



தமிழ்நாடு டாக்டர் அம்பேத்கர் சட்டப் பல்கலைக்கழகம்  
The Tamilnadu Dr. Ambedkar Law University



**SCHOOL OF EXCELLENCE IN LAW**

**LL.M CBCS PATTERN**

**REVISED CURRICULUM**

**FROM ACADEMIC YEAR 2020-2021**

**DEPARTMENT OF INTELLECTUAL PROPERTY LAW**

## **DEPARTMENT OF INTELLECTUAL PROPERTY LAW**

The Department of Intellectual Property Law of the Tamil Nadu Dr. Ambedkar Law University, Chennai was established in the year 2005, as the III branch of specialized study in the University. The LL.M in intellectual property is designed to equip the students with an advanced knowledge and understanding of intellectual property law and policy. During the course of study, the students will have the opportunity to undertake in-depth study of a range of contemporary issues in intellectual property law, and develop further critical understanding and research skills through Skill Enhancement Course and dissertation on intellectual property issue. The course is more practical oriented students in the final year visit any of the place of GI Tag and study the nature of the GI good. The department celebrate World IP Day on April 26, by organizing seminar or workshop by inviting eminent personalities in the IP field.

Intellectual property is everywhere today. The global use of intellectual property has been on the rise in the last decade and it is now an important concern in both developed and developing economies, intellectual property protection has increasingly been associated with the aims of promoting economic growth, innovation and creativity. On the one hand, IP-intensive industries are seen to make a significant contribution to GDP and national employment and bring other socio –economic benefits. On the other, tension remain between intellectual property rights and development of information and communication technologies, access to medicines and education, and the right to freedom of expressions and the right to privacy etc.

Intellectual Property Law is facing unprecedented challenges, evolving issues like cloud computing and biotechnological inventions, big data and traditional knowledge raise questions related to the continuous need to define an optimal interface between law and technology. Similarly, IP law has become a crucial factor in economic, scientific and societal/moral decisions. In view of the above objective the syllabus is thoroughly revised and the revamped syllabus will be effective from the academic year 2020-21, the course will expose to a broad range of perspectives on intellectual property law, practice and policy. It covers substantive law on all major intellectual property rights, including copyright, trademark, designs, patents and common law protection of intellectual property rights. It also examines these rights within the international intellectual property treaty framework and system. This is achieved through a combination of substantive law, judicial precedents and doctrines, customary law and practices, and practical approaches envisaged in 6 Specialized Core Papers, 3 Discipline Specific Elective Papers and 2 Generic Elective Papers which will be studied over 4 Semesters in 2 Years (CBCS System).

The ever- increasing role and impact of intellectual property law and policy makes specialized knowledge of this course a valuable asset for those: Intending to enter legal practice and specialize in intellectual property law; Seeking to work in areas such as the creative industries, cultural industries, manufacturing industries, pharmaceuticals, life sciences, computing, information and communication technologies, etc. with a focus on intellectual property; Intending to take up a policymaking role in relation to knowledge – intensive sectors; Looking to undertake further post graduate study in the area of intellectual property law or pursue a research or academic career.

The curriculum was designed in such a manner to equip the students with the latest development and challenges in IP law. The teaching pedagogy will be enriched by case study session as well as exercise in writing research paper.

**THE TAMIL NADU DR.AMBEDKAR LAW UNIVERSITY**

**BRANCH – III**

**DEPARTMENT OF INTELLECTUAL PROPERTY LAW**

**LL.M SYLLABUS**

**SPECIALIZED CORE PAPERS - 06**

1. Law of Intellectual Property: Evolutionary Perspective
2. Copyright Law: Policy and Governance
3. Patent Law: Comparative Jurisprudence
4. Trademark Law: Policy and Governance
5. Intellectual Property Litigation: Theory and Practice
6. Science, Technology and Intellectual Property Rights: Law and Policy

**DISCIPLINE SPECIFIC ELECTIVE PAPERS - 03**

7. Law and Policy Perspectives of Drugs, Cosmetics and Intellectual Property
8. Intellectual Property Rights and Competition Law
9. Law and Policy Perspective of Cultural Property, Intangible Cultural Heritage and Intellectual Property.

**GENERIC ELECTIVE PAPERS - 02**

10. Intellectual Property Rights and Human Rights: National and International Perspectives
11. Transnational Jurisdictional Perspective of Intellectual Property Rights

## SUBJECTS IN SEMESTERS

<b>First Semester</b>	<ol style="list-style-type: none"> <li>1. Judicial Process (<b>Common Paper-I</b>)</li> <li>2. Legal Education and Research Methodology (<b>Common Paper-II</b>)</li> <li>3. Law of Intellectual Property: Evolutionary Perspective (<b>Specialized Core Course-I</b>)</li> <li>4. Copyright Law: Policy and Governance (<b>Specialized Core Course-II</b>)</li> <li>5. Intellectual Property Rights and Human Rights: National and International Perspectives (<b>Generic Elective Course-I</b>)</li> </ol>
<b>Second Semester</b>	<ol style="list-style-type: none"> <li>1. Constitutional Law : The New Challenges (<b>Common Paper-III</b>)</li> <li>2. Law and Social Transformation in India (<b>Common Paper-IV</b>)</li> <li>3. Patent Law: Comparative Jurisprudence (<b>Specialized Core Course-III</b>)</li> <li>4. Law and Policy Perspectives of Drugs, Cosmetics and Intellectual Property (<b>Discipline Specific Elective Course-I</b>)</li> <li>5. Applied Research Methodology</li> </ol>
<b>Third Semester</b>	<ol style="list-style-type: none"> <li>1. Trademark Law: Policy and Governance (<b>Specialized Core Course-IV</b>)</li> <li>2. Intellectual Property Litigation: Theory and Practice (<b>Specialized Core Course-V</b>)</li> <li>3. Intellectual Property Rights and Competition Law (<b>Discipline Specific Elective Course-II</b>)</li> <li>4. Transnational Jurisdictional Perspective of Intellectual Property Rights (<b>Generic Elective Course-II</b>)</li> </ol>
<b>Fourth Semester</b>	<ol style="list-style-type: none"> <li>1. Science, Technology and Intellectual Property Rights: Law and Policy (<b>Specialized Core Course-VI</b>)</li> <li>2. Law and Policy Perspective of Cultural Property, Intangible Cultural Heritage and Intellectual Property. (<b>Discipline Specific Elective Course-III</b>)</li> <li>3. Skill Enhancement Course(SEC)</li> <li>4. Dissertation</li> </ol>

**PAPER - I**  
**LAW OF INTELLECTUAL PROPERTY: EVOLUTIONARY  
PERSPECTIVE**

**(Specialized Core Paper)**

**OBJECTIVE OF THE COURSE**

*This Course is designed to give an overview of the evolution of IPR. The paper is aimed at discussing the jurisprudence of IP. It shall be a detailed study of the concept of property and its relation with intellectual property.*

*With this objective the course is designed to:*

- *Understand the jurisprudential and theoretical ideology behind the concept of IPRs*
- *Understand the origin and developments of IPRs*
- *Acquaint with various international conventions relating to IPR*
- *Study the contemporary issues concerning IP.*

**COURSE OUTLINE**

**MODULE I - INTRODUCTION TO INTELLECTUAL PROPERTY**

- a) Nature and Concept of Intellectual Property
- b) Types of Intellectual Property
- c) Nature of Intellectual Property Rights-Monopolistic perspective, Economic Perspective, Public Welfare Perspective

**MODULE II - ORIGIN AND DEVELOPMENT**

- a) Historical Development of IPRs
- b) IPRs: From National to International Character
- c) Sources of IPR-Custom, Treaties, Judicial Decision, Juristic Writings, General Principles of Law, Resolutions of International Organizations

**MODULE III - IP JURISPRUDENCE**

- a) Concept of Property: An Overview
- b) Theoretical justification for protection of IP – Western theories- Marxian theory – Indian theories on private property and IP

- c) Constitutional values and protection of private property and IP

#### **MODULE IV - ECONOMIC DEVELOPMENT AND IP**

- a) IP and transfer of technology & Foreign Direct Investment
- b) IP and competition
- c) Indian economy and IP protection

#### **MODULE V - INTELLECTUAL PROPERTY RIGHTS: INTERNATIONAL PERSPECTIVE**

- a) International Law and Intellectual Property Rights - Significance of Legal Protection
- b) IPR and International Institutions – WIPO, WTO, TRIPS , UNESCO– protection of folklore/cultural expressions
- c) Basic Principles-National treatment, MFN, Exhaustion of rights, Territoriality and extraterritoriality, Human Rights and Sustainable Development-policies.

#### **MODULE VI - INTELLECTUAL PROPERTY: NATIONAL PERSPECTIVES**

- a) Evolution and development of IPR in India
- b) Copyright Act - Patent Act- Trade Mark Act
- c) An overview of role of Judiciary

#### **MODULE VII - INTELLECTUAL PROPERTY: CONTEMPORARY TRENDS**

- a) IP and Cyber Technology
- b) IP and Biotechnology
- c) IPR and Cultural Relativism with reference to Traditional Knowledge

#### **MODULE VIII - IPR: SPECIFIC ASPECTS OF HUMAN RIGHTS**

- a) Right to Privacy and Confidentiality
- b) Regulations of environmental hazards and human right issues in IP protection
- c) IPR and Socio, Economic and Cultural Rights – Conflicts and Convergence

#### **BIBLIOGRAPHY**

##### **RECOMMENDED READING:**

##### **BOOKS**

1. R.S. Bhalla, The Institution of Property : Legally, Historically and Philosophically Regarded, Eastern Book Co., (1984)
2. Penner, The Idea of Property in Law, Clarendon Press, Oxford (1997)

3. John Locke, Two Treatises on Government, Industrial Systems Research, (1970)
4. G.W.F. Hegel, The Philosophy of Rights, Cosimo Inc., (2008)
5. Karl Marx – Private Property and Communism, Hackett Publishing CO., (1844); Wage, Labour and Capital, Kessinger Publications, (1847); The Alienation of Labour, (Nicholas Beams), University of Tasmania, (1844)

### **JOURNALS/ARTICLES**

1. John H Barton, The Economics of TRIPS: International Trade in Information – Intensive Products, 33 Geo. Wash. Int'l L. 473 (2001)
2. Keith E. Maskus & J. H. Reichman, The Globalization of Private Knowledge Goods and the Privatization of Global Public Goods, 7 J. Int'l Econ. L. 279 (2004)
3. Pamela Samuelson, The US Digital Agenda at WIPO, 37 Va. J. Int'l L. 369 (1997)
4. Frederick M Abbott, The Doha Declaration on the TRIPS Agreement and Public Health: Lighting a Dark Corner at the WTO, 5 J. Int'l Econ. L. 469 (2002)
5. Frederick M. Abbott, Non Violation Nullification or Impairment Causes of Action under the TRIPS Agreement and the Fifth Ministerial Conference: A Warning and Reminder, Quaker United Nations Office, Occasional Paper No 11 July 2003

### **FURTHER READING:**

#### **BOOKS**

1. Copinger & Skone James on Copyright, Sweet & Maxwell, (latest edition) 8
2. Terrel on Patents, Sweet & Maxwell (latest edition)
3. Kerly's Law of Trademarks and Trade Names, Sweet & Maxwell, (latest edition)
4. Silke von Lewinski (ed.) Indigenous Heritage and Intellectual Property: Genetic Resources, Traditional Knowledge and Folklore, Kluwer International, (2008)
5. Latha R. Nair and Rajendra Kumar, Geographical Indications: A Search for Identity, Butterworths Wadhwa, (2005)
6. Anthony D. Amato – International Intellectual Property Law, Kluwer Law International
7. David I. Bainbridge – Intellectual Property Law, Pearson Education Ltd.
8. Cornish & Llewelyz-Intellectual Property, Thomson, Sweet & Maxwell
9. Catherine Colston- Principles of Intellectual Property Law, Cavendish Publication Ltd.
10. Frederick M. Abbot(Ed) - International Intellectual property in an Integrated World Economy, Wolters Kluwer.

