

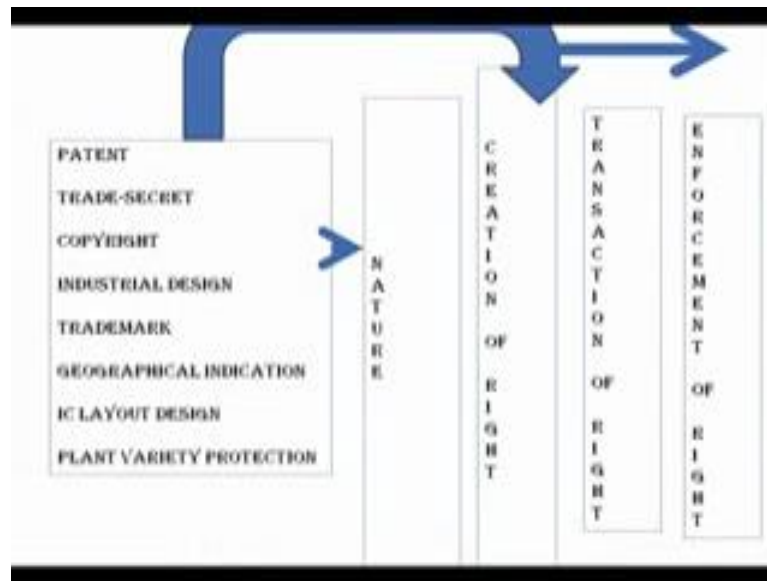
Introduction on Intellectual Property to Engineers and Technologists
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Lecture - 38
Comparative Analysis

So, we are now in module 8, module 8, first 2 classes we discussed about plant variety protection, and bio-diversity. Plant variety protection, there I referred about breeders rights, farmers rights, and I think I am not mentioned about researchers rights, that is already there, just like any forms of IPs, the patents we have research exemptions. Copyright we have fair use, IC layout design, we have also, research analytical purpose use, is not considered in infringement. Similarly here also, researcher has some sorts' rights. We also referred about bio-diversity, and with relations to bio-diversity, just like you know, that there we have we can classify different area, hot spot and bio diversities, including area within a India, different area within India also classified that hot spots of bio-diversity hot spot means your understanding that by bio diversity, exclusive bio-diversity in that region.

So, now after discussing all the forms of IP, I have, now, tried to give you a comparative overview, because that is also necessary for you. This is actually you suppose to do yourself, but I will just give you an idea how to, now we do able to do comparative analysis of the forms of IP. Based on the comparative analysis also, I will discuss about how you will manage your intellectual property, and I also discuss about a few case studies from WIPO specifically, and also I will tell about the few stories about the Google, IBM. So, those three parts, I will discuss consecutively. So, now, start about comparative analysis. So, now, you know always sometimes people understood that IP means patents.

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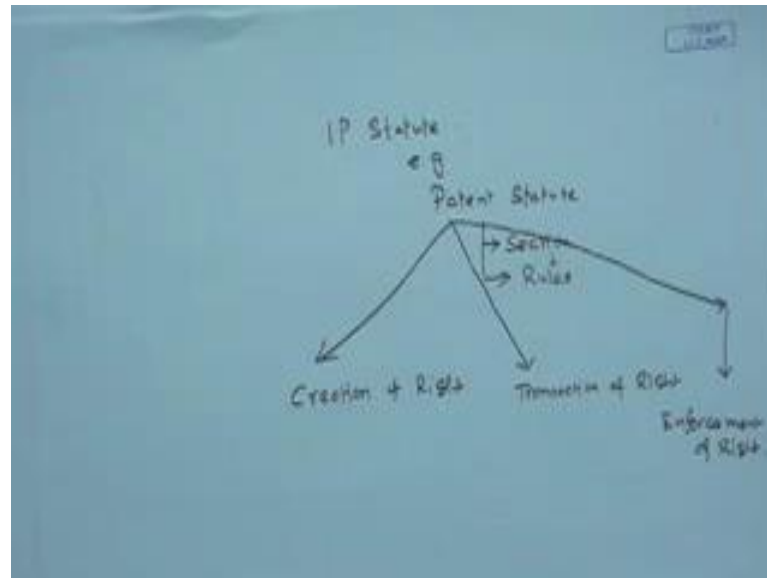


