

The necessary conditions for grant of Patents:

Any subject matter to be eligible for getting the patent granted need to satisfy the following conditions:

- a) The invention must relate to a process or a product or both
- b) It must be novel (new)
- c) The invention must involve an inventive step
- d) The invention must be capable of industrial application
- e) It should not fall under Section 3 and 4 of Indian Patent Act, 1970. These two sections deal with exceptions for the subject matter to be got patented.

Conditions for “NEW”

For an invention to be considered as new or novel for the grant of patent, following conditions are necessary to be met:

- a) The invention must not be published anywhere either in India or elsewhere.
- b) Also, it must not be in prior public use or prior public knowledge.
- c) The claims made in the patent specification must not be claimed before in any of the specifications.

Although, Indian Patent Act,1970 provides few provisions for allowing exceptions for filing patent application despite public disclosure of the invention. Few of such exceptions may be stated as follows:

- a. Anticipation by previous publication (Section 29): If the applicant can prove that someone derived the patent information from the applicant, without his/her consent and published that.
- b. Anticipation by previous communication to the government (Section 30 of Indian Patent Act): If the applicant had submitted the application to government or any representative of government, purely for the purpose of investigation.
- c. Anticipation by public display (Section 31 of Indian Patent Act): If the application is submitted within 12 months of public display in any special exhibition (as per instant section of GoI) or before a learned society.

- d. Anticipation by public working (Section 32 of Indian Patent Act): If the nature of the invention required public trial, then application should be filed within 12 months of that properly justified public trial.
- e. Anticipation by use and publication after provisional specification (Section 33 of Indian Patent Act): If after filing of provisional application, the invention was brought in use or published.

(Source: www.ipindia.nic.in)

Conditions for “INVENTIVE STEP”

The invention to be considered for grant of patent must have an ‘Inventive Step’ in the invention. The conditions for proving the inventive step may be stated as follows:

- a) The step should involve technical advance as compared to the existing knowledge or
- b) It should have economic significance or both, and also
- c) It should make the invention not obvious to a person skilled in the art

Difference between Novelty and Inventive Step:

S.No	Novelty	Inventive Step
1	Novelty deals with that whether the invention is new as compared to prior art.	The inventive step helps in determining the amount of improvement which is sufficient for a patent.
2	If in <u>any single document</u> , the exact citation is there which is similar to the claimed invention, then novelty is considered to be violated.	Obviousness is claimed, even if there are citations in multiple documents and not in a single document.

For determining the inventive step, in the innovation, following points need consideration:

- a) What problem will be addressed by the invention?
- b) Is the problem existing since long?

- c) How impactful the problem looks?
- d) Which other solutions were presented for the problem in that period?

Examples reflecting lack of inventive step in an invention:

- a) When there are only the equivalents of known art in the proposed invention.
Example- Proposed use of digital motor in place of already existing electric motor in a pump
- b) When the Invention tries to fill the existing gap in prior art, but the proposed invention becomes obvious to the skilled person.
Example- Suppose the patent is claimed for a building structure which is made from Aluminum and the prior art already shows such a structure which is made up of a light weight material, only the name Aluminium is missing.

Few Examples from Food Sector:

Food Recipes can also be patented, if they fulfill all the three conditions of patent eligibility. Few examples of wide range of *types* of recipes that have earned U.S. patent protection:

- a) **Microwavable:** Sponge cake that can rise when microwaved (6,410,074)
- b) **Shelf life:** Single-dough cookies that store well (4,344,969)
- c) **Smoothness:** Cooking process that improves mayonnaise (6,579,558)
- d) **Flavoring:** Additive that improves chocolate flavor in baked goods (3,733,209)

(Source: <https://patents.google.com/patent/US20140220186A1/en>, accessed on 5.11.2020)

In India, the Patent rule says:

Its '**First to File**' who will get the patent, while in some countries, its '**First to Invent**' who gets the patent

Patenting Process in India

- a) An applicant may file patent application in any of the designated patent offices, lying in his or her territorial jurisdiction of residence or work place.
- b) Applicant may find the information related to patent application form and details of fee etc. at the IPR website viz. www.ipindia.nic.in
- c) The website also provides all the relevant guidelines for applicants.

