Patent Law for Engineers and Scientists
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Lecture – 01
Introduction to the Indian Patent System
Patent Law as Concepts

Introduction to the Indian Patent System: In this lecture we will be looking at how the Indian patent system came in to being, what are the fundamental features of the system, and also we will be looking at a brief introduction to the intellectual property rights regime which is what forms the greater part of intellectual property rights. So, this lecture will be structured into various parts: first we will be looking at patent law as a system of concepts, then we will be looking at ways to understand the Patents Act, and later on we will be looking at the legislations that comprise patent law which are the act rules and the manual. So, first we look at patent law as concepts.

Patent law comprises of different concepts; different legal concepts and together they form the branch of law called intellectual property rights. But before we understand patents we need to understand what intellectual property rights are.

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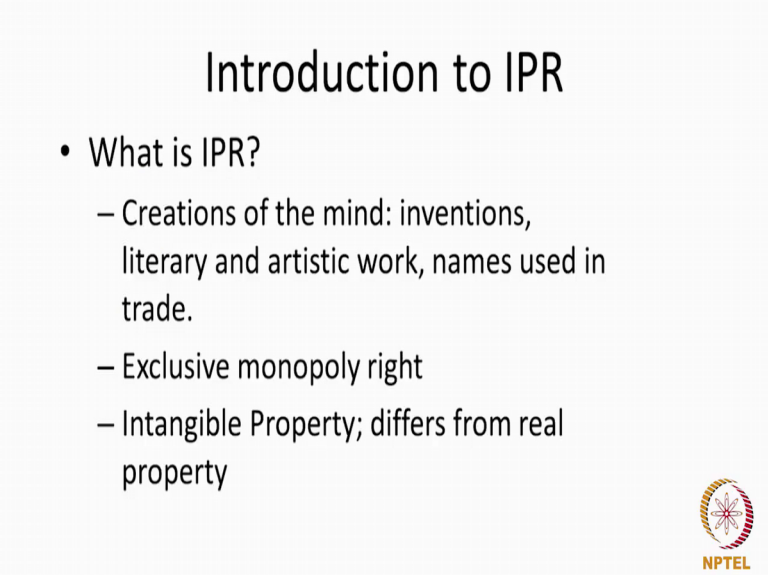

An IPR or intellectual property right is a set of rights that come out of the creations of mind. For instance, inventions are protected by means of patents, literary and artistic works a protected by the copyright regime, and names that we often use in trade and business are protected by the trade mark regime. An intellectual property right offers exclusive monopoly right to the owner of the right. Normally manifest on intangible property and in that way they are differ from real property.

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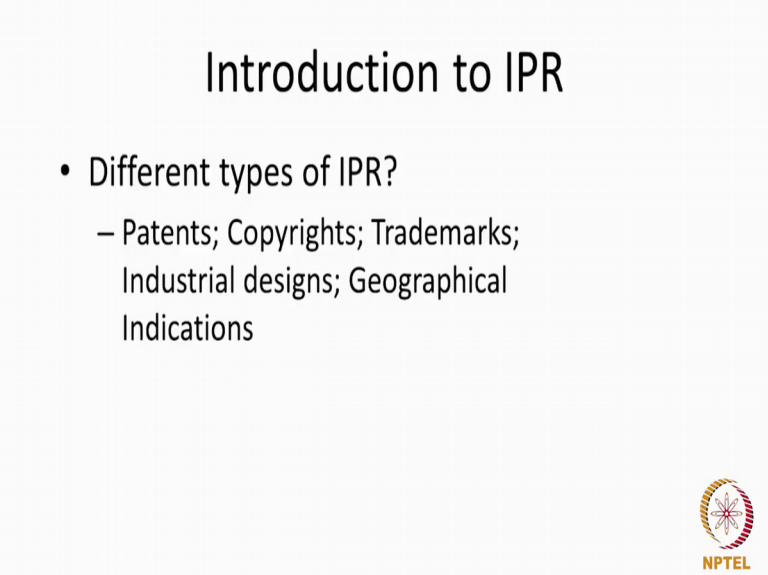

Intellectual property rights as I said it is not branch of law, it is a conglomeration of different areas of law. A patent law is itself a different branch of law copyright law is different from patent law, in the sense that the modes of establishing the right creation of the right and the enforcement of the right are much different in patent law and in copyright law.

For instance, in patent law to prove infringement you will have to look at the document that encompasses the patent right which is what we call a patent specification. Then look at the infringing act which could be an act done by the infringer, and map the act into the scope of the right that is covered in the patent specification. This is how infringement is proved. So, the process of proving infringement is comparing an act committed by the integer to the scope of right that is carved out in a particular document. Whereas if we

look at copyright or even for that matter trademarks the rights that are manifested in the trademark or the copyright are proved by a normal comparison of the infringing right.

