

Intellectual Property Rights – Overview TRIPS & TRIMS

Website for IPR in India - ipiindia.nic.in

IPR For M Voc Final Year JSSACS – Peush kumar

In This Session

- Concept of IPR
- Kinds of IPR
- Economic importance of protection

Kinds Of Property

- Movable property
 - Car, pen, furniture, dress.....
- Immovable property
 - Land, building.....
- Intellectual property
 - Literary works, inventions

Intellectual Property Rights

“Rights”

- A moral or legal entitlement to have or do something or prevent others from doing something.

Intellectual Property Rights

“Property”

- A thing or things belonging to someone

Intellectual Property Rights

“Intellectual”

- Relating to the intellect

Intellectual Property Rights

- Very broadly, means the legal rights which result from intellectual activity in the industrial, scientific, literary and artistic fields.

Intellectual Property

- A WISE MANS GAME

IP Include Rights Relating To:

- Literary, artistic and scientific works
- Performances of performing artists, phonograms and broadcasts
- Inventions in all fields of human endeavor
- Scientific discoveries
- Industrial designs
- Trademarks, service marks and commercial names and designations
- Protection against unfair competition

- **Idea + Expression = COPYRIGHT**
- **Idea + Innovation + Invention = PATENT**
- **Idea + Quality + Identity = TRADEMARK**
- **Idea + Appearance = DESIGN**

- **Trade Secrets**
- **Industrial Design**

Nature

- Intangible
- Transferable
- Territorial
- Quid pro quo
- Limitations and exceptions
- Time-bound
- Exclusive right / Monopoly
 - IP and Competition Law:- contradictory theory

International Treaties

- Paris Convention for the Protection of Industrial Property 1883
- Berne Convention for the Protection of Literary and Artistic Works 1886
- International Union for New Varieties of Plants (UPOV) 1961, 1972, 1978 and 1991
- Convention on Biodiversity, 1992
- Agreement on Trade Related Aspects of Intellectual Property Rights 1994
- Internet Treaties 1996

Kinds

- Copyright and related rights
- Industrial property
 - Patents
 - Industrial designs
 - Trade marks & geographical indications
 - Layout designs/topographies integrated circuits
 - Trade secrets
 - Protection of new plant varieties

IPR: IPR at a Glance



Patent



Trademark



Copyright



Geographical Indication



Industrial Design



Trade Secret

Analyzing Rights

- **Strong –**

- Patents
- Designs

- **Moderate-**

- Trade marks
- Integrated circuits
- Plant varieties

- **Weak**

- Confidential information


Acquiring Rights

❖ Automatic rights

- Copyright

❖ Granted rights

- Patents
- Design
- Trademarks
- Integrated circuits
- Plant varieties
- Geographical Indications

| | |
|--|--|
| Patents | <ul style="list-style-type: none"> • Isolated polynucleic acids, peptides and polypeptides, enzymes, microorganisms, viruses, vectors, antibodies, probes, vaccines, compositions, expression systems, cell lines, plants, seeds, transgenic organisms, methods for preparation or use of the above; • medical devices |
| Trade marks | <ul style="list-style-type: none"> • Words/name, computer icons, graphical designs, multimedia elements or use of the above; • medical devices |
| Registered designs | <ul style="list-style-type: none"> • Medical devices, biochemical, biophysical or bio-electrochemical apparatus |
| Trade secrets / know-how | <ul style="list-style-type: none"> • Laboratory notebooks, design workbooks, customer information, documented internal processes, "data exclusivity" on clinical data generated for therapeutic approval |
|  Plant breeders' or plant variety rights | <ul style="list-style-type: none"> • Plant varieties, propagating and harvesting material from plant varieties |
| Domain names | <ul style="list-style-type: none"> • Web addresses |

IP Laws Of India

- The Copyright Act, 1957
- The Patents Act, 1970
- The Designs Act, 2000
- The Trade Marks Act, 1999
- The Geographical Indications of Goods (Registration and Protection) Act, 1999
- The Semiconductor Integrated Circuits Layout-Design Act, 2000
- The Protection of Plant Varieties and Farmers' Rights Act, 2001

Copyright And Related Rights

- Original literary, dramatic, musical and artistic works
- Cinematograph films
- Sound recordings

Rights

- Moral rights
 - Right of authorship
 - Right of integrity
 - Inalienable rights
- Economic rights
 - To reproduce the work in any material form
 - To issue copies of the work
 - To perform the work in public,
 - To make any translation or adaptation of the work
 - To sell or give on hire.

