

# Introduction to TRIPS:

## Structure and Types of IP Protection

-Aditya P. Satpute,

Centre for WTO Studies, New Delhi

May 07, 2014

## Peculiarity about IP

What is Intellectual Property?

- Creations of mind
- IP is a characteristic of the item or device or work or object
- The object is not the Intellectual Property (IP)

And its laws?

- The laws provide the creator an **exclusive right** for a limited period **to stop others** from making, using or selling that product without his permission
- Legal means to motivate inventor
- Ensure due stream of returns: economic right

## Forms of IPRs: *Traditional Classification*

1. Copyrights and rights related to copyright (i.e. the rights of performers, producers of sound recordings and broadcasting organizations)
  
2. Industrial Property
  - Patents (including the protection of new varieties of plants)
  - Trademarks (including service marks)
  - Geographical Indications (including appellations of origin)
  - Integrated Circuits and Layout Design
  - Undisclosed Information (including Trade Secrets and Test Data)

## TRIPS

Conclusion of Uruguay Round – 1994

Marrakech Agreement of 1994 creates the WTO

Countries signing the Marrakech Agreement automatically became signatories of all multilateral agreements including one at Annex 1 C

Agreement on

**Trade-Related aspects of Intellectual Property Rights**

Monitored by the Council for Trade in IP or the TRIPS Council at the WTO

**Single undertaking**

## Protection of the Rights

*Two levels of legal instruments*

Municipal Law  
International Law

*Two principles of non-discrimination*

National treatment (Art 3)  
Most Favoured Nation (Art 4)



## TRIPS: Main Features

- ▶ **Standards:** The agreement lays down minimum standards of protection
  - The subject matter to be protected
  - The rights to be conferred and permissible exceptions
  - The minimum period of protection
- ▶ **Enforcement (Part III) (Art 41–61)**
  - Provisions for domestic procedure and remedies for the enforcement of the IPRs: obligation on states to establish domestic procedures
  - Includes general principle applicable to IPR enforcement procedure apart from administrative, civil and criminal procedure available for enforcement of rights of the right holder
- ▶ **Dispute settlement:** The agreement provides for the settlement of disputes over IPR among the member states within the parameters of the WTO dispute settlement procedure



# TRIPS: Main Features

## Coverage:

- Copyrights and related rights (Art 9–14)
- Trademarks (Art 15–21)
- GIs (Art 22–24)
- Industrial Designs (Art 25–26)
- Patents (Art 27–34)
- Layout Designs of Integrated Circuits (Art 35–38)
- Undisclosed information (Art 39)



# TRIPS: Basic Principles

Basic principle is non-discrimination, as in GATT and GATS:

- National Treatment (Article 3): Equal treatment for foreign and domestic individuals and companies
- Most Favoured Nation (Article 4): Equal treatment for nationals of all trading partners in the WTO

But also:

- Balanced Protection: (Article 7) IP protection should contribute to technical innovation and transfer of technology
- Public Interest: (Article 8) Consistent with TRIPS provisions, Members may take measures to protect public interest and measures against abuse of rights or trade restraint or technology transfer



# General Principles of TRIPS

## *Article 1*

*Nature and Scope of Obligations*

## *Article 2*

*Intellectual Property Conventions*

## *Article 3*

*National Treatment*

## *Article 4*

*Most-Favoured-Nation Treatment*

## *Article 6*

*Exhaustion*

## *Article 7*

*Objectives*

## *Article 8*

*Principles*

Friday, 09 May 2014

9

## Patents


- Members to make patents available for inventions– both products and processes– in all fields of technology without discrimination
- Invention should fulfil the test of **novelty, inventiveness and industrial applicability**
- Patent rights should be enjoyable without discrimination as to place of invention or imported/locally manufactured

### **3 Exceptions** for grant of patents:


- i. To protect public order or morality– if dangerous for human, animal, plant life or health or seriously prejudicial to environment
- ii. Diagnostic, therapeutic and surgical **methods** for treatment of humans or animals
- iii. Plants and animals, other than microorganisms and essentially biological processes for production of plants or animals