Now, you understood patents now. I think patents is not only one forms of IP, we have others forms of IP, just like trade secret, copyright, industrial design, trademark, geographical indication, IC layout, design plant variety protection. So, how many 1, 2, 3, 4, 5, 6, 7, 8, so here I will now, discussed how you will make comparative analysis of those forms of IP, with reference to, just like complete statutory part just like, we have statutory protection, statutory with reference to the Patent, just like Indian Patent Act, Trade Secret, we do not have an statutory statute to protect, but we I already referred, can protected by Contract Act, and also by means of common law and also by means some position of IPC can also be implemented. Copyright we have statute, industrial design we have statute, trademark we have statute, geographical indication we have statute, IC design layout we have statute, plant and variety protection also we have statute. So, what I will, as we have not discussed about the statute in details, now last 20-25 minutes, I will just give you a an comparative overview of the statutes, specific refers to the India, with reference to all those forms of IP, except trade secrets.

So, now patents. So, I further then I divided into the 4 categories, divided into that different form of IP. The 4 classification, just like a within the purview of natures, within the purview of creation of rights, within the purview of transaction of rights within the purview of enforcement of rights, this 4 categories even if you read any statute, and you

will be able to ultimately classify the statute, just like say in a if you read in IP statute, IP statute, just like say, easy, let us say, Patent statute.

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So, now within the statute, different, we have section, and we have rules that rules, that supplement the section. So, now, if we will be able to classify the Patent statutes, based on those things, just like say, a creation of rights, transaction of rights, and let us say enforcement of right. So, let us that part, I will give you a review and overview with reference to all the forms of IP.

Let us start with Patent. Now come to this class, in nature, what it is? Can you tell, what it is, what is the nature of Patent? I sometime try to mention patents protect product or process. And from the class, first class also I know discuss about the different forms of IP, I told patents protect, product or process. So, if I already referred several times it protect functionality of any object, whether functionality any object can be protected by means of Patent, questions will be yes, just like say product if I ask that a drug ampicillin, if somebody asks what is the functions of drug ampicillin, then you will be able to tell that if a doctor prescribed ampicillin for particular purpose you are correlating with reference to the applications, applications you correlating with reference to the drug formula, may be API. So, that way API can be protected by means of Patent. So,

Patent protect product, or process. Patent may protect may protect the personality of the product.

Then come to Trade Secret (Refer Time: 07:57) is use. Just like it contain maybe technical information, business information, patented features, or non patented features, also can come in the purview of the secret. I already discussed, just like some company may get a patents about product attributes again they can keep some of the attributes in the purview of the Trade Secret, and enjoy the monopoly for averse, means as long as you will able to keep it in the form of a secret. I discussed already the pros and cons of Trade Secret, in comparison to the patents, and when you think about how can you strategize your IP, with reference to the Patent versus Trade Secret, that part also we discussed.

So, Trade Secret means information, information having commercial value, and commercial value maybe with reference to the technical information, with reference to the business information, just like client list, technical commercial means product composition, that is the nature of the Trade Secret. Copyrights protect original works of authorship. What are the different categories of works it protect? It protects musical work, artistic work, Cinematography film, Architectural work. So, work, no utility. Utility Patent, copyright, expression which domain? Literary, artistic, musical domain; Expression means, expression in a tangible forms, mean, should be converted; idea should be converted in to the form of expression.

So, copyright, expression, in a statute, when I, if I consider Patent, copyright. So, when I despite in reference to the statute, means Patent act or copyright act, we will get the natures part, you have to infer from the particulars maybe section two, there any section, any act, section two devote, the devote with reference to definition. Different definition just like a invention, then may be patentees. Similarly here, just like a work, copyright, then different types of definition will be there, then there form you can infers, what is the nature of the that forms of IPs.

So, my intention is to put natures, where from you can you read the statute and find able to identify the natures of IP, forms of IP from the statutes maybe you have to refer for

section two. And even with respect to Patent section three are there, they are specifically mention which are not patentable, but that is not come within the purview of measures.

