The ICFAI Foundation for Higher Education (IFHE),

Hyderabad

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Accredited by NAAC with 'A' Grade

Proceedings of National Conference

on

"Intellectual Property Rights : New Dimensions"

July, 16-17, 2021

Organized by:

Center for Excellence in IPR

A constituent of the ICFAI Foundation for Higher Education
(Deemed to be University u/s 3 of the UGC Act, 1956)

Message from the Vice Chancellor

Greetings!

I am happy to know that ICFAI Law School is organizing a two-day National Conference on **Intellectual Property Rights: New Dimensions** to be held from July, 16-17, 2021. The Conference has four technical sessions with eminent speakers from academics and industry. Conferences such as these help in bringing together the academic knowledge of the Universities and the actual issues faced at the ground level. This will help the policymakers to understand and frame relevant legislations in the or in bringing the amendments to the existing legislations. The issues discussed during the conference on Intellectual Property Rights : New Dimensions shall open the doors for further research in the area. Such a conference will also provide an exposure to the students, some of whom will soon be working in the International, national or even in the Government and inter-governmental organisations.

I am happy that ICFAI Law School is hosting this conference and hope that the event will generate beneficial ideas and would help exchange of knowledge across academia and the industry. I congratulate the Director Prof. (Dr.) A.V.Narasimha Rao, Dr.S.V.Damodar Reddy and the Organising Committee, faculty, supporting staff and students and wish the conference to be a grand success.

Prof. J. Mahender Reddy
The ICFAI Foundation for Higher Education, Hyderabad.

Message from the Director, ICFAI Law School, Hyderabad

Greetings!

ICFAI Law School, Hyderabad is proud to organize its conference on **Intellectual Property Rights: New Dimensions** on July, 16-17, 2021. ICFAI Law School Hyderabad is one of the most prominent and premier schools in India. Espoused to its mission that to carve the mediocre students joining the college into future generation advocates and legal professionals with world class expertise by providing rigorous course work, creating student centric and participative learning opportunities, to solve the complex problems resulting from the changing international business environment.

The Centre for Excellence in IPR is established at ICFAI Law School, Hyderabad to promote protection of innovations and awareness in the field of intellectual property rights. The IPR Cell of the Centre takes the responsibility of fostering the IPR culture among the stakeholders of the IFHE and strives to protect the IP created by the IFHE in general and Innovation Cell in specific. The centre organized webinars on IPR by inviting the Attorneys from Malaysia, Dubai, Germany and Texas Law School, US. The Centre has trained the researchers of Institute Forest Research, Dhulapally on 'Protection of Research and Patent Law'. Organized training programs for participants of 'Startups' of IFHE on identification and protection of IPR.

The conference has been organised around the theme of on Intellectual Property Rights : New Dimensions such as Intellectual Property Rights Policy and Awareness program, Access to new research and Inventions, Piracy and Law, compulsory Licensing challenges etc.,. Academic Research and Corporate insights have been collated into this conference proceedings.

I take immense pride and pleasure in inviting all of you to the conference on Intellectual Property Rights : New Dimensions and hope each participant will reap the maximum benefit from the event.

Dr. A.V. Narsimha Rao
Director, ICFAI Law School
ICFAI Foundation for Higher Education

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Contents

International Journal For Advanced Research In Science & Technology
A peer reviewed international journal
www.ijarst.in
ISSN: 2457-0362

Access to New Research and Inventions

Mr. Dilip Sharma[1]

Abstract

In the knowledge driven economy the commercialization of new knowledge acquired through researches has furthered activities relating to new inventions and laid yawning foundations for stronger IPR regime. Invention, protection and commercialization are three dimensions of the research portfolio and IPR regime. Securing rights on the new inventions and protecting them have become part of business transactions. Parameters for measuring the strength of the business organization has shifted to the number of inventions and number of patents.