For instance, if there is a book that is copyrighted and there is also another work which is allegedly influencing the copyright then all you need to do is a read through the two books and see whether there is a likelihood of the one work being a copy of the other. So, infringement is proved by a simple mechanism of reading or comparing two documents. Similarly for trademarks, the infringement is proved by looking at the two similar marks and the standard is one of reasonableness. So, if it is reasonably found that one mark could not have been made without looking at the other mark there is an initial case of infringement.

So, even the ways in which infringement is crude are different when it comes to the different kinds of intellectual property rights. Then what is it that holds these intellectual property rights together? Why are they formed or regarded as a group of rights that that are thought and learnt and studied together.

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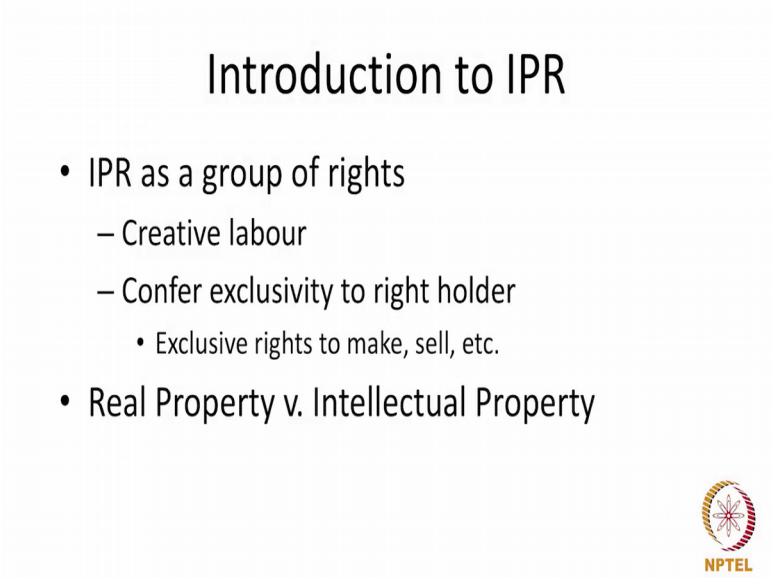

So, we can come across various explanations. One of the predominant explanations which is a classical one is that these rights where came out of some form of creative

labour. Now creative labour is something which we understand as being different from physical labour. So, creative labour when it resulted in certain rights those rights could be captured by these regimes. So, if the creative labour was a result of a person or a group of people coming up with an invention in a technological domain then that right in the invention came to be captured by patents.

If the right patent to an artistic or a literary work which was largely expressed in some medium then that right could be captured by a copyright. If the work, the creative work patent to a mark or a logo which ascertain the origin of the goods and services then you had trademark which came into as a right by which you could understand the origin of goods and services.

Now, these rights do have a creative or an intellectual element and that is largely the reason why they are called intellectual property rights. They also confer exclusivity to the right holder. So, the common trade for all intellectual property rights, they confer exclusivity to the right holder. And exclusivity means they have right to exclude others from using the right. So, if you have a patent if the patent is granted by the patent in India it is granted by the intellectual property office, then you have an exclusive right to use the invention for a period of 10 years from the date of application.

Now this is actually not an exclusive right to use, it is actually an right to exclude others from using. It also includes a set of rights for an instance you can exclude others from manufacturing, excludes others from selling, exclude others from offering for sale, exclude others from licensing, transferring, and the whole set of rights are involved here. So, the grant of a patent in itself confers an exclusivity. Similarly a copyright and a trademark also confer exclusivity.

Now these rights are different from the rights that western real property, because intellectual property one way we can understand intellectual property is by distinguishing them with real property. Real property has borders and it is tangible; you could ascertain the limits of the real property in time and space its possible for you to if the real property is a land you could go to the site and ascertain the boundaries of the property. To ascertain the boundaries of a patent right it is not immediately discernible by looking at

the product in which the patent manifest. The product may have a notifications somewhere say that it is covered by a patent showing a number.

But you would not know; what is the extent of the right covered in the patent; unless you look at an external document. In this case the patent specification or the granted patent. So, the right that manifests in the patent is actually a created right, it is not apparent, it is not open in a sense that a person can see the technology and understand that it is patented. It is created because the right was carved out by a legal mechanism where the law offers such rights to be carved out. And right is protected by documentation; by documentation be referred to a process of registration by which the right is recognised.

