

**LECTURES ON "IPR" FOR SCIENCE
STUDENTS**
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By

Dr. B. B. Singh

M.Sc., LL.M., Ph.D.(Lond.), F.A.Sc., F.N.A.Sc.
Advocate & Scientific Advisor
High Court Bombay

M/S Hoosainally Visram & Co.
Advocates, Solicitors & IPR Attorneys
23-A, Yusuf Building
Veer Nariman Road, Fort
Mumbai 400 023 (India)
Tel. +91-22-22049723, +91-22-22883724
Fax. +91-22-22040664
Email id: hvco@vsnl.com
drbbsingh@mtnl.net.in
Dr.B.B.SINGH

Dr. B.B.Singh holds a Master's degree in Physics and is a recipient of the Gold Medal for being the best student of the year. He obtained his Ph. D. degree in Radiation Biology from the university of London and is an elected Fellow of the Indian Academy of Sciences and also of the National Academy of Sciences of India. He has been awarded the degree of Doctor of Sciences (h.c.) from the International Open University, Colombo, Sri Lanka. He had held several important positions in India at the Bhabha Atomic Research Centre Mumbai and at the United Nations' International Atomic Energy Agency in Vienna. He has served as an expert in various countries including at the Syrian Atomic Energy Commission, Damascus. He is a scientist of international repute specializing in the fields of free radical biology and combination therapy of cancer with radiation and hyperthermia. He is a widely traveled scientist and has participated in 44 international conferences in over 32 countries and has been a member of the Organizing Committee of numerous international conferences held in India and abroad. He has to his credit 2 books and 163 original scientific papers published in as reputed scientific journals as *Nature* (Lond.) and *Science* (Wash.). He has been the President of Indian Biophysical Society, Indian Society for Radiation Biology and Indian Association for Hyperthermic Oncology & Medicine and a Hon. Member of International Society for Clinical Hyperthermia. He retired in 1998 as the Head of the Biochemistry and Radiation Biology Divisions of Bhabha Atomic Research Centre, Mumbai, India. He has served on the Editorial Boards of several International Journals including Intl. J. Radiat. Biol. (UK); Intl. J. Hyperthermia (UK); Radiation Phys. & Chem. (UK).



Dr. Singh also holds LL.B. degree from the Mumbai University specializing in Environmental Law and Consumer Protection. His research work at the J.C. College of Law, Mumbai on "Laws Relating to IPR in Biomedical Technologies in India" has earned him the degree of LL.M. from the Mumbai University. He has been a Research Fellow at the Institute of Intellectual Properties, University of Tokyo, Japan and is currently a member of the Editorial Board of the Intl. Journal of Nuclear Law (Paris). He is presently practicing at the Bombay High Court on laws relating not only to IPR issues but also in other branches of law such as Constitutional remedies & Writs, Public Interest litigations, Consumer Protection, Recovery of debts, Company matters including mergers and winding-up, arbitrations and conciliations, transfer of properties and cases complicated by Indian personal laws for child adoption and matrimonial disputes.

He has extensively toured India for over 5 years delivering public lectures on fallacies of the Indian Patent Bill before it was passed into an Act by the Parliament. He is an active member of several NGOs and social welfare bodies including Rotary International, Masonic Fraternities and Swadeshi Jagran movement. He is a very popular public speaker and a teacher for students of academic pursuits and has guided several research scholars for their master and doctoral degrees in various Universities.

LECTURE - 2

INTELLECTUAL PROPERTIES

(GENERAL CLASSIFICATION)

LITERATURE & ART including Phonograms, Broadcasts & Performance of artists & *computer software (1995)*

INDUSTRIAL PROPERTIES including:

- (a) Trade & Merchandise marks
- (b) Architectural plans
- (c) Industrial designs
- (d) Integrated circuits
- (e) Commercial names
- (f) Computer programs
- (g) Geographical indications
- (h) Traditional knowledge
- (i) PATENTABLE INVENTIONS**

TRIPS CLASSIFICATION

1. COPY RIGHTS & RELATED RIGHTS
(50 yrs for literary work; 20 yrs for Broadcasting agencies)
2. TRADE MARKS
(7 yrs RENEWABLE INDEFINITELY)
3. GEOGRAPHICAL INDICATIONS
4. INDUSTRIAL DESIGNS (10 Yrs)
5. PATENTS (20 Yrs)
6. LAY OUT DESIGNS OF INTEGRATED CIRCUITS (10 Yrs).
7. UNDISCLOSED INFORMATION

THE BEGINNING OF IPR

NEED:

The need for international protection of intellectual property became evident when foreign exhibitors refused to attend the International Exhibition of Inventions in Vienna in 1873 because they were afraid their ideas would be stolen and exploited commercially in other countries.

"Paris Convention - 1883"

The year 1883, when Johannes Brahms was composing his third Symphony, Robert Louis Stevenson was writing "Treasure Island", and John and Emily Roebling were completing construction of New York's Brooklyn Bridge, was the birth of the Paris Convention for the Protection of Industrial Property, the first major international treaty designed to help the people of one country obtain protection in other countries for their intellectual creations in the form of industrial property rights, known as:

- inventions (patents)
- trademarks
- industrial designs

The Paris Convention entered into force in 1884 with 14 member States, which set up an International Bureau to carry out administrative tasks, such as organizing meetings of the member States.

