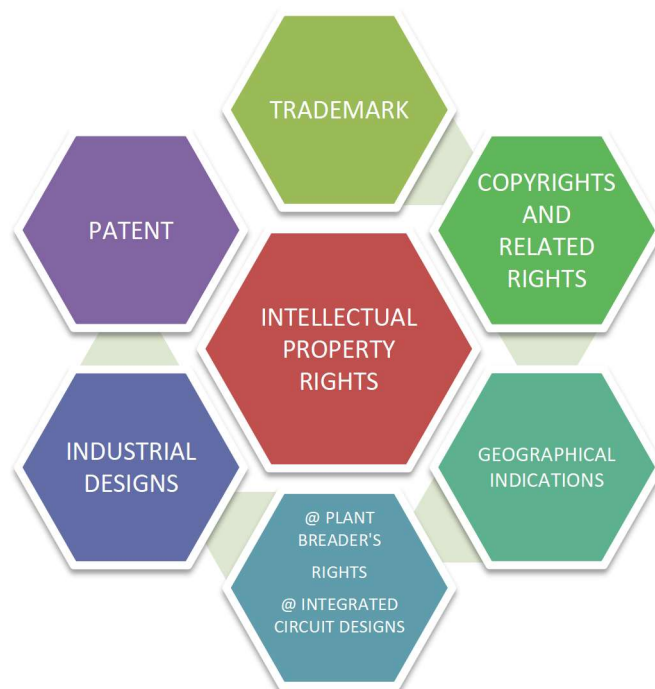


Basics of IPR

A procedural handbook



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Preface:

Intellectual Property rights have created utmost importance worldwide. Last few years were of revolutionary changes in this field. Intellectual Property can play very important role in deciding the future of a business. It is very necessary to utilize an IP in a right and effective way to get maximum benefits out of it and to have a competitive edge in the market. Considering the importance of IP Portfolio, need for getting proper guidance is must. This handbook is developed with an aim to provide the basic know how about various forms of Intellectual Property Laws in India, with special emphasize on trademarks, which affect much larger section of people, compared to other forms of IPR.

Hope this book will be beneficial to many.

About the Author:

This handbook has been written, edited and published by MS. SHRUTI K SHAH, Advocate, IPR Attorney, and proprietor of SKSHAH LEGAL SERVICES, a Law Firm, specialized in Intellectual Property Laws, Contract Laws and commercial-legal content writing. The Law Firm is located at Ahmedabad, a fastest growing, vibrant Metro City of India, which is a hub for commercial and cultural activities on larger scales. The firm provides wide range of services related to Intellectual Property Laws including registrations, Oppositions, Cancellations, Litigation pertaining to all forms of IPR; IP licensing, franchise and assignments; IP Audits, Due Diligence, legal opinions; registration of brands with custom department; Services of commercial agreements drafting and vetting; and training, education and awareness related to IPR laws through different means.

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CHAPTER 1

Introduction to Intellectual Property Rights:

As the words, itself express –

INTELLECTUAL: creative, born out of human mind's efforts and hard work

PROPERTY: that you possess or own, your asset

RIGHT: claim, privilege, entitlement, permission (here, it is a legal right to own, to use, to exploit commercially and to restrain others from using what you own)

Thus, Intellectual Property Rights mean your legal rights or ownership on what you create using your creativity, knowledge and intellect. It is a bundle of rights which you own and hence, in a nature of intangible property.

The human Being is gifted with the quality of thinking and is always trying to find out solutions to problems, making life more luxurious, easy and entertaining. While new creations and innovations keep on emerging in every possible way in science and technology to literature and art and in every other field, unique expressions and Identities of the trade people are also need of the day to identify the source of origin of goods/services. Such innovations, identities and creations are called Intellectual Property and shortly known as IP. Rights related to IP are known as IPR or IP rights more commonly. Such bundle of rights on IP is given by the Governments to promote and encourage new inventions and creativity as well as to promote fair trade and healthy competition in the market, through various

laws and enactments and it include right to use as well as right to restrain others from using the IPR.

You might have heard that need is mother of invention. Inventions, identities and creativity helps our life become more easy and enjoyable. Imagine if wheel would have not been invented, how our life would have been as wheels encouraged people to create many more utilities like cycles, cars and various types of machines out of it. Thus, one invention promotes another and that another promoted many more. Thereby leading to better products/processes making our life better and easier. Such new, novel, industrial useful inventions are given rights called PATENT RIGHTS.

Similarly, imagine if there were no movies, music, paintings, books; how boring life would have been? Like inventions make life easier, creative expressions make life enjoyable and pleasant. Such creative expressions are protected as COPYRIGHTS.

Now imagine you go for shopping in a mall, all products are of same size, with same plain packaging. How difficult it would have been to find the exact product of your choice? Now think this way, if you are selling some products and you want people to buy your products and not of others, how would you define your products without a brand/ trade name/ symbol/logo/ emblem? Brand/ trademark is an identity which indicates origin of products/services and provides some information regarding the products based on your past experiences or based on the reputation or image of the owner in the market by way of its past product history. They are selected and used by a merchant to identify its origin as well as to differentiate its products among others in the market. It also helps to

market and promote the products easily. Brand helps to create an impression, image, memory in the minds of the customers and attracts the buyers to buy such products. Such brands/ trade names/symbol/logo/ emblem are called TRADEMARK.