## **JOURNALS/ARTICLES**

1. Melvyn J. Simburg and et al., International Intellectual Property (2005) 39 International Lawyers, pp. 333-350.
2. Battling HIV -AIDS: A Decision Makers Guide to the Procurement of Medicines and Related Supplies, Y. Tayler, Ed., World Bank 2004
3. Sisule F. Musungu & Graham Dutfield, Multilateral Agreements and a TRIPS Plus World:The World Intellectual Property Organization (WIPO),TRIPS Issues Papers 3
4. Quaker United Nations Office (QUNO) Geneva Quaker International affairs Programme (QIAP) Ottawa.
5. John Barton, New Trends in Technology Transfer: Implications for National and International Policy, ICTSD Intellectual Property and Sustainable Development Series, Issue Paper No 18, Feb 2007
6. The Recognition of Rights and the Use of Names in the Internet Domain Name System, Report of the Second WIPO Internet Domain Name Process September 3, 2001 Available at <http://wipo2.wipo.int>
7. Office of United States Trade Representative 2006 Special 301 Report, Available at <http://www.ustr.gov>
8. Pamela Samuelson, The US Digital Agenda at WIPO, 37 Va. J. Int'l L. 369 (1997)
9. Frederick M Abbott, The Doha Declaration on the TRIPS Agreement and Public Health:
10. Lighting a Dark Corner at the WTO, 5 J. Int'l Econ. L. 469 (2002)

## **CASES FOR GUIDANCE**

1. Donaldson v. Becket, 98 ER 257
2. Darcy v Allein, 1WPC 1; Moore K B 671
3. Ishwarlal Giridharilal Parekh v State of Maharastra, AIR (1969) SC 40
4. The Secretary of State v Vira Rayan (1885) ILR 9 Mad 175
5. Kameshwar Singh v State of Bihar AIR (1951) Pat 91
6. Shankari Prasad Singh Deo v Union of India AIR (1951) SC 455
7. State of West Bengal v Mrs Bella Banerjee AIR (1954) SC 170
8. State of West Bengal v Subodh Gopal Bose AIR (1954) SC 92
9. Dwarkadas Shrinivas v The Sholapur and Weaving Co Ltd. AIR (1954)SC 119
10. R C Cooper v Union of India AIR (1970) SC 564



11. Kesavananda v State of Kerala AIR (1973) SC 1461
12. Millar v Taylor 98 ER 201
13. Darcy v Allein; Moore KB 671
14. Clothworkers of Ipswich, Godbolt's Reports KB 252
15. Liardet v Johnson, 18 L.Q.R.280, 285
16. Blanchard v Hill 26 ER 692
17. Millionton v Fox 107 ER 834
18. Perry v Truefitt 40 ER 956
19. Croft v Day 49 ER 994
20. The Leather Cloth Co Ltd v The American Leather Cloth Co Ltd. 11 ER 1435

### **LEARNING OUTCOMES**

*After successful completion, students will have the knowledge and skills to:*

- *Learn the general principles in introduction of IPRs*
- *Explain origin and development of IPRs*
- *Understand the theoretical and ideological approaches to IP*
- *Learn the international conventions and other documents pertaining to IPRs.*

\*\*\*\*\*

**PAPER - II**  
**COPYRIGHT LAW: POLICY AND GOVERNANCE**

**(Specialized Core Paper)**

**OBJECTIVE OF THE COURSE**

*Copyright is a bundle of exclusive rights encouraging authors, composers, artists and designers who create original works by rewarding them with the exclusive right for a limited period to exploit the work. With the rapid technological development in the field of printing, communication, entertainment and information technology, the importance of copyright has increased enormously. The course examines the significant role played by this mechanism to achieve the balance between the public and private interest.*

*With this objective the course is designed to:*

- *Understand the historical perspective of the copyright law and the role played by copyright to enhance the cultural heritage.*
- *Discuss the concept of neighbouring rights within the copyright system.*
- *Analyse the infringement of the copyright owners in the digital environment*
- *Discuss the copyright in the registered design and also the meaning of design, layout design and integrated circuit.*

**COURSE OUTLINE**

**MODULE I - INTRODUCTION TO COPYRIGHT AND NEIGHBOURING RIGHTS**

- a) Historical origin of Law of Copyright and Neighbouring rights
- b) Development of International Conventions/Treaties on Copyright and Neighbouring rights
- c) Historical Development of Law of Copyright and Neighbouring Rights in India-with reference to Legislative and Judicial Perspectives.

**MODULE II - SUBJECT MATTER OF COPYRIGHT AND RIGHTS OF COPYRIGHT OWNER**

- a) Concept of Originality-Idea/Expression dichotomy in Copyright law – Fixation and other doctrinal requirement.
- b) Works covered under Copyright

- c) Economic and Moral Rights- Co-existence of rights

### **MODULE III - OWNERSHIP AND ASSIGNMENT OF COPYRIGHT**

- a) First owner of copyright, Joint Authorship.
- b) Assignment and Licensing of Copyright
- c) Common Law –Civil Law Percepts of Copyright (Course of employment).

### **MODULE IV - NEIGHBOURING RIGHTS**

- a) Significance and Importance of Neighbouring rights-Types of neighbouring rights
- b) Performers and Broadcasting rights- National and International Perspectives
- c) Beijing Treaty on Audiovisual Performance

### **MODULE V - COPYRIGHT INFRINGEMENT AND REMEDIES**

- a) Elements of infringement of Copyright- Secondary liability of infringement of copyright
- b) Limitation and exceptions to the protection of copyright
- c) Remedies for infringement- Civil remedies, Criminal Remedies and Administrative Remedies

### **MODULE VI - COPYRIGHT IN CYBERSPACE**

- a) Protection of Computer Programme- Database Protection
- b) Copyright in Internet-Multimedia and Copyright Issues- ISP Liability.
- c) Protection of technological measures-Anti-Circumvention Law

### **MODULE VII - EMERGING ISSUES IN COPYRIGHT**

- a) Copyright Concerns on Live Streaming
- b) Anti-trust law and Copyright misuse
- c) Jurisdictional issues-Choice of Court, Choice of Law, Recognition and Enforcement of Foreign Judgment.

### **MODULE VIII - COPYRIGHT IN REGISTERED DESIGN**

- a) Origin and development of Industrial Design, Layout Designs and Integrated Circuit
- b) Meaning and definition of Industrial Design, Layout Designs and Integrated Circuit - overlapping of Design protection under different IP laws.
- c) Piracy of registered design.

## **BIBLIOGRAPHY**

### **RECOMMENDED READING:**

#### **BOOKS**

1. Copinger & Skone James on Copyright, Sweet & Maxwell, (latest edition)
2. Dr. Mathew Thomas, Understanding Intellectual Property, Eastern Book Company, Lucknow (2016).
3. Elizabeth Verkey, Intellectual Property law and Practice (Eastern Book Company)2015
4. Taraporevala V J, Law of Intellectual Property,(2<sup>nd</sup> Edition) Thomson Reuters, 2013.
5. Dr. Irini A. Stamatoudi & Paul L.C.. Torremans, Copyright in the New Digital Environment: The need to redesign Copyright, Sweet & Maxwell, London, 2000

#### **JOURNALS/ARTICLES**

1. Jane C. Ginsburg, No Sweat? Copyright and Other Protection of Works of Information After Feist v. Rural Telephone (1992) 92 Colum L. Rev 838.
2. K Lipstein, Intellectual Property Jurisdiction or Choice of Law? The Cambridge Law Journal Vol- 61 No. 2, (July 2002) pp. 295-300.
3. Pravin Anand, India's Experience of Industrial Designs- Legal and Economic Aspects, (1990) 12 EIPR 459.
4. Yogesh A Pai, Copyright Protection for Computer Program: walking on One Leg? (2006)48 JILI 359.
5. Jane C. Ginsburg, Copyright without Borders - Choice of Forum and Choice of Law for Copyright Infringement in Cyberspace, 15 CARDOZO Arts & ENT. L.J. 153 (1997)

### **FURTHER READINGS:**

#### **BOOKS**

1. Ronald V.Betting, Copyright Culture, The Political Economy of Intellectual Property, 1996
2. Jan J.C.Kabel and Gerard J.H.M. Mom, Intellectual Property and Information Law, Kluwer Law International, London
3. W.R. Cornish, Intellectual Property, Sweet & Maxwell, London (2000)
4. Michael Blakeney, Trade Related Aspects of Intellectual Property Rights: A concise guide to the TRIPS Agreement

5. Wadehra, David, Law Relating to Patents, Trademarks, Copyright, Designs and Geographical Indications.
6. Stephen M. Steward, International Copyright and Neighbouring Rights, London, 1983
7. Law of Copyright: From Gutenberg's invention to internet, Delhi, 2001
8. Gopalkrishnan N S, & Agitha T G, Principles of Intellectual property. Lucknow: Eastern Book Company (2014)
9. M Sakthivel, Broadcasters Rights in the Digital Era – Copyright Concerns on Live Streaming, Martinus Nijhoff, 2020
10. Mark A Lemley, Peter S. Menell, Robert P Merges, and Pamela Samuelson, Software and Internet Law, Aspen Publishers, New York, (2006).

### **JOURNALS/ARTICLES**

1. Brett M. Jackson, Searching for Something More: Viacom Interprets the Control Provisions of the DMCA Sec 512 (c) Safe Harbour, (2013) 54 BCL Rev 85.
2. Dana R Levin, The Future of Copyright Infringement: Metro-Goldwyn- Mayer Studios, Inc. v. Grokster, Ltd., (2006) 21 Journal of Civil Rights and Economic Development.
3. Jessica Litman, Digital Copyright: Protecting Intellectual Property on the Internet, (2001)
4. Mark A Lemley and R Anthony Reese, Reducing Digital Copyright Infringement without Restricting Innovation (2004) 20 Stan L Rev. 101.
5. Rachel Storch, Copyright Vigilantism (2013) 16 Stan Tech Law Rev. 453.
6. "Gone with the Wind Done Gone: Re-Writing and Fair Use" (2002) 115 Harv. Law Rev 1193.
7. Ann Bartow, Educational Fair Use in Copyright: Reclaiming the Right to Photocopy Freely, (1998) U Pitt L Rev. 149.
8. Edmund W. Kitch, Can The Internet Shrink Fair Use? (1999) 78 Neb L Rev 880.
9. Eugen Ulmer, Rome Convention for the Protection of Performers, Producer of Phonograms and Broadcasting Organizations, (1963) 10 BULL CR SOC 90, 165, 219, Parts I, II & III.
10. Herbert T Silverberg, Authors and Performers rights, (1958) Law & Contem Probs 125.

### **CASES FOR GUIDANCE**

1. Eastern Book Company v D B Modak (2008)
2. R G Anand v Delux Films (1978)
3. Anil Gupta v Kunal Dasgupta (2002)

4. Baker v Selden (1880)
5. Computer Associates International Inc v Altai Inc (1992)
6. Ananda Expanded Italics, Re (2002)
7. Star India (p) Ltd v Leo Burnett (India) (P) Ltd (2003)
8. Escorts Construction Equipment Ltd v Action Construction Equipment (P) Ltd (1999)
9. Amar Nath Seghal v Union of India (2005)
10. ESPN Star Sports v Global Broadcast News Ltd (2008)
11. Indian Performing Rights Society Ltd v Eastern India Motion Picture Assn. (1977)
12. John Willey and Sons Inc v Prabhat Chander Kumar Jain (2010)
13. Najma Heptula v Orient Longman Ltd. (1989)
14. Syndicate of Press of University of Cambridge v B D Bhandari (2005)
15. Entertainment Network (India) P Ltd v Super Cassette Industries Ltd (2008)
16. Zee Telefilms Ltd v Sundial Communications (P) Ltd. (2003)
17. Feist Publications Inc v Rural Telephone Service Co (1992)
18. Metro Goldwyn Mayer Studios v Grokster Ltd. (2005)
19. Religious Technology Center v Netcom On Line Communication Services, Inc (1995)
20. A & M Records Inc v Napster (1992)

## **LEARNING OUTCOMES**

*After completion of the course students will be able to-*

- *Understand the object of copyright in encouraging the intellectual creation thereby contributes to the social, economic and cultural development.*
- *Explore the global importance of copyright in the light of International instruments.*
- *Analyse critically the various opportunities available to the creators to exploit their works in the digital age.*
- *Examine the threats posed by the constant development of technology to the rights of the copyright owners.*
- *Understand the copyright in design and overlap in the protection of design under the Copyright Act and Designs Act.*

\*\*\*\*\*

## **PAPER - III**

### **PATENT LAW: COMPARATIVE JURISPRUDENCE**

#### **(Specialized Core Paper)**

#### **OBJECTIVES OF THE COURSE**

*A patent is an exclusive monopoly right granted by the state to the person who invents new and useful product or technology. Initially patents were granted only to inanimate subject-matter which satisfies the patentability criteria. Due to the modern development of science and technology the concept of invention in patent has new dimensions. This course is designed to give an overview of patents, the registration procedure and the practice adopted with respect to this Intellectual Property across the globe. The recent trends and development that had taken place in the field of patent shall be specifically focused.*

*With this objective the course is designed to:*

- *Understand the concept of Patent and its historical perspective both national and international.*
- *Study the procedural aspects of Patents.*
- *Understand the relation between patents and plant varieties protection and impact of patents in sustainable development of bio industry.*
- *Study the Impact of patents on Modern Technology and thereby analyzing the issues associated with.*

#### **COURSE OUTLINE**

##### **MODULE I - HISTORY OF PATENTS**

- a) History of Patent Law-National and International
- b) Study of Treaties and Conventions on Patent at International Levels
- c) International Patent System and its impact on National System.

##### **MODULE II - PATENTABILITY CRITERIA**

- a) Patentable Subject Mater- Concept of Invention and its new dimensions.
- b) Patentability Criteria
- c) Role of Judiciary in determining patentable subject matter

##### **MODULE III - PATENT PROSECUTION**

- a) Procedure for registration of invention- National and International application
- b) Specification and Claim- Disclosure Requirement.

- c) Rights of Patentee- Assignment and License of Patent

#### **MODULE IV - ENFORCING PATENT RIGHTS**

- a) Claim Interpretation-Interpretive Methodology and sources of Evidence
- b) Infringement- Doctrines of Infringement-The Literal Rule, Doctrine of Equivalence /Pith and Marrow and Patent Misuse Doctrine.
- c) Jurisdiction-Remedies

#### **MODULE V - PROTECTION OF PLANT VARIETY AND FARMERS' RIGHT**

- a) Significance and need for protection of Plant Variety.
- b) International Legal framework- UPOV Convention- International treaty on plant genetic resources for food and agriculture- TRIPS- Convention on Biological Diversity.
- c) Protection of Plant Varieties& Farmers Right Act 2001- An Overview

#### **MODULE VI - PATENT SYSTEM AND SUSTAINABLE DEVELOPMENT**

- a) Patent on Genetically Modified Organisms,
- b) Patent on terminator technology and its adverse consequences.
- c) GURT (genetic use restriction technology)-Conservation and Sustainable Use of Biological Diversity.

#### **MODULE VII - PATENT AND NEW TECHNOLOGY**

- a) Software Patents- Business Method Patents & Standard Essential Patents.
- b) Bio tech patents- Patenting of Human genes- legal, ethical and Social Issues
- c) Patent on Artificial Intelligence.

#### **MODULE VIII - EMERGING ISSUES IN PATENTS**

- a) Patent pooling- Patent thickets- Patent trolls
- b) Patents and Anti-competitive practices
- c) Anti-commons: Balance of Private and Public Interest in technological age.

