INTELLECTUAL PROPERTY RIGHTS (R17A0051)

COURSE FILE

II B. Tech II Semester

(2018-2019)

Prepared By

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Department of Aeronautical Engineering

MALLA REDDY COLLEGE OF ENGINEERING & TECHNOLOGY

(Autonomous Institution – UGC, Govt. of India)

Affiliated to JNTU, Hyderabad, Approved by AICTE - Accredited by NBA & NAAC – 'A' Grade - ISO 9001:2015 Certified)

Maisammaguda, Dhulapally (Post Via. Kompally), Secunderabad – 500100, Telangana State, India.

MRCET VISION

- To become a model institution in the fields of Engineering, Technology and Management.
- To have a perfect synchronization of the ideologies of MRCET with challenging demands of International Pioneering Organizations.

MRCET MISSION

To establish a pedestal for the integral innovation, team spirit, originality and competence in the students, expose them to face the global challenges and become pioneers of Indian vision of modern society.

MRCET QUALITY POLICY.

- To pursue continual improvement of teaching learning process of Undergraduate and Post Graduate programs in Engineering & Management vigorously.
- To provide state of art infrastructure and expertise to impart the quality education.

PROGRAM OUTCOMES

(PO's)

Engineering Graduates will be able to:

1. **Engineering knowledge**: Apply the knowledge of mathematics, science, engineering fundamentals, and an engineering specialization to the solution of complex engineering problems.
2. **Problem analysis**: Identify, formulate, review research literature, and analyze complex engineering problems reaching substantiated conclusions using first principles of mathematics, natural sciences, and engineering sciences.
3. **Design / development of solutions**: Design solutions for complex engineering problems and design system components or processes that meet the specified needs with appropriate consideration for the public health and safety, and the cultural, societal, and environmental considerations.
4. **Conduct investigations of complex problems**: Use research-based knowledge and research methods including design of experiments, analysis and interpretation of data, and synthesis of the information to provide valid conclusions.
5. **Modern tool usage**: Create, select, and apply appropriate techniques, resources, and modern engineering and IT tools including prediction and modeling to complex engineering activities with an understanding of the limitations.
6. **The engineer and society**: Apply reasoning informed by the contextual knowledge to assess societal, health, safety, legal and cultural issues and the consequent responsibilities relevant to the professional engineering practice.
7. **Environment and sustainability**: Understand the impact of the professional engineering solutions in societal and environmental contexts, and demonstrate the knowledge of, and need for sustainable development.
8. **Ethics**: Apply ethical principles and commit to professional ethics and responsibilities and norms of the engineering practice.
9. **Individual and team work**: Function effectively as an individual, and as a member or leader in diverse teams, and in multidisciplinary settings.
10. **Communication**: Communicate effectively on complex engineering activities with the engineering community and with society at large, such as, being able to comprehend and write effective reports and design documentation, make effective presentations, and give and receive clear instructions.
11. **Project management and finance**: Demonstrate knowledge and understanding of the engineering and management principles and apply these to one's own work, as a member and leader in a team, to manage projects and in multi disciplinary environments.
12. **Life- long learning**: Recognize the need for, and have the preparation and ability to engage in independent and life-long learning in the broadest context of technological change.

DEPARTMENT OF AERONAUTICAL ENGINEERING

VISION

Department of Aeronautical Engineering aims to be indispensable source in Aeronautical Engineering which has a zeal to provide the value driven platform for the students to acquire knowledge and empower themselves to shoulder higher responsibility in building a strong nation.

MISSION

The primary mission of the department is to promote engineering education and research. To strive consistently to provide quality education, keeping in pace with time and technology. Department passions to integrate the intellectual, spiritual, ethical and social development of the students for shaping them into dynamic engineers.

QUALITY POLICY STATEMENT

Impart up-to-date knowledge to the students in Aeronautical area to make them quality engineers. Make the students experience the applications on quality equipment and tools. Provide systems, resources and training opportunities to achieve continuous improvement. Maintain global standards in education, training and services.

PROGRAM EDUCATIONAL OBJECTIVES – Aeronautical Engineering

1. **PEO1 (PROFESSIONALISM & CITIZENSHIP):** To create and sustain a community of learning in which students acquire knowledge and learn to apply it professionally with due consideration for ethical, ecological and economic issues.
2. **PEO2 (TECHNICAL ACCOMPLISHMENTS):** To provide knowledge based services to satisfy the needs of society and the industry by providing hands on experience in various technologies in core field.
3. **PEO3 (INVENTION, INNOVATION AND CREATIVITY):** To make the students to design, experiment, analyze, and interpret in the core field with the help of other multi disciplinary concepts wherever applicable.
4. **PEO4 (PROFESSIONAL DEVELOPMENT):** To educate the students to disseminate research findings with good soft skills and become a successful entrepreneur.
5. **PEO5 (HUMAN RESOURCE DEVELOPMENT):** To graduate the students in building national capabilities in technology, education and research

PROGRAM SPECIFIC OUTCOMES – Aeronautical Engineering

1. To mould students to become a professional with all necessary skills, personality and sound knowledge in basic and advance technological areas.
2. To promote understanding of concepts and develop ability in design manufacture and maintenance of aircraft, aerospace vehicles and associated equipment and develop application capability of the concepts sciences to engineering design and processes.
3. Understanding the current scenario in the field of aeronautics and acquire ability to apply knowledge of engineering, science and mathematics to design and conduct experiments in the field of Aeronautical Engineering.
4. To develop leadership skills in our students necessary to shape the social, intellectual, business and technical worlds.

