

***INTRODUCTION
TO
INTELLECTUAL PROPERTY RIGHTS***

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OVERVIEW OF IPR

Meaning and Classification of IPR

Intellectual Property is intangible incorporate property consisting of bundle of rights. The property imbibed from the intellectual capacity of a human brain for instant an invention, design of an article, literary or artist work, symbols/trade marks, having commercial value and the same is not available in the public domain. IPR denotes the specific legal rights which authors, inventors and other IP holders may hold and exercise and not the intellectual work itself.

Intellectual Property Rights are statutory rights once granted allows the creator(s) or owner(s) of the intellectual property to exclude others from exploiting the same commercially for a given period of time. It allows the creator(s)/owner(s) to have the benefits from their work when these are exploited commercially. IPR are granted to an inventor or creator, designer in lieu of the discloser of his/her knowledge.

Intellectual property may broadly be divided into two categories:

1. **Industrial property**
2. **Copyright and related rights**

1. **Industrial Property**

- A) Patent
- B) Trademark
- C) Industrial designs
- D) Geographical indications

2. **Copyright and related rights**

Overview of Patent

Patent

Patent, under the Act, is a grant from the Government to the inventor for a limited period of time, the exclusive right to make use, exercise and vend his invention. After the expiry of the duration of patent, anybody can make use of the invention. A patent may be granted for a new, useful, and non-obvious invention, and gives the patent holder a right to prevent others from practicing the invention without a license from the inventor for a certain period of time

Invention

Invention means any new and useful art, process, method or manner of manufacture machine, apparatus or other article substance produced by manufacture and includes any new and useful improvement of any of them, and alleged invention Therefore an invention is the creation of intellect applied to capital and labour, to produce something new and useful. Such creation becomes the exclusive property of the inventor on grant of patent.

Period of patent

1. In respect of process patents relating to drugs and food, the term is five years from the date of sealing the patents or seven years from the date of the patent whichever is shorter.
2. In respect of all other patents the term is fourteen years from the date of the patent. A patent is kept alive only by paying the renewal fee from time to time

Rights of a Patentee

The owner of the "Patent", i.e. patentee is entitled to deal with such property in the same manner as owner of any other moveable property.

- a. The patentee can sell the whole or part of this property (Patent).
- b. He can also grant license to other(s) to use the patented property.
- c. He can also assign such property to any other(s).

Such sale, license or assignment of such patented property naturally has to be for valuable consideration, acceptable mutually.

Use of patented invention by the Central Government

The grant of patent confers the exclusive right of use on the patentee for commercial gain but the Act recognizes that the Central Government may use any invention even without the payment of royalty to the inventor.

The idea is that the invention can be put to use for general public benefit by the government in certain circumstances when the patentee would have to forego his commercial gain in the general public interest.

Some restricted use of patented invention permissible under the law

The essence of a patent is conferring of the exclusive right on the patentee. Yet some restricted use of a patented invention by a person other than the patentee is permissible under the law. For such instance, use of a patented invention is permissible for research or experimental purposes or for imparting knowledge or instructions to pupils.

Infringement of the patent

The right conferred by the Patent is the exclusive right to make, uses, exercise, sells or distribute the invention in India. Infringement consists in the violation of any of these rights. The act expressly provides that use by a person other than the patentee, patentee's assignee or licensee would be an infringement of the patent and as such illegal.

Remedy for infringement of patent

An action for infringement must be instituted by way of a suit in any District Court or a High Court having jurisdiction to entertain the suit.

The plaintiff on satisfying the court about infringement of his patent would be entitled to the following relief:

1. Interlocutory injunction
2. Damages
3. Account of profits

Overview of Trademark

Trademark

A trademark is a mark used in relation to goods for the purpose of indicating a connection between the goods and some person having the right as proprietor to use the mark. It is a visual symbol in the form of a word, device or a label applied to articles of commerce with a view to indicate to the purchasing public that they are goods manufactured or otherwise dealt in by a particular person or a particular organization as distinguished from similar goods manufactured or dealt in by others. It is distinctive sign, which is used to distinguish the products or services of different businesses.

Functions of a Trademark

A trademark serves the purpose of identifying the source or the origin of goods. Trademark performs the following four functions.

