

INTELLECTUAL **PROPERTY**

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“Know Your Rights”

HERBAL MEDICINE

Overview

- ❑ Law governing IP
- ❑ Meaning
- ❑ Types of IP
 - Patent
 - Trademark
 - Copyright
- ❑ Infringement
- ❑ Case Studies
- ❑ Conclusion



WIPO



- WIPO (World Intellectual Property Organization) was established by the WIPO Convention in 1967
- The WIPO is a **specialized agency** of the United Nations.
- It **promote the protection** of IP throughout the world.
- Its headquarters are in Geneva, Switzerland

World Intellectual Property Day April 26

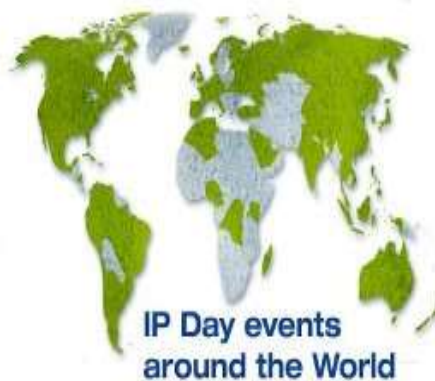
World Intellectual Property Day 2012 *Visionary Innovators*

Your favorite visionary innovators



Source: Number of «likes» on World IP Day Facebook Page

How many countries reported events?



About World IP Day

IP Day offers an exciting chance each year to join with others around the globe, to highlight, discuss and demonstrate how the IP system contributes to the flourishing of music and the arts and to driving the technological innovation that helps shape our world.

April 26

WIPO's birthday (1970)
World IP Day since 2000

www.wipo.int/ipday

On World Intellectual Property Day this year, WIPO's focus is on promoting **VISIONARY INNOVATION** as the key to a secure future.



Intellectual Property Law In India

- ◉ There are many big and small intellectual property law firms worldwide, like in India, USA, UK, Chicago etc, providing qualitative help to inventors and creators of product.
- ◉ In India intellectual property rights are safely protected and controlled by well-established statutory and judicial framework.
- ◉ Apart From that, there are many attorneys and law firm of intellectual property in India in various states.

What is “Intellectual Property”?

- ◉ Intellectual Property is a property that arises from the human intellect. It is a product of human creation.
- ◉ Intellectual Property comprises 2 distinct forms:
 - * Literary & Artistic Works
 - * Industrial Property

“Literary & Artistic Works”

* They are books, paintings, musical compositions, plays, movies, radio/tv programs, performances, & other artistic works.

❖ How are they Protected?

* Protected by “**COPYRIGHT**”

“Industrial Property”

- Industrial Property describes physical matter that is the product of an idea or concept for commercial purposes.

❖ How are they Protected?

- * By Patented objects
- * By Trademarks
- * By Industrial Designs
- * By Trade Secrets
- * By Layout-designs
- * By Geographical Indications

Major Types of IP

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graph TD; A[Major Types of IP] --> B[Functional & Technical Inventions]; A --> C[Purely Artistic works]; A --> D[A symbol, logo, word, sound, color, design, etc.]; B --> E[Patents Act, 1970  
Amended in 1999 & 2005]; C --> F[Copyright Act, 1957  
Amended in 1982, 1984, 1992, 1994 & 1999]; D --> G[Trademark Act, 1999  
Amended in 1994, 1996 & 2000];
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**Functional & Technical
Inventions**