Now, come to industrial design that has come from copyright specifically, considering the artistic loops of, or aesthetic features of say, articles produced in an industrial process. So, this automatically here, the nature, means aesthetic look of an article, produced in an industrial process, and already referred it should be produced, 50 times or more, to differentiate it from copyrights. So, I already referred industrial design and copyright layer. Because in nature part, if I want to say, compare and conflict, with reference to copyright industrial design, let us say Mister X has created a mattress.

Now, mattress is a two dimensional, means let us say, artistic work, and it comes even I doing the purview of copyrights, but the mattress can be produced industrial process. Now if, if he produce the mattress fifty times or more, then automatically, if you, it will come within the purview of industrial design. If you mattress below that, it will till come within the purview of the copyright. Then nature of rights similarly you will get it from section two. Then come to trade mark, it will come when some goods you put in the market, because it will give an indications, of the source of the goods. Just like a you consider, Google, Google is providing the origin of that search, website search, search website search, you may be consider search traders, search Indian traders, consider ITC. So, so to show that way, trademarks is marked in used in the course of trade, understood. So, if I ask, what is the say, nature of IP in respect to trademark? Trademark is, indicating, as a just like you consider the source of the goods in the market, in the trade in the course of trade. So, definitely you can consider, in the market.

So, trademark, the just like your section the resection the 2ZV, of Trademark Act 99, India. If you read that, it will ultimately less distinguish the good and services of the, one at a taking from others, in the course of trade, just like, you have to remember that it in the course of trade, it ultimately distinguish, one undertaking good from the others. Then geographically indications, you understand? That is that, that is a geographic indications, say product place, and link. Product attribute from a particular place, that attributes may be due to the agro climatic conditions, or of due to traditional knowledge, or additional skill. That attributes your, just like protecting the virtue geographical indications.

So, now, let us say we are trying to say, that trade industrial design, trademark and geographical indications, in respect to nature of IP are you getting some similarities? Parts say, some case says like a trademark, whether a shape of a good can be a trade mark? Shape of a good definitely comes in the purview of the industrial design similarly whether a shape of a good, can be a trade mark? So, in that regard, coca cola tm case is their coca cola trademark bottle. So, they initially struggle to get it protected in the form of trademarks, considering it is in the purview of industrial design. Subsequently, they will be able to register the coca cola shape of the bottle in the form of the trademark, subsequently lots of shape trademark is registered in different jurisdiction.

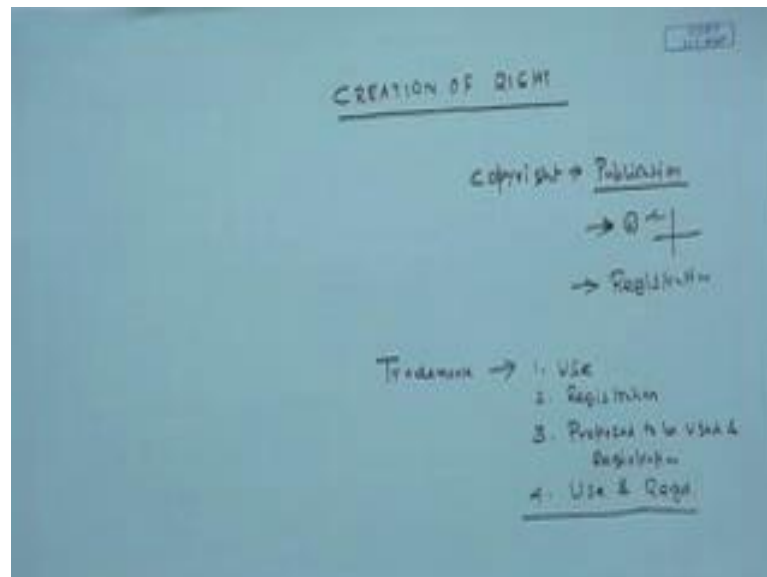
Now, if ask a traditional design, whether it will come within the purview of the industrial design? Per say, no, because the word additional is there. So, traditional design will automatically will come in the purview of the geographic indications, to indications. Then IC layout design, you know that, again, may get some sorts of linkage with reference to copy rights. So, layout, and building layout, I have given the example of that part. So, layout of integrated circuit, or specific functionality as it layout is completely with reference to the some utility and aspect. So, for the reason, the IC layout, separate legislation, not per se, within the purview of copyright, layout or specific functionality you know that.