10


## Patents (Contd.)

- Rights conferred :
    - i. **Product Patent** : Holder gets exclusive rights to prevent others from making, using, offering for sale, selling, of importing the patented product
    - ii. **Process Patent** : Holder gets exclusive rights to use the process and to prevent others from using the process in forms like use, offering for sale, sale or import product obtained directly by that process
  - **Terms of Protection** is for at least 20 years from the filling date of patent
  - **Compulsory licensing** allowed subject to conditions (Art 31)
- 


## Trademarks

- Trademark protects any word, name, logo or device used to identify, distinguish or indicate the source of goods or services
  - Includes trade dress (the total image and overall appearance of a product) and product configuration (the shape if non functional)
  - The purpose is to safeguard the integrity of products and to prevent product confusion and unfair competition
  - The **term of protection** (initial registration and each renewal of registration) of a trademark shall be for a term of not less than **7 years**
- 

## Geographical Indications

- GIs are indications which identify a good as originating in a region or locality, where a given reputation and quality or other characteristics of the good is essentially attributable to its geographical origin (for example: Darjeeling tea)
  - TRIPS prohibits the use of GIs in such a way as to cause deception and provides for injunctive relief, refusal of trademark registration, etc
  - Two levels of protection, one where public is misled or there is unfair protection, and the other where protection is absolute
  - Exceptions such as countries are not obliged to bring a geographical indication under protection, where it has become a generic term for describing the product in question
- 

## Industrial Design

- Protects the artistic aspect (namely, texture, pattern, shape) of an object instead of the technical features
  - The **term of protection**: amount to at least 10 years. '*Amount to*' allows the term to be divided into two periods (for example two periods of five years)
  - A third party is prohibited from making, selling or importing articles bearing a design which is a copy of the protected design, when such acts are undertaken for commercial purposes
  - Exception: where use does not unreasonably conflict with the normal exploitation of protected industrial designs and does not unreasonably prejudice the legitimate interests of the owner of the protected design, taking into account the legitimate interests of third parties
- 

## Layout Designs

- It refers to mask works (topographies) of the integrated circuits, the stencils used to etch or encode an electrical circuit on a semiconductor chip
- Protection conferred to “original” layout-design/topographies
- Exclusive rights include the right of reproduction and the right of importation, sale and other distribution for commercial purposes
- **The term of protection:** ten years from the date of first commercial exploitation




## Undisclosed Information

- Undisclosed information protection (trade secret) applies to information that is secret, that has commercial value because it is secret and that has been subject to reasonable steps to keep it secret
- Trade secrets consist of formulae, patterns, process or compilation of information. (for example the formula for a sports drink)
- In most countries, they are not subject to registration but are protected through laws against unfair competition
- Like geographical indications, trade secrets also **do not have a limited term of protection**; protection continues until the GI is not allowed to become generic, and efforts required to maintain a trade secret continue






# Copyright

- Copyright grants exclusive rights to the creator of original **scientific, artistic and literary works including computer programmes and databases**
  - **'Original'** is key in defining a work that qualifies for copyright protection
  - **The term of protection – Shall be no less than 50 years** from date of authorised publication. Term of protection is **25 years** for **photographic works and works of applied art**
  - Countries to confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with exploitation of the work and not prejudicial to right holder
  - Protection to be extended to every production in **literary, scientific and artistic domain** as also to **computer programmes and to data bases**
  - Protection only to expressions and not to ideas
- 

## Copyright...contd.

- **Three basic principles of protection**
    - i. **National Treatment** : work originating in one member State must be given same protection as accorded to works of nationals of another member State
    - ii. **Automatic Protection** : Protection be automatic and not subject to any formality of registration
    - iii. **Independence of protection** : enjoyment and exercise of rights granted is independent of existence of protection in the country of origin
- 

## IPR Laws in India

- ▶ The Patents Act, 1970 (amended in 1999, 2002 and 2005)
- ▶ Copyright Act, 1957 (amended in 1999)
- ▶ The Designs Act, 2000
- ▶ The Trade Marks Act, 1999
- ▶ The Geographical Indications of Goods (Registration & Protection) Act, 1999
- ▶ The Semi-conductor Integrated Circuits Layout-Design Act, 2000
- ▶ the Protection of Plant Varieties and Farmers' Rights Act, 2001



**Thank you**

