CHAPTER VI

6.0 Study of Intellectual Property Rights: An overview

6.1 Ancient History of Intellectual Property: A Glimpse

Today's modern economic world the intellectual property emerges the most precious compared to other forms of property. "The origin of intellectual property has its historical roots in deliberate interventions by political authorities rather than in a spontaneously involved, continental legal tradition". The beginning of modern intellectual property law in Venice in the late fifteenth century recognized due to innovation of new technology and its development. The history of intellectual property is characterized the development of property in knowledge.

Lysander Spooner an American librarian who apparently first used the term intellectual property in print in 1855, argued that scientists and inventors should enjoy permanent property rights in their ideas. But, the practice of defining intellectual property started in the Italian City States. It is reported that the first patent was granted to Filippo Brunelleschi in the Republic of Florence in 1421. Brunelleschi was given a three years monopoly of his invention concerning special hoisting gear used a barges. An ordinance was passed known as the Venetian Law, 1474.

The history of intellectual property has been a competition between two different characterizations of the legitimate ownership of knowledge. On one hand, is the belief that individuals should benefit from their intellectual endeavors, but on the other is an understanding that those endeavors have such extensive public worth that there is a clear social interest in their relatively free dissemination.

The development of intellectual property law is based on initialization of conflicting political process. The development of intellectual property is a complex process.

Over passage of time, the concept of property has been transformed only physical things held for the owner use to the more recent conception of property that can be used or sold to another potential user. The intellectual property is to contract the scarcity that control requires in the realm of knowledge and to make it legitimate whatever the social consequences.

Our history of the institution of intellectual property aims to illuminate the persistent tension between those who seek to privately appropriate property in intellectual goods and those who seek its dissemination.

In the early history of intellectual property there was no form of legal definition of intellectual property even though there were many attempts made to control the valuable knowledge of the intellectual property. The advancement of technologies spurred the development of social and early legal innovations eventually witnessed the beginning of recognizable body of intellectual property rights in Venice in the late fifteenth century. The patents emerged initially, as grants of privilege and in some cases were clearly intended to allow the dissemination of particular technical advances that would benefit ruling groups through wealth creation.

The condemnation of plagiarism and acknowledgement of theft of ideas stretches back to the beginnings of recorded history. Much of the early recognition of ownership of ideas was more concerned with the relation of secret knowledge, however, that with the rights to reward that remain with the author once a work is being disseminated. Preliterate societies may develop a form of ownership of ideas, often in the way that magical practices are controlled.

The first practice that separated out an information element was the marking of goods. Marks could indicate reliability and the reputation of the craftsman/ maker as well as origin. Marking to establish ownership long precedes formalized laws to adjudication disputes regarding ownership. Marking by owners is likely to have started with the practice of branding animals, the earliest form of proprietary marking although such beginnings of ear cut branding and other techniques. Indeed, the cutting of animals ears to produce an individualized sign of ownership, using a specific ownership’s mark is still widespread in agrarian cultures, and in modern farming ear taps (and branding) continue to serve a similar function. For more than 6,000 years (perhaps since animals were first domesticated), humans across the globe have marked objects they made found or obtained. Marks were used to identify the owner and where relevant, the marker.

There is considerable evidence from ownership stamps on pottery and other household items excavated from prehistoric sites in Europe and Asia indicating that such practices were widespread and common. By the time of the Egyptian and Mesopotamian empires, brick makers marked their products, alongside the name of

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4 Supra 3 – P. 43.
the ruling kind and the owner of the building were the bricks were used. Stonecutters recorded either the name of the contractor or the individual stone cutter on masonry used for building during this and subsequent periods, possibly to calculate wages for their terms of workmen based on output⁵.

In the Greek city-states this recognition that particular goods might be valued more highly by virtue of the identity of the maker started to spread from material goods to the cultural (and intellectual) realm as well. Until then, scientific and technological knowledge had been protected and controlled through secrecy. In ancient civilizations, the knowledge from which political or religious power flowed was more akin to the contemporary trade secret, with severe punishments for its revelation outside the priesthood. Greek philosophical speculations encouraged the motion of knowledge as valuable in its own right however, parking the way for its eventual co-modification⁶.

6.1.1 MODERN HISTORY OF INTELLECTUAL PROPERTY RIGHTS:

Twentieth century was the period of expansion of intellectual property law. This was because of adoption and adaptation of Laws and partly of the imposition of instruments by colonial occupiers.

The first wave of corporate mergers began in the late nineteenth century, proceeding from tactics such as that Edison had pursued.

Cullis argued that Farmers had lobbied strongly for controls over private monopolies but those were aimed more at consumer's good industries such as fuel, oil, sugar, matches, linseed oil, and whiskey rather than whole industries organized under some of the cartels. Congress responded with the passage of the Interstate Commerce Act of 1887 and the 1890 Sherman Antitrust Act. The acts were not much utilized until Franklin Roosevelt's administration in the late 1930s and early 1940s, when the first funds were allocated to the justice Department for enforcement measures⁷. In 1919 the American Pharmaceutical Association lobbied for chemical product protection to be rescinded and for patents to be allowed only on chemical processes. The Association further argued that trademarks should expire at the same time as the patent expired⁸.