There are certain right which does not require any registration. For instance, the right of a parent over a child that comes out of a relationship between the parent and the child which the world recognises by the fact that the child and the parent live together, whereas other rights are created; for instance a patent right is created it is carved by distinguishing the invention from what had gone before.

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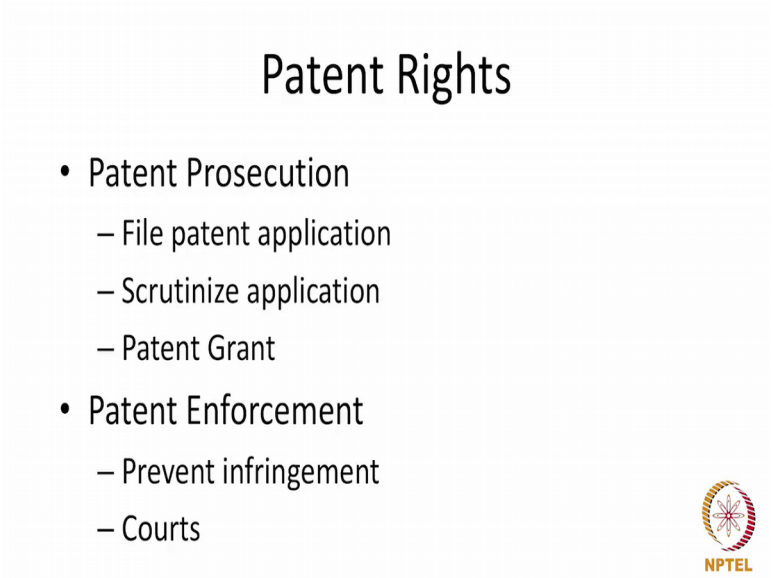

So, in the case of patent rights you need to go through a process of registration. And the process of registration starts with a person filing a patent application before the patent

office, and the patent office scrutinizing the application for certain checks, and later on the patent granting this application into a granted patent. This process the application goes from a formal application and it materializes into a grant is what we call patent prosecution.

Once the patent is granted then the enforcement of a patent which refers to steps taken by the patent holder to ensure that the patent is not violated; the right in the patent is not violated by others which is what we refer to as infringement. The enforcement part happens before the courts. So, the patent offers or the intellectual property office; the task of the intellectual property office is to scrutinize the patent application and grant of patent where as the courts or a judicial system is interested with the task of enforcing them. So, if there is an infringement of a patent the patent holder will have to file an infringement suit before the courts.

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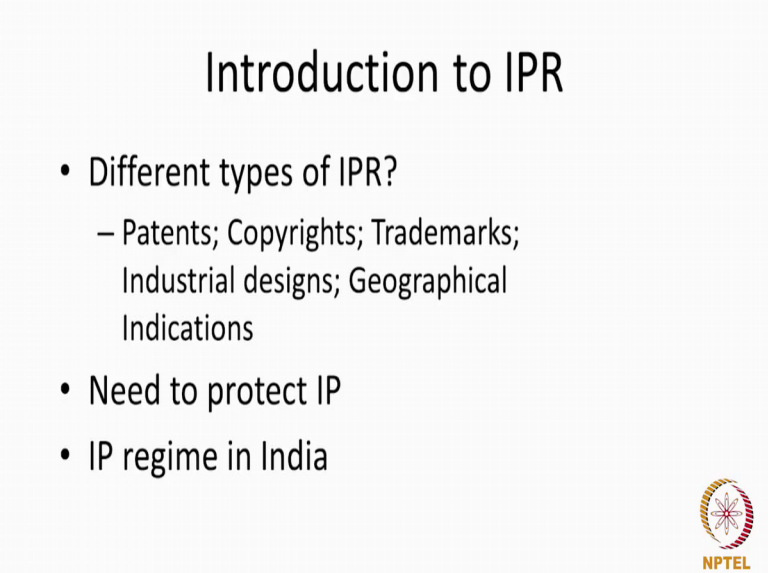

Now, in a modern environment, in which we live there is need to protect intellectual property. The need to protect intellectual property arises from the fact that we are now living in a knowledge economy. And the knowledge economy is distinguished by who has access to knowledge not only who has access knowledge, but also who is able to use this knowledge to his or her benefit.

Intellectual property actually gives exclusive the over use of knowledge and information in one form or the other. The intellectual property regime that we have in India has actually been a result of various international arrangements that came about in different branches of law. So, you had the Patents Act which started off with the Paris Convention in the 19th Century, and later on we had the trips agreement as a part of the WTO regime. So, if you look at the history of patent law that is from the international legal system we can find that patent law like other intellectual property regimes are actually pushed down by a group of countries to other countries; in the sense that, the norms are made at the international level and then they are replicated or they are adopted at the domestic level.