- **Automatic creation.**
- **Advantages of copyright registration**
 - Public record created
 - Can sue if infringed.

- **Term of copyright**
 - 60 years

Patents

- **What is a patent?**
 - Patent is a monopoly right granted by the State to exclude others from exploiting or using a particular invention. This exclusive monopoly granted by a Patent is provided in return for the inventor disclosing the details of the invention to the public.
 - **Term of a Patent ?**
 - 20Years

Conditions of Patentability

- **Novelty:**
 - Prior Art
- **Inventive Step:**
 - obvious to a person with ordinary skill in the art
- **Industrial Application:**

S 2. Definitions and interpretation.

- (j) "**invention**" means a new product or process involving an inventive step and capable of industrial application;
- (ja) "**inventive step**" means a feature of an invention that involves technical advance as compared to the existing knowledge or having economic significance or both and that makes the invention not obvious to a person skilled in the art;
- (l) "**new invention**" means any invention or technology which has not been anticipated by publication in any document or used in the country or elsewhere in the world before the date of filing of patent application with complete specification, i.e., the subject matter has not fallen in public domain or that it does not form part of the state of the art;

S 3-inventions Not Patentable

- a. Frivolous
- b. Contrary public order or morality ;
- c. The mere discovery of A scientific principle ;
- d. Mere discovery of any new property or new use
- e. Mere admixture
- f. The mere arrangement or re-arrangement or duplication
- g. A method of agriculture or horticulture ;

Cont.....

- i. Any process for the medicinal, surgical, curative, prophylactic diagnostic, therapeutic
- j. Plants and animals in whole or any part thereof other than micro organisms but including seeds, varieties and species and essentially biological processes for production or propagation of plants and animals;
- k. A mathematical or business method or A

Cont.....

- l. A literary, dramatic, musical or artistic work or any other aesthetic creation whatsoever including cinematographic works and television productions;
- m. A mere scheme or rule or method of performing mental act or method of playing game;
- n. A presentation of information;
- o. Topography of integrated circuits;
- p. An invention which in effect, is traditional

S 4. Inventions relating to atomic energy

No patent shall be granted in respect of an invention relating to atomic energy .

S 25. Opposition To The Patent.

- (1) Pre-Grant Opposition
- (2) Post-Grant Opposition

84. Compulsory Licences.

- (1) After the expiration of three years
 - (a) reasonable requirements
 - (b) not available at a reasonably affordable price
 - (c) not worked in the territory of India.

Great Patents

- 1. Cotton Gin (#72X – 1794)
- 2. Electric Motor (#132 – 1837)
- 3. Ice Machine (#8080 – 1851)
- 4. Improvement in Telegraph (#174465 – 1876)
- 5. Phonograph (#200521 – 1878)
- 6. Light Bulb (#223898 – 1880)
- 7. Electric Adding Machine (#430804 – 1890)
- 8. Airplane (#821393 – 1906)
- 9. Sliced Bread (#1867377 – 1932)

Industrial Designs

- Features of shape, configuration, pattern or ornaments.
- Three-dimensional features, such as the shape or configuration of an article, or of
- Two-dimensional features, such as patterns or ornaments.
- Term
 - 10 years initially.
 - +5 years renewable .

What Is Not Registrable?

- *not new or original*
- *disclosed to the public*
- *not significantly distinguishable*
- *scandalous or obscene matter*
- *contrary to public order or morality*

Trade marks

- Word
- Device
- Label
- Letters or numerals or any combination thereof.
- Combination of colors
- Sound marks
- Shape of goods or their packaging
- Marks constituting a 3- dimensional sign.

Applied to articles of commerce

- Territorial
- 10 years -- can be renewed indefinitely

Kinds

- Marks on goods
- Service marks
- Certification trademark
- Collective marks
- Well known marks
- Trade names

Geographical Indications Of Goods

- Quality
- Reputation
- Characteristic
 - Agricultural goods,
 - Natural goods or
 - Manufactured goods
- 10 years – renewable indefinitely.

Semiconductor Integrated Circuits Layout-design

- Original
- Novel
- Examination And Publication.
- 10 Years

Trade Secrets

- Invention
- Idea
- Survey Method
- Manufacturing Process
- Experiment Results
- Chemical Formula
- Recipe
- Financial Strategy
- Client Database
- Etc.....