Signed at Paris by 11 countries on March 20, 1883

Entered into force in 1884 with 11 members

Revised at

Brussels on December 14, 1900,
Washington on June 2, 1911,
The Hague on November 6, 1925,
London on June 2, 1934,
Lisbon on October 31, 1958,
Stockholm on July 14, 1967,
and amended on September 28, 1979)

Total Membership 169

"Berne Convention - 1886"

Signed at Berne on September 9, 1886,

completed at PARIS on May 4, 1896,
revised at BERLIN on November 13, 1908,
completed at BERNE on March 20, 1914,
revised at ROME on June 2, 1928,
at BRUSSELS on June 26, 1948,
at STOCKHOLM on July 14, 1967,
at PARIS on July 24, 1971,
and amended on September 28, 1979

In the Year 1886, copyright entered the international arena with the Berne Convention for the Protection of Literary and Artistic Works. The aim of this Convention was to help nationals of its member States obtain international protection of their right to control, and receive payment for, the use of their creative works such as novels, short stories, poems, plays; songs, operas, musicals, sonatas; and drawings, paintings, sculptures, architectural works. The Berne Convention set up an International Bureau to carry out administrative tasks.

In 1893, Paris Convention & Berne Convention with small bureaus united and formed an international organization called the United International Bureaux for the Protection of Intellectual Property (best known by its French acronym **BIRPI**). It was based in Berne, Switzerland, with a staff of seven.

In 1960, BIRPI moved from Berne to Geneva to be closer to the United Nations and other international organizations in that city and a decade later, BIRPI became WIPO (World Intellectual Property Organization) undergoing structural and administrative reforms and acquiring a Secretariat answerable to the member States.

In 1974, WIPO became a specialized agency of the United Nations system of organizations, with a mandate to administer intellectual property matters recognized by the member States of the UN.

In 1978, the WIPO Secretariat moved into the main headquarters building.

In 1990, the WIPO expanded its role and further demonstrated the importance of intellectual properties and in particular, the biotechnological inventions in agriculture and medicine. The main beneficiaries of such inventions i.e. US, EU and Japan found that Paris Convention and Berne Convention under WIPO lacked the authority to enforce the law and thus proved too insufficient and ineffective in the protection of related rights which were available under GATT/WTO. Hence, on their insistence, WIPO entered into a cooperation agreement with the World Trade Organization (WTO).

On 1st January 1995 TRIPS was born and the Developing countries agreed to the inclusion of TRIPS in WTO only on the condition that textile and clothing quotas under the MFA (Multi - Fibre Arrangement) would be abolished.

TRIPS

OBJECTIVES OF TRIPS AGREEMENT

The general goals of the TRIPS Agreement are contained in the Preamble of the Agreement and the main objectives can be enumerated as follows:

- (a) the reduction of distortions and impediments to international trade,
- (b) promotion of effective and adequate protection of intellectual property rights, and
- (c) ensuring that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade.

These objectives should be read in conjunction with Article 7, entitled "Objectives", according to which the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

Article 8, entitled "Principles" recognizes the rights of Members to adopt measures for public health and other public interest reasons and to prevent the abuse of intellectual property rights, provided that such measures are consistent with the provisions of the TRIPS Agreement.

THREE MAIN FEATURES OF THE TRIPS AGREEMENT ARE:

(i) Standards:

In respect of each of the main areas of intellectual property covered by the TRIPS Agreement, the minimum standards of protection to be provided by each Member are enumerated. Each of the main elements of protection is defined:

- (a) the subject-matter to be protected,
- (b) the rights to be conferred and permissible exceptions to those rights, and
- (c) the minimum duration of protection.

The Agreement sets these standards by requiring,

Firstly, that the substantive obligations of the main conventions of the WIPO, i.e. the Paris Convention for the Protection of Industrial Property (Paris Convention) and the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention) in their most recent versions, must be complied with. With the exception of the provisions of the Berne Convention on moral rights, all the main substantive provisions of these conventions are incorporated by reference and thus become obligations under the TRIPS Agreement. The relevant provisions are to be found in Articles 2.1 and 9.1 of the TRIPS Agreement, which relate, respectively, to the Paris Convention and to the Berne Convention.

TRIPS Art.2.1. In respect of Parts II, III and IV of this Agreement, Members shall comply with Articles 1 through 12, and Article 19, of the Paris Convention (1967). (Annexure –I)

TRIPS Art.9.1. Members shall comply with Articles 1 through 21 of the Berne Convention (1971) (Annexure-II) and the Appendix thereto. However, Members shall not have rights or obligations under this Agreement in respect of the rights conferred under Article 6 of that Convention or of the rights derived therefrom.

Secondly, the TRIPS Agreement adds a substantial number of additional obligations on matters where the pre-existing conventions are silent or were seen as being inadequate. The TRIPS Agreement is thus sometimes referred to as a Berne and Paris-plus agreement.

(ii) Enforcement:

The second main set of provisions deals with domestic procedures and remedies for the enforcement of intellectual property rights. The Agreement lays down certain general principles applicable to all IPR enforcement procedures. In addition, it contains provisions on civil and administrative procedures and remedies, provisional measures, special requirements related to border measures and criminal procedures, which specify, in a certain amount of detail, the procedures and remedies that must be available so that right holders can effectively enforce their rights.

(iii) Dispute settlement

The Agreement makes the TRIPS obligations subject to the WTO's dispute settlement procedures. In addition the Agreement provides for certain basic principles, such as national and most-favoured-nation treatment, and some general rules to ensure that procedural difficulties in acquiring or maintaining

IPRs do not nullify the substantive benefits that should flow from the Agreement.

The obligations under the Agreement will apply equally to all Member countries, but developing countries will have a longer period to phase them in. Special transition arrangements operate in the situation where a developing country does not presently provide product patent protection in the area of pharmaceuticals.

The TRIPS Agreement is a minimum standards agreement, which allows Members to provide more extensive protection of intellectual property if they so wish. Members are left free to determine the appropriate method of implementing the provisions of the Agreement within their own legal system and practice.

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