- a. It identifies the product and its origin.
- b. It proposes to guarantee its quality.
- c. It advertises the product. The trademark represents the product.
- d. It creates an image of the product in the minds of the public particularly the consumers or the prospective consumers of such goods.

Marks not registerable

Following are few types of marks, which are not registerable:

- a. The use of Marks, which would be likely to deceive or cause confusion.
- b. A mark the use of which would be contrary to any law for the time being in force
- c. A mark comprising or containing scandalous or obscene matter
- d. A mark comprising or containing any matter likely to hurt the religious susceptibilities of any class or section
- e. A mark, which would be disentitled to protection in court of law.
- f. A mark which is identical with or deceptively similar to a trademark already registered in respect of the same goods or goods of the same description.

- g. A word, which is the accepted name of any single chemical name or chemical compound in respect of chemical substances.
- h. A geographical name or a surname or a personal name or any common abbreviation thereof or the name of a sect, caste or tribe in India.

Time period

The registration of a trademark shall be for a period of seven years, but it may be renewed from time to time.

Infringement

Infringement of a trademark occurs if a person other than the registered proprietor in the course of trade, in relation to the same goods or services for which the mark is registered, uses the same mark or deceptively similar mark.

Essentials of infringement

- a. The taking of any essential feature of the mark or taking the whole of the mark a few additions and alterations would constitute infringement.
- b. The infringing mark must be used in the course of trade, that is, in a regular trade wherein the proprietor of the mark is engaged.
- c. The use of the infringing mark must be printed or usual representation of the mark in advertisements, Invoices or bills. Any oral use of the trademark is not infringement.
- d. Any or all of the above acts would constitute infringement.

Remedies

The proprietor of a trademark has a right to file a suit for infringement of his right and obtain:

- a. **Injunction**- an injunction restrains the defendant from using the offending mark pending the trial of the suit or until further orders.
- b. **Damages** in assessing the damages the important question is what is the loss sustained by the plaintiff. The loss must be the natural and direct consequence of the defendant's acts. The object of damages is to compensate for loss or injury.
- c. **Accounts of profits**. Where a plaintiff claims the profits made by the unauthorized use of his trademark, it is important to ascertain to what extent he

trademark was used, in order to determine what proportion of the net profits realized by the infringer was attributable to its use.

No action for infringement of unregistered trade mark

No person shall be entitled to institute any proceeding to prevent, or recover damages for, the infringement of an unregistered of an unregistered

Jurisdiction

A suit for infringement of registered trademark is filed in District Court having jurisdiction or in a High Court having original jurisdiction to entertain such suits. The infringement must have taken place within the territorial jurisdiction of the Court.

Limitation

The period of limitation for filing the suit is three years from the date of infringement.

Overview of Industrial Design

Industrial design is an applied art whereby the aesthetics and usability of products may be improved for marketability and production. The role of an Industrial Designer is to create and execute design solutions towards problems of engineering, marketing, brand development and sales.

According to the ICSID, (International Council of Societies of Industrial Design) "Design is a creative activity whose aim is to establish the multi-faceted qualities of objects, processes, services and their systems in whole life-cycles. Therefore, design is the central factor of innovative humanization of technologies and the crucial factor of cultural and economic exchange".

According to the IDSA (Industrial Design Society of America) "Industrial Design (ID) is the professional service of creating and developing concepts and specifications that optimize the function, value and appearance of products and systems for the mutual benefit of both user and manufacturer."

Industrial design has a focus on technical concepts, products and processes. In addition to considering aesthetics, usability, and ergonomics, it can also encompass the engineering of objects, usefulness as well as usability, market placement, and other concerns such as seduction, psychology, desire, and the sexual or affectionate attachment of the user to the object. These values and accompanying aspects on which industrial design is based can vary, both between different schools of thought and among practicing designers.

Product design and industrial design can overlap into the fields of user interface design, information design and interaction design. Various schools of industrial design and/or product design may specialize in one of these aspects, ranging from pure art colleges (product styling) to mixed programs of engineering and design, to related disciplines like exhibit design and interior design.