Have you bought some product just because it had an attractive design or appealing features/looks/shape? That is called INDUSTRIAL DESIGNS i.e. shape of goods, configuration or ornamental outer look of products that pleases to eyes. Such shapes of goods, attractive designs are protected as Industrial Designs as well as trademark too (shape of goods).

When we buy any goods/services, what attracts us is its usefulness, unique, memorable brand, reputation of brand or its creative packaging, brochure, hoarding, advertisement video or song, attractive design or shape or colour of products etc. Thus, a buyer's buying decision is very much dependent over the intellectual efforts of the sellers on their products. We are surrounded by brands, copyrights, patents and designs, straight from product packaging to hoardings over that cross roads, television advertisements or radio jingles, just have a look, how many types of intellectual property you can identify and how is it affecting your buying decision. Therefore, as an entrepreneur, whether you sell goods or provide services, you cannot ignore the importance of IPR in your business. Effective creation, management and use of IPR is necessary for competitive advantage in the market.

Different types of intellectual property are governed by different set of laws and procedures and possess different protection. While there are separate laws and rules for Trademarks, Patents, Copyrights and Related Rights,

Industrial Designs, Geographical Indications, Plant Varieties, Integrated Circuits and Layouts Designs, there are other forms of Intellectual Properties for which such separate laws and rules are yet not available, such as (1) Trade Secrets which needs to be protected through contracts laws and unfair competition laws; Traditional Knowledge and biodiversity which needs to be protected under either trademarks, copyrights, patents or design laws depending upon the nature of the knowledge, subject to mitigating basic legal requirement for registration.

Most people make a common mistake and get confused about the rights they hold in their intellectual work. Therefore, understanding the types of IPR and protection under it is very necessary.

Don't confuse a **trade mark** with **copyright** or **patent**.

They all differ.



PATENT: Invention of any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof

COPYRIGHT: Source Code/ Binary Code used in Mobile

Is IPR only for big business? The answer is NO.

No matter how small an enterprise or firm or individuals, there is some IPR owned. Identifying, protecting and utilizing these IPRs effectively can benefit the firm in many ways. Such IPRs can be sold or given on rent like any other property and royalty can be earned. For example, giving license to use or franchisee to a third party. In some cases, Bank loans are being offered on such IPRs. Well managed IPR can take your business to a great Height, while poorly managed IPR can drag you to the unwanted litigation or losses.

Which IPR do you own?

Now just check from the below list and find what do you own? There are some overlaps and one IP can be protected under more than one law, each having different kind of protection and drawbacks.

Subject property	Protection under which law
Company or firm name	Trademarks
Brand name/ non-generic product/ service name	Trademarks
Company logo, product logo	Trademarks, Copyrights
Tag line, punch line, slogan	Trademarks
Product wrapper (including its artistic design, colour combination etc.)	Trademarks & Copyrights
Shape of Goods/ Unique innovative product or package or container design	Trademarks & Industrial Designs Patent- in some countries/in some cases
Whole look of product including shape, colors, wrapper artwork etc.	Trademarks (as trade dress)
Colors, colour combinations, used to distinguish goods	Trademarks
Smells or Sounds applied to a product to make it different from others	Trademarks

Unique Food recipes	Copyright as a recipe book or Trade Secret Patents- in some rare cases
Unique way of doing business or unique information and knowledge of working of business	Trade Secret Business methods are protected as patent in some cases, in some countries but not in India
Website name	Domain name, Trademark
Website/ Mobile Applications	No protection to website/ Mobile Application as a whole; different work is subject to separate application under the copyrights. Such as literary work, artistic work, photographs, cinematographic works, sound recordings etc.
Software or computer programs	Software source code and object codes are protected under copyrights as literary work.
Business Data, Compilation of Data	Copyright & Trade Secret
Customers, supplier's names and addresses and other important information	Trade Secret Compilation of such data as copyrights
Informative Booklet, promotional brochure, designs of advertisement hoardings or magazine advertisement's designing and content	Copyrights
Musical piece for advertisement	Trademark & Copyrights
Advertisement film	Copyright
Unique inventive process or product	Patent
Product from a specific region having some specialty or quality or reputation attributed due to that region	Geographical Indication
Literature such as Books, Blogs, articles, song lyrics etc.	Copyrights
Name of books, name of movies, Name of TV programs	Trademarks
Music and sound recordings	Copyrights
Cinematographic film	Copyrights

Paintings, Sculptures, and other artistic works	Copyrights
Photographs	Copyrights
Business ideas and business methods reduced in detailed writing (concept notes)	copyrights

Do you have adequate protection for your IPR?