MALLA REDDY COLLEGE OF ENGINEERING & TECHNOLOGY

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II Year B. Tech, ANE-II Sem	**4**	**1/-/-**	**3**

(R17A0051) INTELLECTUAL PROPERTY RIGHTS

Objectives:

- The objective of this course is to provide the knowledge on International IPR's and to make students efficient to take decisions in Global Corporate.

OBJECTIVES:

The objective of this course is to provide the knowledge on International IPR's and to make students efficient to take decisions in Global Corporate.

Unit-I

Introduction: Intellectual property rights basics, the role and value of IP in international commerce, Issues affecting IP internationally. Agreement on trade related aspects ofIntellectual Property Rights. (TRIPS) - Agreement on TRIPS and India.

Unit-II

Parties to IP Rights: Owner, customer, authorized user, licensee, attorney, protection of the weak and strong, finalizing ownership and use rights.

Unit-III

Ensuring the value of IP: Ensuring the value of IP at creation stage, after creation stage, precise contractual protection of IP rights. Key issues related to IP internationally. IP rights in international forums. Fundamentals in Country legal systems, generalities. Validity of IP rights locally: specifics.

Unit-IV

Managing IP Rights: Acquiring IP Rights: letters of instruction, joint collaboration agreement, work made for hire agreement - Protecting IP Rights: non disclosure agreement, cease and desist letter, settlement memorandum. Transferring IP Rights: assignment contract, license agreement, deed of assignment or license agreement, addendum to unrecorded assignment or license.

Unit-V

Remedies and IPR Evaluation - GATT - WTO - Role of WTO in solving IPR issues.

REFERENCES:

- A short course in International Intellectual Property Rights – Karla C. Shippey, World Trade Press – 2 nd Edition.
- Intellectual Property Rights – Heritage, Science, & Society under international treaties – A. Subbian, - Deep & Deep Publications – New Delhi.
- Intellectual Property Rights: N K Acharya: ISBN: 9381849309
- Intellectual Property Rights: C B Raju : ISBN-8183870341
- Intellectual Property : Examples and Explanation – Stephen M McJohn, 2/e, ISBN13: 978-0735556652
- Intellectual Property Rights in the Global Economy – Keith E Maskus, PIIE, ISBN paper 0- 88132-282-2

TEXT BOOKS:

- A short course in International Intellectual Property Rights – Karla C. Shippey, World Trade Press – 2nd Edition.
- Intellectual Property Rights – Heritage, Science, & Society under international treaties – A. Subbian, - Deep & Deep Publications – New Delhi.

Outcomes:

- It allows students how to prepare and protect the Inventions , start up ideas and rights of patents and copy rights etc.,
- This subject brings awareness to the students the basic legal aspects at present following at Global level.

III B.TECH I SEMESTER – AERONAUTICAL ENGINEERING
INTELLECTUAL PROPERTY RIGHTS (R17)
MODEL PAPER – I
MAXIMUM MARKS: 75

1. M and N filed for patent application with provisional specification on the same date for the same invention. After that 'M' filed complete specification much earlier to 'N' but both filed within time allowed. Examine the status of patent application filed by both 'M' and 'N'.

   OR

2. State and explain the development of laws on Intellectual property and the benefits on such protection.

3. What is 'mark' ? What are the various steps for registration of Trademark ?

   OR

4. What do you mean by infringement of Trademark and discuss the remedies available for infringement.

5. Can the inventor of new process of bypass surgery claim a patent for new surgical method, invented by him ?
   OR

6. A foreign applicant of a convention country applies for patent without sufficient description of the invention. The controller accepts the application and grants patent. Decide

7. Explain the grounds for refusal of registration of a trademark

   OR
8. Discuss the powers and functions of Registrar of Trademarks.

9. 'A' is registered proprietor of trademark 'M–SEAL'. 'B' adapted and used mark 'SM-SEAL' with all essential characters of trademark 'M-SEAL'. Can 'B' be restrained from using the Mark ? Decide.

   OR
10. Registrable and non-registrable marks

III B.TECH I SEMESTER – AERONAUTICAL ENGINEERING
INTELLECTUAL PROPERTY RIGHTS (R17)
MODEL PAPER – II
MAXIMUM MARKS: 70

1. Discuss whether the following items would be protectable as trademarks, copyrights, patents, or trade secrets:

a) 'Freeze You' as the name of a new type of ice cream
b) a company's plans for its future business operations and possible mergers
c) a new type of rose
d) a new slogan to be used by Burger King

OR

2. Explain about patent? Explain about different types of Intellectual property??

3. Discuss about the methods of preparing the Trademark application?

OR

4. Explain Infringement of Trademarks? Explain about Inter partes and inter partes proceedings? What is the role of Inter partes?
5. Explain the process of the Patent Application?

OR

6. Write about the need of patent searching? Explain?
7. Write about the need of patent searching? Explain?

OR

8. Describe the determination of trade secret status?
9. Discuss about intellectual property audits?

OR

10. Discuss about international developments in trade secrets law?

III B.TECH I SEMESTER – AERONAUTICAL ENGINEERING
INTELLECTUAL PROPERTY RIGHTS (R17)
MODEL PAPER – III
MAXIMUM MARKS: 70

1. Discuss whether the following items would be protectable as trademarks, copyrights, patents, or trade secrets:

c) 'Freeze You' as the name of a new type of ice cream
d) a company's plans for its future business operations and possible mergers
e) a new type of rose
f) a new slogan to be used by Burger King

OR

2. Explain about patent? Explain about different types of Intellectual property??

3. Discuss about the methods of preparing the Trademark application?

OR

4. Explain Infringement of Trademarks? Explain about Inter partes and inter partes proceedings? What is the role of Inter partes?
5. Explain the process of the Patent Application?