Industrial Designers often utilize 3D Software such as '*3D CAiD, Alias Studio Tools, 3D Studio Max, Pro/Engineer, SensAble FreeForm(R) Modeling Plus(tm) System, Rhinoceros, solidThinking, SolidWorks*'

Industrial design rights are intellectual property rights that make exclusive the visual design of objects that are not purely utilitarian. An industrial design consists of the creation of a shape, configuration or composition of pattern or color, or combination of pattern and color in three dimensional form containing aesthetic value. An industrial design can be a two- or three-dimensional pattern used to produce a product, industrial commodity or handicraft. Under the Hague Agreement Concerning the International Deposit of Industrial Designs, a WIPO-administered treaty, a procedure for an international registration exists. An applicant can file for a single international deposit with WIPO or with the national office in a country party to the treaty. The design will then be protected in as many member countries of the treaty as desired.

Overview Geographical Indications

Geographical Indications of Goods are defined as that aspect of industrial property, which refers to the geographical indication referring to a country or to a place, situated therein as being the country or place of origin of that product. Typically, such a name conveys an assurance of quality and distinctiveness, which is essentially attributable to the fact of its origin in that, defined geographical locality, region or country. Under Articles 1 (2) and 10 of the Paris Convention for the Protection of Industrial Property, geographical indications are covered as an element of IPRs. They are also covered under Articles 22 to 24 of the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement, which was part of the Agreements concluding the Uruguay Round of GATT negotiations.

India, as a member of the World Trade Organization (**WTO**), enacted the Geographical Indications of Goods (Registration & Protection) Act, 1999 has come into force with effect from 15th September 2003.

In December 1999, the Parliament had passed the Geographical Indications of Goods (Registration and Protection) Act, 1999. This Act seeks to provide for the registration and better protection of geographical indications relating to goods in India. The Controller General of Patents, Designs and Trade Marks- who is the Registrar of Geographical Indications would administer the Act. The Geographical Indications Registry would be located at Chennai.

Geographical indication indicates that a particular good originates from a definite geographical territory.

- a. It is used to identify agricultural, natural or manufactured goods.
- b. The manufactured goods should be produced or processed or prepared in that territory.
- c. It should have a special quality or reputation or other characteristics

Overview of Copyright And Related Rights

Copyright

Copyright is a right given by the law to creators of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings. In fact, it is a bundle of rights including, *inter alia*, rights of reproduction, communication to the public, adaptation and translation of the work. There could be slight variations in the composition of the rights depending on the work.

The object of copyright law is to encourage authors, composers, artists and designers to create original works by rewarding them with the exclusive right for a limited period to exploit the work for monetary gain. It protects the writer or creator of the original work from the unauthorized reproduction or exploitation of his materials. The protection provided by copyright to the efforts of writers, artists, designers, dramatists, musicians, architects and producers of sound recordings, cinematograph films and computer software, creates an atmosphere conducive to creativity, which induces them to create more and motivates others to create. However there is no copyright in ideas. Copyright subsists only in the material form in which the ideas are expressed.

Works protected by copyright are:

- 1) Original, Literary, dramatic, musical and artistic works;
- 2) Cinematographic film; and
- 3) Records

Literary, dramatic, musical and artistic works

Literary work- Copyright subsists in original literary works and relates to the expression of thought, but the expression need not be original or novel. The work must not be copied from another work but must originate from the author. Two authors independently producing an identical work will be entitled for copyright in their respective works. The emphasis is more on the labor, skill judgment and capital expended in producing the work. It includes tables, compilations and computer programs.

Dramatic work- Copyright subsists in original dramatic work and its adaptation. It includes any piece or recitation, choreographic work, Entertainment in dumb show The scenic arrangement or acting form of which is fixed in writing otherwise, but does not include a cinematograph film.

Musical work- Copyright subsists in original musical work and Includes any combination of melody and harmony, either of them reduced to writing or otherwise graphically produced or reproduced.

An original adaptation of a musical work is also entitled to copyright. There is no copyright in a song. A song has its words written by one man and its music by another; are words having a literary copyright, and so has its music. These two copyrights are entirely different and cannot be merged. In cases where the same person writes the word and music, or where the same person owns them, he would own the copyright in the song.

In case of literary, dramatic or musical work, a copyright gives the right to do and authorize the doing of any of the following acts, namely-

- a) To reproduce the work in any material form;
- b) To publish the work;
- c) To perform the work in public;
- d) To produce, reproduce, perform or publish any translation of the work;
- e) To make any cinematographic film or a record in respect of work;
- f) To communicate the work by broadcast or to communicate to the public by loudspeaker or any other similar instrument the broadcast of the work;
- g) To make any adaptation of work;
- h) To do in relation to a translation or an adaptation of the work any of the acts specified in relation to the work in clause (a) to (d).

