

BOOK REVIEW

Mathew Thomas's "*Understanding Intellectual Property*", 1st Edition, Eastern Book Company, Lucknow, India, 2016, pp. LXXI + 501, Soft Cover, Price - Rupees. 595.

PARIMITA DASH¹

The book under review is an outcome of author's extensive research on various issues pertaining intellectual property rights. Author has given a very lucid analysis of the basic formulations of intellectual property as concept and has highlighted the justification behind protecting intellectual property under a sui generis legal framework. The book very coherently highlights the author's perspective on the relevance of intellectual property rights on today's world with a special focus on the evolution of intellectual property rights as a concept since its inception till today. At the outset of the book, i.e. in the preface itself, author has wonderfully explained the amazing journey intellectual property right has made through 21st century from being a mere patenting tool to cover anything and everything our creative mind can conceive and which can be physically manifested in to certain tangible forms. The practical relevance of intellectual property rights in other disciplines like that of medical, engineering, biotechnology etc. also has been emphasized by the author justifying the need for having a multidisciplinary approach while analysing and discussing various issues relating to intellectual property rights. One of the major highlights of this book is the author's meticulous study of each and every possible concepts relating to Intellectual property rights like Copyright, Patents, Trademarks, Geographical Indications, Designs, Protection of Plant Varieties and Farmers Rights, Semiconductor Integrated Circuits Layout-Design, Confidential Information and Trade Secrets etc. and dedicating individual chapters to all these mentioned areas signifies an extensive research on the part of author with a special focus on various other useful doctrines and various international legal frameworks concerning intellectual property rights.

The book has 11 chapters in total which discusses the above mentioned aspects of intellectual property rights in great detail yet in very simple language which can be easily comprehensible. Introductory part of the book differentiates between the corporeal

1. Assistant Professor of Law, School of Law, KIIT University, Bhubaneswar, Odisha, email: parimita@kls.ac.in.

property and incorporeal property and analyses the justification behind placing intellectual property concept under the intangible property category. This part of the book also highlights the major shift that this 21st century has witnessed from a collectively owned knowledge domain to a domain which identifies individual exclusive rights in knowledge & creativity giving way to the emergence of the negative right concept. It also discusses jurisprudential justifications behind various concepts of intellectual property rights by tracing their evolution from the ancient era to modern era.²

The first chapter of the book which is on Copyright starts with a famous saying by David Warren i.e. *Cartier has an ethic, "Never copy-always create"* is a comprehensive study on various dimensions of copyright as a concept of intellectual property right. Author gives a wonderful introduction to the concept of copyright by providing a historical development of copyright in U.K.³ and comparing that with the evolution of copyright law in U.S.A.⁴ and finally making his observation on the phases of development of copyright law in India. With this the first chapter proceeds with defining the concept of copyright formally with a clear comparison of the concept of copyright with the concept of copy left. The other aspects of copyright which has been dealt with in this chapter are works on which copyright subsists, concept of originality, authorship-ownership concept, the idea-expression dichotomy, moral rights of an author, transfer of copyright including the concepts like transmission assignment and licenses of copyright, infringement of copyright, remedies against a copyright infringement, exceptions to copyright infringement i.e. doctrine of Fair Use and Fair Dealing etc. Another feature which makes this entire chapter a good reading for the readers is the balanced analysis of the plethora of cases on copyright not

-
2. In this context the evolution of the patent system has been traced from the Venetian Patent Statute of 1474 which is considered to be the earliest of its kind through the system of Royal Grants by Queen Elizabeth II for monopoly privileges to the Statute of Monopolies, 1624 was the first statutory patent law passed by an Act of Parliament.
 3. The Author here gives a vivid understanding of the Copyright law in European Union by referring to The Statute of Anne, which was the first statute on Copyright in England enacted during the year 1709-1710. (p.2)
 4. The Copyright Act 1790 also has been referred by the author with special focus on its objective which is to encourage learning by securing the copies of maps, charts, books to the authors and proprietors during the times therein mentioned. (p.2)

only confined to Indian cases but also discussing similar copyright cases of different jurisdictions.