OR

6. M and N filed for patent application with provisional specification on the same date for the same invention. After that 'M' filed complete specification much earlier to 'N' but both filed within time allowed. Examine the status of patent application filed by both 'M' and 'N'.

7. State and explain the development of laws on Intellectual property and the benefits on such protection.

OR

8. What is 'mark' ? What are the various steps for registration of Trademark ?

9. What do you mean by infringement of Trademark and discuss the remedies available for infringement.

OR

10. Can the inventor of new process of bypass surgery claim a patent for new surgical method, invented by him?

III B.TECH I SEMESTER – AERONAUTICAL ENGINEERING
INTELLECTUAL PROPERTY RIGHTS (R17)
MODEL PAPER – IV
MAXIMUM MARKS: 70

1. Explain the functions of INTA, WIPO?
   Or
2. Describe why Trade Secrets are necessary? How do they function?
3. Discuss about the advantages of Trademark use and compliance policies?
   Or
4. Explain the Post registration procedures?
5. Discuss about new developments in copyright law? What are they?
   Or
6. Differentiate Contributory Infringement and Vicarious Infringement?
7. Discuss about trade secret litigation?
   Or
8. Explain about the remedies for misappropriation in Trade Secrets?
9. Discuss about European patent organization and what are its duties?
   Or
10. Discuss about patent cooperation treaty?

III B.TECH I SEMESTER – AERONAUTICAL ENGINEERING
INTELLECTUAL PROPERTY RIGHTS (R17)
MODEL PAPER – V

MAXIMUM MARKS: 70

1. Distinguish between Trademark and Trade secrets?
Or
2. Explain why agencies responsible for Intellectual Property Registration with any two examples?
3. Discuss new developments in Trademark Law? How do you avoid cyberspace trademark issues?
Or
4. Explain how do you select and evaluate Trademark?
5. Discuss about "the rights to perform the work publicly" and explain it?
Or
6. Explain when the terminations of transfers of copyrights take place?
7. Explain about unfair competition? Write its types?
Or
8. Discuss right of publicity? Explain?
9. Explain copyright in the electronic age?
Or
10. Explain the new developments in copyright and recent developments in copyright law?

UNIT -1

Introduction

Intellectual Property Rights:

Intellectual property broadly refers to creations which result from intellectual activity in the industrial, scientific, literary, and artistic fields. Over the course of history, different legal instruments for protecting intellectual property have emerged. These instruments differ in their subject matter, extent of protection, and field of application, reflecting society's objective to balance the interests of creators and consumers for different types of intellectual works. Table 1 provides an overview of the different IPRs instruments.

Patents are legal titles granting the owner the exclusive right to make commercial use of an invention. To qualify for patent protection, inventions must be new, non-obvious, and commercially applicable. The term of protection is usually limited to 20 years, after which the invention moves into public domain. The patent system is one of the oldest and most traditional forms of IPRs protection. Almost all manufacturing industries make use of the patent system to protect inventions from being copied by competing firms. Since the early 1980s, patents have also been granted for agricultural biotechnology products and processes and for certain aspects of computer software.

As an adjunct to the patent system, some countries have introduced *utility models* (or petty patents). The novelty criteria for utility models are less stringent and are typically granted for small, incremental innovations. Their term of protection is far shorter than for "regular" invention patents (typically four to seven years). Similarly, *industrial designs* protect the ornamental features of consumer goods such as shoes or cars. To be eligible for protection,

designs must be original or new. They are generally conferred for a period of five to fifteen years.

Trademarks are words, signs, or symbols that identify a certain product or company. They seek to offer consumers the assurance of purchasing what they intend to purchase. Trademarks can endure virtually indefinitely provided they remain in use. Almost all industries use trademarks to identify their goods and services. The use of trademarks has turned out to be of high significance in certain consumer goods industries, such as clothing and watches. Similar to trademarks, *geographical indications* identify a product (e.g., wine or olive oil) with a certain city or region.

Copyright protects original works of authorship. Copyright protection differs from patent protection in that copyright solely protects the expression of an intellectual creation, whereas the ideas or methods advanced in the title can be freely copied. Copyright protection typically lasts for the life of the author plus 50 to 70 years. It is applicable to literary, artistic, and scientific works. During the past decade, copyright protection has also developed as the main form of protection for computer software. Rights related to copyright—often referred to as *neighboring rights*—are accorded to phonogram producers, performers, and broadcasting organizations. Limits to exclusive copyrights and neighboring rights exist in certain "fair use" exemptions, such as educational or library use or for purposes of criticism and scholarship.

Besides these traditional forms of IPRs, ongoing technological change and the unique characteristics of certain industries and products have led to additional, so-called sui generis forms of protection. *Layout designs for integrated circuits* protect producers of semiconductors. Protection is limited to the design of an integrated circuit and does not restrict reverse

engineering of a semiconductor. In this regard, protection of layout designs is similar to copyright. However, the term of protection is shorter than under copyright—typically ten years. Title holders have the right to prevent unauthorized reproduction, importation, sale or other distribution of the layout design for commercial purposes. *Exclusive rights to test data* submitted to regulatory agencies have been granted in the pharmaceutical and chemical industries. Companies that first submit these data can prevent competing firms from using the same data to obtain own marketing approval.