⁵ Supra 3 – P. 43.
⁸ Supra 3 – P. 43.
Jessica Litmas revealed a pattern of incremental change in which private sector stakeholder's drafted narrow legislation that interest their interests in the US copyright law.

She has further pointed out: "the dynamics of inter-industry negotiations tend to encourage fact-specific pollutions to inter-industry disputes. The participants' frustration with the rapid again of narrowly defined rights has inspired them to collaborate in drafting rights more broadly. No comparable tendency has emerged to inject breadth or flexibility into the provisions, limiting those rights. The legislative process has tended to exclude the public and thereby has privileged the private interest of authors and owners at the expense of the public interest in the use and reuse of copyrighted information. Over time, the scope of project matter eligible for copyright has broadened considerably. This has been particularly evident in the realm of high technology and computing.

The major computer lobbyists in the United States pressed for computer programs to be protected by accretion, that is, by treating them as atery works within traditional norms of copyrights; and they now have persuaded much of the world to adopt this approach.

The debate over semiconductor chip protection was hotly contested and clearly demonstrates how new technologies complicate the identification of what counts as intellectual property. In the early 1980s, American semiconductor chip manufacturers, faced with escalating competition from Japanese producers, sought to gain protection of the design structure (or architecture) of semiconductor chips. Existing intellectual property regimes to protect their products were held to be inadequate by the industry: their chips often failed to meet the requisite standard of novelty and inventiveness for patent protection. This situation prompted the chip manufacturers to seek protection by accretion into the broader copyright regime, but user groups, such as the American Association of Publishing (AAP), successfully resisted this effort. The AAP represented a broad group of industries that uniformly opposed copyright protection for semiconductor mask works on the basis that such protection would breach the fundamental principles underlying copyright.

9. Litman 1989, 333; emphasis added
11. Supra 3 – P. 43.
In the U.S., the semiconductor chip protection Act of 1984 provided an entirely new form of intellectual property protection based in part on copyright and embodying reciprocity. The act protected both the mask works, which are fixed in semiconductor chips, and the chips themselves. It provided for a short-term, ten-year protection against copying the chip design and provided such protection only to those foreign nationals whose countries had adopted a similar country had adopted a similar law. Although this was a domestic law, the international ramifications were made quite clear at the outset. The United States broke new ground by extending protection to mask works and by incorporating extensive transition provisions to facilitate reciprocal protection by other countries.\textsuperscript{14}

The European Community’s Directive on the Legal Protection of Database, 1996, the sui generis regime radically depends from earlier intellectual property rights systems and presents new and difficult challenges to the public domain open science, and national innovation systems.\textsuperscript{15}

The European Union (E.U.) directive arose from the interest of the European Community (EC) Commission in promoting Europe’s participation in the rapidly expanding world database market.\textsuperscript{16} Like Dr. Semiconductor chip protection Act, the EC directive built in the concept of reciprocity; if offered database protection only to those states that offered similar level of database protection. It was designed to encourage as many states as possible to sign on\textsuperscript{17}.

The directive provides high levels of protection for database. The form of the selection or arrangement is protected by copyright. The content – the data in the database – is covered by Sui Generis Protection.\textsuperscript{18}

During the 1960s and 1970s, developing countries’ governments were worried about the problems of economic development and seized upon patent protection as one of the factors behind important monopolies and the failure to develop indigenous technologies. During these periods the developing countries governments and negotiators argued for a dilution of international intellectual property law, whereas, the developed countries/ governments merely supported the status quo.

\textsuperscript{16}Vaidhyanathan 2001, P.163
\textsuperscript{17}Supra 3 – P. 149.
\textsuperscript{18}Morlin – Bennett 2004, p.114
6.2 NEW ERA OF INTELLECTUAL PROPERTY RIGHTS LAW

The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) is the results of the international trade diplomacy in the last part of the twentieth century.

In many ways TRIPs, like much of the previous history of the governance of IPRs was a response to technological changes. TRIPs was also part of a more general agreement among the crucial regional trading blocks, in the wake of the end of the cold war, that the governance of international trade should move from the relatively weak General Agreement on Tariffs and Trade (GATT) to a new and more robust governance regime. The inclusion of TRIPs alongside the General Agreement on Trade in Services (GATS) and a number of other agreement (ranging from investment to antidumping, into the final settlement of the Uruguay Round of multilateral Trade negotiations was the culmination of a general strategy on behalf of the US government and the European Union (EU) to force developing countries to adopt multilateral agreements in sectors that they had hitherto resisted (Steinberg 2002).

TRIPs presents WTO members with a single framework for dealing with the diverge aspects of intellectual property. It brings the fragmented set of treaties and sectoral agreements previously overseen by the world Intellectual Property Organization (WIPO) into a single framework. It is not a model piece of legislation that can be incorporated directly into national law but rather sets the minimum standards to be established by all WTO members. National Legislatures are required to ensure that TRIPS are protected.

