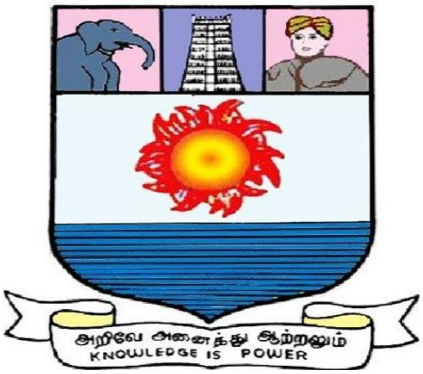
JNBA41 –INTELLECTUAL PROPERTY

RIGHTS



CENTRE FOR DISTANCE AND ONLINE EDUCATION

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SYLLABUS

JNBA41 – INTELLECTUAL PROPERTY RIGHTS

UNIT	Details
I	**IPR Introduction:** and the need for intellectual property right – IPR in India – Different Classifications Important Principles of IP Management Commercialization of Intellectual Property Rights by Licensing
II	**Introduction–Classification–Importance**–Types of Patent Applications in India - Patent able Invention– Inventions Not Patentable.
III	**Introduction–Fundamentals –Concept**–Purpose Functions–Characteristics– Guidelines - For Registration of Trade Mark – Kinds of TM – Protection – Non-Register Trademarks
IV	**Introduction to Copyright– Conceptual Basis** –Copy Right and Related Rights– Author & Ownership of Copyright - Rights Conferred By Copy Right- Registration – Transfer –Infringement
V	**Geographical Indications:** Concept, Protection & Significance

	References Books
1	Landmark Judgment on Intellectual Property rights by Kush Kalra. Central Law Publishing.
2	Intellectual Property Rights in India by V.k.Ahuja, Lexis Nexis.
3	Introduction To Intellectual Property Rights Softbound By Singh, Phundan, Daya Publishing House.
4	Introduction To Intellectual Property Rights by Chawkam H.S, Oxford &Ibh
5	Intellectual Property - Patents, Copyright, Trade Marks and Allied Rights by W Cornish and D Llewelyn and T Pain

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Unit – I

Structure:

1.1 Introduction:

IPR stands for Intellectual Property Rights. It refers to the legal rights granted to creators and inventors for their intellectual creations, like inventions, literary works, and designs. These rights give the creator the exclusive ability to use, reproduce, and benefit from their work.

Intellectual Property Rights (IPR) are legal protections granted to creators and inventors for their intellectual creations, ensuring they can benefit from their work without unauthorized use. These rights cover various types of creations, including inventions, literary and artistic works, designs, symbols, and more. IPRs incentivize innovation and creativity by providing creators with exclusive rights to use, sell, and control their creations for a specified duration.

1.2 Meaning:

All the rights linked with intangible assets possessed by an individual or business to safeguard such assets against unlawful use or exploitation are called Intellectual Property Rights. Such rights are granted to the creators of intellectual property so that their creations cannot be used by others without their permission**.** These include:

- ✓ Right to reproduce such work
- ✓ Right to sell such work
- ✓ Right to create other forms of such work, etc.

Intellectual Property Rights are used to convey the monopoly of the holder over the usage of the specified property or items for a definite time period**.** Any violation of these rights attracts severe penalties.

1.3 Definitions:

Intellectual property comprises an interrelated set of legal regimes protecting economic and in some contexts personal interests in inventions, information, and works of authorship, images, symbols, and sound recordings. Intellectual property law principally embodies utilitarian precepts such as promoting technological innovations and creative expression. The term ‘IP’ (Intellectual Property) has been given official recognition by the international community with

the establishment of World Intellectual Property Organization (WIPO), one of the 16 specialized agencies of United Nations.

According to WIPO, "intellectual property means the legal rights which originated from intellectual activity in the industrial, scientific, literary and artistic fields". Intellectual property law aims at safeguarding creators and other producers of intellectual goods and services by granting them certain time-limit to control the use made of those productions. Those rights do not apply to the physical object in which the creation may be embodied but instead to the intellectual creation as such. Intellectual property is traditionally divided into two branches, "Industrial Property" and "Copyright." WIPO concluded in Stockholm on July 14, 1967 that intellectual property shall include rights relating to (1) literary, artistic and scientific works, (2) performances of performing artists, phonograms and broadcasts, (3) inventions in all fields of human endeavor, (4) scientific discoveries, (5) industrial designs, (6) trademarks, service marks and commercial names and designations, (7) protection against unfair competition, and (8) all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields (WIPO, 2004, viii).

Tom Palmer puts it this way: "Intellectual property rights are rights in ideal objects, which are distinguished from the material substrata in which they are instantiated."

Intellectual property (IP): IP is considered to be "a work or invention that is the result of creativity, such as a manuscript or a design, to which one has rights and for which one may apply for a patent, copyright, trademark, etc."

The Business Dictionary (2009) defines IP as "documented or undocumented [human] knowledge … that have commercial value and are protectable under copyright, patent, … trademark, or trade secret laws, infringement, and dilution". Cook traces the term back to the

Enlightenment period when people started to realize that knowledge was created by them rather than through celestial disclosure, as suggested in several historical texts.

1.4 Historical Development:

During the last four centuries, intellectual property rights have changed from feudal power to people's private rights. Today, it is undeniable that the revolution brought by IPR not only has expanded the traditional content of property rights system, led to the intellectual property system became the world's most important property rights system, but also made a profound impact on mankind in the 21st century. With the development of new technologies and human cognitive ability, to balance the private rights and public interests, the intellectual property system has always encountered challenges and controversy. Intellectual property rights were a general term for human rights for the results of their intellectual and creative production. Thus, it is a collection of concepts and covers copyright, patents, trademarks. In different countries, intellectual property rights cover slightly different contents. As a social system promoting innovation, the intellectual property right was established in the Western countries first, and later has been constituted in the rest of the world.

1.5 The Early Stage of The Intellectual Property System:

The term "intellectual property" can potentially be glimpsed in early Jewish law. According to Schneider Jewish laws included several considerations whose effects were similar to those of modern intellectual property laws, although the notion of intellectual creations as property did not seem to exist notably in the principle of Hasagat Ge'vul (unfair encroachment) until the 16th century. Gupte mentioned that it contained the prohibitions against certain mental crimes (further elaborated in the Shulchan Aruch), notably Geneivat da'at (mind theft), which some have interpreted as prohibiting theft of ideas, though the doctrine was principally

concerned with fraud and deception, not property. Section 1 of the French Law of 1791 stated, "all new discoveries are the property of the author; to assure the inventor the property and temporary enjoyment of his discovery, there shall be delivered to him a patent for five, ten or fifteen years". The concept of intellectual property made its first appearance after the French revolution: in an 1818 collection of writings, the French liberal theorist, Benjamin Constant, argued against the recently introduced idea of "property which has been called intellectual."

Patents began as instruments for attracting and introducing new products, technologies and techniques in European countries. While looking at the old patents granted by some of the countries it is found that they were just a replication of the technologies available elsewhere. Artisans were invited from one country to the other and given special rights, amongst them being the exclusive right to exploit the technology. The laws and administrative procedures related to intellectual property rights had their roots in Europe.

During this period of introducing new art and technologies a thought process slowly started taking root, on the question of disclosing secrets of the art or craft or technologies. It really did not matter whether the inventor was from the same land or from a foreign country. In the early 13th century, the King of Britain granted a license to the inventors. The Republic of Venice city constituted the first world's patent law in 1474. Soon after, the wave of the industrial revolution swept through the whole of Europe. Some countries then established a national patent system. The United States established the principle of protection of proprietary technology in their Constitution and made patent protection constitutional right.

The rights of literary works involving published works were not protected until the advent of printing machines, which made copying of literary works much easier. Otherwise someone would have to write the complete manuscript for making a copy, which from

commercial angle, was not profitable. From the beginning copyright laws have been designed more by the economics of publication than by the economics of authorship. The first known copyrights appeared in Italy. The craft of printing was introduced in Rome and Venice by the end of 1460s. A number of privileges were allowed by “Venice” in terms of import of franchise, exclusive licenses to print or sell an entire class of books, prohibition of import of books printed abroad and patents for the improvement of printing and typography. As the focus was on printing books in public domain (such as the Bible), the rights of authorship were not considered important. Copyrights had the same colour with a strong monarchical power. Before the birth of the copyright system, various countries have had long standing system of printing privileges. According to this franchise system, the king can grant a printed right to license the printer rather than the copyright owners. In 1709, Britain built the first modern copyright law - "The Queen Anne Act." It was followed by, the United Kingdom, France and Germany establishing their copyright systems respectively.

Under the influence of these countries as a pioneer, the copyright system has been gradually accepted by Governments. Such cases were very few and copyrights were by and large issued to the publishers for works written by others. This is an interesting aspect of copyright. During the last few centuries, the emphasis of ownership shifted from that of publisher to creator / author of the work. With the advent of digital technologies and new forms of works being created, especially for internet purposes, publishers’ stakes seem to be increasing each day as the quality of replication and ease of replication have become extremely simple. The publisher lobby is therefore seeking new treaties such as the Data Protection Treaty, for protecting their investments. It may become a case of the old order taking over the new order because technological inputs have brought about a major shift in the publishing business. “Venice” can

be considered the cradle of intellectual property system as most legal thinking in this area was done here and laws and systems were made here for the first time in the world, and other countries followed them. Scholars feel that the first general copyright law in the world came in the form of a decree issued by the Venice Council around 1545, which prohibited the printing of any work without the permission of the author. No steps were apparently taken to maintain a register for the copyrighted works. Similar laws also came into being in other European countries. Each country introduced an element of censorship to exclude from publication, material that was considered unacceptable by the society. It is also important to realize that the laws were applicable to printing and publishing of material generated within the country. There were practically no laws which prohibited publishing and printing of books, pamphlets etc. which were imported into the country. Obviously, the element of international obligation, which is becoming so pervasive and important in the present day IPR system, was completely missing. The character of IP management in countries has undergone a metamorphosis ever since the borders and barriers to global trade and commerce started becoming less rigid, which perhaps was driven if not consciously then unconsciously, by the spirit of promoting fair competition and attaching due honour to, let us say, the creators of knowledge. The process is an ongoing one, as more and more countries become a part of the international trade and new variables get introduced in international relations.

1.6 Modern Development:

The framework of the intellectual property system which included copyright, patent and trademark rights as the main modules took a long period of time to be has established. Many countries accepted a variety of forms of intellectual property rights in different attitudes and progress. At the same time, new types of intellectual property rights have and continue to be

gradually integrated into the system of intellectual property rights. All these developments demonstrate that the historical development of the intellectual property system has entered a stage of steady development.

The term intellectual property was found to be used in the October 1845 Massachusetts Circuit Court ruling in a patent case by Davoll et al. v. Brown in which Justice Charles L. Woodbury wrote that "only in this way can we protect intellectual property, the labors of the mind, productions and interests are as much a man's own...as the wheat he cultivates, or the flocks he rears." By the end of 1880's of the twentieth century, the new wave of civil legislation began to rise. Many countries tried to develop the Code of intellectual property or integrate intellectual property law into the Civil Code. These activities set off a wave of codification of intellectual property rights.

The modern use of the term intellectual property as a common descriptor of the field probably traces to the foundation of the WIPO by the United Nations. It did not enter popular usage however until passage of the Bayh-Dole Act in 1980. As nations move toward a global information economy, governments are responsible for ensuring that IPR conforms to the challenges imposed by information technology and the digital media, under such economic and juristic influence, IPR and other relative notions will be developed and completed continuously among companies and nations.

Trade and commerce have emerged to be the major deterministic factor for achieving the above goals. Pressures of globalization or internationalization were not intense during 1950s to 1980s, and many countries, including India, were able to manage without practicing a strong system of intellectual property rights. Globalisation driven by chemical, pharmaceutical, electronic and IT industries has resulted into large investments in R&D. This process is

characterized by reduction in the time of product cycle and high risk of reverse engineering by competitors. Industries came to realize that trade secrets were not adequate to guard a technology. It was difficult to reap the benefits of innovations unless uniform laws and rules of patents, trademarks, copyright etc existed. That is how intellectual property rights became an important constituent of the World Trade Organization.

1.7 The Concept of Intellectual Property:

The concept of intellectual property refers to ownership rights, for e.g. to a particular invention, a set of scientific research results, the written text and increasingly so today, electronic versions of these. The concept of intellectual property (IP) will be understood better if we understand what is meant by the term property. To a lay mind, property means some material object belonging to a particular person. The concept of ownership is critical to the concept of property. Ownership means the right to possess, use and dispose of the property as desired by the owner, to exclude the others. If a society does not recognize ownership, it will not have the concept of a property. In the legal sense, property refers to the bundle of rights that the law confers on a person by virtue of the ownership and possession of an object. However, a material object under one's possession may not amount to much as property if it does not become a resource to satisfy some human want or need. By exertion of his intellect, either in the form of ideas or technology, man converts a natural resource into something of utility, making it an item of property. Two factors significantly influence the value of an object as property. The first is scarcity, which refers to its availability in relation to the need. The scarcity of a thing in relation to the demand for it, the higher is its value. The second important factor influencing the value of an object is the knowledge of its use or uses. The higher the value of an object, the more zealously it is guarded as a property. These rights deal with various aspects of the relationship

between man and his property, such as: ownership and possession; use and enjoyment of the fruits of the application of property; exclusion of others from use and application of the property; and transfer of rights of the property.

1.8 Need for Intellectual Property Right:

Intellectual property rights (IPR) are crucial for protecting creators and driving innovation. They incentivize research, development, and creativity by allowing creators to benefit from their work and prevent unauthorized use. This protection is vital for economic growth, fair competition, and the preservation of cultural heritage. The importance of IPR is as follows:

i) Encouraging Innovation and Creativity:

- ✓ IPR provides a framework for rewarding inventors and creators, encouraging them to continue investing time and resources in developing new ideas, inventions, and creative works.
- ✓ This incentive helps drive technological advancements, scientific breakthroughs, and artistic expression.

ii) Protecting Investments and Promoting Economic Growth:

- ✓ IPR allows businesses and individuals to protect their investments in intellectual property, which can be a valuable asset.
- ✓ This protection helps foster a competitive marketplace, where businesses can innovate and grow without fear of their work being copied or stolen.

iii) Facilitating Trade and Global Collaboration:

- ✓ IPR helps ensure that international trade and collaboration are based on mutual respect and fair competition.
- ✓ It provides a framework for enforcing intellectual property rights in different countries, which can help facilitate global trade and cooperation.

iv) Safeguarding Cultural Heritage:

- ✓ IPR plays a role in preserving cultural heritage by protecting traditional knowledge, artistic expressions, and cultural symbols.
- ✓ This can help ensure that cultural heritage is not exploited or misappropriated for commercial purposes.

v) Promoting Fair Competition:

- ✓ IPR helps create a level playing field for businesses and individuals, preventing unfair competition based on the unauthorized use of others' intellectual property.
- ✓ This can help promote a more dynamic and innovative marketplace, where businesses are incentivized to develop new products and services rather than relying on copying or stealing the work of others.

vi) Protecting Personal Information:

- ✓ In the digital age, IPR helps protect personal information and privacy.
- ✓ This is especially important in the context of online creations and innovations, where there is a greater risk of unauthorized use and exploitation.