Trademarks are very important for a healthy market as they are considered as source identifiers which in turn help in maintaining the distinctiveness of the various products and services in the market, helping customers to exercise their right of selecting the right products and services for them. This basic formulation behind the concept of trademarks has been very aptly discussed at the very outset of the second chapter which is on Trademarks. The author in this chapter very clearly justifies the incorporation of the concept of trademarks under the intellectual property rights regime by analysing the concept in the light of the concept of goodwill which is an intangible asset for any business entity in the market. Apart from defining a trademark, discussing various kinds of trademarks, the chapter deals in great detail two very important requirements for trademark registration in India i.e. concept of Distinctiveness and Graphical Representation in the light of series of cases of distinctiveness under Indian trademark regime and the various difficulties faced by non-conventional trademarks in registration of such trademarks under Trademarks Act 1999 in terms of graphical representation. This chapter also focuses on the concept of domain names in the light of trademarks and compare both these concept on the basis of the basic formulations involved in formulating these two concepts with special mention of no. of cases of domain names disputes in Indian and abroad. Additionally the chapter also covers other areas of trademark law like passing off actions, well known trademarks, seriousness attached with regard to pharmaceutical trademarks. And towards the end of the chapter, author discussed the trademark registration procedure in India in great length with extensive focus on infringement of trademarks and the remedies against infringement of trademarks both in terms of civil and criminal remedies. In terms of efforts on the part of the author, this chapter has received the maximum thrust as compared to the other chapters in the book, which very well can be justified in the light of the increasing no of trademark dispute cases in India and thereby giving rise to the need for having strict frameworks for protecting the intangible goodwill attached with trademarks against misrepresentations and unauthorised usage.

Chapter 3 of the book revolves around one of the most discussed areas of intellectual property law and i.e. Patents. This is one such

area under IPR regime which witnesses the maximum interface with many other areas like that of medicines, engineering, biotechnology etc. and for that matter any area of research and development which can generate innovations. Considering this even the author has adopted a multidisciplinary approach while formulating this very chapter. With a general introduction to Patents and various international legal instruments⁵ relating to patents at an international level, the chapter proceeds with a detailed analysis of history of patents in India, the concept of invention and what constitutes an invention to be eligible to be patented with a special focus on the procedure to grant a patent in India along with the Patent Cooperation treaty (PCT) filing for obtaining a patent on an invention at an international level. In addition to this, understanding the need of technicalities in the light of patents author in this chapter also fairly discusses the various technical aspects a patent i.e. claim construction, drafting provisional and complete specification etc. along with general concepts like rights of a patentee & infringement and subsequent remedies against an action of infringement of patent more specifically under Indian patent regime.

Geographical Indications are turning out to be the next big thing under the IPR regime with the emergence in awareness of nations with rich cultural heritage in terms of various traditional practices and traditional products which they want to exploit commercially at an international level maintaining the geographical identity of these products and safeguarding them against potential threats in terms of misrepresentations and counterfeiting. Hence this book also dedicates a whole chapter in the form of chapter 4, on various issues pertaining to geographical indication like need for protecting geographical indications under a sui generis legal framework, concept of homonymous geographical indications, enhanced protection extended to wines and spirits under Article 23 of TRIPS, with an elaborate analysis of the various phases that a product will have to undergo under Geographical Indications (Registration & Protection) Act, 1999 in India in order to get the status of a

5. Author meticulously mentions in this context various international legal instruments under the world patent regime like Paris Convention, Patent Cooperation Treaty (PCT), European Patent Convention etc. with a special focus on role of WTO and WIPO in promoting for the cause of identifying exclusive interest of the creator in his creations/ innovations and thereby promoting the research and development sector with larger interests. (pp.212-214)

geographically indicated product. This chapter also contains few specimen of already registered geographical indications of India pertaining to various kinds of products originating from different parts of the country.⁶

Chapter 5 of the book provides the readers with a comprehensive reading on Design law under Intellectual Property regime. The various topics that have been covered with fair precision in terms of deliberations under this chapter are, fundamental concept of design and justification behind its incorporation under IPR regime, salient features of the Indian legislation on Designs i.e. Designs Act 2000 like designs that can be registered and designs that are prohibited from being registered under the Act, the interface between copyright law and law relating to designs, registration procedure for designs under the statute, what constitutes an infringement of registered designs and what remedies are available against an act of infringement of registered designs in India. The author has discussed all these aspects of designs fairly in the light of various decided case laws in this regard.