The organizations and business houses, irrespective of its size and financial statuses, are striving to fix their share in the research and innovations by contributing their funds. The medium and large industries and business enterprises are establishing their own departments or subsidiaries for undertaking the researches. The small enterprises, because of their financial constraints, are not able to have their own research units, but, are undertaking the research activities on consortium basis. Some of them are entering into the agreements with the universities and other community institutions to improve their IPR portfolio by obtaining the rights upon the new inventions. The government policy, granting tax deductions and exemptions for the investments in the research and development activities also is encouraging the business people to invest the money in the research activities. The tax benefits and concessions received by the research institutions are contributing to the deficit in the financial budgets of the government and the extent of the gap is filled by the new taxations. In other words the common public through their tax payments are facilitating the governments to extend benefits to the research institutes for the promotion of new inventions.

In India and other countries, the government is also establishing the research institutions in various fields like, science, technology, agriculture, medicine, biotech, space and other industries. These institutions are fully funded by the government through out the process of inventions. Universities also contributing to the new researches and inventions by allocating budgets from their available finances or through grants from the University Grants Commission or from the funds received philanthropists.

It is an equitable proposition that the benefits accrued through inventions undertaken by public funding should be shared by the public who contributed directly or indirectly. It is the natural justice. The knowledge created should fall on to the public domain for easy access and used for the welfare of the society without any restrictions. But, the other argument crops up in defense of the protection of the inventions are that the research institutions should have the rights on their inventions as they have applied their intellectual capital for undertaking invention. The argument sounds good. A strategic policy should be formulated to strike balance between the granting of rights to the research institutions and public access and the same may be incorporated in the IPR law. And the tenure of protection of inventions should be made short when the public funds are used for the research activities there after the knowledge created should fall into the public domain without any hindrances.

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International Journal For Advanced Research In Science & Technology
A peer reviewed international journal
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ISSN: 2457-0362

IPR Policy and Awareness Programs

Prof Dilip Sharma[2]

Abstract

Knowledge is nobody's property. It is the property of the intellects who strive hard to exist in the struggle among the competitors. The skills and labor of intellectuals dominates and penetrates into the existing knowledge and new knowledge is created. It stimulates the traditional and indigenous knowledge and metamorphoses them into new creations, the core concerns of intellectual property. The new knowledge and inventions are not created only by the scientists, academia, but, during the real life struggles, the industry workers, uneducated traditional cultivators, business entrepreneurs also develops new knowledge, invents new processes and products. The technical knowledge coming out of real life situations and experience has a greater contribution towards the intellectual capital. Sometimes, the creativity or inventions rising from the field will be more useful than that of research labs and Universities. Inventions in textiles designs, pharma industries, software and computer appliances, telecommunications, seeds and plant varieties have its roots from the industry.

The present scenario of IPR policy – bringing awareness on the importance of intellectual property rights and their protection, shows that it is limited to certain pockets of the society. The Government is concentrating in granting of funds to the Universities, voluntary organizations, government departments, associations and Confederations for conducting seminars and workshops in the process. There is no paucity in the efforts. But, it is observed in most of the cases, the academia, bureaucrats, scientists and other cream of the society are actively taking part and they interact, discuss, and come with some resolution for the enrichment of IPR Regime. But, the purpose is not solved as it is not reaching the gross roots of the industry from where the real share of inventions is coming. As a result, number of new inventions and creations are left unnoticed. The persons interested may adapt the same and customize the inventions to meet their personal needs and patent them. The original inventors, requiring the protection, are not aware of their rights and the process of patenting or registering of their IPRs. It results in counterfeit products which drains the benefits of the real inventor.

The lack of awareness at the basic gross root levels also causes concern of unintentional seepage of trade secrets and confidential information to the competitor. It is known fact that most of the inventors are passive in enforcing their rights because of huge expenditure and fail to quantify the damages they suffer due to the piracy or infringement. Even the educated, authors who published their books on agreements for royalties, the producers of music and cinematographic films are not coming forward to knock the doors of justice to recoup their damages. It is not out of place to state that the percentage of advocates or consultants handling the patents and other related IPR issues is very very negligible. The number of litigations in courts is very low when compared to other property litigations. It shows the need to improve the situation.