#### **BIBLIOGRAPHY**

##### **RECOMMENDED READINGS:**

##### **BOOKS**

1. Carvalho, TRIPS Regime of Patent Rights, Aspen Publishers, 2010
2. Cook, Trevor. Pharmaceuticals Biotechnology and the Law. 2<sup>nd</sup>ed, LexisNexis, 2009
3. Donald S. Chisum, Chisum on Patent Law, LexisNexis, 2008
4. Gopalakrishnan, N. S. &Agitha T. G, Principles of Intellectual Property, Eastern Book



Company, 2009

5. Grubb, Philip W. and Thomson, Peter, Patents for Chemicals, Pharmaceuticals and Biotechnology: Fundamentals of Global law, Practice and Strategy, Oxford university Press, New York, 2010

### **JOURNALS/ARTICLES**

1. Adam Mossoff, Rethinking the Adam Mossoff, Rethinking the Development of Patents: An Intellectual History, 1550-1800, 52 Hastings L.J. 1255 (2001)
2. Bernard F. Garvey, History of United States Patents and Present Day Norm of Patentable Inventions, 5 Miami L.Q. 541 (1951)
3. Charles W. Rivise, Invention, 13 J. Pat. Off. Soc'y 664 (1931)
4. David E. Adelman, A Fallacy of the Commons in Biotech Patent Policy, 20 Berkeley Tech. L.J. 985 (2005)
5. Eklavya Gupte, Biotech's Biggest Blockbuster, Managing Intell. Prop. 54 (2008)

### **FURTHER READING:**

#### **BOOKS**

1. Holger Hestermryer, Human Rights and the WTO: The Case of Patents and Access to Medicine, OUP, New York, 2007
2. Richard F. Cauley, Winning the Patent Damages Case, OUP, New York, 2008
3. Uma Suthersanan, Innovation without Patents: Harnessing the Creative Spirit in a Diverse World, Edward Elgar, 2007
4. Verkey, Elizebeth, Law of Patents, Eastern Book Company, Lucknow, 2004
5. Watal, Jayashree, Intellectual Property Rights in the WTO and Developing Countries, Oxford University Press 2001
6. William Van Caenegem, Intellectual property Law and Innovation, Cambridge University, New York, 2000
7. David Bainbridge, Intellectual Property, Pearson, United Kingdom, 9th Ed., (2012)
8. Gregory A Stobbs, Software Patent, Wolters Kluwer India, (2007)
9. Li Westerlund, Biotech Patents: Equivalency and Exclusions Under European and
10. U.S. Patent Law, Kluwer Law International, Netherlands (2002)

### **JOURNALS/ARTICLES**

1. John E. R. Hayes, The Mental Concept of Invention, 17 J. Pat. Off. Soc'y 948 (1935)

2. Juan Felipe Jimenez, Patents in Outer Space: An Approach to the Legal Framework of Future Inventions, 98 J. Pat. & Trademark Off. Soc'y 447 (2016).
3. K. P. McElroy, Invention, 13 J. Pat. Off. Soc'y 565 (1931)
4. Kevin W. O'Connor, Patenting Animals and Other Living Things, 65 S. Cal. L. Rev. 597 (1991).
5. Lisa Larrimore Ouellette, Access to Bio-Knowledge: From Gene Patents to Biomedical Materials, 2010 Stan. Tech. L. Rev. N1 (2010)
6. M. F. Bailey, History of Classification of Patents, 28 J. Pat. Off. Soc'y 537 (1946)
7. P. J. Federico, Origin and Early History of Patents, 11 J. Pat. Off. Soc'y 292 (1929)
8. Rebecca S. Eisenberg, Re-Examining the Role of Patents in Appropriating the Value of DNA Sequences, 49 Emory L. J. 783 (2000).
9. Stephen M. McJohn, Patents: Hiding from History, 24 Santa Clara Computer & High Tech. L.J. 961 (2007)
10. Timothy Caulfield, Tania bubela, and C J. Murdoch, "Myriad in the Mass Media: The Covering of a Gene Patent Controversy," Genetics in Medicine, December 2007.

#### **CASES FOR GUIDANCE**

1. Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries (1979) 2 SCC 511
2. Novartis AG v Union of India (2013) 6 SCC 1
3. Bayer Corpn v. Union of India (2012)
4. Monsanto v Nuziveedu (2019)
5. Diamond v. Diehr 450 US 175 (1981).
6. Bilski v. Kappos, 177 Led 2d 792
7. Alice Corp v. CLS Bank (2014)
8. Larami Corp. v. Amron (1993)
9. Graver Tank v. Linde Air Products Co. 339 US 605 (1950)
10. Catnic Components Ltd v Hill & Smith Ltd (1982)RPC 183
11. Improver Corp. v Remington Consumer Products Ltd. (1990) FSR 181
12. Bajaj Auto Ltd v. TVS Motors Co Ltd (2008)
13. Monsanto v Nuziveedu (2019)
14. Mayo Collaborative Services v Prometheus Laboratories Inc (2012)
15. Assn. for Molecular Pathology v. Myriad (2012)
16. Dimminaco A G v Controller of Patents and Designs
17. Monsanto Canada Inc v Schmeiser (2004)

18. Pepsi Co v Farmers Lays Potato Chips (2019)
19. Diamond v Chakrabarty 1980
20. F Hoffmann La Roche Ltd v Cipla Ltd (2012)

## **LEARNING OUTCOMES**

*After completion of the course students will be able to –*

- *Develop a clear understanding about the requirements in relation to patentable subject matter and the criteria for the grant of patents and also expose them to the challenges in relation to specific fields such as biotechnology, computer software and pharmaceuticals.*
- *Will expose students to the procedural aspects of patent acquisition, both national and international.*
- *Will also familiarize the students with the system of maintenance of patent by the right holder and also the practical aspects of transfer of rights.*
- *Develop a wide understanding of patents in modern technology and its impacts.*

\*\*\*\*\*

## **PAPER - IV**

### **TRADEMARK LAW: POLICY AND GOVERNANCE**

**(Specialized Core Paper)**

#### **OBJECTIVE OF THE COURSE**

*This course is designed to give an overview trademarks and trademark law and practice in countries around the world with special reference to India. The recent trends and the development that had taken place in the field of trademarks shall be specifically focused upon. It shall be a detailed study across the historical, philosophical and legal aspects.*

*With this Objective the Course is designed to:*

- *To understand the evolution and growth of trademark law*
- *To understand the importance of trademark and emerging issues*
- *To analyse the status of trademarks in cyberspace.*
- *To study the conflict between trademark and geographical indication and need for separate protection of GI.*

#### **COURSE OUTLINE**

##### **MODULE I - LAW OF TRADE MARK**

- a) Historical development of the concept of trademark and trademark law-National and International aspects of introduction to trademarks
- b) Trademark law within the larger scheme of IPL-Kinds of trademarks-Need for protection of Trademarks- Economic and social justification of Trademarks
- c) International legal instruments on trademarks.

##### **MODULE II - REGISTRATION OF TRADEMARKS**

- a) Grounds of refusal of registration- deceptive similarity.
- b) Procedure for registration of trademarks- National and International application
- c) Assignment and transmission of Trademarks-limitation on Licensing

##### **MODULE III - TRADE MARK INFRINGEMENT**

- a) Infringement of Trademarks- Trademark Dilution- Passing off action and its development in India
- b) Defenses to Trademark infringement- Doctrine of Exhaustion- Fair use

- c) Remedies- Civil, Criminal and Administrative remedies-unfair Competition Law

#### **MODULE IV - TRADEMARK IN COUNTERFEIT GOODS**

- a) Meaning of Counterfeit goods- Counterfeit mark- Counterfeiting remedies
- b) The International Anti-counterfeiting coalition
- c) Exhaustion of Rights-Online Trade and Measures against Counterfeit goods

#### **MODULE V - TRADEMARK ISSUES IN CYBERSPACE**

- a) Domain Names Disputes - Metatagging-Key Word advertisements
- b) ICANN-Uniform Domain Resolution Policy (UDRP) - Role of National Courts
- c) Consideration on Jurisdiction-interplay with National Laws and judgments- Jurisdiction of National Courts and Choice of Law.

#### **MODULE VI - TRADE MARK AND GEOGRAPHICAL INDICATIONS**

- a) Conflict between Trademark and geographical indications
- b) Need for protecting Geographical Indication
- c) International Protection of Geographical Indication

#### **MODULE VII - LAW OF GEOGRAPHICAL INDICATIONS**

- a) Historical background of Geographical indication in India
- b) Definition of GI-Procedure for registration- Part A & B registration
- c) Infringement, penalties and Remedies

#### **MODULE VIII- EMERGING ISSUES**

- a) National borders limits on Trademark Rights- Well known Mark
- b) Protection of Nonverbal Marks
- c) Character merchandising- Disparagement and comparative Advertisements-Parallel importation-Right of publicity- celebrity right.

#### **BIBLIOGRAPHY**

##### **RECOMMENDED READING:**

##### **BOOKS**

1. Mary La France, Understanding Trademark Law, Lexis Nexis (2017)
2. Kailasam, Law of Trade Marks and Geographical Indications (2nd ed. 2009)
3. V.K. Ahuja, Law Relating to Intellectual Property Rights (2009)

4. Ashwani Kr. Bansal, Law of Trade Marks in India ( 2009)
5. Johan Flodgren, 'Geographical Indications and Trademarks: Synergies and Conflicts in the International Market' (2009)

#### **JOURNALS/ARTICLES**

1. Mark A Lemley, The Modern Lanham Act and the Death of Common Sense, 108 Yale L.J. 1687 (1999)
2. David R Johnson & David Post, Law and Borders- The Rise of Law in Cyberspace, 48 Stan. L. Rev. 1367 (1996).
3. Paul Schiff Berman, The Globalization of Jurisdiction, 151 U. Pa. L. Rev. 311 (2002)
4. Davis, Benjamin G. The New New Thing, Uniform Domain-Name Dispute- Resolution Policy of the Internet Corporation for Assigned Names and Numbers The Journal of World Intellectual Property, Vol. 3, No. 4, July 2000
5. B R Rutherford, Trademarks and Comparative Advertising, The Comparative and International Law Journal of Southern Africa, Vol 43 No. 2 July 2010, pp 173-89.

#### **FURTHER READING:**

##### **BOOKS**

1. Jayashree Watal, Intellectual Property rights in the WTO and Developing Countries, kluwer law International, 2001
2. UNCTAD-ICTSD, Resource book on TRIPs and Development, Cambridge University Press, 2005
3. T. Ramappa, Intellectual Property Rights under WTO: Tasks before India, Wheeler Publishing , 2000
4. Indralina Sen, Comparative Advertisement and Trademark Infringement: A Comparative Analysis, 2019.
5. Ananth Padmanabhan, Intellectual Property Rights: Infringement and Remedies, Lexis Nexis, Nagpur 2012
6. N S Gopalakrishnan, Principles of Intellectual Property, EBC, Lucknow, 2014
7. J. S. Sarkar, Trademarks- Law and Practice, 1997.
8. Dinwoodie & Janis, Trademark and Unfair Competition, Law and Policy, Wolters Kluwer (2018)
9. Joseph & David, Trademark and Unfair Competition, Carolina Academic Press (2010)

10. Jane C Ginsburg, Jessica Litman and Mary Kevlin, Trademark and Unfair Competition, Cases and Material, sixth Edition, Carolina Academic Press (2017)

#### **JOURNALS/ARTICLES**

1. Gary M. Ropski, The Right of Publicity - The Trend towards Protecting a Celebrity's Celebrity, 72 TRADEMARK REP. 251 (1982).
2. Tone Jagodic & Zlatko Matesa, The Legal Aspects of Ambush Marketing, 56 ZB. RADOVA 271 (2019).
3. John F. Hacking, Trademark Dilution: Setting the Dilution Standard under the Federal Trademark Dilution Act, 5 TUL. J. TECH. & INTELL. PROP. 115 (2003).
4. Ian S. Blackshaw & Gillian Hogg, Comparative Advertising and Product Disparagement, 13 TOLLEY'S J. MEDIA L. & PRAC. 294 (1992).
5. N. M. Dawson, Trade Mark Law and the Creation and Preservation of Well-Known Brands, 49 N. IR. LEGAL Q. 343 (1998).
6. Thorsten Klein, Madrid Trademark Agreement vs. Madrid Protocol, 12 J. CONTEMP. LEGAL Issues 484 (2001).
7. Rachel Jane Posner, Manipulative Metatagging, Search Engine Baiting, and Initial Interest Confusion, 33 COLUM. J.L. & Soc. Probs. 439 (2000).
8. Rembert Meyer-Rochow, Passing Off - Past, Present and Future, 84 TRADEMARK REP. 38 (1994).
9. William McGeeveran, Rethinking Trademark Fair Use, 94 IOWA L. REV. 49 (2008).
10. David S. Welkowitz, Reexamining Trademark Dilution , 44 VAND. L. REV. 531 (1991).

