

# **INTELLECTUAL PROPERTY PORTFOLIO MANAGEMENT**

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**Lecture - 05**

Welcome friends! In this particular session, we are going to discuss historical development of the intellectual property system in India as well as globally. Because that will give us a perspective on portfolio management that why these things started, and what was the original objective of creation of the system of intellectual property. And when we understand the original objective of a particular subject

We will be able to use it in a more strategic manner. However, it is also true that many things may start with some particular intention, but over a period of time, as changes are happening in the environment, particularly the business environment and geopolitical scenarios, people start using these tools in more than one possible way. So, the same thing is happening with this intellectual property also. that initially the whole idea was to protect the inventions. So, no unauthorized use can take place, but now, in a more organized manner, organizations are trying to create an advantage for them, and that is why it is important for us to understand the historical perspective of intellectual property.

We are discussing the importance of intellectual property in the 21st century. You remember, in one of the session, we discussed the concept of knowledge economy and knowledge economy is the way of generating wealth in the 21st century. you will be really surprised to know that the idea of intellectual property started as old as in the 1474. So, it is not a very new idea the patent statute it was developed in city of Venice and from there the very first idea about the protection of any new thing any new creation which is not available in the market which is not available in the society was started.

So, you can understand how old this idea is, and the same spirit is still continuing that what is new, we should protect it. However, we will discuss three specific conditions what is to be protected and how we are going to determine that in one of the session. by and large the original philosophy that we should protect anything new is still continuing. Then after that two more important developments happened these are in 1624 and 1710 where 1624 this system it gave us to current patent law. The patent law which is used

by Britishers and then in India also we will see because of that the law which we had in the India. And in 1710 the copyright related laws were came into existence and in fact you can say these two the Statute of Monopolies and British Statute of Anne, these are the two founding principles of the idea of IP. So, the concept of IP developed from this, but then your idea was protected either in Venice because of their statutes, your idea was protected under the statutes of monopolies or your copyrights are granted under the British Statutes of Anne, but then happened a different type of problem.

What if you are going from one state to another state, how are you going to protect your idea? How are you going to protect your inventions? Because these laws were initiated by particular nations. like the Republic of Venice or by the British parliaments then people realize that this idea of IP is a territorial idea. And because of this territorial idea we started thinking about some kind of a global system of IP.

And for that purpose we will see in few minutes that how different type of treaties started coming into picture. Meaning of the idea that territorial means if I am protecting some IP in India, so the protection is available only in India. Then I have to separately protect the same invention in other markets. For example, my market can be in USA, my market can be in Europe, my market can be in many other countries. I need to go to all those markets because the idea of IP protection is a territorial.

So, now, if I have protected my idea and my invention in India and there is some exhibition in Europe, I will fear about whether I should participate in that exhibition or not. Because if I go there and there will be different people coming to that exhibition. They may copy my idea and I have no protection available there. So, therefore, people started thinking that we need to have some kind of consensus about global protection of our ideas. So, various

treaties started coming into the picture and the starting of these treaties came in 19th century with this Paris Convention.

which is known as the Paris Convention for the Protection of Industrial Property. So, this you can say is the starting of a system that how our IP can be protected in another country. If I have protected something in my country can there be a system through which I can protect my invention, and my copyrights in other countries also. And as I just mentioned this whole idea that you need to have international protection of IP came because many exhibitors refused to attend one international exhibition of inventions which was supposed to held in Vienna, Austria in 1873 because they all had this fear that if we go there we participate in that exhibition there will be people who can take our ideas and who can exploit that idea commercially in some other countries.

So, if I am in India, my idea is protected in India. Now, I am going to an exhibition in some European country, and there are some visitors from various parts of Europe, and they start taking my idea. And they will make let us say a visitor comes from France and he starts making the idea and selling it in Germany. I cannot do anything because I have protection only in India. How will I protect?

How will I fight? How will I enforce my IP in France and Germany? Because I participated there and I had no control on the visitors. Yes, I have control in India who will come to my exhibition, who will participate there. I have full authority on that, but I cannot do anything in Europe.

So, people had this fear and therefore, this 1883 Paris Convention came into existence where they covered three things. One is your invention which we call a patents now. The second was trademarks and the third was industrial design. three things were covered under this Paris Convention. So, this is the starting of some kind of a global thought process for intellectual property.

After that initially within three years it was in 1883 and within three years in 1886 there came another very interesting movement and as a result of movement we came up with this idea of protection of literary and artistic works also. Though in this Paris convention we had trademarks which is a kind of you can say design work but this is specifically related

to copyrights. So, one convention started the idea of the protection of copyrights at a global level where you can receive payments for your creative work. at the international level.

