

The Perspective of Legal Issues in Intellectual Property

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Abstract

Intellectual Property (IP) is a broad category of law regarding the rights of the invention or creative intangible product owners. IP law, for example, grants some owners of art, technology, and symbols or designs exclusive rights. The patent, copyright, trademarks and trade secrets shall be covered by IP law subcategories. IP offers more and more job opportunities for lawyers, and this is growing rapidly. IP is a fast-growing industry which offers lawyers more and more job opportunities. Therefore, IP plays an ever more important role in businesses; its regulation and study are consequently increasingly prominent in government, non-profit and academia. This paper seeks to highlight the perspectives of numerous IP law sub-specialties including patents, copyright, trade secrets, and technology transfer.

Keywords: *Intellectual Property, Legal issues.*

Introduction

Intellectual property (IP) is a general term used in the laws of patents, copyrights and registrations providing legal rights for the protection of ideas, expression of ideas, names, logos and marks that are used to identify a company or product[Marshall, 1997]. IP has many characteristics; IP can be purchased, sold and rented. In addition, the IP owner can avoid infringement of his / her property by others, but in IP law infringement is called infringement. A

new invention, an implementation of a new idea, a discovery or a useful concept is provided by a patent as legal protection.

A patent allows the inventor to prevent others for a period of time from practicing the invention. For creative works as well as business and scientific publications, computer software and data collecting, copyright provide legal protection against copying. The author or artist is principally entitled to determine whether and how copies are made and distributed of work under Copyright law.

Patent Law

The Patent Bar Exam has passed by Patent Officers and is authorized to conduct the so-called "patent prosecution" ("patent prosecution"). However, the patent agents are not lawyers, so the patent prosecution is limited to USPTO. Strong technical backgrounds of non-lawyers may become patent agents. Patent lawyers must, on the other hand, be allowed to exercise law in at least one US State and therefore are also permitted to represent their clients on legal matters such as the provision of views on patent infringements and the drawing up of contracts, in addition to prosecuting patents. Legal professionals with a strong technical background are good candidates for patent attorney (Hermann 2011), as well as some patent lawyers.

Federal courts (U.S. District Court and the United States Court of Federal Claims) are often turned into patent (or IP) litigants who represent customers on patent litigation (usually patent infringe claims). Other IP issues (like copyright and trademarks) are often litigated by these lawyers also. Although patent lawyers may be included in patent litigation equipment and supply the patent litigators with expert technical advice, patent litige counsel typically do not take over the litigation process (ESAUSPT0, 2012). There are also some practical differences between patent lawyers and patent litigants over and above the clear substantive differences.

Copyright Law

A creator of an original work, such as literature, drama, music, and art, and other intellectual works, such as software code, is entitled under copyright. The purpose of copyright law is to encourage the creation and dissemination and to protect the published or unpublished work. The

ideas or thoughts never written or formulated cannot be protected by copyright. The copyright is automated, regardless if the copyright is registered when "authorship work" is created. However, the Copyright Office has advantages, including the ability to use the US Customs and border patrols to stop the import of items which are copyright infringing. The copyright is registered with the Library of Congress copyright office and last for the rest of the authors' lives plus a further 70 years. Copyright lawyers are either litigation officers who assist their customers in the enforcement of copyright or transactional lawyers who help customers manage and license their copyright assets (Maier & Maier, 2013).

Trademark Law and Trade Secrets

A mark is a 'word, sentence, symbol or design' or a combination of that word, word, phrase, symbol or design, which identifies and distinguishes between the sources of goods of each party and those of another party.' Trademark law aims to help consumers identify the product source and avoid confusion among brands. Whilst it does not prevent other persons from producing a similar product, it does prohibit them from marketing the good with a trademark that is sufficiently similar to confuse the origin of the goods with the consumer.

Companies are entitled to keep economically beneficial information confidential. For instance, many companies in the food industry are relying on commercial secrets rather than more institutionalized patents since obtaining a patent requires full disclosure and because patents are expiring after twenty years and trade secrets can be kept indefinitely. No formal way to protect a business secret is provided and no legal recourse is available to prevent someone from using a business secret after it has been made public. Therefore, lawyers construct non-disclosure or non-compete labor contracts which both protect and respect business secrets and labor law (BCIS, 2013).

