

“Role of Intellectual Property Rights in International Trade”

Sweta Mandal
REVA University
(School of Legal Studies)

Intellectual property rights are basically intangible creations, ideas, inventions, discoveries which an individual or group of individual arrive at after research and development. Intellectual property rights include patents, copyright, industrial design rights, trademarks, plant variety rights, geographical indications and in some jurisdiction trade secrets.

In India, intellectual property rights are recognised under the following statutes –

- The Patents Act,1970;
- The Copyrights Act,1957;
- The Designs Act,2000;
- The Geographical Indications of Goods(Registration and Protection) Act,1999;
- The Trade Marks Act, 1999;
- The Protection of Plant Varieties and Farmers’ Rights Act,2001;

As intellectual property enormously contributes to our national and international economies, several industries across our economy rely on the suitable enforcement of their patents, trademarks, copyrights ¹.

Intellectual property rights facilitates free flow of information by sharing the protected expertise critical to the original patented invention. To ensure consumers purchase safe and guaranteed products ,intellectual property protection is pivotal in development of international trade. America became the world’s entrepreneurial leader by enforcing protection for strong intellectual property rights for authors and inventors.

Intellectual property rights are extremely pivotal to the competitiveness of various post – industrial economies.

Intellectual property rights helps in fostering international trade, improving public health across the world, boosting pharmaceutical industry, improving access to education, contributing in overall sustainable development in trade. Intellectual property rights ensure incentive to invention, completion, recognition, financial support. The importance of intellectual property was first recognised in the Paris Convention for the Protection of Industrial Property 1883 (patents, industrial designs, etc) and the Berne Convention for the Protection of Literary and Artistic Works 1886 (copyright).

WIPO (World Intellectual Property Organisation) came into existence to protect intellectual property worldwide. It also ensured administrative co-operations among the intellectual

¹ <http://www.wipo.int/about-wip/en/>

property unions established by the treaties that WIPO administers. WIPO wanted its member nations to agree upon coherent and consistent norms.

Though the development of a balanced and effective international intellectual property system enabled innovation and creativity for the benefit of all, WIPO couldn't satiate the international trade concerns and issues remained unsolved. WIPO was ineffective in stopping the use of counterfeit, thus hurting the interests of developing countries.

So they decided that WTO would regulate these types of activities preventing counterfeit. If a country operates under counterfeit, WTO can punish the country through the dispute settlement mechanism. Developed countries wanted to include (TRIPs) within the scope of WTO and this was part of Grand Bargain.

WTO rules are currently codified in three agreements:

- The General Agreement on Tariffs and Trade(GATT)- It promotes international trade by reducing or eliminating trade barriers such as tariffs or quotas.
- General agreement on Trade in Services(GATS)- To liberalize international trade, developed economies have pursued new negotiations such as Trade in Services agreement(TISA).
- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) – Worldwide agreement on the issues which intersect between intellectual property and trade.²

The Agreement on Trade –Related Aspects of Intellectual Property Rights (TRIPs) is an international legal agreement between all the member nations of the world , introduced intellectual property rules into the multilateral trading system.

- TRIPs agreement contains minimum standards of protection for intellectual property.
- Agreement outlines how the general provisions and basic principles of the multilateral trading system is applied to international intellectual property.
- The agreement contains the procedures members should come up for the enforcement of those rights in their own territories.
- The agreement shows the ways to settle disputes on intellectual property between members of the WTO.
- The agreement exhibit special transitional arrangements for the implementation of TRIPs provisions³

² www.wto.org

³ Gerald J. Mossinghoff, The Importance of Intellectual Property Protection in International Trade

According to TRIPS Agreement ,intellectual property protection should contribute to technical innovation and transfer of technology. Both producers and users should gain ,and economic and social welfare should be increased.⁴

The agreement ensures that computer programs will be protected as literary works under the Berne Convention. There is an expansion of International copyright rules to cover rental rights ,as authors of computer programs and producers of sound recording ought to have the right to prohibit the commercial rental of their works to public. Agreement also defines the types of signs eligible for protection as trademarks. The TRIPS Agreement provides higher levels of protection for wines and spirits. The original or new industrial designs should be protected for 10 years. The patent protection must be eligible for all qualified inventions in all fields and must include both products and processes.

Conventions of UPOV- the International Union for the protection of New Varieties of Plants) provides the breeder's rights for the protection of plant varieties by patents or special system.

Trade in goods – IPRs grant creators the right to invent and design the goods and use the right to negotiate payment in return for using them. Section 377 of the amended Tariff act of 1930 authorizes the International Trade Commission to prohibit U.S imports that infringe on U.S.IPR . IPR policies practises a basis for offering or suspending duty-free entry to goods from other countries.⁵

Trade in services- IPRs help in the sale and delivery of an intangible product called service. The GATS (General Agreement on Trade in Services) defines sets of multilateral rule covering international trade in services. There is transfer of responsibility of many services like advertising, distribution, computer related, legal, audiovisual, postal and courier services, telecommunication, environmental services, construction services.

Royalty and licensing charges- Often the licensor asks to pay a fixed royalty charge which is considerably quite more than percentage of the intellectual property royalties⁶. One needs to know the value of their intellectual property to set fair royalty rates. Thus the value of patent, trademark, copyright, or brand assets helps in setting the royalty rates accurately.

Copyright industry- Intellectual property rights award creators the exclusive right for an original and creative work of authorship all over the world .it includes the copyright holder the sole right to market a work and exempt permit to a user to exercise any right without authorization. Copyright industry consists of literary inventions such as novels, poems, plays, films, musical works or artistic works such drawing, painting, sculptures, photographs, architectural designs.⁷

⁴ Kenneth W.Dam, The Growing Importance of International Protection of Intellectual Property

⁵ V.K. Ahuja, Law relating to Intellectual Property Rights, 3rd Edn. (2017)

⁶ <http://www.scconline.com>

⁷ <http://www.manupatra.com>

Pharmaceutical industry- Stringent IPRs is enforced in countries where there are countless local manufacturers with the ability to produce cheap counterfeit copies of patented drugs which often find their way back to western markets. Comprehensive advice on protection, management, exploitation of patented drugs is done. There is defined balance between Intellectual property protection and urgent needs of patients and avoiding considerable reputational harm.

Manufacturing industries- IPRs protects the integrity of the brands in international market and ensures the products to keep up with the ensuing competitors all over the world. IPRs ensures the product to remain progressive. There are many potentially lucrative trade secrets which are well guarded by intellectual property protection. The confidential manufacturing processes, technology is also well taken care of.⁸

Although some goods are not counterfeit ,but it still isn't unencumbered whether they are infringing goods, there is something called 'grey goods' or 'parallel imports ' .

Parallel trade of goods protected by intellectual property rights is a fundamental issue of international trade . The doctrine of exhaustion of rights provides a legal basis for parallel imports. IPRs are exhausted when goods or services are sold within territory. It is known as first- sale doctrine. The TRIPS Agreement recognizes discretion accorded to countries to adopt their own policies and rules with respect to exhaustion of rights.

Parallel importing of pharmaceuticals reduces the price of pharmaceutical by introducing competition.

An efficacious and equitable intellectual property system can help all countries to realize intellectual property's potential as a stimulant for economic development and social and cultural well being. The intellectual property system helps strike a balance between the interest of innovators and public interest, providing an environment in which creativity and invention can flourish, for the benefit of all. Promotion and protection of intellectual property stimulate economic growth, creates new industries and increases the quality of life.

⁸ John M. Curtis, Intellectual Property Rights and International Trade: An Overview