Patents Act, 1970
Amended
in 1999 & 2005

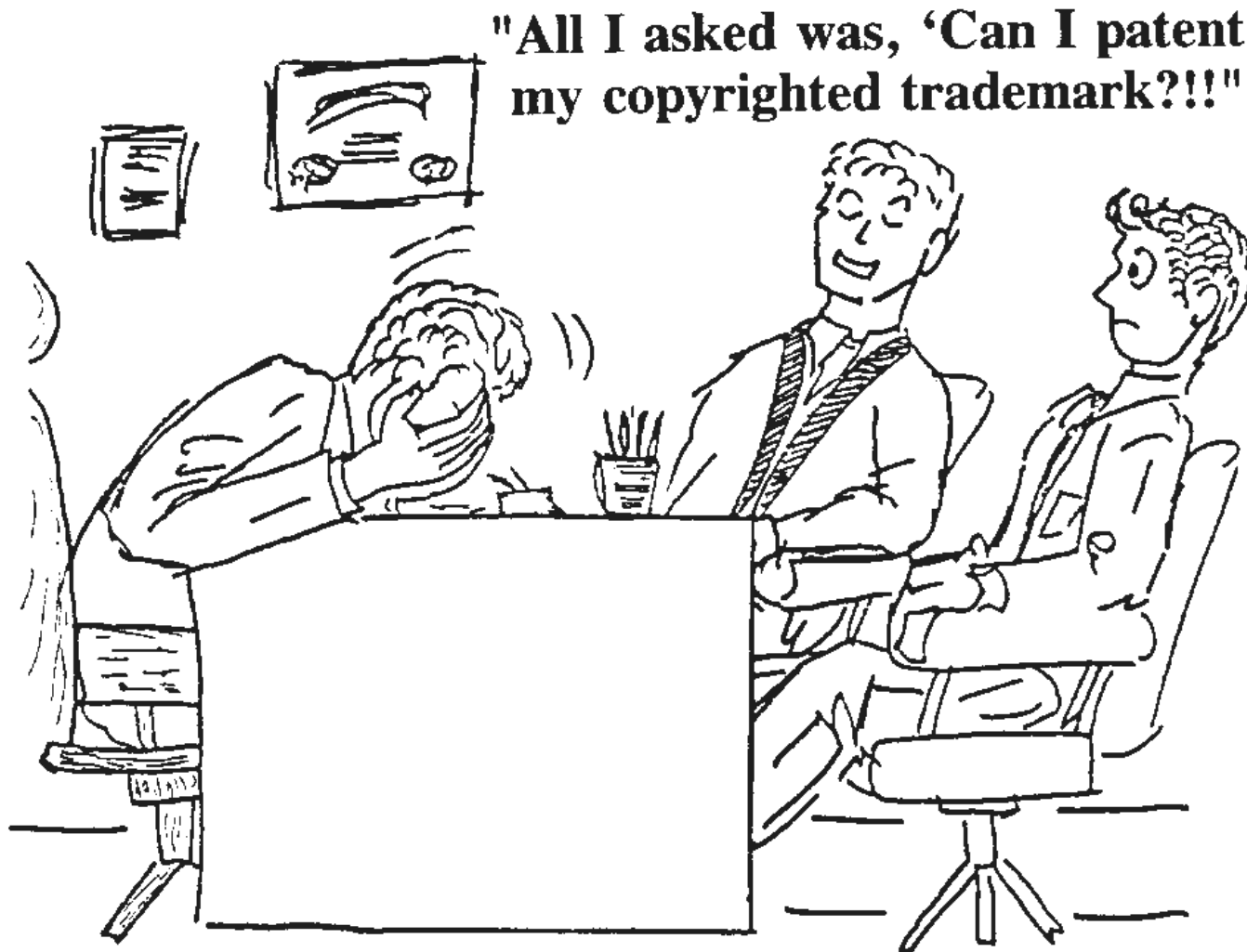
**Purely
Artistic works**

Copyright Act,
1957
Amended in 1982,
1984, 1992,
1994 & 1999

**A symbol, logo, word, sound,
color, design, etc.**

Trademark
Act, 1999
Amended in 1994,
1996 & 2000

If you don't see a problem with this question, you need the class!



PATENTS

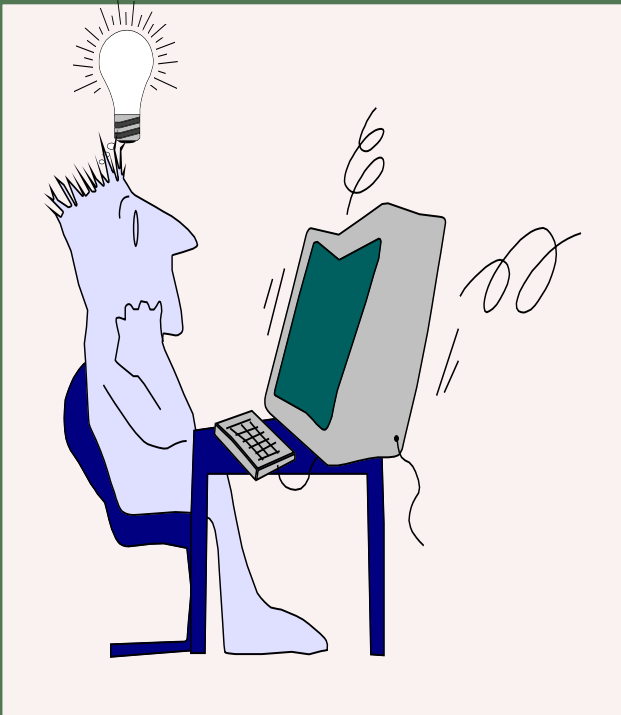
- (1) It is covered under the Act called the Patents Act, 1970 [Amended by Patents Act, 2005]
- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may publish, by notification in the Official Gazette.



Patents

Definition:

- ◉ A patent describes an invention for which the inventor claims the exclusive right.



INVENTION PATENTABLE IF...

