



## Intellectual Property Rights in India

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### ABSTRACT

*The exclusive rights for an inventor's or creator's valuable innovation or production are granted by the intellectual property rights (IPR), which are intangible in nature. The current globalization environment places IPR at the centre of international trade and daily life. By granting recognition and financial rewards to creators or inventors, these rights encourage innovation, whereas a lack of understanding of IPR and its inefficient application may impede the economic, technological, and societal advancement of a country. Thus, it is essential for every country to spread awareness about IPR and apply it properly. The current paper discusses a number of IPR concepts, including patents, trademarks, industrial designs, geographic indications, copyright, etc., together with its accompanying rules, regulations, needs, and functions, particularly in the context of India.*

### KEY WORDS

*Intellectual Property Rights, Trademarks, WIPO, Industrial Designs, Geographic Indications, Copyright and Related Rights.*

### INTRODUCTION

To participate in the fierce rivalries in technology and trade after globalisation, it is crucial to be ahead in inventions and creativity. In the domains of software engineering, missile technology, moon or jupiter missions, and other technological sectors, India is widely known for its intellectual prowess. India, however, lags behind other countries in the development of IPR assets, such as registered trademarks, industrial designs, and patents. India ranked 29th out of 30 countries in the IP index

worldwide according to a recent analysis by the US Chamber of Commerce. The situation is extremely concerning for both policymakers and the country at large.

## Objective of Research

- To Understand Intellectual Property.
- To Understand Rights Regarding Intellectual Property.
- To understand scenario of intellectual property rights in India.

## Intellectual Property Rights in India

One of the UK's top international markets is India. Knowing how to utilize, protect, and defend your legal rights regarding any intellectual property (IP) that you or your company has is crucial if you intend to do business in India or already conduct business there. This manual provides recommendations on how to implement these concepts in the Indian market and provides information on Intellectual Property in general. It describes possible issues with infringing intellectual property in India, offers suggestions on how to effectively resolve these, and gives references to sources of additional help.

## What are Intellectual Property Rights?

“Intellectual property” means a name, invention, design, or other type of creation over which a person or company has legal rights. A commercial asset that almost all companies have access to is intellectual property.

## Intellectual Property Rights Include

- **Copyright:** This protects written or published works such as books, songs, films, web content and artistic works.
- **Patents:** This protects commercial inventions, for example, a new business product or process.
- **Designs:** like drawings or computational models are protected by this.
- **Trademarks:** Trademarks are used to distinguish the products and services you provide from those of your rivals. They include signs, symbols, logos, slogans, and sounds.

## Registration of Intellectuals Property

Unregistered IP gives you immediate ownership of your creation. Among the forms of intellectual property that are not registered include copyright, unlicensed design rights, common law trade marks, database rights, confidential information, and trade secrets. To get your rights recognised with respect to registered intellectual property, to a body, like Intellectual Property Office, you must submit an application. If you don't, others are free to make money off of your creations. Patents, registered trade marks, and registered design rights are examples of registered intellectual property. Additionally registrable is copyright.

## Internationally Relevant Factors

India has been a member of the World Trade Organisation (WTO) since 1995. Members of the WTO need to have domestic laws that safeguard intellectual property in some way. This indicates that there are some similarities between Indian IP legislation and enforcement practises and those of UK law enforcement practices if you are doing business with India.

## Conventions and Agreements

Additionally, India has ratified the following international IP agreements:

- **Paris Convention:** According to this, any citizen of a signatory state may submit an application for a patent or trademark in another signatory state and be granted the same enforcement rights and standing as a citizen of that state;

- **Berne Convention:** This means that each member state acknowledges the authors' ownership of their works in the same way as its own citizens.
- **Madrid Protocol:** This allows someone to submit a single trademark application to the head office that will permit them protection across numerous nations.
- **Patent Cooperation Treaty:** This is a main protocol for submitting a single application to get a "bundle" of national patent applications in many jurisdictions.

The Hague Agreement, which permits the protection of designs in numerous nations with a single filing, is not ratified by "India".

## India's Systems for Protecting Intellectual Property

### Copyright

The copyright-related Berne Convention is ratified by India. However, registering your copyright may be a smart idea as doing so may help to prove ownership if there are legal actions taken against infringers. However, in India, registration is often not necessary to maintain a copyright infringement claim. The Copyright Office must be registered with either personally or through a representative. The Department of Industry and Commerce in India has been in charge of copyright policy since 2016. All IPRs are currently under the control of the Department for Industrial Property and Promotion (DIPP). India has a problem with online piracy of movies, music, games, and software, as well as with unauthorised printing of real books.