So, this became a very important thing that covers things like which we all keep under the copyrights for example, novels, short stories, poems, plays, songs, operas, musical activities, drawings, paintings and other kind of architectural works etc. So, all these different types of scope are there under this Berne convention which is about protection of literary and artistic work. After that regular developments were happening. In 1891 another very important you can say system came into existence which was the Madrid Agreement. And you can say this is the first international IP filing service and it is known as the Madrid system for the international registration of marks particularly trademarks and all those things which became the major you can say point of discussion under this Madrid agreement.

Now you can say. that this is the starting of a system which is now known as World Intellectual Property Organization. Because now we are coming to some kind of global IP services and slowly slowly the Madrid Agreement when it started unfolding it resulted into becoming this system of WIPO which is World Intellectual property organization. So, WIPO is having its you can say seed from this Madrid agreement of 1891.

Then in 1893 a new system came into existence which is the combination of Paris and Berne conventions. So, we discussed Paris Convention which is for industrial property then one convention which is for the copyrights. Now, combining these two things it became the United International Bureaux for Protection of Intellectual Property and it is a French acronym which is known as BIRPI and in fact BIRPI is now known as WIPO only and this BIRPI started with a very small organization of seven people and the office of BIRPI was in Switzerland one and later on we will see that the WIPO office shifted to Geneva. In 1970 after a long time happened this was 1893 and after that we all know at the global level two very important incidences happened.

One was the First World War and after that the Second World War. So, unfortunately the world was busy in those two very important you can say events of our history. And therefore, there was not any significant development as far as the global IP related activities

because there were other important priorities at that time. After that when all these things got settled and in fact during this time India also got independence. So, in 1970 after that considerable long time happened this BIRPI which I just told you that how it started as a combination of Paris and Bern conventions it become World Intellectual Property Organization.

So, the birth of you can say, WIPO happened in 1970, when people started focusing more on economic development. because people thought that war is no solution, we need to work, we need to progress and as a result of that new thought process started emerging. In fact, once upon a time Japan and America were at loggerheads, but after that Japan and America came together, started a new era and all those things resulted into the formation of this World Intellectual Property Organization, WIPO. And within four years, WIPO become a subsidiary of United Nations, which is known as a specialized agency of UN, WIPO.

And all the member states of UN can become the member of this specialised agency, WIPO which is specialising in the area of intellectual property. So, WIPO is now part of a UN agency and most of the members you will see of UN are actually the member of WIPO also. Once WIPO came into existence, WIPO started the system of PCT, Patent Cooperation Treaty and in fact, This became the most important activity or facility of WIPO because it is creating a system that how you as an inventor you can not only protect your invention in your home country, but you can also protect in many other countries.

So, there is a system we will be talking about PCT systems in our some of the sessions, but Now, you can understand that one of the most important activities of WIPO is about implementation of this PCT system. which came into existence in 1970s. So, it started with the Stockholm Convention in 1967 and further this convention was amended in 1979 also. Presently the headquarter of WIPO is in Switzerland, Geneva and including India.

WIPO has around 193 member states. So, most of the you can say member states they understand the WIPO's strategic direction and they are part of WIPO initiatives. So, it is vice versa. Member states make the strategic role of WIPO. And WIPO also directs its member states that what should be their way to take IP to the next stage.

So, it is both way communication which is happening between member states and the WIPO leadership team. By the way, India is also a very active contributor. in WIPO's overall development not only from the policy point of view, but from the academic point of view also WIPO has done a lot of collaboration with various Indian organizations, Indian universities, Indian higher education institutions for educating creating a system of IP in developing nations like India. Now, since WIPO has come into existence, so let us talk about the objectives of WIPO and it will give you the idea that WIPO is basically to promote the protection of intellectual property worldwide. Here, I will like to give you one advice or you can say warning also.

When we see the promotion of protection of IP worldwide, you should not understand that there is something which is global IP. IP is still a territorial right, but how you can take protection for your IP in many other countries this is facilitated by WIPO. So, WIPO does not mean that IP is not territorial, IP is still territorial once you register you take benefit only in that particular country. How can you register in many other countries that is being facilitated by WIPO? So, that is the meaning which you need to be very very careful when you understand that to promote the protection of IP worldwide.

It is not global IP, but how you can protect your IP in multiple countries that is the meaning we are talking here. The second is to ensure administrative cooperation. among the IP unions established by the treaties that WIPO administers. So, as we just saw that around close to 200 members are there in WIPO and it is not necessary that for all the treaties of WIPO all members are agreeing. So, one important thing WIPO tries creates

that most of the members they should agree on a particular proposal that is one important thing. But once they agree the execution of those treaties that is also very important thing that treaty should be followed by all the signatories in letter and spirit and that is also very important job objective of WIPO that whatever treaties of cooperation with respect to patents, with respect to trademarks, with respect to copyrights, with respect to geographical indicators, industrial design etc. It has to be properly respected among all the member states that is second important thing. Now, for doing these things for doing these objectives WIPO take different types of activities.