Technology Transfer

Technology transfer refers to governments, universities, and other organizations, through which IP restrictions are placed on inventions, knowledge or materials. Technology commercialization is also referred to as transfer from universities or governments to the private sector. Transfer of

technology usually involves licensing, which by contract provides IP rights. In such cases, lawyers deem what is being handed over and draft contracts (realities, patents, copyrights, etc.). The technology transfer is a rapidly growing field of IP law, as the government and universities market huge volumes of technology.

Antitrust

Antitrust law protects consumers against excessive monopolies and predatory practices of the enterprise. In order to promote competition, the 1890 Sherman Antitrust Act was the first federal legislation to set limits on monopolies and cartels, charging the government of investigating companies suspected of violating those limits. This Act is still the basis for most of the federal government's anti-trust proceedings over the past hundred years. IP law and antitrust legislation may seem to function for cross-cutting purposes at first glance. But, as both are intended to foster innovation, industry and competition, many regards both laws as complementary.

International Intellectual Property Law

International IP Law is based on three general areas, namely U.S. enforcement of international IP rights, cross-border licensing, IP asset administration and the building of cross-border consensus to build a wider global IP system. Furthermore, in Europe and some developed countries, IP legislation opportunities are available (Franklin, 2013).

U.S. Intellectual Property Enforcement Abroad: Protecting IP Rights abroad is important but challenging because copyrights, trademark, and patents granted in the U.S. do not always have legal application outside of Canada. In other countries, treaties attempt to enforce IP rights, but the ultimate enforceability of rights depends on the laws of this country, type of IP protected, and specific features of any existing treaties. The United States has several government organizations, including the US Policy and External Affairs Administrator's Office.

The Department of State's International Narcotics & Enforcement Affairs Department, Patent and Trade Mark Office and the Cybercrime and Intellectual Property Division, work to strengthen cooperation internationally. Cross-border licensing or IP asset management: cross-border license refers to the transaction process whereby products are permitted to be used or sold

in one country. As a business decision may be beneficial to the expansion into foreign markets, the transaction details may affect the future value of IP rights or control over those rights by the owner.

The issue of international licensing can also involve taxation, pricing or compliance; litigation is sometimes involved when conflicts arise over IP rights. IP lawyers help their customer's structure contracts and transactions to manage their IP assets effectively and to guarantee future control over their rights. Tentative to build an international system for comprehensive International IP systems: Many organizations are engaged in negotiations on an international IP system which is more comprehensive.

Cyber Law and Online Privacy

Cyber law has become a growing field which draws from many fields of traditional law and becomes a field that in itself is becoming increasingly important. It covers multidisciplinary matters, from financial and civil crime, cyber bullying, to rights of first and fourth amendments. All subjects that cyber lawyers regularly discussed are privacy, control, and access. Cyber Law is being pursued by increasing numbers of HLS students. Cyber law promises to offer even more diverse possibilities in the future, as a rapidly growing and developing field. Disposing information about individuals or groups will lead to problems of privacy if governments, other organizations or individuals use the Internet. Data protection concerns have become increasingly important because people are transmitting more private information through the Internet and storing private data from computers not controlled physically and the privacy of the Internet is challenging (Thompson, 2011).

Issues related to Intellectual Property Rights

The Intellectual Property Rights is treated globally which would ultimately in future shape and formulate the laws and policies relating to Information Technology. As a result the concern related to intellectual property right has become of paramount importance to the legislators.

Updating the laws and policies of the information technology and the intellectual property rights to meet the challenges of the networked environment has to be the key focus of the

Government, the Courts and the State Legislatures. The Information Technology Act 2000, the Intellectual Property laws (the Patents Act 1970, Trademark Act 1999, Indian Copyright Act 1957, Design Act 2000, The Geographical Indications of Good (Registration & Protection) Act 1999) and more are the efforts enhancing the Indian laws and policies thereby bringing greater transparency in the work and facilitate the role of Government in development of the nation.

In addition it is required that there has to be positive action to be taken towards eliminating counterfeit which are of importance by means of policies and laws that would balance the advancement of technologies, innovation and protect the infringement of the intellectual property rights.

The government's use of modern surveillance technology devices offers potential benefits and costs, which would enable the society to understand the pros and cons of the trade-off between efficiency and efficacy of the law enforcement techniques.

The rapid development of internet and computer technology globally has led to the growth of new forms of worldwide crimes especially on the internet. These crimes have virtually no boundaries and may affect any country across the globe. Thus, there is need for awareness and ratification of necessary legislation specifically in all developing countries for the prevention of cybercrimes.

