

# INTELLECTUAL PROPERTY RIGHTS (IPR)



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## What is Intellectual Property?

The term Intellectual Property is reserved for types of property that result from creations of the human mind, the intellect. These include intangible creations such as scientific discoveries and inventions, literary and artistic works, engineering designs, pharmaceutical formulas and symbols, names, images and designs used in commerce.

IPR stands for Intellectual Property Rights. As the name suggests, these are rights associated with Intellectual Property which are products of human intellect, skill and creativity. IPR forms an important part of our daily lives right from the brush we use to clean our teeth which has its design and company name protected by registration of Trademark to our cup of morning Assam tea which is protected by Geographical Indications. Each time we buy a protected item, the owner gets back a part of what we pay to compensate for the time and energy involved for creating the work.

Like any other form of tangible property including our car, house, land, jewels etc., intellectual property also should not be used without the permission of the owner and needs to be protected. IPR provides various types of protection so that the assets created out of human genius are rewarded and unauthorized reproduction and distribution is liable for prosecution.

India, being a member of WTO and a signatory to the TRIPS is under obligation to provide minimum standards for protection of IP.

## What will IPR do for us?

As Eleanor Roosevelt said, "A right is not something that somebody gives you. It is something that nobody can take away."

IPR provides exclusive rights to the owner and creator of IP. It provides incentives to creativity and innovation of human endeavour. Just like any other property, IP is legally protected. The rights provided are the right to sale, distribute, reproduce and license an IP. The person putting effort and intellect for creating an object or invention gets some financial incentive and encouragement as a result of endeavour put into the work. It further provides incentive to put more intellect as a means of earning more financial returns. IPR, therefore, promotes economic growth, creates new job prospects thereby ensuring quality life of a nation.

Following is the list of items entitled for protection under IPR.

- A chemical formula
- A company's name
- Designs for objects
- Logos
- Industrial processes
- Videos

Various forms of IP in India

- Patents
- Copyrights
- Designs
- Trademarks
- Geographical Indications
- Protection of Plant Varieties and Farmer's Rights
- Layout Designs of Integrated Circuits



Laws in India that deal with IPR

1. Patents

The Patents Act, 1970

The Patents (Amendment) Act, 1999

The Patents (Amendment) Act, 2002

- The Patents (Amendment) Act, 2005
2. TradeMarks  
The TradeMarks Act, 1999
3. Industrial Design  
The Designs Act, 2000
4. Copyright  
The Copyright Act, 1957, as amended by Amendment Acts of 1983, 1984, 1992, 1994 and 1999
5. Layout Designs of Integrated Circuits  
The Semiconductor Integrated Circuit Layout Design Act, 2000
6. Geographical Indications  
The Geographical Indication of Goods (Registration and Protection) Act, 1999  
The Biological Diversity Act, 2002
7. Plant Variety Protection  
The Protection of Plant Varieties and Farmer's Rights Act (PVP&FR), 2001

## **Patent**

A Patent is an exclusive territorial right granted for an invention, either a product or a process that offers a new technical advance or solution as compared to existing knowledge to a problem. These are statutory rights granted by the government for a period of 20 years which cannot be renewed. These rights, thus, ensure the commercial exploitation of an invention for a specific period of time in consideration of the disclosure of an invention so that on expiry of the term of the patent the information can benefit the public at large.

The Patent holder has the right to make, use, sell and import the product or process within the territory of grant of Patent. The product that is patented cannot be produced without the authorization of the Patent holder. It is, therefore, an award for the inventor and a reward for the investor.

The requirements for a product or process to be patented are:

- The invention must be novel and should not exist in Prior art which includes everything published, presented or known before the date of patent application.
- It should have an inventive step and should be non-obvious.

- It should be capable of industrial application.

The following inventions cannot be patented in India:

- Any frivolous invention.
- Inventions contrary to public morality.
- Mere discovery of a scientific principle.
- Mere discovery of anything living or non-living.
- Discovery of new form of a known substance.
- Mere admixture resulting in aggregation of properties of components.
- Mere arrangement or re-arrangement of known devices.
- A method of agriculture or horticulture.
- Plant and animals as a whole.
- Any process for medical treatment of human being or animal.
- Any aesthetic creation.
- Inventions relating to Atomic Energy.

## **Copyright**

Copyright is a protection given by law to creators of original literary and artistic works from unauthorized uses. The kind of works covered by Copyright include, expressions as novels, poems, plays, reference works, books, pamphlets, newspapers and computer programmes; artistic works as paintings, drawings, photographs, sculpture, musical compositions, architecture, advertisements, databases, technical drawings, maps, plans, audiovisual works, cinematographic films and sound recordings. Rights related to copyright include those of performing artists in their performances, producers of phonograms and those of broadcasters in their radio and television programs. A Copyright protection extends only to expressions and not to ideas, procedures and methods.