#### **CASES FOR GUIDANCE**

1. Panavision International v Toeppen
2. Polaroid Corp v Polarad Elects Corp
3. DC Comics v Powers
4. Smith v Chanel
5. Starbucks Corp. v Wolfer Borough Coffee Inc
6. Rolex watch USA, Inc. v Michael Co.
7. Yahoo Inc v Akash Arora (1999)
8. ICC Development (Int) Ltd. v ARVEE Enterprises (2003)
9. Star India (P) Ltd v Leo Burnett (India) (P) Ltd (2003)

10. Daimler Benz Aktiengesellschaft v Hybo Hindustan (1994)
11. Dychem Ltd v Cadbury (India) ltd (2000)
12. Cadila Health Care Ltd v Cadila Pharmaceutical Ltd (2001)
13. Pepsi Co Inc v Hindusthan Coco Cola (2001)
14. Durga Dutt Sharma v Navaratna Pharmaceutical Laboratories (1965)
15. TATA Sons v Greenpeace International (2011)
16. Kapil Wadhwa v Samsung Electronics Co Ltd (2012)
17. N R Dongre v Whirlpool Corpn (1996)
18. ITC Ltd v Registrar of Trademark (1968)
19. Amritdhara Pharmacy v Satya Deo Gupta (1963)
20. Jolen Inc v Shoban Lal (2001)

### **LEARNING OUTCOMES**

*After completion of the course students will be able to-*

- *Develop a clear understanding of the Law of Trademark and Law of Geographical Indication*
- *Analyse the trademark issues in cyberspace*
- *Understand the various kinds of infringements and remedies for infringement*
- *Examine the Uniform Dispute Resolution Policy in resolving the Trademark issues in Cyberspace*
- *Understand the emerging issues in trademark law such as Character merchandising, Ambush Marketing, Right to privacy and celebrity right*

\*\*\*\*\*



**PAPER - V**  
**INTELLECTUAL PROPERTY LITIGATION: THEORY AND PRACTICE**

**(Specialized Core Paper)**

**OBJECTIVES OF THE COURSE**

*This course is intended to teach the application of law in terms of court's principles and procedures exclusively for deciding intellectual property cases. Most significantly, in deciding Intellectual property cases both Supreme Court and High Courts in India are apparently following foreign judgments in many occasions. Intellectual property laws confer monopoly to the owners of intellectual property so the enforcement of intellectual property rights is getting more crucial.*

*The main objective of the course is to-*

- *Impart practical perspective of IPR enforcement mechanism by discussing various tests, rules and procedures laid down by the courts in case of infringement of IPRs.*
- *Teach international and cross border litigations of intellectual property rights.*
- *Study various doctrines evolved by the judiciary in the enforcement of IP*
- *Study the dispute settlement mechanism of WTO.*

**COURSE OUTLINE**

**MODULE I - LITIGATION RELATING TO COPYRIGHT**

- a) Copyright infringement-Direct infringement and indirect infringement
- b) Online Copyright Piracy- liability of internet service provider- Anti Circumvention Law.
- c) Exception to Copyrighted work-Exhaustion of Copyrighted work

**MODULE II - LITIGATION RELATING TO PATENT AND TRADE SECRET**

- a) Claim interpretation or Construction- Infringement of Patent- Literal infringement- Doctrine of Equivalents/Doctrine of Pith and Marrow
- b) Limitation and exception-Doctrine of First Sale-parallel import
- c) Infringement of trade secrets- breach of trust- Springboard doctrine.

### **MODULE III - LITIGATION RELATING TO INDUSTRIAL DESIGN AND THE SEMICONDUCTOR INTEGRATED CIRCUIT LAYOUT DESIGN**

- a) Definition of Design-prohibition of registration of design –copyright on registration
- b) Piracy of registered design
- c) Infringement of layout design of Integrated Circuit-Reverse Engineering of layout design.

### **MODULE IV - LITIGATION RELATING TO TRADE MARKS**

- a) Infringement of trademark-Deceptive similarity-Polaroid Factors
- b) Concept of Dilution- New trends in Passing off.
- c) Fair use of trademark- Doctrine of exhaustion of right in trademark.

### **MODULE V - LITIGATION RELATING TO GEOGRAPHICAL INDICATIONS**

- a) Definition of Geographical indication-Prohibition of registration of certain geographical indication
- b) Registered proprietor and Authorised user-rights conferred by registration.
- c) Infringement of registered GI--special provisions relating to trademark and prior user-

### **MODULE VI - LITIGATION RELATING TO PLANT VARIETIES**

- a) Definition of variety- Registerable varieties -rights of breeder, farmers and researchers.
- b) Infringement –protection of innocent infringement by farmers,
- c) Access to biological diversity-sustainable use of diversity - Transfer of technology and equitable sharing of benefits.

### **MODULE VII - ENFORCEMENT OF IPR UNDER TRIPS AGREEMENT**

- a) Prior to TRIPS Agreement –Berne Convention and Paris Convention- reference to International Court of justice
- b) Enforcement, Acquisition and Maintenance of Rights under TRIPS Agreement
- c) Dispute settlement mechanism –XXII and XXIII of GATT 1994- - Dispute Settlement Understanding (DSU).

### **MODULE VIII - CROSS-BORDER IPR LITIGATIONS**

- a) Private International Law and Intellectual property law
- b) Hague Convention on Choice of Court and Choice of law- Recognition and enforcement of foreign judgment.
- c) Cross-border Intellectual property disputes in digital environment

## **BIBLIOGRAPHY**

### **RECOMMENDED READING:**

#### **BOOKS**

1. Arnaud Nuyts –International Litigation in Intellectual Property and Information Technology,(1<sup>st</sup> Ed.,) Wolters Kluwer, New York, 2008
2. V.K. Ahuja, Law Relating to Intellectual Property Rights ( Lexis Nexis) 2015
3. Elizabeth Verkey, Intellectual Property law and Practice ,Eastern Book Company, 2015
4. Taraporevala V J, Law of Intellectual Property,(2<sup>nd</sup> Edition) Thomason Reuters, 2013.
5. James J. Fawcett and Paul Torremans: Intellectual Property and Private International Law,2012, (oxford)

#### **JOURNAL/ARTICLES**

1. Ruth Okediji, Towards an International Fair Use Doctrine 39 Colum J. Transnat'l L. 75 (2000)
2. Andrew S. Brown, Amgen v. HMR: A Case for Deference in Claim Construction (2007) 20 Harv. JL Tech 479
3. Raj S Dave, A Mathematical Approach to Claim Elements and the Doctrine Of Equivalentents (2003) 16 Harv. J L Tech 508.
4. Hazel Carty, Dilution and Passing Off: Cause for Concern (1996) 112 LQR 632
5. Kern Alexander, The Mareva Injunction and Anton Piller Order: The Nuclear Weapons of English Commercial Litigation (1997) 11 Fla J Int'l L. 487

### **FURTHER READING:**

#### **BOOKS**

1. Graeme Austin: Private International Law and IPR Common Law : An Over View (2001),[https://www.wipo.int/edocs/mdocs/mdocs/en/wipo\\_pil\\_01/wipo\\_pil\\_01\\_5.pdf](https://www.wipo.int/edocs/mdocs/mdocs/en/wipo_pil_01/wipo_pil_01_5.pdf)
2. Copinger and Skomnes James on Copyright by Gillian Davies, Kevin Garnett, and Gwilym Harbottle(15<sup>th</sup> ed. 2005) Indian Reprint, 2008
3. Rama Sarma, Commentary on Intellectual property Laws, Vol.2. Nagpur: Lexis Nexis Butterworths Wadhawa (2009)
4. Abbott, F., T. Cottier and F. Gurry (1999) The International Intellectual Property System: Commentary and Materials. The Hague, London and Boston, Kluwer Law International

5. Terrel on Patents, Sweet and Maxwell, London (1994)
6. Kerly's Law on Trademarks and Trade Names, Sweet and Maxwell. Wolters Kluwer (2015)
7. Russell Clarke, Industrial Design, Sweet and Maxwell, 9<sup>th</sup> Ed., (2016).
8. Julie E. Cohen and *Et al.*, Copyright in a Global Information Economy, Aspen Publisher, Wolters Kluwer, (2010)
9. Resource Book on TRIPS and Development, UNCTAD- ICTSD (2004)
10. John Cross, Global Issues in Intellectual Property Law- Cases and Materials, west Publisher (1<sup>st</sup> ed., ) 2010

### **JOURNALS/ARTICLES**

1. N S Gopalakrishnan, Administrative Remedies in Intellectual Property Protection under TRIPs and Indian Law: Border Control Measures 2000 CLC 1 (Jr) 23
2. Mabel Tsui, Access to Medicine and The Dangers of Patent Linkage: Lesson From Bayer Corp v. Union of India (2011) 18 Journal of Law and Medicine 577-88
3. Ron A Bouchard et al., Structure Function Analysis of Global Pharmaceutical Linkage Regulations (2011) 12 Minn J L Sci & Tech 391-457.
4. Peter S. Menell, Economic Implication of State Sovereign Immunity from Infringement of Federal Intellectual Property Rights, 33 Loy. L. A. L. Rev. 1399 (2000)
5. Pamela Samuelson & Tara Wheatland, Statutory Damages in Copyright Law: A remedy in Need of Reform 51 Wm & Mary L. Rev. 495 (2009)
6. Alan Latman, Probative Similarity as Proof of Copying: Towards Dispelling Some Myths in Copyright Infringement? (1990) Colum L. Rev 1187.
7. Adam V. Vickers, Comment, Peering Beyond Today's Internet File sharing Concerns: The Future of Bit Torrent Technology, 8 Tul. J. Tech & Intell. Prop. 133 (2006)
8. Neil Weinstock Netanel, Impose a Non Commercial Use Levy to Allow Free Peer to Peer File Sharing 17 Harv. J. L. & Tech 1 (2003)
9. Michael J Madison, A Pattern Oriented Approach to Fair Use, 45 Wm & Mary L. Rev 1525 (2004)
10. Pamela Samuelson & Suzanne Scotcher, The Law and Economics of Reverse Engineering, Yale L. J. 1575 (2002)

### **CASES FOR GUIDANCE**

1. R. G. Anand v. Delux Films (1978) 4 SCC 118

2. Computer Associates International Inc v. Altai 982 F.2d 693 (3<sup>rd</sup> Cir 1992)
3. Kelly v. Arriba Soft Corp (2003)
4. Delhi University Photo Copying Case – The Chancellor Masters and Scholars of the University of Oxford v. Rameshwari Photocopy Services (2012)
5. Sega Enterprises Ltd v. Accolade Inc (1992)
6. A & M Records v. Napster Inc (2001)
7. Phillips v AWH Corporation (2005)
8. Larami Corp. v. Amron (1993)
9. Graver Tank v. Linde Air Products Co. 339 US 605 (1950)
10. Catnic Components Ltd v Hill & Smith Ltd (1982)RPC 183
11. Improver Corp. v Remington Consumer Products Ltd. (1990) FSR 181
12. Bajaj Auto Ltd v. TVS Motors Co Ltd (2008)
13. Monsanto v Nuziveedu (2019)
14. Britannia Industries Ltd v. Sara Lee Bakery AIR 2000 Mad 497
15. Erven Warnink v. J Townend & Sons Ltd (1979)
16. S M Dyechem Ltd., v Cadbury (India) ltd (2000)
17. Cadila Health Care Ltd v Cadila Pharmaceutical Ltd (2001)
18. Scotch Whisky Assn., v Pravara Sahakar Shakar Karkhana Ltd AIR 1992 Bom 294
19. Syndicate of Press of University of Cambridge v B. D. Bhandari (2005) 31 PTC 58 (Del)
20. Kapil Wadhwa v. Samsung Electronics Co. Ltd (2012) 53 PTC 112 (Del)

## **LEARNING OUTCOMES**

*After completion of the course students will be able to –*

- *Learn the practical application IP Laws*
- *Examine different rules and tests laid down by the courts in different jurisdictions*
- *Understand the interpretation of IP Laws*
- *Discuss and learn about cross border IP litigations*
- *Learn international IP enforcement mechanisms*

\*\*\*\*\*

## **PAPER - VI**

### **SCIENCE, TECHNOLOGY AND INTELLECTUAL PROPERTY RIGHTS: LAW AND POLICY**

**(Specialized Core Paper)**

#### **OBJECTIVES OF THE COURSE**

*The protection of Intellectual Property is of high priority in the modern times due to the rapid advancement in science and technology, especially in the field of Information and Communications, Biotechnology, Pharmaceutical drugs etc. These technologies are expensive to develop but at the same time they are vulnerable to infringement. The revolution in the technologies leads to the new Intellectual Property regime in order to incentivize the innovations and simultaneously ensuring the technology transfer. This course will focus on the significance of Intellectual Property Rights in achieving the myriad benefits from the science and technological innovations.*

*With this Objective the Course is designed to*

- *Analyse the nature of the Intellectual Property system and their implications for the science and technology.*
- *Understand the necessity of effective Intellectual Property protection in the new trends of innovation.*
- *Examine the difficulty in the assertion of Intellectual Property Rights in the new technologies through the traditional enforcement mechanisms.*
- *Review the current Intellectual Property mechanisms to protect the emerging technologies at the national and international levels.*

#### **COURSE OUTLINE**

##### **MODULE I - INTRODUCTION**

- a) Development in Science and Technology
- b) Impact of Science and technology on human rights and preservation of human health
- c) Nature of Intellectual Property Rights-effectiveness in protecting the new technologies-Broadening the scope of IP regime

##### **MODULE II - IPR AND BIOTECHNOLOGY**

- a) Meaning of Biotechnology-Different Generation of biotechnology.
- b) Evolution of Biotech Patent Law- Product of nature doctrine

- c) Microorganism as a patentable subject matter-Gene patent.

### **MODULE III - AGRICULTURAL BIOTECHNOLOGY**

- a) Green Technology-Bio safety and biodiversity-conservation of biological diversity.
- b) Impact of biotechnology on biological diversity
- c) Legal regulation of biological diversity and Farmers' Right

### **MODULE IV - BIO –SAFETY CONCERNS IN BIOTECHNOLOGY**

- a) Cartagena protocol on bio-safety and WTO
- b) Bio safety clearing house, precautionary principle
- c) Genetically modified organisms (GMO) and Living Modified Organisms (LMO), concerns in trade in GMO/LMO

### **MODULE V - IPR AND PHARMACEUTICALS**

- a) Role of IPR in development and access to Pharmaceutical drugs
- b) Patent Linkage
- c) Data Exclusivity

### **MODULE VI - IPR AND COMPUTER PROGRAMME**

- a) Copyright Protection of Computer programme
- b) Software Patent-Patentability of computer related invention
- c) Business method Patent

### **MODULE VII - IPR ISSUES IN CYBERSPACE**

- a) Copyright Issues in Cyberspace
- b) Secondary Liability of Technology providers-ISP Liability
- c) Trademark Issues in Cyberspace

### **MODULE VIII - NEW ISSUES AND CHALLENGES**

- a) Database Protection and Right to privacy
- b) Artificial Intelligence – Big Data Analytics
- c) Block Chain Technology and IP

### **BIBLIOGRAPHY**

#### **RECOMMENDED READING:**

#### **BOOKS**

1. Katju Markanday, Law in the Scientific Era- The Theory of Dynamic Positivism,

- Universal Law Publication (2000).
2. Carolina Lasén Díaz, Intellectual Property Rights and Biological Resources, Wuppertal Institute for Climate, Environment and Energy, 2005.
  3. Kshitij Kumar Singh, Biotechnology and Intellectual Property Rights Legal and Social Implications, Springer India 2015.
  4. Dr Ramakrishna.T (edited) Biotechnology and Intellectual Property Rights, Center for Intellectual Property rights and Advocacy (CIPRA), National Law School of India University, Bangalore, First Edition, 2003.
  5. David Bainbridge, Information Technology and Intellectual Property Law, Bloomsbury Professional, 7th Edition, (2019).