Plant breeders' rights (PBRs) protect new plant varieties that are distinct from existing varieties, uniform, and stable. Exclusive rights, in principle, include the sale and distribution of the propagating materials for a minimum of 15 years. Exclusive rights are typically subject to two general exemptions: the "research exemption," which permits the use of a protected variety as a basis for the development of a new variety; and the "farmers' privilege," which gives farmers the right to re-use seeds obtained from their own harvests. With the advent of biotechnology, however, many breeders in industrial countries are increasingly using the regular patent system for protecting agricultural products and processes. Breeders enjoying patent protection can not only prevent their competitors from using their protected material for breeding purposes, but also prevent farmers from reusing harvested seed.

Finally, the protection of *trade secrets* is part of many countries' IPRs systems. Trade-secret protection differs from other forms of protection in that it does not grant an explicit title to the creator of an original work. Instead, it protects businesses from the unauthorized disclosure or use of confidential information. Such confidential information includes inventions not yet at the patenting stage, ways of organizing business, client lists, purchasing specifications, and so on. In agriculture, breeders rely on trade secrets to protect hybrid plant varieties, if they can be kept

secret. Copying through reverse-engineering does not infringe trade-secret laws. In essence, all industries possessing secret business information rely on trade-secret protection to safeguard their intangible assets.

These legal instruments are just one of the pieces that form a national system of intellectual property protection. Also crucial to the system's overall effectiveness are the institutions administering these instruments, the mechanisms available for enforcing IPRs, and the rules regarding the treatment of non-nationals.

The administration of IPRs is most significant in the area of patents, industrial designs, trademarks, and plant breeders' rights. To obtain protection for these types of intellectual property, applicants have to submit their intellectual creations to a national IPRs office, which examines their eligibility for protection. Copyright and neighboring rights protection typically applies automatically upon creation of the intellectual work, although for evidentiary purposes authors may choose to register their works at copyright offices.

The enforcement of intellectual property rights relies on a country's judicial system. Title holders fight infringement of their exclusive rights in front of courts. To immediately stop infringing activities, they can request seizures or preliminary injunctions. If the claim of infringement is verified by trial, courts can demand the payment of punitive charges to the infringed title holder (or secret holder in the case of trade secrets).

IPRs are created by national laws and therefore apply at the level of each jurisdiction, independent of such rights granted elsewhere. Accordingly, nations must reach accommodation as their residents seek protection for their intellectual works abroad. Numerous international treaties to promote cooperation among states in the protection of intellectual property have been

negotiated over the last 100 years (see Table 1). These treaties are administered by a specialized agency of the United Nations—the World Intellectual Property Organization (WIPO). They typically require their signatories to follow national treatment in the protection of IPRs (equal treatment of nationals and non-nationals) and facilitate the registration of intellectual property titles in foreign jurisdictions. But for the most part they do not promote harmonized standards of protection.

The role and value of IP in International Commerce:

IP is really a type of property or asset, just as valuable (or more valuable) than physical or real property, even though it may be intangible, like knowledge. The value of IP assets relative to physical assets has increased because of the importance of technology and creative works in the modern economy. IP consists of new ideas, original expressions, distinctive names, and appearance that make products unique and valuable. IP is often traded (or " licensed") in its own right without trading in the value of an underlying product or service, by means of patent or other IP licenses from a rights owner to another.

There are several reasons why IP is important to E-Commerce and e-commerce is important to IP. E-Commerce, more than other business systems, often involves selling products and services that are based on IP and its licensing. Music, pictures, photos, software, designs, training modules, systems, etc. can all be traded through E-Commerce, in which case, IP is the main component of value in the transaction. IP is important because the things of value that are traded on the Internet must be protected, using technological security systems and IP laws, or else they can be stolen or pirated and whole businesses can be destroyed.

Also, IP is involved in making E-Commerce work. The systems that allow the Internet to function - software, networks, designs, chips, routers and switches, the user interface, and so on - are forms of IP and often protected by IP rights. Trademarks are an essential part of E-Commerce business, as branding, customer recognition and good will, essential elements of Web-based business, are protected by trademarks and unfair competition law.

E-Commerce businesses and Internet related businesses are based on product or patent licensing. This is because so many different technologies are required to create a product that companies often outsource the development of some component of products, or share technologies through licensing arrangements. If every company had to develop and produce all technological aspects of every product independently, development of high technology products would be impossible. The economics of E-Commerce depends on companies working together to share, through licensing, the opportunities and risks of business. Many of these companies are SMEs.

Finally, E-Commerce based businesses usually hold a great deal of their value in IP; so the valuation of your E-Commerce business will be affected by whether you have protected your IP. Many E-Commerce companies, like other technology companies, have patent portfolios and trademarks that enhance the value of their business.

Issues affecting IP Internationally:

IP Issue Areas to be considered in International Trade are

- IP Rights are Territorial
- Secure Freedom to Operate

- Respect Deadlines
- Early Disclosure
- Working with Partners
- Choosing an Appropriate Trademark.