In essence, IPR is a fundamental aspect of a modern economy, playing a vital role in fostering innovation, promoting economic growth, and protecting the rights of creators.

1.9 Objectives of IPR:

The objectives of these are designed to balance the interests of creators, businesses, and the public. Key objectives include:

i) **Encourage Innovation and Creativity:** Provide incentives to inventors, artists, and businesses by granting them exclusive rights, fostering a culture of innovation and creativity.

ii) **Economic Growth:** Stimulate investment in research and development, boosting industries and contributing to economic development.

iii) **Protection of Creators' Rights:** Safeguard the rights of creators, ensuring recognition and fair compensation for their work.

iv) **Encourage Innovation and Creativity:** Provide incentives to inventors, artists, and businesses by granting them exclusive rights, fostering a culture of innovation and creativity.

v) **Economic Growth:** Stimulate investment in research and development, boosting industries and contributing to economic development.

vi) **Protection of Creators' Rights:** Safeguard the rights of creators, ensuring recognition and fair compensation for their work.

1.10 Advantages of IPR:

It offers several advantages to individuals, businesses, and society. Key benefits include:

i) **Encourages Innovation and Creativity:** By providing legal protection and financial incentives, IPR motivates individuals and businesses to innovate and create new products, services, and artistic works.

ii) **Protects Creator Rights:** Ensures that inventors, artists, and businesses receive recognition and financial rewards for their efforts.

iii) **Promotes Economic Growth:** Fosters investment in research, development, and creative industries, contributing to economic advancement.

iv) **Enhances Brand Value:** Protects trademarks and other brand identifiers, ensuring exclusivity and helping businesses build strong reputations and customer trust.

v) **Prevents Unethical Practices:** Discourages counterfeiting, piracy, and unauthorized use, maintaining fairness in markets.

vi) **Fosters Knowledge Sharing:** Patent disclosures and licensing agreements enable knowledge dissemination, aiding further innovation.

vii) **Supports Global Trade:** Internationally recognized IPR systems encourage foreign investment and facilitate the smooth exchange of goods and services across borders.

viii) **Boosts Consumer Confidence:** Ensures the authenticity and quality of products, helping consumers make informed choices.

By protecting intellectual assets, it fosters innovation and ensures a balanced and equitable market environment.

1.11 IPR in India:

Intellectual Property Rights (IPR) in India protect creators and inventors, fostering innovation and economic growth. Key types of IPR include patents, copyright, trademarks, industrial designs, geographical indications, and trade secrets. The Indian government administers these rights through various acts and regulations.

Key aspects of IPR in India:

Legislation

Key acts like the Patents Act, 1970, the Copyright Act, 1957, the Trade Marks Act, 1999, and the Designs Act, 2000, govern different aspects of IPR protection.

Types of IPR:

i) **Patents:** Protect inventions, granting exclusive rights to inventors for a limited period.

ii) **Copyright:** Protects original works of authorship, such as literary, dramatic, and artistic works.

iii) **Trademarks:** Protect brand names, logos, and symbols used in commerce.

iv) **Industrial Designs:** Protect the visual appearance of products.

v) **Geographical Indications:** Protect products with specific geographical origins.

vi) **Trade Secrets:** Protect confidential information, like formulas and processes.

Administration:

The Office of the Controller General of Patents, Designs & Trade Marks (CGPDTM) is responsible for administering patents, designs, trademarks, and geographical indications.

Importance:

IPRs play a crucial role in stimulating innovation, promoting economic growth, and protecting the rights of creators.

Challenges and Future Directions:

- ✓ While India has a strong legal framework for IPR, challenges remain in enforcement, awareness, and modernization of the system.

- ✓ The government is taking steps to modernize IP offices, utilize technology, and increase awareness through initiatives like the IPR enforcement toolkit and the Maharashtra IP Crime Unit.
- ✓ The Indian government is also focusing on promoting innovation and IP literacy in schools and educational institutions.

1.12 Status of IPR in India:

The status of **Intellectual Property Rights in India** has significantly evolved, aligning with global standards and fostering innovation and economic growth. Key highlights of IPR in India include:

i) Legal Framework:

India has comprehensive laws covering various types of IPR:

- ✓ **Patents Act, 1970** (amended in 2005) ensures compliance with WTO's TRIPS agreement.
- ✓ **Copyright Act, 1957** (amended in 2012) protects creative works.
- ✓ **Trade Marks Act, 1999** regulates brand protection.
- ✓ **Geographical Indications of Goods (Registration and Protection) Act, 1999** safeguards region-specific products like Darjeeling Tea and Mysore Silk.
- ✓ **Designs Act, 2000 and Protection of Plant Varieties and Farmers' Rights Act, 2001** support specialized intellectual property.

ii) Administrative Developments:

- ✓ Establishment of **IPR Cells** and modernization of IP offices.
- ✓ **National IPR Policy, 2016**, aimed at fostering innovation, awareness, and commercialization of IP assets.

iii) International Commitments:

India is a member of the WTO, WIPO, and various treaties, including the Paris Convention, Berne Convention, and Madrid Protocol.

iv) Challenges:

Despite progress, India faces challenges such as low IP awareness, enforcement issues, delays in processing applications, and limited commercialization of IP assets.

v) Recent Trends:

India has witnessed increasing patent filings, greater emphasis on R&D, and support for startups under initiatives like **Startup India** and **Make in India**, boosting the country's IP ecosystem.

India's evolving IPR framework aims to strengthen innovation, protect creators' rights, and foster economic growth.

1.13 Classifications of IPR:

Intellectual Property Rights (IPR) can be classified into several types, broadly categorized into copyright and industrial property. Within these categories, specific forms of protection exist, including patents, trademarks, copyrights, trade secrets, industrial designs, and geographical indications. Plant variety rights and semiconductor integrated circuit layout designs are also recognized forms of IPR.

i) Copyright:

Protects original works of authorship, including literary, dramatic, musical, and artistic works.

ii) Patents:

Grant exclusive rights to inventors for their inventions, typically for a set period (usually 20 years), allowing them to prevent others from making, using, or selling the invention.

iii) Trademarks:

Distinguish goods or services of a particular company, protecting brand names, logos, and slogans.

iv) Trade Secrets:

Protect confidential business information, such as formulas, processes, or customer lists, provided they are kept secret.

v) Industrial Designs:

Protect the aesthetic appearance of a product, focusing on its visual features like shape, pattern, or color.

vi) Geographical Indications (GIs):

Protect products associated with a specific geographical origin, such as "Champagne" or "Darjeeling tea," linking their quality to their region.

vii) Plant Variety Rights:

Protect new and distinct plant varieties.

viii) Semiconductor Integrated Circuit Layout Designs:

Protect the layout designs of integrated circuits.

1.14 Important Principles of IP Management:

Effective intellectual property (IP) management relies on a proactive approach to identify, protect, and leverage intellectual assets, ensuring they align with business goals and contribute to long-term growth. Key principles include thorough evaluation, strategic planning,

safeguarding confidentiality, and adapting to evolving global regulations. IP Management is guided by principles such as:

i) Identification and Evaluation:

- ✓ **IP Audit:**

  Regularly assess existing IP assets to understand their value, relevance to the business, and potential risks.

- ✓ **Strategic Prioritization:**

  Not all IP requires protection. Focus on assets with the highest potential value, market relevance, and enforceability.

- ✓ **Global View:**

  Consider international IP laws and protections as businesses expand globally.

ii) Protection and Enforcement:

- ✓ **Legal Protection:**

  Seek legal protection through patents, copyrights, trademarks, or trade secrets, depending on the nature of the IP.

- ✓ **Confidentiality:**

  Maintain confidentiality, particularly for trade secrets, and educate employees on their importance.

- ✓ **Monitoring and Enforcement:**

  Monitor markets for potential infringements and take legal action when necessary.

iii) Exploitation and Commercialization:

- ✓ **Commercialization Strategies:**

  Explore various avenues to monetize IP, such as licensing, selling, or integrating into products and services.

- ✓ **Portfolio Management:**

  Effectively value and manage the IP portfolio, including identifying, prioritizing, and potentially divesting underperforming assets.

  Technology Transfer:

  IP rights are crucial for technology transfer, allowing control over business actions and facilitating joint ventures.

iv) Adapting to Legal and Regulatory Changes:

- ✓ **Compliance:**

  Stay informed about changes in patent, trademark, or copyright laws and their implications for the IP library.

- ✓ **International IP Laws:**

  Understand and comply with international IP laws and conventions in global markets.

v) Socially Responsible IP:

- ✓ **Social Well-being:**

  Governments can define IP management guidelines to streamline research outputs and promote socially responsible commercialization of research outcomes.

- ✓ **Unmet Needs:**

  Consider the unmet needs and specific development levels of different countries when commercializing IP.

By adhering to these principles, businesses can effectively manage their IP, protect their valuable assets, and leverage them to drive innovation and growth.

1.15 Commercialization of Intellectual Property Rights by Licensing:

Commercializing intellectual property (IP) rights through licensing involves granting permission to others to use the IP, typically for a fee or royalty, while the owner retains ownership, enabling the IP to be used to create products or services and generate revenue. The following encompasses the IPR licensing.

What is IP Commercialization through Licensing?

Defining Commercialization:

Commercialization of IP refers to the process of converting an idea or innovation into a marketable product or service, ultimately generating revenue.

Licensing as a Method:

Licensing is a common method of IP commercialization where the IP owner (the licensor) grants permission to another party (the licensee) to use their IP under specific terms and conditions.

Key Aspects of Licensing:

i) Granting Rights: The licensor grants the licensee the right to use the IP, which can include patents, trademarks, copyrights, or trade secrets.

ii) Terms and Conditions: Licensing agreements outline the terms of use, including the scope of the license (e.g., geographical area, type of product), duration, fees, and royalties.

iii) Royalty Payments: The licensee typically pays royalties or fees to the licensor for the right to use the IP.

iv) Maintaining Ownership: Unlike selling the IP, licensing allows the IP owner to retain ownership while enabling others to utilize the IP for commercial purposes.

Benefits of Licensing:

i) Revenue Generation: Licensing provides a stream of income for the IP owner.

ii) Market Access: Licensing can help the IP owner access new markets or industries where they might not have the resources or expertise to enter alone.

iii) Reduced Risk: Licensing can reduce the financial risk associated with developing and commercializing a product or service, as the licensee bears the costs of production and marketing.

iv) Faster Commercialization: Licensing can accelerate the commercialization process by leveraging the licensee's existing infrastructure and expertise.

Types of Licensing Agreements:

i) Exclusive License: Grants the licensee the sole right to use the IP within a specific territory or for a specific purpose.

ii) Non-Exclusive License: Allows multiple licensees to use the IP.

iii) Franchise: A specific type of licensing where the IP owner (franchisor) grants a franchisee the right to use their business model, trademarks, and other IP.

Examples:

- ✓ A pharmaceutical company licensing a drug patent to another company for manufacturing and distribution.
- ✓ A software company licensing its software to other businesses for use in their products.
- ✓ A fashion designer licensing their brand to a retailer for producing and selling clothing.

Check Your Progress

Choose the Correct Answer:

1. What is the primary objective of Intellectual Property Rights (IPR)?
    a) To protect the monetary interests of large corporations
    b) To promote the creation of new inventions and creative works
    c) To limit competition among businesses
    d) To control global markets
2. Which of the following is NOT a classification of Intellectual Property (IP)?
    a) Copyright
    b) Patents
    c) Trade secrets
    d) Corporate trademarks
3. In India, which of the following bodies is responsible for the administration and enforcement of Intellectual Property Rights?
    a) Ministry of Commerce and Industry
    b) Indian Patent Office
    c) Ministry of Information and Broadcasting
    d) Reserve Bank of India
4. Which principle of IP management ensures that intellectual property is used in a way that benefits the creator and the wider community?
    a) Exclusivity principle
    b) Transparency principle
    c) Public interest principle
    d) Utility principle
5. What is one common way of commercializing intellectual property rights?
    a) By selling the IP to competitors
    b) By licensing the IP to others for a fee
    c) By giving it away for free to the public
    d By using it only within a company for research
6. The primary function of a Geographical Indication (GI) is to:

a) Provide trademark protection for global goods

b) Protect products linked to their geographical origin with unique qualities.

c) Regulate global distribution of all regional products

d) Restrict access to the geographical area of production

7. The protection granted to a Geographical Indication (GI) extends to:

a) Only the local producers within the region

b) All producers within the geographical region that meet the GI's standards

c) Only international exporters of the product

d) The trademark holder only

8. Under the Geographical Indications of Goods (Registration and Protection) Act, 1999, the registration of a GI can be:

a) Transferred to any person within the industry

b) Renewed every 10 years

c) Transferred only after 5 years of registration

d) Revoked if the product fails to meet quality standards

9. The term "Collective Mark" in the context of Geographical Indications refers to:

a) A mark used by members of a collective group to distinguish their goods.

b) A mark used by a single entity to represent its goods globally

c) A mark used only for services

d) A mark that can be shared by multiple regions across the country

10. In the event of a Geographical Indication infringement, the affected party can seek:

a) A monetary fine and a public apology from the infringer

b) Legal recourse through civil courts to stop the infringement and seek damages

c) The removal of the infringing product from local markets only

d) Immediate revocation of the GI rights of the infringer

Answer to Check Your Progress:

1 b) 2 d) 3 b) 4 c) 5 b) 6 b) 7 b) 8 b) 9 a) 10 b)

1.16 Self-Assessment Questions

1. What are intellectual property rights? Bring out the need for protecting intellectual property?
2. Explain the importance and protection of IPR.
3. Explain the present status IPR in India.
4. Explain the types of IPR.
5. Explain with suitable examples the salient features of ‘Geographical Indications’ in Indian context.

UNIT – II

Structure:

2.21 Types of Invention which are not Patentable in India

2.22 The Conditions to be satisfied by an Invention to be Patentable and Describe Acquisition of Patent Rights.

2.23 The Various Procedures in Chronological Order, for a Patent Filing in Indian Context

2.24 Self Assessment Questions

2.1 What is a Patent?

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.

2.2 What is the term of a patent in the Indian system?

The term of every patent granted is 20 years from the date of filing of application. However, for application filed under national phase under Patent Cooperation Treaty (PCT), the term of patent will be 20 years from the international filing date accorded under PCT.

2.3 Which Act governs the patent system in India?

The patent system in India is governed by the Patents Act, 1970 (No.39 of 1970) as amended by the Patents (Amendment) Act, 2005 and the Patents Rules, 2003. The Patent Rules are regularly amended in consonance with the changing environment, most recent being in 2024.

2.4 Does Indian Patent give protection worldwide?

No. Patent protection is a territorial right and therefore it is effective only within the territory of India. There is no concept of global/world patent. However, filing an application in India enables the applicant to file a corresponding application for same invention in convention

countries or under PCT, within or before expiry of twelve months from the filing date in India. Patents should be obtained in each country where the applicant requires protection of his invention.