Artistic work

It means:

1. A painting,
2. A sculpture,
3. A drawing including a diagram, map, chart or plan,
4. An engraving or a photograph, whether or not any such work possesses artistic quality;
5. An architectural work of art; and any other work of artistic craftsmanship.

The work need not possess any artistic quality but the author must have bestowed skill, judgment and effort upon the work.

A poster used in advertisement is an artistic work. But advertisement slogans consisting of a few words only are not copyright matter.

Cinematograph film

Cinematograph film includes the sound track, if any. It also includes any work produced by any process analogous to cinematography. A video film is considered to be a work produced by a process analogous to cinematography. A movie may be taken of a live performance like sport events, dramatic or musical performance.

In the case of cinematography film, copyright means the right to do or authorize the doing of any of the following acts, namely-

- a) To make copy of the film;
- b) To cause the film, in so far as it consists of visual images, to be seen in public and, in so far as it consists of sounds, to be heard in public;
- c) To make any record embodying the recording in the part of the sound track associated with the film by utilizing such sound track.

Records

Record means -any disc, tape, perforated roll or other device in which sounds are embodied so as to be capable of being reproduced there from.

The sound tract in a cinematography film is not a record unless it is separately recorded in a disc tape or other device.

Where the record is made directly from a live performance the owner of the disc or tape in which the recording is made will be the owner of the copyright.

In the case of a record, copyright gives the right to do or authorize the doing of any of the following acts by utilizing the record, namely-

- a) To make any other record embodying the same recording.
- b) To cause the recording embodied in the record to be heard in the public.
- c) To communicate the recording embodied in the record by broadcast.

Use of a work without permission of the owner of the copyright, and, if so, which are they?

Subject to certain conditions, a fair deal for research, study, criticism, review and news reporting, as well as use of works in library and schools and in the legislatures, is permitted without specific permission of the copyright owners. In order to protect the interests of users, some exemptions have been prescribed in respect of specific uses of works enjoying copyright. Some of the exemptions are the uses of the work

- a. For the purpose of research or private study,
- b. For criticism or review,
- c. For reporting current events,
- d. In connection with judicial proceeding,
- e. Performance by an amateur club or society if the performance is given to a non-paying audience, and
- f. The making of sound recordings of literary, dramatic or musical works under certain conditions.

Application to Titles and Names

Copyright does not ordinarily protect titles by themselves or names, short word combinations, slogans, short phrases, methods, plots or factual information. Copyright does not protect ideas or concepts. To get the protection of copyright a work must be original.

Assignment of Copyright

The owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or partially and either generally or subject to limitations and either for the whole term of the copyright or any part thereof.

ANALYSIS OF PATENT, COPYRIGHT AND TRADEMARK

	TRADEMARK	COPYRIGHT	PATENT
Right Protected	Right conferred to use a particular mark, which may be a symbol, word, device applied to articles of commerce to indicate the distinctiveness of goods.	Right conferred in respect of original, literary, dramatic, musical and artistic works, cinematograph film and records.	Right conferred in respect of a new invention to manufacture the product patented or use the process patented.
Time Period	7 years and may be renewed from time to time.	Life time plus 50 years for literary, dramatic, musical and artistic works. 50 years from year of publication for records.	14 years and in case of food and drugs 5 or 7 years.
Who Can Register	Proprietor of the trademark and application may be made in the name of an individual, partners of a Firm, Corporation, Government department or Trust.	The author or publisher of, or owner of or other person interested in the copyright in any work.	Actual inventor or an assignee of the right to make an application or legal representative of either.
Commercial Use	Licensing the right by registration of the licensee as a registered user.	By assigning or licensing the right to others on a royalty or lump sum basis.	Assigning rights or licensing them to industrialists for a lump sum payment or royalty basis.
Remedy For Infringement	Injunction, Damages, Accounts of profits	Civil, Criminal, Administrative.	Injunction, Damages, Accounts of

Intellectual Property Rights in India

There is a well-established statutory, administrative and judicial framework to safeguard intellectual property rights in India, whether they relate to patents, trademarks, copyright or industrial designs.