When Trade Secrets Are Preferred?

- Not patentable;
- Un-limited life
- Cost
- Difficult to reverse engineer

Plant Varieties And Farmer's Rights

- New Varieties
 - ❖ Novelty, Distinctiveness, uniformity and stability
 - Extant varieties
 - ❖ Distinctiveness, uniformity and stability
- Persons who can Register
 - Breeders, farmers, universities, agricultural institutes
- Period of protection
 - 15 years for annual crops;
 - 18 years for trees and vines

Benefits of IP

- Good fences make good neighbors:
- Filing First is the rule
- Encourages
 - innovation
 - product development
 - technical change
- Monetary gains to inventors.
- Greater inflows of technology
- Reduces imports



THE TRIPS AGREEMENT

TRIPS

Trade Related Aspects of Intellectual Property Rights (TRIPS) is a World Trade Organization (WTO) agreement designed by developed countries to enforce a global minimum standard of Intellectual Property Rights.

Only one actually enforceable under GATT Arts. XXI & XXII & the WTO dispute settlement understanding.

Since TRIPS is part of the WTO agreements, developing countries that want access to the global market through the WTO must accept the TRIPS agreement, and integrate its IPR standards into their national legislation.

Broad Issues dealt in the Agreement

How basic principles of the trading system and other international intellectual property agreements should be applied

How to give adequate protection to intellectual property rights

How countries should enforce those rights adequately in their own territories

How to settle disputes on intellectual property between members of the WTO

Special transitional arrangements during the period when the new system is being introduced.

TRIPS: Standards for IIP

Patents shall be granted for any inventions, whether products or processes, provided they are *new, involve an inventive step, & are capable of industrial application.*

Patents shall be granted in all fields of technology.

Trademark

Defines what types of signs must be eligible for protection as trademarks.

Service marks protected the same way.

Copyright

Protection of computer programs as literary works & of compilations of data.

The agreement says performers must also have the right to prevent unauthorized recording, reproduction and broadcast of live performances (bootlegging) for no less than 50 years.

TRIPS: Standards for IIP

Exclusive rights can be exercised against acts for commercial purposes, including importation.

The minimum term of protection is 10 years

Trade Secrets

Undisclosed commercial information is to be protected against unfair commercial practices

Secret data submitted for the approval of new chemical entities for pharmaceutical & agrochemical products should be protected against unfair commercial use & disclosure by governments.

Geographical Indication

The TRIPS Agreement says countries have to prevent this misuse of place names.

Provision on basic principles

“each Member shall accord to the nationals of other Members treatment no less favourable than it accords to its own nationals with regard to the protection of intellectual property” (Art. 3)

Most-Favoured-Nation Treatment

“With regard to the protection of intellectual property, any advantage, favour, privilege or immunity granted by a Member to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of all other Members” (Art. 4)

Other provisions

General obligations like enforcement procedures must be available; procedures to be fair and equitable etc

Special obligations like enforcing provisions for enforcing civil and administrative procedures like Disposal of infringing goods, Right of information etc

DISPUTE SETTLEMENT

Aims for prevention of disputes through provisions on transparency
Settlement of disputes through panel procedures and decisions and trade sanctions in case decisions are not adhered to.

IMPLEMENTATION & IMPACT

- Developing countries (2005)
- Least developed countries to implement TRIPS was extended to 2013, and until 1 January 2016 for pharmaceutical patents.

Impact of TRIPs on Pharmaceutical industry in developed and developing countries

Relaxation

- Doha Declaration(2001)- circumvents patent rights for access to essential medicines through compulsory licenses.

