Intellectual Property
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Lecture - 78
Q and A – Discussion

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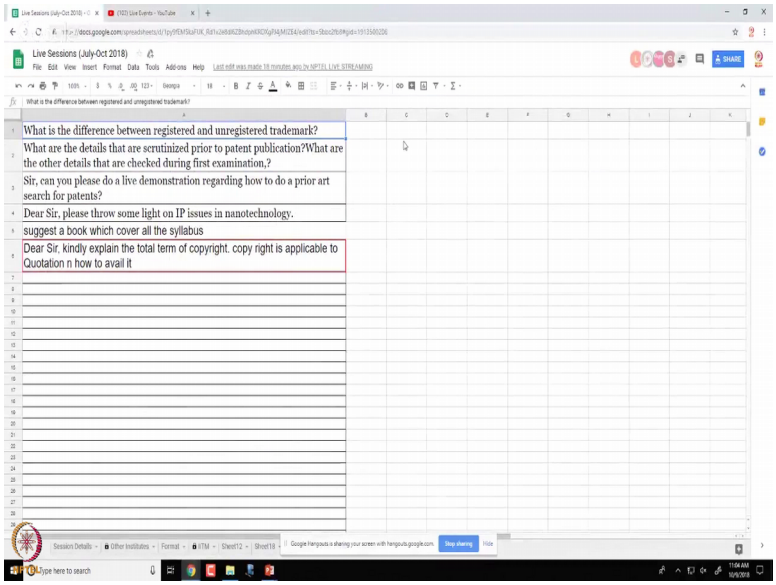

We will just look at the questions. What is the difference between a registered and unregistered trademark? Now a trademark is a mark or a symbol which signifies goods or services, which is connected the goods or services.

So, you are selling a product, you can have a mark isn't it, the mark so say the Nike mark or the apple logo they all marks which will tell you the origin of the goods or services. If the owner of the mark registers the mark before the trademark office and gets the registration for it then, we say that the mark is the registered mark.

Unregistered mark is a mark that is being used, but not yet registered. Now in a normal case, especially in the 21st century you would expect all the users to register the mark. But in some cases marks may not be registered, but nevertheless they may have goodwill and reputation attached to it.

A classic instance can be foreign mark which does not have any operation in India; say a European company which sells shoes and that shoe is not sold in India at all. But the

reputation of the mark is such that, you find over a period of time people who travel to Europe bring the shoe import the shoe or bring the shoe into India and they start using it here.

So, the mark though it is not registered in India, develops goodwill within the country. So, it could be the case that the entity may come into India at a later point of time and register it, but even without registration you could protect that mark because, it has go goodwill and reputation attached to it.

Now this can be done as we had discussed in our lecture on trademarks, this can be done by the remedy of passing off. So, if it is a registered trademark then you can file an trademark infringement suit, if it is an unregistered trademark you can protect it by the law of passing off. The difference between a registered and unregistered trademark is the fact that there is no registration.

But little does it mean that unregistered trademarks cannot be protected. As I just mentioned there could be instances where a player in a foreign country enters India at a later date. And even if they have not entered they could still enforce their right; provided they can (Refer Time: 02:43) prior use in a foreign country and goodwill and reputation, trans border reputation, in that case they may have to show trans border reputation and goodwill. And there have been cases where that has been demonstrated.

What are the details that are scrutinized power prior to pattern publication, what are the other details that are checked during first examination? Now before a patent application is published, the patent application has to satisfy the criteria of patentability. The criteria of patentability refers to the fact that a patent is granted for an invention. So, there has to be a invention in a particular field of technology and that technology should be protectable under the patent side. There are certain technology that are not protected for instance atomic energy inventions pertaining to atomic energy is not protected.

So, it has to be a technology that is protectable under the patent side and it should have novelty that is the first requirement, it should have inventive step and it should be capable of commercial application or industrial application, what we also call utility. So, in an application you would you would describe the invention in such a way that it satisfies this criteria. For instance, you would not mention your invention in a way in which it falls within the prior or it overlaps with something that is already dispersed in

the public domain. So, that takes care of the novelty requirement. You will describe the invention in such a way that it does not look obvious to your peer that takes care of the invents. And you could say that the possible objectives of the invention or the possible uses, which takes care of the utility requirement.

Now these are the positive requirement. There are certain negative criteria that the pattern has to get over. There are exceptions to patentability under section 3, various exceptions you cannot patent or plants and educational parts them, you cannot patent computers software per se the source code you cannot find. Now there are various other exceptions.

So, what you would do is why do you file a patent application you have to prior to the filing of the patent application, you have to ensure that these details are covered in your application. Now the question says what are the details are scrutinized prior to patent publication? I would understand that publication the (Refer Time: 05:19) prior to filing a patent application because, the application once it is file, it gets published just before the examination, which is a requirement in the law so that, the world is put a notice before a writers. (Refer Time: 05:33)

Now the same things that are looked at while filing a patent application like the criteria of patentability, novelty (Refer Time: 05:44) and exceptions to patentability these are the things that the patent office would look into at the time of examination. So, the first examination as the questionnaire had mentioned, the patent office will look into whether the patentability requirements are being satisfied and whether it falls outside the scope of the exceptions.

Now, the criteria of patentability we normally refer to it as what amounts to an invention? Novelty, inventive step and utility, but there are also other requirements internal requirements for instance, there has to be a disclosure of the invention. And the disclosure should enable a person, it should be an enabling disclosure in a sense that it should teach people to come up with the invention without undue experimentation of without having to get back to the inventor.