### **JOURNALS/ARTICLES**

1. Justine Pila, Bound Futures: Patent Law and Modern Biotechnology, 9 B.U. J. Sci. & TECH. L. 326 (2003).
2. John W. Schlichter, Biotechnology and the Patent System; Patent Law and Procedures for Biotechnology, Health Care and Other Industries, 4 U. BALT. INTELL. PROP. L.J. 121 (1996).
3. Shaoyi Alex Liao, Resolving the Dilemmas between the Patent Law and Biotechnology: An Analysis of Three Recent Biotechnology Patent Cases, 11 Santa CLARA COMPUTER & HIGH TECH. L. J. 229 (1995).
4. Blockchain and the Law: A Critical Evaluation, 2 Stan. J. BLOCKCHAIN L. & POL'y 1 (2019).
5. Jose Carlos Erdozain, How Will the IP World Respond to the Rise of AI, 281 MANAGING INTELL. PROP. 56 (2019).

### **FURTHER READING:**

#### **BOOKS**

1. Roger Brownsword, W.R. Cornish and Margaret Llewelyn, The Modern Law review, Human genetics and the law: Regulating a revolution, Blackwell publishers, 1998.
2. Sivaramaiah Shantaram, Jane F. Montgomery, Biotechnology, Biosafety and Biodiversity-Scientific and ethical issues for sustainable development, Oxford and IBH publishing Co. Pvt. Ltd, New Delhi, 1999, Reprinted 2000.
3. Zaveri.N.B, Patents for future, Vakils Feffer and Simons Limited, Mumbai, First Edition, 2001.
4. Kauser Abdulla Malik, Yusuf Zafar, Intellectual Property Rights in Plant



- Biotechnology: A Contribution to Crop Biosecurity, Asian Biotechnology and Development Review, 2005.
5. Jonathan Curci, The New Challenges to the International Patentability of Biotechnology: Legal Relations Between the WTO Treaty on Trade-Related Aspects of Intellectual Property Rights and the Convention on Biological Diversity, Brigham Young University International Law & Management Review, 2005.
  6. Pamela Samuelson et.al. "A Manifesto Concerning the Legal Protection of Computer Programs, Columbia Law Review.
  7. Chris Reed, Internet Law, Text and Material, Universal Law Publishing Co. Pvt. Ltd. (2005)
  8. Pamela Samuelson, "Privacy as Intellectual Property", Stanford Law Review
  9. P. BerntHugen Holtz, Copyright and Electronic Commerce, Kluwer Law International, London
  10. Mark J. Davidson, Legal Protection of Databases, Cambridge University Press, London

#### **JOURNALS/ ARTICLES**

1. Stacey L. Dogan & Mark A. Lemley, Trademarks and Consumer Search Costs on the Internet, 41 Hous. L. Rev. 777 (2004).
2. Mark A. Lemley and R Anthony Reese, Reducing Digital Copyright Infringement without Restricting Innovation, 56 Stan. L. Rev. 1345 (2004).
3. Pamela Samuelson, intellectual Property and The Digital Economy: Why the Anti-Circumvention Regulations Need to be Revised, 14 Berkely Tech. L. J. 519 (1999).
4. Julie Cohen, Reverse Engineering and the Rise of Electronic Vigilantism: Intellectual Property Implications of "Lock-Out" Technologies 68 S. Cal. L. Rev 1091 (1995)
5. Rochelle Cooper Dreyfuss, Are Business Method Patent Bad for Business? 16 Santa Clara Computer & High Tech. L.J. 263 (2000)
6. Mark A. Lemley, Intellectual Property and Shrinkwrap Licenses, 68 S. Cal L. Rev. 1239 (1995)
7. Jinku Huang, Is the ACPA a Safe Haven for Trade Mark Infringers? Rethinking the Unilateral Application of the Lanham Act 22 J. Marshall J. Comp. & Info. L. 655 (2004)
8. Jessica Litman, Sharing and Stealing, 26 Hastings Comm. & Entertainment L. (2004)
9. Neil W. Netanel, Impose a Non Commercial Use Levy to allow Free Peer-to-Peer File Sharing 17 Harv. J. L. & Tech. 1. (2003)
10. Pamela Samuelson, Did MGM Really Win the Grokster Case? 48 Communications ACM 19 (2005)

## CASES FOR GUIDANCE

1. Diamond v Chakrabarty 1980
2. Diamond v Diehr 1981
3. Bilski v Kappos (2010)
4. Alice Corp Private Ltd v CLS bank (2014)
5. Mayo Collaborative Services v Prometheus Laboratories Inc (2012)
6. Assn. for Molecular Pathology v. Myriad (2012)
7. Novartis A G v Union of India (2007)(2013)
8. Dimminaco A G v Controller of Patents and Designs
9. Bayer Corporation v Union of India
10. Monsanto v Nuziveedu (2019)
11. Monsanto Canada Inc v Schmeiser (2004)
12. Pepsi Co v Farmers Lays Potato Chips (2019)
13. Computer Associates international inc., v. altai 982 F.2d 693 (3<sup>rd</sup> Cir 1992)
14. Sega EnterPrises Ltd v. Accolade Inc., (1992)
15. A & M Records v Napster Inc., 239 F. 3d 1004 (9<sup>th</sup> Cir. 2001)
16. Metro-Goldwyn-Mayer Studios Inc v. Grokster, Ltd 125 S. Ct. 2754 (2005)
17. Yahoo Inc v. Akash Arora & Anr, 78 (1999) DLT 285
18. Panavision International L. P. v. Toeppen 141 F.3d 1316 (9<sup>th</sup> Cir 1998)
19. Brookfield Communications inc v. West Coast Entertainment Corporation 174 F.3d 1036 (9<sup>th</sup> Cir 1999)
20. Tata Sons V Greenpeace International (2011)178 DLT 705

## LEARNING OUTCOMES

*After the completion of the course, students will be able to-*

- *Analyse the impact of new technologies in balancing the objective behind the Intellectual Property system*
- *Understand the importance of strong Intellectual Property rights in facilitating the economic growth and industrialization.*
- *Appreciate the re-evaluation of current Intellectual Property system to accommodate the imperative of new emerging technologies*
- *Examine the role of International Organisations in the technology transfer to developing and least developed countries.*

\*\*\*\*\*

## **PAPER - VII**

### **LAW AND POLICY PERSPECTIVES OF DRUGS, COSMETICS AND INTELLECTUAL PROPERTY**

**(Discipline Specific Elective Paper)**

#### **OBJECTIVES OF THE COURSE**

*The Course is designed to understand the significance and emerging need of Pharma IP and right to public health and how these paradigm shift in pharma Patents affects global drug industry and access of human rights.*

*With this objective the course is designed to:*

- *Understand the concept of Pharmaceutical patents*
- *Study the need of global drug market and competitive policies*
- *Understand WTO and Public Health against monopolies*
- *Study the economic aspects of cosmetic patents.*
- *Discuss the linking of generic drug market approval to the status of patent*

#### **COURSE OUTLINE**

##### **MODULE I - INTRODUCTION TO PHARMACEUTICAL PATENT**

- a) Patenting of pharmaceutical inventions-Issues and Challenges
- b) TRIPS flexibilities and response of India- Doha Declaration
- c) Facilitating Access to Medicines-Indian Patent System and International Obligations- Price Control Policy- Drug Price Control Order

##### **MODULE II - DRUGS AND COSMETICS ACT**

- a) DCA & DCR- Market approval of drugs
- b) Powers and Function of Drug Controller General of India (DCGI).
- c) Import, manufacture, sale, distribution and prohibition of Drugs and Cosmetics

##### **MODULE III - TEST DATA AND PHARMACEUTICAL INDUSTRIES**

- a) Protection of test data-Paris Convention, TRIPS Agreement - Data Exclusivity in US and EU;
- b) Protection of test data in India- test data requirement under Drugs and Cosmetics Act 1940

- c) Protection of test data and pharmaceutical industry-unfair commercial use and compulsory licensing.

#### **MODULE IV - TRIPS PLUS AND PATENT LINKAGE SYSTEM**

- a) Patent Linkage system-market approval of generic drug.
- b) Hatch Waxman Act -EU Directive on Medicinal Product.
- c) Enforcement of patent through Drug and Cosmetics Act- *Federal Trade Agreements*-Bipartisan Congressional Trade Priorities and Accountability Act 2015.

#### **MODULE V - IP AND COSMETICS INDUSTRY**

- a) Intellectual property protection on the cosmetics and perfumes market
- b) IPR crimes in Cosmetic Industry-Licensing of proprietary products and intellectual property - counterfeiters and unauthorized sellers.
- c) EPO Patents - Anti-Counterfeit technologies – Radio Frequency Identification (RFID) - OHIM report on IPR infringement in the cosmetics- Procter and Gamble Patents - Loreal Patents - Henkel Patents

#### **MODULE VI - INTELLECTUAL PROPERTY, HUMAN RIGHTS AND ACCESS TO MEDICINES**

- a) Pandemics and Global Burden diseases - International Human Rights regime and access to drugs - Health as a human right - Art.27. 2 of UDHR
- b) Ever greening of Pharmaceuticals - Economic Justice - Impact of Public Health
- c) Human Right to Health vs. Patent Right - Access to Medicines in third world nations.

#### **BIBLIOGRAPHY**

##### **RECOMMENDED READING:**

##### **BOOKS**

1. S. N. Katju, Encyclopaedia on Law of Drugs, 6th Revised New Edn, Delhi Law House, (2013)
2. Ravi Kant, Shiva Nath Katju, S.N. Katju's Commentary on Law of Drugs With Latest Amendments on Drugs and Cosmetics along with Narcotic Drugs and Psychotropic Substances Act and Notifications, Delhi Law House, 2002
3. Richard A. Guarino, New Drug Approval Process, CRC Press, 2009
4. Sampat BN, Shadlen KC. Patent watch: Drug patenting in India: Looking back and looking forward. *Nat Rev Drug Discov.* 2015;14:519–20.

5. Feroz Ali Khader, *The Law of Patents- With Special a Focus on Pharmaceutical in India*, Lexis Nexis (2011)

#### **JOURNALS/ARTICLES**

1. Shwetaree Majumder & Lucy Harrold, *Protecting Healthcare IP in India*, *Managing Intell. Prop.* 131 (2008).
2. Craig J Konnoth, *Drugs' Other Side-Effects*, 105 *IOWA L. Rev.* 171 (2019).
3. Kevin Outterson & Ryan Smith, *Counterfeit Drugs: The Good, the Bad, and the Ugly*, 16 *Alb.L.J.Sci. & Tech.* 525 (2006).
4. Peter Ollier, *Controversy over Drugs Patent Linkage in India*, *Managing Intell. Prop.* 16 (2009).
5. *Future of Innovation in Medicine: Incentives for New Medical Treatments and Global Health*: Transcript, 12 *Wash. J.L.tech & Arts* 293 (2017).

#### **FURTHER READING:**

##### **BOOKS**

1. Vijay Malik and Elizabeth Verkey, *Law Relating to Drugs & Cosmetics*, EBC 2013
2. Peter Elsner, *Cosmeceuticals Drugs v Cosmetics* (2000)
3. Gisbert Ottersatter, *Coloring of Foods, Drugs & Cosmetics* (1999)
4. Vimala Devi, *Text Book of Herbal Cosmetics* CBS Publisher (2019)
5. Shailendra Saraf and Swarna Lata Saraf, *Cosmetics a Practical Manual* (2014).
6. Carvalho, *TRIPS Regime of Patent Rights*, Aspen Publishers, 2010
7. Cook, Trevor. *Pharmaceuticals Biotechnology and the Law*. 2<sup>nd</sup>ed, LexisNexis, 2009
8. Donald S. Chisum, *Chisum on Patent Law*, LexisNexis, 2008
9. Gopalakrishnan, N. S. & Agitha T. G, *Principles of Intellectual Property*, Eastern Book Company, 2009
10. Grubb, Philip W. and Thomson, Peter, *Patents for Chemicals, Pharmaceuticals and Biotechnology: Fundamentals of Global law, Practice and Strategy*, Oxford university Press, New York, 2010

##### **JOURNALS/ARTICLES**

1. Jed Odermatt, *Investigating New Models of Pharmaceutical Innovation to Protect the Human Right to Health*. The European Law Students' Association ([www.elsa.org](http://www.elsa.org))
2. Aaron S. Kesselheim. *Intellectual Property Policy in the Pharmaceutical Sciences: The Effect of Inappropriate Patents and Market Exclusivity Extensions on the Health Care*

- System. Division of Pharmacoepidemiology and Pharmacoeconomics, Brigham and Women's Hospital, Harvard Medical School, Boston. *The AAPS Journal* 2007
3. Liu, J. (2015). Compulsory licensing and anti-evergreening: Interpreting the TRIPS flexibilities in Sections 84 and 3(d) of the Indian Patents Act. *Harvard International Law Journal*, 56(1), 207–227.
  4. Jennifer Lei, Makeup or Fakeup?: The Need to Regulate Counterfeit Cosmetics Through Improved Chinese Intellectual Property Enforcement, 88 *Fordham L. Rev.* 309 (2019).
  5. Sanjeev Chandran, Archana Roy and Lokesh Jain, “Implications of New Patent Regime on Indian Pharmaceutical Industry: Challenges and Opportunities” 10 *Journal of Intellectual Property rights* 269-280, 2005.
  6. K M Gopakumar, *Product Patents and Access to Medicines in India: A Critical Review of the Implementation of TRIPS Patent Regime*, *The Law and Development Review*, Vol 3 (2010)326-368.
  7. Vipin Mathur “Patenting of Pharmaceuticals: An Indian Perspective”, *Int. J. Drug Dev. & Res.*, July-September 2012, 4(3): 27-34
  8. Balaji Subramanian, Requiem for a Dream: Price Control, IP and Competition in the Pharmaceutical Market, 12 *NALSAR Stud. L. REV.* [5] (2017).
  9. U. S. Government Printing Office. *Legislative History of the Federal Food, Drug, and Cosmetic Act and Its Amendments* (1961).
  10. Laura A. Heymann, The Cosmetic/Drug Dilemma: FDA Regulation of Alpha- Hydroxy Acids, 52 *FOOD & DRUG L.J.* 357 (1997).