Now some will think, why should IPR be protected or registered? Well, like any other property, well maintained IPR is an asset to any business. In needs, such assets can be sold to liquidate money; given on license to someone to use (for example Franchisee) and earn royalty or mortgaged [hypothecated] to banks to take loans (in some cases). There are many other benefits of well-developed IP Rights. Further, like other properties, you can take insurance of your IPR under some cases, though the IP insurance, IP mortgage etc. are yet in infant stage.

For adequate protection, one should not only get the IPR registered at appropriate authority under appropriate law and appropriate territory, get IP insurance, when available, get timely renewals; should take quick actions against imitators as well as use and exploit your IPR in right manner. During business transactions and dealing with employees, third parties like dealers, Franchisees, contract manufacturers, suppliers, distributors, etc. a proper written contractual agreement regarding IPR ownership is necessary for better clarity and to avoid future disputes.

No World-Wide Registrations: IPRs are territorial rights and one should apply in each country where it uses or wishes to use it. There is no world-wide registration system. However, there is a provision for single application from India for registration in multiple countries in case of

Trademarks and Patents, under the multi-national agreements like Madrid Protocol and Patent Co-operation Treaty (PCT), but not all countries are part of these arrangements and the post application, examinations are individual country wise. For example, Shri Lanka, UAE, Bangladesh are not members of Madrid Protocol and therefore, we, from India, cannot get benefit to file an application for trademark through Madrid Protocol in Shri Lanka and UAE. Similarly, India is not a member of Hague System and therefore, the facility of filing single application of Industrial Designs in many countries is not available for India Jurisdiction by so far.

CHAPTER 2

TRADEMARKS

Trademarks, more commonly known as brands include logo, words, company name, sign, symbol, etc. which can be graphically represented and which are innovative and distinct enough to indicate the source/ origin of the goods i.e. proprietor of the goods. Trademarks also include Service Marks (marks used for services), Collective marks (mark owned and applied collectively by a group of people), Certification Marks (marks which certify quality of goods/services, for example Wool mark) Such marks are governed under the Trademarks Act, 1999 in India. The below information is for most commonly used simple trademarks and service marks.

- **What can be a trademark?**

- Company Name/ Division Name/domain name
- Product Name
- Logo/ Label/ Packaging
- Heading/ Signature
- Shape of goods
- Combination of colors
- Combinations of above
- Trade Dress
- Sound clips
- Smell applied in unique way to products

- **Benefit of Registration**

1. Registration is prima facie proof of ownership
2. Can take infringement action against imitators

3. Can file suits/actions at your location (jurisdiction) no matter where the defendant resides
4. Adds in value of trademark
5. Can help better market your products/services
6. Increase goodwill of company
7. Can sell or give rights to use and generate revenues

- **Who can apply:** the proprietor who is using or wish to use the trademark, which includes-

- Individual Person
- Sole Proprietary Concern
- Two or more persons Jointly
- Partnership Firm through its partners
- Company or LLP
- Trust through its Managing Trusty
- Government Body

Note: MSMEs (Udyam Holders), Individuals and Start-ups registered with DPIIT, have half the Government Fees than other entities. Further, Start Ups have special professional fee waiver offered by Trademark Facilitator Scheme. The list of registered start up facilitators is maintained by Registrar of Trademarks and uploaded on their website. Thus a startup only has to pay half government fees and no professional fees for trademark registration.

- **What Trademarks are capable of Registration:**

- Distinctive, Capable to identify owner of the goods
- Different from existing trademarks
- Should not be customary to current language/ Common to trade

- Should not indicate kind, quality, quantity, intended purpose or geographical origin of the goods (Trademark should not give any direct reference to goods or services)
- Should not be contrary to other legal provisions of Trademark Law

- **Requirements for Registration:**

1. Name, address, email ID and phone number of the Applicant
2. Exact date of first use of trademark, if being used
3. Affidavit with evidence of use, if mark is being used
4. List of goods/services for which trademark is applied and its appropriate class according to the International Classification of goods and Services (NICE Classification)
5. A JPEG format logo/label containing trademark-not larger than 8 x 8 cm (not required if you have word mark)
6. Power of Attorney in favour of your agent/ attorney
7. Government fees
8. your agent/attorney's professional fees, if applied through agent/attorney/lawyer

- **Use of TM and ®**

® indicates registered trademark and use of ® without registration is fraud and punishable under the law

TM indicates a non-registered trademark and can be used freely to indicate your trademark in common law countries, including India

- **Duration of Registration:** 10 years and further renewals of 10 years each of payment of fees for perpetual time
- **Classification:** India follows International classification latest edition and is a part of "TMclass".

- **Paris Convention:** Yes, India is a member of the Paris Convention and for claiming priority under Paris Convention, Application in other Paris Convention Country must be filed within six months of filing of National Application/ Indian Trademark Application.
- **Well-known Trademark:** a trademark which has acquired well-known status has a broader protection and such owner can restrain others from using identical/similar trademark for even different set of goods/services. As per Trademarks Rules 2017, an Application can be made to get the registration as a well-known trademark at the Trademark Registry Office with a Government Fees and proofs/evidence of acquiring well-known status.

