

# INTELLECTUAL PROPERTY RIGHTS

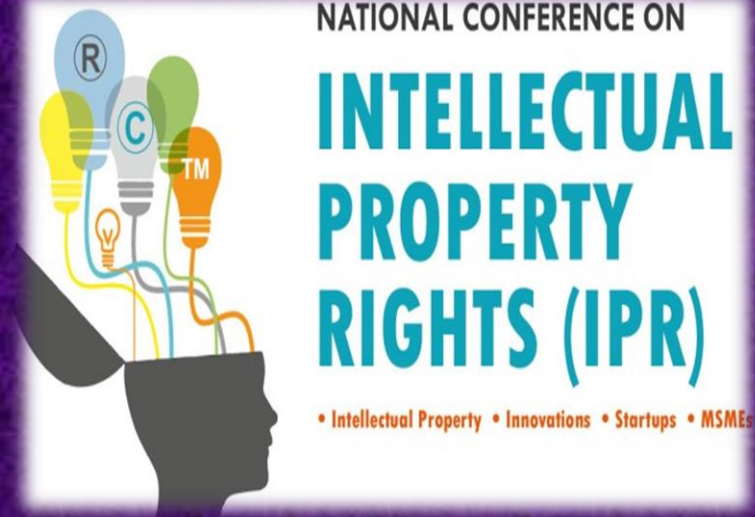
Copyright

Patent



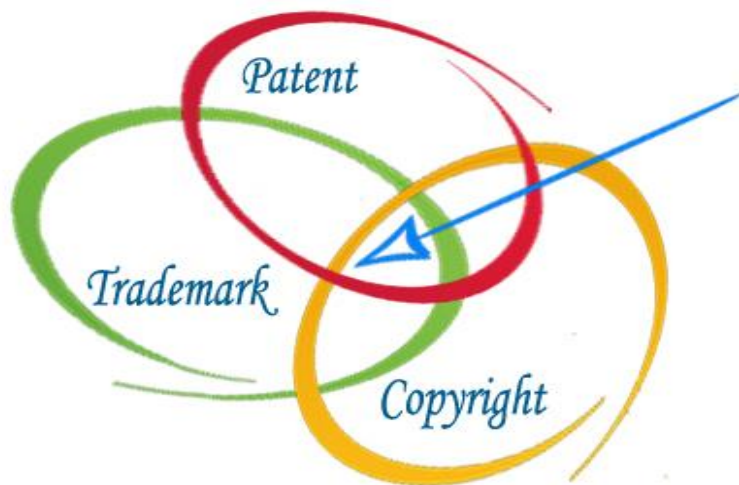
# INDEX

- Introduction
- Types
- Patent
- Trademark
- Copyright
- Infringement
- Case studies
- Conclusion
- Bibliography



# INTRODUCTION

- Intellectual property rights are the rights given to persons over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time.



*Intellectual Property*



# TYPES

```
graph LR; A[TYPES] --- B[PATENTS]; A --- C[TRADEMARKS]; A --- D[COPYRIGHTS]
```

PATENTS

TRADEMARKS

COPYRIGHTS

# PATENTS

- The idea behind a patent is exclusivity of use of the invention within a particular territory.
- Thus, the owner of a patent has the exclusive right to stop others from making, selling, offering for sale, importing or using the patented invention in any other way.
- This however applies only for the term of the patent within the country where the patent has been obtained.
- A patent gives legal/commercial protection to the Applicant(s) (individual(s)/company(s)) holding it.

# Criteria for an invention to be patented:-

- An invention means a new product or a process involving an inventive step and capable of having industrial application.
- The invention has to be new and cannot be part of the “prior state of art”. This prior art refers to everything that has been published, presented or disclosed to the public, as on the date of filing for the patent.
- The invention will be judged by a person skilled in the relevant area. It should not be an obvious extension of the state-of-the-art. In short, the invention should be non-obvious to a person skilled in the art.
- An invention must be capable of being produced or used in some kind of industry. It has to take the form of an apparatus or device, a product such as some new material or an industrial process.

HERE'S  
MY NEW  
INVENTION!

OH, IT LOOKS  
LIKE MINE!



