



**Certified Intellectual Property
Rights & Legal Manager
Sample Material**

V-Skills Certifications

**A Government of India
&
Government of NCT Delhi Initiative**

V-Skills



1. INTRODUCTION

IPR (Intellectual Property Rights) are the creations of the human mind or the human intellect. IPR can also refer to pieces of information which can be incorporated in tangible objects at the same time in an unlimited number of copies at different locations anywhere in the world¹.

Across the globe States have laws to protect intellectual property primarily for two reasons.

- ✓ Firstly, providing statutory expression to the moral and economic rights of creators in their creations as well as giving rights to the public in accessing those creations;
- ✓ Secondly, to promote, as a deliberate act of Government policy, creativity and the propagation and application of its results aiding in fair trading which would contribute to economic and social development².

The Convention Establishing the World Intellectual Property Organization (WIPO) provides vide Article 2 (viii)³ that,

“Intellectual property shall include rights relating to:

- ✓ literary, artistic and scientific works;
- ✓ performances of performing artists, phonograms and broadcasts;
- ✓ inventions in all fields of human endeavour;
- ✓ scientific discoveries;
- ✓ industrial designs;
- ✓ trademarks, service marks and commercial names and designations;
- ✓ protection against unfair competition;

and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.”

Areas discussed as literary, artistic and scientific works are a part of the copyright branch of intellectual property law. The areas mentioned as performances of performing artists, phonograms and broadcasts are oft called “related rights,” i.e., rights related to copyright.

Inventions, industrial designs, trademarks, service marks and commercial names and designations make up the industrial property branch of intellectual property rights. The portion

¹ WIPO/ IP/ MCT/ APR/04/2 on April 19, 2004 at Muscat

²World Intellectual Property Organisation [at <http://www.wipo.int/about-ip/en/iprm/pdf/ch1.pdf>]

³Concluded in Stockholm on July 14, 1967

referred to as the protection against unfair competition can also be reflected as being a part of that branch, furthermore as Article 1(2) of the Paris Convention for the Protection of Industrial Property (Stockholm Act of 1967) (the “Paris Convention”) state that “the repression of unfair competition” as one of the areas of “the protection of industrial property”; the said Convention includes that:

“Any act of competition contrary to honest practices in industrial and commercial matters constitutes an act of unfair competition” (Article 10(2)).

The concept of “industrial property” encompasses inventions and industrial designs. In other words, inventions can be defined as new solutions to technical problems and industrial designs as appealing creations defining the look of industrial products. Additionally, industrial property also includes trademarks, service marks, commercial names and designations, including indications of source and appellations of origin, and protection against unfair competition.

Herein the concept of intellectual creations, despite in existence, is less prominent, but what is of prime importance is that the object of industrial property mostly contains signs dispersing material to consumers, particularly in reference to products and services offered in the market, and their protection is directed against illegitimate use of such signs which is likely to dupe consumers, and misleading practices on a general plain.

Scientific discoveries, cannot be regarded as the same as inventions. The Geneva Treaty on the International Recording of Scientific Discoveries (1978) promotes the definition of a scientific discovery as “the recognition of phenomena, properties or laws of the material universe not hitherto recognized and capable of verification” (Article 1(1)(i)). Inventions are innovative solutions to specific technical problems naturally relying on the properties or laws of the material universe, but these properties or laws must be properties or laws not recognized previously.

1.1 Intellectual Property Law in India

Intellectual property is ownership of property other than real estate or personal property, as these are products of the human mind or spirit. Although the property is similar, the type of goods is different: tangible and intangible assets. Intellectual property rights are the legal rights

of intellectual activity in the industrial, scientific, literary and artistic fields result. These rights are limited by time.

The protection of intellectual property rights (IPR) in India until recently was at a very budding stage. Protection after the signing of international conventions and agreements on intellectual property has been gradually expanding. There is now a well-established statutory, administrative and judicial framework for intellectual property to protect, whether they relate to patents, trademarks, copyrights and industrial designs.

Initially, in India trade marks for goods were extended by court decisions to service marks, but now they are legally recognized. Computer databases have a strong protection under the IPR laws in India. The courts are granted under the doctrine of breach of confidentiality, a widespread protection of trade secrets.

The Intellectual Property Rights (IPR) laws in India are divided into five broad categories: trademarks, copyrights, patents, industrial designs and geographical indications.

India provides protection for intellectual property rights in accordance with its obligations under the TRIPS (Trade Related Aspects of Intellectual Property Rights) Agreement of WTO.

Other than the civil remedies and damages, the police and other authorities are empowered to take action against infringement of intellectual property. The petitions will be filed for violations of intellectual property rights and tried in the courts like other suits. Appeals are filed in the courts against administrative decisions relating to intellectual property rights.

Intellectual Property Law in India broadly covers the following areas:

- ✓ Patents
- ✓ Plant Variety Protection
- ✓ Geographic Information
- ✓ Traditional Knowledge
- ✓ Copyright
- ✓ Trade Marks
- ✓ Trade Secrets
- ✓ Industrial Designs

1.2 Patents

A patent is an exclusive right granted to a person who has invented a new and useful article or an improvement of an existing article or a new process for producing an article. It consists of an exclusive right to manufacture the new article invented or manufacture an article according to the invention for a limited period. After completion of the term of a patent anyone is entitled to use the invention.

The concept of the patent and its major components such as novelty, inventive step obviousness and lack of compliance with the description remained the same, as was developed more than 400 years ago.

A patent is an exclusive right for an invention for a limited period, subject to the disclosure of the invention given by an applicant. The patent holder enjoys the exclusive right to prevent a third person from doing an unlawful act, then to avoid using, offering for sale, selling or importing the patented product or process within the country during the term of a patent. A patented invention is free for public use after the expiration of the term of the patent or patent application.

Patent rights are protected in India under the Patents Act, 1970.

1.2 Trademarks

A trademark is a visual symbol in the form of a word, a device or a label applied to show objects of trade in relation to the buying public that they produce goods or are otherwise treated by a particular person even when distinguished from similar goods manufactured or traded by other people. A man who sells his goods under a particular trademark acquires a sort of limited exclusive right to use the mark in relation to those goods to be used. Such a right is recognized by the use as a form of property purchased and protected under the brand of general laws. A person can also acquire a similar right to a mark which is not yet used, under the Trade Marks Act 1999. The law of trademarks is based above all on the distinctive concepts of similarity between the marks and the similarity of the goods.

Trademarks in India are protected under the Trade Marks Act, 1999.

1.3 Copyrights

Copyright protection includes literary works such as novels, poems and plays, films, musical works, artistic works such as drawings, paintings, photographs and sculptures and architectural designs. Rights related to copyright include those made by artists in their performances of sound recordings and television in its radio and television broadcasts.

Intellectual property rights are like any other property rights; the owner or creator can take advantage of a patent, trademark or copyrights to protect his or her own work or investment.

Copyrights in India are protected by the Copyrights Act, 1957.

A detailed explanation to all these concepts with an Indian perspective shall be given during the course of this booklet.