While determining whether a trademark is a well-known trademark, below few facts are relevant—

- (i) the knowledge or recognition of that trademark in the relevant section of the public including knowledge in India obtained as a result of promotion of the trademark;
- (ii) the duration, extent and geographical area of any use and promotion of that trademark; including sales, advertising or publicity and presentation, at fairs or exhibition of the goods or services to which the trademark applies;
- (iv) the duration and geographical area of any registration of or any application for registration of that trademark under this Act to the extent they reflect the use or recognition of the trademark;
- (v) the record of successful enforcement of the rights in that trademark, the extent to which the trademark has been recognized as a well-known trademark by any court or Registrar under that record.

(vi) the number of actual or potential consumers of the goods or services;

(vii) the number of persons involved in the channels of distribution of the goods or services;

(viii) the business circles dealing with the goods or services, to which that trade mark applies.

- **Deceptively Similar Mark:** “A mark shall be deemed to be deceptively similar to another mark if it so nearly resembles that other mark as to be likely to or cause confusion.” Overall impression of trademarks, as a whole, from the view point of an average customer having imperfect recollection capacity, literacy of customer segment, nature of the product and other factual circumstances shall be considered keeping in view the visual, phonetical, structural similarity of trademarks, to decide if it is likely to deceive or cause confusion or not.
- **Prior Use Wins Over Prior Registration:** India is a common law country and therefore, in case of dispute between two deceptively similar/identical trademarks, the prior user/ the one who comes in market prior has better rights compared to the prior registration holder. Such subsequent registration is liable to be refused based on cancellation/rectification application by the prior user.
- **Intention to Use Necessary:** For registration of a trademark, genuine intention to use is necessary. Not using the trademark for many years even after the Application/registration, makes trademark vulnerable to lose rights/registration.

- **Right use of trademark:** Trademark must be used in proper manner, unless it can lose its value and fail to identify your origin in the market, resulting in to loss of trademark. For example, Thermos, escalator, kerosene etc. were once famous brand names which now have become generic product names and has lost its value/ownership.

Always have the **ACID** test to check if your trademark is being used correctly or not and take appropriate measures to correct it and educate people involved to use it in correct manner.

- A –** use your trademark as **ADJECTIVE** to the product name
- C –** **CONSISTENT** use, less variations in design/logo/mark. Mark should ideally be used in the same way each time, as applied for registration.
- I –** **IDENTIFICATORY**- identify your trademark on your product/service by putting letters TM/ SM/ ® if registered or by using the trademark in bold, italic, prominent letters different from the descriptive and generic part.
- D –** **DISTINCTIVE**–Distinguish your trademark from your generic product name.

If your product is innovated one, also create a generic name for it. For example, THERMOS was a brand but the owners failed to create a name for an innovative product i.e. insulated bottle. Result, Thermos became the name of the product itself there by generic and open to be used by all.

Correct use: Please photocopy these papers using XEROX TM copier machine

Incorrect use: Xerox these papers

CHAPTER 3

Copyrights

Copyrights are exclusive rights granted to an author or creator or owner of a literary, dramatic, musical or artistic work. Registration of copyrights is not mandatory in India. Rights are acquired immediately on creation of the work by an author. However, authorship/ownership is subject to evidence/proofs and therefore, Registration of Copyright provides certain advantages and is advisable.

- **Types of Copyright Works:**

Type of Copyright Work	Examples
Literary Work	Books, Articles, blogs, Data-charts/compilation of data, poems, lyrics, screenplays,
Artistic Work	product package design or label, Paintings, sculptures etc.
Cinematography Work	Video recordings such as advertisement clipping, news or entertainment program or Movies
Musical Work	Musical work may be in form of Notes sheet or in form of phono record (CD or tape or digital file) and it may or may not contain words. It is the arrangement i.e. what part of Guitar will play and when words will come or when other instruments will get played
Sound Recordings	A Sound Recording results from the fixation of a series of musical, spoken, or other sounds. It is the recording of actual performances.

Computer Programs	Software etc.
Broadcasting rights	For Broadcasting of a TV or Radio Program
Copyright in Website	A web-site contains several works such as literary works, artistic works (photographs etc.), sound recordings, video clips, cinematography films and broadcasting and computer software too. Therefore, a separate application must be filed for registration of all these works.
Concept notes	Business ideas, business methods well written and documented

- **Benefit of Registration:**

1. Registration is prima facie proof of ownership
2. Makes easy to act against imitators
3. Warning to others not to imitate
4. Increase goodwill of the company
5. Increase value of the creation

- **Who can apply:** creator/Author or lawful owner

- **Who is first owner of work:** Generally, author or creator is the first owner of work. In case of work under employment as a part of the duty/job responsibility, the employer shall be the first owner of the work, in absence of any contrary agreement. In case of photograph, painting, cinematography work, if such work is done for valuable consideration, then the person who paid consideration, is the first

owner, in absence of any contrary agreement. It is advisable to have clear written agreement of ownership to avoid future disputes.

Indian Copyright Office has made it compulsory to submit an assignment deed or an 'No Objection Certificate' of the author in favour of the Applicant, in case where Applicant is not an author/creator itself. In case of work is created by Director, partner etc. NOC or assignment deed is required in favour of company/firm.

