Intellectual Property Rights and Challenges before Higher Education in 21st Century

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"The right of property enables an industrious man to reap where he has sown."[2]

Anonymous

I. Introduction:

Intellectual Property (IP) refers to a creation of mind i.e. inventions, industrial designs for article, literary & artistic work, symbols etc. used in commerce. IP is divided into two categories: industrial property, which includes inventions (patents), trademarks, industrial designs, and geographic indications of source: and Copyright, which includes literary and artistic works such as novels, poems, plays, films and musical works etc. According to the Trade Related Aspects of Intellectual Property Rights (TRIPS)[3] Agreement, the intellectual property has been classified into-Patents[4], Industrial Designs[5], Trade Marks[6], Copyright[7], Geographical Indications[8], Layout Designs of Integrated Circuits[9], and Protection of Undisclosed Information/Trade Secrets. Different IP Rights vary in the protection they provide.

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[2] James Simon & Stebbings Chantal, 'A Dictionary of Legal Quotations', 2010, Universal Law Publishing Co. Pvt. Ltd., New Delhi, India, at p.148.

[3] The WTO agreement, *inter-alia*, contains an agreement on IP, namely, the Agreement on Trade Related Aspects of Intellectual Property (TRIPS). This Agreement made protection of intellectual property an enforceable obligation of the Member States. TRIPS Agreement sets out minimum standards of intellectual property protection for Member States.

[4] The Patents Act, 1970 as amended by Patents (Amendment) Act 2005, Commercial Law Publisher (India) Private Ltd., 2005

[5] The Design Act 2000 along with Design Rules 2001; Universal Law Publishing Co. Ltd., New Delhi; 2004

[6] The Trademarks Act 1999 along with trade Marks Rules 2002; Commercial Law Publisher (India) Private Ltd., 2004

[7] The Copyright Act 1957 as amended up to 1999 along with Copyright Rules 1958 and International Copyright Order 1999; 2005

[8] The Geographical Indications of Goods (Registration and Protection) Act, 1999 along with Geographical Indications of Goods (Registration and Protection) Rules 2002; Universal Law Publishing Co. Ltd., New Delhi; 2004

[9] The Semiconductor Integrated Circuits Layout Design Act 2000 along with Semiconductor Integrated Circuits Layout Design Rules 2001; Universal Law Publishing Co. Ltd., New Delhi; 2005.

Intellectual property rights (IPRs) have emerged as an indispensable strategic tool in today's knowledge economies and societies, particularly in the context of economic globalisation. An entity's ability to compete in the global market depends to a large extent on its capacity to generate new ideas through innovation in science and technology. IPR, by conferring exclusive monopoly rights to its owner for a limited duration, has emerged as a significant factor in creating incentives for innovation and generation of economic value. An effective IPR system is also a constituent of a reliable legal environment, which in turn becomes an important factor for decisions on foreign investment and technology transfer.[10] Recently, IPRs are generating a huge amount of money. Therefore, their legal protection from theft or misuse is equally important. This creates a demand for professionals and experts in the field of IP to take care of IP-related issues that are emerging from investments and technology development.[11] National Knowledge Commission in its report[12] recommended that the nation's future and its ability to compete in the global market depended greatly on how it generated ideas and innovated in science and technology. Countries like China, Japan and Korea have improved their respective IPR systems through intense capacity building efforts, with a view to achieving greater innovation. It has become imperative for India to scale up efforts to build a world class IPR infrastructure and ensure that IPR is used in the best national interest for more extensive innovative research, technology transfer, wealth creation and overall benefit of society.

II. Intellectual Property Rights - a Critical Issue:

IP creation and its protection are two highly critical issues in the global knowledge-based competitions. Some of the Asian countries such as Japan, China and South Korea have already on their way to improve their IPR regime through serious efforts, with the aim of achieving the much advanced innovation. Therefore, it is the duty of our country to cope up with these already advanced countries by putting up rigorous efforts in order to bring our IPR infrastructure to the level of world-class to ensure that they are used for the betterment of national interest and to promote more advanced and innovative research, creation of wealth, and overall benefit of the society.