Diff b/w TRIPS and Indian Patent Act

| Indian Patent Act | TRIPS |
|--|--|
| Only process not product patents in food, medicines, and chemicals | Process and product patents in almost all fields of technology |
| Term of patents: 14 year, 5-7 in chemicals, drugs | Term of patents: 20 years |
| Compulsory licensing | Limited compulsory licensing |
| Several areas excluded from patents | Almost all fields of technology patentable |
| Government allowed using patented invention to prevent scarcity | Very limited scope of governments |



THE TRIMS AGREEMENT

TRIMS

Agreement on Trade Related Investment Measures (Uruguay round)

TRIMs are rules that apply to the domestic regulations a country applies to foreign investors

Restrictions:

1. Include local content requirements
2. Manufacturing requirements
3. Trade balancing requirements
4. Domestic sales requirements
5. Technology transfer requirements
6. Export performance requirements
7. Local equity restrictions
8. Foreign exchange restrictions
9. Remittance restrictions
10. Licensing requirements
11. Employment restrictions

Legal Framework

The TRIMs agreement does not provide any new language
It focusses on two Articles that were identified in a previous case
under the GATT

Article III (National Treatment)

- National treatment of imported product, unless specified in other agreements
- Subjects the purchase or use by an enterprise of imported products to less favorable conditions than the purchase or use of domestic products

Article XI (Quantitative Restrictions)

- Prohibition of quantitative restrictions on imports and exports
- Part of the general trend in textiles and agriculture to phase out the use of quantitative restrictions

Aims of the Agreement

Desiring

- to promote the expansion and progressive liberalisation of world trade and to facilitate investment, while ensuring competition

Take into account

- trade, development and financial needs of developing countries, particularly least developed countries

Recognising

- certain investment measures can cause trade-restrictive and distorting effects

Notification

Governments of WTO members, or countries entitled to be members within 2 years after 1 January, 1995 should make notifications within 90 days after the date of their acceptance of the WTO agreement.

India's notified TRIMs

TRIMs Agreement India had notified three trade related investment measures as inconsistent with the provisions of the Agreement:

1. Local content (mixing) requirements in the production of News Print,
2. Local content requirement in the production of Rifampicin and Penicillin – G, and
3. Dividend balancing requirement in the case of investment in 22 categories consumer goods.

Transition periods

Members are obliged to eliminate TRIMs which have been notified. Such elimination is to take place within

two years for developed countries

five years for developing countries

seven years for LDC

Implementation Difficulties

Difficulties in identifying TRIMs that violate the agreement

Difficulties in identifying alternative policies to achieve the same objective

Difficulties in accounting for non-contingent outcomes such as the financial crisis in Asia and Latin America

Difficulties in meeting the transition period deadlines

LDCs lack the capacity to identify measures that are inconsistent with the TRIMs agreement and hence are unable to meet the notification deadline.

Patent filings rebound in 2010

Patent filings worldwide grew by 7.2% in 2010.

China and the US, which accounted for four-fifths of worldwide growth.

Japan and the US the main contributors for patent grants worldwide

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Patent filings rebound in 2010