Bringing, intellectual property into the governance mechanisms for international trade, TRIPs requires the application to intellectual property of the principles that are central to the WTO (like the GATT before it) : national treatment (Antide 3) and most-favoured-nation (MFN) treatment (Article 4). Introducing MFN and national treatment ensures that favouritism accorded domestic inventors or prospective owners of IPRs relative to non nationals is rendered illegal, as is the favourable treatment of IPR owners from specific trading partners. This is an important shift because in the past many national IPR system, including the US system, favoured domestic owners either through legislative or procedural means.

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19 Supra 3 – P. 162.
Mathews argued that one of the areas where it proved impossible to conclude an agreement during the Uruguay Round of negotiations was regarding the exhaustion of rights (Article 6), not least as the EU negotiating team was unprepared to accept the extension of national exhaustion of rights.\(^2^0\)

The Article 7 and 8 of the agreement Act set out the objectives and principles. The first, reflecting the interests and concerns of the developing countries negotiators,\(^2^1\) (Watal 2003, 387), declares that the protection and enforcement of IPRS "should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in the manner conducive to social and economic welfare and to a balance of rights and obligations."\(^2^2\)

The second allows members to adopt measure to protect public health and to promote the public interest in sectors of vital national importance, alongside provisions for halting abuses of IPRs by rights holders, explicitly including problems, with the transfer of technology.

Article 9 through 14 cover protections that TRIPs established for copyright, defined in accordance with common usage as expressions not ideas, procedures, methods of operation or mathematical concepts as such "(GATT 1994, Sec. AIC, 6). A significant reflection of the US domination of the negotiations is that although requiring members to comply with Articles 1-21 and the appendix of the Berne Convention (1971), the agreement explicitly excludes members from the obligations under Berne’s article 6 bis to respect authors’ /creators’ moral rights.

Article 10 makes it clear that "computer programs, whether in source or object code, shall be protected as literary works under the Berne convention. The databases, directories and other electronically stored public knowledge shall be protected by copyright and as such brought into the intellectual property regime, at least in their particular patterning (or structure of compilation).\(^2^3\)

Mathews observes that the agreement extends a right of copyright holders to authorize or prohibit the rental of their works (Article 11), although through French

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22 General Agreement on Tariffs and Trade 1994, See AIC, 5.
23 Supra 3 – P. 165-166.
insistence, an exclusion to this right was inserted that holds except when there is a clear demonstration that rentals have led to widespread copying (Mathews 2002, 52).

The term of copyright protection is held at fifty years either from the death of the author or (where no single author can be identified) fifty years from the end of the calendar year in which authorized publication took place (Article 12). Exceptions to all the provisions noted are limited by Article 13 to special cases that neither conflict with normal exploitation nor unreasonably prejudice the legitimate interests of the rights’ holder.

Mathews observes that Article 15 through 21 set out WTO members’ obligations in the realm of trademarks. The agreement presents a relatively standard definition of trademarks (Article 15.1), although it also establishes a right to refuse a mark, on a number of grounds drawn from the Paris Convention (1967); for instance, that a work would be contrary to public morality or might deceive the public.

Article 16 is concerned to confer exclusive rights and, again drawing explicitly from the Paris Convention (1967), seeks to establish the protection against similar or confusing marks, what is usually termed “passing off”, including the possibility of such protection for as yet unregistered foreign marks that are “well known” in a WTO member’s jurisdiction. Although the WIPO has drafted nonbinding advice on how a mark might be recognized as well-known many developing and developed countries seem unlikely and unwilling to extend protection to (nationality) unregistered marks (Watal 203, 261).

A number of members of the EU as well as Switzerland were instrumental in establishing an agreement on geographical indicators (GIs) as part of TRIPs (Maskus 2000, 20). These are covered in Articles 22 through 24.

Articles 25 and 26 follow on industrial designs. Articles 27 through 34 set out in TRIPs for protection of patent rights in India.

India has its own history of intellectual property rights and protection. The right to obtain a patent has been confirmed on an inventor of a new and useful invention by a Statute. In the year 1856, the first statute was passed which granted certain exclusive privileges to the inventors of new inventions for a period of 14 years. In the year 1859 the Act was re-enacted with some modifications.

24 Supra 3 – P. 167
25 Supra 17 – P. 54
26 Supra 3 – P. 167 - 168
The patents Bill, 1953 was introduced in the Lok Sabha on 7.12.1953 based on U.K. Patents Act, 1949 and the same was lapsed as the Lok Sabha was dissolved.

In September 1959 Justice Ayyangar submitted a comprehensive report on Patents Law revision. The Patents Bill 1965 was formally moved in the Lok Sabha on 5.12.1966 but could not be proceeded with for want of time and eventually lapsed with the dissolution of the Third Lok Sabha on 3.3.1967.

India is a signatory of the TRIPs agreement which came into force on 1.1.1995. The TRIPs agreement binds India to fulfill the conditions of the agreement for product patents in respect of pharmaceutical and agricultural chemicals and on fulfillment of certain conditions grant Exclusive Marketing Rights for a period of the years to an applicant until the patent is granted or rejected.