WORK	FIRST OWNER
Literary or Dramatic work	Author
Musical work	Composer
Artistic work	Artist
Cinematography film	Producer
Sound Recording	Producer
Computer generated work	Person who causes the work to be generated
Work under Employment or caused for Consideration (e.g. contractual job work)	Employer in absence of any contrary agreement between parties/ Person who pays for contractual job work

- **Duration of Registration:** Generally, duration of registration differs for each type of work. For example, in case of literary work, it is lifetime of author + 60 years, however, in case of photographs, cinematography films and software, it is 60 years only.
- **Requirements for Registration**
 1. Copies of work to be copyrighted

2. Name and address of Applicant/ Owner
 3. Name and address of Creator/Author
 4. Assignment Agreement from Creator/Author in favour of owner/Applicant
 5. NOC of all stake holders in favour of Applicant
 6. Government Fees
 7. professional fees (if applied through lawyer)
 8. Power of Attorney in favour of agent/attorney/lawyer
- **Copyright in Design:** Copyright in any Design, which is capable of being registered under Design Act, but which has not been so registered - Copyright shall cease as soon as any article to which the design has been applied is produced for fifty times by an industrial process.
 - **Work which are applied on product/services:** when any work is to be applied on product/services, for its copyright registration, a no objection certificate from the Trademark Office is required before applying for Copyright Application. For example, logo of a company.
 - **Compulsory License:** There is a provision for Compulsory License from the owner/author of the Indian Work, when the owner/author has-
 - Refused to republish/make available to public a published work;
 - Refused to allow performance or communication of work to public

When the author/owner of work is dead, unknown and cannot be traced, one can apply to copyright office for license to publication of such work or its translation.

CHAPTER 4: INDUSTRIAL DESIGNS

'Industrial Design' or Design in short, for the purpose of IP rights means only the features of shape, configuration, pattern or ornament or composition of lines or color or combination thereof applied to any article whether two dimensional or three dimensional or in both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye, but does not include any mode or principle or construction or anything which is in substance a mere mechanical device, and does not include any trademark, property mark or artistic works.

Design should be new, original, not published before to filing an Application.

Example: Coca-Cola Bottle shape

- **"Article"** means any article of manufacture and any substance, artificial, or partly artificial and partly natural; and includes any part of an article capable of being made and sold separately
- **Benefit of Registration:** For protection of a design, registration is compulsory
- **Who can apply:** the inventor or owner of design
- **Duration of Registration:** 10+5 years
- **Classification:** India has its own classification
- **Requirement for Registration:**
 1. Name, nationality and address of applicant
 2. Name and Description of article/s
 3. Statement of Novelty

4. If Applicant is a small entity, proof thereof and an Affidavit in support thereof
5. Six sets of drawings/Photographs of design from six different sides
6. If priority is claimed, details and documentary proof of home country Application, if not in English, provide Verified English Translation
7. Government fees and your attorney/agent fees
8. Power of attorney in favour of agent/attorney, if applied through agent/ attorney/lawyer

CHAPTER 5:

PATENTS:

It is a legal right granted by the statute to have the monopoly (of exclusively use and to exclude others from using the said invention in market) for an inventive process or product for a limited period subject to disclosure of the Invention. However, this monopoly is limited or subject to the other laws prevailing in the country.

Patent can be acquired on innovated product or process. Few conditions are essential to get registration under the Patent Act, such as –

(1) Inventive step (2) Novelty (3) Industrial Application

It should not be published or disclosed before application.

Example: invention of new medicine or medicine

- **Benefit of Registration:** No protection if not registered
- **Who can apply:** true and first inventor or his assignee; legal representative of any deceased person
- If provisional specification is filed, Complete specification must be filed within 12 months of earliest filed provisional specification
- **Requirement for Registration**
 1. Name, nationality and address of Applicant
 2. Name, nationality and address of the person signing on behalf of Applicant
 3. Name, nationality and address of Inventor/s
 4. Assignment Agreement from Inventor in favour of the Applicant
 5. Detailed information about the invention/specification
 6. Drawings to explain the invention

7. Declaration of Inventorship
8. Statement of Undertaking Under section 8
9. Government Fees
10. If priority claimed- Priority Document (if not in English, valid English translation)
11. Date of filing of the basic application in the convention country
12. Details of all corresponding applications in other countries, with name and address of all applicants in convention country

- **Duration of Registration:** 20 years
- Section 3 of Indian Patent Act, 1970 provides for Inventions, which are not patentable. In this Section Sub Section 3(d) is unique for India and it prevents ever-greening.

Section 3(d): the mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance or the mere discovery of any new property or new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant.

Explanation. —For the purposes of this clause, salts, esters, ethers, polymorphs, metabolites, pure form, particle size, isomers, mixtures of isomers, complexes, combinations and other derivatives of known substance shall consider to be the same substance, unless they differ significantly in properties about efficacy;

- Similarly, section 3(k) deals with software per se, which is non patentable.

