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**A REVIEW ARTICLE ON INTELLECTUAL PROPERTY RIGHTS (IPR)**

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**ABSTRACT**

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 recognition for an invention, which satisfies the criteria of global novelty, non-obviousness, and industrial application. IPRs are generally understood to have two principal areas of impact in pharmaceuticals. First, there is the issue of pricing and access, where discussion focuses on the links between IPRs (particularly patent rights), exclusion of competitors and the availability and pricing of new medicines. Second, there is the issue of R & D incentives – that is to say, the role of IPRs in providing incentives to discover, develop and market new drugs – and the effect of IPRs on R & D expenditure and its allocation across diseases, countries and organizations. In this article we are providing the information about IPR.

**KEYWORDS**

Intellectual property, License, Patent, R and D, Copy right and Trademark.

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**INTRODUCTION<sup>1</sup>**

Intellectual Property Right (IPR) is a right given over a creation of the mind and to exclusively exploit it for a certain period of time. Intellectual property, often known as IP, allows people to own their creativity and innovation in the same way that they can own physical property. The owner of IP can control and be rewarded for its use. This encourages further innovation and creativity to the benefit of everyone.

## **PURPOSE OF IPR<sup>1,2</sup>**

1. IPR (Intellectual property Rights) is a general term covering patents, copyrights, trademarks, industrial designs, geographical indications, layout design of integrated circuits and protection of undisclosed information (trade secrets).
2. Protection for idea/material.
3. The owner can usually decide whether or not to license its use to someone else (OR) to sell it to someone else through proper channel.

## **HISTORY OF INTELLECTUAL PROPERTY RIGHTS**

1. Prior to General Agreement on Tariffs and Trade (GATT), intellectual property rights were not subject to formal international trade negotiations.
2. Rather, intellectual properties were subject only to international conventions like Berne and Rome conventions concerning Copyrights.
3. The agreement on TRIPS (Trade Related Intellectual Property Rights) was negotiated with other international trade agreements during the URUGUAY round trade organizations of the GATT from 1986 to 1994.
4. The TRIPS agreement sets minimum standards in the field of Intellectual Property protection that all WTO member countries have to respect.
5. To achieve this goal, WTO members have to modify their Intellectual Property laws to make them consistent with the new WTO standards.
6. The TRIPS agreement states that all patents shall be available for at least 20 years from filing date, whereas before the TRIPS agreement the patent term varied greatly among the countries (7, 10, 17 or 20 years).
7. All WTO member countries have to incorporate this 20 years patent term in their patent.

## **TYPES OF INTELLECTUAL PROPERTIES AND THEIR DESCRIPTION<sup>3</sup>**

Originally, only patent, trademarks, and industrial designs were protected as 'Industrial Property', but now the term 'Intellectual Property' has a much wider meaning. IPR enhances technology advancement in the following ways<sup>1-4</sup>.

1. It provides a mechanism of handling infringement, piracy, and unauthorized use.
2. It provides a pool of information to the general public since all forms of IP are published except in case of trade secrets.

IP protection can be sought for a variety of intellectual efforts including

1. Patents.
2. Industrial designs relates to features of any shape, configuration, surface pattern, composition of lines and colors applied to an article whether 2-D, e.g., textile, or 3-D, e.g., toothbrush<sup>5</sup>.
3. Trademarks relate to any mark, name, or logo under which trade is conducted for any product or service and by which the manufacturer or the service provider is identified. Trademarks can be bought, sold, and licensed. Trademark has no existence apart from the goodwill of the product or service it symbolizes<sup>6</sup>.
4. Copyright relates to expression of ideas in material form and includes literary, musical, dramatic, artistic, cinematography work, audio tapes, and computer software<sup>7</sup>.
5. Geographical indications are indications, which identify as good as originating in the territory of a country or a region or locality in that territory where a given quality, reputation, or other characteristic of the goods is essentially attributable to its geographical origin<sup>8</sup>.