The Act does not provide for grant of produce patents in respect of medicines and drugs and agricultural chemicals and also for Exclusive Marketing Rights. The President of India issued patents (Amendments) Ordinance, 1994 to fulfill the TRIPs agreements obligations. The patent (Amendment) Bill 1995 was lapsed on the dissolution of the Tenth Lok Sabha. The patents (Amendment) Bill, 1998 was then introduced in the Rajya Sabha on 16.12.1998. The Act was amended by the patents (Amendment) Act, 1999 retroactively and some changes were made further by the Patents (amendment) Act, 2002.

The Indian penal code, 1860 provides for legal protection to trade marks under Sections 479 to 489 with the growing industrialization and economic development there was need for passing of special statute for the protection of trade marks. The Indian Merchandise Marks Act, 1889 was passed followed by the Trade Marks Act, 1940. Thereafter, the parliament of India passed the Trade and Merchandise Marks Act, 1958 and the Trade Marks Act, 1999.

In India, the English Copyright Act, 1842 was held to be applicable even though it was not expressly declared to be applicable to India. Lal has commented on Copyright and Neighbouring Rights (1997) in page 6 that the copyright Act, 1911 of England was extended to India of His Majesty’s dominions. The Government of India, after the receipt of the views of local governments concurred with them and by virtue of powers conferred by Section 27 of the Copyright Act, 1911 prepared a draft Bill embodying modifications in and addition to the copyright Act, 1911. This Bill

was passed into law which came to be known as Indian Copyright Act, 1914. This Act introduced criminal sanctions for copyright infringement. It also modified the scope of the term copyright. Under Section 4 of that Act the ‘Sole right’ of the author to ‘produce, reproduce, perform or publish a translation of the work shall subsist only for a period of ten years from the date of publication of the work’, the copyright Act, 1957 and continued with minor modification till January 1924, 1958. The Act of 1958 creates a copyright office and a copyright Board to facilitate registration of copyright and to settle certain kinds of disputes arising under the Act.

A brief history of Copyright Development in India:

Modern copyright law developed in India gradually, in what we may identify roughly as three distinct phases spanning more than 150 years. This article attempts to briefly navigate through the major changes brought in by each successive wave of copyright amendment which have cumulatively resulted in the way Indian Copyright law stands today.

Phase I : East India Company Statute.
Copyright law entered India in 1847 through an enactment during the East India Company’s regime. According to the 1847 enactment, the term of copyright exceed a period of forty-two years. The government could grant a compulsory licence to publish a book if the owner of copyright, upon the death of the author, refused to allow its publication. The act of infringement comprised in a person’s unauthorized printing of a copyright work for (or as a part of attempt of) “sale hire, or exportation”, or “for selling, publishing or exposing to sale or hire”. Suit or action for infringement was to be instituted in the “highest local court exercising original civil jurisdiction”.

Phase II : Copyright Act 1914
In 1914, the then Indian legislature enacted a new Copyright Act which merely extended most portions of the United Kingdom Copyright Act of 1911 to India. It did, however, make a few minor modifications. Baxi identifies two of the major changes: First, it introduced criminal sanctions for copyright infringement (sections 7 to 12). Second, it modified the scope of the term of copyright; under section 4 the “sole right” of the author to “produce, reproduce, perform or publish a translation of the work shall subsist only for a period of ten years from the date of the first publication of the work”. The author, however, retained her “sole rights” if within the period of
ten years she published or authorized publication of her work a translation in any language in respect of that language.

Phase III – Post Independence
Independent India accorded high priority to formulation of her own law on copyright. The Indian Copyright Act 1957 (“the 1957 Act”) repealed the Indian Copyright Act 1914 (“the 1914 Act”) which had virtually incorporated the whole of the Imperial Copyright Act 1911. The revision of the 1914 Act occurred within a mere seven years of Independence.

A number of factors, according to Baxi, impelled this early revision. First, it was clear that continued existence of the 1911 Act through the 1914 Act was unbecoming to “the changed constitutional status of India”. Second, the 1914 Act did not accord with the 1948 Brussels Act of the Berne convention and the 1952 Universal Copyright Convention – chiefly in the much longer terms that the Berne Convention mandated. Third, new “and advanced method of communications” rendered modernization of the law necessary. Fourth, the need for an “independent self-contained law” was also felt in the light of the experience of the “working” of the 1911 Act, and more important, of “the growing public consciousness of the rights and obligations of the authors”.

Subsequently, after a gap of a decade, sweeping changes were introduced through an amendment in 1994. These include:

1) The increase of the term of copyright from fifty years post mortem to sixty years;
2) The extension of copyright to new types of works including computer programmes and performances;
3) The redefinition of “communication to the public” so that a work is communicated “regardless of whether any member of the public actually sees, hears or otherwise enjoys the work”.
4) An overhaul of the vocabulary employed in the Act, for instance- substituting ‘broadcast’ for ‘radio diffusion’, ‘work of architecture in the place of ‘architectural work’, ‘sound recording’ in the place of ‘record’.
5) Clarification of the ownership of copyrights over public speeches and works by public undertakings.
In 1999, certain sections relating to international broadcasting rights were inserted into the Act, along with stipulations enhancing the fair dealing rights of users of computer programmes – these permitted the “doing of any act necessary” to obtain information essential for the interoperability of computer programmes, and also permitting the making of personal copies and adaptation of computer programmes if they were legally obtained.  

