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Legal provision for Infringement of Intellectual Property Rights in India

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Abstract

The term "intellectual property rights" (IPR) refers to the legal protections afforded to works of creativity, such as books, movies, and music. The purpose of intellectual property rights (IPR) is to ensure that the people responsible for creating anything new have the opportunity to profit from their labor. Patents, copyrights, trademarks, and other forms of intellectual property protection are only a few examples. A patent is an official acknowledgment of an innovation that has met the standards of universal novelty, non-obviousness, and practicality in industrial settings. Protecting innovations and creative works requires first identifying them, then preparing for their commercialization and implementation. Depending on its own niche, each industry should have its own set of intellectual property rights (IPR) rules, management philosophy, strategies, etc.

Keywords: Medicine, Intellectual Property, Obtaining a License or a Patent, and Trademark

INTRODUCTION

Any product of the mind, whether artistic, literary, technological, or scientific, may be protected as intellectual property (IP). The term "intellectual property rights" (IPR) is used to describe the legal protections afforded to an inventor or creator for the duration of his work. Having these protections in place ensures that the inventor or his assignee has the only and unrestricted right to profit from and otherwise use the innovation for a certain time period. Intellectual property (IP) plays an essential role in today's economy. It has also been shown beyond reasonable doubt that the intellectual effort connected with the invention should be accorded proper attention in order for public benefit to emerge from it. The R&D and market entry investment expenses have increased dramatically. Technology developers now have a lot riding on their work, therefore it's important to keep their discoveries safe from theft for a while so they can recoup their expenses and make enough money to keep investing in R&D in

the future. Since IPR offers the inventor/creator of an IP an exclusive right for use of his invention/creation for a specified length of time, it is a powerful weapon to safeguard investments, time, money, and effort spent by the inventor/creator of an IP. Accordingly, IPR helps a country's economy thrive by fostering a climate of healthy competition, which in turn promotes the expansion of industries and the economy. This article provides a high-level summary of IPR, with a focus on the pharmaceutical industry.

Property is defined as-

The term "property" is used to refer to items that are owned by one person or one organization. One has the right to dispose of his or her property as he or she sees appropriate, including the right to use or not use the property, the right to exclude others from using the property, and the right to transfer ownership to another party.

There are two distinct sorts of property: those that can be touched and handled, known as

"tangible" property, and those that cannot and do not exist in the same way, known as "intangible" property. Some examples of tangible assets include a building, plot of land, a home, money, or jewellery. However, there is also a kind of valued property that does not have a physical form and so cannot be directly experienced. One kind of intangible property that might have a greater financial impact than a physical asset or property is intellectual property.

TYPES OF INTELLECTUAL PROPERTY

The different types of Intellectual Property Rights are:

- Patents
- Copyrights
- Trademarks
- Industrial designs
- Geographical indications of goods
- Trade Secrets

Need for IPR-

The progress and well-being of humanity rest on its capacity to create and invent new works in the areas of technology and culture.

-Legally safeguarding original works inspires investors to put more money into research and development.

-Promotion and protection of IP boosts the economy, gives rise to innovative businesses and occupations, and improves people's quality of life.

-By granting them certain time-limited rights to control the use made of the manufactured goods, IPR is necessary to protect the rights of creators and other producers of their intellectual commodity, goods, and services. Moreover, IPR encourages innovation and creativity and guarantees the smooth operation of businesses.

Infringement of IPR

Infringement of intellectual property occurs when one makes unauthorised use of the intellectual property of another. Infringement is "a crime less severe than a felony" when someone acts *supra vires*. Infringement of intellectual property in this context might take the form of trademark infringement, copyright infringement, patent infringement, etc.

Various Forms of Trademark Infringement-

There are two forms of trademark infringement to be aware of while doing research:

1. Direct infringement

Section 29 of the Act provides the legal definition of direct infringement. Some specific conditions must be followed in order for a direct breach to occur, and they are as follows:

Access by an unauthorised user: As a result, trademark infringement occurs only when the mark is utilised by a party that is not authorised by the trademark owners. To avoid trademark infringement liability, the mark must be utilised with the registered trademark owner's permission.

Similar enough to be confusing: Unauthorised use of a trademark requires that it be either identical to, or confusingly similar to, a registered trademark. The word "deceptively similar" here simply suggests that the average customer "may" be confused between the marks and may consider them to be the same. The key word here is "may," therefore evidence of anything other than the likelihood that this will occur is unnecessary. Potential consumer confusion over the marks is sufficient to establish infringement.