#### **CASES FOR GUIDANCE**

1. *Aerotel Ltd. v. Telco Holdings Ltd.* [2006] EWHC 997 (pat)
2. *Synthon BV v. SmithKline Beecham Plc.* (2006) RCP 10, 22 (HL)
3. *Novartis AG v. Johnson & Johnson Medical Ltd.* 2009 EWHC 1671 (pat)
4. *Environmental Designs Ltd. V. Union Oil Co.* 713 F 2d 693 (Fed Cir 1983)
5. *Dyson v. Hoover*, 2002 RPC 465
6. *Windsurfing international Inc. v. Tabur Marine (GB) Ltd* 1985 RCP 59
7. *Cipla Ltd. v. F.Hoffmann-La Roche Ltd. & Anr*
8. *Quanta Computer, Inc v. LG Electronics Inc.*, 453 F. 3d 1364
9. *Roche Products, Inc. v. Bolar Pharmaceutical Inc.* 733 F. 2d 863
10. *Poppenhausen v. Falke*, 110 F.Cas. 1048, 1049 (C.C.S.C.N.Y. 1861)

11. In re Krimmel
12. Novartis Pharmaceuticals Corp. v. Leavitt 435 F.3d 344 (D.C. Cir 2006)
13. Millennium Pharmaceuticals, Inc v. Zyfas Medical Co (2020) SGHC 28
14. Merck Frosst Canada Ltd. v. Apotex Inc., 2009 FCA 187
15. Bristol-Myers Squibb Co. v. Hetero Drugs Ltd., CS (OS) No.2680/2008
16. Bayer Corporation and Ors V. Union of India (UOI) and Ors. 2009 (41) PTC 634 (Del)
17. People's Union of Civil Liberties v. Union of India (1997) 1 SCC 301
18. Consumer Education & Research Centre v. Union of India & Others, AIR 1995 S.C.C (3) 42
19. Paschim Banga Khet Samity v. West Bengal, AIR 1996 S.C. 2426
20. Natco Pharma Limited v. Bayer Corporation (2010).

### **LEARNING OUTCOMES**

*After completion of the course students will be able to –*

- *Explore the need of Pharma Patents and Public Health in compliance with International Legislation*
- *Understand the need for streamlined regulation in pharma patents industry*
- *Study the role of WTO, TRIPS in balancing patent industry and public health.*
- *Examine the Judicial Pronouncements in Compulsory Licensing.*
- *Study the Human Rights Approach in drug and cosmetic industries.*
- *Examine the Patent Linkage between the Drug Regulatory Authority and Patent Controller while granting approval of generic drug.*

\*\*\*\*\*

## **PAPER - VIII**

### **INTELLECTUAL PROPERTY RIGHTS AND COMPETITION LAW**

**(Discipline Specific Elective Paper)**

#### **OBJECTIVES OF THE COURSE**

*Intellectual Property Rights promote innovation by granting exclusionary rights and protection to the creators. Competition law addresses the threats posed by anti-competitive practices in order to sustain competitive market. The intersection of Intellectual property rights and competition law appears when the Intellectual property owners exploit their rights in an inappropriate manner thereby causing harm to the consumers and competitors. This course will focus on the conflict which arises between IPR and Competition law due to the conduct of Intellectual property owners*

*With this Objective the Course is designed to:*

- *Understand the importance of competition law in protecting the consumers and ensuring competition in market thereby preventing market distortions.*
- *Discuss the vital interplay between Intellectual Property Law and Competition Law*
- *Critically analyse the various IPR related competition cases in India and other jurisdictions*

#### **COURSE OUTLINE**

##### **MODULE I - INTRODUCTION TO INTELLECTUAL PROPERTY**

- a) Intellectual Property- An Overview
- b) Rights of owners of intellectual Property- Exhaustion of Rights
- c) Balancing of Owners and users' interest-limitation and exceptions- TRIPS Flexibilities.

##### **MODULE II - INTRODUCTION TO COMPETITION LAW**

- a) Competition Act, 2002-Anti-competitive Agreements-Abuse of dominant.
- b) U.S Antitrust law-Sherman Act, 1890 - Clayton Act, 1914- Federal Trade Commission Act, 1914-Deceptive trade practices
- c) European Union- Article: 81 of EC treaty- Article: 82

##### **MODULE III -RELATIONSHIP BETWEEN INTELLECTUAL PROPERTY RIGHTS AND COMPETITION LAW**

- a) History on the relationship between Intellectual Property Law and Competition law



- b) Relationship between Intellectual Property and Market Power-Competition Law and Misuse of Intellectual Property
- c) Jurisdiction and Remedies- Powers and Functions of CCI- Jurisdictional and Procedural issues

#### **MODULE IV - UNILATERAL CONDUCT BY INTELLECTUAL PROPERTY OWNERS**

- a) Enforcement of a Fraudulently procured patent-Sham litigation
- b) Tying Arrangements and Intellectual Property-Design changes and Predatory Innovation
- c) Unilateral Refusals to license and Deal

#### **MODULE V - HORIZONTAL AGREEMENTS INVOLVING INTELLECTUAL PROPERTY**

- a) Price Fixing and Intellectual property
- b) Market allocation and Intellectual Property Rights
- c) Agreements to buy and sell Intellectual Property

#### **MODULE VI - VERTICAL AGREEMENTS INVOLVING INTELLECTUAL PROPERTY**

- a) Vertical Price Restraints and Intellectual Property
- b) Non-Price licensing restrictions
- c) Structuring Royalties and Competition in Market

#### **BIBLIOGRAPHY**

##### **RECOMMENDED READING :**

##### **BOOKS**

1. Steven D. Anderman, Intellectual Property and Competition Law: New Frontiers, Oxford University Press, 2011
2. Christopher R. Leslie, Antitrust Law and Intellectual Property Rights: Cases and Materials, Oxford University Press, 2011
3. K.D. Raju, The Intellectual Property Rights and Competition Law: A Comparative Analysis, 2015
4. Gabriella Muscolo, Marina Tavassi, The Interplay Between Competition Law and Intellectual Property : An International Perspective, Wolters Kluwer, 2018
5. J. Drexli, Research HandBook on Intellectual Property and Competition Law, 2008

## **JOURNALS/ARTICLES**

1. Viktoria HSE Robertson, Enforcement of Standard-Essential Patents and Abuse of Dominance: The Samsung, Motorola and Huawei v ZTE Cases, 13 COMPETITITON L.J. 44 (2014)
2. Fred Houwen & Richard Neville, Risky Business: Current Challenges in the Relationship between Competition Law and Copyright, 8 COMPETITITON L.J. 18 (2009).
3. Alexandra Sansen, Patent Settlements in the Pharmaceutical Sector: EU and USA, 12 COMPETITITON L.J. 57 (2013).
4. Vasiliki Brisimi, On the Interface between the Exhaustion of IP Rights under Internal Market Law and Competition Law: Oracle America Inc v M-Tech Data Ltd, 11 COMPETITITON L.J. 312 (2012).
5. Joseph Gratz & Mark A. Lemley, Platforms and Interoperability in Oracle v. Google, 31 HARV. J. L. & TECH. 603 (2018).

## **FURTHER READING:**

### **BOOKS**

1. Holyoak & Torremans, Intellectual Property Law, Oxford University Press, 2008.
2. Hugo Wharton, Michala Meiselles, International Licensing Agreements: IP, Technology Transfer and Competition Law, Wolters Kluwer, 2018.
3. US Department of Justice and the Federal Trade Commission, 'Antitrust Enforcement and Intellectual Property Rights: Promoting Innovation and Competition' (2007)
4. T Ramappa, Competition Law in India: Policy, Issues and Developments, The University Press, New Delhi, 2011
5. US Department of Justice and the Federal Trade Commission, "Antitrust Guidelines for the Licensing of Intellectual Property", April 1995.
6. A. Jones & B. Suffrin, EC Competition Law: Text, Cases and Materials, 2008
7. Gustavo Ghidhini, Intellectual Property and Competition Law: The Innovation Nexus, 2006
8. Manoj Kumar Sinha and Susmitha P Mallaya, Emerging Competition Law, Indian Law Institute, Delhi (2017)
9. Avtar Singh, Competition Law, Eastern Book Companies, 2012
10. T Ramappa, Competition Law in India, Oxford University Press, Third Edition, 2006

## **JOURNALS/ARTICLES**

1. Ilan Charnelle, The Justification and Scope of the Copyright Misuse Doctrine and Its Independence of the Antitrust Laws, 9 UCLA ENT. L. REV. 167 (2002).
2. Scott A. Miskimon, Divorcing Public Policy from Economic Reality: The Fourth Circuit's Copyright Misuse Doctrine in *Lasercomb America, Inc. v. Reynolds*, 69 N.C. L. REV. 1672 (1991).
3. Haris Apostolopoulos, The Copyright Misuse Doctrine on Computer Software: A Redundant Doctrine of U.S. Copyright Law or a Necessary Addition to E.U. Copyright Law, 24 J. Marshall J. COMPUTER & INFO. L. 571 (2006).
4. Barbora Kralickova, Questions Related to Application of Essential Facility Doctrine to Intellectual Property Rights, 95 PRAVNY OBZOR 481 (2012).
5. Unilateral Refusals to Deal and the Role of the Essential Facility Doctrine, 22 World Competition 67 (1999).
6. Meenakshi K.K. & Hardik Jain, IPR-Antitrust Crossroads: Is Essential Facility Doctrine a Solution, 11 NUALS L.J. 123 (2017).
7. Michael Jacobs & Alan Devlin, The Riddle Underlying Refusal-to-Deal Theory, 105 NW. L. REV. COLLOQUY 1 (2010-2011)
8. Krista L. Cox, The Medicines Patent Pool: Promoting Access and Innovation for Life-Saving Medicines through Voluntary Licenses, 4 Hastings Sci. & TECH. L.J. 291 (2012).
9. Thomas O. Barnett, Interoperability between Antitrust and Intellectual Property, 14 GEO. Mason L. REV. 859 (2007).
10. Innovation, Leveraging and Essential Facilities: Interoperability Licensing in the EU Microsoft Case, 28 World Competition 71 (2005)

## **CASES FOR GUIDANCE**

1. *Vallal Peruman and Others v Godfrey Phillips India Ltd.* (1995)
2. *Manju Bhardwaj v Zee Telefilms Ltd* (1996)
3. *Ericsson v Micromax* (2016)
4. *Amir Khan Productions Private Limited v Union of India* (2010)
5. *Microfibres Inc v Girdhar & Co* (2006)
6. *Entertainment Network (India) Limited v Super Cassette Industries Ltd.* (2004)
7. *Hawkins Cookers ltd. v Murugan Enterprises* (2008)

8. Microsoft v United States (2016)
9. Kapil Wadhwa v Samsung Electronics Co Ltd (2012)
10. Apple Inc v Samsung Elec. Co. (2015)
11. Oracle America Inc v Google Inc (2018)
12. Allen Myland Inc V International Business Machine Corp (1994)
13. Lasercomb America Inc v Reynolds
14. CVD Inc v Raytheon Co
15. Filmtec Corp v Hydranautics
16. International Salt Co v United States
17. Digidyne Corp. v Data General Corp.
18. Standard Oil Co v United States
19. Image Technical Serv. V Eastman Kodak
20. Intergraph Corp v Intel Corp.

## **LEARNING OUTCOMES**

*After the completion of the course, the students will be able to-*

- *Critically analyse the limits of Intellectual Property owners in exercising their Intellectual Property Rights.*
- *Realize that the objectives of both IPR and Competition law promote consumer welfare and protection*
- *Discuss the possibility of dealing the abuse of Intellectual property rights using competition law.*
- *Explore the balanced approach to harmoniously construct both the statutes of IPR and Competition Law*

\*\*\*\*\*

**PAPER - IX**  
**LAW AND POLICY PERSPECTIVE OF CULTURAL  
PROPERTY, INTANGIBLE CULTURAL HERITAGE AND  
INTELLECTUALPROPERTY**

**(Discipline Specific Elective Paper)**

**OBJECTIVES OF THE COURSE**

*The course is designed to understand the notion of property in particular cultural property and intellectual property, their relation to intangible cultural heritage/ traditional knowledge and how these notions of property are employed in rights discourses by governments and indigenous and local communities around the world.*

*With this objective the course is designed to:*

- *Understand the concept of intangible cultural heritage and the need to safeguard the ICH*
- *Study the role of UNESCO, WIPO, UNDP, UNCTAD and UNEP in protecting ICH*
- *Study the role of indigenous and local community in protecting ICH*
- *Understand the relationship between Intangible cultural heritage/traditional knowledge , cultural property and intellectual property*

**COURSE OUTLINE**

**MODULE I - INTRODUCTION TO CULTURE AND CULTURAL HERITAGE**

- a) The Indian Culture- an Historical and Constitutional Perspective – India and Its Cultural Heritage- Inscribed in the World Heritage List.
- b) Culture and Cultural Relativism
- c) Culture Right and Human Rights

**MODULE II - INTERNATIONAL ORGANIZATIONS IN PROTECTING  
INTANGIBLE CULTURAL HERITAGE**

- a) UNESCO, its World Heritage Committee and its advisory bodies
- b) WIPO – IGC on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore- UNEP- UN Declaration on the Rights of Indigenous Peoples 2007

- c) UNESCO- WIPO joint effort in protecting traditional knowledge- Tunis Model Law on Copyright

### **MODULE III - UNESCO AND ICH**

- a) UNESCO- Conventions and cultural diversity
- b) Meaning and Scope of Intangible Cultural Heritage
- c) Definition of World Heritage- Inscription of properties in the World Heritage List.

