Intellectual Property Rights (IPR) enable the protection and promotion of creativity. With its increasing importance in recent times, it has enabled people to gain recognition as well as financial benefits by virtue of their creations.

Protecting your intellectual property is of insurmountable importance. It not only gives you financial benefits but it also gives you the exclusive right to use your invention or creation.

IPR thus acts as an incentive for innovation. Just like the benefits you reap from tangible property, intellectual property enables you to reap the same benefits from your intangible property.

The subject-matter of intellectual property rights may be inventions, brand names, artistic and literary works or designs, i.e. patents, trademarks, copyrights or industrial designs.
Intellectual Property is divided into two categories:
(a) Industrial Property - patents, trademarks, industrial designs and geographical indications.
(b) Copyright - literary work, artistic work and architectural design. Copyright also includes the rights of performers and broadcasters.

Intellectual property was first recognized in the Paris Convention for Protection of Industrial Property (1883) and Berne Convention for Protection of Literary and Artistic Works.

Both these Treaties were administered by the World Intellectual Property Organization.

DID YOU KNOW?

1. Each category of intellectual property has separate requirements and a separate process for legal recognition. To know more on any category of IPR, read on!

2. Inventions are an integral part of the economy. They provide a benchmark for determining the technological progress of an economy.

3. Endowing the inventor with the exclusive right to use the invention acts as an incentive for people to invent.

With more inventions, the economy progresses at a faster pace. Such is the importance of inventions in today’s world.
WHAT IS A PATENT?
A patent is an exclusive right conferred by the Government on an inventor, to use his invention. A patent is usually granted for a limited period of time.

A patent protects the invention from being used by any unauthorized person. This means that unless a patent owner specifically authorizes a person, nobody can produce, sell, distribute, import or even use the patented invention.

WHAT IS THE NEED FOR A PATENT?
Getting a Patent is admittedly expensive. Then why go through the trouble of getting one?

There is a two-pronged answer to this. First, a patent on the invention endows the inventor with the exclusive right to use the invention. After all the hard work put into inventing, the inventor would not want just anybody to replicate the invention right? Second, getting a patent means that the inventor can license his invention to other people. Consequently the inventor gets a royalty for licensing your invention.

Simply put, by getting a patent, the inventor not only protect the invention, but also makes money on it.

WHAT ARE THE REQUIREMENTS FOR AN INVENTION TO BE PATENTABLE?
In order to be patentable, the invention has to satisfy three criteria:

1. Novel (Non-obvious) - The invention cannot be known or be obvious in the public forum, throughout the world.

2. Inventive step - The invention has to have an improvement over and above any existing product or process that is already available. Just an improvement is not sufficient. The improvement should not be obvious to any person skilled in the same field as the invention pertains to.

3. Industrial application - The invention must be capable of being used materially. It must have practical application.

If the invention meets all three requirements then it can be patented.

QUICK LINKS
For comprehensive information on what cannot be patented
www.intepat.com/blog/patent/patent-law-in-india/

HOW DOES AN INVENTOR GET A PATENT?
Getting a patent for an invention can take 5-7 years. As per the Patent (Amendment) Rules, 2016, only e-filing of patents is allowed from 16.05.2016. Registering a patent requires the inventor to follow a series of comprehensive steps listed on the official website.

QUICK LINKS
To understand how and where to file a patent
www.intepat.com/blog/patent/filing-patent-application-in-india/
For detailed information on the steps involved in e-filing
www.intepat.com/blog/patent/e-filing-patent-application-in-india/

WHAT IS THE TERM OF VALIDITY OF A PATENT?
Once registered, a patent is valid for 20 years from the date of filing the application for registration of the patent.

DID YOU KNOW?
1. The first Legislation in India relating to Patents was the Act VI of 1856. It was enacted with the objective of inducing inventors to disclose the secret of their inventions and to encourage new inventions.

2. The Patent (Amendment) Rules, 2016 has introduced a new category of Applicant- startups. The fee for a Startup is the same as the fees for a natural person. Refer to this for a detailed description of the Patent fee for different categories of Applicants.
TYPES OF PATENT APPLICATIONS

A Patent Application can be of the following types:

Before filing a patent application you must first decide which application you want to file. There are 5 types of patent applications. Each serves a different purpose. The below explanation will help you choose the Application that suits your requirements.

