Intellectual Property

"Intellectual Property" is a class of property emanating primarily from the activities of the human mind. Historically, patents for inventions, designs for industrial designs and trademarks for marketing a product were collectively known as Industrial Property. These three forms of Industrial Property together with Copyright in literary work form Intellectual Property. However, the Intellectual Property now includes all property resulting from the exercise of the human intellect.

Just as the ownership of and transactions in other forms of property are governed by law so also is the case with Intellectual Property. The Intellectual Property is, thus, protected and governed by appropriate legislation i.e., the applicable law of the country.

There are many species of Intellectual Property prevailing in many countries, but in India currently, the intellectual property system consists of patents, trademarks, designs, and copyrights.

Development of Intellectual Property System in India

Patents

The existence of Intellectual Property system in India can be traced back to 1856. The first legislation on the subject was brought into force in the form of an Act on Protection of inventions based on the British Patent Law of 1852. As per this legislation, a system was introduced in India in the form of grant of certain privileges to an inventor of new manufacture for a period of 14 years. The Act was re-enacted with some modifications as the Act XV of 1859 in which Patent Monopolies were called Exclusive Privileges. According to this legislation, an inventor of a new manufacture, by filing a specification disclosing the invention, could obtain the exclusive privilege of making, selling and using the invention in India and authorising others to do so for a term of 14 years from the date of filing of such a specification. In 1872, the Patents and Designs Protection Act was passed which was followed by the Protection of Inventions Act of 1883. These Acts were consolidated as Inventions & Designs Act 1888. Subsequently, the Act of
1888 was replaced by the Indian Patents & Designs Act, 1911 (IPD). The Indian Patents & Designs Act, of 1911 established for the first time in India a system of Patent and Design protection under the management of a Controller of Patents and Designs. The IPD Act 1911 was in force when India became independent on 15 August, 1947.

Based on the fact that the patent system has played a key role in the industrial development and economic advancement of many countries which are today recognised as industrially and economically advanced countries in the world, it was felt that the patent system that has been in vogue in India has not helped in achieving its fundamental objectives, namely to stimulate and encourage innovative activities in the country and to encourage commercial utilization of the patented inventions to boost industrial development and consequent economic advancement of the country. Considering that India was on the threshold of a major industrial development, it was felt that the provisions of the IPD Act, 1911 were not adequate and required modifications.

At this stage, the subject was referred to Justice Rajagopala Ayyangar and he was requested to advise the Government on the question of revision of the Patent Law. Justice Ayyangar submitted his report in 1959 with various recommendations for effecting radical changes in the Patent Law.

Based on the recommendations of Justice Ayyangar and also considering the changes proposed in the light of further examination by the Government of India, a comprehensive and consolidated Patent Bill was introduced in the Parliament in 1967.

Parliament passed the Bill in its historical special sitting on 19 August, 1970 after a long and gruelling debate. This Act (Act 39 of 1970) received the assent of the President of India on 19 September, 1970. The Patents Act, 1970, came into effect from 20 April, 1972 and is in force now.

The Patents Act, 1970, contains many salient features some of which are highlighted below:

1. Definition of patentable inventions
2. Definition of invention which are not patentable
3. Requirement of novelty of the invention based on worldwide knowledge
4. Exhaustive definition for drug/medicine
5. Requirement of providing information regarding the application being processed in different countries for the same or similar invention covered in the Indian application
6. Provision of only process protection in the areas of pharmaceutical, food and chemical substances prepared by chemical processes (Section 5 of the Act)
7. Terms of patents: (i) For drugs and food patents the term being five years from the date of sealing or seven years from the date of the patent whichever period is shorter, and (ii) in all other categories of inventions, 14 years from the date of the patent.
8. Provision of endorsing with the word Licences of Right in the case of inventions falling under the section 5 of the Act after the expiry of three years from the date of sealing
9. Restriction of Indian residents on filing patent application abroad without written permission of the Central Govern-
ment in case the application is not filed in India.