Then plant variety protection, we discussed recently, plant variety protection, that new varieties, extend variety essential derived varieties, we just like a, farmer variety, and breeder varieties, also come within the form of another forms of IP, that will related to the, let us say, related to the, say, living organism. Just like if I ask the plant variety, and Patent. Is there any, say interrelationship, of where you can find able to identify the linkage between within the plant variety protection, and patents. In regard I already referred plant and animal as a whole, in Indian Patent I am referring plant and animal as a whole, all parts is not patented in India.

Similarly, naturally occurring micro-organism is not patentable in India. So, plant per se, or definitely, which is not Patentable in India. Similarly agricultural method is not Patentable in India. So, definitely, it attracts separate forms of IP to make the balance between the breeder's rights, and farmers rights, in between researcher right are also

there. So, now you have to understand the natures of rights, in all the forms of the IPs, and where from you will get the information regarding that? If you read the section two of respective statute, OK.

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So, now creation of rights, let us say, we will elaborate this part. What do you mean by creation of rights? Just like say, consider if I somebody have let us say, lays down the foundation stone, of a building. So, do you think that he is creating some sorts of rights by laying the foundation stones? Not like that. So, how will you create rights, with reference to that, the forms of, different forms of intellectual property rights, that part just I will try to compare?

So, now patents how will you create the rights? Simply by inventing, or simply by using, or simply by registration, the answers, if I give you ask you to choose the appropriate answer, you say answers, no choice your answer, no nothing, no nothing non will meet, because patents rights, can be acquired, means creation of rights acquired, by means of registration, means not simply registration, registration and examinations, because you have to file application it will examined. So, it is examined, creation of rights based on examination, examination, it will be ultimately registered. So, statutory rights, now how to create rights? Who will administer the right? So, what is the procedural aspect with

respect to creation of rights? Those parts will come within the purview of creation of rights. The statute you are reading, within the statute, the creation of rights part, will come up here. So, fundamentally what I understood, the creation of right with reference to patents is a statutory rights, and it is based on registration and say filing and examinations filing and examination.

Now, come to Trade Secret. How will you create rights over the Trade Secret? Per se, if you want to keep, you will able no registration, there is no procedural aspects. So, if you able to create your confidential business information, secret you have right automatically on it. So, there is no registration based system. So, this is. I can say the automatic rights, why I am telling automatic rights? Means if you able to protect create protect it in the form of secret information, and having the business value, it will be considered as Trade Secret. There is no requirement of registration and filing all sorts of things.

Now copyrights, this is also important, copyrights, here also registration is not compulsory. So, you have the two routes, based on from publications, you have rights on your copyright work, based on the publication, copyright publications. So, here I will suggest you, sometimes, you have to put a sign like C. So, for public notification, that it is copyright protected work, otherwise people may told, how will you know it is copyright protected by somebody, they will claim that, we are ignorant with reference to that creation of somebody, creation rights of somebody, then in that case court may give less damages compare to the cases where the public notification is already there.

So, creation of rights in respect of copy rights publications, and sign, the say that is was the telling that was in reference to this, is not, the law is not mentioning this things, with reference to the procedural aspects, and by means of registration, for published and registers, publish then registration, publish and registration. So, creation of right with reference to copyrights, involve publication, registration, publication and registration. Then industrial design also, I am here, not to mentioning the criteria. Just like a Patent, you know that criteria within the purview of creation of right, the criteria you should meet, and then only you will able to create the rights. Industrial design here also, no registration, if you just like a based on sometime you will call, fast to file systems, if you fast file, then your things will be considered novel. So, similarly industrial designs also,

novelty is the criteria. So, should before publication, you should register, means you should apply for registration. So, this is also application, and examination based systems for creation of rights.

Then come to trademark, trademark again, just like a copyright. Some extent aspect it differs the trademark registration again not again is not compulsory. You may create right or trademarks based on used, just like sometimes, we may refer, just like say defined way, how to create rights over the trademark. Say I can classify it like this say use registration, then propose to be used and registration, and use and subsequently register. See how many say ways you can create rights over the trademark.