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International Journal For Advanced Research In Science & Technology
A peer reviewed international journal
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ISSN: 2457-0362

New Dimensions of Patenting Medical Inventions

Dr S V Damodar Reddy[3]

Abstract

The growth in the field of technology, science is unmatchable and unpredictable. It is not confined to a certain segment of the society or section of research area. Every new invention under the sun is patentable. However, the patent law bars some of the inventions are not the subject matter of the patents. This restriction has invited a number of criticisms. The segments of intense research and new inventions are the pharmaceuticals and biotechnology. The latest research on DNA structures has opened new vistas in understanding the creativity and root causes for a number of chronic diseases which again triggered the inventions in the field of drugs and pharmaceuticals. These inventions also brought some of the new methods of medical treatments and equipment to diagnose and treat the diseases which were considered as incurable.

The researches have developed a new process of producing new living things without natural reproductive process, but by means of artificial mechanisms – the cloning. Considering ethical issues involved in, the human cloning is made as non-patentable subject matter. In addition to, the methods of medical treatments are tagged as non patentable by the law of the patents. The patent law does not permit the patenting the diagnostic, therapeutic and surgical methods. Ethical issues and public interest are the drivers for not providing patentability to medical treatments. Whatever the new method of treatment is invented or conceptualized, that should be shared by all the people irrespective of place of invention or person invented. Human kind should reap the fruits of such invention and universalization of such invention should be the policy. Treatment methods are interdependent upon the implements designed and produced for the said purpose. If the implements are patented, the companies manufacturing them may directly control the treatment methods by creating scarcity or fixing high prices. End results will be – non-availability of equipments to persons in need and companies having patents upon them shall control which is against the public policy.

However, the equipment that is invented for undertaking medical treatments may be allowed to be produced by any company interested in the manufacturing of medical instrumentation and infrastructure which controls the price tags of the equipment. The price tag of equipment is reflected on the treatment cost of individual and health care establishments which again discriminates the poor from enjoying the fruits of researches in the area. It is essential to bring such newly invented equipment and infrastructure under the category of non patentable subject matter. The process patents or the product patents relating to such equipments should be discouraged and incentives for new inventions in the said area should be granted to encourage the continuation of inventions in the medical field. Like the provisions made to the life saving drugs across the globe new initiation may be taken to fix the moderate and affordable rates to the equipments that is used in the medical treatments including the surgery.

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International Journal For Advanced Research In Science & Technology
A peer reviewed international journal
www.ijarst.in
ISSN: 2457-0362

Piracy and Law

Dr. Rekraj Jain[4]

Abstract

The piracy is the pest gulping the cream of the intellectual property and leaving pulp, resulting in irreparable damages to the owners. There are some occasions where the organizations have downed their shutters while paying the penalties when their piracy is detected. The plague of piracy has spread to all the corners of the society and irrespective of class or classes of intellectual property viz., copyrights, patents, trademarks, trade secrets, bio-technology, electronic property and so on. The most effected areas of the piracy are pharmaceuticals, music industry and cinema. Number of cases are filed in different courts of US and people are facing litigations, spending money and time to protect themselves.

Music and cinema industries are the worst affected areas by the piracy. Sale of counterfeit music discs, cinema tapes are dominating than the sale of original and licensed ones resulting in loss of crores of rupees to the original owner. According to Motion Picture Association of US, the cinema industry in the US had suffered to a tune of 3 billion US dollars whereas the music industry has lost in multiples of billions not only in US but also in other countries. The Napster case is one of the celebrated cases of music piracy which shows the roots into all corners of the society. Internet is a double-edged tool which not only helps the original owners to capture the untapped businesses and also facilitates the authors and others in promoting the piracy. Downloading of the music and motion pictures through Internet has become a fashion of the day.

Most of the Legislations relating to IPR enacted by the developed and developing countries have provisions defining the piracy of the intellectual property and also penalties for the infringement and piracy of the copyrighted material or patented products and services. They realized that further delay in enforcement of the rights of the owners will certainly encourage the piracy and brings down the morale of owners of intellectual property which ultimately affects economy of the country.

In India, the powers are given to the police for making investigations and enquiries relating to pirated goods. The legislations also are stringent in India by providing great penalties and punishments to the infringers and persons engaged in piracy but even then the rate of piracy is increasing and the music and cinema industries are suffering losses. The time has ripen for the intellects and authorities to have a round table and discuss the pros and cons of enforcement mechanism that is existing today and come out with a solution to curb the piracy which is a caterpillar sucking the blood of nation's economy.