- ✓ NEW (**Novel**)
- ✓ USEFUL
- ✓ NOT OBVIOUS
- ✓ PERTAINS TO PATENTABLE SUBJECT MATTER

Patentable Subject Matter

Invention

- Relates To A Process Or Product Or Both
- Involves An Inventive Step
- Be Capable Of Industrial Application
- A Machine

Life & Duration

- ◉ Term of the patent is 20 years from the date of filling for all types of inventions.
- ◉ Priority date- first to file
- ◉ The date of patent is the date of filing the application for patent.
- ◉ The term of the patent is counted from this date.

Fees For Filing Patent

- ◎ The Government fee for filing a patent application in India is Rs.750/- for individuals and Rs.3,000/- for legal entities.
- ◎ No fee for 1st and 2nd year
- ◎ Renewal fee, on yearly basis, is required to be paid for 3rd to 20th for keeping the patent in force.
- ◎ Patent lapses if renewal fee is not paid within the prescribed period.

Is A Patent Granted In One Country Enforceable In Other Countries?

- ◉ No, there is nothing like a global patent or a world patent. Patent rights are essentially territorial in nature
- ◉ Granting a patent in one country of the Union does not force other countries to grant the patent for the same invention.
- ◉ The refusal of the patent in one country does not mean that it will be terminated in all the countries

Patent Holders In INDIA

- ◉ The list of top 10 patents holders in India comprises only pharmaceutical and bio-tech companies.
- ◉ In India, **184** patents are held by the Council of Scientific and Industrial Research, followed by 'Ranbaxy'
- ◉ While the top 10 patents holders across the world are IT companies, in India, no IT firm has patents.

Youngest Patent-holder on wheelchair



- ❖ JAIPUR: Drawing inspiration from scientist Stephen Hawking, a wheelchair-bound nine-year-old boy here has invented a game of six-player circular chess. The boy, **Hridayeshwar Singh Bhati** has got the game's design patented in his name.

What Does a Patent look Like?

	Certificate of Grant of Patent
COPY	
Patent Number: GB2399473	
Proprietor(s): Nicholas P Le Feuvre	
Inventor(s): Nicholas P Le Feuvre	
<i>This is to Certify that, in accordance with the Patents Act 1977,</i> a Patent has been granted to the proprietor(s) for an invention entitled "Loudspeaker with low distortion precise imaging and deep bass" disclosed in an application filed 8 March 2004. Dated 19 October 2005	
	 Ron Marchant <i>Comptroller General of Patents, Designs and Trade Marks</i> UNITED KINGDOM PATENT OFFICE
The attention of the proprietor(s) is drawn to the important notes overleaf.	

Trademark

1. It is covered under the Act called the Trade Marks Act, 1999.
2. The Act came into effect on September 15, 2003. It replaced the Trade and Merchandise Marks Act, 1958.
3. It extends to the whole of India.
4. It shall come into force on such date as the Central Government may publish, by notification in the Official Gazette

Trademarks

© **Trademark:**

- A symbol, logo, word, sound, color, design, or other device that is used to identify a business or a product in commerce.
- Different Symbols are :

- TM** Intent to use application filed for product
- SM** Intent to use application filed for services
- ®** Registered trademark

Registration Procedure

- ◉Application for search.
- ◉Application for registration.
- ◉Examination of trademark.
- ◉Advertisement of trademark.
- ◉Filing of opposition.
- ◉Certificate issued.

DURATION & FEES OF TRADEMARK

- ◉ Trademark is ***valid*** for 10 years from the date of application which may be renewed for further period of 10 years on payment of prescribed fees.
- ◉ Service mark Rights are reserved exclusively for owners for 17 year & it can also be renewed.
- ◉ The Govt. fees is Rs. 2,500 for each class of goods or services.

Applicability Of Trademark

- ◉ A trademark is a sign **Used on**, or in connection with the marketing of goods or services.
- ◉ “**Used on**” the goods means that it may appear not only on the goods themselves but on the **container or wrapper** in which the goods are when they are sold.

A) Set apart from surrounding text....

Correct use:

Raymond Textile is India's leading producer of worsted suiting fabric with over 60% market share.

'Raymond Textile' is India's leading producer of worsted suiting fabric with over 60% market share.

Incorrect use:

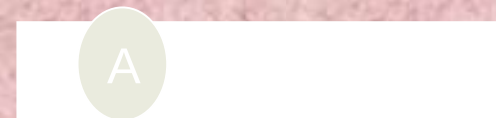
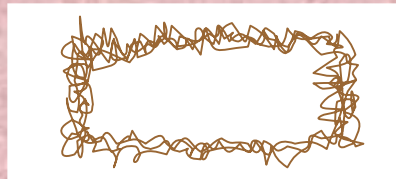
Raymond Textile is India's leading producer of worsted suiting fabric with over 60% market share.