So, then geographical indication, geographic indication can be, also not required for registration, it can be ultimately, registration will give you better protection. IC layout design again registration is compulsory it is also examinations and filing over application is an examination based system, then plant variety of protection is also say, registration based system.

So, now we have referred about the creation of right. Let us quickly go to the transactions of right. Patent right you can transact. So, subsequently sections will be there, and different, different rules will be prescribed, how will you transfer the Patent rights, just like section 48, refer to the right of patentee. So, how the Patent right will be transferred, license, assignment, just like license is not defined in the act Patent rights can be transferred. Then there is a composite licensing this is also a transaction of right of Patent. Trade Secret question lies whether non disclosure of agreement can transfer the Trade Secret. Contractual routes here also you are ultimately using the contractual routes, and by operation of law if I consider transaction, means they are also just like high, just like a, if some body it had then it by operation of law it will be transferred to that to his offspring.

Copyright is also similarly, license, license by virtue of exclusive license on exclusive license assignment, sell. Industrial design, also transacted like just like a copyrights. Trademark I already referred, that just like a trademark is called assignable with or without goodwill. Similarly trademark license in jurisdiction have been developing based

on the permitted use concept. Geographic indication, that form of IP, which is not assignable or transferable, you remember, is not? So, transaction of IP rights, with reference to geographical indication is not possible only on the death of authorize, authorized users, his rights will be transferred to his legal heirs, IC layout design similar to the patents and copyright in industrial design, is transferable licensing, sale. So, plant variety protection, similarly the breeders can sell.

So, now transactions of rights, you may create a comparative chart, what are the rules, route of transactions of IP breeders IP rights, that part you may create, you are getting similarities, now you have to build the jurisdictions for Trade Secret, and similarly the geographic indications, recharge part, ok.

So, now enforcement of IPs right, what do you means by enforcement? Say, just like I have already referred, if you somebody without your permissions, is violating your rights, then he will be treated as an infringer of your rights. So, now, how will you enforce your rights? Means what procedural aspects you will follow for enforcing the right, where to file the suit, just like a district court having appropriate jurisdiction, in respect of patents, trademark. So, that appropriate jurisdiction will be decided based on the civil procedural court also. So, the enforcement of rights, the procedural part, another you can classified and grouped all the section and rules related to that then you will consider the, that that part for enforcement of rights, with reference to the specific IP, including patents.

Now, if I referred that, what are the remedies provided in respect of enforcement of IP? Just like say in civil remedies, in respect of that injunction, injunction in the form of a permanent injunction, temporary injunction, then damages can be provided, then loss or profit cost may be avoided, these are things. Patent specifically in India Patent act, there is, per se there is, say except some cases known as for infringement part say, civil, civil remedies is only provided. Trade Secret understood that, civil criminal may be provided. Copyrights civil criminal remedies are provided. Industrial design also, trademarks also geographical indication also IC layout, similarly plan variety protection.

So, enforcement of rights, how will you enforce? What are the remedies provided? Because that is also an essential component, when you are trying to manage your asset, just like say consider, when your thinking about a house, and probably return from your house, you given on rent, or somebody is occupied your house, without your permission. The rent has dent, just like a rent, or lease deed is already over, and he is now authorized occupant for the house. Now if you are, how you will manage with reference to that. Similarly that thing is applicable with reference to the intelligent property, in the form of the intangible asset, so enforcement of rights.

So, this mode, this class we try to give a comparative overview of the different forms of IP, with reference to natures, because if I create a hypothetical situation, will avail to identify, which form of IP will be appropriate for protection of this creation. Then how to create rights? If you do not know how to create rights, you lose a potential IP out of that. Just like unintentional disclosure, or publications of industrial design may lead to the, say may lead to the loss of potential IP. Same thing applicable for Patent, but same may not applicable for Copyright, may be Trade Secrets.

So, if the Trade Secret means Trade Secret related information, if you when product id available, but the secret is disclosed, you have to remember that. So, just like you are just publishing the Trade Secret composition that is not a Trade Secret. So, that way, this part, this class will give, will ultimately explained the, about the comparative overview of the different form of IP. That is also essentials for any learner in respect of IP.

Thank you.