# FEE



- 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 1<sup>st</sup> and 2<sup>nd</sup> year
- Renewal fee, on yearly basis, is required to be paid for 3<sup>rd</sup> to 20<sup>th</sup> for keeping the patent in force.
- Patent lapses if renewal fee is not paid within the prescribed period.



# Why file a patent?

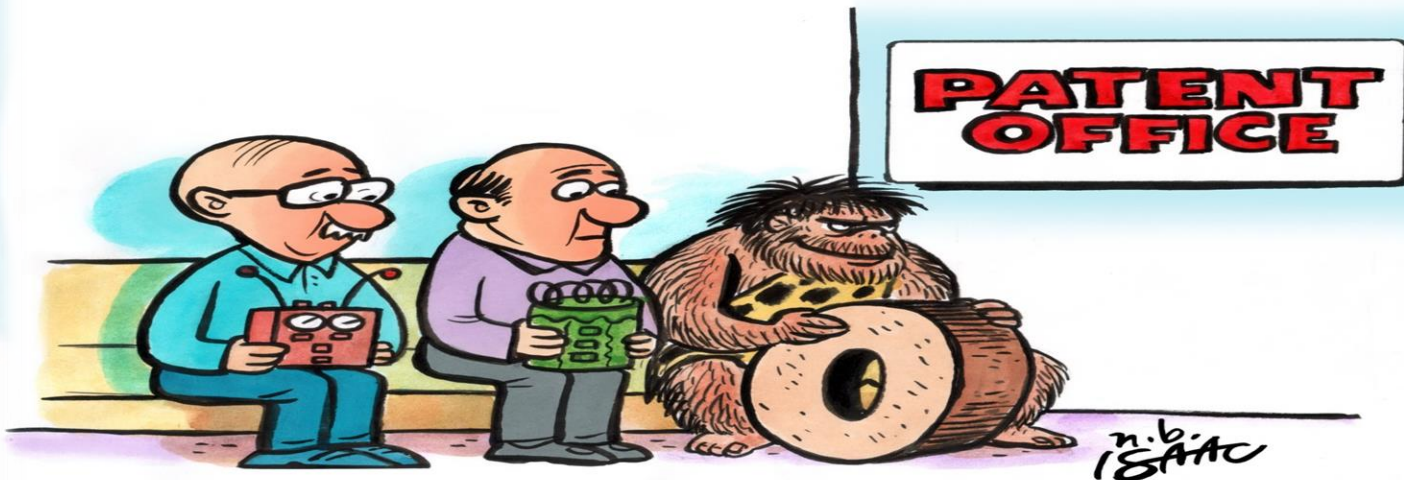
A patent gives legal/commercial protection to the Applicant(s) (individual(s)/company(s)) holding it.

## **For the individual (Inventors)**

- Enjoy monopoly of the technology for 20 years
- Makes any invention/technology saleable
- Facilitates the creation of distribution and licensing agreements
- Provides inventors a basis for further invention or improvisation
- Establishes the patent owner and inventor as the market leader and attracts customers
- Informs the marketplace of an individual's serious commercial intent

# For the Company(s)

- Licensing or sale avenues open up, creating new revenue streams
- Consolidates/strengthens market position
- Increase in negotiating power through cross licenses or Joint Venture agreements
- Fuels a company culture of innovation, brand presence and design
- Attracts new capital for product development
- Creates and enhances company image to potential investors, customers, manufacturers and distributors
- Keeps the talent bank secure, thus encouraging more inventions in future
- Makes it easier to operate in overseas markets and to sign up distributors



# THE FAMOUS GRAVITY-DEFYING LEAN OF MICHAEL JACKSON



# TRADEMARKS

- A Trademark is a sign of serious commercial intent and protects/increases the goodwill of the owner's business
- It is seen as an evidence of ownership
- A trademark gives the owner legal recourse against illicit use

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

# Registerable trademarks

- ❑ Invented words - one or more
- ❑ A word, or combination of words, a logo, device, symbol, phrase, design, or a combination of any of these which do not directly allude to the character or quality of the goods or services
- ❑ Words without geographical significance and words which don't connote a personal name, surname or common abbreviation



# The use of the <sup>TM</sup> and the ® symbols

The <sup>TM</sup> symbol is an alert to the users/public that the mark bearing this symbol is being used in commerce, and/or that an application for registration of the mark is pending at the Trademarks Registry.