2.5 What can be patented?

An invention relating either to a product or process that is new, involving an inventive step and capable of industrial application can be patented. However, it must not fall into the categories of inventions that are non- patentable under sections 3 and 4 of the Act.

2.6 What are the criteria of patentability?

An invention is patentable subject matter if it meets the following criteria – i) ii) It should be novel. It should have inventive step. iii) It should be capable of Industrial application. iv) It should not attract the provisions of section 3 and 4 of the Patents Act 1970.

2.7 When should an application for a patent be filed?

An application for a patent can be filed at the earliest possible date and should not be delayed. An application filed with provisional specification, disclosing the essence of the nature of the invention helps to register the priority of the invention. Delay in filing an application may entail some risks such as (i) some other inventor may file a patent application on the said invention and (ii) there may be either an inadvertent publication of the invention by the inventor himself/herself or by others independently of him/her.

2.8 Types of Patent Applications in India:

The types of applications that can be filed are:

i) Ordinary Application:

An application for patent filed in the Patent Office without claiming any priority either in a convention country or without any reference to any other earlier application under process in the office. Such type of application is known an ordinary application.

Ordinary application can be filed by way of filing:

a) Provisional specification: Indian Patent Law follows first to file system. A provisional specification can be filed if the invention is still under experimentation stage. Filing a provisional specification provides the advantage to the inventor since it helps in establishing a priority date of the invention. Further, the inventor gets 12 months' time to fully develop the invention and ascertain its market potential and to file the complete specification.

b) Complete specification: An applicant may directly file the complete specification if the invention is fully developed.

ii) Convention Application:

An application for patent filed in the Patent Office, claiming a priority date based on the same or substantially similar application filed in one or more of the convention countries is known as a convention application. In order to get convention status, an applicant should file the application in the Indian Patent Office within 12 months from the date of first filing of a similar application in the convention country.

iii) PCT International Application:

An Application filed in India as Receiving Office (RO) under Patent Cooperation Treaty is an international application which can be considered as deemed filed in more than 150 countries (member of PCT) by a single application.

iv) PCT National Phase Application:

When an international application is made according to PCT designating India, an applicant can file the national phase application in India within 31 months from the international filing date or the priority date, whichever is earlier.

v) Patent of Addition:

Where an application is made for a patent in respect of any improvement in or modification of an invention described or disclosed in the complete specification filed therefore for which he has already applied for or has obtained patent, the applicant can go for patent of addition if the improvement or modification in the invention is new. One of the benefits of filing patent of addition is that there no need to pay separate renewal fee for the patent of addition during the term of the main patent and it expires along with the main patent.

vi) Divisional Application:

When an application claims more than one invention, the applicant on his own or to meet the official objection on the ground of plurality or distinct invention may divide the application and file a further application, as the case may be for each of the inventions. This type of application, divided out of the parent one, is known as a Divisional Application. The priority date for all the divisional applications will be same as that of the main (the Parent) Application (Ante-dating).

2.9 Is there any jurisdiction for filing patent application in India?

Yes, India has four patent offices located at Chennai, Kolkata, Mumbai and New Delhi. Each office has a separate territorial jurisdiction. The appropriate office for all proceedings including filing of the application depends normally where the applicant/first mentioned

applicant resides/has domicile/has place of business/has origin of invention. In case of foreign applicants, it depends on the address for service in India given by such applicant.

2.10 When can an applicant withdraw patent application in India?

An applicant can withdraw the application any time before the grant of patent by making a request. There is no fee for withdrawing the application. The applicant has to file form 29 for withdrawal of application. If a request for the withdrawal of the application is filed within 15 months of the date of filing or date of priority, whichever is earlier, the application will not be published and be treated as withdrawn. If an application is withdrawn before the issuance of the First Examination Report a refund of up to 90% of examination fees can be claimed.

2.11 When is an application for patent published?

Every application for patent is published after expiry of 18 months from the date of its filing or priority date whichever is earlier. However, following applications are not published.

- ✓ Application in which secrecy direction is imposed
- ✓ Application which has been abandoned u/s 9(1) and i.e when a provisional application has been filed and the complete application has not been filed within 12 months from the filing of the provisional specification
- ✓ Application which has been withdrawn 3 months prior to 18 months

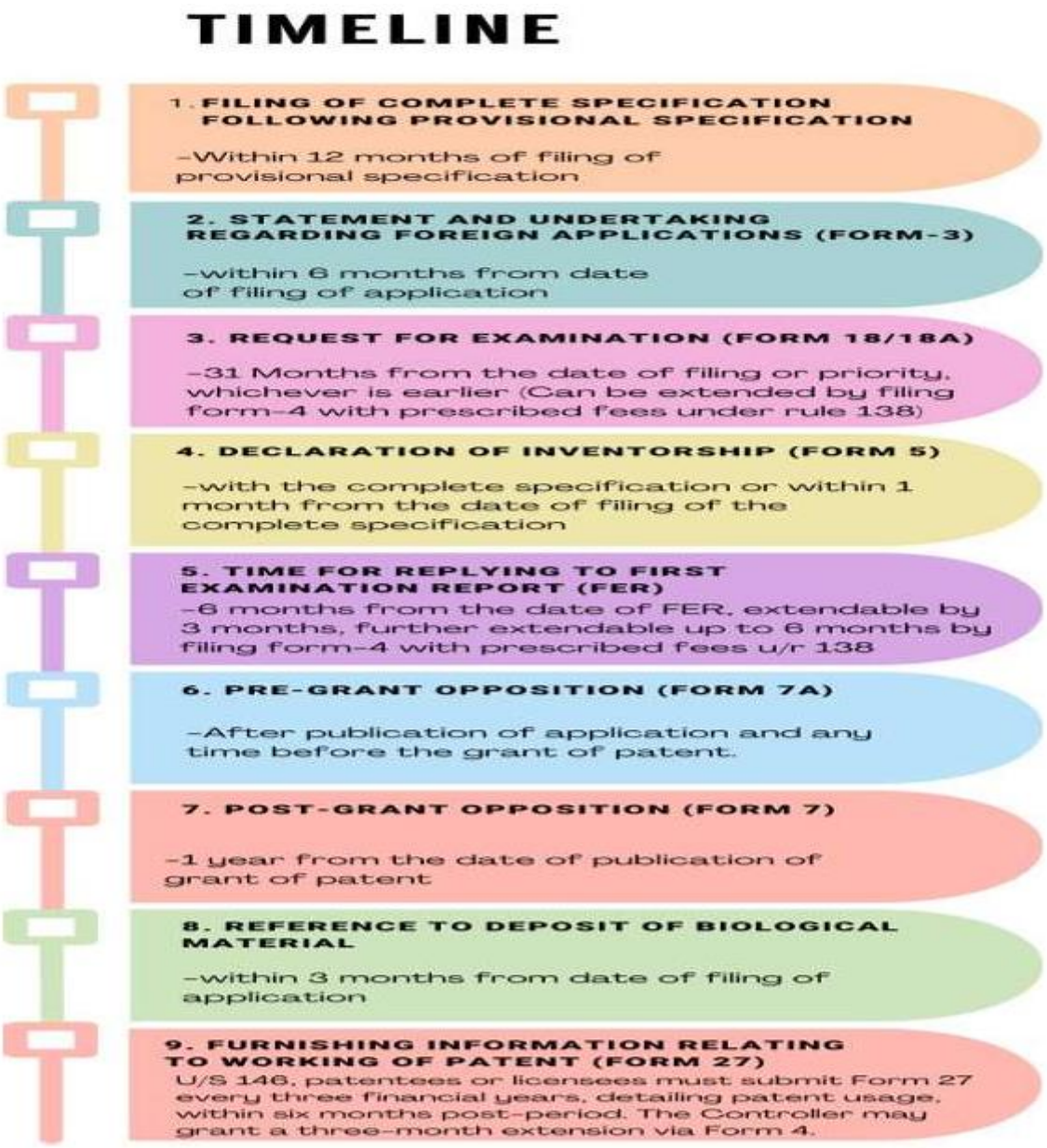
2.12 What are the forms required to be filled for filing a patent application in India?

Generally, in order to file an application, an applicant is required to file Form 1 which is a request for filing an application and Form 2 which is either a provisional or complete specification with drawings, if any. In addition to these, an abstract of the invention is also required. If the application is filed through a registered patent agent, a power of authority in favour of the said agent in Form 26 is also required. The application can be examined only after

receipt of request for examination on Form 18/18A. The complete list of forms is available on the website www.ipindia.gov.in

2.13 What time lines are to be adhered to while prosecuting a patent application in India?

Following are some of the important time lines during the prosecution of a patent application.



2.14 Is patent application once filed examined automatically?

A patent application is not examined automatically after its filing. The examination is done only after receipt of the request of examination in Form 18 either from the applicant or from third party or Form 18A for expedited examination (under conditions as prescribed in the Rule 24C of the Patents Rules 2003 as amended.)

2.15 When can the request for examination be filed?

The request for examination can be filed within a period of 31 months from the date of priority or date of filing of the application whichever is earlier. For more details kindly refer to rule 24B and 24C of the Patents Rules 2003 as amended.

2.16 Is there any provision for expedited examination?

Yes, as per Rule 24C of the Patent Rules as amended in 2016, a request for expedited examination can be filed with the prescribed fees in Form 18A along with the fee as specified in the first schedule only by electronic transmission duly authenticated within the period prescribed in rule 24B on any of the following grounds, namely:

- ✓ that India has been indicated as the competent International Searching Authority or elected as an International Preliminary Examining Authority in the corresponding international application.
- ✓ that the applicant is a startup
- ✓ that the applicant is a small entity
- ✓ that the applicant is a natural person or in the case of joint applicants, all the applicants are natural persons, then applicant or at least one of the applicants is female
- ✓ that the applicant is a department of the Government

- ✓ that the applicant is an institute established by a Central, Provincial or State Act, which is owned or controlled by the Government
- ✓ that the applicant is a Government company as defined in clause (45) of section 2 of the Companies Act, 2013 (18 of 2013)
- ✓ that the applicant is an institution wholly or substantially financed by the Government
- ✓ that the application pertains to a sector which has been notified by the Central Government, on the basis of a request from the head of department of the Central Government
- ✓ that the applicant is eligible under an arrangement for processing a patent application pursuant to an agreement between Indian Patent Office and a foreign Patent Office

2.17 What happens to a patent application once it is examined?

After examination, the Patent office issues an examination report to the applicant which is generally known as First Examination Report (FER). Thereafter the applicant is required to comply with the requirements within a period of 6 months from the date of FER which can be extended by 3 months which can be further extended upto 6 months by filing form-4 with prescribed fees under rule 138 as amended by the patents amendment rules, 2024. In case, the application is found to be in order for grant, the patent is granted, provided there no pre-grant opposition is filed or pending. A letter patent is issued to the applicant. However, in case a pre-grant opposition is pending, the further action is taken after disposition of the pre grant opposition.

2.18 Patentable Inventions and Non-Patentable Inventions:

Patentable inventions are those that are new, involve an inventive step, and are capable of industrial application, while non-patentable inventions fall outside these criteria. Specifically,

non-patentable inventions often include discoveries, scientific theories, abstract ideas, and methods of treatment of the human body.

a) Patentable Inventions:

i) Novelty: The invention must be new and not already known to the public.

ii) Inventive Step: The invention must not be obvious to someone skilled in the relevant field.

iii) Industrial Applicability: The invention must have a practical application in industry.

Examples: New products, processes, machines, compositions, or new uses of known things.

b) Non-Patentable Inventions:

i) Discoveries, Scientific Theories, Mathematical Methods:

These are not patentable because they are fundamental to science and do not involve an inventive step.

ii) Abstract Ideas:

Purely theoretical concepts without a practical application are not patentable.

iii) Natural Phenomena:

The existence of things in nature is not patentable.

iv) Methods of Treatment of the Human Body:

Medical and surgical methods are generally excluded from patentability to ensure public access to healthcare.

v) Inventions Contrary to Morality or Public Order:

Inventions that are harmful or unethical are not patentable.

vi) Methods of Agriculture or Business:

Purely abstract methods of agriculture or business are not patentable, unless they involve a technical solution.

vii) Inventions Relating to Atomic Energy:

Inventions involving atomic energy are generally excluded from patentability.

viii) Inventions that lack Utility or are purely Aesthetic:

Inventions that do not have a practical application or are purely for aesthetic purposes are not patentable.

2.19 Difference between Patentable and Non Patentable Inventions

Patentable inventions are innovations that meet specific legal criteria and can be granted patent protection, granting the inventor exclusive rights for a certain period. Non-patentable inventions, on the other hand, are not eligible for patent protection because they don't meet these criteria or fall under specific exceptions.

Key Differences:

Patentable Inventions:

- ✓ Must be novel, meaning new and not previously disclosed.
- ✓ Must involve an inventive step, meaning not obvious to someone skilled in the relevant field.
- ✓ Must be industrially applicable, meaning capable of being made or used in some industry.
- ✓ Must be a technological invention, such as a process, machine, composition, or a new use for a known product.

Non-Patentable Inventions:

- ✓ Inventions that are not new or obvious.
- ✓ Discoveries of natural phenomena, laws of nature, or abstract ideas.
- ✓ **Traditional knowledge**.

- ✓ **Scientific theories**.
- ✓ **Mental processes**.
- ✓ Inventions that are harmful to public order, morals, or health.
- ✓ **Frivolous inventions**.
- ✓ Inventions related to atomic energy (in India).

In essence, patentability is a legal process where an invention must meet specific criteria to be protected. Non-patentable inventions are excluded from this protection for various reasons, including lack of novelty, obviousness, or because they fall into specific categories deemed not patentable by law.

2.20 Patentable and Non Patentable Inventions in India:

In India, patentable inventions are generally new products or processes involving an inventive step and capable of industrial application, while non-patentable inventions include discoveries, scientific theories, abstract ideas, and inventions contrary to morality or public order. The Indian Patents Act, 1970 outlines specific exclusions from patentability in Sections 3 and 4.

a) Patentable Inventions:

i) New Products or Processes:

A product or process must be novel, not already known to the public, and not readily derivable from existing knowledge.

ii) Inventive Step:

The invention must involve a technical invention or solution that is not obvious to someone skilled in the relevant field.

iii) Industrial Application:

The invention must be capable of being produced or used in a wide variety of industries, or otherwise have a practical utility.

Examples:

- ✓ New drugs and formulations.
- ✓ Genetic engineering and biotech products.
- ✓ Mechanical inventions, electrical circuits, and robotics.
- ✓ Software that involves a technical solution to a problem.

b) Non-Patentable Inventions:

i) Discoveries, Scientific Theories, and Mathematical Methods: Mere discoveries of scientific principles or natural phenomena are not patentable.

ii) Abstract Ideas: Purely abstract ideas or business methods are not patentable.

iii) Inventions Contrary to Public Order or Morality: Inventions that could be harmful to public health, the environment, or morality are not patentable.

iv) Certain Medical or Surgical Methods: Methods of medical treatment or surgery are generally not patentable.

v) Plant and Animal Varieties (with exceptions): Plant and animal varieties, including genetically modified organisms (GMOs), are generally not patentable.

vi) Inventions of Atomic Energy: Any invention related to atomic energy is not patentable.