Intellectual property (IP) rights exist to protect the works of creators and innovators from misappropriation or copying by unauthorized parties. Such protection is in the interests not only of the individual creators, but of wider economic development and consumer interests. Counterfeiting and piracy hamper the growth of national economies, depriving legitimate enterprises of turnover, and the state of revenues. The phenomenon deters investment and innovation, and often violates employment, health and safety legislation. On a transnational scale, counterfeiting often involves and sustains organized crime.

Today counterfeiting and piracy affect a huge spectrum of different goods, from aircraft parts to detergent, from alcohol and perfumes to security holograms. No industry is spared. Whereas previously high-end branded goods were a principal target, the latest trend is also to copy ordinary branded consumer goods – even those as mundane as toothbrushes. The type of goods counterfeited is changing constantly in line with market trends.

Counterfeiters are getting cleverer. They are exploiting technological advances to produce copies hardly distinguishable form the originals, in some cases even outsmarting the proprietors. They are making extensive use of the Internet, resulting in the sale and distribution of fake goods at enormous speed and with no geographical limitations. And they are seeking to circumvent border measures by moving imitation goods across borders in "disassembled" form, i.e. waiting until the

consignment has passed through customs before sticking on the trademark labels which would make it obvious that the goods are counterfeit.

The problem is escalating, as demonstrated by the ever greater quantities and types of counterfeit goods seized each year. In 2004, seizures of fake foodstuffs and alcoholic beverages doubled at the European Union external borders, while seizures of computer hardware increased nine-fold over the previous year (see table). The scale and nature of the problem demands a coordinated approach to enforcement measures at the national, regional and international levels.

Agreement on trade related aspects of Intellectual Property Rights:

The **Agreement on Trade-Related Aspects of Intellectual Property Rights** (**TRIPS**) is an international legal agreement between all the member nations of the World Trade Organization (WTO). It sets down minimum standards for the regulation by national governments of many forms of intellectual property (IP) as applied to nationals of other WTO member nations. TRIPS was negotiated at the end of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) in 1994 and is administered by the WTO.

The TRIPS agreement introduced intellectual property law into the international trading system for the first time and remains the most comprehensive international agreement on intellectual property to date. In 2001, developing countries, concerned that developed countries were insisting on an overly narrow reading of TRIPS, initiated a round of talks that resulted in the Doha Declaration. The Doha declaration is a WTO statement that clarifies the scope of TRIPS, stating for example that TRIPS can and should be interpreted in light of the goal "to promote access to medicines for all."

Specifically, TRIPS requires WTO members to provide copyright rights, covering content producers including performers, producers of sound recordings and broadcasting organizations; geographical indications, including appellations of origin; industrial designs; integrated circuit layout-designs; patents; new plant varieties; trademarks; trade dress; and undisclosed or confidential information. TRIPS also specify enforcement procedures, remedies, and dispute resolution procedures. Protection and enforcement of all intellectual property rights shall meet the objectives to 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 a manner conducive to social and economic welfare, and to a balance of rights and obligations.

TRIPS requires member states to provide strong protection for intellectual property rights. For example, under TRIPS:

- Copyright terms must extend at least 50 years, unless based on the life of the author.
- Copyright must be granted automatically, and not based upon any "formality," such as registrations, as specified in the Berne Convention.
- Computer programs must be regarded as "literary works" under copyright law and receive the same terms of protection.
- National exceptions to copyright (such as "fair use" in the United States) are constrained by the Berne three-step test
- Patents must be granted for "inventions" in all "fields of technology" provided they meet all other patentability requirements (although exceptions for certain public interests are allowed and must be enforceable for at least 20 years.

- Exceptions to exclusive rights must be limited, provided that a normal exploitation of the work and normal exploitation of the patent is not in conflict.
- No unreasonable prejudice to the legitimate interests of the right holders of computer programs and patents is allowed.
- Legitimate interests of third parties have to be taken into account by patent rights.
- In each state, intellectual property laws may not offer any benefits to local citizens which are not available to citizens of other TRIPS signatories under the principle of national treatment. TRIPS also has a most favored nation clause.

Many of the TRIPS provisions on copyright were copied from the Berne Convention for the Protection of Literary and Artistic Works and many of its trademark and patent provisions were modeled on the Paris Convention for the Protection of Industrial Property. It is the case of the protection of software and database.

(TRIPS) - Agreement on TRIPS and India:

The TRIPs (Trade Related Intellectual Property) regime has emerged as the basic framework for ensuring intellectual property rights across the world. It is not the universal Intellectual property law. But it provides a basic framework. Every member of WTO should include TRIPs provisions in their domestic intellectual property legislations.

Intellectual property regime is anchored by legislations in the corresponding fields. With the establishment of WTO and the international enforcement of its various provisions; India also has made corresponding changes in the intellectual property regime.

The intellectual property right regime of the country has been modified by a number of legislation since 1995. For India, the WTO's TRIPs agreement became binding from 2005 onwards as the country has got a ten-year transition period (1995-2005) to make the domestic legislation compatible with TRIPs. Here, India has got additional five-year transition period because of not having product patent regime in critical sector like pharmaceutical. Hence, existing laws were amended and fresh legislations were introduced during this period.

Different amendments to the various existing Acts- Patent Amendment Act (2005), Copy right Amendment Act (2010), are made to strengthen domestic legal framework to fulfill the harmonization with the WTO's TRIPS agreement. Similarly, a number of fresh legislations are made to upgrade the country's intellectual property regime. The following are the main legislations made to accommodate the TRIPs envisaged IPRs rights.