Patents, trademarks and GDP annual growth rate (%), 2009 and 2010

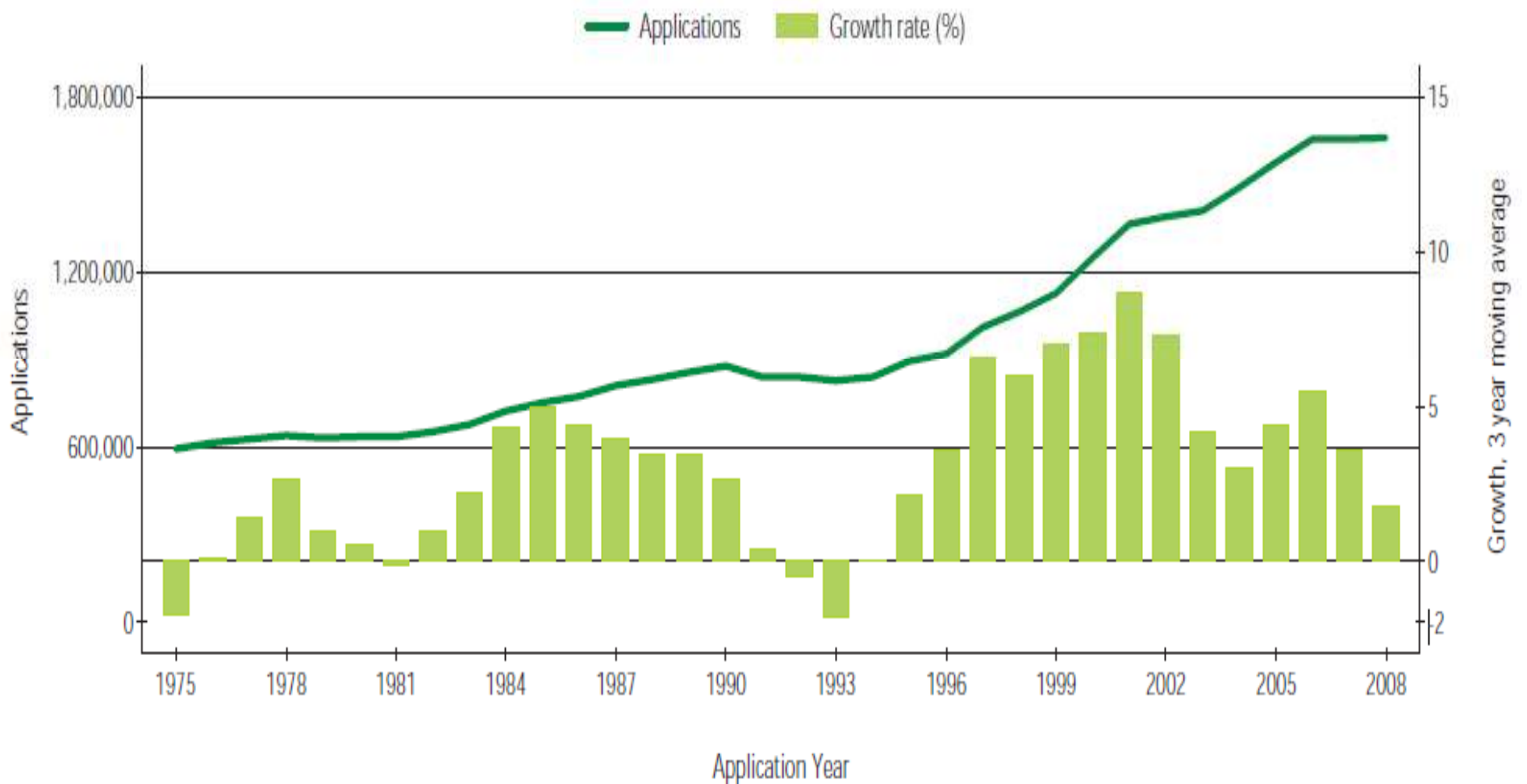
| IP Office | GDP | | Patent applications | | Trademark applications | |
|---|------|------|---------------------|------|------------------------|------|
| | 2009 | 2010 | 2009 | 2010 | 2009 | 2010 |
| World | -0.7 | 5.1 | -3.6 | 7.2 | -2.6 | 11.8 |
| Advanced economies* | -3.7 | 3.1 | -5.4 | 3.7 | -9.5 | 4.0 |
| France, Germany and the United Kingdom* | -4.3 | 2.3 | -6.5 | 7.1 | -2.6 | 6.9 |
| United States of America (US) | -3.5 | 3.0 | 0.0 | 7.5 | -10.1 | 5.0 |
| Japan | -6.3 | 4.0 | -10.8 | -1.1 | -8.1 | 11.1 |
| Republic of Korea | 0.3 | 6.2 | -4.2 | 4.0 | -10.1 | -5.3 |
| China | 9.2 | 10.3 | 8.5 | 24.3 | 19.1 | 29.8 |

Note: Except for "world total" figures, trademark application data refer to class counts, that is the number of classes specified in applications.

*Patent application data for European countries include both national patent office and EPO data. Trademark application data for European Union (EU) countries include national trademark office data and resident regional applications at the EU's Office for Harmonization in the Internal Market (OHIM).