Section 3(K): “a mathematical or business method or a computer program per se or algorithms;”

Thus, a computer program or software is not patentable in India, unless it has attached hardware or software when run on computer produce technical effects, which is enhanced technology and patentable.

Other provisions of Section 3 are as under:

- (a) an invention which is frivolous, or which claims anything obviously contrary to well established natural laws;
- (b) an invention, the primary or intended use or commercial exploitation of which could be contrary public order or morality, or which causes serious prejudice to human, animal or plant life or health or to the environment;
- (c) the mere discovery of a scientific principle or the formulation of an abstract theory 20 [or discovery of any living thing or non-living substances occurring in nature];
- (e) a substance obtained by a mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substance;
- (f) the mere arrangement or re-arrangement or duplication of known devices each functioning independently of one another in a known way;
- (h) a method of agriculture or horticulture;
- (i) any process for the medicinal, surgical, curative, prophylactic [diagnostic, therapeutic] or other treatment of human beings or any process for a similar treatment of animals to render them free of disease or to increase their economic value or that of their products.
- (j) plants and animals in whole or any part thereof other than micro-organisms but including seeds, varieties and species and essentially

biological processes for production or propagation of plants and animals;

(l) a literary, dramatic, musical or artistic work or any other aesthetic creation whatsoever including cinematographic works and television productions;

(m) a mere scheme or rule or method of performing mental act or method of playing game;

(n) a presentation of information;

(o) topography of integrated circuits;

(p) an invention which in effect, is traditional knowledge or which is an aggregation or duplication of known properties of traditionally known component or components.

- **Compulsory licenses:** Compulsory License can be granted either on application if-

- I. Reasonable requirements of the public with respect to the patented invention have not been satisfied; or
- II. The patented invention is not available to the public at a reasonably affordable Price; or
- III. The patented invention is not worked in the territory of India.

Or on Suo moto by Central Government, in case of National emergency, circumstances of extreme urgency, public non-commercial use etc. subject to other provisions of law.

CHAPTER 6:

GEOGRAPHICAL INDICATIONS:

If certain goods/ products have special qualities/characters/reputation attributed due to its Geographical location from where it is being manufactured or produced, such Geographical Indications are protected under the Geographical Indications of Goods (Registration and Protection) Act, 1999.

Example: Darjeeling Tea, Kolhapuri chappal, Banarasi sarees etc.

Under Articles 1 (2) and 10 of the Paris Convention for the Protection of Industrial Property, geographical indications are covered as an element of IPRs. They are also covered under Articles 22 to 24 of the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement, which was part of the Agreements concluding the Uruguay Round of GATT negotiations. India, as a member of the World Trade Organization (WTO), enacted the Geographical Indications of Goods (Registration & Protection) Act, 1999 has come into force with effect from 15th September 2003.

- **Benefit of Registration (GI):**

1. It confers legal protection to Geographical Indications in India
2. Prevents un-authorized use of a Registered Geographical Indication by others
3. Registration is a prima facie proof of ownership
4. Registration Blocks others similar GI from getting registered
5. Registered Proprietor can act against Infringement
6. It boosts exports
7. It promotes economic prosperity of producers of goods produced in a geographical territory

- **Who can apply:** An association representing the interest of the people involved in the trade i.e. artisans/weavers/producers etc.
- **Authorized Users:** All members of a registered Association must apply in prescribed manner to become Authorized User. A non-member can also apply provided it belongs to the Geographical Area and involved in the trade.
- **Requirement of Registration:**
 1. Name and address of applicant Association
 2. Copy of Bye Laws of the Association
 3. Details of Inspection Body and how the Association maintains quality
 4. List of Members of the Association and their address, details of work etc.
 5. Detailed information about GI such as specification, uniqueness, detailed method of production, marketing and selling criteria, etc.
 6. Affidavit of Association as to how it represents interest of the producers/artisans/weavers etc.
 7. Map of Geographical Area (notified)
 8. Government Fees
 9. Power of Attorney in favour of agent/Attorney
- **Duration of Registration:** 10 years + renewals every 10 years for perpetual time

CHAPTER 7:

Semiconductor Integrated Circuit Layout Designs

A semiconductor integrated circuit layout design (SICLD) means a layout of transistors and other circuitry elements and includes lead wires connecting such elements and expressed in any manner in semiconductor integrated circuits.

What Semiconductor Layout Designs are registrable:

Semiconductor Layout Designs which are-

- ✓ Original
- ✓ Distinctive – i.e. capable to differentiate from other SICLDs
- ✓ Should not be commercially exploited anywhere in India or convention countries

-are registrable.

Exception: However, use for SICLD up to two years from the date of application for registration is not commercially exploited.

Though it is advisable not to publish/promote/use SICLD before filing the Application.

