

Intellectual Property
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Lecture - 04
What are Property in IPR?

(Refer Slide Time: 00:14)

Meaning of 'property' in IPR

- Property is a form of **regulation**
- Property can be of 2 kinds: public and private
- Public property is property which is held in common (also known as 'the commons'), whereas, private property is owned by an individual.



Now, let us look at what we mean by the word property. And now we just had a short understanding of what we mean by it right. Property is a form of regulation, and when it comes to intellectual property we are talking about a form of regulation of creations that come out of the mind. Property can be either public property or private property. These are two broad classifications of property.

For instance, public property is something which is held in common, what we call the commons. And private property is something which a person holds for himself individually.

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Meaning of 'property' in IPR

- Real property (land) has **physical boundaries** & can be distinguished from the property of another
- The owner of land & its boundaries can be ascertained from the property deed.



Now, to understand the concept of property, we need to take the analogy of land or landed property. Any landed property exists in time and space. You could go to a particular location and analyze or look at the land and see its boundaries, and you will get a fair understanding of the limits of that land; where the land is, what are the boundaries of the land, there are the boundaries of the neighbors' land, and where it is, where is the pathway that leads to the land, all these things can be ascertained in the physical world (Refer Time: 01:35)

So, property is something that we understand as specially private property, we understand it as something that can be differentiated from others' property, and something which is capable of being distinguished from others' property. And this hallmark of property is that it can be distinguished from others' property comes from the limits of the property.

In a land, in the case of the land we call them the boundaries of the land. The boundaries can be ascertained physically by going to the location and measuring it or looking at it. If the boundaries are protected and it gives a much clearer view of what is the extent of the land. Land can be measured, it can be ascertained in numbers, we can compute, and we can say what is the extent of the land.

Land is also the title in a land also manifest itself in a piece of a document. What is what we call the deed or the sale deed, by which a land is conveyed from one person to

another. In a sell deed typically, you would find towards the end of the sale deed, a portion of the sale deed what we call the schedule. The schedule normally has the description of the land the extent of it and also the boundaries of it.

As I said in the case of a land, you can doubly be sure you can be sure by looking at the document, where the boundaries of the land are, you could also go and look into the property deed or the title deed and see what are the boundaries of the land. So, two ways to check it; one, you could look physically and check the boundaries, or you could look at the title deed and look for the boundaries of the property.

Intellectual property does not exist in time and space like real property. As I said, because intellectual property deals with creations of the mind; like, an invention or an idea or an expression of an idea, we need to have some form by which we can ascertain the limits of property. When a person comes up with an invention, the invention could be improvement in an internal combustion engine that could be an invention.

The improvement rests inside the engine. It is not possible for a person who sees the engine from outside to ascertain where the invention is, or which part of the improvement actually makes the engine better. Unless it is described in detail, in writing it will be very hard for a person to understand the improvement in the engine, unless he analyzes it, or he breaks it down, or a reverse engineers, it will be very hard for that person to understand where the contribution is with regard to that particular invention.

So, though there is an improvement that the inventor has made with regard to the internal combustion engine, it will be very difficult for people to ascertain where that improvement is, unless the inventor himself tells the world as to what was the contribution that he made. In patent law every invention needs to be described in writing. The descriptive part of the invention is contained in a document what we call the pattern specification.

And the pattern specification much like the land deed would convey the details about the property, and would end with something what we call the claims. The claims will demarcate the boundaries of the intellectual property when it comes to a patent right. So, you could look at a pattern specification, and the last portion or the concluding portion of a pattern specification is what we call a claim or many claims. It could be a multitude of claims or it could be a single claim. And these claims when you read will give you an

understanding of what are the boundaries of the property what are the limits of the property.

By property we understand as something that can be possessed, and something that can be transferred. We also understand property as something that has boundaries, which makes it possible for you to distinguish your property from another person's property. Take a pen for instance, the pen has a boundary in time and space. And the fact that pens are possessed by people, we do not have title disputes with regard to ownership of pens.

Assume a scenario, where you and your friend have a small tussle with an ownership of a pen. How are we going to settle this ownership dispute? Now, if your friend is smart enough, he could just fill up, his pen just open it up and say you know I had written my name somewhere discreetly. He could show that and he could get away with it he could say that, is one way to prove ownership you had given put in a secret mark.

The other way to prove ownership is, me opposition, you could say that I have been possessing this for a long time, this is my pen. So, it is hard to make a claim. Now if your friend wants to really make a claim, he would come up with something called a bill, showing that this pen is actually mine, because I purchased it for consideration he could produce a bill.

Now, that may put you in a back step, in a on the on the back foot. You may wonder whether he has a better title than you. Now you could further circumvent that by saying that no this bill is fabricated or the bill does not correspond to those pen. Now all these things are disputes with regard to title on the ownership of a pen.

Now, eventually let us assume that, you convinced your friend on the ownership of your pen. You could have complete possession and once you clear it off, then you could have complete possession on ownership of the pen. Now disputes with regard to property is normally settled in this way. You could either show position for a long period, uninterrupted period of time, or you could bring evidence of title to show that a bill or a received or something of of a similar nature to show that or the fact that you received it as a gift from someone someone else. You could show evidences by which you can claim title to a particular piece of property.

Intellectual property because it is not readily discernible, because the rights do not manifest itself in time and space in a tangible on a tangible form we find it difficult to settle disputes on intellectual property rights. When it comes to patent that is why we have a requirement of every invention to be expressed in writing disclosed in great detail, differentiating itself with every other invention that went before it, which is close to it or proximate to it. And then explaining the contribution made by the invention inventor, with regard to what has gone before what has gone before is generally left referred to by a term called the prior art. And then demonstrating what is the inventive contribution that he made.

All this is done in the patent specification, and after the inventor distinguishes his invention from what has gone before, he claims as something to be his own property, that is what is contained as I said in the concluding part of the patent specification what we call the claims. The claims are actually for what the protection is granted. The protection in a patent is confined to what is mentioned in the claims and not what is mentioned in the descriptive part of the pattern specifications.

Now so, the proof of the existence of intellectual property if it is a patent if it is an invention, then we would look at the patent specification, the document that encompasses it. Now you may be wondering; so, is it easy to get an intellectual property right I just need to put everything in writing that is not the case. If you put everything in writing, there is a scrutiny that is done by the patent office. In India it is done by the Indian patent office. And only when you pass the tests that the Indian patent office will subject your written description to will you be granted a patent, which which will give you a title and a protection for a limited period of time, provided you keep it alive by paying the required fees.