Trademark application: Only trademarks that are registered with the Indian trademark registration are afforded legal protection under the Act. The common law of passing off is used to cases involving the infringement

of an unregistered mark. This branch of tort law applies when one party's actions negatively impact the reputation of another party or organization.

Distribution of products and services: Unauthorised use of a trademark may constitute trademark infringement only if it is used to promote products or services that are included in the same class as the registered brand.

Second, there was an instance of indirect violation.

Contrary to direct infringement, which is explicitly addressed in the Act, indirect infringement is not. This does not rule out the possibility of legal consequences for less direct forms of violation. Indirect infringement is based on the principle of universal law and is applied in accordance with that principle. All parties involved in an infringement, not only the main infringer, are held responsible. Indirect infringement may occur in two ways:

Responsibility for another party's actions; vicarious liability. If a corporation violates the Act, the whole corporation will be held accountable under Section 114. So, not only the main offender, but also every individual accountable for the firm, will be liable for indirect infringement, unless they acted in good faith and without knowledge of the infringement.

Trademark Infringement Consequences-

Legally speaking, trademark infringement in India can lead to both civil and criminal penalties. The trademark does not need to be registered under Indian law in order for civil or criminal actions to be initiated. This is because of the passing off doctrine in common law, as was noted above. When a trademark is violated, the court has the option of issuing the following remedies:

- Temporary injunction
- Permanent injunction
- Damages
- Account of profits (damages in the amount of the profits gained from the infringement)
- Destruction of goods using the infringing mark
- Cost of legal proceedings

In the case of a criminal proceeding, the court dictates the following punishment:

- Imprisonment for a period not less than six months that may extend to three years
- A fine that is not less than Rs 50,000 that may extend to Rs 2 lakh.

Patents

There is no clear legal definition of "infringement" in the Indian Patents Act of 1970. The Indian Patents Act 1970, section 48 however, confers exclusive rights upon the patentee to exclude third parties from making, importing, using, offering for sale or selling the patented invention, patented product or patented process. Accordingly, it follows that infringing on the foregoing monopoly rights would amount to patent infringement.

Direct infringement occurs when the infringer uses all of the essential features claimed in the patent to make a product.

As with direct infringement, the term "colourable imitation" refers to situations in which the infringer uses all of the features claimed in the patent but makes changes to one or more of the non-essential features.

The phrase "taking the pith and marrow of the invention" is used to describe the act of duplicating the invention's core elements.

The following are some of the legal options available to you if someone infringes on your patent:

.Injunction

- Damages or account of profits
- Delivery up or destruction of infringing goods
- Certificate of validity

Copyright

It is common practice to grant copyright protection to the following types of works:

The written word (novels, plays, poems, and articles from the press); The digital realm (computer programs and databases);

- Visual media, musical compositions, and choreography; Photographs, paintings, drawings, and sculptures; Buildings and billboards, road maps, Architecture, advertisements, maps, and technical drawings

Copyright infringement-

Infringement of copyright is defined in Section 51 of the Copyright Act, 1957 as follows:

1. when a person does something that the owner of the copyright has the exclusive right to do, or permits for profit the use of any place for the purpose of communicating the work to the public where such communication constitutes an infringement of the copyright in the work, without a license or in violation of the conditions of the license.

2. When someone in India produces copies of the work for commercial use, sells or lets them out for commercial use, displays or offers them for sale or hire, distributes for commercial gain or to the detriment of the copyright holder, or publicly displays or exhibits the work.

Fair dealing with any work for personal, private use or research; reproduction of any work for the purpose of a judicial proceeding; replication by a teacher or pupil in the course of teaching, etc. are all examples of activities

that do not violate copyright and are listed in Section 52.

In the event of a copyright violation, the Copyright Act allows for both civil and criminal remedies.

Conclusion

In a world where technological, scientific, and medical advancements are constantly being made, intellectual property is crucial. Intellectual property is a worthwhile investment because it gives its owner a leg up on the competition. Registering intellectual property rights is recommended for optimal use. One's "brainchild" is the subject of intellectual property rights, which grant the owner exclusive ownership over that creation. These protections encourage innovation and aid creators at every stage of a company's evolution, from initial concept to market entry and beyond. It's worth noting that when IP rights are properly registered and enforced, consumers have a better idea of the product's quality, safety, and dependability.

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