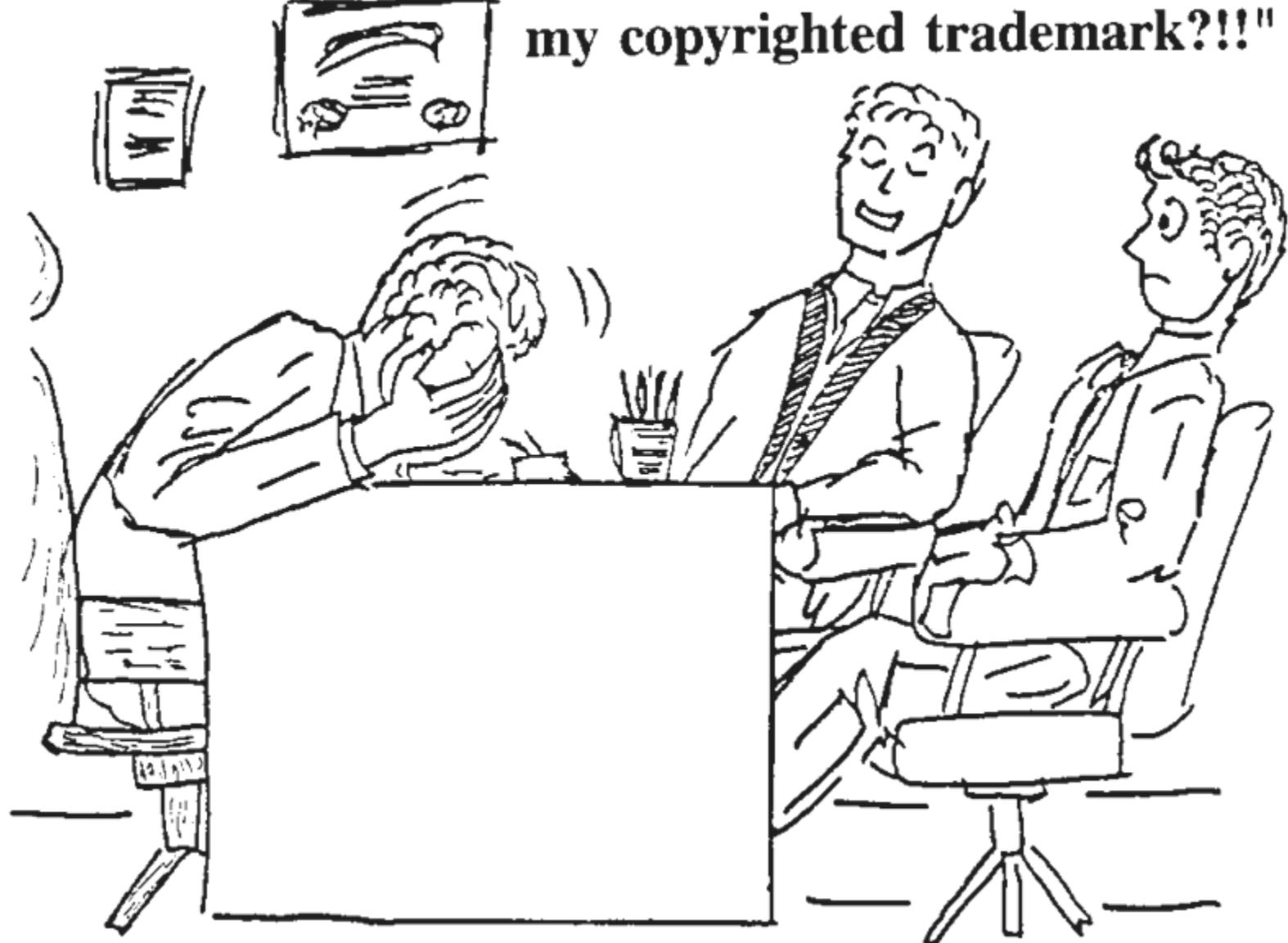




# The Basics of Intellectual Property Law

--Dr. Indu Bhatt



"All I asked was, 'Can I patent  
my copyrighted trademark?!!'"





# What is Intellectual Property?

Intellectual property (IP) is a term referring to creations of the intellect for which a monopoly is assigned to designated owners by law



# IP rights can be acquired for

- Name of the business : **Trade Name**
- Distinctive signs: **Trademarks, Geographical Indications, Certification Marks, Collective Marks**
- Creative designs (appearance or look of the products): **Industrial Design**
- Innovative products and processes: **Patents, Utility Models**
- Cultural, artistic and literary works, including (in most countries) computer software and compilation of data: **Copyright**
- Confidential business information (customer lists, sales tactics, marketing strategies, manufacturing process, etc.): **Trade Secrets**