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International Journal For Advanced Research In Science & Technology
A peer reviewed international journal
www.ijarst.in
ISSN: 2457-0362

Fostering of Intellectual Property Culture in SMEs and Challenges

Dr S V Damodar Reddy[5]

Abstract

Knowledge has the power to drive and influence the economy and the technology. Ideas, innovations and human intelligence, forming the part of knowledge, are the most valuable intellectual commodities in today's world. The knowledge creation is dependant upon the intellectual competencies and capacities of the persons involved. Thus, the intellectual property and knowledge creation are interdependent and inter-related. The knowledge so created or acquired is applied for the development of new products and process, modifications. Existing products are modified as a part of improvement of their quality.

With the liberalization of economy and opening of markets, investments in to the business are flowing from different parts of the world based upon the competencies and capacities of business enterprises. Dynamic social needs demands new products and services or modifications for the existing products and services. A continual research is warranted to satisfy the need. The earning of products and services also depends upon maximization of profits by excluding pirates from sharing benefits of research. IP Rights protection influences the investments, product developments, market incentives, trade policies, competition laws, and other regulations. Increased investments, liberalized systems deregulates the licencing, technology development policies develop additional IPRs.

The development of scientific and technological researches changed the growth phase of business. The post industrial revolution period witnessed greater encouragement to innovations like locomotives, planes, printing machine, telephone, and many other industrial products. The industries including the manufacturing of machinery, petroleum, cement, chemicals, automobiles, paper, textiles, and rubber, plastic are benefited because of continuous research activities. Thus, the business houses especially the Small and Medium Enterprises and research institutes interacts with one other. The SMEs undertake the responsibility of supplying of products and services which are required to satisfy the demands of consumers, in the process depends upon the research institutions to help them in finding the solutions for consumer problems.

The intellectual property helps SMEs in brand and image building which promotes the sales of its product and attracts investments from outside world. Trademarks, industrial designs and intellectual property protection can be powerful tools for creating value for SME business. SMEs should use the intellectual property creatively, pro-actively. They must be transformed from mere legal concepts and enforceable rights into commercially valuable assets and that can be achieved primarily by putting them to work as tools for creating and developing a brand value for SME business. Management of IP assets of SME also plays important role which depends upon the awareness of the employers and employees of the SME. Lack of awareness and commercialization of existing intellectual property are important hurdles in the economic benefits of the SME.

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International Journal For Advanced Research In Science & Technology
A peer reviewed international journal
www.ijarst.in
ISSN: 2457-0362

Compulsory Licensing Challenges in Patent Law

Dr.Veena[6]

Abstract:

The patent is one of the intellectual property rights granted for an invention, a product or process. It is an exclusive monopoly right to the patentee for a limited period of 20 years to make use of the patented product or process. The patentee has a right to commercialize his invention which is an incentive to his intellectual outcome and excludes others to make use unauthorizedly. The Agreement on Trade Related aspects of Intellectual Property Rights (TRIPs) is one of the World Trade Organization agreements provides global minimum standards for grant, protection and enforcement of intellectual property which includes patents to bring harmonization of laws. India being a member of WTO amended Indian Patent Act 1970 accordingly in 2005 for product patents in the pharmaceutical field. The population in developing and least developed countries could not afford patented drugs as they were proved expensive due to exclusive patent right. The generic industries cannot reverse-engineer the process of research and development carried out by foreign researches, as it is prohibited under the patent law. The TRIPS Agreement made provisions relating to public health and made a provision for compulsory licensing. In this paper an attempt was made to study the concept of compulsory licensing at national level with respect to domestic law which is a check to the exploitation of patentee rights and public health of national interest. The compulsory licensing was to make use of a patented product by a third party which is opposite to right of voluntary license exercised by the patentee. Sections 84-92 of Patent Act 1970 deals with the various provisions which need to be fulfilled for grant of compulsory license to someone other than the rightful owner. A person can approach and make a request to the Controller for grant of compulsory license on expiry of three years of grant on any of the conditions – i) reasonable requirement of the public with respect to the patented invention have not been satisfied, ii) patented invention is not made available to the public at reasonable or affordable price or iii) patented invention is not worked within the territory of India. The Controller is empowered to issue compulsory licenses Suo motu in case of 'national emergency' or 'public non-commercial use'. India granted first compulsory license to Natco pharma on March 9, 2012 for the generic production of Bayer's corporation Nexavar, a life saving drug used to cure liver and kidney cancers. In some of the cases, controller rejected outrightly compulsory license on the grounds that it was not applied for license before approaching the Controller for compulsory license, or not substantiated public use, exorbitant prices, etc., In Roche's Herceptin case, Ministry of Health denied compulsory license. Other cases include the BDR Pharma concerning Dasatinib and Lee Pharma for Saxagliptin drug denied compulsory license. The paper focus on the study of various judicial pronouncements towards the protection of patent rights and public welfare. It further studies about how to strike a balance between patent rights and compulsory license by overcoming the challenges to make it available in sufficient quantity at required time and at affordable prices. It also suggests to promote research and development and to establish full proof legal mechanism in this regard.

