

**The (Non) Role of
Intellectual Property Rights
in
Technology Transfer**

OHT Notes

by
Dr. V. Siddhartha
at
IIT Kharagpur
December 1996

What IPR Law ought to be

Realm of political economy
and moral philosophy

What the domestic IPR Law is
and how it got to be so

Realm of international and
domestic political economy;
international and domestic
legal regimes

Given the law, how does one
maximise benefit?

Realm of IPR in Technology
Management

Given legal ownership of IPR,
how does one enforce it?

Realm of Patent Attorneys/
lawyers/case law

Intellectual Property Rights (IPRs) defined

The *rights* relating to : literary, artistic and scientific work; performances of performing artists, phonograms and broadcasts; inventions in all fields of human endeavour; scientific discoveries; industrial designs; trade marks; service marks and commercial names and designations; and all other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields.

[From : Convention establishing the World Intellectual Property Organisation (WIPO), Stockholm, 1967]

Intellectual property rights in political-economy - I [United States, 1909]

"The enactment of copyright legislation by [US] Congress under the terms of the Constitution is not based on any natural right that the author has in his writings, for the Supreme Court has held that such rights as he has are purely statutory rights, but on the ground that the welfare of the public will be served and progress of science and useful arts will be promoted Not primarily for the benefit of the author, but primarily for the benefit of the public such rights are given. *Not that any particular class of citizens, however worthy, may benefit*, but because the policy is believed to be for the benefit of the great body of people, in that it will stimulate writing and invention to give some bonus to authors and inventors."

Speaking Notes

- (a) No so-called "balance" between private gain and public good in IPR law.
- (b) There is only one good - the public good. The benefit is for, *and only for*, the "great body of people".

Intellectual property rights in political-economy - II

Rights to intellectual property are legal title to the products of the individual or corporatised mind. They are granted by the State in furtherance of the policies of the State. Intellectual Property Rights (IPRs) are not granted in furtherance of the welfare of the individual or corporatised mind. IPRs granted by the State are thus instruments of political economy; they are not Fundamental Rights.

Technology transfer is effected through information-based products

which may be categorised as:

- a. Works of fact (e.g. invention; know-how; technical data; maps).
- b. Works of function (e.g. mechanical devices, electronic circuits).
- c. Works of form (e.g. designs of objects without motor functions; jewellery; graphic designs; dance forms).

Technology transfer is effected through information-based products

Overlay (1)

It is through these information-based products that technology is 'transferred' from the generator-owner of the information to the user-licensee of the information.

Overlay (2)

Intellectual Property *is embodied in the above information-based products.*

Overlay (3)

In effecting the transfer of technology, any or all the above information-based products may act as the vehicle(s) for "transfer of technology". Only some of these products are the subject of legal protection, such as through patents.

Overlay (4)

Note that it is the work (e.g. invention; computer programme), and not its legal protection (e.g. patent; copyright), which is the vehicle for technology transfer. More generally, *legal rights* to intellectual property have, in themselves, nothing whatever to do with technology transfer.

Why is a patent not know-how? - I

In all countries, the applicable law governing grant of patents for inventions requires only that the patent specification discloses all necessary information so as to enable a person skilled in the art to perform the invention i.e. to demonstrate the claims in the patent without the assistance of the inventor.

Why is a patent not know-how? - II

The applicable law in India and in most other countries does *not* require that the information disclosed in the patent specification be *sufficient* for the commercial exploitation of the invention.

Why is a patent not know-how? - III

'Know-how', on the other hand, covers any information necessary to set-up a production plant or to commercialise the invention. Such information includes, for example, details of the production methods applicable to the invention or, in the case of a mechanical component, the design drawings. It is this 'know-how' which is traded while transferring technology from a laboratory to an enterprise or from one enterprise to another. 'Know-how' is invariably commercially confidential and separately disclosed only under the terms of a licensing agreement executed between the seller and buyer of know-how. It is this 'know-how' which confers commercial value upon an invention disclosed in a patent.

An often-forgotten point

A patent is no indicator that an invention has any technical merit; nor is it an indicator of functional usefulness, much less of commercial value.

A patented invention is not necessarily 'superior' to an unpatented one performing the same technological function.

A patent is not some kind of ISO-type certification of the worth of an invention.

Intellectual Property Law on Internet

**[http://saliz.lib.washington.edu/libinfo/libunits/sciences/
engineering/patents/faq.html](http://saliz.lib.washington.edu/libinfo/libunits/sciences/engineering/patents/faq.html)**

The basics of patents and trademarks are explained with links to additional Internet resources.
(with the usual American biases)

Information contained in most patents are legally freely usable in India

A. World

- | | | |
|-------|--|---|
| (i) | World stock of published Patent specifications | : ~ 43 million |
| (ii) | Stock of Indian published patent specifications
(incl.: FPH [@] in India) | : ~ 0.17 million |
| (iii) | Proportion of world stock of patent specifications
which remain in force at any point of time | : 10-12 per cent
(Or say, 5 million) |
| (iv) | Proportion of published Indian patents in
force compared to world stock in force | : ~ 0.3 per cent |

Conclusion: 99-plus per cent of world stock of patent specifications legally freely usable in India.

[@] FPH : Foreign Patent Holder. Figures are 1993 estimates.

Information contained in most patents are legally freely usable in India

B. Indian

- | | |
|---|--|
| (i) Patent Applications (in India)
from India and abroad | : 3000 to 3500 per year
(steady over past 10 years) |
| (ii) Patents in force in India (incl.: FPH [@] in India) | : About 14000 |
| of which Indian-owned | : ~ 33 per cent |
| (iii) Proportion of Indian patents <u>in force</u> as
compared to total number of published
Indian patents (incl.: FPH [@] in India) | : ~ 8 per cent |

Conclusion : 90-plus per cent of published Indian patent specifications usable by anybody absolutely free.

[@] FPH : Foreign Patent Holder. Figures are 1993 estimates.

Patent literature in an Academic Environment - I

Patents are a mine of technical information

Current Stock ~ 40 million
world-wide.

80% of technical material contained in them is *not* published anywhere else.

THEREFORE

Even for academic research and teaching, a patent search and review is a pre-requisite in order to be

accurate, complete and current

in one's knowledge of the relevant field.

Patent literature in an Academic Environment - II

As pre-requisite for selecting the Research Problem

- Work towards a Research Degree invariably begins with a “Literature Review”
- A review of the Patents Literature must be an integral part of such a “Literature Review”.
- The specific Research Problem should not be decided upon until that review is conducted.

Patent literature in an Academic Environment - III

Patent literacy as a qualifying skill

In addition to asking a prospective candidate:

“Which journals do you read?” and

“How many papers have you co-authored?”

Potential candidates for *research* positions should be asked:

“Which patent searches have you conducted?”

“How many patents have you read, in what fields?”

“How many patents have you written?” [Note: *Written*, not *filed*]