India is a member of the two international conventions on copyright, namely, Berne Convention for the protection of Literary and Artistic Works (Brussel Text 1948) and the Universal Copyright Convention (1952). Both these conventions were revised at Paris in 1971. Those revised conventions provide for certain additional facilities to enable the developing countries to grant compulsory licenses for translation and reproduction of works of foreign origin required for the purpose of teaching, scholarship or research or for purposes of systematic instructional activities, if these rights could not be obtained on freely negotiated terms and conditions. The Act was amended in the year 1983 and thereafter in 1992 and 1994.

India ratified the TRIPs agreement which imposes obligations on India to provide mechanism for protection of computer programmes, sale or give on commercial rental or sale or for commercial rental any copy of computer programme and broadcasting organization and performers. In order to meet the aforesaid requirements of TRIPs agreement, the Act was further amended in 1999.

The first Indian legislation on designs was passed in 1872, the patents and Designs Protection Act, 1872. It supplemented the 1859 Act. The Act provided for granting to inventory of new manufacture, process and the exclusive privileges of making, selling and using the inventions in India. The Act 1872 was passed in British India for giving privileges to the inventors of new patterns and designs. The Act included in the term “new manufacture” “any new and original pattern or design, or the application of such pattern on design to any substance or article of manufacture”. The invention and Designs act was passed in 1888. This Act was aimed at in consolidating the law relating to the protection of inventions and designs. The Indian Patents and Designs act 1911 was passed based on the British Patents and Designs Act 1907. The Patents Act 1970 repealed the provisions with respect to the patents law

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from the patents and Designs Act 1911. The Designs Act 2000 was passed to encourage competition in the economy and industrial progress.

6.2.1 KEY FORMS OF INTELLECTUAL PROPERTY

What is worth copying is prima facie worth protecting” (Paterson J.) 30.

The key forms of intellectual property are patents, copyrights, trademarks, and trade secrets. Associated rights permit intellectual property to be treated as an asset that can be bought, sold, licensed, or even given away at no cost. The laws of Intellectual Property enable owners, inventors, and creators to protect their property from unauthorized uses.

6.3 PATENTS -

A patent conveys to its owner the right to prevent others from making, using, selling offering for sale, or importing the patented invention. Patents are national in nature, having effect only within the territory of the issuing country.

One may say that a patent is a contract between society as a whole and an individual inventor. Under the terms of this social contract, the inventor is giving the exclusive sight to prevent others from making, using, and selling a patented invention for a fixed period of time – in most countries, for up to 20 years – in return for the inventors disclosing the details of the invention to the public.

Patents, however, are not easily obtained. Patent rights are granted not for vague ideas but for carefully tailored claims. To avoid protecting technology already available, or within easy reach of ordinary artisans, those claims are examined by experts. Because patent claims vary as much in value as the technologies they protect, applicants must negotiate claims of appropriate defensible scope 31.

In Imperial chemical Industries Ltd. v. Controller General of Patents, Designs and Trade marks and another AIR 1978 Cal 77 32, the Hon’ble Calcutta High Court held, the Salient Features of a patent : (1) The patent must be in respect of an

32 .Imperial Chemical Industries Ltd. V. Controller General of Patents, Designs and Trade marks and another AIR 1978.
invention and not a discovery, (2) In respect of one single invention there must be one single patent (3) A patent may be in respect of a substance or in respect of a process (4) But it is not possible to bifurcate a patent and state that one relates to the substance and the other to the process (5) In order to have a complete patent the specifications and the claims must be clearly and distinctly mentioned. (6) If the claims and claims alone which constitute the patent.

In order to qualify for a patent, an invention must be novel, non-obvious, and useful.

It was held in AIR 1978 Del. 1\textsuperscript{33}, that the invention for which patent is claimed may be a product or an article or a process. In the case of an article, the patent is in the end product or the article. In the case of a process, the patent does not lie in the product, but only in the process by which it is carried in Section 5 of the Patents Act 1970.

The patent law of the United States provides for three kinds of patents: Plant patents, design patents, and utility patents. Plants patents cover asexually reproduced plants and are primarily of interest only to plant breeders. Design patents cover the ornamental design of an article to the extent that design or appearance is dictated by aesthetic, rather than functional, considerations. The majority of patents are of the third kind—utility patents—and it is with these that we shall be mostly, but not exclusively concerned.

Patent claims are of two kinds: independent claims and dependent claim. Independent claims are those that do not refer to another, preceding claim. Dependent claims incorporate by reference each and every limitation of each of the claims from which they depend.

6.3.1 Requirements for patentability -

The patent and Trademark Office (PTO) grants on patent when an inventor can show five things: an invention this one of the general categories of patentable subject matter: it has not been preceded prior art: it is useful; it represents a

\textsuperscript{33} Raj Prakash v. Mangat Ram Choudhary and others AIR 1978, Del. 1
nontrivial extension of what was known, and it is disclosed and described by the applicant in such a way as to enable other to make and use the invention.