### **MODULE IV - PROTECTION OF TRADITIONAL KNOWLEDGE**

- a) TK- Definition, Characteristic and Holders/Owners-Community interest- Need for protection.
- b) International development of traditional knowledge protection – CBD – FAO International Treaty on Plant Genetic Resources –developments in WIPO on traditional knowledge
- c) IP protection of TK- Positive and Defensive protection- Protection of TK in India- Documentation of Traditional Knowledge - Traditional Knowledge Digital Library “TKDL” -AYUSH Systems of Medicines.

### **MODULE V - PROTECTION OF TRADITIONAL CULTURAL EXPRESSION/ FOLKLORE**

- a) Traditional Cultural Expression/Folklore-definition, characteristic and Public domain.
- b) A Legal and Cultural Protection of TCE/Folklore
- c) International Treaties and Convention for Protection of Culture, Folklore and Cultural Diversity.

### **MODULE VI - PROTECTION OF GENETIC RESOURCES AND ASSOCIATED TRADITIONAL KNOWLEDGE**

- a) Genetic Resources and associated TK as property - common heritage of mankind- CBD - permanent sovereignty- nature of ownership of GR and TK in CBD, and Nagoya Protocol (PIC & BS)
- b) Role of Indigenous and local communities-Benefit Sharing – Bonn Guidelines, Nagoya Protocol, FAO, ITPGRFA and Indian Law
- c) Interface between IPR and GR –TRIPS –CBD conflict and proposed solution.

## **BUBLIOGRAPHY**

### **RECOMMENDED READINGS:**

#### **BOOKS**

1. Christoph Belman and Graham Dutfield, *Trading in Knowledge: development Perspectives on TRIPS, Trade and Sustainability*, Earthscan Publications Ltd. (2003)
2. Patricia Lucia Marin, *Providing Protection for Plant Genetic Resources: Patents, Sui Generis Systems and Bio-Partnerships*, Kluwer Law International (2001)
3. Timothy M. Swanson (ed), *Intellectual Property Rights and Biodiversity Conservation: An Interdisciplinary Analysis of the Values of Medicinal Plants*, Cambridge University Press (1995)
4. Christoph Antons (ed.) *Traditional Knowledge, Traditional Cultural Expressions and Intellectual Property Law in the Asia Pacific Region*, Kluwer Max Planck Series, (2009)
5. Silke von Lewinski (ed.) *Indigenous Heritage and Intellectual Property: Genetic Resources, Traditional Knowledge and Folklore*, Kluwer Law International, (2008)

#### **JOURNALS/ARTICLES**

1. Navigating Traditional Knowledge And IP – The Adventure of the Yakuanoi, Available at : <https://www.wipo.int/tk/en/tk/yakuanoi.html>
2. Inter- Governmental Committee on Traditional Knowledge, Traditional Cultural Expression and Genetic Resources, Available at: <https://www.wipo.int/tk/en/igc/>
3. Lorie Graham and Stephen Mc John, *Indigenous Peoples and Intellectual Property*, 19 Wash. U.L.J.L &Pol’y (2005) Pp: 313-338.
4. Bastida-Munoz, MindahiCrescencio& Geraldine A. Patrick, *Traditional Knowledge and Intellectual Property Rights- Beyond TRIPS Agreements and Intellectual Property Chapter of FTA’s.*, *Journal of International Law* Vol 14, No. 2, 2006 (259- 290).
5. Sudhir Krishnaswamy, *Intellectual Property and India Development Policy*, *Indian J L and Tech.*, (2015), Pg. 169.

### **FURTHER READING:**

#### **BOOKS**

1. WIPO Reading Material on Intellectual Property, WIPO, Geneva
2. FAO, *The State of World’s Plant Genetic Resources for Food and Agriculture*
3. *Convention on Biological Diversity, 1992 and International Treaty on Plant Genetic Resources for food and Agriculture*, 2002

4. UNESCO/WIPO Model Provisions for Protection of Folklore/ Cultural Expressions.
5. Documents of Inter Governmental Committee, WIPO on TK & TCE protection, WIPO. Geneva.
6. Daniel F. Robinson Confronting Biopiracy: Challenges, Cases and International Debates, Earthscan, (2010)
6. Jonathan Curci, Protection of Biodiversity and Traditional Knowledge in the International Law of Intellectual Property, Cambridge University Press, (2010)
7. Dutfield and Posey, Beyond Intellectual Property: Toward Traditional Resource Right for Indigenous Peoples and Local Communities, IDRC, (1996)
8. Geoff Tansey and Tasmine Rojotte (Eds.), The Future Control of Food: A Guide to International Negotiations and Rules on Intellectual Property, Earth Scan, London (2008)
9. Gerald Moore and Witold Timousky, Explanatory Guide to the International Treaty on Plant Genetic Resources for Food and Agriculture, IUCN, Gland, Switzerland and Cambridge, (2005)
10. Patricia Lucia Marin, Providing Protection for Plant Genetic Resources: Patents, Sui Generis Systems and Bio-Partnerships, Kluwer Law International (2001)

#### **JOURNALS/ARTICLES**

1. Rebecca Tsosie, An Essay on Cultural Appropriation and Cultural Rights, Arizona State Law Journal Vol -34, No. 1, (2002), pp. 259-358
2. Charles R Mc Manis, Intellectual Property, Genetic Resources and Traditional Knowledge Protection Thinking Globally, Acting Locally (2003), Cardozo Journal of International Comparative Law 547.
3. L. Margulies, Protecting Biodiversity Recognizing International Intellectual Property Rights in Plant Genetic Resources (1993) Michigan Journal of International Law (322- 356).
4. Marcus Goffe, Recent Developments in the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional knowledge and Folklore, (2011) 1 Queen Mary J. Intell. Prop. Pp. 90-98.
5. Dennis S. Karjala, Sustainability and Intellectual Property Rights in Traditional Knowledge, (2012) 53 Jurimetrics 57.
6. Susan Scafidi, Intellectual Property and Cultural Products (2001) Boston University Law Review Vol. 81, pp. 793-842.



7. Lauren Loew, Creative Industries in Developing Countries and Intellectual Property Protection, 9 Vand. J. Ent. & Tech. L. 171 (2006)
8. Peter K. Yu, Cultural Relics, Intellectual Property, and Intangible Heritage, 81 Temp. L. Rev. 433 (2008).
9. Craig Forrest, Cultural Heritage as the Common Heritage of Human Kind: A Critical Re- Evaluation, 40 Comp. & Int'l L.J. S. Afr. 124 (2007).
10. Beatriz Barreiro Carril, Article 20 of the UNESCO Convention on Cultural Diversity: Its Use for Promoting Respect for Cultural Diversity in WTO Law, 6 Cuadernos Derecho Transnacional 108 (2014).

### **CASES FOR GUIDANCE**

1. Monsanto v Nuziveedu (2020)
2. Monsanto v Schmeiser (2004)
3. Pepsico v Farmer (2019)
4. Biogen v Medeva [1997] RPC 1 HL
5. Ciba Geigy's Propagating Material Application [1984] O J EPO 112
6. Harvard Onco Mouse, E.P.O.R. 525 Ex. D
7. Plant Genetic Systems/Glutamine Synthetase Inhibitors [1995] E.P.O.R. 357
8. American Cyanamid v Berk [1976] R.P.C. 231
9. Milirrpum v Nabalco Pty Ltd. (1971) 17 FLR 141
10. Mullick v Mullick; LR LII Indian Appeals 245 (1725)
11. The Arnamagnaean Foundation v Ministry of Education 1971 UfR 299 (Denmark)
12. Bulun Bulun John & Another v R & T Textiles Pty Ltd. [1998] FCA 1082
13. Bulun Bulun v Nejlam Pty Lam (1989)
14. Yumulul T v Reserve Bank of Australia, Reserve Agency Ltd and Another [1991] FCA 448
15. Navajo Nation v Urban Outfitters Inc 935 F Supp (2d) 1147. (N. Mex. Dist Ct 2013)
16. Fairey v Associated Press 09 Civ. 01123 (SDNY Feb 9, 2009)
17. Cariou v Prince 784 F Supp 2d (SDNY 2011)
18. Tilousi v Arizona State University [2005 WL 6199562 at 2 (D ARiz Mar 3, 2005)]
19. Havsupai Tribe v Arizona Board of Regents 204 P.3d 1063, (Ariz Ct Appeal 2008)
20. Grimes v Kennedy Kriger Institute 782 A.2d 807 (Md. 2001)

## **LEARNING OUTCOMES**

*After completion of the course students will be able to –*

- *Appreciate the need and relevance of safeguarding Intangible cultural heritage*
- *Understand the role of indigenous people and effort made by them in the participation of the various forum and committees*
- *Study the role of various international organizations in protecting ICH namely- UNESCO, WIPO, UNDP, UNCTAD, FAO and UNEP*
- *Examine the role of WIPO in protecting and recognizing the Traditional Knowledge, Traditional Cultural Expression/Folklore Expression and Genetic Resources*
- *Explore various Conventions and Declaration by various organization in protecting the Intangible Cultural Heritage /Traditional knowledge.*

\*\*\*\*\*

**PAPER - X**  
**INTELLECTUAL PROPERTY RIGHTS AND HUMAN RIGHTS:**  
**NATIONAL AND INTERNATIONAL PERSPECTIVES**

**(Generic Elective Paper)**

**OBJECTIVE OF THE COURSE**

*The relationship between intellectual property rights and human rights is one of the emerging areas in academic interest. The importance of the subject has been accentuated by the still largely unexplored links between certain human rights and a variety of issues such as indigenous peoples' rights, the rights of the blind and the visually impaired, biodiversity, open source developments, creative commons licensing, free speech and the access to knowledge. These links have generated a heated, contemporary and vital debate both from the theoretical and practical point of view. The object of the course is to explore the international, regional and national legal frameworks in protecting the human rights under the intellectual property laws.*

*After undergoing the course the student will be able to understand the*

- *Relationship between the IP and human rights which include cultural heritage, traditional knowledge, right to health, science and technology and non- discrimination.*
- *Various international instruments in protecting the human rights of the individual*
- *The extent to which IPR have been recognized in the HR regime i.e., right to property.*

**COURSE OUTLINE**

**MODULE I - INTRODUCTION TO IP AND HR**

- a) Historical isolation of the human rights and intellectual property regimes
- b) Jurisprudential aspects and Constitutional aspects of IP and Human rights - Protection of Human Rights Act.
- c) Expanding Intersection of the Human Rights and Intellectual property regime.

**MODULE II - INTERNATIONAL INSTRUMENTS RELATING TO IP AND HR**

- a) International Instruments relating to HR- Universal Declaration of Human Rights (UDHR)

- b) International Instruments relating to IP -Rise of TRIPS Plus Treaties and Doha Declaration on Public Health
- c) WIPO -IGC on Traditional Knowledge and Folklore – CBD, FAO-ITPGR.

**MODULE III - INTERFACE BETWEEN HUMAN RIGHTS AND INTELLECTUAL PROPERTY**

- a) Intellectual Property and Right to health
- b) Biotechnology and Human Rights
- c) The Human Right to food, Plant Genetic Resources and Intellectual Property

**MODULE IV - CREATORS' RIGHT AND FREEDOM OF EXPRESSION**

- a) Creators' right and the Human Right of Property
- b) Right to privacy and Freedom of expression- Fair Use Doctrine.
- c) Right to Education and Copyright in Learning Material - the rights of the blind and the visually impaired.

**MODULE V - INDIGENOUS PEOPLES' RIGHTS AND INTELLECTUAL PROPERTY**

- a) International Human Right Law relating to Indigenous People-- United Nations Declaration for the Right of Indigenous People (UNDRIP).
- b) IP protection of Traditional Knowledge and Traditional Cultural Expression/Folklore
- c) Individual and Collective interest in Indigenous Cultural Productions

**MODULE VI - NEW DEVELOPMENTS IN HUMAN RIGHTS**

- a) IPR and Socio, Economic and Cultural Rights – Conflicts and Convergences
- b) Right to Privacy and Confidentiality - Corporation's Right to Privacy
- c) Green Technology and transfer of technology- Right to safe and clean Environment

**BIBLIOGRAPHY**

**RECOMMENDED READING:**

**BOOKS**

1. Paul L.C. Torremans, Intellectual Property Law and Human Rights, Fourth Edition, Wolters Kluwer
2. Ramcharan, International Intellectual Property Law and Human Security springer

3. Saggi, Kamal, Keith E. Maskus, and Bernard Hoekman, Transfer of technology to developing countries: Unilateral and multilateral policy options. The World Bank, 2004.
4. Khor, Kok Peng, and Martin Khor. Intellectual property, biodiversity, and sustainable development: resolving the difficult issues. Zed Books, 2002.
5. Laurence R Helfer and Graeme W Austin, Human Rights and Intellectual Property Mapping the Global Interface, Cambridge University Press, 2011.

#### **JOURNALS/ ARTICLES**

1. Laurence R. Helfer, "Human Rights and Intellectual Property: Conflict or Coexistence?", Minnesota Intellectual Property Review Volume 5 Issue 1 Article 2 2003
2. American University Washington College of Law Articles in Law Reviews & Journals Student Scholarship 1-1-2010 TRIPS and Human Rights: The Case of India Subramanya Sirish Tamvada American University Washington College of Law
3. Audrey R. Chapman, "A Human Rights Perspective On Intellectual Property, Scientific Progress, And Access To The Benefits Of Science",
4. Andrews, Lori B. "Genes and patent policy: rethinking intellectual property rights." Nature Reviews Genetics 3.10 (2002): 803-808.
5. Lacy, Patricia A. "Gene patenting: universal heritage vs. reward for human effort." Or. L. Rev. 77 (1998): 783.