WHO CAN APPLY FOR REGISTRATION:

SICLD can be applied for registration by –

- ✓ Creator of SICLD
- ✓ an Indian national or a company/entity registered in India or a person/company, national of any other country which accords similar rights to citizens of India
- ✓ has principal place of business in India or place of service in India

PROCESS OF REGISTRATION:

SICLD can be applied for registration in prescribed form and drawings of SICLD in prescribed format with process design Kit information and Govt. fees by way of a demand draft. The Registrar of SICLD then examines the SICLD and may accept or refuse its registration or accept for registration with amendments/modifications according to the legal provisions. All the accepted/accepted with modification applications then gets published for third party oppositions and if within prescribed time, no opposition received, SICLD is granted registration. If the Opposition is received, Applicant needs to defend its application by filing reply in prescribed form, within prescribed time and with prescribed fees, followed by hearing. Registrar, after considering both the parties facts and merits, may allow or refuse the Application. There is provision of appeal against such orders.

Validity of Registration: 10 years, counting from the date of application/ first commercial exploitation, which is earlier.

Chapter 8:

Plant Breeder's Rights & Registration of New Plant Varieties

Plant breeder means the farmer or researcher or anyone who breed/innovate new Plant Variety.

The registration, protection and encouragement to new plant varieties and farmers and plant breeders' rights therein are essentially important for the improving rural income and economic development of rural parts of India. Also inventing a new plant variety is long and expensive process and registrations and rights of monopoly are provided to encourage development of new plant varieties, from which the society can benefit.

Below PLANT VARIETY can be registered:

1. a new variety of a plant
2. variety essentially derived from existing variety by means of either of below processes:
 - (i) Genetic Engineering
 - (ii) Mutation
 - (iii) Tissue Culture Derived
 - (iv) Back Cross Derivative
 - (V) Any other (Ploidy change etc.)
3. any traditionally cultivated plant variety which has undergone the process of domestication /improvement through human interventions
4. farmers' variety
5. Extant Variety/older varieties

Any variety which is already in the market, but not for more than a year, which is distinctive from the other available varieties in at least one essential characteristic is considered as New Plant Variety.

Any plant varieties available in wilderness cannot be registered.

WHO CAN APPLY FOR REGISTRATION?

Application for registration of a variety can be made **by breeder of Plant Variety** and such breeder can be–

1. A person
2. Company
3. Farmer
4. Group of farmers
5. Community of farmers
6. University
7. Publicly funded agricultural institute
8. successor or assignee or a person authorized by breeder

THE DURATION OF PROTECTION OF REGISTERED VARIETIES:

For Trees and vines - 18 years and for other crops - 15 years.

For extant varieties notified - 15 years

BENEFITS OF REGISTRATION:

1. to stop unauthorized use of registered plant variety through infringement action

If a person, not being a registered owner or its license holder or authorized person and without permission from the registered owner, sells, exports, imports or produces other Plant variety identical or deceptively similar with registered plant variety which

may lead to confusion or deception in the market, it amounts to infringement of plant variety rights of the Registered owner.

1. Registered owner enjoy monopoly in the market
2. earn better profits
3. Take higher prices
4. have a competitive advantage

Farmer who is engaged in the conservation of genetic resources of land races and wild relatives of economic plants and their improvement through selection and preservation shall be entitled in the prescribed manner for recognition and reward from the Gene Fund provided that material so selected and preserved has been used as donors of genes in varieties registered under this Act.

Farmer's variety is exempted from application/registration fees

SEED SAMPLE DEPOSITION:

Sample seeds of such new plant variety are required to be submitted for testing on its purity and germination. After testing some seed samples are sent for DUS TESTS (DUS = Distinctiveness, Uniformity and Stability) whereas the rest are kept with the National Gene Bank.

What needs to be provided for registration?

1. Characteristics of variety with description of Novelty, distinctiveness, uniformity, and stability
2. prescribed germination percentage, physical purity and Phyto-sanitary standards, seed quality test report, seed propagating material, parental line seeds etc.
3. Complete passport data of parental lines from which the variety has been derived along with its geographical location in India and all

such information relating to the contribution if any, of any farmer (s), village, community, institution, or organization etc in breeding, evolving, or developing the variety

4. A declaration that genetic material used for breeding of such variety has been lawfully acquired
5. disclose the use of genetic material conserved by any tribal or rural families
6. An affidavit that variety does not contain any gene or gene sequences involving terminator technology

CHAPTER 9:

Written Agreements:

Agreement is a legal contract binding between two or more parties and consists of mutually agreed terms or understanding between them. Generally, such agreements are on stamp paper (as per law) and signed by parties to make it binding and valid evidence.

In India, since decades, people do business on trust basis. However, with growing industrialization, globalization, technological advancement, there is strong need to put everything in writing between two or more parties to avoid any complications or loss or misunderstandings at later stage.

Executing strong agreements in writing duly signed by all parties makes business certain and secure. Drafting and Vetting of commercial Agreements ensures that no unwanted obligation or liability is created and that no rights or claims gets unenforced in absence of evidences. Written agreements are enforceable under the law before the court and provides much support to a business in terms of clarity of terms and by binding people for their responsibilities and duties.