1. Patents: Patent Amendments: Patent amendment Act 1999, 2002 and 2005

2. Protection of Traditional Knowledge under Patent Amendment Act 2002

3. Industrial Designs: the Design Act, 1999

4. Trademarks: A new Trademarks Act 1999 has been enacted (The Trade and Merchandise Marks Act, 1958).

5. Copyrights: The Copyrights Act 1957 has been amended in 1983, 1984, 1992, 1994, 1999 and 2010. The latest amendment of 2010 became effective from 2012 onwards.

6. Geographical indications: The Geographical Indications of Goods (Registration and Protection Act) 1999.

7. Layout design of integrated circuits: The Semiconductor Integrated Circuit Layout Design Act, 2000

8. Plant Varieties: The Protection of Plant Varieties and Farmers' Rights Act 2001.

The Biological Diversity Act, 2002 also supports the IPR regime of the country. Several modifications are also expected in the immediate future to fine tune the country's IPR regime in the post TRIPs environment.

UNIT -2

Parties to IP Rights

Owner:

A person or organization that owns something. He is the owner of a chain of hotels. Example is Business/home/car owner. Most business owners will find the help of a financial adviser invaluable.

Customer:

In sales, commerce and economics, a customer (sometimes known as a client, buyer, or purchaser) is the recipient of a good, service, product or an idea - obtained from a seller, vendor, or supplier via a financial transaction or exchange for money or some other valuable consideration.

Authorized User:

Being an "authorized user" basically means you have someone else's card in your name. You can make purchases with it, but you're not the primary owner of the card. And you're right: signing on as an authorized user can help someone build or rebuild credit.

Licensee:

The recipient or grantee of a license; one who uses property subject to a license, as opposed to one who has been actually or constructively invited onto the property, for the benefit of the owner of the property (invitee).

Attorney:

A person appointed to act for another in business or legal matters.

Protection of the weak and strong:

Intellectual property serves as the foundation of innovation in our economy. Government-granted rights incentivize discovery and creativity by providing creators with an opportunity to profit from the value of their innovative work. In exchange, the creative work is made public so that others may build on and benefit from the work of the original creator. Laws protecting intellectual property also reduce the transaction costs between inventors and industry by providing information about the quality of the invention without jeopardizing the ownership of the idea.

For the entrepreneur, intellectual property in the form of patents, trademarks, and copyrights can be especially valuable. Patents, for example, have been shown to increase firm productivity and, more immediately, a firm's market value. Patent applications held by young firms also correlate with higher valuations by investors, provided those applications are not software-based.

But firms can also use patents and other forms of intellectual property in inefficient and anti-competitive ways. Firms may use patents as a strategic deterrent by building up "patent thickets," which make incremental or follow-on innovation by other firms a more challenging and costly process. Non-Practicing Entities (NPEs) also have been identified by many policymakers as a costly impediment to innovation and economic growth.

Sufficient intellectual property protection is key to promoting innovation. However, tweaks to intellectual property rights can shift incentives in ways that either encourage more or less innovation, depending on how strong or weak the existing intellectual property rights are.

The Dangers of Too-Weak Patents:

- Weak patent protection can lead to suboptimal innovation, since the potential payoff for a private actor may be deemed insufficient for the amount of time and resources put into developing an invention.
- Because weak rights make it more expensive to protect inventions, firms tend to look inward to solve problems that may otherwise have been more-efficiently solved by an inter-firm partnership.
- Patents (and copyrights) allow employers to see the exact results of the creativity and skill of prospective and current employees. When rights are weak, workers have trouble quantifying their value.

The Dangers of Too-Strong Patents:

- Expansive patent rights make successive innovative activity more costly. Having to seek permission from all related patent holders bids up the cost of innovation.
- Overly strong patent rights disproportionately benefit large firms. Larger firms are more likely to use patents to entrench their position in the market, as opposed to small- and medium-sized firms that are more likely to use patents to accumulate revenue and enhance their reputation.
- When patent rights are stronger, firms with intellectual assets are emboldened to threaten other inventors with litigation. For example, NPEs often discourage innovation by more productive innovators.

Finalizing ownership and use rights:

Every design project is different and the best will result from trust between the client and the designer. The most effective way to assure trust meets both client and designer expectations in an engagement is to codify the relationship with a written agreement. The standard agreement is adaptable to unique circumstances while still drawing from the best proven practices based on mutual respect and clarity. It is a modular approach that recognizes the different needs and requirements of different types of engagements. The AIGA Standard Form of Agreement for Design Services is one of the method followed. If you're familiar with the previous versions, you'll notice that this one is quite different. It does not take a one-size-fits-all approach, and it is not an extensive pre-printed document where you simply fill in the blanks. Instead, it acknowledges that most design firms develop their own custom proposal document for each project and are looking for an appropriate set of terms and conditions to attach to it. When put together and signed, the custom proposal document and its attached terms and conditions comprise the binding agreement with the client. With this in mind, the new focus of the AIGA Standard Form of Agreement is on those terms and conditions. AIGA members are involved in many different design disciplines. Because of this, the recommended terms and conditions have been prepared in a modular format. This also helps to keep individual agreements down to a more manageable size. The first two modules, Basic Terms and Conditions and Intellectual Property Provisions, should be used for all design assignments. An additional three modules are provided as supplements that can be added to the agreement as needed: Print specific Terms and Conditions, Interactive-Specific Terms and Conditions and Environmental-Specific Terms and Conditions.