Key Sections of the Indian Patent Act:

Section 3: Outlines various exclusions from patentability, including those mentioned above.

Section 4: Addresses the issue of prior applications and the timing of patentability.

Important Considerations:

Novelty and Non-Obviousness: For an invention to be patentable, it must be new and not obvious to a person skilled in the relevant field.

Utility: The invention must be useful and capable of practical application.

Enablement: The patent application must provide enough information to allow a person skilled in the relevant field to make and use the invention.

2.21 Types of Invention which are not Patentable in India:

In India, certain types of inventions are explicitly excluded from patentability. These include frivolous inventions, those contrary to public order or morality, scientific discoveries, mere discoveries of new forms of known substances, methods of agriculture or horticulture, treatment methods for humans or animals, mathematical or business methods, computer programs, literary or artistic works, and inventions relating to atomic energy.

i) Frivolous Inventions and Those Contrary to Natural Laws:

Examples:

A perpetual motion machine (violates thermodynamics) or a machine claiming to generate infinite energy without input.

Reasoning:

These inventions lack real-world utility or contradict established scientific principles.

ii) Inventions Contrary to Public Order, Morality, Health, or Environment:

Examples:

Biological weapons, methods for breaking into a house, or inventions that could cause serious harm to the environment.

Reasoning:

These inventions could be used for harmful purposes or pose a threat to public safety or well-being.

iii) Mere Discoveries of Scientific Principles:

Examples: The discovery of gravity or the formulation of a new abstract theory.

Reasoning: Discoveries of natural laws or phenomena are not considered inventions unless they have a practical application.

iv) Mere Discovery of New Forms of Known Substances:

Examples:

A new crystalline form of a known drug, unless it significantly improves the efficacy or use of the drug.

Reasoning:

This provision prevents "evergreening" where a pharmaceutical company may seek to patent minor variations of known compounds.

v) Methods of Agriculture or Horticulture:

Examples: Methods of plant breeding, soil cultivation, or pest control.

Reasoning: These methods are considered to be part of traditional farming practices.

vi) Methods for Treatment of the Human Body:

Examples:

Surgical procedures, diagnostic methods, or therapeutic interventions for humans or animals.

Reasoning:

This exclusion is intended to ensure access to medical treatments and prevent unnecessary restrictions on healthcare.

vii) Mathematical or Business Methods, Computer Programs:

Examples:

Algorithms, accounting techniques, e-commerce models, or computer software as such.

Reasoning:

These are considered to be abstract and not eligible for patent protection unless they have a specific technical application.

viii) Literary, Dramatic, Musical, or Artistic Works:

Examples: Books, movies, music, paintings, sculptures, etc.

Reasoning: These works are protected under copyright law and not patentable.

ix) Inventions Relating to Atomic Energy:

Examples:

Inventions related to fissionable materials, nuclear reactors, or the use of atomic energy.

Reasoning:

These inventions are governed by separate legislation and are not subject to patent protection.

2.22 The Conditions to be satisfied by an Invention to be Patentable and Describe Acquisition of Patent Rights.

To be patentable, an invention must be new, non-obvious, and industrially applicable. Patent rights are acquired through the filing of a patent application and subsequent grant by a patent office.

Conditions for Patentability:

i) Novelty:

The invention must be new and not publicly known or used before the application date.

ii) Inventive Step (Non-Obviousness):

The invention must not be obvious to a person skilled in the relevant field, meaning it requires a non-trivial inventive step.

iii) Industrial Applicability:

The invention must be capable of being made or used in an industry, demonstrating its practical utility.

Acquiring Patent Rights:

i) Filing a Patent Application:

The inventor or their assignee files a patent application with the relevant patent office, providing a detailed description of the invention, including its novelty, inventive step, and industrial applicability.

ii) Examination:

The patent office examines the application to determine if it meets the requirements for patentability.

iii) Granting the Patent:

If the application is approved, a patent is granted, giving the inventor exclusive rights to the invention for a specified period (typically 20 years from the filing date).

iv) Maintenance Fees:

The patent holder must pay maintenance fees to keep the patent in effect.

v) Patent Acquisition Strategies:

Patent acquisition can also involve purchasing existing patents or licensing intellectual property rights from others, according to Brainiac IP.

In India, the relevant legislation is the Indian Patents Act, 1970, which outlines the criteria for patentability and the process for obtaining patents.

2.23 The Various Procedures in Chronological Order, for a Patent Filing in Indian Context

The process of filing a patent application in India involves several key steps, beginning with understanding the invention and conducting a patentability search. After drafting the application, it's filed with the Indian Patent Office, followed by publication and a request for examination. If objections arise during the examination, they must be addressed before the patent is granted.

Detailed Chronological Steps:

i) Invention Disclosure and Understanding:

Define the invention clearly, including its novelty and potential for patentability.

ii) Patentability Search:

Conduct a thorough search to identify prior art (existing inventions or publications) that may be relevant to your invention.

iii) Patent Drafting:

Prepare the patent application, which includes a detailed description of the invention, claims defining the scope of protection, and drawings if necessary.

iv) Filing the Patent Application:

Submit the completed application to the Indian Patent Office.

v) Publication of Application:

The application is published in the Patent Journal 18 months after the filing date or priority date, whichever is earlier.

vi) Request for Examination:

File a formal request to initiate the examination process, which assesses the application's compliance with patent laws.

vii) Examination and First Examination Report (FER):

The examiner assesses the application and issues a FER, indicating whether objections have been raised.

viii) Response to Objections (if any):

The applicant has a set period to respond to the examiner's objections and make any necessary amendments.

ix) Grant of Patent:

If the examiner finds the application in order, a patent is granted.

x) Post-Grant Opposition:

After the patent is granted, any interested party can file an opposition to the patent.

Check Your Progress

Choose the Correct Answer:

1. What is the primary purpose of a patent?
   a) To provide copyright protection for a product
   b) To grant exclusive rights to the inventor for a limited period
   c) To offer protection for trademarks and logos
   d) To regulate the market competition
2. Which of the following is required for an invention to be patentable in India?

a) It must be publicly available

b) It must be a business model

c) It must be novel, non-obvious, and useful

d) It must be a new form of art or literature

3. Which patent application is filed for inventions not yet publicly disclosed?

a) Provisional Application

b) Complete Application

c) International Application

d) Utility Model Application

4. Which of the following is NOT patentable in India?

a) A new chemical composition

b) An invention related to biotechnology

c) A new form of a known substance with no significant change in efficacy

d) A scientific theory

5. Which type of patent application can be filed in India?

a) Utility Application

b) National Application

c) Foreign Application

d) International Patent

6. A patent is granted for an invention that:

a) Is widely used in the market

b) Is novel, involves an inventive step, and is capable of industrial application

c) Has been in the public domain for over 20 years

d) Cannot be easily copied by others

7. In India, a patent application can be filed in which of the following languages?

a) English only

b) English or Hindi

c) Only the local language of the applicant

d) Any language, as long as it is understood by the applicant

8. Which of the following is NOT considered a patentable invention in India?

a) A scientific theory

b) A new mechanical device

c) A chemical compound with new properties

d) A process to produce a new material

9. What is the maximum duration of protection granted for a patent in India?

a) 10 years

b) 20 years

c) 25 years

d) 30 years

10. What is the key requirement for an invention to be patentable in India?

a) It must be novel and non-obvious to someone skilled in the field

b) It must be known worldwide

c) It must have immediate commercial applications

d) It must be related to existing patent laws

Answer to Check Your Progress:

1 b) 2 c) 3 b) 4 d) 5 b) 6 b) 7 b) 8 a) 9 b) 10 a)

2.24 Self-Assessment Questions

1. Explain the different types of Patent Applications in India. What are the forms required to be filled for filing a patent application in India?
2. Describe the types of invention which are not patentable in India with suitable examples.
3. Elaborate the conditions to be satisfied by an invention to be patentable and describe acquisition of patent rights.
4. Explain in detail the various procedures in chronological order, for a patent filing in Indian context.

UNIT – III

Structure:

3.1 Purpose of IPR:

Intellectual Property Rights (IPR) primarily serve to incentivize innovation, creativity, and economic growth by protecting creators' rights to their works and inventions. This protection encourages investment in research and development, fosters a culture of creativity, and allows creators to profit from their work, thus benefiting society as a whole. The purpose of IPR are as follows:

i) Encouraging Innovation and Creativity:

- ✓ IPR grants creators exclusive rights (like patents, copyrights, trademarks) to their creations, giving them a financial incentive to invest time and resources in developing new ideas and works.
- ✓ This protection discourages unauthorized use or copying, fostering a competitive environment where new innovations are more likely to emerge.

ii) Promoting Economic Growth:

- ✓ IPR helps to protect investments in research and development, stimulating economic activity and job creation in industries like technology, entertainment, and pharmaceuticals.
- ✓ Licensing and technology transfer agreements facilitated by IPR can further boost economic development by sharing knowledge and technology internationally.

iii) Safeguarding Creators' Rights:

- ✓ IPR ensures that creators are recognized and compensated fairly for their work, promoting ethical and just practices.
- ✓ It prevents unauthorized use of intellectual property, protecting creators from exploitation and ensuring they can capitalize on their creations.

iv) Enhancing Fair Competition:

- ✓ By preventing the unauthorized use of intellectual property, IPR helps ensure a level playing field for businesses and individuals, preventing unfair advantages and promoting a more competitive market.
- ✓ It also enables consumers to make informed choices by distinguishing between legitimate and counterfeit products, fostering trust and reliability in the market.

v) Other benefits:

- ✓ **Promotes cultural heritage:**

  IPR, particularly geographical indications, can help preserve traditional knowledge and cultural identity.

- ✓ **Enhances consumer confidence:**

  Trademarks and certifications provide consumers with assurance of authenticity and quality, promoting consumer trust.

- ✓ **Supports small businesses and startups:**

  IPRs can provide a competitive edge for smaller businesses, allowing them to protect their innovations and compete with larger companies.

3.2 Functions of IPR:

Intellectual Property Rights (IPR) serve several key functions, primarily to protect creators and stimulate innovation. IPRs provide legal frameworks for protecting intellectual creations, encouraging investment in research and development, and fostering economic growth by enabling the commercialization of inventions and creations. They also play a role in preventing unauthorized use and ensuring fair competition. The key functions of IPR are listed below

i) Protecting Intellectual Creations:

- ✓ **Exclusive Rights:**

  IPRs grant creators exclusive rights to use, distribute, or sell their creations, preventing unauthorized use or copying.

- ✓ **Preventing Piracy and Counterfeiting:**

  IPRs help deter the creation and sale of counterfeit or pirated goods, protecting legitimate businesses and consumers.

- ✓ **Safeguarding Creator's Rights:**

  IPRs provide legal protection for creators, allowing them to benefit from their intellectual property and reap commercial rewards.

ii) Encouraging Innovation and Creativity:

- ✓ **Incentivizing Investment:**

  IPRs create incentives for creators to invest in research and development, knowing their creations will be protected and they can benefit financially from their work.

- ✓ **Stimulating New Products and Services:**

  By protecting intellectual creations, IPRs encourage the development and distribution of new products and services based on inventions, trademarks, designs, or other intangible assets.

- ✓ **Promoting Technological Advancements:**

  IPRs can accelerate technological advancements by providing a framework for protecting inventions and encouraging further innovation based on those inventions.

iii) Fostering Economic Growth and Development:

- ✓ **Supporting Research and Development:**

  IPRs can encourage businesses to invest in research and development, leading to the creation of new products, services, and technologies, which can drive economic growth.

- ✓ **Facilitating Trade and Commerce:**

  IPRs are essential for international trade, as they provide a framework for protecting intellectual assets across borders.

- ✓ **Generating Income and Creating Jobs:**

  IPRs can generate income for creators and businesses through licensing, royalties, and the sale of products and services based on protected intellectual property.

- ✓ **Promoting Fair Competition:**

  IPRs, such as trademarks, help consumers make informed decisions and encourage fair competition by protecting brand identities and preventing deceptive practices.

iv) Providing a Legal Framework:

- ✓ **Dispute Resolution:**

  IPR laws provide a legal framework for resolving disputes related to intellectual property, such as infringement or unauthorized use.

- ✓ **Ensuring Fair Use:**

  IPRs balance the interests of creators, inventors, and the public, ensuring fair use of intellectual property while protecting the rights of creators.

v) Specific Types of IPR and their Functions:

- ✓ **Patents:**

  Protect inventions, granting exclusive rights for a limited time, encouraging innovation and technological advancement.

- ✓ **Copyrights:**

  Protect original works of authorship, including literary, dramatic, musical, and artistic works, allowing creators to control the use and distribution of their work.

- ✓ **Trademarks:**

  Protect brand names, logos, and other distinctive features that identify a product or service, helping consumers differentiate between products and services.

- ✓ **Trade Secrets:**

  Protect confidential information, such as business processes, formulas, and designs, allowing businesses to maintain a competitive edge.

- ✓ **Industrial Designs:**

  Protect the aesthetic aspects of products, like their shape, configuration, or patterns, encouraging design innovation.

3.3 Characteristics of IPR:

Intellectual Property Rights (IPR) have several key characteristics: they are intangible, meaning they exist as ideas or creations and not physical assets. IPR are territorial, meaning protection is granted within a specific jurisdiction where the right is registered. Furthermore, IPR are time-bound, with protection lasting for a specific period, and exclusive, granting the owner the sole right to use, sell, or license their creation. IPR are also transferable, meaning the rights can be sold or licensed to others. Finally, IPR are adaptable to technological advancements, reflecting the evolving nature of innovation and creativity.

The following provides a detailed explanation of each characteristics:

i) Intangible: IPR are not physical objects; they are rights associated with ideas, inventions, and creations.

ii) Territorial: Protection under IPR is limited to the specific country or region where it's registered.

iii) Time-Bound: IPR protection is not perpetual. Patents, for example, have a limited term, while copyrights offer protection for the life of the author plus a certain period of time.

iv) Exclusive: The owner of IPR has the exclusive right to control how their intellectual property is used, whether it's for their own purposes, for sale, or for licensing to others.

v) Transferable: IPR can be transferred through sale or licensing agreements, allowing others to benefit from the intellectual property.

vi) Adaptable: IPR laws and regulations are often updated to address technological changes and emerging challenges in the areas of innovation and creativity.

3.4 Guidelines for Patent Registration in India:

To register a patent in India, an applicant needs to follow a structured process, including filing an application with necessary documents and fees, publication of the application, requesting examination, and addressing objections raised by the patent office. If the application meets the requirements of novelty, inventiveness, and industrial applicability, the patent will be granted.

i) Patentability Search:

- ✓ Before filing, conduct a search to determine if your invention is new and not already patented.

ii) Application Preparation:

- ✓ **Drafting:**

  Prepare the patent application form (Form 1) and a detailed specification (Form 2).

- ✓ **Forms:**

  Include other required forms like Form 3 (Statement and Undertaking under Section 8) and Form 5 (Declaration as to Inventorship).