Governing Laws in India for IPR as follows:

1. Patent Act 1970;
2. Trade Marks Act (1958 original) 1999;
3. The Copyright Act 1957;
4. The design Act 2000;
5. Geographical Indication of Goods (Registration and Protection) Act 1999;
6. Plant Variety and Farmers Right Protection Act 2001.

Well-known international trademarks have been protected in India even when they were not registered in India. The Indian Trademarks Law has been extended through court decisions to service marks in addition to trademarks for goods. Computer software companies have successfully curtailed piracy through court orders. Computer databases have been protected. The courts, under the doctrine of breach of confidentiality, accorded an extensive protection of trade secrets. Right to privacy, which is not protected even in some developed countries, has been recognized in India.

Protection of intellectual property rights in India continues to be strengthened further. The year 1999 witnessed the consideration and passage of major legislation with regard to protection of intellectual property rights in harmony with international practices and in compliance with India's obligations under TRIPS. These include:

1. **The Patents (Amendment) Act, 1999** passed by the Indian Parliament on March 10, 1999 to amend the Patents Act of 1970 that provides for establishment of a mail box system to file patents and accords exclusive marketing rights for 5 years.
2. **The Trade Marks Bill, 1999**, which repeals and replaces the Trade and Merchandise Marks Act, 1958 passed by the Indian Parliament in the Winter Session that concluded on December 23, 1999.
3. **The Copyright (Amendment) Act, 1999** passed by both houses of the Indian Parliament, and signed by the President of India on December 30, 1999.

4. A *sui generis* legislation for the protection of geographical indications called the **Geographical Indications of Goods (Registration & Protection) Bill, 1999** approved by both houses of the Indian Parliament on December 23, 1999.
5. **The Industrial Designs Bill, 1999**, which replaces the Designs Act, 1911 was passed in the Upper House of the Indian Parliament in the Winter Session, which concluded on December 23, 1999 and is presently before the Lower House for its consideration.
6. **The Patents (Second Amendment) Bill, 1999** to further amend the Patents Act, 1970 and make it TRIPS compliant was introduced in the Upper House of Indian Parliament on December 20, 1999.

In addition to the above legislative changes, the Government of India has taken several measures to streamline and strengthen the intellectual property administration system in the country. Projects relating to the modernization of patent information services and trademarks registry have been implemented with help from WIPO/UNDP. The Government of India is implementing a project for modernization of patent offices at a cost of Rs.756 million incorporating several components such as human resource development, recruiting additional examiners, infrastructure support and strengthening by way of computerization and re-engineering work practices, and elimination of backlog of patent applications. An amendment to the Patent Rules was notified on June 2, 1999 to simplify the procedural aspects.

The Trade Marks Registry is also proposed to be further strengthened and modernized. A project for modernization was earlier implemented during 1993-96. Further strengthening of the Registry is being taken up at a cost of Rs.86 million. The main thrust now is to strengthen the infrastructure of the Trade Marks Registry and the early removal of backlog of pending applications, transfer of records to CD-ROM's, re-engineering of work processes, appointment of additional examiners, etc.

Landmark Cases

1. The Turmeric Case

The turmeric patent is a landmark case in the area of Intellectual property rights. This was the first time a patent based on the Traditional Knowledge of a developing country was challenged successfully and United State Patent and Trademark Office (USPTO) revoked the patent.

In 1995, to two non-resident Indians, Suman K. Das and Hari Har P. Cohly, associated with the University of Mississippi Medical Center, Jackson, USA obtained patent for Use of turmeric in wound healing. As turmeric has been used by all Indian families as a traditional wound healer in India for thousands of years for healing wounds and rashes.

Indian Council of Scientific and Industrial Research (CSIR) were entrusted with the responsibility of challenging the patent. CSIR challenged the patent on the ground that it lacked novelty. CSIR could locate 32 references (some of them being more than one hundred years old, in Sanskrit, Urdu and Hindi), which showed that this finding was well known in India prior to filing of this patent. The formal request for re-examination of the patent was filed by CSIR at USPTO on 28 October 1996. The first re-examination result rejected all the six claims based on the references submitted by CSIR on the ground of 'anticipated references'

University of Mississippi Medical Centre, decided not to pursue the case and transferred the rights to the inventors. Inventors Mr. Suman K. Das and Mr. Hari Har P. Cohly decided to file a Objections to the re- examination results. The inventors argued that the powder and paste form of Turmeric had different physical properties which helps wound healing, i.e. bio-availability and absorbability, and therefore, one of the ordinary skills in the art would not expect, with any reasonable degree of certainty, that a powdered material would be useful in the same application as a paste of the same material. The inventors, further, mentioned that oral administration was available only with honey and honey itself was considered to have wound healing properties.