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International Journal For Advanced Research In Science & Technology
A peer reviewed international journal
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ISSN: 2457-0362

Parallel Imports , Issues and Trademarks

Rukmini Desai[7]

Abstract:

A parallel import is a non-counterfeit product imported from another country without the permission of the intellectual property owner. Parallel imports are often referred to as grey goods or grey-market goods. The goods imported are different from genuine goods, meaning that they have actually been manufactured by, for or under license from the brand owner for the requirements of the consumers of a particular jurisdiction, and then are imported into a different jurisdiction from that intended by the brand owner Parallel importers usually purchase products in one country at a price that is cheaper than the price at which they are sold in a second country. They then import the products into the second country. The products are then sold at a price which is normally somewhere between the usual price found in the country of export and the country of import. A related concept is the exhaustion of rights, or the doctrine of exhaustion. This is a concept in intellectual property law whereby an owner will lose or exhaust certain rights after the first use of the subject matter which is the subject of intellectual property rights. Exhaustion of IP rights refers to the extent to which IP owners can control the distribution of their products. For example, the ability of a trade mark owner to control further sales of a product bearing its mark are generally exhausted following the sale of that product.

This concept typically arises in the context of parallel imports, and may therefore be relevant nationally, regionally or internationally. If a right becomes exhausted in one jurisdiction, an intellectual property owner may not be able to enforce its rights in another jurisdiction. In India, parallel importation is intricately linked to the principle of exhaustion of rights under the Trademarks Act, 1999. The principle of exhaustion of rights is enshrined in Article 6 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), which states that "nothing in this Agreement shall be used to address the issue of the exhaustion of intellectual property rights". Hence, each state is entitled either to prohibit or to allow parallel imports within its own legal framework. The Government of India definitely here must intervene in this matter so as to maintain a balance between the interests of the Consumers and Trademark Holders, so that no one is at a higher risk. Ultimately the bottom line is that the decision on whether to allow Parallel Imports is a choice between quality control and price control; between the economic rights of trademark owners and consumer access; between trade monopolies and free trade.

[7] Faculty Associate, ICFAI Law School, Hyderabad

International Journal For Advanced Research In Science & Technology
A peer reviewed international journal
www.ijarst.in
ISSN: 2457-0362

Intellectual Property Management in Universities, Research and Educational Institutions Practice & Perspective Plans.

Dr S V Damodar Reddy[8]

Abstract:

Intellectual Property Rights plays a vital role for the progress of the economies on account of the rapid developments and changing needs of the societies. Economies over the period have grown with considerable pace and are about to grown with leaps and bounds in the coming future. It emphasizes on IP'S developed in Universities, Research and Educational Institutions. Describes a slogan i.e file early and file often and MNC's Global companies slogans to file patents. Intel own 44,973 patents and Hewlet Packard own 56274 patents as on 2018. IBM Google Corp and Amazon adopted strategies by open source code challenge for anyone to develop the program. Trade secrets of Mahila Griha Udyog Lijjat Papad and Jet home products . At the same time others are progressing so as to catch the speed of the developed economies. This is all made possible only with the Intellectual Property Rights. The objective of this paper is to emphasize the importance of Intellectual Property Rights, its Generation and Management. Today effective management of Intellectual Property Rights play a vital role in order to reap the maximum benefits from the inventions and the innovations made. The paper mainly focuses on the Management of Intellectual Property Rights in the Universities, Research & Educational Institutions. Future Economies thrive and progress to a great extent only if the invention and innovation culture develops right from the Institutes of learning, in contrast to the regular mode of developments which are made in the Industry, Trade and Commerce.