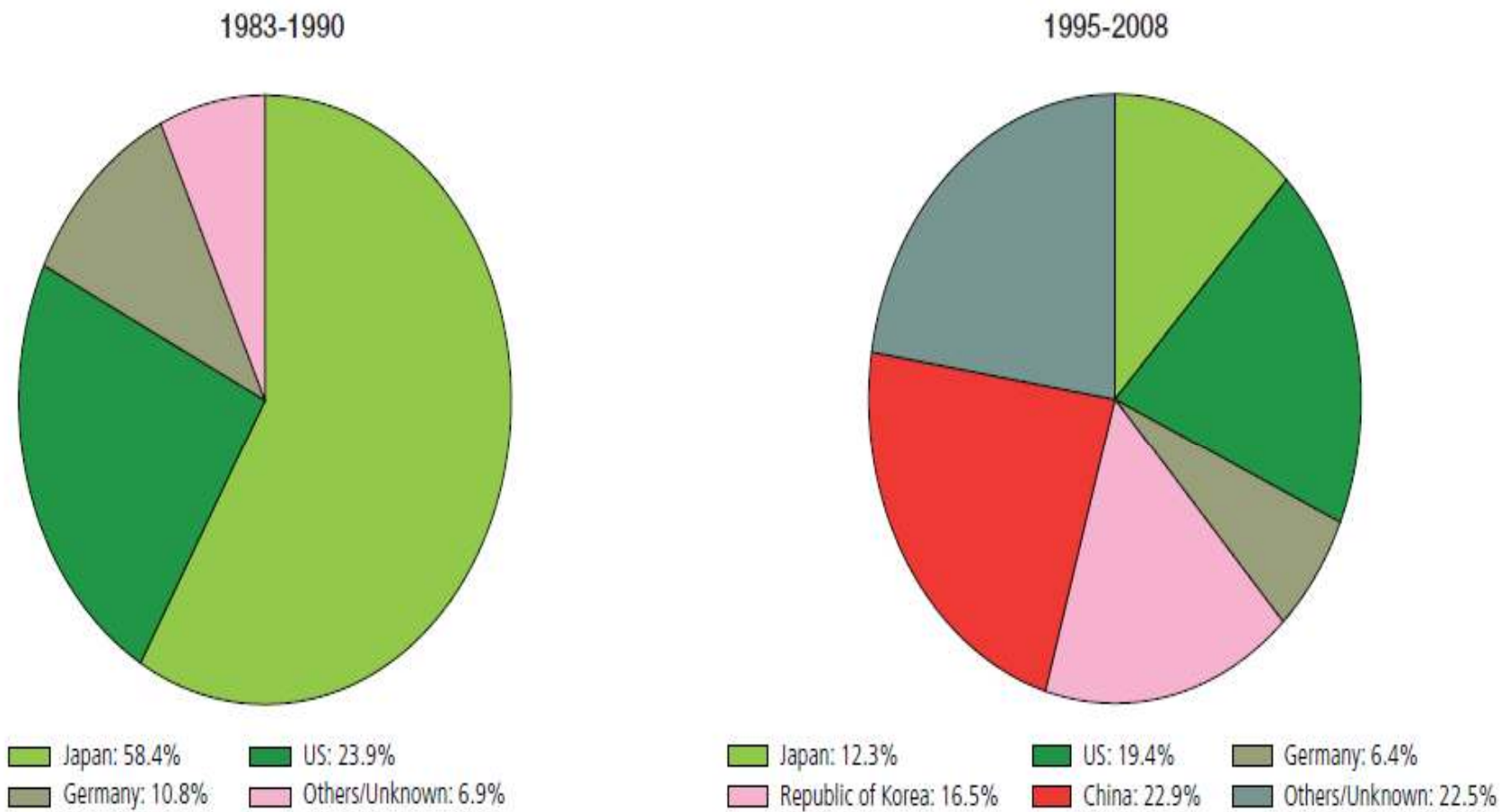
Source: WIPO
Report 2011

Figure 1 Growth in patent filings worldwide



Source: WIPO Report 2011

Figure 3 Contribution of individual countries to the change in total volume of filings

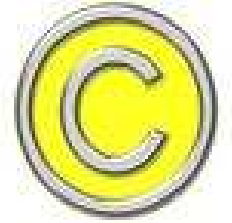


Note: Filings grew by 29% during the period 1983-2008 and by 85.6% between 1995 and 2008. The "Others" category includes all other origins and unknown origins. United States of America = US.

Source: WIPO Statistics Database, October 2011

Source: WIPO Report 2011

Limitations



- Creator holds a monopoly over his creation.
- Power in the hands of one person or company.
- Companies can charge any amount they desire.

Benefit Large Businesses

- benefit large corporations and businesses not individuals
- New innovations, are costly.
- Outdated patents to generate income rather than creating new, efficient innovations.

Current Issues

IPL brands - intellectual property
bouquets (2009)

Delhi's Nehru Place among IPR
infringing IT markets (Dec 2011)

The Apple v Samsung Patent
War (2011)



Implications for MNEs

MNEs should invest in countries where IPR laws are properly enforced

No technology diffusion will happen in the countries which complies with IPR laws.

Gives an incentive for innovative MNEs.

MNEs in developing countries with limited R&D capabilities will have a negative impact due to IPR laws.

Questions?

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THANK YOU