It is normative activities, programmed activities, international classification and standardization activities, registration and filing activities which we will be talking in our subsequent sessions. So, I am not going to give any details about these different activities of WIPO. We will be talking about them in our subsequent sessions. These are a list of treaties, conventions which are administered at different levels. And now, for most of these treaties, the WIPO is the administrator, though many of these treaties came into existence before the WIPO was born.

WIPO was born in 1970, but the Paris Convention was existing since 1883. even though it was not there at that time when the WIPO was not there. But still now WIPO is taking care of the Paris convention also, it is taking care of the Berne convention which is related to copyrights. And the table also gives you that how many signatories are there for these different conventions. For example, we just mentioned that 193 members are there

under the WIPO umbrella, but you can see in this list that not even in single case you have 193 members. So, even though I am a member of WIPO it is not completely obligatory to me to follow all the conventions or all the treaties. Individual nations they see their own interest Here comes the role of strategic use of IP. If being part of a particular convention, it is going to give me benefit, I will be part of that convention.

But when I see that the terms and conditions of these conventions may not be in the interest of my organizations, my citizens, I may not be the part of those conventions. So, therefore, for all the treaties, countries do their own due diligence and based on that due diligence they decide should we take part in these conventions or should we not take part. So, that is the list which is available here and you can see that in this list different types of conventions treaties and what is the scope of that particular treaty and how many members are there in that treaty. The list the number of members

is a dynamic number. So, maybe at the time of the original signing of the treaty I may not be the member but I can join the treaty later on. So, this number is not a static number it keeps changing based on more members more countries join these treaties over a period of time. So, now we also need to understand the Indian patent system we got independence in

1947 we made our constitution by 1950, but intellectual property protection systems in India started as old as in 1856.

However, these laws were as per the British patent laws. So, the British patent law of 1852, which was giving exclusive privileges for inventors new manufacturers for about 14 years. So, that law also became in India in 1856. So, you can say this is the start of the IP system in India.

And in fact, Indians also took benefit of this patent act which came in 1856. After that some modifications happened in British patent law and those modifications were also introduced in India and this was in year 1859. So, but still the period for which that exclusive rights were granted these were 14 years. We know that presently these exclusive rights are available for 20 years, but at that time this selling and using inventions in India and authorizing others to do so for 14 years from date of filing specification.

So, these were the important clauses of the 1859 Patent Act. Then another important thing happened in 1872 Patents and Design Protection Act also came in India. So, only in the first you can say 17 years we were only dealing with the patent acts and in 1872 design and design protections also started in India. And in 1883 the protection of inventions act that also came in India so it is a kind of modification of these initial acts of 1856 and 1859.

So, this became the Protection of Inventions Act in India in 1883. Then in 1888 it was two different acts, the Patterns and Design Protection Act and the Protection of Inventions Act. These were combined to give Inventions and Design Act of 1888. So, this also became a very important milestone and then further change happened in 1911 when the Indian Patents and Design Act was named.

So, this Inventions and Design Act is renamed as the Indian Patents and Design Act. So, you can say that we got our patent and design act in 1911. So, that is the first time this patent word came into Indian act system also. And after that we all know from this time to this time 1911 to 1999 during this period a very important thing happened that in 1947

we got independence and after that our own constitution came into existence in 1950 and after that very long time around 50 years. In 1999 and here I say we lost track, we did not

understand the importance of intellectual property. and we focused on large industries and we used to procure technologies from outside. So, that is a very different type of discussion, but in 1999 we created our patent act and this act came into effect with effect from 1st January 1995. So, many of us believe

that the Patent Act in India is with effect from 1995. However, there was a Patent Act in 1911 also. This got amended in 2002 also which came in effect from 20th May 2003 and it got further amended in 2005 and in fact in 2016 our country came up with a national IPR policy which created the environment of intellectual property in India. And in 2024 now further amendments in our IP Act, and the Patent Act are under discussions and maybe

very soon we will have a new revision of our patent act. So, in India also history of patenting system is not after the independence, it is pre-independence and obviously it was giving more benefits to Britishers when it came in 1856 and 1859 and 1883. But we realised the importance of our own IP act in year 1995. We enacted it in 1999, and since then, continuous amendments have been happening considering the environment. Because in 1999 we understood the role of our own organizations and our own industries because in 1991

India took a very different trajectory of liberalization, globalization and then we realize the role of intellectual property in our development and therefore, we came up with our own intellectual property this patent act and continuously since then we are amending it seeing the geopolitical situations, seeing our interest that how best we can promote innovations in our country and use them for the strategic advantage. So, this is about the overall system of global development of intellectual property and the Indian system that how over a period of time Indian IP system was developed. With this we come to end of this particular session. Thank you very much.