[8] Associate Professor, ICFAI Law School, Law School, Hyderabad

International Journal For Advanced Research In Science & Technology
A peer reviewed international journal
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ISSN: 2457-0362

Intellectual Property Aspects of Artificial Intelligence

Dilip Sharma[9]

Abstract:

***I**n the modern era of technology, the concept of artificial intelligence has got widespread recognition all over the world. Now, the day is not far away when these artificial intelligence machines/programs will be making new innovative or creative works without any human intervention. Even in recent past, there were so many such incidents where these Artificial intelligence programs has shown their creative/innovative strength such as one computer generated short Japanese Novel qualified upto the second round of Japanese National Literary Prize. Similarly a portrait called 'The Next Rembrandt' made by a computer program after analyzing the works of a 17th century Dutch Artist Rembrandt got attention from people all around the world. The music created by Google's Deepmind Software is another such example where an AI program has shown its creative strength. Further in October, 2017 Saudi Arabia has given citizenship to a humanoid robot named 'Sophia'. The European Parliamentary committee has also recently proposed to grant the status of electronic person to AI robots. These incidents gave rise to a new issue under the intellectual property regime that who should be granted ownership over the intellectual property created by such artificial intelligence program or robotic citizen. Hence, it is now pertinent to relook into the existing IP laws to address the present issue of grant of intellectual property rights to artificial intelligence (Programs/Machines/Robots) over work created by them. In this seminar presentation, I will try to analyze the issue of grant of intellectual property rights to artificial intelligence generated creations/inventions. Further an attempt to find a probable solution to the existing issue of grant of ownership over the work generated by artificial intelligence is done.*

[9] Assistant Professor, ICFAI Law School, Hyderabad

International Journal For Advanced Research In Science & Technology
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ISSN: 2457-0362

Street Art and Graffiti: Basics and Recognition

Rishav Soni[10]

Abstract:

Street art is an important form of art deserving the same copyright protection as similar artistic formats. Denial of intellectual property protection to street artists' works would preclude a great artist from further development or deny the public of a wonderful artist and could work to discourage the development of the Arts. Graffiti, as an art form, has always existed at the fringes of society. It should be no surprise that it also exists at the fringes of copyright law. However, the mainstream success of graffiti has brought it commercial success and, where there's money there's litigation. Many of the issues surrounding graffiti and copyright remain unsettled and may still be for some time. Settlements are easier and cheaper than wading through murky legal waters. Still, these issues won't go away.As long as there's a drive to commercialize graffiti, there will be copyright issues Particular attention is to be paid to see whether the law is able to accommodate the needs of street and graffiti artist, and give them the right tool to protect their interest for example, against companies trying to commercially exploit their artwork .

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International Journal For Advanced Research In Science & Technology
A peer reviewed international journal
www.ijarst.in
ISSN: 2457-0362

Traditional Knowledge in India: A Legislative Analysis

Rukma Lavanya[11]

Abstract:

A major problem faced in creating a comprehensive and efficient legislative framework for protection of Traditional Knowledge is the difficulty faced in defining it and the absence of a universal understanding of the concept. However, Traditional Knowledge needs to be protected because there is a vast global market for it (in addition to the dire need for it in matters of mitigating the effects of climate change; the creation of a market in fact helps in preserving it and consequently, there are consent, equity and compensatory issues that need to be taken care of. This research intends to study the various aspects of Traditional Knowledge, like, the economic importance of Traditional Knowledge, the socio-cultural importance of Traditional Knowledge and tries to analyze the legislative framework available for the protection of Traditional Knowledge in India. It also delves into the question of the need for a sui generis legislation.

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International Journal For Advanced Research In Science & Technology
A peer reviewed international journal
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ISSN: 2457-0362

"The Enigma of Protecting Background Performers: An Analysis Under the Indian Copyright Law"

Ms Manini Sidhu[12]

Abstract:

The Copyright Act 1957 (hereinafter referred to as the "Act"), governs the rights granted under copyright and its various neighbouring rights – which will be the focus of the seminar. The proviso to the definition of 'performers', as named so by the drafters of the law, explicitly excludes a very important part of the show – background performers. Often, they are termed as 'Extras' or 'Walk-ons' in the entertainment industry, but there is a fine line of difference between the two categories. The seminar attempts to bring to light, such dissimilarities, and highlight as to why this class of performers must receive due recognition for their creative contributions.