B) Specify font, size, proportion and placement

Correct use:



Incorrect use:



C) Do not change spelling

Correct use:

- Calvin Klein
- Tommy Hilfiger
- MPC POTTERIES GWALIOR

Incorrect use:

- Kalvin Klein
- Tommy-Hilfiger
- MPC P/G

Trademarks



Name

Logotype

Symbol

Slogan

Shape

Color



Copyright

- ◉ The **Indian Copyright Act, 1957** governs the system of copyrights in **India**.
[Amended in 1982, 1984, 1992, 1994 & 1999]
- ◉ **Meaning** : It is a right which Grants protection to the unique expression of Ideas.

Original

- ◉ The term original in the copyright law means that the work *originated* with the author.
- ◉ There is no requirement for *novelty or uniqueness* as there is in patent law.
- ◉ Copyright law protects the expression of an idea. Not the idea itself.

What is covered by copyright?

Literary



Films



Dramatic



Musical



Artistic



Sound Recording



What is not covered by copyright?

- ◉ Ideas
- ◉ Facts
- ◉ Recipes
- ◉ Works lacking originality (e.g. The phone book)
- ◉ Names, titles or short phrases



Registration Procedure



- ◉ Register a copyright by completing a simple application form, along with the appropriate fee
- ◉ Need not send a copy of your work,
- ◉ It may appear with the same title, but if each work has been created independently, each will have its own copyright protection.

Duration of Copyright



Copyright lasts for the-

- Author's lifetime + 50 years from the end of the calendar year in which the author dies,
- 50 years for films and sound recordings,
- 25 years for typographical arrangements of a published edition,
- Copyright protection always expires on December 31 of the last calendar year of protection.

What is “Fair Use”?

- ◉ Gives permission to use copyrighted materials if certain criteria are met
- ◉ Protects freedom of speech
- ◉ Promotes public benefits like education.



Beware the “Fair Use Excuse”

- ◎ Never assume that your use falls under the fair-use exception!
- ◎ “Saving money” is not a sufficient excuse
- ◎ Laziness can be a trap!



How much can I use?

- ◉ Photos and images - up to 5 works from one author; up to 10% or 15 works, whichever is less, from a collection
- ◉ Database information - up to 10% or 2500 fields or cell entries, whichever is less



Take action against Infringements



What constitutes Infringement?

- ◎ Any reproduction, use, distribution, performance, etc. of the work without the permission of the owner.
- ◎ An ***identical or substantial similar*** reproduction is also covered
- ◎ Infringement – Damages - Injunction

Remedies for Patent Infringement



- A **suit** can lie in the District or High court ,
- It may issue **an injunction** either **to prevent** the infringer from any further use & **award damages** to the patent owner **or** will pay the patent owner **royalties** for further use.

Apple sued HTC over iPhone patents

- Apple sued phone maker HTC and has filed a complaint with the U.S. International Trade Commission, alleging that the Taiwanese company is infringing 20 Apple patents related to the iPhone
- Steve Jobs, Apple's CEO, said in a statement "We think competition is healthy, but competitors should create their own original technology, not steal ours."



Remedies for Trademark Infringement



A suit can lie in District or High court

- Punishment extends from **6 months to 3 years**
- A permanent bans on engaging in commercial activities

Example of a successful civil enforcement action

- 3 suits filed by Adidas Saloman AG in the Delhi High Court against counterfeiters
- At the initial stage, infringing goods were seized by the Local Commissioner
- Cases were decreed recently & damages of Rs. 15 lakhs was awarded to Adidas Saloman



Remedies for Copyright Infringement



- ◉ A **suit** can lie in the district court or in a high court u/s 63 of the copyright act, 1957
- ◉ Punishable with imprisonment upto **3 years** and fined as per the claims.

COPYRIGHT CLAIMS ON THE BASIS OF UNDERLYING ARTISTIC WORKS

Ritika Limited v. Ashwani Kumar



Ritika Limited v. Nina Talukdar



Ritika Limited v. Sajid Mobin



“...but I didn't know!”

- ◉ Called “Innocent Infringement”
- ◉ Occurs when infringer was unaware that things were Protected.
- ◉ No excuse if work properly displays..
 - “Patent”
 - Trademark symbol: ®, TM, SM
 - Copyright notice: © + name + year

Example: Utsav Sarees © 2011-2012



CONCLUSION

- Create yourself, rather than using other's creations
- Do not use competitor's mark in such way that it harms competitor in unfair way
- No comparisons that are likely to cause confusion

CONCLUSION

- ◎ Technological advancement made the job of the CREATOR easy
.....it also made the job of the COPY-ER easy.

THANK
YOU

Any Questions.....