Agreements are needed at every transaction of business, right from the discussion of an idea or business plan to establishment of a business, hiring employees, getting partners or share-holders, appointing dealers, distributors, contract manufacturers or product/service suppliers, website or mobile app or logo or brochure creators, and so on. Few of the Agreement types are Non-disclosure Agreements, partnership deeds, LLP deeds, trust deeds, Memorandum of associations, Memorandum of Understandings, Joint venture agreements, and so on.

In all above agreements, terms protecting IP Rights must be incorporated for clarity and security. We like to draw your attention that IP rights need to be closely monitored in very non-IPR nature documents like contract manufacturing, service contracts, marketing contracts, contract for promotion of your products, dealership or distribution agreements and employment agreements etc.

Apart from above agreements, there are also agreements specifically dealing with IP Rights, such as IPR Assignments (sell of IPR), IPR licensing (hire/rent of IPR), Franchisee agreements (hire/rent of IPR), Hypothecation Deeds (mortgage/loan on IPR) etc., which needs to be carefully created and monitored for effective management and protection of IPR.

CHAPTER 10:

IMPORTANT WEBSITES:

Trademark, Patent, Design and GI Registry	www.ipindia.gov.in
Copyright Registry	www.copyright.gov.in
Plant Variety Registry	https://plantaauthority.gov.in/plant-varieties-registry-related-information
Semiconductor integrated circuit layout design registry	https://sicldr.gov.in/sicw/index
Udyam registration	https://udyamregistration.gov.in/Government-India/Ministry-MSME-registration.htm
Start up registration	https://www.startupindia.gov.in/content/sih/en/startup-scheme.html
DPIIT	https://dpiit.gov.in/
NIPAM (National IP Awareness Mission)	https://iprsearch.ipindia.gov.in/events-ipr/home/home.aspx
Rajiv Gandhi National Institute of Intellectual Property Management	https://ipindia.gov.in/rgniipm.htm
World Intellectual Property Organization (WIPO)	https://www.wipo.int/portal/en/index.html

CHAPTER 11:

GENERAL GUIDELINES

In this last Chapter, some guidelines have been given, which can be useful in effective management of IPR. It contains simple dos and don'ts for safeguard of IPR in day to day transactions.

1. Think out of the box, think creative, think innovative and give your product/service/business a different dimension and stand out in market.
2. Only registering a company name at Registrar of Companies or Registrar of Firms is not adequate to protect your company/firm/entity name. Similarly, only registration of domain name is also not adequate protection. Therefore, also register the company/ firm name/domain name as Trademark.
3. Select a company name/ firm name/ brand name which is different from others, in real sense. Just changing letters or images here and there will not help you. Try to create your own identity.
4. Select a strong trademark/brand i.e. different from others and should not directly indicate kind/quality/purpose of use etc. of product/service that you are offering, should not be a chemical name or generic term. Make your own identity.
5. Various forms of IP rights overlap in their operations and protections. Therefore, ideal is to acquire protection under each possible way. For example, logo/product package/label can be registered as trademark as well as copyrights. Similarly, product shape/design/shape of goods can be registered as trademark and/or design. Certain Designs also qualify for patent rights. Software or computer programs

generally are protected under copyright laws, trade secrets and in some rare cases, they do get entitled for patent registration (mostly they don't). Geographical Indications are also registered as Trademark/Certification mark/ Collective mark and in different country, different registrations are valid or useful. Each registration type of registration has its own benefits and lacuna. Therefore, it is advisable to get all possible registrations/protectations.

6. Conduct a prior search [in market, on google and on IPR office data bases] before adopting and using any form of IPR and secure that your use does not amount infringement of/ passing off of any third party's rights.
7. Do not publish or disclose your process/product/product design before applying for patent/design rights.
8. While dealing with third parties or employees or partners or sponsors or franchisees, contract manufacturers, distributors, dealers, etc., always make it clear in writing as to who owns IPR and trade secrets. Carefully word your terms.
9. It is advisable to take from the logo designer, website or mobile application or software developer a written assignment that it has received its full consideration and all IP rights now vest in you exclusively and that such logo designer, website or mobile or software developer shall not make any same/similar logo/design/product for any other party creating direct competition with you. Also, that such developer/designer has independently created the work and has not copied from any one and that in case of any allegation, charge, litigation, it shall bear all the liabilities and keep you harm less.

10. Use confidentiality agreements, non-disclosure agreements, non-compete agreements to protect your IPR.
11. Never use someone else's IPR without permission. If you will respect others intellectual property, others will respect yours.
12. Keep record of your IP rights, forms of IP owned, application numbers, status, registration details etc. It helps manage IPR in effective manner.
13. Keep periodic check/ audit of IPR to ensure effective protection, renewal, follow ups etc.
14. Investigate about insurance policy which protects IPR. There are some policies which cover litigation costs also.
15. Promptly stop imitators or infringers as delay may damage your IP Right.
16. There are various schemes of state government and central government that provides cost of registration of patent/trademark/GI, provide loans/funds, provide guidance and support to start your business using the intellectual property rights. Approach nearest MSME office or industrial commissionerate office for more information.

Educate yourself, be aware, Innovate, create, protect, exploit, progress and prosper.

Wish you good luck!