- ✓ **Information:**

  Provide details about the invention, including its technical field, background, how it solves a problem, and drawings/diagrams if applicable.

- ✓ **Claims:**

  Clearly define the scope of the invention and its unique features in the claims section.

iii) Filing the Application:

- ✓ **Submission:**

  Submit the completed forms, documents, and prescribed fees to the Indian Patent Office.

- ✓ **Location:**

  The application can be filed online or offline, depending on the requirements.

iv) Post-Filing Process:

- ✓ **Publication:** The patent application is published (usually after 18 months from the filing date).
- ✓ **Examination:** The patent office examines the application for novelty, inventive step, and industrial applicability.
- ✓ **Objections:** The patent office may raise objections during the examination process.
- ✓ **Response:** The applicant must respond to these objections.
- ✓ **Grant:** If the application meets all requirements, the patent will be granted.

3.5 Copyright Registration Guidelines in India:

To register a copyright in India, applicants must submit an application in Form XIV, along with the prescribed fee and necessary documents, to the Copyright Office. This process involves preparing the work, visiting the Copyright Office website, filling out the application

form, attaching documents, paying the fees, and submitting the application. The process of copyright registration guidelines are listed below:

i) Prepare the Work:

Ensure your work is original and meets the criteria for copyright protection. This includes literary, artistic, musical, dramatic, cinematographic, and software works, among others.

ii) Visit the Copyright Office Website:

Access the official website of the Copyright Office to download the necessary forms and instructions.

iii) Fill the Application Form (Form XIV):

Complete the application form with accurate details about the work, its author, and the applicant.

iv) Attach Documents:

Provide copies of the work, proof of payment, and other required documents (e.g., No Objection Certificate, Power of Attorney, source code for software).

v) Pay the Fees:

Pay the prescribed registration fee, which is INR 500 per work for literary, dramatic, musical, or artistic works.

vi) Submit the Application:

Submit the completed application and documents through the online portal or by visiting the Copyright Office.

vii) Examination and Registration:

The Copyright Office will examine the application. If objections are raised, the applicant will be given a chance to respond. Once objections are resolved and the application is approved, a registration certificate will be issued.

Key Documents Required:

- ✓ **Copies of the Work:** Two copies for unpublished works and three for published works.
- ✓ **Application Form (Form XIV):** This form must be filled out accurately.
- ✓ **Payment Proof:** Proof of payment for the registration fee.
- ✓ **No Objection Certificate (NOC):** If the applicant is not the author, an NOC from the author is required.
- ✓ **Power of Attorney:** If filed by an agent, a Power of Attorney is necessary.
- ✓ **Source Code (for Software):** First and last 10 pages of the source code must be provided.
- ✓ **Statement of Particulars:** A detailed description of the work, its nature, and other relevant information.

Important Considerations:

- ✓ Copyright is automatic, but registration provides a legal record of ownership and makes it easier to prove infringement.
- ✓ Registration in India provides protection within India and may also benefit from international treaties like the Berne Convention.
- ✓ The Copyright Office website provides detailed information and downloadable forms for the registration process.

3.6 Procedure for Design Registration in India:

To register a design in India, one must first search for existing designs to ensure originality, then prepare and submit a design application, which includes Form-1 and required representations of the design. The application undergoes examination by the Indian Patent Office to ensure compliance with legal requirements, and if objections are raised, the applicant must respond. Upon acceptance, the design is published in the official gazette, and if no objections are received, the design is registered, and a certificate is issued, valid for 10 years with the possibility of renewal. Procedure for design registration in India are guided by the following steps:

i) Search for Existing Designs:

- ✓ Conduct a design search to check if a similar design already exists. This helps avoid unnecessary conflicts and ensures the design meets the novelty requirements for registration.

ii) Prepare the Design Application:

- ✓ Complete Form-1, providing details like the applicant's name, address, and nationality, along with a description of the article and the unique design features.
- ✓ Include representations of the design, such as photographs, drawings, or other visual representations, to clearly depict the design from different angles.
- ✓ For two-dimensional designs, submit two copies; for three-dimensional designs, submit multiple views to show the design from all angles.
- ✓ Include a statement of novelty and any disclaimers regarding features not being considered part of the design.

iii) Submit the Application:

- ✓ File the application with the Indian Patent Office in Kolkata, Delhi, Mumbai, or Chennai.
- ✓ The application can be filed online or by mail.

iv) Examination of the Application:

- ✓ The Indian Design Office examines the application to ensure it meets the legal requirements, including originality, novelty, and compliance with the Designs Act, 2000.
- ✓ If objections or issues arise, the applicant will be notified and given a chance to respond.

v) Publication in the Official Journal:

- ✓ If the application is accepted, the design is published in the official journal, allowing the public to raise any objections.

3.7 Trademark:

Trademark is a brand or name associated with a service or product of an individual or company. It is a unique mark through which the consumers identify a product or service. It differentiates the product manufactured or service provided by an individual or an entity.

In India, trademarks are regulated under the Trademarks Act, 1999 (‘Act’) and Trade Marks Rules, 2017 (‘Rules’). When a trademark is registered under the Act, it is protected from infringement which means that a third party cannot use the registered trademark for their products or services without authorised permission.

3.8 Meaning of Trademark:

A trademark is defined under Section 2(m) of the Act as a mark that includes a brand, device, heading, ticket, label, name, word, signature, letter, the shape of goods, numeral, packaging or combination of colours or any such combination.

Trademark is a visual symbol or logo used to indicate the source of the products or goods. The symbol or logo can be a word, signature, number, geometrical figure, monogram, a combination of words and numerical, a combination of colours with a logo, or it can even be a sound mark.

Examples of a Registered Trademark:

A few examples of registered trademarks are:

- ✓ Apple (Half eaten apple symbol with the leaf)
- ✓ Coca Cola (Coca-cola bottle symbol)
- ✓ Nestle (Nestle word written in red colour)
- ✓ Amazon (Amazon word in black colour with a yellow arrow below)
- ✓ McDonald's (Yellow 'M' symbol)
- ✓ Nike (Swoosh symbol)
- ✓ Maggie (Maggie word written in yellow colour inside the red colour bubble)
- ✓ Adidas (Adidas word written with three parallel lines/stripes above the word)

3.9 Who Can Apply for Trademark Registration?

The owner (proprietor) of the trademark can apply for trademark registration in India. An individual is the owner of a trademark that he/she creates and uses for his/her services or products. A company or entity will be the owner of the trademark when the trademark is used to represent the goods or services of that company. Thus, an individual or a company can apply for trademark registration.

3.10 Procedure for Trademark Registration in India:

To register a trademark in India, you must first conduct a trademark search to ensure your proposed mark is not similar to any existing ones, then file an application using Form TM-

A. The application is examined, and if accepted, it is published in the Trademark Journal, allowing for oppositions. If no objections are filed, the trademark is registered and a certificate is issued. Procedure for trademark registration in India are guided by the following steps:

i) Trademark Search:

- ✓ **Purpose:**

  To verify if your proposed trademark is already in use or registered for similar goods or services.

- ✓ **How:**

  Conduct a search of the Indian Trademark Registry's database, either online or through a professional.

- ✓ **Significance:**

  This step is crucial to avoid potential conflicts and protect your investment.

ii) Filing the Application:

- ✓ **Form:** You'll need to fill out Form TM-A, available on the IP India website.
- ✓ **Details:** Provide information like the trademark details (name, logo, etc.), your details (name, address, etc.), and the goods or services the trademark will be used for.
- ✓ **Fees:** Pay the required application fee.
- ✓ **Filing Method:** You can file online or physically, with the physical filing requiring submission to the Registrar's office.

iii) Trademark Examination:

- ✓ **Purpose:** The Trademark Registry examines the application for compliance with trademark laws.

- ✓ **Process:** Examiners check for any discrepancies and may issue an examination report if issues are found.
- ✓ **Response:** If objections are raised, you have a chance to respond and address them.

iv) Publication in the Trademark Journal:

- ✓ **Purpose:** To notify the public about the application and allow for oppositions.
- ✓ **Process:** The accepted application is published in the Trademark Journal, which is available on the Registry's website.
- ✓ **Opposition Period:** Individuals or companies who believe their rights may be infringed can file an opposition within a specific timeframe.

v) Addressing Objections:

- ✓ **Process:**

If an opposition is filed, you'll have to respond to it, potentially with evidence or arguments.

- ✓ **Hearing:**

In some cases, a hearing may be conducted to allow the parties to present their case.

vi) Registration and Certificate:

- ✓ **Outcome:** If no objections are filed or if objections are resolved in your favor, the trademark is registered.
- ✓ **Registration Certificate:** You will receive a certificate confirming your trademark registration.
- ✓ **Validity:** A registered trademark is valid for 10 years and can be renewed.

3.11 Kinds of Trademarks in India:

In India, trademarks are broadly categorized into seven main types: Product Mark, Service Mark, Collective Mark, Certification Mark, Shape Mark, Pattern Mark, and Sound Mark. Each type serves a distinct purpose and offers varying levels of protection.

i) Product Mark:

Identifies and distinguishes goods or products offered by a specific entity, helping consumers associate them with the source.

ii) Service Mark:

Similar to a product mark, but it identifies and differentiates the services provided by a business.

iii) Collective Mark:

Used by a group or association of individuals to indicate that the goods or services are produced by members of that group, according to Bytescare.

iv) Certification Mark:

Used to certify the characteristics of goods or services, such as quality, origin, or material, says Selvam & Selvam.

v) Shape Mark:

Protects the distinctive shape of a product, according to iPleaders Blog such as the Coca-Cola bottle or a perfume bottle.

vi) Pattern Mark:

Protects a distinctive pattern or design on a product, says Whizseed.

vii) Sound Mark:

Protects a distinctive sound, such as a jingle or a musical piece, according to IPR studio used to identify a product or service.

3.12 Trademark Protection in India:

In India, trademark protection is primarily governed by the Trade Marks Act, 1999. This Act provides a framework for registering, using, and enforcing trademarks, granting registered trademark owners exclusive rights to use their marks. While registration is recommended for broader legal protection, unregistered trademarks can also be protected under common law principles, such as passing off.

Key aspects of trademark protection in India:

i) Trade Marks Act, 1999:

This act is the primary legislation governing trademarks in India.

ii) Registered Trademarks:

Registered trademarks are granted exclusive rights to the owner, allowing them to prevent unauthorized use and file infringement suits.

iii) Unregistered Trademarks:

Unregistered trademarks can be protected through the common law principle of "passing off," which prohibits businesses from selling goods as those of another.

iv) Well-known Marks:

The Act also recognizes and protects well-known trademarks, granting them protection across all classes of goods and services.

v) Registration Process:

Trademark registration involves filing an application, examination by the Trademark Registry, and publication in the Trade Marks Journal.

vi) Validity:

A registered trademark is valid for 10 years from the date of filing, and can be renewed indefinitely.

vii) Enforcement:

Trademark infringement can be pursued through legal action, seeking injunctions and damages.

viii) Importance of Registration:

While not mandatory, registering a trademark provides broader legal protection compared to using the mark unregistered.

3.13 Non Register Trademark:

An unregistered trademark, also known as a common law trademark, is a brand name, symbol, or design that is used by a business to distinguish its goods or services, but has not been formally registered with the government's trademark office. While unregistered trademarks are protected under common law, they do not have the same legal protections as registered trademarks.

Key Characteristics of Unregistered Trademarks:

i) No Formal Registration:

They are not officially registered with a trademark office like the USPTO (United States Patent and Trademark Office) or the Trademark Registry in India.

ii) Common Law Protection:

Unregistered trademarks are protected under common law principles, particularly the doctrine of "passing off," which prevents others from using a mark that is confusingly similar to an existing unregistered trademark.

iii) No Right to Use the ® Symbol:

Unregistered trademarks are typically indicated by the ™ symbol (trademark symbol), not the ® symbol (registered trademark symbol), which is reserved for registered trademarks.

iv) Enforcement Challenges:

Enforcing unregistered trademarks can be more difficult than enforcing registered trademarks because the owner must prove goodwill and reputation in the mark, as well as that the infringement caused confusion in the marketplace.

v) No Statutory Benefits:

Unregistered trademarks do not have the same statutory protections as registered trademarks, meaning the owner cannot sue for infringement under the relevant trademark laws.

Benefits of Registration:

While unregistered trademarks can still be protected, registering them provides significant advantages:

i) Stronger Legal Protection: Registered trademarks offer greater legal protection, including the ability to sue for infringement.

ii) Notice to the Public:

Registration provides public notice of the trademark, which can help prevent others from using a similar mark.

iii) Prima Facie Ownership:

Registration gives the owner a presumption of ownership, which can be helpful in legal proceedings.

In essence, unregistered trademarks are still valuable brand identifiers, but they lack the full legal protections and advantages that come with formal registration.

3.14 Difference between Registered Trademark and Unregistered Trademark:

A **registered trademark** is a legally recognized symbol, word, or phrase that a company uses to identify its products or services and distinguishes them from others. An **unregistered trademark** is a symbol, word, or phrase that a company uses to identify its products or services but has not taken the legal steps to secure a registered trademark.

Feature	**Registered Trademark**	**Unregistered Trademark**
Legal Protection	Strong legal protection granted by government.	Limited legal protection, relying on common law.
Enforceability	Easier to enforce trademark rights in case of infringement.	Difficult to enforce trademark rights in case of infringement.
Government Record	Officially recorded with the government trademark office.	Not officially recorded with the government trademark office.
Symbol	Can use the ® symbol.	Cannot use the ® symbol.
Exclusive Use	Only the trademark owner or authorized users can use it.	Only the trademark owner can use it, but it may be difficult to prove.
Renewal	Must be renewed periodically with the government trademark office.	Not required to be renewed.
Transferability	Can be sold, assigned or licensed to another party.	May be transferred, but the process is more difficult.
National Protection	Protects the trademark in the country where it is registered.	Only protected in the region where it has been used.

Legal Proceedings	In case of infringement, a legal proceeding can be initiated.	In case of infringement, a legal proceeding can be initiated, but it is more difficult to prove.