[12] Assistant Professor, ICFAI Law School,, Hyderabad

International Journal For Advanced Research In Science & Technology
A peer reviewed international journal
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ISSN: 2457-0362

Protecting the Performers' Rights: An Analysis of the Relevant Law in the Indian Copyright Regime

Aftab Jeelani Wani[13]

Abstract

In the traditional copyright regime, performers had no specific rights as those granted to an author or a creator of a work, since they were considered only as intermediaries between the author and the communication of his work to the public and hence not capable of possessing rights like an author or a copyright owner. With the advent of copying technology in the 20th century, the copyright system was at stake, and performers could not protect themselves from exploitation of their works. However, subsequent protection against unauthorized exploitation was granted to performers under 'neighboring rights' or 'related rights'. Only economic rights were granted to them initially under the international agreements, and subsequently, moral rights were granted for the first time at the international level through World Intellectual Property Organization (WIPO) Performances and Phonograms Treaty (WPPT) in 1996. Though the Indian Copyright Act, 1957 recognized the performers' economic rights in 1994, it did not provide for any moral rights until the Copyright (Amendment) Act, 2012 came into effect. This paper attempts to analyze the development of law relating to the performers' rights in the Indian copyright regime under the influence of different international agreements, and how far the provisions of the Copyright Amendment Act 2012 in India with respect to performers' rights have made the Indian Law compatible with different international instruments.

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International Journal For Advanced Research In Science & Technology
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ISSN: 2457-0362

Modern Encroachment on Traditional Rights of Farmers: An Analysis of the Conceptual Basis of Farmers' Rights in IPR Regime

Showkat Hussain[14]

Abstract:

A discussion on the devolution of rights upon farmers in the field of Intellectual Property Rights (IPRs) is actually a discussion on the proprietary claims on plant genetic resources. Many justifications are given for the grant of IPRs to persons who invest their skill, labor, time and effort in creating something that helps develop the society. These justifications have given rise to new forms of properties like, patents, copyrights, designs, trademarks, and Breeder's Rights, etc. Using the same analogy, it is argued that farmers must also be rewarded for their past, present and future contributions in conserving, improving, and making available plant genetic resources. The farming community has over centuries protected and preserved our plant genetic resources and it would be unfair if they were not rewarded for their efforts. The farming community is an equally important stakeholder in maintaining future food security of the world. But the farming community has been denied that what is due to them. This paper presents an analysis of the conceptual basis of farmers' rights in IPR regime.

[14] University of Kashmir, The Jammu & Kashmir Bank Ltd, Law Department, BKC Mumbai

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ISSN: 2457-0362

Intelligent Trademarks: "Is Artificial Intelligence Colliding with Trademark Law?"

Kalyan Revalla[15]

Abstract:

We have entered a generation where Artificial Intelligence (AI) is creating a tectonic shift in the way people interact with the technology. Human is being replaced by the Artificial Intelligence to perform the automatic complex cognitive tasks. AI is trying to build the 'transhumanism' system where it can outperform the human capabilities. Though AI had failed to link the intelligence and consciousness but it was able to build a Neural network technology which is designed in a way works similar to the human brain. This process of AI is creating ripples in the trademark law. As AI reduces the human involvement in the product suggestion and product purchasing process then the validity of the traditional trademark law is questioned. Traditionally, trademark is treated as tool for the source identification and hence the legal protection but in the modern world the trademarks changed their character and also being used as an effective tool for both the corporate and social communication. Once the machine learning replaces the human then the aspect of source identification evaporates where as they can directly recollect the source by analyzing the data. And by this questions are raised regarding the basic tenants of the trademark law include likelihood of confusion, initial interest confusion, post purchase confusion, average consumer and imperfect recollection where AI is not going to face any of the confusions and it will perfectly recollect the source. These are some of the aspects where AI is hitting hard at the trademark law. It appears that trademark law need to adopt or reform or evolve according to the technological changes but it is highly impossible to get rid of the trademark law as long as there is an emotional chord between the consumer and brand.