[10] "Intellectual Property Rights", available at httpwww.knowledgecommission.gov.indownloadsbaselineipr.pdf
[11] Krishnakumar G., "Monetise knowledge, create jobs", appeared in The Hindu, dated 28th November, 2011,
[12] National Knowledge Commission Report to the Nation, 2006 – 2009, Available at, http: // www. knowledgecommission. gov. in / downloads / report2009 /eng /report09.pdf

IPR is an emerging area of study with the evolution of the new regime in international trade overshadowed by the World Trade Organisation (WTO) and the Trade-related aspects of Intellectual Property Rights (TRIPS). The main aim of IPR regime in the world is to enable the people to create new knowledge and to encourage them to have its legal ownership by protecting their rights with the help of the laws and statutes. It is often said that if something is worth copying, it is worth protecting[13], therefore, IPR has become a critical element of economic development in the 21st century. Therefore, its legal protection has ensured a much importance in the country like India and other developing countries especially when the IPRs are making their impact on the field of agriculture and pharmaceutical sectors. Hence, It has become imperative for relevant stakeholders to be aware about the IPR regime so as to keep pace with the speedy developments in the fields of science and technology. Without the proper knowledge of IPRs we should not be permitted to be called educated illiterates by the world. In order to promote innovative creations and overall development of the country we need to make use of IPRs and traditional knowledge effectively and efficiently.

India has amended its IPR laws[14] in order to comply with the requirements of TRIPS agreement. This has resulted in the creation of highly qualified IPR professionals to take care of the emerging problems resulting from the new investments and formation of new technology.

III. IPRs and the problems in India:

In India, there is a dearth of legal experts in IPR fields. Producing new knowledge and protecting existing resources is critical for a nation to compete in the global knowledge economy. It is argued that taking into social, cultural and economic facts of our nation, whether the TRIPS-based IPR laws are going to solve the domestic problems that confront India in terms of technology development and its use to large sections of its population. Therefore, in order to compete with the world, we need to examine our Indian laws with the IPR policies with the aim to achieve the objective of serving the needs of the society which is

[13] "Copyright information", available at: http://www.cla.co.uk/copyright_information/copyright_information.

[14] India has complied with the obligations contained in the TRIPS Agreement and amended / enacted IP laws. A reference may also be made to the amendment of Patent Act, 1970, by way of The Patents (Amendment) Act, 2005, which came into force on the 1st day of January, 2005. This amendment has introduced product patents in case of pharmaceutical, chemical and food products besides other amendments.

on the main menu. In the above given context, the study in IPR has give much importance in Indian legal system.

The National Knowledge Commission (NKC) in its Report to the Nation (2006-09) has said that for India to become global knowledge leader, we would need to be at the forefront of creating knowledge. This requires a favourable eco-system that not only protects its ingenuity of the creator but also rewards knowledge creation through commercial applications. Besides other recommendations, it has also suggested the need to protect the traditional knowledge of the nation and also highlighted the creation of incentives for it and also to explore mechanisms for identification of key IPR issues in new technology areas.[15]

Therefore, in the light of the above, we need to create experts and professionals in the field of IPR for providing legal advice to the research and development institutions in order to take appropriate legal steps for the protection of their creations. This can be achieved by updating our curriculum instead of sticking to the age old educational system. Since IPR education is the need of the hour in this techno-savvy world, where robots and animated human characters have taken the place of real human beings, most of the National Law Schools in India have started IPR courses, resulting in a good demand for the efficient IPR teaching professionals.[16]

Besides, some companies and other research and educational institutions such as private firms and universities that are engaged in investing in the research and development of a new science and technological areas such as biotechnology, nano-technology, stem-cells technology, etc., demand IPR experts and professionals in their respective legal departments for proper management of their IPR. Similarly, law firms that are engaged in advising these companies also need IPR experts and professionals for looking after the filing and registrations of IPR applications with the concerned Government authorities and also to look after the legal issues and matters in that regards. In fact where there is a flow of more foreign companies (MNCs for example) seeking IPR protections, especially when their branches are established in India, we need more and more experts and professionals in the filed of IPR.