Patent lawyers call the no-identical-prior-invention requirement "novelty". In practice, novelty in established by applying a set of technical rules to determine if a patent applicant was really the first to make the invention he is claiming. The novelty test determines whether the claimed invention is un patentable because it was made before sold more than a year before a patent application was filed or otherwise disqualified by prior use or knowledge.

Utility, the second requirement, has devolved over the years into a rather minimal obstacle in obtaining a patent.

Today, a patent will not be withheld even though the invention works only in an experimental setting and has no proven use in the field or factory. Only if an invention has absolutely no "practical utility" will a patent be denied. The only exception is inventions pertaining to pharmaceuticals, where some cases question whether laboratory promise is enough to establish utility in treating human patients.

The next requirements, non-triviality, are known to patent lawyers as "non-obviousness". This is the most important requirement; it has been called, "the ultimate condition of patentability". The reason is that non-obviousness attempts to measures an even move abstract quality than novelty or utility: the technical accomplishment reflected in an invention. This requirement asks whether an invention is a big enough technical advance over the prior art. Even if an invention is new and useful, it will still not merit a patent if it represents merely a trivial step forward in the art.

Finally, it requires a patentee to give a sufficiently good description of her invention that, "one of ordinary skill in the art" would be able to make and use the invention.\(^{34}\)

Under the Indian patents Act, an invention to be patentable must be a new and useful method or manner of manufacture.

6.4 COPYRIGHT:

A copyright is an exclusionary right. It conveys to its owner the right to prevent others from copying, selling, performing, displaying, or making derivative versions of a work of authorship. The duration of copyright depends on several factors.

It may be described as, the copyright is a legal term describing the economic rights given to creators of artistic works, literary, including the right to reproduce the work, to make copies, and to perform or display the work publicly. Copyrights offer essentially the only protection for music, films, novels, poems, architecture, and other works of cultural value. As artists and creators have developed new forms of expression, these categories have expanded to include them. Computer programs and sound recordings are new protected, too.

The origin of Copyright law in Anglo-American jurisprudence parallels the origin of patent law in certain respects.

Both laws grew out of original grants of monopoly to merchant guilds. The first “copyright” was granted in England by royal decree in 1556, not long after the introduction of the printing press in England. The printing Revolution in Early Modern Europe (Cambridge 1993) (discussing the ties between printing technology and the creation of copyright)36.

6.4.1 Copyright as defined in AIR 1934 Lah 777 at P. 779:

Copyright means the sole right to produce or reproduce whole the, work or any substantial part thereof in any material form whatsoever, and the copyright in a work shall be deemed to be infringed by any person who without the consent of the owner of copyright does anything, the sole right to do which is conferred, on the owner of the copyright.

The term copyright as defined in Blacks Law Dictionary is: ‘Copyright’ is the property right in an original work of authorship (such as a literary, musical, artistic, photographic, or film work) fixed in any tangible medium of expression, giving the holder the exclusive right to reproduce, adapt, distribute perform and display such works. This right is also extended to music etc.

35 .Supra 27 – P. 4.
36 .Supra 1 – P. 345.
Section 14 of the Copyright Act, 1957, defines the term ‘copyright’ to mean the exclusive right to do or authorize other(s) to do certain acts in relation to – literary, dramatic or musical works, artistic work, cinematograph film and sound recording.

In the case of computer programme the ‘copyright’ means to do any of the acts mentioned in clause (a) of Section 11 of the Act, 1957; to sell or give on hire or offer for sale or hire any copy of the computer programme, regardless of whether such copy has been sold or given on hire on earlier occasions.

Although the copyright and patent laws flow from the same constitutional basis and share the same general approach – statutorily created monopolies to faster progress – they feature different elements and rights, reflecting the very different fields of creativity that they seek to encourage.

6.4.2 A protectable copyright has the following elements:

Copyrightable Subject Matter: The subject matter protectable by copyright spans the broad range of literary and artistic expression – including books, song, dance, computer programmes, movies, sculpture, painting. Ideas themselves are not copyrightable, but the author’s particular expression of an idea is protectable.

Threshold for protection: A work must exhibit a modicum of originality and be fixed in a “tangible medium of expression”.

Formalities. Notice of copyright, in different forms, is required on all works created prior to 1989. Registration of a copyright is not strictly required for its validity, but it is required of U.S. authors prior to instituting an infringement suit. Deposit of copies of the work is required to obtain registration of copyright.

Authorship and Ownership. The work must have been created by the party bringing suit or rights in the work must have been transferred by the author to the party bringing suit. In the case of works made “for hire”, the employer and not the original creator is consider the author and the owner of the work.
Duration of copyright. A copyright lasts for the life of the author plus 70 years, or 95 years from the first publication in the case of entity authors (or 120 years from the year of creation, whichever occurs first).

Trademarks: Trademarks indicate commercial source. The distinctive signs that identify certain goods or services produced or provided by a specific person or enterprise. Trademarks are especially important when consumers and producers are far away from one another.