#### **FURTHER READING:**

##### **BOOKS**

1. A. K. Bansal, Law of Trademark in India, Thomson & Reuter, 2014
2. Latha R Nair & Rajendra Kumar, Geographical Indications: A Search For Identity, Lexis Nexis, 2005
3. Feroz Ali Khader, The Law of Patents-With a Special Focus on Pharmaceuticals in India, LexisNexis, 2nd Edition, 2011
4. Elizabeth Verkey, Law of Patents, Eastern Book Company, 2nd Edition, 2012
5. Kevin Garnett, Jonathan Rayner James, Gillian, Copinger and Skone James on Copyright, Sweet & Maxwell, London, 2013
6. P. Narayanan, Copyright and Industrial Designs, Third Edition, Eastern Law House,

7. V. J. Taraporevala, Law of Intellectual Property, Third Edition 2019, Thomson Reuters
8. Cornish & Llewelyz-Intellectual Property, Thomson, Sweet & Maxwell
9. Catherine Colston- Principles of Intellectual Property Law, Cavendish Publication Ltd.
10. Frederick M. Abbot(Ed) - International Intellectual property in an Integrated World Economy, Wolters Kluwer.

#### **JOURNAL/ARTICLES**

1. Glenna, Leland L., et al. "Intellectual property, scientific independence, and the efficacy and environmental impacts of genetically engineered crops." *Rural Sociology* 80.2 (2015): 147-172.
2. Ray, Christopher. "Culture, intellectual property and territorial rural development." *Sociologia ruralis* 38.1 (1998): 3-20.
3. Coombe, Rosemary J. "The recognition of indigenous peoples' and community traditional knowledge in international law." *Thomas L. Rev.* 14 (2001): 275.
4. Samuel D. Warren & Louis D. Brandeis, *Right to Privacy*, 4 *Harv. L. Rev.* 193 (1890-91)
5. Christophe Geiger, *Copyright as an access right: Securing Cultural Participation through the protection of Creators' interests, What if we could reimagine Copyright?* ANU Press, 2017.
6. Simeone, Tonina. *Indigenous traditional knowledge and intellectual property rights.* Parliamentary Research Branch, Library of Parliament, 2004.
7. Peter Groves, *Sourcebook on Intellectual Property Law*, Routledge-Cavendish, 1997.
8. K C Kailasam and Ramu Vedaraman, *Law of Trademarks including International Registration under Madrid Protocol and Geographical Indications*, Lexis Nexis, 2013
9. Henrik Andersen, *WTO Law and Prices of Pharmaceutical Products: Rule of Law Gaps and the Unclear Balance between Trade Protection, Human Rights, and IP Protection*, 51 *MCGEORGE L. REV.* 451 (2020).
10. Julie Yassine, *IP Rights and Indigenous Rights: Between Commercialization and Humanization of Traditional Knowledge*, 20 *SAN DIEGO INT'L L.J.* 71 (2018).

#### **CASES FOR GUIDANCE**

1. *Natco Pharma Ltd. v Bayer Corporation* 2012 50 PTC 244
2. *Novartis AG v Union of India* (2013) 6 SCC 1
3. *Mayo v Prometheus* (2012)
4. *Assn of Molecular Pathology v Myriad Genetics* (2014)

5. Bowman v Monsanto
6. Monsanto Technology LLC v. Nuziveedu & Ors AIR 2019 SC 559
7. Roche Products Inc., v Bolar Pharmaceuticals Co.
8. V T Thomas v Malayalam Manorama Co. Ltd 1987 SCC online Ker 138 AIR 1989 Ker 49
9. University London Press Ltd v University Tutorial Press Ltd 1916 2 ch 601
10. R G Anand v Delux Films ( 1978) 4 SCC 118
11. Turmeric Basmati and Neem case
12. Jeevani Case
13. Ashby Donald and Others v. France, European Court of Human Rights (2013)
14. Diamond v Chakrabarty (1980)
15. Harvard Onco Mouse Case
16. The Chancellor, Masters and Scholars of the University of Oxford v Rameshwari Photocopy Services (2012)
17. Bristol-Myers Squibb Co. v. Hetero Drugs Ltd., CS (OS) No.2680/2008
18. Bayer Corporation and Ors V. Union of India (UOI) and Ors. 2009 (41) PTC 634 (Del)
19. People's Union of Civil Liberties v. Union of India (1997) 1 SCC 301
20. Pepsico v Farmers (Lays Potato Chips) (2019).

## **LEARNING OUTCOMES**

*After completion of the course the students will be able to:*

- *Study the special characteristics of Intellectual Property and Human Rights.*
- *Examine the basic principles and sources of International Intellectual Property law and Human Rights.*
- *Analyse science, technology and society influence the change in the Intellectual property law and Policy.*
- *Understand the interconnection and relationship between Intellectual Property and Human Rights.*
- *Have an improved ability to argue, analyses and evaluate complicated international legal issues of Intellectual Property from a Human Rights perspective.*

\*\*\*\*\*

## **PAPER - XI**

### **TRANSNATIONAL JURISDICTIONAL PERSPECTIVE OF INTELLECTUAL PROPERTY RIGHTS**

**(Generic Elective Paper)**

#### **OBJECTIVES OF THE COURSE**

*Intellectual Property Rights are territorial in nature. The extents to which the Intellectual property rights exist and are protected within the territorial borders are determined by each state's IP law. But the usage of Intellectual Property is not limited by territorial boundaries since globalization, economic integration and digitalization. This leads to the interaction between conflicts of law and Intellectual property rights. The territoriality principle has implications for the conflict of law in Intellectual property rights. Conflict of law is a field of municipal law that deals with private law disputes that have foreign elements. The impact of Intellectual property infringement on different territories raises the question of jurisdiction, applicable law and enforcement and recognition of foreign judgments and judicial cooperation in cross border IP disputes.*

*With this objective the course is designed to*

- *Explores cross-border issues that may arise in intellectual property infringement litigation.*
- *Discuss the principle of territoriality of Intellectual Property Rights versus the extraterritorial enforcement of those rights.*
- *Examine the issue of exhaustion of IP rights and Parallel imports.*
- *Discuss the choice of forum, choice of law and enforcement and recognition of foreign judgments.*

#### **COURSE OUTLINE**

##### **MODULE I - INTRODUCTION**

- a) Origin and Significance of IPR
- b) Meaning and Definition of IPR
- c) Rights and Infringement of intellectual property rights

##### **MODULE II - ENFORCEMENT OF IPR**

- a) Enforcement of Intellectual Property under International Conventions/Treaties
- b) Enforcement of intellectual property under the national law



- c) WTO Dispute Settlement Mechanism and Dispute Settlement Understanding

### **MODULE III - CONFLICT OF LAW AND INTELLECTUAL PROPERTY RIGHTS**

- a) Interaction of Conflict of law and Intellectual Property Rights
- b) Territoriality principle and extra-territorial enforcement of Intellectual Property Rights.
- c) International and Regional treaties on cross border litigation

### **MODULE IV - EXHAUSTION OF INTELLECTUAL PROPERTY RIGHTS AND PARALLEL IMPORTATION**

- a) Doctrine of Exhaustion
- b) National, Regional and International Exhaustion of Intellectual property rights
- c) Concept of Parallel importation and its relevancy in exhaustion of Intellectual property rights

### **MODULE V - JURISDICTION AND ENFORCEMENT OF FOREIGN JUDGMENTS RELATING TO INTELLECTUAL PROPERTY RIGHTS.**

- a) Jurisdiction- Description of Cross-border element- Choice of Forum
- b) Applicable law- Lex Fori- Lex Protectionis- Initial Ownership/ Transferability issues- Freedom of Choice of Law
- c) Recognition and Enforcement of Foreign interim and final Judgments

### **MODULE VI - CONFLICT OF LAWS IN CROSS-BORDER INTELLECTUAL PROPERTY DISPUTES IN DIGITAL ENVIRONMENT**

- a) Trademarks Issues -Domain Name Disputes-UDRP
- b) Copyright infringement in cyberspace
- c) Online Infringement of Patent by offering or supply of patented goods.

### **BIBLIOGRAPHY**

#### **RECOMMENDED READING:**

#### **BOOKS**

1. Cheshire & Norths, Private International Law, Oxford University Press, 2006.
2. Clarkson and Hill, The Conflict of Laws, Oxford University Press, 2007
3. Dicey, Morris and Collins on the Conflict of Laws, Sweet & Maxwell, 2006
4. Briggs. A, The Conflict of Laws, Oxford University Press, 2008
5. Cornish, William R., Intellectual Property Infringement and Private International Law:

Changing the common law approach, Cornish 1996.

### **JOURNAL/ARTICLES**

1. Christie, Andrew F., Private International Law issues in Online Intellectual Property infringement disputes with cross- border elements: an analysis of National approaches, World Intellectual Property Organisation, 2015.
2. Austin, Graeme W, Domestic law and Foreign Rights: choice of law in transnational copyright infringement litigation, Austin 1999
3. Solveig Singleton, IP as Conflict Resolution: A Micro View of IP , 42 San DIEGO L. REV. 45 (2005).
4. William T. Gallagher, Trademark and Copyright Enforcement in the Shadow of IP Law, 28 Santa CLARA COMPUTER & HIGH TECH. L. J. 453 (2011).
5. Angel Espiniella Menendez, Conflict of Laws and the Internet, 12 Cuadernos DERECHO Transnacional 1495 (2020).

### **FURTHER READING:**

#### **BOOKS**

1. Gottschalk et al., Conflict of laws in a Globalized World, Cambridge University Press, 2007
2. V.C. Govindaraj, The Conflict of laws in India, Inter-territorial and Inter- personal conflict, Oxford University Press, 2011.
3. European Max Planck Group on Conflict of Laws in Intellectual Property, Principles for Conflict of Laws in Intellectual Property, 2011
4. Lydia Lundstedt, Territoriality in Intellectual Property Law, Stockholm University, 2016.
5. Engelen Van, Jurisdiction and Applicable law in matters of Intellectual Property, 2010
6. Paul Torremans, Copyright territoriality in a borderless online environment, Torremans 2012
7. WIPO, Private International Law Issues in Online Intellectual Property Infringement disputes with Cross- Border Elements- An Analysis of National Approaches, 2015
8. David I. Bainbridge – Intellectual Property Law, Pearson Education Ltd.
9. Catherine Colston- Principles of Intellectual Property Law, Cavendish Publication Ltd.
10. Frederick M. Abbot(Ed) - International Intellectual property in an Integrated World Economy, Wolters Kluwer.

## **JOURNALS/ARTICLES**

1. Sung Pil Park, Harmonizing Public and Private International Law: Implications of the Apple vs. Samsung IP Litigation, 7 J. E. Asia & INT'L L. 351 (2014).
2. Intellectual Property and Private International Law, 76 Int'l L. Ass'n Rep. Conf. 571 (2014).
3. Sophie Neumann, Intellectual Property Rights Infringements in European Private International Law: Meeting the Requirements of Territoriality and Private International Law, 7 J. PRIV. INT'L L. 583 (2011).
4. P. R. Stephenson, International Private Law as a Model for Private Law Jurisdiction in Cyberspace, 7 LEGAL Issues J. 103 (2019).
5. William Patry, Choice of Law and International Copyright, 48 AM. J. COMP. L. 383 (2000)
6. Jane C. Ginsburg, Choice of Law and Choice of Forum in International Copyright Infringement, 5 INT'L INTELL. PROP. L. & POL'y 38-1 (2003)
7. Coenraad Visser, Choice of Law in Internet Copyright Disputes, 11 S. AFR. MERCANTILE L.J. 268 (1999).
8. Jane C. Ginsburg, Copyright without Borders - Choice of Forum and Choice of Law for Copyright Infringement in Cyberspace, 15 CARDOZO Arts & ENT. L.J. 153 (1997)
9. Raquel Xalabarder, Copyright: Choice of Law and Jurisdiction in the Digital Age, 8 ANN. Surv. INT'l & COMP. L. 79 (2002)
10. Miquel dels Sants Mirambell Fargas, Economics of Arbitrability in International IP Contracting, 37 J.L. & COM. 179 (2019).

## **CASES FOR GUIDANCE**

1. American Cynamid Co v Ethicon Ltd., (1975)
2. Novartis AG v Mehar Pharma (2005)
3. Novartis AG v Adarsh Pharma (2004)
4. F Hoffmann-La Roche Ltd v Cipla Ltd (2009)
5. Cadila Pharmaceutical Ltd v Instacare Laboratories (P) Ltd. (2001)
6. Piller (Anton) KG v Mfg. Processes Ltd (1976)
7. Bucyrus Europe Ltd v Vulcan Industries Engg. Co (P) Ltd (2005)
8. Microsoft Corpn v Dhiren Gopal (2010)
9. Pillalamarri Lakshmikantham v Ramakrishna Pictures (1981)
10. Bilcare Ltd v Amartara (P) Ltd (2007)

11. Microsoft Corp v K Mayuri (2007)
12. Sheo Ratan Upadhyaya v Gopal Chandra Nepali (1965)
13. Siyaram Silk Mills v state (2001)
14. Gramophone Co of India Ltd v Birendra Bhadr Pandey (1984)
15. Shobhan Lal Jain v Drug Controller (2009)
16. Bayer corp. V union of India (2010)
17. Kapil Wadhwa v Samsung Electronics Co Ltd., (2012) 53 PTC 112 (Del)
18. Wipro Cyprus p Ltd. v Zeetel Electronics, (2010) 44 PTC 307 (Mad)
19. Penguin Books Ltd. v India Book Distributors; AIR 1985 Del 29
20. John Willey and Sons Inc v Prabhat Chander Kumar Jain (2010) 44 PTC 675 (Del).

### **LEARNING OUTCOMES**

*After the completion of course, students will be able to-*

- *Critically analyse the intersection between Intellectual Property Rights and Conflict of Law.*
- *Develop a critique of the enlarged opportunities for infringement of Intellectual Property Rights in digital environment.*
- *Understand the judicial co-operation relating to international disputes concerning Intellectual Property Rights to facilitate the flow of information and cultural exchange across borders.*
- *Explore various initiatives that aims to develop a harmonized rules for application by national courts to transnational IP disputes.*

\*\*\*\*\*