[15] See: National Knowledge Commission Report to the Nation (206-2009), available at: http www .knowledgecommission .gov .indownloadsreport2009 engreport09.pdf

[16] In fact the Department of Law has also forwarded a proposal of a new curriculum of LL.M. Course by including a specialization in IPRs to the Board of Studies (BoS) in Law, Shivaji University, Kolhapur.

This automatically creates a lot of responsibilities on the educational institutions such as universities to introduce the said courses in IPR.

IV. Education in IPR – a challenge:

The biggest challenge that we face in India today is the shortage of IPR-trained professionals. The demand for human resource in the field of IPR is growing day-by-day. The importance of IPR field is also going higher and higher. The papers related to IPR laws are regularly becoming part of the syllabus in various educational institutions. Many institutions offer certificate and diploma courses in the field of IPR laws. There is a big carrier awaiting in the world to those students who pass out their law, science, arts, commerce & management etc., graduation with the IPR background.

V. Misuse of IPR and the economic development:

There is a rapid development in science and technology in today's modern world. The technology has both positive as well as negative sides. It can not only help to create wealth but it can also cause to lose the wealth. That is with the help of technology the culprits commit infringement of IPRs. This can be remedied by producing highly qualified IPR specialized lawyers to handle the IPR related litigations. Many developed countries like, USA, UK, etc., offer a well organized IPR professionals and therefore the job opportunities among such professionals are highly competitive. Many fast developing countries like India require IPR professionals and experts with expertise in their domestics IPR laws to manage the IPR related issues effectively otherwise they will have to rely on outsourcing its IPR related issues worldwide.

VI. IPR and Research Activities – a need of the hour:

There are still some people who are reluctant to accept the new change in their curriculum development. This results into a dearth of research activities in the field of IPR and such other technologies. There are hardly any institutions in India that facilitate serious research in the filed of IPR. Some of these are The Inter-University Centre for IPR Studies and the HRD Chair on IPR at the Cochin University of Science and Technology. These institutions are involved in policymaking and facilitating multidisciplinary research and

teaching. [17] Therefore, we have to encourage serious research in IPR and develop a team of well educated and qualified human beings in order to set up an adequate infrastructure and, generate and encourage a welcome environment for creating, protecting and managing intellectual property for development of science, technology and arts leading to expansion of trade and industry and well being of the society. We are required to have a good beginning by putting in place useful systems and policies. One of the first steps to boost the IPR field in the country is proper education by introducing a curriculum in that respect. Research and Development must be promoted by creating a familiar environment to protect our traditional knowledge.[18] We must protect our traditional knowledge by keeping check on the dangers of misuse that may arise after patenting the same.[19]

VII. Conclusion and Suggestions:

Indeed IPR plays a crucial role in the development of industry, commerce and trade and in the growth of creative efforts in almost every field of human endeavour. Although the value of this species of property is recognized, the law relating to this form of property is understood only by a few special experts. Therefore, a knowledge of the basic principles of the various branches of IPR laws is essential to all those who are engaged in any business, academic or industrial activities and in the technological and cultural development of the country. IPR plays a key role in transfer of technology. Piracy of IP has become international in character. At the same time the scope of IP is expanding very fast and attempts are being

[17] See Note No.9.