Throughout the world, in most of the countries the registration of trademark is a must and be enforceable. The registration of trademarks must be renewed.

In India a registrable trademark must contain at least one of the following essential particulars: (i) the name of company, individual or firm represented in a special or particular manner; the signature of the applicant for registration or some predecessor in his business; (iii) the invented word or invented words, (iv) a word or words having no direct reference to the character or quality of the goods and not being according to its ordinary signification, a geographical name or sub-name, (v) any other distinctive mark, but a name signature of word or words other than such as to fall within the description in the above personal shall meet except by order of the Board or trade or the court, be deemed a distinctive mark. When none of these particulars appear there is no trademark. 37.

In India, Trademark cannot be registered when it is already in use in the country 38.

6.5 TRADE SECRETS AND KNOW-HOW -

A trade secret is information that is not generally available and that confers a competitive advantage on its possessor. Some of its examples are chemical formula, a manufacturing process, a machine design, or a business method, the trade secret need to be absolute and the information in question is not widely known.

Thomas G. Field Jr. has described trade secrets: Any information that may be used in the operation of a business and that is sufficiently valuable to afford an actual or potential economic advantage is considered a trade secret. Examples of trade

37. Hafizulla Hamidulla v Papa and another AIR 1933 Nag 344. at P. 345
secrets can be formulas for products, such as the formula for Coca-Cola; compilations of information that provide a business with a competitive advantage, such as a database listing customers; and even advertising strategies and distribution processes. Unlike patents, trade secrets are protected for a theoretically unlimited period of time, and without any procedural formalities. Trade secrets, however, tend to escape, and protection is free.

Know-how is similar to trade secrets. Essentially, it comprises a body of information, the components of which may be individually known, but the compilation of which has competitive value. Supplier lists, parts specifications, and quality assurance and testing procedures generally fall into this category.

The life of trade secrets extends as long as the secret can be maintained. The patents differ from trade secrets: An infringer who has independently rediscovered the patented invention is an infringer nonetheless, but not so with trade secrets.

6.6 TRADEMARKS:

A trademark is a word, symbol, or combination thereof that is used to identify the source, albeit a possibly anonymous source, of goods. Examples of trademarks include Sony, Toshiba, Nike, Rolls Royce. A service mark performs the function as a trademark with respect to the provision of services. A trademark or service mark has a potentially perpetual life.

Thomas G. Field Jr. States: Trademarks are commercial source indicators, distinctive signs that identify certain goods or services produced or provided by a specific person or enterprise. Trademarks are especially important when consumers and producers are far away from one another. Children ask for Barbie dolls, Lego building locks, and Hot Wheels toy cars. Some adults dream of Ferrari automobiles, but more can afford to buy Toyota or Honda brands. These consumers need trademarks to seek or avoid the goods and services of particular firms.

Throughout most of the world trademarks must be registered to be enforceable, and registrations must be renewed. Yet, while copyrights and patents eventually expire, names of companies that treat customers well become increasingly

valuable over time. If trademark rights were to expire, consumers would be collectively harmed as much as owners. Imagine the confusion if unaffiliated firms could sell products under another company’s trademark. And consider, for example, the dubious quality of counterfeit and fake drugs and their potential for causing great harm, if not death, to unsuspecting users.

Trademark protection is also widespread in sports, estimated to account for 2.5 per cent of world trade.40

Trademarks have been in existence for almost as long as trade itself. Once human economics progressed to the point where a merchant class specialized in making goods for others, the people who made and sold clothing or pottery began to “mark” their wares with a wood or symbol to identify the maker. Such marks – often no more than the name of the maker – have been discovered on goods from China, India, Persia, Egypt, Rome, Greece, and elsewhere and date back as much as 4000 years.41

6.7 BIOTECHNOLOGY

Genetic engineering and associated technologies have brought about the most revolutionary advances in the history of biological and medical science. Biotechnology industry is created by the two scientific knowledge of genetic and chemical. This industry has vast potential and economic value. The biologists and biochemists who invented these new technologies in their academic laboratories came to the forefront of entrepreneurial ventures to use this knowledge to develop drafts and devices for the diagnosis, prevention, and treatment of disease. The phenomenal growth of the industry is due to direct contribution of investors, academic institutions, politicians, we witnessed revolutionary developments in medicine and biology in recent decades are based on genetic engineering and its associated biotechnologies.

6.8 OTHER FORMS OF INTELLECTUAL PROPERTY

Within the basic forms of intellectual property, many variations and special kinds of protection are possible. Geographical indications, which identify a good as
originating in a locality where a given quality, reputation or other characteristic of the good is essentially attributable to its geographic origin.

Geographical indications are clearly defined in Article 221 of TRIPs as ‘indications which identify a good as originating in the territory of a member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographic origin’.

Unlike trademarks, geographical indications are distinctive signs identifying products of several undertaking is located in a specified geographical area. No one enterprise or even group of enterprises owns this distinctive sign and therefore, unlike trademarks, there is no right conferred on any entity to grant or refuse authorization on use. Instead, all undertakings located in the specified geographical area are allowed to use the geographical indication on the specified products produced by them.  