1. CONVENTION APPLICATION

Filing a convention application allows the applicant to claim a priority date if the same or substantially similar application has been filed in one or more of the convention countries. The time limit for claiming priority date is 12 months from the date that the first Application was filed in a convention country.

2. PCT-INTERNATIONAL APPLICATION

If you want to get your patent registered in more than one country, then the Patent-Cooperation Treaty is your best bet. The PCT is recognised by as many as 150 countries. The search is conducted by an International Search Authority. The patentability of your invention becomes apparent even before you have to incur the national costs of patent filing. It is important to note that a PCT-International Application does not grant a patent. For a patent to be granted you must file a national phase Application.

3. PCT-NATIONAL PHASE APPLICATION

The national phase follows the preceding International Application. The applicant must file national applications in the countries that he chooses to enter within 30-31 months from the date of international filing or the priority date, whichever is earlier.

4. PATENT OF ADDITION

Suppose you have filed for a patent or already obtained one and you come across a slight improvement to the innovation. You cannot file a new patent application as there is no inventive step involved. This is when you have to file a Patent of Addition in order to protect the improvement. The Patent of Addition does not attract any extra renewal fees and it expires when the main patent expires.

5. DIVISIONAL APPLICATION

Suppose an application claims more than one invention, then the applicant may be required to divide the application based on the number of inventions. The priority date of all the applications will be the same as the date of the parent application.

6. ORDINARY APPLICATION

Apart from all the types of applications listed above there is also an ordinary application. An ordinary Application does not claim any priority and is not filed on the basis of any convention.
Whether online or physical retails, the number of people who have goods or services to offer to the public is ever increasing. In this situation it becomes very important for organizations to offer quality goods and services.

Now, given the fact that an organization offers high quality goods or services, it would definitely not want someone else to capitalize on it reputation.

That is precisely why organizations have to protect their goods and services with a brand name or a trademark.
WHAT IS A TRADEMARK?
A Trademark is defined in the Trademark Act as a mark that is capable of distinguishing the goods and services of one person from that of another. Simply put, any mark that tells the public that the goods or services belong to a particular company, is a trademark.

A trademark can be a device, heading, label, ticket, name, signature, word, letter, numerical, shape of goods, packaging or combination of colors or any such combination.

This means that a trademark does not have to be a word, it can be a logo, device mark or any of the things listed above.

WHAT IS THE NEED FOR A TRADEMARK?
A trademark is needed to define ownership for products or services. People need to associate goods with a specific company. A trademark makes that possible. It is like an identity for a company that bridges the gap between the public and the company. The importance of a trademark for business in the current economy cannot be over-emphasized.

IS IT NECESSARY TO REGISTER A TRADEMARK?
Suppose ‘Company-A’ has a flourishing business that offers high quality goods. ‘Company-A’ decides not to register the trademark and continue with its business. A few years later, ‘Company-B’ produces the same goods as ‘Company-A’, but of a lower quality, and decides to capitalize on Company-A’s reputation and begins to use its (unregistered) trademark. Company-A’s business takes a hit because the people begin to think that the inferior quality goods belong to Company-A’s. What do Company-A do?

Company-A files a case against Company-B for passing off. Cases for passing off are usually harder to prove. However, even if a company does win the case, no damages are awarded. The infringer will only be restrained from using the mark any longer.

On the flip side, had Company-A registered its mark, it could have sued the infringer for trademark infringement. Cases of trademark infringement are relatively easy to prove. They also have the added benefit of entitlement to damages. It is always better to protect a trademark by registering it, rather than take the risk of exposing it to potential infringers.