10. Conditionality of the patent grant.

**Designs**

The law for the protection of designs developed from the efforts to afford protection to textile or linens, cottons, calicoes and muslins. Over a period of time, this concept was extended to patterns and prints made by modelling, casting or embossment of an impression or ornament on any article of manufacture. Prior publication or use of designs before registration was not allowed and the concept of novelty was introduced as distinct from that of copyright in literary work and a separate law for copyright for industrial designs came to be established. The Patent and Designs Act was passed in 1872 which was consolidated in 1888. Later, the Act was replaced by Indian Patent and Designs Act, 1911. After introduction of the Patents Act, 1970 modifications were incorporated to confine IPD Act, 1911 to designs only. Thus, IPD Act, 1911 came to be known as the Designs Act, 1911 with effect from 20 April, 1972 and is currently in force.

**Trademarks**

A legislation for the protection of Trademarks was enacted in India for the first time on 11 March, 1940. The Act was brought into force on 1 June, 1942. Prior to the enactment of the Act, there was no legislation governing registration of Trademarks in India, it was possible for such protection by a passing off action under the Indian law of Torts based on the principles of the English Common law relying on the Guidelines of established British case laws. This Act, of 1940 was later amended in 1958 and the revised Indian Trade and Merchandise Marks Act, 1958 was brought into force on 25 November, 1959 which is currently in force.

**Copyrights**

The development of Copyright law in India was closely associated with the British Copyright law. The British Act of 1911 codified and consolidated the earlier Acts on different works. It also abolished the common law Copyright and introduced a term of life of the author plus fifty years. Further, it abolished the need for registration of Copyright as a prerequisite for claiming right or enforcement of Copyright. In India, the first Copyright Act was passed in 1914, which was a copy of the British Copyright Act of 1911, with suitable modification to make it applicable to the British India. The Copyright Act, 1957 which is currently in force, adopted many principles and provisions of the British Copyright Act of 1956. The Copyright Act, 1957 was passed on 4 June, 1957 and came into force on 21 January 1958 with the intention to cope with the new problems in the law of copyright created by technological advances in the field of communication, broadcasting, microfilming, photolithography, movies, cinemas and talkies.

A number of amendments to this Act were effected in 1983 mainly to avail of the benefits arising from the revision of the Berne Convention and the Universal Copyright Convention, to which India is an adherent. Further, amendments were also effected in 1984 with the main object of discouraging and preventing the widespread piracy prevailing in video films and records. The amendment made in the Act in 1992 extends the term of copyright protection from the lifetime of the author plus 50 years to the lifetime of the author plus 60 years.

The Copyright Act was further amended in 1994 mainly to define more clearly the term
computer and computer program. The amendments mainly relate to:

(a) making adequate provision for the special nature of computer programs and the protection of computer generated works.

(b) extending to authors, resale share in respect of the original copies of their paintings, sculptures and drawings and original manuscripts of literary, and dramatic or musical works.

(c) including within the scope of copyright in artistic works the right (subject to appropriate exceptions) to display the work in public.

(d) promoting collective administration of rights through copyright societies in the interests of both the owners of rights and the general public.

(e) dealing more effectively with the infringement of copyright and related works.

(f) further improving the functioning of the Copyright Board.

(g) simplifying and improving the law relating to copyright and related rights, in the interests of the general public, in particular of the users as well as the owners of such rights.

Information Contained in Patent Documents

One of the important advantages of the patent systems is the variety of technical information it provides. The uniqueness of the scientific and technical information contained in patents are enumerated below:

- Uniform in structure
- Available in a minutely classified manner
- Provide information not only to the concept of the invention but also the practical application of the invention
- The information is not secret. It can be freely used for R&D and education without the permission of the patentee

So far approximately 30 million patent documents have been published worldwide, the annual increase is in the order of 1 million. Currently there are many, international agencies who maintain the data bases and help disseminate the information.