So, which is true for India the Indian IP regime started off as British act the Patents Act of 1911 which was brought into India when the Britisher's were ruling the country.

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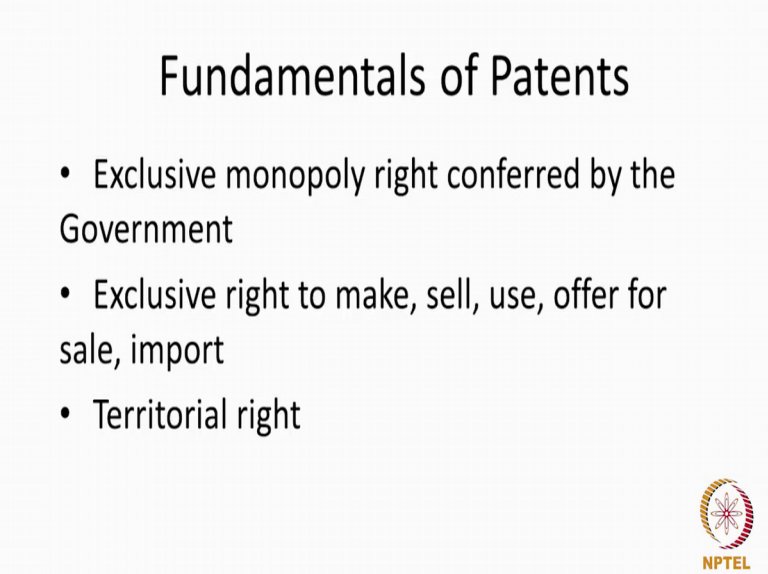

Fundamentals of patents: patents offer an exclusive monopoly right, this right is conferred by the government and it is for a period of 20 years from the date of application. The exclusive right pertains to the right to make sell use offer for sale or import the invention. The exclusive right is actually a right to exclude others. So, there you have a right to exclude others from making, selling, using, offering for sale or for

importing the invention that is covered by the patent. Patents are territorial, in the sense that if the Indian patent office a grants a patent it is not enforceable in Sri Lanka or Bangladesh or Pakistan or any of the neighbouring countries.

So, patents are granted by the local patent offices, and because you are granted by the local patent offices the territory of their operation are also limited to the jurisdiction of those officers. So, an Indian patent can only be enforced within the boundaries of India.

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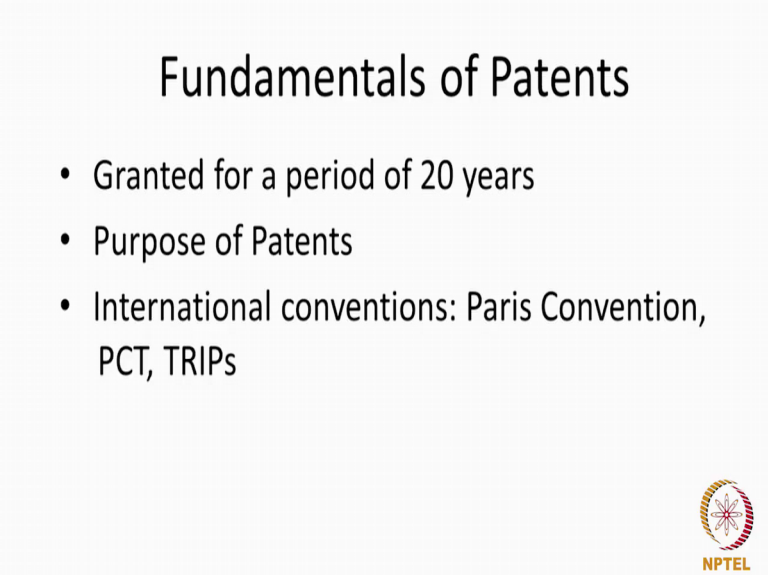

They are granted for a period of 20 years. Patent serve different purposes. Now the object of a patent or the grant of a patent could be to identify area and technology and to do further work. So, finding a patent gives the patentee or the patent owner the right to work on a particular share to the exclusion of others. So, whatever products that can come out of that technological area can now be carved as a right by the patent holder.

Patents are also seen as instruments that can incentivize innovation. By offering limited monopoly for the inventor the patent system actually incentivises people to take risky tasks like spending time effort and money in developing inventions. In a world without patents it would be very difficult for people to invest time and resources in coming up with new inventions. In a world where there are new patents if a person comes out with

an invention there is all likelihood that a competitor would steal it or copy it and enter the market. So, the patterns grant a protection for people who would invest time and effort in creating new things.