The Privacy rights related to protection of personal data and information which has been not specifically implemented by the provisions of the information technology laws which are otherwise protected under Article 21 of the Constitution needs to be specifically addressed for formulating laws and policies for enforcement of intellectual property rights.

In the developed and the developing countries which are interdependent on each other, there is the need to address the critical issues of Internet access and Telecommunication. Enforcement of intellectual property rights need laws and policies to protect their innovators in issues related to E-commerce which is of jurisdiction, fraud, development of electronic trade and cost incurred into the compliance of businesses.

The above mentioned few issues are the factors required to be focused on intellectual property rights in reference to information technology innovations that needs a revision of laws and policies formulated due to rising infringement in the contemporary scenario which questions the adequacy of the present legal system.

Intellectual property may assist innovations in almost every aspect of business development and competitive strategy from; product development to product design; delivery to marketing; raising financial resources to exporting or expanding business abroad through licensing or franchising.

Number of patent applications filed by IT sector in Indian industries is relatively low compared to the number filed by multinational companies. Number of factors that discourage innovations in IT sector from filing IP includes the lower level of familiarity with the procedures involved, the high costs of filing and maintaining an IP, uncertainty about the protection offered by an IP and the uncontrollable and unpredictable costs of litigation.

Large multinational companies have IP departments to maintain their own IP assets and benefit from already established technology and markets to generate continuous stream of IP knowledge. In contrast information technology industry usually focuses on cutting edge technology and still need to find a market for its innovations.

Innovators in IT sector lack financial means to maintain an in-house IP department and lack financial strength to mount successful legal challenges to rivals infringing their IP rights. As a result there is a need to assist local IT sector with the IP filing procedures to facilitate the acquisition of tangible protection for their IP and to secure IP protection at a broader international level.

The identification of IP assets is a first step. Protection is the next, and the last one is effective management of IP assets. Effective IP management for innovations means more than just protecting an enterprise's inventions, trademarks, designs, or copyright. It involves company's ability to commercialize such inventions; market its brands, license its know-how; conclude

joint ventures and other contractual agreements involving IP and effectively monitor and enforce its intellectual property rights.

A company's IP portfolio must be viewed as a collection of key assets that add significant value to the enterprise. Making technocrats and innovators of Information technology aware and informed of the costs and benefits of the use of IP system, and through it, protection of new and original ideas. IP management is essential for reaping the benefits of improved product quality, in an increasingly competitive market place and knowledge-driven global economy.

Intellectual property issues can be avoided by making detained and elaborate contracts in the very beginning of any innovation which is to be carried out. The advancements in the field of information technology research being conducted need to be patented. The treaties signed on international level for dissemination of intellectual property rights so far are silent on arbitration as a dispute resolution mechanism; they only speak of consolation procedure. Evidently arbitration is found to be binding in nature for the new technologies being carried out through the innovations in information technology sector.

The innovations in the information technology need to make its own domain for its growth and a sub agency must be formed under the WIPO to look after such cases encompassing both the elements of intellectual property and information technology.

Summary

"Intellectual property" (IP) represents a generic legal term for patents, copyrights, and trademarks that provide for the protection of ideas, the expressive expression of ideas, and inventors and creators. For the application of a new invention, a patent offers legal protection, discovering a new idea or a concept which is useful. For every creative work, the copyright offers legal protection, as well as for business, scientific and computer software, and information compilations. A registered mark provides the right to use symbols, special words, logos or other markings which indicate a product or service source.

Another method of benefiting from an invention is simply keeping it secret instead of revealing it a "trade secret." IP impinges on nearly all the researchers do. IP and should be of concern to all scientists to protect their ideas and express their ideas in writing. This short introduction to IP is hoped to raise public awareness and encourage readers to explore this particular topic in more depth.

The societies today have become dependent on the information technologies which have led to cybercrimes. There is a need for guidelines for the online communities and social network sites in relation to their intellectual property and information technology laws to curb the arising crimes.

Although Scholars have advocated for the protection of infringement of intellectual property rights in the virtual world by means of adopting legal initiative, sociological and technological approach, for bringing the change in innovations. The e-information society needs to take interest in the challenging digital era for the protection and infringement of the intellectual property rights.

The role of intellectual property right in relation to innovations in information technology laws and policies are of paramount importance which needs to be addressed; firstly it would require the coordination that focuses on the development, dissemination and education of the laws and policies. Secondly, it would require the present laws and policies to be reviewed and analysed for the continued applicability and effectiveness. And lastly, there is need to formulate the policies and laws related to specific issues, situations and incidents.

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