Establishment of Patent Information System in India

Recognizing the importance of patent information, Government of India established a Patent Information System (PIS) in Nagpur in 1980. The PIS is under the administrative control of Controller General of Patents, Designs & Trademarks. Currently the PIS is being modernised under a project of UNDP and WIPO. The PIS provides a variety of services connected with the dissemination of information contained in patents. Many other institutions in India are also involved in the dissemination of information contained in the patent documents.

Present Status of Intellectual Property System in India

Consequent to the GATT Agreement, the World Trade Organisation was established on 1 January 1995. India, being a signatory to the establishment of the Agreement and GATT Final Act containing provisions of Trade Related Intellectual Property Rights (TRIPS), has to make certain modifications to the Patents Act 1970 to honour the commitments made in the Agreement.

The provisions relating to TRIPS in the GATT Final Act cover seven categories:
trademarks, copyrights, geographical indications, industrial designs, patents, integrated circuit, and trade secrets. In India, currently, laws only relating to trademarks, copyrights, and industrial designs are in force.

Only in the area of patents are the norms and standards envisaged in the GATT Final Act significantly different from the existing Patents Act, 1970. Therefore, India would have to amend the Patents Act, 1970 particularly with respect to allowance of product protections in all the fields of science and technology, providing protection for microorganisms and a uniform term of 20 years.

The GATT Final Act provides a pipeline period of five years for implementation of all the provisions of the agreement. It also provides for an additional transition period of five years to those developing countries which do not presently provide for product patents in any field of technology, to extend product patent to those fields of technology. However, in respect of pharmaceutical and agricultural chemical products alone, the GATT Final Act requires that the member countries receive applications containing product claims in the above mentioned areas from the date of coming into force of the Act. If those products are granted patents and marketing approval in any other country, and the patent owner desires to introduce those products in the Indian market, he should be given exclusive marketing right for 5 years or till his pending patent application in India is approved or rejected, whichever is earlier.

To meet the requirement of granting Exclusive Marketing Rights for the applications for patents received in the areas of pharmaceutical and agricultural products, the Government of India had promulgated an Ordinance on 31 December 1994. The Bill containing the provisions of the Ordinance could not be passed in Parliament and the Ordinance lapsed. Currently a Select Committee of the Parliament is giving an in depth study on the provisions of the Bill.

It is to be noted that the provisions of the Bill are confined to the grant of Exclusive Marketing Rights and matters related thereto and not for completely modifying the Patents Act 1970 allowing protection for products in all the categories of inventions and for the extension of term of patents.

Government of India has also by the notification dated 3 January 1995 declared 72 countries as Convention Countries under Section of 133 of the Patents Act 1970. The countries included in the notifications are those countries which are signatory to the GATT Final Act. These countries are in addition to those which have already been notified viz. UK, Australia, Sri Lanka, State of Ire, Canada and New Zealand.

**Protection for Plant Varieties**

The GATT Final Act does not insist the member countries to grant patents for plants and animals, but makes the countries obligatory for the grant of protection for microorganisms and microbiological processes and for the enactment of an effective system for protecting new plant varieties. The system for the protection of new plant varieties may be by way of patents, by *sui generis* system or a combination thereof.

India has opted for a *sui generis* system for the grant of protection for new plant varieties. A draft of the *sui generis* system drawn up by the Ministry of Agriculture is under consideration.
Trademarks

With a view to consolidating the law relating to trademarks and providing better registration of trademarks for goods and preventing the use of fraudulent marks, the Government of India has drafted a Bill which has been introduced in the Parliament for consideration. The Bill is currently being studied by a Select Committee of the Parliament. Some of the salient features in the proposed Bill are:

(a) Providing protection for service marks in diverse areas such as banking, communication, financing, insurance, real estate, transport, energy, hotel industry, entertainment, advertising.

(b) Extension of the duration of the term of trademarks and subsequent renewals from 7 to 10 years

(c) Guidelines for the rectification of trademarks/service marks.

(d) Simplification of the procedure for registration by permitting registration in several classes of goods/services by means of a single application.

(e) Confining the registration in one part of the Register of Trademarks instead of the current practice of registration in either Part A or Part B of the Register.