Check Your Progress

Choose the Correct Answer:

1. In India, the minimum period for which a trademark registration is valid is:
    a) 1 year
    b) 5 years
    c) 10 years
    d) 15 years
2. Which of the following actions does not constitute trademark infringement?
    a) Using a similar mark that causes confusion among consumers
    b) Using a completely different mark that does not resemble the original trademark
    c) Copying a registered trademark for the same type of goods
    d) Using a trademark without the owner's permission
3. What is the main characteristic of a Collective Mark?
    a) It is used to identify a product’s geographical origin
    b) It is used by the members of a collective organization
    c) It represents the ownership of a single person
    d) It distinguishes a service from other services
4. Which of the following is a guideline for the registration of a trademark in India?
    a) The trademark must be descriptive of the goods or services
    b) The trademark must be identical to an existing trademark
    c) The trademark must not be deceptive or misleading
    d) The trademark must represent the entire industry
5. Which of the following is not a kind of trademark?
    a) Service Mark
    b) Certification Mark

c) Registration Mark

d) Collective Mark

6. What is required for trademark registration?

a) Generic mark

b) Distinctive mark identifying the source

c) Global registration

d) Company name inclusion

7. Which mark indicates product quality or certification?

a) Service Mark

b) Certification Mark

c) Collective Mark

d) Registered Trademark

8. What should a trademark owner do first in case of infringement?

a) File a lawsuit

b) Send a cease and desist letter

c) Notify the trademark office

d) Publicly warn on social media

9. What are common trademark categories?

a) Certification and Service Marks only

b) Word Mark, Logo, Combination Mark

c) Trade Dress and Packaging only

d) None of the above

10. Which trademark is non-registerable?

a) Similar to an existing mark

b) Unique design

c) Common product name

d) Exclusive logo

Answer to Check Your Progress:

1 c) 2 b) 3 b) 4 c) 5 c) 6 b) 7 b) 8 b) 9 b) 10 a)

3.15 Self-Assessment Questions

1. Explain the guidelines for patent registration in India.
2. Explain the copyright registration guidelines in India.
3. Explain the procedure for design registration in India.
4. Explain the procedure for Trademark Registration in India.
5. Explain the different process, procedures and documents associated in trade mark and copy right. Draw a rough figure to explain.
6. Explain the trademarks and rights arising from trade mark registration.
7. Difference between Registered Trademark and Unregistered Trademark.

UNIT – IV

Structure:

4.22 Types of IPR Transfers

4.23 Legal Framework in India

4.24 Considerations for Transfer Agreements

4.25 Benefits of IPR Transfer

4.26 Infringement

4.27 Types of Infringement

4.28 Remedies Available against Patent Infringement in India

4.29 Self Assessment Questions

4.1 Copy Right:

The Copyright Act, 1957 (the 'Act') came into effect from January 1958. The Act has been amended five times since then, i.e., in 1983, 1984, 1992, 1994, 1999 and 2012. The Copyright (Amendment) Act, 2012 is the most substantial. The main reasons for amendments to the Copyright Act, 1957 include to bring the Act in conformity with two WIPO internet treaties concluded in 1996 namely, the WIPO Copyright Treaty ("WCT") and WIPO Performances and Phonograms Treaty ("WPPT"); to protect the Music and Film Industry and address its concerns; to address the concerns of the physically disabled and to protect the interests of the author of any work; Incidental changes; to remove operational facilities; and enforcement of rights. Some of the important amendments to the Copyright Act in 2012 are extension of copyright protection in the digital environment such as penalties for circumvention of technological protection measures and rights management information, and liability of internet service provider and introduction of statutory licenses for cover versions and broadcasting organizations; ensuring right to receive royalties for authors, and music composers, exclusive economic and moral rights to performers,

equal membership rights in copyright societies for authors and other right owners and exception of copyrights for physically disabled to access any works.

Broadly speaking, copyright is an exclusive right granted by law for a specified period to the creator of a work authorship fixed in a any tangible medium of expression, to prepare derivative works based upon derivative works based upon the original works based upon the original work, and to perform or display the work in the case of musical, dramatic, choreographic, and sculptural works against any form of copying by an unauthorized person.

Copyright protection does not extend to any idea, procedure, process, system, method of operation, concept, principle, or explained, or embodied. Rather, copyright protection is limited to an author's particular expression of an idea, process, concept, and the like in a tangible medium.

Copyright law deals with particular forms of creativity, concerned primarily with mass communication. Copyright protection automatically subsists in all works of authorship from the moment of creation. It is also concerned with virtually all forms and methods of public communication, not only printed publications but also such matters as sound and television broadcasting, films for public exhibition in cinemas, etc. and even computerized systems for the storage and retrieval of information. Copyright deals with the rights of intellectual creators in their creation.

The TRIPS Agreement provides a minimum standard for the duration of copyright protection. In the case of a person, the term is the life of the author plus 50 years. In the case of a corporate entity, it is 50 years from the end of the calendar year of authorized publication or, in the absence of publication, from the end of the calendar year of making (TRIPS Article 12).The term of protection for live performances that are recorded is 50 years for the performer and

producer, and 20 years for the broadcaster of the work .The United States recently upgraded its protection for copyrighted works as part of the digital Millennium Copyright Act, or DMCA. For instance, in the United States, the copyrighted work of an individual author created on or after January 1, 1978, lasts for his or her life term plus 70 years after the author's death. However, if the work is made for hire, the copyright lasts for 120 years from the time of creation or 95 year from the first publication, whichever is shorter.

The exclusive rights granted to the copyright owner do not include the right to prevent others from making fair use of the owners work. Such fair use may include use of the work for purposes of criticism, comment, news reporting, teaching or education, and scholarship or research. The nature of the work ,the extent of the work copied , and the impact of copying on the works commercial value are all considered in determining whether an unauthorized use is a "fair use".

To secure copyright protection, the work in question must be an original work of authorship fixed in a tangible medium of expression. Works of authorship that fall within this definition may include:

- ✓ Literary works (including computer programmes);
- ✓ Musical works and accompanying lyrics;
- ✓ Dramatic works and dialogue;
- ✓ Pantomimes and choreographic works ;
- ✓ Pictorial, graphic, and sculptural work;
- ✓ Motion pictures and other audiovisual works; and
- ✓ Sound recording.

To be copyrightable, a work must be “fixed in a tangible medium of expression”. A work is fixed when its embodiment in a tangible medium is sufficiently permanent or stable as to permit it to be perceived, reproduced, or otherwise communicated for a period of time that is not transitory. The means, manner, or medium of fixation is irrelevant.

Copyright registration in most countries is relatively straightforward and inexpensive. Although copyright protection subsists from the movement the work is fixed in a tangible expression, copyright registration confers additional important benefits in some countries. Although some WTO members, including the United States, retain a registration system as a prerequisite for foreign national before initiating legal action to stop copyright infringement or to recoup costs, including attorneys’ fees of enforcement. So, for example, the United State may require the US Copyright Office. In addition, in some countries, a copyright registration constitutes prima facie evidence of the validity and ownership of copyright.

The objective of copyright law is to encourage authors, composers, artists and designers to create original works by rewarding them with an exclusive right for a limited period. Such exclusive rights are permitted for literary, dramatic, musical, artistic, cinematograph film and sound recordings. Licensing the right to publishers, film producers and music record manufacturers permits the economic exploitation. The law also aims at preventing anyone from reproducing or exploiting another person’s work without authorization. Copyright is not a single right rather it bundles several rights together. Copyright is also accompanied with other related rights going beyond reproduction of the work; these rights are known as Neighboring Rights.

These include the right to works derived from the original work, the right to public performance and the right to recording and broadcasting. The bundle of rights that constitutes copyright has two kinds of rights:

(a) The economic rights that take care of the economic interests of the author, and

(b) The moral rights, that is, the rights that concern the status, respect and dignity of the author.

The economic rights deal with issues like permission to publication or reproduction of the work or their adaptation or translation and the right to assign or license the copyright. The moral rights include the right to claim and be recognized as the author of your intellectual creation, and have the name mentioned as the author whenever the work is used; similarly the author has the right to object to the use of the work in a manner or in a context that would compromise with honor and reputation of the author.

Copyright is granted to the author for any categories of works as to who is entitled to freely and exclusively exploit the work, while granting or refusing permission for others to copy their work in these ways. These activities are called the Restricted Acts and include:

- ✓ Copying the work (for example, photocopying, photographing, scanning)
- ✓ Distributing copies of the work to the public
- ✓ Renting or lending copies of the work to the public
- ✓ Communicating the work to the public (for example, display on the internet or internal intranet) Adapting the work, (for example, translating, adapting or abridging a work)
- ✓ Performing, playing or showing the work in public
- ✓ Broadcasting the work (which can also include electronic transmission)

Many countries in Europe, such as France, Denmark and the UK, give copyright protection automatically as soon as a work is created, without the need to register. If a work does not belong to one of the categories (above) it will not be protected by copyright, although it may be protected by some other right. Also notable is the ability for works to belong to more than one

category. This is useful to understand because it illustrates that content can be created by more than one author and so permission to reproduce content can be subject to permission from a number of different people.

4.2 Definition of Copyrights:

Copyright law in a country provides authors, composers, software writers, website designers, and other creators with legal protection for their literary and artistic works, which are more commonly referred to as "works." Copyright law also protects creators from having their works stolen.

Copyright safeguards several of creative and/or unique expressions, including books, poems, songs, paintings, pictures, sculptures, buildings, films, computer programmes, video games, and original Database. In most countries, the copyright system protects not just written works but also sketches, drawings, and designs of manufactured goods.

The author of a work is granted several exclusive rights to his work for a predetermined amount of time by the laws governing copyright. Because he owns these rights, he can choose how his work is used in a variety of contexts and is compensated for his efforts. The law governing copyright also includes provisions known as "moral rights," which safeguard an author's reputation and sense of honesty.

4.3 What is Copyright?

Copyright refers to the exclusive rights of creators or authors over their work. It comes into effect automatically and without any necessary registration process when someone creates an original work using their judgement and skill.

A work needs to be committed to a fixed form to qualify for copyright protection. Copyright safeguards the creator's original expression of an idea and not the idea itself from which the expression arises.

4.4 What does Copyright Protect?

The following range of works is protected by copyright:

- ✓ Original literary compositions (including computer programs)
- ✓ Original dramatic compositions
- ✓ Musical compositions
- ✓ Artistic compositions
- ✓ Sound recordings
- ✓ Cinematograph films

4.5 What is not protected by Copyright?

Names, titles, facts, slogans, short combinations of words and phrases are generally not qualified for copyright protection. Concepts, news and ideas are also not protected by copyright.

4.6 How Long Does Copyright Last?

The copyright of a literary, musical, artistic or dramatic work remains valid through the lifetime of the author and thereon for 60 years following the year of his/her death.

4.7 Who Owns Copyright?

The author of a work is ordinarily the first owner of the copyright therein. Copyright, however, may be licensed or assigned to a publisher who would then be designated as the rights holder. In some exceptions, when the work is created in the course of employment under a contract of service, the copyright belongs to the employer.

4.8 What is joint ownership of copyright?

In instances where more than one individual are involved in the creation of a work, and it is difficult to distinguish the contribution of each, the copyright is held jointly by the authors. In case a single contributor is inclined to publish or license the work, he/she would require the consent of the others.

4.9 What Rights does A Copyright Owner Have?

Copyright ownership provides two kinds of rights to the owner:

Economic rights: These rights permit the copyright owner to derive proceeds from their work, through its distribution, reproduction, publication, translation, adaptation, public performance or communication to public.

Moral rights: These laws protect the personal link between the author and their work. It includes the right of the author to be appropriately credited, the right against false attribution and the right to object to any derogatory action in relation to the work which could negatively impact the author's image

4.10 Requirements for Copyright Protection:

Original works are the only ones that can be protected by copyright laws. In copyright law, creativity has to do with how an idea is expressed, not with the idea or thought itself. However, copyright law in each country has different ideas about what it means to be original. If a new video game, for instance, contains content that is protected by the copyright of third parties and/or contains information that is considered to be in the "public domain," then the protection of copyright would only extend to any original compilation of this material, and not to the material that was taken from a third party.

Despite of this, works are entitled to copyright protection regardless of the creative elements, quality, or value of the work (for example, a drawing/ painting made by a child aged four-five is also considered a work entitled to full copyright protection), and the work does not need to have any literary or artistic merit (copyright also applies to purely technical guides, instructions manuals, or engineering drawings).

4.11 Copyrights and Related Rights:

Copyright protects original literary and artistic works, like books, music, and films, while related rights protect the performances of performers, sound recordings, and broadcasts. Related rights, also known as neighboring rights, specifically protect the efforts of creators other than the authors, such as performers, record companies, and broadcasting organizations.

Works are safeguarded by laws governing copyright. Nearly all of the world's legal systems have provisions for the protection of the following categories of works:

- ✓ Works of literature (including but not limited to books, written speeches, magazines, bulletins, trade journals, training materials, technical papers, instruction manuals, and catalogues);
- ✓ Works of music (including songs, operas, and musicals).
- ✓ Works of drama (including dance, dramas, and mime).
- ✓ Artistic works (such as cartoons, paintings, sculptures, architectural works, blueprints, computer, and laser artwork);
- ✓ Photographic works (such as photos and gravures);
- ✓ Computer programs, software, and original databases;
- ✓ Maps, globes, charts, diagrams and technical drawings;
- ✓ Advertisements, commercial prints and labels;

- ✓ Motion pictures (such as films, documentaries and television advertisements);
- ✓ Multimedia products (works that combine text with visual images, sound and computer programs, such as video games); and
- ✓ Works of applied art (such as artistic jewelry, wallpaper, carpets).

People usually use copyright to protect works that are both written and stored electronically. Works are protected no matter where they are found: on computer diskettes, hard drives, CD–ROMs, VCDs, and DVDs; on radio or TV stations; or when they are downloaded from the Internet.

4.12 The things Copyright does not protect:

Copyright law doesn't protect ideas, facts, procedures, systems, or methods of operation. It also doesn't protect names, titles, slogans, or short phrases, or works not fixed in a tangible form. Additionally, copyright generally doesn't cover commonly known information, government works, or utilitarian elements of designs.

Things Not Protected by Copyright:

- ✓ **Ideas, Concepts, and Principles:** Copyright protects the expression of an idea, not the idea itself.
- ✓ **Facts:** Copyright doesn't protect factual information, even if it's original.
- ✓ **Procedures, Systems, and Methods:** Copyright doesn't protect how something is done, but it might protect the written description or illustration of a system.
- ✓ **Names, Titles, and Short Phrases:** These are generally considered too short or generic to warrant copyright protection, although they may be protectable under trademark law.
- ✓ **Works Not Fixed in a Tangible Form:** Improvisational performances or other works not recorded or otherwise made tangible are not generally protected.

- ✓ **Commonly Known Information:** Information that is widely available and not original is not protected.
- ✓ **Government Works:** Works created by the United States government are typically in the public domain and not subject to copyright.
- ✓ **Utilitarian Elements of Designs:** While the expressive elements of a design (like a decorative lamp base) might be protected, the functional aspects of a design are not.
- ✓ **Simple Geometrical Shapes and Familiar Symbols:** Copyright does not protect simple geometric shapes or commonly used symbols like a "Stop" sign.
- ✓ **Recipes and Lists of Ingredients:** The listing of ingredients in a recipe is not protected, but the written description of the recipe itself may be.
- ✓ **AI-Generated Content:** The U.S. Copyright Office generally does not grant copyright protection to works created by non-humans, including AI.

4.13 Author & Ownership of Copyright:

In general, the author of a copyrighted work is the first owner of the copyright, according to Section 17 of the Indian Copyright Act, 1957. However, there are exceptions, particularly when a work is created within the context of employment or for a public undertaking, where the employer or public undertaking may be the first owner.