The ® symbol, however can only be used against marks which have already been registered by the Registry. The use of this symbol on a mark which is unregistered constitutes a criminal offence.



# Is an Indian trademark valid abroad?

No. The owner of the trademark has rights only in the country which has granted it. However, some countries (especially those which do not have Trademark laws, like Nepal) recognize an Indian trademark registration as the basis for registering that particular mark in its territory.



# COPYRIGHTS

## PROTECTION

Music

Theatre

Fine Art

Literature

**Copyright, which protects music, films, literature and other creative works, as well as source code for computer programs. Copyright applies for 70 years after the death of the copyright holder.**



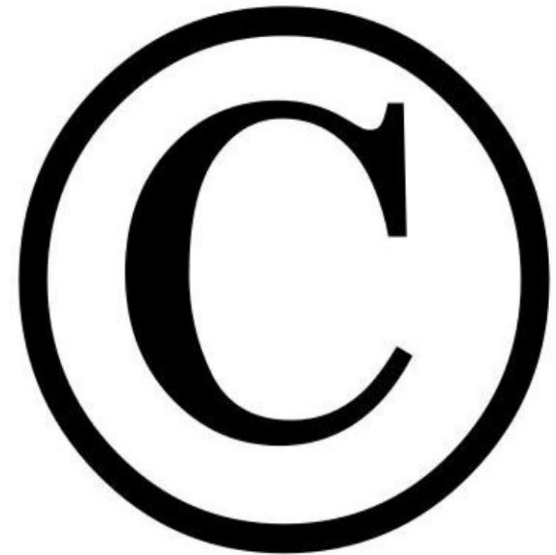
# Rights of an owner of a Copyright

**Copyright owners have the exclusive right to either do or authorize the doing of any of the following:**

- To reproduce the work in any material form including the storing of it in any medium by electronic means**
- To issue copies of the work to the public not being copies already in publication**
- To perform the work in public, or communicate it to the public to make any translation or adaptation of the work**
- To sell or give on hire, or offer for sale or hire a copy regardless of whether such copy has been sold or given on hire on earlier occasions**

# Registration Of Copyright

Copyright need not be registered. However, given the issues of infringement, it is advisable to register. More often than not the issue of proof of originality of the work is difficult to resolve. A copyright registration would negate the need for such proof as the certificate and all the information contained therein is considered sufficient.



# Designs

Enjoy!  
*Chica Locca*

- Creation of a novel and original outer appearance (shape, configuration and pattern or ornamentation) of an article can be protected through a registered design that recognizes and protects the exclusive rights of the registered proprietor in the design
- He can then apply the design to the article in the class in which the design has been registered. This form of IP protection, albeit narrow in scope, is rendered very attractive, because it is swift, procedurally simple and cheap to obtain.



# Infringement



Intellectual property laws distinguish deliberate theft and innocent infringement. Different rules apply to different types of intellectual property.



**COMMON INTELLECTUAL  
PROPERTY MISTAKES**

*Startups Make*

CLEVERISM.COM

# Infringement of copyright

Copyright is only infringed if the unauthorized use involves the whole or a 'substantial part' of the copyright work. Unauthorized use usually involves copying, issuing copies, renting or lending, performing, showing, playing, communicating or adapting the copyright work.



In general use of a copyright work is not an infringement if it is used fairly and with acknowledgement, for the purpose of non-commercial research, private study, illustration for instruction or criticism or review.



For copyright a number of exceptions and defenses apply to schools, universities and other educational establishments when using content that belongs to someone else

# Infringement of patents

- ❑ Infringing a patent means manufacturing, using, selling or importing a patented product or process without the patent owner's permission. The owner of a patent can take legal action against you and claim damages if you infringe their patent.

**Nikola One**



**Tesla Semi**





# Infringement of Trademarks

❑ If someone uses an identical or similar trade mark for identical or similar goods or services to a trade mark already in use without the owner's consent, that person infringes the trade mark.