WHAT IS THE PROCEDURE TO REGISTER A TRADEMARK?
Before filing for getting a trademark registered, a trademark search needs to be conducted. This search is to determine whether the mark to be registered is available or not. Public search of trademarks must be done on the website www.ipindia.nic.in

If the trademark is available, an application needs to be filed before the jurisdictional trademark registry. A trademark examiner will examine the trademark and post an Examination Report. If objections are raised in the Examination report, the applicant needs to respond to the objections. If the Registrar is satisfied with the response he will publish the Trademark in the Journal. After publication, any third-party can object to the registration of the trademark, if they find that the trademark might infringe their mark. After resolution of the third-party opposition the trademark will be registered.

E-filing of a Trademark eases the registration process to a certain extent.

QUICK LINKS
For detailed information on e-filing of a Trademark
www.intepat.com/blog/trademark/online-trademark-registration-india/

This procedure will take more than a year on the whole. The IPR Policy of 2016 has proposed to reduce the registration time for a trademark to 1 month.

The procedure to register a trademark can be a cause for confusion. It is always better to engage professional help through the process of registration. Engaging professional help will increase the chances of getting a trademark registered.

WHAT IS THE TERM OF VALIDITY OF A TRADEMARK?
Once registered, a trademark is valid for 10 years, after which it needs to be renewed every 10 years.
The key to ensuring the registration of your Trademark is to choose an invented or arbitrary word, as opposed to a generic or common word. Invented and arbitrary words rate high on the scale of registrability.

DID YOU KNOW?

1. Registration of a Trademark is a long process that takes anywhere between 18-24 months. If the National IPR Policy, 2016 comes into effect the whole registration period will be reduced to just 1 month!

2. Trademarks are territorial in nature. This means that statutory protection is given only in the countries where the Trademark is registered. So, if you want to prevent a cross-border infringement of your Trademark, it is important that you register it in every country where you want to use it.

FURTHER READING

- Trademark Search Services
  www.intepat.com/ip-services/trademark-india/trademark-search-india/
- Trademark Registration Services
  www.intepat.com/ip-services/trademark-india/trademark-registration-india/
- Process: Trademark Registration in India
  www.intepat.com/blog/trademark/procedure-trademark-registration-india/
- Trademark Registration Fees in India
  www.intepat.com/blog/trademark/trademark-registration-cost-india/
- How to Check Trademark Application Status in India?
  www.intepat.com/blog/trademark/trademark-application-status-india/
- What cannot be registered as a Trademark?
  www.intepat.com/blog/trademark/what-cannot-registered-trademark/
- Difference between TM and ® symbols
  www.intepat.com/blog/trademark/difference-r-tm-symbol/
- Trade name Vs Trademark
  www.intepat.com/blog/trademark/trade-name-vs-trademark/
- Filing An International Trademark Under The Madrid Protocol?
  www.intepat.com/blog/trademark/filing-madrid-trademark-application-india/
WHAT IS A COPYRIGHT?
A copyright is that part of intellectual property that protects creative works. It is a bundle of rights given to the creators of literary, artistic, dramatic and musical works and the producers of cinematograph films and sound recordings.

A copyright is referred to as a bundle of rights because it endows on the creator a number of rights. These rights are exclusive only to the creator of the work.

WHAT IS THE NEED FOR A COPYRIGHT?
A copyright protects an artist’s creative manifestation. Getting a copyright not only protects the artist’s work from being used by a third party, it also gives him/her the exclusive rights to use, perform, distribute, translate and adapt that work. Nobody can use the artist’s work unless it is specifically licensed to them. The essence of copyright law is to ensure that the artist enjoys the credit of his/her hard work.

IS IT NECESSARY TO REGISTER A COPYRIGHT?
A copyright comes into existence as soon as an artist creates his/her work. The artist is the owner of the work that is created and hence the copyright rests with him/her.

There is no formal requirement of registration to get a Copyright. However, official recognition makes it easy for the artist to prove that he/she are the creator of a work.

If someone begins to use the work without permission and a case is filed against that person, a registration certificate is prima facie evidence that the work belongs to the artist. Therefore it is always better to register at copyright.

WHAT IS THE PROCEDURE TO REGISTER A COPYRIGHT?
A copyright can be registered by manual filing or e-filing. The artist needs to submit an Application form along with the prescribed fees.

The Statement of Particulars and the Statement of Further Particulars must be duly filled in and sent in triplicate.