Provisional Specification (Section 9)

If in case an applicant feels that his or her invention is almost ready to be presented but not completely final, then he may file a provisional specification application to the patent office, disclosing his or her invention in the form of a written description.

But the condition is that after filing of provisional application, the complete specification need to be submitted within a period of 12 months of filing the provisional one.

The Provisional Application needs to be submitted in Form 2. The first page of the Form 2 should contain-

- (a) Title of the invention, (within 15 words)
- (b) Name, address and nationality of each of the applicants for the patent
- (c) Preamble to the description
 - A provisional specification is not a rough draft or a skeleton of the complete specification.
 - A provisional specification application does not replace the latter.
 - Rather both are permanent and separate documents.

The Provisional Specification should have a mentioning about:

- a) The field of invention and contain the background of the invention,
- b) The object of the invention,
- c) The statement of the principle underlying the invention and general statement of the actual invention

Complete Specification

The Complete specification is a techno-legal document which fully and particularly describes the invention and discloses the best method of performing it. Complete specification is filed to patent office as the main document for grant of patent. The application containing complete specification need to be drafted with due care and need to give complete and accurate details

The Complete Specification should have the following components:

- a) Field of Invention

- b) Use of Invention: A brief statement of the advantages of the invention
- c) Prior Art related to the invention
- d) Problem to be solved.
- e) Object of Invention (may be more than one)
- f) General statement of invention
- g) Detailed Description of Invention (with reference to drawings, if any)
- h) Best method /example of working of the invention
- i) Statement of claims
- j) Signature with date
- k) Drawings
- l) Abstract

((Source: www.ipindia.nic.in)

Patents are granted for a period of 20 years. After that the product or the process becomes free for the public. India follows *compulsory registration* and *first to file process* for patents.

The steps involved in filing the patents are:

- I. Filing of provisional / complete application. In case of provisional application, the complete application needs to be filed within one year.
- II. Publication of application : Usually happens within 18 months of filing the provisional application
- III. Request for examination
- IV. Examination issue of first examination report
- V. Grant of patent

Exceptions for Patents as per section 3 and 4 of Indian Act 1970

There are few inventions which cannot be patented because of any of these reasons:





- a) The invention is a frivolous invention
- b) Invention is contrary to the well established natural laws
- c) The invention is contrary to the public order or the morality or it may cause serious prejudice to health or human, animal, plant life or to the environment
- d) Genetically modified organizations (GMOs)

- e) Mere discovery of a scientific principle, abstract theory or discovery of any living thing or non-living substance, microorganisms present in nature
- f) By mixing of two or different already existing components in such a manner so that a new substance is obtained by just aggregation only
- g) Method of Agriculture or Horticulture, or medical, surgical, curative, diagnostic or therapeutic treatment of human beings or animals, any mathematical method, business method or algorithms or computer programme *per se*

2. Trademarks

A sign or any combination of signs, which can distinguish a product or service from other products and services in the market, is (are) known as Trademarks. A trademark varies from a symbol or design or word or phrase or a combination of these. A trademark helps in identifying and distinguishing the source of products or services of one party from those of others.

Examples:

S.No	Trademarks	Examples
1	Words	
2.	Phrases	
3.	Symbols or Logos	
4.	Designs	

Trademark Protections

Registration for trademarks is not compulsory in India to claim the trademark protection. Any creator of trademark may use the symbol TM to declare ownership of trademark and similarly the symbol SM for a service mark. If the trademark is registered it is represented by the ® symbol.

Registered trademark gives more protection to the registrant in terms of exclusivity of right, more legal protection in terms of claims of ownership.

As per Trademarks Act, 1999, the registration of a trademark shall be for a period of ten years, which may be renewed from time to time. The renewal of registration of a trademark should be made for every ten years under the present Act.

3. Industrial Designs:

An industrial design is the protection granted to the product (part or whole) because of its features like lines, shapes, patterns, colors, texture or material or its ornamentation. Designs are protected for 10 years from the registration date and may be extended to further 5 more years.

Examples: Coca Cola's contour bottle, the pattern of writing polo on the tablet



4. Trade Secrets

Any information which is confidential and valuable for the business and is used as a secret to gain competitive economic advantage over others is known as trade secret. The secrets are maintained by companies by adopting their own ways and methods. Trade secrets cannot be registered anywhere. So, if any secret is leaked then the company cannot claim any type of right on that.