A patent is awarded for an invention, which satisfies the criteria of global novelty, non-obviousness, and industrial or commercial application. Patents can be granted for products and processes. As per the Indian Patent Act 1970, the term of a patent was 14 years from the date of filing except for processes for preparing drugs and food items for which the term was 7 years from the date of the filing or 5 years from the date of the patent, whichever is earlier. No product patents were granted for drugs and food items<sup>9</sup>. A copyright generated in a member country of the Berne Convention is automatically protected in all the member countries, without any need for registration. India is a signatory to the Berne Convention and has a very good copyright

legislation comparable to that of any country. However, the copyright will not be automatically available in countries that are not the members of the Berne Convention. Therefore, copyright may not be considered a territorial right in the strict sense. Like any other property IPR can be transferred, sold, or gifted<sup>7</sup>.

#### Types of patents<sup>10-13</sup>

##### Patent

Patent is a monopoly right given to a invention or innovation or creativity.

##### Process patent

Nobody has right to prepare products in that particular process except patentee. 1970-31/12/2004.

##### Product patent

Nobody has right to prepare that particular product except patentee. 1/1/2005 - till date.

#### CHARACTERIZING PHARMACEUTICAL IPRS

1. It should be a priority to develop a comprehensive and multidimensional measure of the formal structure of IPRs in pharmaceuticals for a broad cross-section of countries, as described above.
2. Country-based or cross-country surveys of a broad set of stakeholders (e.g. government and academic medical researchers, health care providers, branded and generic pharmaceutical company executives in R & D/marketing/public affairs/legal, import/export companies, wholesalers and retailers of pharmaceutical products, leading law firms) as to their perceptions of the strength and impact of IPRs would provide valuable context for discussion of policy issues, and a basis for measuring the *de facto* rather than *de jure* IPR environment.

#### INTELLECTUAL PROPERTY RIGHTS – INDIAN SCENARIO

1. Before enactment of Indian Patent Act, 1970, the Indian pharmaceutical industry was largely depending upon import of drugs and technology and indigenous pharmaceutical sector was not in a position to compete mighty foreign companies established long back in the country.

2. The enactment of Indian Patent Act, 1970, was a revolutionary step taken by the Late Smt Indira Gandhi as a prime minister of India for the encouragement of Indian pharmaceutical industry.
3. The Indian Patent Act was aimed at giving impetus to the industrial and economic growth within the country by adopting process patent strategy. The provision of process patent in the act was one of the important landmark in enhancing the bulk drug production in the country.
4. The effective implementation of this act between 1970 and establishment of world trade organizations (WTO) on 1-1-1995, given desired results of increased production of different commodities by Indian industrial sector especially in the field of drugs and pharmaceuticals.
5. 1970 - 1-1-1995 is considered as a Golden Era for Indian pharmaceutical industry.
6. The international agency world trade organizations (WTO) was established on 1-1-1995, to act as watch dog for implementations of policies of TRIPS (Trade Related Intellectual Property Rights) and TRIM (Trade Related Investment Measures).
7. The strength or weakness of a country's system of Intellectual Property protection appears to have a substantial effect on the kind of technology transferred or protected with India joining the World Trade Organization (WTO).

#### LEGISLATIONS COVERING IPRS IN INDIA

##### Patents

The Patents Act, 1970. The Act was amended in March 1999, followed by another in 2003.

##### Design

The Design Act, 1911. A new Design Act, 2000 has been enacted superseding the earlier Design Act, 1911. (enforcement pending).

##### Trade Marks

The Trade and Merchandise Marks Act, 1958. A new trademarks Act, 1999 has been enacted superseding the earlier Trade and Merchandise Marks Act, 1958. (Enforcement pending).

### **Copyright**

The Copyright Act, 1957 as amended in 1983, 1984, 1992, 1994 and 1999 and The Copyright Rules, 1958.

### **Layout Design of integrated Circuits**

The Semiconductor Integrated Circuit Layout Design Act, 2000. (Enforcement pending).

### **Protection of on disclosed information**

No exclusive legislation exists but the matter would be generally covered under the Contract Law.

### **Geographical indications**

The Geographical Indication of Goods (Registration and Protection) Act, 1999. (Enforcement pending).

### **Intellectual property Rights**

#### **International Scenario**

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### **CONCLUSION**

The pharmaceutical industry is unusually knowledge-intensive, and the economics of this sector are widely recognized to be unusually sensitive to IPRs. Some progress has been made in documenting and understanding the interactions between IPRs, complementary regulatory and policy provisions, the international expansion of the industry, and the implications of these for pricing and access to drugs, R&D, trade and production. 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.

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### **CONFLICT OF INTEREST**

We declare that we have no conflict of interest.

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