After filing for a copyright the Applicant has to wait for a mandatory period of one month for any objections that might be filed before the Copyright office with regard to the ownership of the work.

If objections are filed the Applicant has to wait for a further period of one month for the Copyright office to determine the registrability of the work, after giving a hearing to both the parties involved.

Subsequently the Application is set for examination. If any discrepancy is found a further period of one month is given to the Applicant to rectify the discrepancy. Then, your copyright will be registered.
WHAT IS THE TERM OF VALIDITY OF A COPYRIGHT?
Generally a copyright is valid for a period of 60 years. Insofar as original literary, dramatic, musical and artistic works, the term of 60 years is calculated from the year following the death of the author.

In the case of cinematograph films, sound recordings, photographs, posthumous publications, anonymous & pseudonymous publications, works of government and works of international organizations, the 60-year period is counted from the date of publication.

QUICK LINKS
Handbook of Copyright Law
www.copyright.gov.in/documents/handbook.html

FURTHER READING
• Copyright Registration Services
  www.intepat.com/ip-services/copyright-registration-india/
• Demystifying Copyrights For The Common Man
  www.intepat.com/blog/copyright/demystifying-copyright-india/
• Emerging Trends in Digital Copyright Law India

DID YOU KNOW?
1. The concept that Copyright does not require any formal registration in order to exist was introduced by the Berne Convention for Protection of Literary and Artistic Works (1886)
2. It is important to remember that you cannot copyright an idea. Only your original expression of an idea is what can be registered as a copyright. So, even an old idea can be the subject-matter of a copyright as long as your expression of the idea is original.
3. Even unpublished works can be registered as a copyright.
4. E-filing for Copyright was introduced on 14.02.2014
5. Section 52 of the Copyright Act, 1957 enumerates a list of exceptions to copyright infringement. Fair dealing is arguably the widest statutory exception as no definition is accorded to fair dealing.
WHAT IS INDUSTRIAL DESIGN?
According to the Designs Act, 2000, a Design is defined as “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.”

Simply put, a design is the overall visual appearance of the product that is unique to the product. The uniqueness to the appearance may be rendered by the shape, combination of colors, composition of lines and the like. The important point is that the design must be capable of being applied to an article. This means that the design cannot exist in abstract; it must be applied whether to a two-dimensional or a three-dimensional article.
WHAT IS THE NEED TO REGISTER A DESIGN?
Design enhances the aesthetic value of a product. Most consumers base their purchase decisions on the way in which a product looks.

Given the importance a design has on the decision-making of consumers, it is only fair to protect original and unique designs by conferring their right to use on the creators.

Even if the design of a product is copied, it can have an adverse effect on the business of the creator of the design.

WHAT IS THE PROCEDURE TO REGISTER A DESIGN?
Refer to the flow chart overleaf for the design registration process

WHAT IS THE TERM OF VALIDITY OF A DESIGN?
A Design is valid for a period of 10 years from the date of registration. This initial period of registration may be extended by further period of 5 years on an Application to the Controller.

FURTHER READING

- Industrial Design Services
  www.intepat.com/ip-services/industrial-design-registration-india/

- Industrial Design Registration in India: Meaning and Significance
  www.intepat.com/blog/design/industrial-design-registration-india/

- Industrial Design Registration Process in India
  www.intepat.com/blog/design/industrial-design-registration-process-india/

- Industrial Design Fee Structure in India
  www.intepat.com/blog/design/industrial-design-e-filing-fee-structure-in-india/
ABOUT INTEPAT IP SERVICES
Intepat IP Services Pvt Ltd (“Intepat®”) is a niche intellectual property services company that provides a broad range of customized services in Intellectual Property matters, that includes patents, trademarks, copyright and industrial design.

We strive to develop an in-depth understanding of each client’s business and to deliver intellectual property services in the manner that best suits the needs of each individual client.

Our customized and cost-effective approach has enabled our clients to transform their ideas and innovations, into business opportunities.

Our clients, from Fortune 500 to SME’s to Individual Inventors, are active in a broad variety of technical and scientific areas.

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