4.14 Meaning of Ownership:

Ownership in copyright is different from ownership in the physical material in which work is fixed. A person who owns a book may not be owner of its copyright therein. As a rule, author is the first owner of copyright in a work. However the copyright laws provide certain exceptions to this rule, which are enumerated in the later part of this Unit. To illustrate this point, if a photograph, painting or a portrait has been made at the instance of any person for a valuable

consideration, such a person is the first owner of the copyright in this case. The originator of an idea is also not the owner of copyright in the work unless he is the creator of the work. Thus if a person has a brilliant idea and he communicates it to a playwright who goes on to make a play on the same, the originator has no right in the product, for copyright subsists in a tangible form and not in an idea.

4.15 Meaning of Author:

An author is a person who, in fact, writes, compiles, composes and draws the work in issue, although the idea may have been suggested by another. The rationale behind this is, as we have discussed in previous units, that the originator behind the brilliant idea is not the copyright owner in the work which gives concrete form to an idea unless he is also the creator of the work. The nationality of an author is not the prime determinant of the entitlement of the author to a copyright under the Act. However, the subsistence of copyright has certain requirements under Section 13 (2).

a) Published work − in case of published work, the work must be published in India or when published outside India, the author must be a citizen of India at the date of publication, if alive at that date, or if dead, at the time of his death.

b) Unpublished work − (other than architectural work), the author at the time of making the work must be a citizen of India or domiciled in India where making of an unpublished work is extended over a considerable period, the author of the work will be deemed to be a citizen of, or domiciled in, that country of which he was a citizen or wherein he was domiciled for any substantial part of that period. (Section 7 of Copyright Act.)

c) Architectural work − the work must be located in India only then it can be subject of copyright protection.

As a rule, the author is the first owner of the copyright in the work. Section 2(d) of the Act defines the author of various works as follows:

- ✓ in case of literary or dramatic work, the author of the work,
- ✓ in case of musical work, the composer,
- ✓ in case of an artistic work other than a photograph, the artist,
- ✓ in case of photograph, the person who takes the photograph,
- ✓ in case of cinematographic film, the producer,
- ✓ in case of sound recording, the producer, and
- ✓ in case of literary, dramatic, musical or artistic work which is computer generated, the person who causes the work to be created.

"Composer" in relation to musical work means the person who composes music regardless to any form of recording in graphical notation. However, the definition of composer may not enable him to prove his authorship unless the composition is recorded in some form of musical notation or otherwise.

"Musical work" means a work consisting of music and includes any graphical notation of such work but does not include any words or any action intended to be sung, spoken or performed with the music.

i) Exceptions to the General Rule:

There are certain exceptions to the general rule that author is the first owner, i.e. when the author is an employee and the work is made in the course of employment, or the work is a cinematograph film or sound recording, then the copyright in the work vests with the employer. An author may create a work independently, or he may create a work under contract of service or contract for service. Where a man employs another to do work for him under his direct control

and supervision, which includes what to be done and how it is to be done, then it is a contract of service. If, on the other hand, a man employs another to do certain work but leaves it to the discretion of the other person the manner in which it is to be performed to result in desired product, then it is contract for service. The 'real test' to ascertain the nature of contract is whether the employee is employed as a part of the business and whether his work is an integral part of the business or is only an accessory to it. In the former case, it is a contract of service and in the latter a contract for service. Therefore, the distinction between the two is that of between an employee and an independent contractor.

ii) Contract of Service:

In the light of the above stated, where an author creates a work at the instance of another person for a valuable consideration, this is a case of contract of service e.g. when a music composer composes music of a song for a film or a photographer takes a photo on behalf of a newspaper etc. In such cases, in the absence of an agreement to the contrary, the person at whose instance the work is created is treated as the owner of copyright in the work. In other words, if the work is made by a person pursuant to a contract of service apprenticeship with you, you are the first owner of the copyright in that work. If you happen to be the proprietor of a newspaper or a periodical, and the work is made for purpose of publication in the newspaper under a contract of service or apprenticeship, then you as proprietor are the first owner of the copyright. If you have commissioned somebody for valuable consideration to take photographs, or draw paintings or portraits, or make an engraving or cinematograph film, then you and not the person who undertakes the commission, is the first owner of copyright. In this paragraph, the expression "contract of service" would, in the absence of legal complexities, mean a contract of employment.

It is imperative to note that each of the exceptions given above is subject to agreement to the contract between employee and the author of the work.

From the discussion above, we may gather that if there is an employer-employee relationship between yourself and the person creating the work, or if you have commissioned that person to create the work, you are the first owner of the copyright by default as it were.

iii) Joint Authorship:

A work of joint authorship means a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors. Copyright subsists in the works of joint ownership.

To constitute joint ownership it is necessary that there should be a common design and co-operation in carrying out that design. A person who only suggests the idea or the subject matter of the work cannot be considered as joint author. A person who revises and makes some minor addition for making the work more attractive cannot claim the authorship with the author.

Joint authors of a work hold the copyright as 'tenants in common' rather than as joint tenants, and, in the absence of agreement to contrary, each owns an equal undivided share in the copyright. One joint author cannot reproduce the work himself or grant licenses to others to reproduce it, without the consent of the other author or authors, but he may by himself take proceedings for infringement.

4.16 Rights Conferred By Copy Right:

Copyright law confers exclusive rights to the copyright holder, primarily allowing them to control the use, reproduction, and distribution of their work. This includes the right to reproduce, prepare derivative works, distribute copies, and publicly perform or display the work.

The following are the essential copyrights.

i) Right to Reproduce: This grants the copyright holder the sole right to make copies of their work, both in physical and digital forms.

ii) Right to Prepare Derivative Works: This allows the copyright holder to create new works based on their original work, such as adaptations, translations, or dramatizations.

iii) Right to Distribute: The copyright holder can distribute copies of their work to the public by sale, rental, or other means.

iv) Right to Public Performance: For certain types of works (e.g., literary, musical, dramatic, and choreographic), the copyright holder has the right to control public performances of their work, including digital audio transmissions.

v) Right to Public Display: The copyright holder can control the public display of their work, whether it's a painting on a website or a movie shown in a theater.

vi) Right of Paternity (Attribution): This allows the copyright holder to claim authorship of their work and to prevent others from falsely claiming authorship.

vii) Right of Integrity: This right protects the copyright holder from any distortion, mutilation, or other modification of their work that could be prejudicial to their honor or reputation.

viii) Moral Rights: While distinct from economic rights, moral rights also protect the author's name, reputation, and integrity of their work.

ix) Other Rights: Depending on the jurisdiction and the type of work, other rights may be conferred, such as the right to broadcast and re-broadcast the work, or the right to authorize or prohibit its communication to the public. In essence, copyright provides a bundle of rights that empower the copyright holder to control the use and distribution of their creative works, ensuring they can benefit from their creations and prevent unauthorized exploitation.

4.17 IPR Registration:

IPR registration, or Intellectual Property Rights registration, is the process of legally protecting your intellectual property, such as patents, trademarks, copyrights, and designs, with the relevant government authorities. This process grants you exclusive rights to your creations, preventing unauthorized use or reproduction.

4.18 Types of IPR and Registration:

i) Patents:

Protect inventions, granting the inventor exclusive rights to use, sell, and manufacture the invention for a set period. To register a patent in India, you must apply to the Indian Patent Office.

ii) Trademarks:

Protect brand names, logos, and other symbols used to identify and distinguish a company's goods or services. In India, you can register a trademark online through the e-filing portal.

iii) Copyrights:

Protect original works of authorship, such as literary works, musical compositions, and dramatic works. Copyright registration in India is managed by the Copyright Office.

iv) Designs:

Protect the aesthetic appearance of industrial products, such as the shape, configuration, pattern, or color of a product. A comprehensive e-filing system for Design applications is available through Intellectual Property India.

v) Geographical Indications (GI):

Protect names and marks used to indicate that a product originates from a specific geographic location and has certain qualities due to that origin. The Indian Trademark Act provides the legal framework for GI registration.

4.19 Registration Process:

i) Filing an Application:

You'll need to fill out the prescribed application form and submit it to the relevant IPR office, along with the necessary documents and fees.

ii) Examination:

The IPR office will examine your application to ensure it meets the legal requirements and that your IPR is eligible for registration.

iii) Publication:

If the application is accepted, it will be published in the IPR journal, giving others an opportunity to object.

iv) Objection Period:

If someone objects to your application, you will be given a chance to respond and provide evidence to support your claim.

v) Registration:

If no objections are upheld or if your response is successful, your IPR will be registered, and you will receive a certificate of registration.

4.20 Benefits of IPR Registration:

i) Legal Protection: IPR registration gives you legal grounds to sue anyone who infringes your rights.

ii) Enhanced Credibility: Registered IPR can enhance your company's credibility and reputation.

iii) Financial Returns: IPR registration can lead to licensing agreements and royalties, generating financial returns.

iv) Competitive Edge: IPR registration can provide a significant advantage in the market.

4.21 IPR Transfer:

IPR transfer, or the transfer of Intellectual Property Rights, refers to the process of an IP owner transferring those rights to another party, either permanently through an assignment or temporarily through a license. This transfer can involve patents, trademarks, copyrights, or industrial designs, and is governed by respective statutes. The transfer can be for monetary benefits, as in an assignment, or for the right to use the IP, as in a license.

4.22 Types of IPR Transfers:

i) Assignment:

A permanent transfer of ownership, where the original owner relinquishes all rights to the IP.

ii) License:

A temporary transfer of the right to use the IP, where the owner retains ownership and the licensee pays a fee or royalty.

4.23 Legal Framework in India:

i) Patents:

Governed by the Patents Act, 1970, requiring written assignments and registration with the Indian Patent Office.

ii) Trademarks:

Governed by the Trademarks Act, 1999, also requiring written assignments and registration with the Trademark Registry.

iii) Copyrights:

Governed by the Copyright Act, 1957, allowing for both whole and partial assignments, which must be in writing.

iv) Industrial Designs:

Governed by the Designs Act, 2000, requiring written assignments and registration with the Design Office.

4.24 Considerations for Transfer Agreements:

i) Written Agreement:

Transfer of IP rights must be in writing, whether through assignment or license.

ii) Registration:

For patents and trademarks, registration is required for the transfer to be enforceable against third parties.

iii) Payment:

The agreement should specify the consideration for the transfer, whether it's a lump sum or a series of payments.

iv) Scope of Rights:

The agreement should clearly define the scope of rights transferred, whether it's exclusive or non-exclusive, and the duration of the license if applicable.

4.25 Benefits of IPR Transfer:

i) Monetization: Owners can generate income by licensing or assigning their IP rights.

ii) Exploitation: Parties can utilize IP rights without ownership, potentially expanding market reach and commercializing inventions.

iii) Technology Transfer: IPR transfer can facilitate the sharing of knowledge and innovation between different parties.

4.26 Infringement:

Infringement is the act of breaking a law, rule, or right. It can also refer to the unauthorized use of another person's intellectual property.

Examples of infringement: Using copyrighted material without permission, Using a trademark without permission, Using a patented product without permission, and Violating the rules of a sport.

Infringement in intellectual property law:

In intellectual property law, infringement can occur even if the infringer didn't intend to violate the rights of the owner. For example, supplying parts or instructions for making a patented product can be considered indirect infringement.

Legal remedies for infringement:

In cases of infringement, a court can order an injunction to stop the infringing activity. If the infringer doesn't comply with the injunction, the court can impose sanctions, including incarceration.

4.27 Types of IP Infringement:

Intellectual Property (IP) infringement occurs when someone uses, sells, or copies someone else's protected work or invention without permission, violating the IP owner's rights. Different types of IP infringement include copyright, trademark, patent, and trade secret infringement, each with its own specific rules and remedies.

i) Copyright Infringement:

Unauthorized copying, distribution, or modification of copyrighted works like books, music, software, and movies.

ii) Trademark Infringement:

Using a brand name, logo, or slogan that is similar to a registered trademark, leading to consumer confusion.

iii) Patent Infringement:

Manufacturing, using, selling, or importing a patented invention without the patent holder's permission.

iv) Trade Secret Infringement:

Illegally obtaining or using confidential business information, such as formulas, practices, or processes, without consent.

v) Design Infringement:

Unauthorized copying or use of a design that is protected by design law.

vi) Cybersquatting:

Registering a domain name that is identical or confusingly similar to a trademark, with the intent to profit from it.

vii) Biopiracy:

Illegally obtaining or using biological resources or traditional knowledge.

Patent Infringement Subtypes:

i) Direct Infringement:

A direct violation of the patent rights, such as manufacturing or selling a patented product without permission.

ii) Indirect Infringement:

This includes contributory and induced infringement, where someone contributes to or encourages another person's direct infringement.

iii) Contributory Infringement:

Providing components or materials intended specifically for use in an infringing product, knowing they will be used for that purpose.

iv) Induced Infringement:

Actively encouraging or persuading another to infringe a patent, with full knowledge of the patent's existence.

v) Literal Infringement:

When a product or process exactly matches the patent claims.

vi) Infringement under the Doctrine of Equivalents:

Infringement that is not literal but still infringes on the patent's scope.

4.28 Remedies Available against Patent Infringement in India:

In India, remedies against patent infringement typically include injunctions, damages, and an account of profits. Injunctions can be either temporary (interlocutory) to prevent further infringement during litigation or permanent to prevent future infringement after a finding of infringement. Damages compensate for financial losses caused by the infringement, and an account of profits requires the infringer to disclose and surrender any profits gained from the infringement.

i) Injunctions:

A court order that prevents the infringing party from continuing the infringing activity.

- ✓ **Temporary (Interlocutory) Injunction:** Issued to stop further infringement while the case is pending.
- ✓ **Permanent Injunction:** Issued after the court finds infringement, preventing future infringement.

ii) Damages:

Monetary compensation for the financial losses caused by the infringement.

- ✓ **Actual Damages:** The patent holder's actual financial losses.
- ✓ **Statutory Damages:** Awarded at the discretion of the court.
- ✓ **Enhanced Damages:** Increased damages, usually threefold the actual damages, if willful infringement is established.

iii) Account of Profits:

The infringer is required to disclose and surrender any profits gained from the infringement.

iv) Other Remedies:

- ✓ **Seizure, Forfeiture, or Destruction of Infringing Articles:** The patentee can request the seizure, forfeiture, or destruction of infringing goods, as well as materials and implements used for the infringing activities.
- ✓ **Costs:** The court may order the unsuccessful party to pay the costs of the litigation.
- ✓ **Punitive Damages:** In some cases, punitive damages may be awarded to deter future infringement.