Trade secrets may relate with any of such information:

- a) Technical and scientific information
- b) Financial information
- c) Commercial information
- d) Negative information

For ex. The recipe and ingredients for Coca cola and Pepsi are maintained as secrets generation by generation and are never disclosed anywhere. The benefit of trade secret is that it never expires or there is no need of any type of renewal etc.

Three essential legal requirements for Trade Secrets are:




- a) The information must be a secret
- b) Being a secret, it should have some commercial value
- c) Some reasonable steps should have been taken by the owner to protect and maintain it as a secret.

5. Geographical Indication (GI)

“Geographical indications” are defined at Article 22(1) of the World Trade Organization’s (WTO) 1995 Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) as-

“indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographic origin.”

GI indicates the region of origin for a product or a good. It is usually used to identify agricultural, natural or manufactured goods originating in a particular area. There must be any specific and unique characteristic or quality feature or reputation associated with the product specific to that geographical location.

S. No.	Examples
1	Alphanso Mango 
2.	Darjeeling Tea 
3.	Basmati Rice 

Application for the GI may be submitted by any association of persons or producers or any organization. An individual cannot apply for the GI. The registration of a GI shall be for a period of **ten years** but may be renewed from time to time for an unlimited period, by payment of the renewal fees.

6. Copyrights

Copyright is the protection granted to the 'form of ideas' created by an individual in the field of literary or artistic works. Copyrights give protection only for physically expressed works and not to the unexpressed ideas. It protects items such as paintings, drawings, sculptures, photographs, architecture, instruction manuals, software, databases, technical documentation, advertisements, maps, literary works, music, films or songs.

Few Examples from the category of original piece of work, which may be protected through copyrights, may be mentioned as follows:


S. No	Category	Examples
1	Literary works	Poems, books, song lyrics, research papers, user manuals, business models, newspaper articles and exam papers.
2	Dramatic works	Stage plays, drama, ballet, dance.
3	Artistic works	Drawings, paintings, photographs, maps, sculptures, architecture work and any craftwork
4	Musical works	Recorded original songs, advertisements, soundtracks, instrumental music

5	Films	Cinema films, home videos or DVDs of television programmes
6	Typographical arrangements	A published edition of a literary, musical or dramatic work, for example a banner or movie poster or book cover.
7	Broadcasts	Transmitted images, sounds or information that can be received by members of the public
8	Sound recordings	Recordings of sound recorded in either CDs, MP3s etc.

(Source: <http://www.copyright.org/copyright-resources/introduction-to-copyright/>)

The two necessary conditions for grant for copyright is, that:

- It should originate from the creator itself (originality)
- It should be presented physically and not just a mere ideation

There is no need of compulsory registration for the copyrights. The original creator can start using the symbol  on their piece of creation and it shows that it is protected by the claimant. Although it is always good to get the copyright registered so as to get much stronger protection.

The copyrights get protection from the moment they are created till the death of author (creator) plus 60 more years after his or her death.

The copyright owner gets economic rights and moral rights for his or her creation.

Where economic rights cover the economic benefits from his or her original creation and the owner can authorize/ prevent:

- a) Reproduction in various forms
- b) Distribution of copies
- c) Public performance
- d) Broadcasting and other communication to the public
- e) Translation to other languages
- f) Adaptation

While moral rights grant the creator to restrict any type of distortion or modification to his or her creation, which may hamper his or her image or may showcase his or her creation in a morally wrong way, even after transfer of the economic rights or the end of copyright protection tenure.

For example: Suppose if the copyright owner sells the economic rights associated with his or her original creation of painting and if the buyer writes any derogatory statement on the painting and displays that then the original creator has moral rights to stop the buyer to do that.

Copyrights protect only the form of expressions of Ideas and does not protect unexpressed Ideas. For example, the copyright is owned for the famous Mickey Mouse character. But in that only the specific features of that particular cartoon character are copyrighted, and not the general idea of creating talking mice or talking animals related artistic works.

The items which cannot be copyrighted are:

- a) The unexpressed Ideas, concepts, discoveries
- b) Titles, short phrases, names or slogans
- c) Any type of improvised speech or dance. The works which are not fixed in a tangible form i.e. not documented or recorded
- d) The information which is commonly available and lacks originality