So, there are certain other requirements as well, but we largely go by the patentability criteria which means, the patent should satisfy the requirements under the act. So, in the first examination report, the controller will raise objections under the act which is largely

on patentability and on exceptions. (Refer Time: 06:59) The controller may also makes raise small objections like that there are there are certain procedural requirements, that (Refer Time: 07:06) has to be not more than 15 words, the abstract should not be more than 115 words.

So, those are smaller procedural requirements, but the substantial requirements are already mentioned in the act and the application has to comply with it ok. We had last time we there was a request for a live demonstration regarding prior art search, we will be doing that next week. Next week Monday we will schedule class and we will inform you about it and that is long due, I remember mentioning it in earlier live sessions.

So, we will be showing you how to do a prior art search on a public database as well as on subscription database ok. There is a question on IP issues in nanotechnology. Now nanotechnology is a means of achieving something. Now that is my understanding, that is a nano technologies when you go beyond particular size, you call it as a nano, the microns in microns, it is range in which a thing can be conceived.

Now, because it is the science of reducing, science of bringing down the size of things we do not regard it especially from a patenting perspective, we do not regard it as a separate branch. So, you could employ nanotechnology in pharmaceuticals, you could employ nanotechnology in chemical, you could enjoy a employ nanotechnology in biotechnology. So, nanotechnology itself found a patenting perspective it is not a separate branch, it is rather the process which could be used in any technology.

So, we do not have an issue with that because, as long as the technology allows you to have it you could as long as it is new it is it involves in an inventive step and it has utility, you may get a pattern. But one issue that I need to bring to your notice where nanotechnology or using nanotechnology may still not get you a patent or there could be difficult to get a patent is with regard to known substances. Section 3D as we have covered deals with new forms of known substances ok

So, somebody comes up with a new form of unknown substance. Then if it falls within the explanation and there is there is an explanation to section 3D, you have to demonstrate that the new form is more has more efficacy than the earlier form. Now I am telling this particularly with regard to pharmaceuticals. In pharmaceuticals there is reduction of particle size itself is an innovation, but particle size reduction which could

be done by using nanotechnology could come under the explanation because, particle size is regarded as a new form of a known substance and the applicant will have to show that by reducing the particle size itself they may not get a pattern they may have to additionally show how that leads to enhanced efficacy.

Now, this could be a difficult thing in pharmacy pharmacology because, just by reducing the particle size of the active ingredient you may have to now show how therapeutic efficacy or how that can lead to quicker healing or quicker treatment of diseases. So, bear in mind that is from a patenting perspective, there is no separate requirement for nanotechnology. It is just like any other laws, but there could be an exception when it comes to pharmaceuticals especially when you are talking about new forms of known substances because, the explanation in section three d covers particle science.

So, if you use nanotechnology to reduce particle science of a known substance, that may itself not get you a patent unless you show that new product now has enhanced efficacy. And if it is a medicine then you will have to show that the enhanced efficacy is actually therapeutic ok. We have already covers suggested books there are there are free freely available books which we have already shared on the forum, we can share it again, the WIPO has material quite a lot of material on intellectual property rights and we will also have another UJC had this EPathshala, where material is available on intellectual property courses.

So, that is one of the reason why we did not because, they are all standard courses tried and tested, so we, we just given reference to them. And kindly explain the total term of copyright, copyright is applicable to quotation and how to avail it. The term of the copyright is the creator is an individual an author. It runs from the year of creation actually, it starts with the life of the author.

So, if I create a work in 2018 and say I live for some more years, my term will be the life of that is my life up until my death plus 50 years. So, the copyright term will be life of the author regardless of when the author wrote his work, so till he dies from his death there is an additional 60 years. Now all of Gandhiji's works are into the public domain, somewhere around 2009. So, that was life of Gandhiji plus 60 years he came into the public domain.

Now, this is the term of the copyright, if it is an individual author regardless of what then the author, the author would have written different books and I had written a book in 2007, one in 2016. So, regardless of the term they will all have a term which will expire at the same time because it is tied to my lifespan. So, when I die, after my death the term will extend for 60 more years.

Now, quotation there is no hard and fast rule and how much you can quote, the laws quite flexible there. In some works especially that emanates from United States they may even say in the copyright page that you can only produce if you have to reproduce or quote this is all you can do, but quote in itself it cannot if you are putting it for the purposes of research. Say you are writing a scholarly article and you are quoting it then, there is a limit to which you will not quote say 10 pages right you will only quote what is required.

So, as long as you quote what is required and it does not look as though you are passing off somebody else's work by quoting them extensively it will not amount to copyright violation. Copyright law protects quoting other words it can you can quote provided you attribute the source and give a references. So, there is no limit as to how much you can quote, it largely depends on the work that you are doing say, you are doing a work on critical analysis of one of Shakespeare's plays.

You may have to extensively quote Shakespeare because, that is a critical analysis. So, your thesis, PhD thesis is say on that one play. So, you are going to extensively quote it, not that Shakespeare's works are protected anymore, I am just giving you one instance. So, if you are doing analysis of somebody else's book, say you are writing a book review then you may have to extensively quote it.

So, it depends on the case in which you are what you are doing or if you are doing a critical analysis or a PhD on somebody else's written work which is still under copyright, you can use it because, now you are into the research domain. So, again the purpose for which you put to use and it s commercial or non commercial, whether it is research or education all these things will govern the amount or the limit to which you can quote.

So, we do not have any more questions, if you have please raise them on the forum, we will have one more session that is next week. We will certainly try to cover the prior art search, I will bring one of my colleagues who has been working Abroad and in India and

who is an expert in search. So, we will have a session and it will be a live session and we will take it forward from there. In the meantime, we will have one more session next week, where I will tell you about case laws in the importance of case laws and I will also be happy to answer questions with that session.

So, we will conclude this session for now.

Thank you.