In the second re-examination it was observed that the paste and the powder forms were equivalent for healing wounds in view of the cited material by CSIR. the examiner rejected all the claims once again and upheld the contentions raised by CSIR

Turmeric patent case is the first successful case in the area of intellectual property violation.

2. Basmati Rice Case

The Basmati patents debate has once again hit the headlines with the recent report that a US company, Ricetec, has been granted a Patent in the US by the US Patent and Trademark office. The US Patent Office's decision comes after a three year long legal battle. Two years back, the Indian government had vowed to fight the case till the end

and ensure that Indian interests are not hampered. In fact the Indian government realised that a patent application had been filed on Basmati a year after the filing in September 1997. It received information regarding the patent only after India objected to the United Kingdom registering Ricetec's "Texmati" trademark in late 1998. In reply, the US Company said it had received patent for its Basmati line rice in its own country.

Ricetec's Claim:

Ricetec had stated in its Patent application that their "invention" was based on its surprising discovery that certain Basmati plant and grain characteristics and aspects of the growing environment for traditional Basmati rice lines are not critical to perceived Basmati product quality by consumers. It had said that the "limited success" in growing Basmati in other parts of the world "supports the belief in consumer, trade and scientific circles that authentic Basmati rice can only be obtained from the northern regions of India and Pakistan due to the unique and complex combination of environment, soil, climate, sowing practices and the genetics of the Basmati varieties." In its patent application Ricetec also acknowledged that "good quality Basmati rice traditionally come from northern India and Pakistan...Indeed in some countries the term can be applied to only the Basmati rice grown in India and Pakistan." However, the company then went on to claim that it had invented certain "novel" Basmati lines and grains "which make possible the production of high quality, higher yielding Basmati rice worldwide."

The Indian government has now claimed that the recent ruling by the US patent office is not really a victory for Ricetec as what has been granted as Patent Rights is a dilution of the original claims made by the company. Apparently, during the course of the appeal filed by India in the US Ricetec agreed to drop 15 of the 20 claims that it had made in the original patent application. The government would also like to draw satisfaction from the fact that the American company will not be able to call its product Basmati -- it is likely to be called something like Texmati (thus indicating that it is Basmati grown in Texas!).

Of Ricetec's 20 claims before the US Patent Office, three (15 to 17) were considered critical by the Indian side because if these had been upheld Ricetec would have been granted Patents for characteristics that were considered unique to Basmati varieties grown in India and Pakistan. The Indian response to Ricetec's patent claim took two years to formulate because of the complex issues involved. The response that was finally filed argued that a Patent for Basmati should not be granted, as Ricetec's variety was different from the Basmati that is grown in India (and Pakistan). The evidence furnished was germplasm from the collection of the Directorate of Rice Research in Hyderabad and declarations by Indian scientists on grain characteristics of Basmati rice grown in India.

The Legal Position:

In this context, the legal position in the Basmati case needs to be understood. Plant varieties are not allowed Patent protection in most countries (including India), though the US has been a strong proponent for Patent protection of plant varieties. The WTO agreement does not require countries to provide Patent protection to plant varieties—it only requires countries to legislate so that plant varieties are protected in some manner (not necessarily through patents). However, because the application was filed in the US,

domestic laws of that country allowed the patent application. Hence, obviously, there is no immediate threat to any extension of the patents granted to India.

Ricetec has been granted what are called "varietal" patents; i.e. three strains developed by the company have been allowed protection. What is more important is that the company can label its strains as "superior Basmati rice". It is difficult to argue that this will not constitute a threat to Indian exports of Basmati rice. As a result of the varietal Patent granted, not only will India lose out on the 45,000-tonne US market, which forms 10 per cent of the total Basmati exports, but also its premium position in vital markets like the European Union, the UK and West Asi The case also raises broader question regarding the unequal nature of the global patent system. This is borne out by the fact that the combined might of the Indian government and all the consequent resources at its disposal was unable to completely overturn a patent application of a small company, in spite of the Patent application having been flawed to start with.