Check Your Progress

Choose the Correct Answer:

1. What does copyright law primarily protect?
    a) Industrial designs
    b) The exclusive rights to use, distribute, and license original works
    c) Counterfeit goods
    d) Public domain works
2. Which of the following is a related right under copyright law?
    a) Trademarks
    b) Trade secrets
    c) Neighboring rights for performers and producers
    d) Design rights
3. Who owns the copyright of a work created by an employee in the course of employment?
    a) The employer
    b) The employee
    c) The government
    d) The client
4. Which right is conferred by copyright protection?
    a) Unauthorized copying of the work
    b) The right to reproduce, distribute, and perform the work
    c) Allowing competitors to use the work freely
    d) Erasing the work from public access
5. What constitutes copyright infringement?
    a) Unauthorized adaptation of the work
    b) Unauthorized reproduction, distribution, or performance of the work
    c) Fair use for research
    d) Transfer of copyright ownership
6. Copyright protection applies to:
    a) Ideas
    b) Facts

c) Theories

d) Original works fixed in a medium

7. Which is NOT a copyright right?

a) Reproduction

b) Perpetual use

c) Distribution

d) Public performance

8. How long is copyright protection in India for an individual author's work?

a) 50 years

b) 60 years after the author's death

c) 100 years

d) 70 years from publication

9. Copyright is automatically granted when:

a) The work is fixed in a tangible medium

b) The work is registered

c) The work is publicly displayed

d) The work is published

10. Which action is copyright infringement?

a) Reproducing and distributing without authorization

b) Using for educational purposes with attribution

c) Quoting under fair use

d) Creating a parody

Answer to Check Your Progress:

1 b) 2 c) 3 a) 4 b) 5 b) 6 d) 7 b) 8 b) 9 a) 10 a)

4.29 Self-Assessment Questions

1. Discuss procedures involved in assignment of copyrights by the owner.
2. What are the benefits protecting copy rights and related rights?
3. What are the requirements for Copyright Protection?

4. Explain in detail the various procedures in chronological order, for patent filing in Indian context.
5. Explain the types of infringement.
6. Explain the remedies available against patent infringement in India.

_____

UNIT – V

Structure:

5.1 Geographical Indications:

"Geographical indication" in relation to goods means an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of processing r preparation of the goods concerned takes place in such territory, region or locality, as the case may be.

It may be noted that any name which is not the name of a country, region or locality of that country shall also be considered as the geographical indication if it relates to a specific

geographical area and is used upon or in relation to particular goods originating from that country, region or locality, as the case may be. [Section 2(1) (e)].

Key aspects of a GI:

i) Place of Origin:

GIs are linked to a specific geographic region, such as a town, region, or country.

ii) Qualities and Reputation:

The product's characteristics, like taste, texture, or aroma, are often associated with the unique environment and traditions of the origin.

iii) Intellectual Property:

GIs are protected by intellectual property rights, ensuring that only authorized producers from the designated location can use the name.

Examples:

Famous examples include "Champagne" from France, "Tequila" from Mexico, and "Roquefort" cheese from France.

Benefits:

GIs help protect the authenticity of traditional products, promote regional heritage, and provide producers with recognition and economic advantages.

In India:

- ✓ The Geographical Indications of Goods (Registration and Protection) Act, 1999, provides legal protection for GIs in India.
- ✓ Examples of Indian products with GI tags include Darjeeling Tea, Mysore Silk, and Kashmiri Saffron.
- ✓ The Geographical Indications Registry in India handles the registration process.

Why are GIs important?

i) Consumer Trust:

GIs help consumers identify products of high quality and authenticity, ensuring they are getting what they expect.

ii) Producer Benefits:

GIs protect producers from imitation and ensure they can benefit from the reputation and quality associated with their product's origin.

iii) Economic Growth:

GIs can stimulate economic growth in regional areas by supporting local producers and promoting regional specialties.

5.2 What is a Geographical Indication?

A geographical indication (GI) is a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin. In order to function as a Geographical Indications, a sign must identify a product as originating in a given place. In addition, the qualities, characteristics or reputation of the product should be essentially due to the place of origin. Since the qualities depend on the geographical place of production, there is a clear link between the product and its original place of production.

5.3 Who are Entitled for Registration?

As per Section 11 any association of persons or producers or any organisation or authority established by or under any law representing the interest of the producers of the concerned goods can apply for the registration of a geographical indication.

The Applicant has to be a legal entity and should be representing the interest of producers of the goods applied for. Any such organisation or association being not that of the producers

may have to prove that they represent the interest of producers. Any Applicant Authority also has to prove that they represent the interest of producers.

An application for registration of a geographical indication is to be made in writing, along with the prescribed fees (as specified under First Schedule), and should be addressed to the Registrar of Geographical Indications. [Rule 12 &, 13]

Jurisdiction: The Geographical Indication Registry is situated at Geographical Indications Registry, Intellectual Property Office Building, G.S.T. Road, Guindy, Chennai – 600032 having all-India Jurisdiction. Application or any other document may be filed directly in the GI Registry, Chennai, or may be sent by post or registered post or speed post or courier services.

5.4 Registration of Geographical Indications:

Section 8 of the Act provides that a geographical indication may be registered in respect of any or all of the goods, comprised in such class of goods as may be classified by the Registrar and in respect of a definite territory of a country, or a region or locality in that territory, as the case may be.

The Registrar may also classify the goods under in accordance with the International classification of goods for the purposes of registration of geographical indications and publish in the prescribed manner in an alphabetical index of classification of goods.

Any question arising as to the class within which any goods fall or the definite area in respect of which the geographical indication is to be registered or where any goods are not specified in the alphabetical index of goods published shall be determined by the Registrar whose decision in the matter shall be final.

5.5 Geographical Indication (GI) Protection:

Geographical Indication (GI) protection safeguards products with specific geographical origins, ensuring their unique qualities and reputation are linked to their origin, and preventing unauthorized use of the GI name or product.

Why is GI protection important?

i) Protection of Consumers:

GIs help consumers identify and choose authentic products from a specific region, ensuring they get what they expect.

ii) Protection of Producers:

GIs protect the collective rights of producers in a specific geographical area, preventing others from misusing their reputation or name.

iii) Promoting Local Products:

GI protection can boost the value and recognition of local products, promoting economic development and preserving traditional production methods.

iv) Combating Counterfeiting and Imitation:

GIs prevent unauthorized use of registered GI names, protecting the authenticity and reputation of the product.

How are GIs protected?

Geographical Indications (GIs) are protected through a combination of legal systems, including specific GIs laws (sui generis systems), collective or certification marks, and business practice enforcement. These systems aim to prevent unauthorized use, ensure product quality, and promote collective marketing.

1. Sui Generis Systems:

i) Dedicated GI Laws:

Many countries, including India, have enacted specific laws dedicated to the protection of GIs, such as the Geographical Indications of Goods (Registration & Protection) Act, 1999 in India.

ii) Registration and Protection:

These laws typically involve registering a GI with the relevant authority and providing legal protection against unauthorized use.

iii) Exclusive Rights:

Registered GIs grant exclusive rights to producers within the designated geographic area to use the name and associated reputation, preventing others from using it on products not from that area or conforming to the specified quality standards.

2. Collective and Certification Marks:

i) Collective Marks:

These marks can be used by a group of producers in a particular region to identify goods as originating from that area and produced under specific conditions.

ii) Certification Marks:

These marks indicate that a product meets certain quality standards or production criteria established by a certifying body.

iii) Trademark Protection:

In some cases, GIs can also be protected as trademarks, collective marks, or certification marks under general trademark law, particularly if the GI name has acquired "secondary meaning" and is used to identify the source of the goods.

3. Business Practice Enforcement:

i) Unfair Competition Laws:

Laws against unfair competition and consumer protection can also be used to prevent the misuse of GIs.

ii) Administrative Product Approval Schemes:

In some cases, administrative product approval schemes may be used to ensure that products meeting the GI's requirements are allowed to be sold.

iii) Monitoring and Enforcement:

Producers with a GI can also establish systems for monitoring and enforcing compliance with the GI's specifications and standards, including taking legal action against infringements.

4. International Protection:

i) Lisbon Agreement:

The Lisbon System allows for the international registration and protection of appellations of origin, which are a type of GI.

ii) TRIPS Agreement:

The World Trade Organization's TRIPS Agreement provides for the protection of GIs at the international level.

iii) Bilateral Agreements:

Many countries also negotiate bilateral agreements to protect GIs in trade with other countries, ensuring that GIs are recognized and protected in those territories.

5.6 Significance of Geographical Indications:

Geographical Indications (GIs) are vital for preserving cultural heritage, protecting traditional knowledge, fostering economic development, and ensuring consumer confidence in

the authenticity and quality of products. They act as a shield against unauthorized production and protect the unique identity of products linked to specific regions, benefiting both producers and consumers.

i) Cultural Preservation:

GIs help safeguard traditional practices, skills, and knowledge passed down through generations.

ii) Economic Development:

GI-tagged products can command premium prices due to their exclusivity, boosting local economies.

iii) Legal Protection:

GIs prevent unauthorized use of product names, protecting the authenticity and market value of genuine products.

iv) Enhanced Exports:

GI tags can enhance the global reputation and exportability of regional products.

v) Consumer Confidence:

GIs assure consumers of the authenticity, quality, and distinctiveness of products, fostering trust and loyalty.

vi) Protection of Intellectual Property:

GIs act as a form of intellectual property, protecting the unique characteristics and reputation of products linked to their geographical origin.

vii) Promotion of Regional Specialties:

GIs promote the unique features of products associated with specific regions, contributing to their recognition and value.

5.7 Difference between Geographical Indications and Trade Marks:

Geographical Indication	Trademark Registration
They are related to particular place	It has nothing to do with the place
It can be manufacturing or agricultural products like fruit, coffee etc.	It is given for the particular types of marks, symbol, sign, logo etc.
Complicated procedure of registration	Easy procedure of registration
Governed by Goods (Registration and Protection) Act of 1999	Governed by Trademark Act of 1999
It is available only for the goods	It is available for both the goods as well as services
This is the protection for the community at large	It is associated with particular individual or business
Trademark sometimes includes geographical indication	Geographical indication does not include trademark
After getting trademark registration applicant become the owner of the trademark	In geographical indication producer or manufacturer does not become the owner of the GI
It attracts the tourist which results into the financial gain	It attracts customers towards the same which will increases the value of the business in the market

5.8 Benefits of Trademark and Geographical Indications:

With the understanding of the difference between trademark and geographical indication, it's important to know about their benefits. There are many benefits of the trademark and geographical indications, some of them are mentioned below in the table:

Benefits of Trademark	Benefits of Geographical Indication
Creates brand value in the market	Prevent the unauthorized use of the particular

	product
Increases credibility of the business in the market	Price of the product increases after geographical indication protection
Gives unique recognition to the business and its goods as well as services	Distinct identity of the product
Customers trustworthiness got increased towards the business	Provide unique identification to the product on which geographical indication has been given
Customers trustworthiness got increased towards the business	Provide unique identification to the product on which geographical indication has been given
It get loyalty of the customers	It attracts tourists

5.9 What are the documents required for filing geographical indication?

To file a Geographical Indication (GI) application in India, you'll need a few key documents. These include the application form (GI-1A to GI-1D), a statement of case explaining the GI and its link to the geographical area, a map of the production area, and potentially, documents demonstrating the unique qualities and reputation of the product. Additionally, you'll need to provide details about the producers, the standards for using the GI, and an affidavit representing the producers' interests.

1. Application Form:

- ✓ The application must be filed in the prescribed form, which is GI-1A to GI-1D, according to the Intellectual Property India guidelines.
- ✓ The application needs to be submitted in triplicate.
- ✓ There's a prescribed fee for filing, which is Rs. 5,000 per class.

2. Statement of Case:

- ✓ This is a detailed explanation of why the GI is being sought, including how it identifies the goods as originating from a specific region.
- ✓ It should clearly describe the characteristics, qualities, and reputation of the product, and how they are linked to the geographical origin.
- ✓ It may also include information about the special features of the product, such as climate or traditional production methods.

3. Geographical Map:

- ✓ Three certified copies of a map showing the area where the product is produced.
- ✓ The map should clearly delineate the geographical area to which the GI applies.

4. Other Documents:

- ✓ **Evidence of Origin:**

  Documentation demonstrating the historical, cultural, or geographical link to the region.

- ✓ **Evidence of Use:**

  Proof of the product's reputation and commercial value, often through market research or industry data.

- ✓ **Details of Producers:**

  Information about the producers to be initially registered, including their names, addresses, and if applicable, a collective reference for multiple producers.

- ✓ **Affidavit:**

  An affidavit from the applicant (an association, producers, organization, or authority) demonstrating how they represent the producers' interests.

- ✓ **Standards Benchmarks:**

Details on the standards and quality benchmarks for using the GI, including any inspection structures.

- ✓ **Additional Representations:**

  Five additional representations may be needed depending on the application.

Important Considerations:

- ✓ The application must be signed by the applicant or their authorized agent.
- ✓ It's crucial to provide accurate and comprehensive information in the application to ensure a successful registration.
- ✓ The application should be addressed to the Geographical Indications Registry, Intellectual Property Office Building, G.S.T. Road, Guindy, Chennai – 600 032, according to the Intellectual Property India guidelines.

Check Your Progress

Choose the Correct Answer:

1. Which law governs the registration and protection of Geographical Indications in India?
   a) The Copyright Act, 1957
   b) The Trade Marks Act, 1999
   c) The Geographical Indications of Goods (Registration and Protection) Act, 1999
   d) The Patent Act, 1970
2. How long is the protection granted to a registered Geographical Indication in India?
   a) 5 years
   b) 10 years, renewable indefinitely
   c) 15 years
   d) 20 years
3. Who can apply for the registration of a Geographical Indication in India?
   a) Only large corporations
   b) Any association, group, or organization representing the producers of the product

c) Only government agencies

d) Any individual producer

4. What is the role of the Geographical Indications Registry in India?

   a) To grant exclusive ownership of geographical locations

   b) To register and protect Geographical Indications of goods and maintain a public registry

   c) To regulate product prices linked to GIs

   d) To promote international exports of GI products

5. In the case of infringement of a Geographical Indication, which of the following actions can be taken?

   a) The GI holder can sue for damages or seek an injunction to prevent further infringement

   b) The GI holder can file a suit in the court to protect the GI against misuse or counterfeiting

   c) The GI holder can only send a warning letter to the infringing party

   d) The GI holder can revoke the registration of the infringing product

6. What defines a Geographical Indication (GI)?

   a) Represents a company brand

   b) Links product to its geographical origin and quality

   c) Applies to foreign products only

   d) Used for services

7. Which product can be registered as a GI in India?

   a) Generic global product

   b) Product linked to its place of origin

   c) Trademarked product

   d) Non-geographical product

8. Who can apply for a GI in India?

   a) Individual producers

   b) Association or group of producers

   c) Government only

   d) Single company

9. What does GI registration provide?

   a) Exclusive rights to use the product name

b) Protection from international competition

c) Global trademark rights

d) Worldwide distribution rights

10. Main benefit of GI protection?

a) International rights

b) Protection from misuse

c) Global market access

d) Unlimited product lifespan

Answer to Check Your Progress:

1 c) 2 b) 3 b) 4 b) 5 a) 6 b) 7 b) 8 b) 9 a) 10 b)

5.10 Self-Assessment Questions

1. What is a geographical indication? How is a geographical indication different from a trade mark? List out the examples of possible Indian Geographical Indications?
2. Discuss the problems and prospects involved in the approval and practices in Geographical Indications.
3. How to file a copyright application? Explain the documents required for filing geographical indication.
4. What is a generic geographical indication?
5. Why do geographical indications need to protection?
6. Who can apply for the registration of a geographical indication? What is the benefit of registration of geographical indications? Who is a registered proprietor of a geographical indication?
7. Discuss the procedure for registration of geographical indications?