Incorporation of concept of Protection of Plant varieties and Farmers Rights under intellectual property regime has been the result of the lobby of the countries which have agriculture based economies and as a result of the bargain between the countries advocating for absolute individual rights and the countries promoting a balance between individual right and scope for collectively owned rights under IPR framework and this understanding has been very aptly been discussed by the author in the 6th chapter of the book which solely has been dedicated to Protection of Plant varieties and Farmers Rights. This chapter starts with the relevance of various provisions of various international legal instruments⁷ advocating for concepts like plant variety protection and farmers rights and analyses how far India has been able to comply with these provisions as far as its sui generis law on plant variety protection

6. For better understanding of the concept for the students, the author has provided information pertaining to an already registered geographical indication “ Nizamabad Pottery” by incorporating its released advertisement in official gadget under rule 41 (1) of Geographical Indications (Registration and Protection) Rules 2002. (pp.318-322)

7. Author has in this regard explained various relevant provisions of Biodiversity Convention 1993, Cartagena Protocol, Nagoya Protocol etc. like fair and Equitable Sharing of benefits arising out of commercial exploitation of bio resources, access to genetic resources, ABS clearing House etc. (pp. 366-369).

and farmers rights is concerned i.e. PPVFR Act, 2001. The chapter in detail explain concepts of farmers rights, breeders rights, researchers rights/ privileges, various plant varieties that can be registered under the statute, NDUS test to be conducted in order to determine a new variety of plant, registration of a new variety of plant, role of authority in granting registration to new plant varieties and ensuring protection to farmers and breeders rights.

Chapters 7 and 8 deal with “Semiconductor Integrated Circuits Layout –Design” and “Confidential Information and Trade Secrets” respectively. While the author in the former deals with various concepts relating to semiconductor and integrated circuits like TRIPS approach towards Layout designs of integrated circuits, need for registering such designs, role of registrar in registration of such lay out designs, conditions & term of protection of such registration with special incorporation of sample of advertisement of application of registration of layout designs of integrated circuits for bringing a practical touch and better understanding of the concept, the later revolves around the need and relevance of confidential information and trade secrets in today world of business by focusing on the various clauses of confidentiality agreements with respect to different subject matters, jurisdictional basis of confidential information, requirement of trade secret, springboard doctrine, kinds of trade secrets, subject matter of information that can be protected etc. These two chapters definitely stand out from other books written on intellectual property rights as most of such books do not have separate chapters on these less discussed allied areas of IPR in this detailed manner.

9th chapter of the book deals with “Damages in Intellectual Property”. Considering the fact that most intellectual property infringements result in economic loss, damages comes as the most preferred remedies against IP infringements and this has been well explained in this chapter by analysing the various parameters taken in to consideration by courts in awarding damages in the light of Panduit factors.

The last two chapters of the book i.e. chapters 10 and 11 respectively deal with “some useful doctrines, orders and rules involving intellectual property” and “international conventions on intellectual property”. Inherency doctrine, doctrine of equivalence, reverse doctrine of equivalents, doctrine of exhaustion, merger doctrine, useful article doctrine, springboard doctrine, doctrine

of inevitable disclosure are few such doctrines which have been thoroughly discussed by the author in chapter 10 and in the last chapter of the book author has discussed various international legal instruments relating to intellectual property law TRIPS, WTO, WIPO, Berne Convention, Paris Convention, Universal Copyright Convention, Rome Convention, WIPO Copyright Treaty, WIPO Performance and Phonograms Treaty, Patent Law Treaty, Budapest Treaty, Madrid Protocol concerning international registration of Trademarks, NICE Agreement, UPOV 1961 etc. This last chapters tries to incorporate all possible international legal instruments concerning intellectual property protection and provides readers with comprehensive study on international scenario for Intellectual Property protection and enforcement.

This book contains an extensive research on literature review that has been done by the author for writing each chapters. The entire arrangement of the contents like the way the book provides a meticulously drafted list of cases, statutes, abbreviations at the outset of the book, the unique feature of case pilot inserted at various places of the different chapters of the of the book indicating specific case law/ study on the concerned subject matter and a well drafted subject index at the end of the book are very impressive and hence make the reading interesting and breaks the monotony. However the author could have worked upon certain areas like incorporation of protection of biological resources under Intellectual Property framework. In this context the book does not live up to the expectation as it totally ignores a major area of IPR which is being discussed of late at various forums. Concepts like traditional knowledge including traditional medicinal knowledge over various biological resources found in most of the developing countries rich in biodiversity, Principle of National Sovereignty over biological resources, Access and Benefit Sharing model etc. have not been discussed in this book with proper focus. This book can be regarded as a material contribution to the existing literature on Intellectual Property Protection and Enforcement in India.