UNIT-3

Ensuring the value of IP

Ensuring the value of IP at creation stage:

Intellectual property rights are like any other property right. They allow creators, or owners, of patents, trademarks or copyrighted works to benefit from their own work or investment in a creation. These rights are outlined in Article 27 of the Universal Declaration of Human Rights, which provides for the right to benefit from the protection of moral and material interests resulting from authorship of scientific, literary or artistic productions. The importance of intellectual property was first recognized in the Paris Convention for the Protection of Industrial Property (1883) and the Berne Convention for the Protection of Literary and Artistic Works (1886).

Both treaties are administered by the World Intellectual Property Organization (WIPO). There are several compelling reasons. First, the progress and well-being of humanity rest on its capacity to create and invent new works in the areas of technology and culture. Second, the legal protection of new creations encourages the commitment of additional resources for further innovation. Third, the promotion and protection of intellectual property spurs economic growth, creates new jobs and industries, and enhances the quality and enjoyment of life.

An efficient and equitable intellectual property system can help all countries to realize intellectual property's potential as a catalyst for economic development and social and cultural well-being. The intellectual property system helps strike a balance between the interests of innovators and the public interest, providing an environment in which creativity and invention can flourish, for the benefit of all.

After creation stage:

A survey of economic studies reveals that patents are the most preferred IP rights in relation to technological innovations. This seems to be due to the use of the terms 'innovation' and 'invention' as synonyms. This may explain why studies on innovation have, in many cases, treated patents as proxy input for innovation.[9] To be specific, the *number of patents* owned by an enterprise has often been used as one of the main indicators for determining *innovation intensity* of that enterprise. In addition, patents are also used as a measure of *output of innovation*. However, while such an approach is useful, it does not look at the "big picture" about the important role of the whole IP system, including the subsystem of enforcing IP rights (comprised essentially of the police, customs authorities and the judiciary), in facilitating the success of innovation in the marketplace. In this article, however, the focus is limited to all IP related actions that must be taken within an enterprise at different stages of the new product development process or cycle for using the different tools in the IP system for market success. Innovation as a process, therefore, requires effective participation of individuals from different sections/divisions of an enterprise, such as technical experts in R & D, marketing, management, finance, legal, etc., apart from outside consultants, suppliers, outsourced component manufacturers/service providers, business partners and lead users.

However, for the sake of simplicity, it is assumed in this article that all actions concerning innovation in relation to new product development happen within an enterprise.

An enterprise would be well positioned to benefit from innovation if it takes into consideration from the initial stage of the new product development process the full range of IP issues. This is

true whether the decision to innovate is taken as part and parcel of the overall business strategy, one-off development of a new idea, or as a reaction to developments in the marketplace.

As there are many players involved in facilitating the market success of an innovation, the effective use of the tools of IP will play an important role in reducing risk for the players involved, who may then be able to reap acceptable returns for their participation in the process. IP plays an important role in facilitating the process of taking innovative technology to the market place. At the same time, IP plays a major role in enhancing competitiveness of technology-based enterprises, whether such enterprises are commercializing new or improved products or providing service on the basis of a new or improved technology.

For most technology-based enterprises, a successful invention results in a more efficient way of doing things or in a new commercially viable product. The improved profitability of the enterprise is the outcome of added value that underpins a bigger stream of revenue or higher productivity.

Precise contractual protection of IP rights:

Intellectual property rights (IPR) have been defined as ideas, inventions, and creative expressions based on which there is a public willingness to bestow the status of property. IPR provide certain exclusive rights to the inventors or creators of that property, in order to enable them to reap commercial benefits from their creative efforts or reputation. There are several types of intellectual property protection like patent, copyright, trademark, etc. Patent is a recognition for an invention, which satisfies the criteria of global novelty, non-obviousness, and industrial application. IPR is prerequisite for better identification, planning, commercialization, rendering, and thereby protection of invention or creativity. Each industry should evolve its own IPR

policies, management style, strategies, and so on depending on its area of specialty. Pharmaceutical industry currently has an evolving IPR strategy requiring a better focus and approach in the coming era.

It is obvious that management of IP and IPR is a multidimensional task and calls for many different actions and strategies which need to be aligned with national laws and international treaties and practices. It is no longer driven purely by a national perspective. IP and its associated rights are seriously influenced by the market needs, market response, cost involved in translating IP into commercial venture and so on. In other words, trade and commerce considerations are important in the management of IPR. Different forms of IPR demand different treatment, handling, planning, and strategies and engagement of persons with different domain knowledge such as science, engineering, medicines, law, finance, marketing, and economics. Each industry should evolve its own IP policies, management style, strategies, etc. depending on its area of specialty. Pharmaceutical industry currently has an evolving IP strategy. Since there exists the increased possibility that some IPR are invalid, antitrust law, therefore, needs to step in to ensure that invalid rights are not being unlawfully asserted to establish and maintain illegitimate, albeit limited, monopolies within the pharmaceutical industry. Still many things remain to be resolved in this context.

Key issues related to IP internationally:

Ideas and knowledge are an increasingly important part of trade. Many products that used to be traded as low-technology goods or commodities now contain a higher proportion of invention and design in their value. Films, music recordings, books, computer software, on-line services, clothing, food, plants, biotechnology products and many others are bought and sold because of

the information, creativity and identity they contain — not usually because of the plastic, metal, cloth, paper or other material used to make them.

The WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), negotiated in the 1986–94 Uruguay Round, introduced intellectual property rules into the multilateral trading system for the first time. It's one of the three main areas of work in the WTO, alongside trade in goods and services. The TRIPS Council's job is to monitor how countries are applying the TRIPS Agreement and to discuss issues that arise from that. The balance is described in different ways. It's a balance between private rights (incentives to create) and public interest (ability to use or access the creations). It's also a balance between the short and long term.

- Long-term: society benefits from creations and inventions, including when the period of protection expires and they enter the public domain
- Short-term: intellectual property protection is mostly limited in time (there are some exceptions). Generally, private rights are protected in the short-term as an incentive to create and invent. Where intellectual property protection has social costs, governments can meet their objectives for social welfare and development by adapting the protection through various exceptions and flexibilities, for example to tackle public health problems

Technology transfer. Intellectual property protection should contribute to technical innovation and the transfer of technology. Producers and users should benefit. So should economies and societies at large.

Equal treatment.

- national treatment — treating one's own nationals and foreigners equally, with limited exceptions
- most-favored-nation treatment — equal treatment for nationals of all trading partners in the WTO, with limited exceptions

Different legal systems …. The TRIPS Agreement respects countries' own legal systems, which can vary considerably. Each can decide how to protect intellectual property and implement the agreement's provisions so long as they meet the TRIPS Agreement's minimum, same minimum standards. Countries have to meet minimum standards set by the TRIPS Agreement, such as the minimum number of years of protection. Each country is also free set its own standards at a higher level than the agreement requires, sometimes called "TRIPS-plus", so long as this is consistent with the agreement.

IP rights in international forums:

The United States has been negotiating with 11 other countries to establish an international free trade arrangement known as the Trans-Pacific Partnership Agreement, or TPP. The parties have been proceeding slowly; the countries recently entered into their 19th round of discussions.

International business disputes could potentially be mitigated if multi-country coalitions would enforce and respect international agreements. Although only a limited number of countries are involved in the TPP, establishing a framework for IP protection would send a message to other countries not to ignore international laws. India is one of a number of countries that have failed to adhere to international agreements concerning IP law. In 2012 alone, nine U.S. products protected by a patent had those patents either revoked or denied by India. While business

litigation may resolve patent disputes within the U.S., U.S. laws cannot be imposed on an International forum.

Companies that experiment with medicines to be submitted to the FDA go through anywhere between 5,000 and 10,000 medicines on average before being granted one approval. These companies typically invest more than $1 billion dollars before being awarded a patent.

In India, international agreements concerning IP rights have been ignored so that the country may grow its own domestic pharmaceutical industries. A failure to protect U.S. intellectual property might remove the incentive to dedicate time and resources to finding cures for pressing and ongoing diseases like cancer, since companies might not be willing to tackle more complex medical issues if there was no prospective payout. Business attorneys may help researchers litigate within the U.S. to protect their intellectual property rights. An attorney could investigate a business' individual situation and come up with a legal plan of action in order to combat copyright infringements.

Fundamentals in Country legal systems, generalities:

Civil law, civilian law, or Roman law is a legal system originating in Europe, intellectualized within the framework of late Roman law, and whose most prevalent feature is that its core principles are codified into a referable system which serves as the primary source of law. This can be contrasted with common law systems whose intellectual framework comes from judge-made decisional law which gives precedential authority to prior court decisions on the principle that it is unfair to treat similar facts differently on different occasions (doctrine of judicial precedent, or *stare decisis*).

Historically, a civil law is the group of legal ideas and systems ultimately derived from the *Corpus Juris Civilis*, but heavily overlaid by Napoleonic, Germanic, canonical, feudal, and local practices,[3] as well as doctrinal strains such as natural law, codification, and legal positivism.

Conceptually, civil law proceeds from abstractions, formulates general principles, and distinguishes substantive rules from procedural rules. It holds case law to be secondary and subordinate to statutory law. When discussing civil law, one should keep in mind the conceptual difference between a statute and a codal article. The marked feature of civilian systems is that they use codes with brief text that tend to avoid factually specific scenarios. Code articles deal in generalities and thus stand at odds with statutory schemes which are often very long and very detailed.

Validity of IP rights locally: specifics:

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in other countries must apply for a patent in each of the other countries or in regional patent offices. Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country, in accordance with the requirements of that country. Similarly, local laws apply to trademark, copyrights, and other forms of intellectual property in each jurisdiction.

IPR Toolkits for more than 20 countries and regions are provided on the website. The IPR Toolkits provide detailed information about protecting and enforcing intellectual property rights in specific markets, along with contact information for local IPR offices abroad and US

Government officials available to assist you. The information provided by no means constitutes legal advice and should not be a substitute for advice of counsel. Its intended purpose is to provide an overview.

Many small companies experience difficulty protecting their IPR abroad, including in China, as they are not aware of how to obtain and enforce rights in foreign markets. Some basic, often low-cost, steps small companies should consider include:

- Working with legal counsel to develop an overall IPR protection strategy;
- Developing detailed IPR language for licensing and subcontracting contracts;
- Conducting due diligence of potential foreign partners (The U.S. Commercial Service can help, see Export.gov);
- Recording their U.S.-registered trademarks and copyrights with Customs and Border Protection; and
- Securing and registering patents, trademarks, and copyrights in key foreign markets, including defensively in countries where IPR violations are common.