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International Journal For Advanced Research In Science & Technology
A peer reviewed international journal
www.ijarst.in
ISSN: 2457-0362

Evolution of Farmers' Rights in Intellectual Property Regime: International and Indian Perspective

Showkat Hussain[16]

Abstract

Ever since the homo-sapiens began to use land for creating means of sustenance like food, clothing and shelter, the importance of land as a crucial input in the development of human civilization was realized. Besides, the settlement of people, after nomadic life, also brought into focus the relevance of agricultural land for their survival and development. With the passage of time, the position of the farmer became most vulnerable and pitiable which needed protection at the societal level through the instrument of law. After the Second World War, with the growth of international trade, many new doctrines and concepts were evolved and propagated. Among these, the concept of Intellectual Property, though evolved in the 19th century, witnessed increased recognition and acceptance in the global community. One of the aspects of the Intellectual Property Rights (IPRs) was the protection of breeders' rights. The plant breeders were given protection and many international conventions were convened for this purpose. The International Undertaking on Plant Genetic Resources (IU), the Convention on Biological Diversity, TRIPs Agreement and International Treaty on Plant Genetic Resources for Food and Agriculture, 2001 are four important international conventions that are relevant to the construction of ownership and control of plant genetic resources in global debates on plant variety protection. After according protection to plant breeders, it was soon realized that the rights of the breeders were in conflict with those of farmers. As a result, the concept of farmer's rights was put forth both at international and national levels.

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International Journal For Advanced Research In Science & Technology
A peer reviewed international journal
www.ijarst.in
ISSN: 2457-0362

Patenting of Life Forms: Reflections on Some Legal and Ethical Issues

M Hussain[17]

Abstract:

Biotechnology and genetic engineering have made it possible to create new life forms or even to re-evolve the life forms. Stem cell technology, somatic cell hybridization, genome technology, gene therapy and cloning are the buzzwords of modern scientific developments and research. The developments in these branches of science in the field of pharmaceuticals, agriculture and human healthcare are significant, with medicines such as insulin, erythro protein and interferon produced on commercial scale. In agriculture, the development of disease-resistant plant varieties, hybrid seeds and plants, nitrogen fixing microorganisms, new plant varieties with shorter life cycle, etc., and in human life science, the reconstruction of organs and creating life through cloning, biotechnology and genetic engineering are making a long-lasting impact on the human life. A section of the scientific world argues that the risk involved in commercially applying most of these scientific techniques can cause serious and irreparable damages to environment. Some others view that patenting in such areas should not be allowed for the reasons of biodiversity preservation and rights of indigenous people. Some critics of cloning technology and organ reconstruction technology foresee the danger to nature as compared to its advantages. This paper attempts to analyze the arguments against the patenting of life forms, which have been divided into the following: ethical and religious arguments; environmental implications; economic considerations; and legal issues. The author has also attempted to analyze the questions as to whether there are certain inherent values in life and whether patenting life forms violates such inherent values. The paper concludes with some important suggestions as to patenting of life forms.

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International Journal For Advanced Research In Science & Technology
A peer reviewed international journal
www.ijarst.in
ISSN: 2457-0362

The Concept of Originality Under Copyright Law: An Analysis of Judicial Interpretation and Juristic Opinions

Aftab Jeelani Wani[18]

Abstract:

The sine qua non for statutory copyright protection to a literary, dramatic, musical and artistic work under any legal system is that the work must be 'original'. But no copyright law, whether national or international, has provided any sort of definition or meaning as to what the term 'original' in the context of the subject means. The matter, therefore, has been left open for the national courts to determine and legal fraternity to ponder upon. As such, different theories have developed across the globe in relation to the meaning of the term 'original' under copyright law. The interpretation of the term 'original' has significant legal consequences as it has a direct bearing on the question of as to what qualifies for the subject matter of copyright and what not and is, therefore, an important aid in deciding the cases of infringement of copyrighted works. This paper analyzes the various aspects of the concept of 'originality' at international and national levels including the approach of the Supreme Court of India vis-à-vis interpretation of the term 'original' as a sine qua non for grant of copyright protection.

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