As we mentioned we derived this regime through certain international conventions like the Paris Convention the trips agreement which stands for trade related aspects of intellectual property rights which is a part of the WTO- the World Trade Organisation. And also we have some arrangements between countries to facilitate patent filing internationally like the patent cooperation treaty- the PCT.

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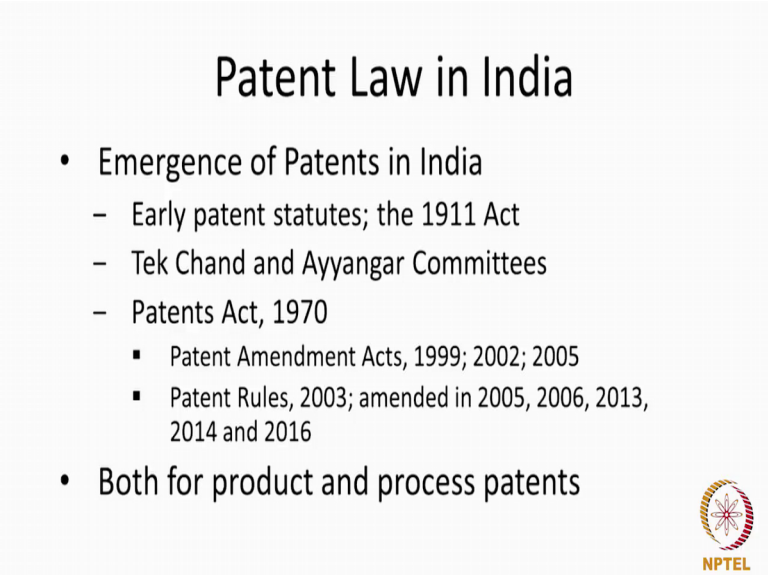

As we mentioned before the Patents Act in India came as a British import. The Britisher's when they were ruling the country; they had brought in the Patents Act of 1911 which was largely the British act itself. But soon after independence it was felt that because patterns are tried tied closely to the development of a nation it was felt that India required its own patent law.

So, post independence there were two committees led by experts: the Tek Chand Committee and Ayyangar Committee which were established to study whether the existing patent regime which was in 1911 Act suited the national interest, and more

particularly at the stage in which India was a newly independent country and trying to make its place firm in the global economy. And it was found by both the committees that the Patents Act as it existed does not favour local and national development.

So, there was a proposal by the Tek Chand Committee followed by the Ayyangar Committee to revise the patent laws. And the 1970 Act which is the present act that we have came as an exercise that was suggested by taking all the measures the committees had suggested. So, the 1970 Act for the first time it removed product protection for medicines. Earlier the 1911 Act had offered product protection for product patents; what we call product patents for pharmaceutical and drugs; pharmaceuticals and drugs. Now this was removed by the 1970 Act.

The 1970 Act also made some substantial change changes in on the term of the patent. The term of a patent was 14 years, and the term of a patent for a food medicine or drug was a shorter period it would vary between 5 to 7 years. And they were also host of provisions on compulsory licensing which was introduced by the 1970 Act. The 1970 Act was a after India became member of the world trade organisation in 1995; the act came to be amended three times in 1999, in 2002 and in 2005.

These were all amendments that brought the act in compliance with the trips agreement of the WTO. The trips agreement being an international agreement it brought a common standard on various things. For instance, the trips agreement brought in and the trips agreement was actually a product of close to 8 years of negotiations between the member countries. It brought a common standard that the term of a patent shall be 20 years from the date of application. India earlier had a 14 year period for inventions in general and a shorter period for patents inventions pertaining to food drug and medicine.

Now this had to be changed. So, apart from this the fact that the Indian patent regime did not grant product patents for drugs and pharmaceutical was also to be done away with. So, the Indian patent system went through a series of amendments to the Patents Act in 99 followed in 2002 and later on in 2005; these three sets of amendment brought the Indian law in complete compliance with the troops obligations.

Soon after amending the act the rules were also amended. Now the rules are subsidiary to the act, they perform, they are what we call delegated legislation, the central government has the power to make the rules, whereas the acts have to be acts that are passed in both the houses of the parliament. So, we had a substantial turnover in 2003 where new rules were framed, these rules were amended in 2005, 2006, in 2013, 2014 and lately in 20161.

So, with the amendment of the Patents Act in 2005 we now offer product and process patents irrespective of the technology. Earlier there was a distinction that product patents need not be granted for drugs and pharmaceuticals. Now that is gone. So, the two kinds of patents broadly that can be granted under the Indian Patents Act are either for a product or for a process.