## EXCEPTIONS

- Use of another registered trademark
- Use of own name and address



# CASE STUDIES

## ❖ Rogers vs. Koons



Photograph: Art Rogers – 1985; Polychrome: Jeff Koons – 1988

Koons was forced to pay a monetary settlement to Rodgers.

# ❖ The Associated Press vs. Fairey



➤ The artist and the AP press came to a private settlement in January 2011, part of which included a split in the profits for the work.

Mannie Garcia – 2006 (via The New York Times); Poster:  
Shepard Fairey – 2008 (via Wikipedia)

# ❖ Cariou vs. Prince



Patrick Cariou – 2000; Adaptation: Richard Prince – 2008

A judge ruled in favor for Cariou in 2011 for some of the works, claiming the changes made to Cariou's photographs weren't significant enough to constitute a change in meaning — fair use.

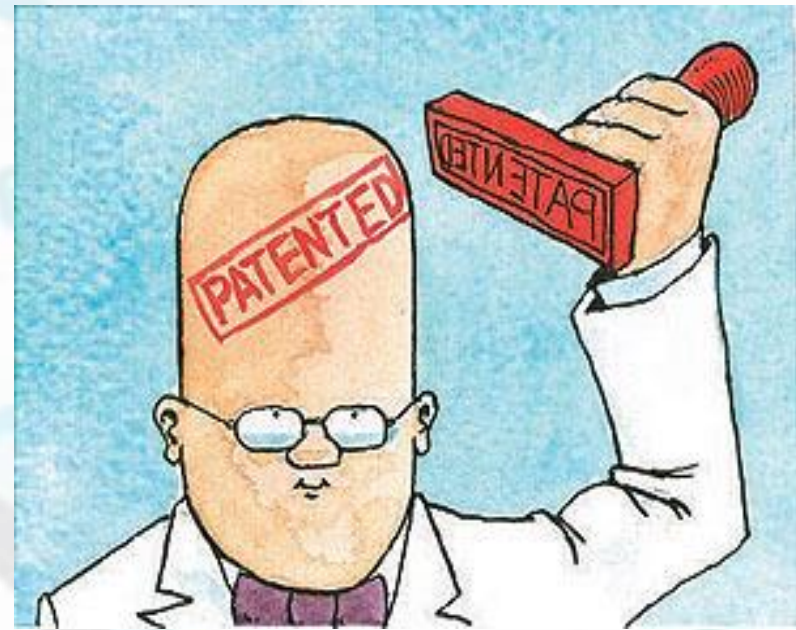
# Microsoft vs. MikeRoweSoft

- ❑ In August, 2003 , a 17 year old boy named Mike Rowe from Canada created a website – Mikerowesoft.com which was encountered by the \$220billion company as a trademark infringement due to the phonetic variation.
- ❑ He responded and asked to be duly compensated; Microsoft obliged and counter-offered — to the tune of \$10, Rowe's original domain registration fee.
- ❑ . Insulted, Rowe responded again, this time requesting \$10,000.
- ❑ A few weeks later, Rowe received a 25-page cease and desist order Overnight, the case was international news.. Almost instantaneously, he'd become an internet hero.

In exchange for Rowe's domain name, Microsoft set up Rowe's new website, paid for a Microsoft certification course, and escorted him to the Microsoft Research TechFest in Washington. **and they gave him an X-Box...with some games.**



- 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



**Hood ornament**

Trademark, design patent and/or copyright

**Logo, model name, manufacturer's name**

Trademark



**Engine, transmission, and internal components**

Utility patent, design patent and/or trade secret

**Body design**

Trade dress, design patent and/or copyright

**Method of manufacture**

utility patent and/or trade secret

**Uniquely-styled seats**

Design patent, copyright or trade dress, or

**Seat functionality**

Utility patent and/or trade secret).

# BIBLIOGRAPHY

- [economictimes.indiatimes.com](http://economictimes.indiatimes.com)
- [ocpla.org](http://ocpla.org)
- [www.lawabsolute.com](http://www.lawabsolute.com)
- [secureyourtrademark.com](http://secureyourtrademark.com)
- [www.jisc.ac.uk](http://www.jisc.ac.uk)
- [www.depenning.com](http://www.depenning.com)
- [www.wipo.int](http://www.wipo.int)
- [www.wto.org](http://www.wto.org)



**Thank You!**