[18] A number of cases relating to traditional knowledge have attracted international attention. As a result, the issue of traditional knowledge has been brought to the fore of the general debate surrounding intellectual property. These cases involve what is often referred to as "bio-piracy". The examples of turmeric, neem and ayahuasca illustrate the issues that can arise when patent protection is granted to inventions relating to traditional knowledge which is already in the public domain. In these cases, invalid patents were issued because the patent examiners were not aware of the relevant traditional knowledge. In another example, a patent was granted on a plant species called Hoodia. Here, the issue was not whether the patent should or should not have been granted, but rather on whether the local people known as the San, who had nurtured the traditional knowledge underpinning the invention, were entitled to receive a fair share of any benefits arising from commercialisation.Traditional Knowledge also covers, examples such as literary, artistic or scientific works, song, dance, medical treatments and practices and agricultural technologies and techniques. Source, "Integrating Intellectual Property Rights and Development Policy", Available at: http:// www. iprcommission. orgpaperspdfsfinal_ reportCIPRfullfinal.pdf.

[19] In order to protect their traditional knowledge, many developing countries, holders of traditional knowledge, and campaigning organisations are pressing in a multitude of fora for traditional knowledge to be better protected. Such pressure has led, for example, to the creation of an Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore in WIPO. The protection of traditional knowledge and folklore is also being discussed within the framework of the CBD and in other international organisations such as UNCTAD, WHO, FAO and UNESCO.6 In addition, the Doha WTO Ministerial Declaration highlighted the need for further work in the TRIPS Council on protecting traditional knowledge. Source : Ibid.

made by persons who create new creative ideas to seek protection under the umbrella of IPRs. The law relating to IP in India is undergoing changes so as to bring them to harmonise with the corresponding laws in the developed countries. This has become necessary after India signing the GATT and TRIPS and becoming a member of WTO. Countries with effective intellectual property (IP) protection reap the benefit of protecting their own intellectual property, as well as creating a positive foreign investment environment. But many countries face serious obstacles to IP protection, such as a lack of IP awareness, inadequate laws, and ineffective enforcement mechanisms, and many do not have the resources to address these issues.

To remedy this situation a proper education is needed to train the stakeholders in the filed of IPR. However, this is a difficult and complex process without an inter-disciplinary approach. This is always easier said than done. But it can be achieved if the universities develop the policies and schemes where the faculties such as economics, management and law are combined together in order to facilitate proper IP training and for finding new models for research and development. Finally we can say that the IPR debates are not going to fade away in the near future. We might, however, begin to wonder how we can generate more useful 'intellectual property' so that the task of protecting it becomes worthwhile.

Suggestions:

In order to prepare well-equipped and trained IP professionals, following things are required to be adopted by the educational institutions, especially by the universities, law colleges, law departments, law schools and all the authorities that are engaged in the management of IPRs.

1. Education on IPR must go beyond the IP offices and reach out to scientists and engineers working at national research institutes, universities, industries, the Bar, as well as to researchers and students, not just in the metropolitan areas but also in the smaller towns and rural areas of the country.
2. All the Law schools throughout India must also design specialised courses and programmes on IPRs and take necessary steps to create faculty chairs on the IPR subjects.
3. Business schools also need to incorporate IPR dimensions in their curricula.

4. There is also an urgent need to set up IPR Cells in major scientific and educational institutions in the country with trained staff, competent in the law and technical aspects of relevant disciplines.

5. It has become essential for technical institutions, scientists, examiners and other relevant stakeholders to be fully aware of the IPR regimes of new and rapidly changing technologies, especially in ICT (Information and Communication Technology), biotechnology, nano-technology, electronics, engineering, bio-informatics etc. There is a need for high powered expert bodies to help identify IPR issues arising out of each of such areas and to evolve necessary IPR policies that would optimally foster greater global competitiveness for Indian industry as well as ensure faster innovation, wealth creation and overall development.

6. Funding agencies such as UGC, etc. must generate special and separate fund provisions to provide assistance to the universities and other educational institutions to encourage them to undertake research activities in the field of IPR.

7. Universities and other educational institutions too must strive to get assistance from the apex body such as the World Intellectual Property Organisation (WIPO), a global body that provides financial assistance to the institutions dealing IPR issues.