### Patents

The law governing patents in India is outlined in the 1970 Patents Act, 2003 Patent Rules, and 2016 Patent Amendment Rules. There is no provision for utility model patents, much like in the UK. In India, the Ministry of Commerce and Industry's Controller General of Patents, Designs, and Trade Marks office is in charge of regulating patents. This office is headed by the Patent Registrar. After the application date, patents are valid for 20 years; however, there is an annual renewal charge. The "first to file" rule governs patent law in India, which means that if two people submit identical patent applications, the first applicant will be granted the patent.

### Designs

The Designs Act 2000 and the Designs Rules 2001 are the legislation that govern designs. Designs can only be used for a total of 10 years before being renewed for five more years.

### Trade Marks

India's trademark laws are comprised on the 1999 Trade Marks Act and the Trade Marks Rules from 2002 and 2017. Patents are governed by the Controller General of Patents, Designs, and Trade Marks of the Department of Industrial Policy and Promotion. The police now have broader powers to enforce trade mark law, including the ability to inspect properties and seize goods that are thought to be counterfeit without getting a warrant. The requirement that the police get the Trade Mark Registrar's opinion on the licencing of the mark before taking any action, however, limits these capabilities. This prolongs the process and raises the possibility that fake goods will be removed or sold. In India, trade names are also a type of trademark, providing protection for anyone desiring to do business under their own surname regardless of other trade names already in use. Due to the widespread trend of "cybersquatting," which is the registration of trademarks by third parties in bad faith with the purpose of selling them to the original rights holders, it is advisable for rights holders to register their domain names in India as trade marks as soon as is practical. Registration may take two years. A trade mark may be renewed indefinitely for further ten-year periods in India and has a ten-year lifespan.

## Indian Intellectual Property Rights Registration and Enforcement

Most intellectual property rights in India must be registered before you can use them. For rights other

than industrial designs, you can file under the terms of the Patent Cooperation Treaty, which is often easier and faster. Individual registrations are necessary for patents in India. The national trade mark system or the Madrid system should be used to register trade marks in India. Although it is not required, copyright registration with the relevant authorities is a good idea. By allowing rights that have already been registered overseas to grow effective in India, “priority rights” under the Paris Convention can help with the local registration of trademarks, designs, and patents if they are submitted before a deadline.

## Indian IP Enforcement

IP rights can be upheld by civil court actions or criminal prosecution. Both the Competition Act and India’s IP laws specify the steps to be taken in both civil and criminal actions. Patent and design infringements are exempt from criminal prosecution. The inability to obtain significant damages and the rarity of punitive damages against infringers are drawbacks of civil action. However, if you have a known infringer, it can be wise to file a civil lawsuit because the infringement can be stopped awaiting the conclusion of the case if an interim injunction is obtained. In cases of copyright theft and trademark infringement (which fall under criminal proceedings), damages are frequently awarded; less frequently in patent cases. But over time, judgements in favour of international businesses over local infringers have shown how fair the system. Like in other nations, the Indian Government takes legal action in criminal cases, however in most situations this happens as a result of complaints made by rights holders to magistrates or police authorities. Criminal prosecution of violators carries the possibility of significantly harsher penalties, such as fines and jail. As an another option to litigation, mediation or negotiations with infringers can be fruitful. A formal mediation procedure is provided for by the CPC.

## Thoughts on Self-help

You can take a number of actions to generally make it more challenging for counterfeiters to use your products. For illustration, you could:

- Think about how easy it would be for someone to imitate the design of your product without seeing your original ideas.
- Have strong IP-related clauses in employment contracts when hiring personnel. Ensure that you also teach your staff on Intellect Property rights and protection.
- Dependable physical protection and destruction procedures for paperwork, blueprints, tools, samples, equipment, etc.;
- Make sure there are no packaging “leakages” that counterfeiters could employ to pass off fake goods;
- Check manufacturing overruns to make sure a genuine product isn’t being sold under a fraudulent name.

## Possibly Occurring Issues in India and Solutions

Every essential area of IP protection is covered by India’s intellectual property (IP) laws. All of the laws governing intellectual property have recently undergone revisions or amendments, largely in response to India’s 1995 entry into the WTO. There are still significant problems with IP enforcement even though Indian IP law is extensive and typically comparable to European IP regulations. Enforcement officials are particularly concerned about bureaucratic slowness, which has led to a backlog of cases in both the civil and criminal courts. This indicates that legal proceedings may last up to five years. Additionally, there is a lack of openness, especially at the municipal level. The fact that India’s legal system is based on common law, just like the UK’s, means that the core procedures are familiar, which is advantageous for UK companies doing business there.

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