3. **Novartis Glivec- Patent Case – Madras High Court**

In a significant development which may affect Section 3(d) of the Patents Act, 1970, Novartis AG, has gone into appeal before the Madaras High Court against the decision of the Indian Patent Office, which has rejected grant of patent to Glivec, an anti cancer drug, on the ground that the claim of Novartis AG of improvement to the original drug is nothing but “old wine in a new bottle”. Section 3(d) of the Patents Act, 1970, will hit slight improvements in form or structure of the existing medicine. Section 3(d) provides that the mere discovery of any new property or mere new use for a known substance or the mere use of a known process, machine or apparatus unless such known process results in a product or employs at least one new reactant, shall not fall within the definition of patent. Novartis AG has challenged the constitutional validity of Section 3(d) of the Patents Act, 1970. The decision of the Indian Patent Office has been welcomed by Indian Drug Manufactures.

4. **Microsoft Corporation Vs. Deepak Raval MIPR 2007(1) 0072**

Delhi High Court has ruled that sale of pirated software, which are properties of Microsoft by a computer vending firm, amounts to infringement of trade mark and copyright of Microsoft. The issue before the Court was illegal and unauthorized installation of Microsoft Windows 98 operating system, Microsoft Visual Basic 6.0, Microsoft Visual C++ 6.0, Microsoft FoxPro, and Microsoft Office 2000. The Court injuncted the defendants saying “in so far as grant of relief of injunction is concerned it hardly possesses any problem”, and held that the Defendants were guilty of violation of Microsoft’s copyright and trade mark. In this case, the Court also granted punitive damages, by holding that the Defendants acts of violation were “willfully calculated to exploit the advantage of an established mark” In this case the Court took the professional help of a Chartered Accountant for the calculation of damages who assisted the Court to arrive at the figure of punitive damages of INR 1, 28, 23, 200. However, in the suit since the damages claimed were only Rs. 5, 00,000/-, the Court granted only the above sum as damages.

5. **Yahoo! Inc. Vs. Akash Arora and Another. 1999 (19) PTC201**

The Plaintiff www.yahoo.com alleged that by using a similar domain name, i.e. www.yahooindia.com, the defendants were indulging in deceit and “passing off”. Thus, by applying the doctrine of passing off, the court granted an interim injunction restraining the defendants from dealing in services or goods on the Internet or under the trademark / domain name <yahooindia.com>. It was held that a domain name is entitled to equal protection against passing off as in the case of a trademark. This case of Yahoo Inc. set the principle that the use of domain names, which are identical or deceptively similar to trademarks, makes a prima facie case of passing off.

6. **Mawana Sugars Limited Vs. Panalink Infotech Limited 2006 (32) PTC 537**

The complainant company has been in the sugar producing and marketing business under the trademarks MAWANA and MAWANA SUGARS for the past 55 years. The complainant registered its domain names through the respondent, who illegally transferred the same to some third party during the pendency of the proceedings. It was held that it was a typical case of “Cyberflying”, which means a phenomenon where a registrant of a domain name, when named as a respondent in a domain name dispute case, systematically transfers the domain name to a different registrant to disrupt the Policy. Held that respondent failed to show any legitimate right in the domain names and transfer of the domain name without the 4 consent of the complainant was an action in bad faith. It was held that the respondent was involved in “CYBERFLYING”.

7. **Scotch Whisky Association & Others Vs. Golden Bottling Limited. 2006 (32) PTC 656 (DEL),**

Delhi High Court, taking cognizance of Scotch Whisky Order, 1990 and U.K. Scotch Whisky Act, 1988, has restrained the Defendants by way of an injunction from using the word Scotch or Scot with the Whisky like Red Scot, on the ground that the whisky by the defendant was not being manufactured as per the rules under the U.K. Act or imported from Scotland, and such use would amount to improper use of the Geographical Indications. India, being a signatory to WTO–TRIPS Agreement, has passed the Geographical Indications of Goods (Registration and Protection) Act, 1999, and now recognizes Geographical Indications.

Thank You