6.9  INDUSTRIAL DESIGNS AND LAYOUT DESIGNS OF INTEGRATED CIRCUITS

6.9.1  INDUSTRIAL DESIGN :

Industrial designs can be both aesthetic and functional Industrial design laws generally protect designs that are ornamental or aesthetic and are applied on industrial products. Such designing are usually nonfunctional and merely enhance the aesthetic appeal of industrial product although purely artistic designs that cannot be applied to any utilitarian objects are excluded. Similarly, purely functional designs are also generally excluded i.e., designing that are dictated solely by the function which the articles to which these are applied are to perform.

Industrial designs can also be protected under copyright law, thus obtaining simultaneous and concurrent protection.

6.9.2  LAYOUT-DESIGNS OF INTEGRATED CIRCUITS

Unlike industrial designs, layout-designing of integrated circuits are highly functional and help to reduce the dimensions or increase the functions of integrated circuits incorporated in semiconductor chips. These chips are incorporated into a variety of products including computers, washing machines. Such designs are usually the result of huge capital investments and require a high degree of skill. Layout-

designing are usually protected under sui generis laws that do not fit either the industrial property or copyright

**DOMAIN NAMES:**

6.10 **DOMAIN NAMES:**

The need for new forms of IP sometimes arises and the assignment of Internet address has posed particularly difficult issues. Like telephone numbers, Internet addresses have the basic form “123.456.123”. If that were the end of it, there would be no problem.

Because useful directories are so far unavailable, however, most addresses also have an alphanumeric form such as “BBC.UK”, BBC.Com.”, on “Yale.edu”. The unique part of each (“BBC” or “Yale”) is registered as a “domain name” Just as postal addresses indicate unique physical locations, domain names indicate unique locations in “cyberspace”.

Various entities control the registration, renewal, and transfer domain names depending on the final portion of any alphanumeric address. Addresses ending with country codes “Fr” or “UK” are subject to the laws of France and the United Kingdom, respectively. Those ending with “edu” are controlled, under argument with the U.S. Department of commerce by edu cause, a non-profit U.S. organization. Those ending with “com” and a few other terms have a global reach. They are governed by rules established by the Internet Corporation for Assigned Names and Number (ICANN) also under agreement with the U.S. Department of Commerce.

Because domain names often comprise celebrities or companies’ names, trademarks and the like, few people regard them as merely addresses. In the early days of the Internet, individuals quick to understand this registered many. “com.” Domain names for sale at hefty premiums. For example, a tourist agency registered “Barcelona.com” as its domain name, a move denounced by the Spanish city of Barcelona, which went on to establish its superior claim to that domain name. Holders of domain names intending to suggest unauthorized affiliations were condemned as “cyber squatters”. Procedures were soon established to prevent misleading

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43. Supra I, p. 262 & 276.
44. Supra 30, p. 276 & 282.
registrations or have ownership transferred to others with superior claims of legitimacy

Concluding Comments:

This Chapter provides an overview of history and gradual development of Intellectual Property rights. The origin of intellectual property has its history roots in deliberate interventions by political authorities rather than in a spontaneously involved continental legal tradition. The history of intellectual property is characterized the development of property in knowledge. The development of intellectual property is a complex process. TRIPs is the result of the international trade diplomacy in the last part of the twentieth century. The Uruguay Round of multilateral Trade negotiations was the culminations of a general strategy on behalf of the US government and the European Union (EU) to force developing countries to adopt multilateral agreements in sectors that they had hitherto resisted. The WIPO sets the minimum standards to be established by all WTO members. National legislation is required to ensure that TRIPs are protected.

India has its own history of intellectual property rights. The right to obtain a patent has been confirmed on an inventor of a new and useful invention by a statute. India is a signatory of the TRIPs agreement which came into force on 01-01-1965. The TRIPs agreement binds India to fulfill the conditions of the agreement for product patents in respect of pharmaceutical and agricultural chemicals.

In India, the English Copyright Act, 1842 was held to be applicable. The Government of India with respect to Section 27 of the Copyright Act, 1911 prepared a draft Bill embodying modifications in and addition to the Copyright Act, 1911, known as Indian Copyright Act, 1914. This Act introduces criminal sanctions for copyright infringement. Thereafter Copyright Act of 1957 and 1958 was passed. Prof. Upendra Baxi has contributed a lot in the history of development of copyright in India.

India is a member of the two international conventions on copyright, namely, Berne Convention(1948) and the Universal Copyright Convention(1952).

45.Supra 2, P. 8 & 9.
India ratified the TRIPs agreement which imposes obligations on India to provide mechanism for protection of computer programmes, sale or give on commercial rental any copy of computer programme and broadcasting organization and performers. The first Indian legislation on designs was passed in 1872, the Patents and Designs Protection Act, 1872. The Indian Patents and Designs Act, 1911 was passed based on the British Patents and Designs Act, 1907. The Designs Act, 2000 was passed to encourage competition in the economy and industrial progress. India has passed Trademarks Act 1999 and Trade Secrets and know-how.