It is not necessary to formally register a work to get Copyright. Its acquisition is automatic, as soon as the work is created. However, a Certificate for Registration of a work can be obtained which serves as a prima facie evidence in the Court of Law in case of dispute for ownership of Copyright. The term of protection of Copyright work lasts for 60 years.

## Design

A design refers to features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article whether in two-dimensional or three-dimensional form or both. The design is supposed to be fit for protection only if it is new and original and has not been disclosed to the public anywhere in the world for obtaining protection.


These designs make an article attractive and appealing; hence, they add to the commercial value of a product and increase its marketability.

The registration of a design gives the owner the legal right to bring an action against those who use it without his/her knowledge or approval. It also helps economic development by encouraging creativity in the industrial and manufacturing sectors, as well as in traditional arts and crafts.

The term for protection of a design is 10 years which can be extended for up to 5 years.

**DESIGN PATENT EXAMPLES**

- Coca-Cola bottle
- U.S. D48,160
- Samuelson, A.
- (1915)




DESIGN  
A. SAMUELSON.  
BOTTLE OF SIMILAR APPEARANCE.  
48,160. Patented Nov. 16, 1915.

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**DESIGN PATENT EXAMPLES**

- Statue of Liberty
- U.S. D11,023
- Bartholdi, A.
- (1879)



DESIGN  
A. BARTHOLOMEW.  
Statue.  
No. 11,023. Patented Feb. 18, 1879.

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## Trademark

A Trademark is a distinctive sign or a visual symbol used for services or products to visually identify them from other goods and services of similar nature. These may include a

combination of words, letters and numerals or may consist of drawings, symbols, three-dimensional signs, and audible signs such as music or vocal sounds, fragrances or colours used as distinguishing features. It provides protection to the owner of the mark by ensuring exclusive right to use it to identify goods or services or to authorize another to use it in return for payment.

Trademarks promote initiative and enterprise by rewarding the owners of trademarks with recognition and financial profit. It also discourages unfair competitors and counterfeiters to use similar distinctive signs to market inferior or different products or services. It, therefore, creates an image of the goods or services and guarantees quality.

Some well known Trademarks are:



The protection term for a Trademark is indefinite but it has to be renewed every 10 years.

## **Geographical Indication**

Geographical Indication (GI) is an indicator of goods origination from a definite geographical territory having particular characteristics. It gives an assurance of quality and distinctiveness which is attributed to its place of origin in that defined geographical locality. Agricultural goods derived from the place of production, influenced by specific local factors, such as climate and soil can be protected by GI. Geographical Indication essentially indicates the name of the place of source of origin of the goods.

The use of GI is not limited to agricultural products. They may also highlight specific qualities of a product which are due to human factors that can be found in the place of origin of the products, such as specific manufacturing skills and traditions.

Many products acquire valuable reputation due to their place of origin which, if not adequately protected, may be misrepresented by dishonest commercial operators. False use of GI by unauthorized parties, for example “Darjeeling” for tea that was not grown in the tea gardens of Darjeeling, is detrimental to consumers and legitimate producers. The former are deceived into buying a worthless imitation of a genuine product and the latter suffer because valuable business is taken away from them and established reputation for their products is damaged.

India’s famous GIs are:

- Paschmina shawls
- Darjeeling tea
- Basmati rice
- Assam tea

Agricultural and art/craft products for which Bihar has earned GI are:

- Katarni rice
- Zardalu mango
- Magahi paan
- Shahi litchi
- Bhagalpur saree
- Madhubani art
- Sikki grass craft
- Sujini embroidery work



The protection term for a GI is indefinite but it has to be renewed every 10 years.



## **Plant Variety Protection**

This aims to protect the plant varieties for farmers and breeders to recognize the rights of those who have put in efforts for conserving and breeding a plant variety. The requirements for protection are distinctiveness, uniformity, novelty and stability. Indian Council of Agricultural Research registers valuable sovereign Plant Genetic Resources with known characteristics by a mechanism of "Registration of Plant Germplasm" instituted at National Bureau of Plant Genetic Resources, New Delhi.

The term of protection for trees and vines is for 9 years and can be renewed till 18 years. For other crops it is 6 years and can be renewed till 15 years.

## **Semiconductor Integrated Circuit Layout Design**

Semiconductor integrated circuit means a product having transistors or other circuitry elements, which are inseparably formed on a semiconductor material or an insulating material or inside the semiconductor material and designed to perform an electronic circuitry function.

Layout-design means a layout of transistors and other circuitry elements and includes lead wires connecting such elements and expressed in any manner in a semiconductor integrated circuit.

India has the Semiconductor Integrated Circuits Layout Design Act, 2000 for their protection. The term of protection is for 10 years.