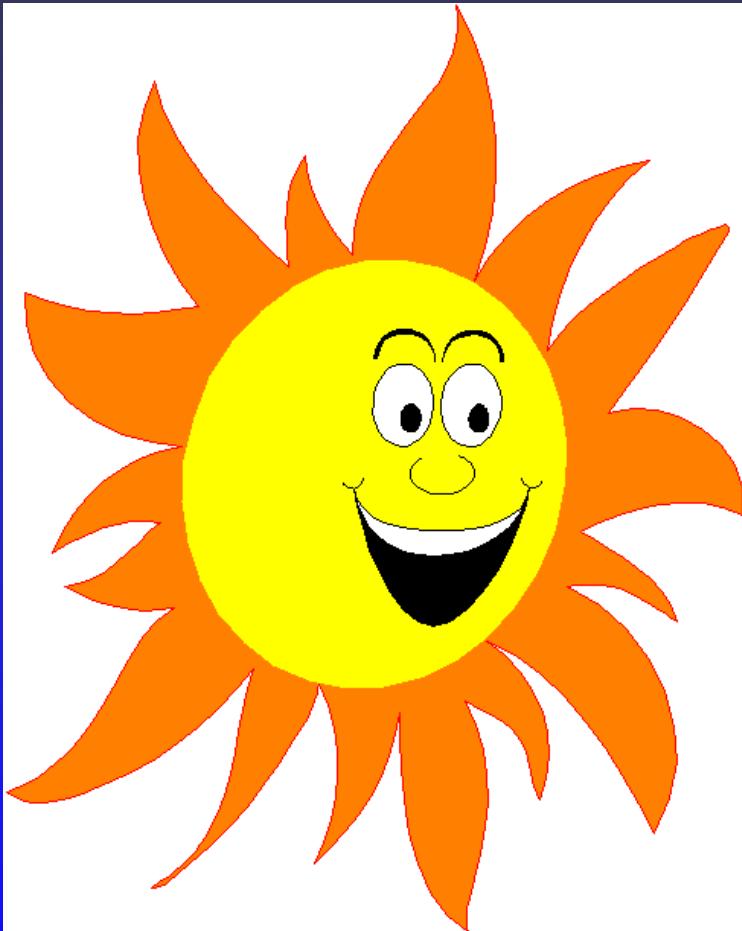


# What is a PATENT?

- A patent is an exclusive right granted for an invention, which is a product or a process that provides a new way of doing something, or offers a new technical solution to a problem
- The **limited monopoly right** granted by the state enables an inventor to prohibit another person from manufacturing, using or selling the patented product or from using the patented process, without permission.
- Period of Patents - 20 Years



# What is Patentable?



“. . . Anything under the sun that is made by man.”



# Conditions of Patentability

- Novelty: Invention not known to public prior to claim by inventor
- Inventive Step: Invention would not be obvious to a person with ordinary skill in the art
- Industrial Application: Invention can be made or used in any useful, practical activity as distinct from purely intellectual or aesthetic one



# Patentability

## ➤ **Process:**

- *Process, act or method, and primarily includes industrial or technical processes*

## ➤ **Machine:**

- *Self explanatory*

## ➤ **Manufacture:**

- *Articles which are made, including all manufactured articles*

## ➤ **Composition of Matter**

- *chemical compositions and may include mixtures of ingredients as well as new chemical compound*



## PATENT- Key Concept

Anyone who invents or discovers any new and useful process, machine, article of manufacture or composition of matter, or any new and useful improvement thereof, may obtain a patent.



# Outline of Patent Grant and Rights

- Formalities
  - Registration
  - Patent application
    - Claims
    - Defining the invention
    - Examination
    - Fee
  - Exclusive rights are granted by the patent office
    - For the patentee
    - To use the patented invention
    - For definite period
  - Prevent others from using the invention



# Patent Infringement

- *Unauthorized making, using, offering for sale or selling any patented invention within the United States*
- Patentee may sue for relief in the appropriate court where remedies include:
  - *injunction to prevent the continuation of the infringement*
  - *Money damages because of the infringement*
- Appeal to the Court



## Patent Exercise

### *Case 1*

Country X has a long tradition of medicine an important feature of which has always been the use of herbs.

Medicinal properties of some herbs and flowers, in particular periwinkle, have been known since the Middle Ages. Periwinkle extracts and preparations have been described in numerous books and articles on the subject.

Based upon this knowledge, A, a pharmacist, has developed a syrup consisting mostly, but not exclusively, of periwinkle extract. She claims that this composition can boost the immune system and protect against common cold.



## PATENT EXERCISE continued

*Question 1:* May A apply for a patent? If yes, what must A demonstrate in order to prove that she is entitled to a patent?



## PATENT EXERCISE continued

### *Answer to Patent Exercise Question 1:*

In order to obtain a patent she must demonstrate:

- 1/ That her composition is new (novel).
- 2/ That it involves an inventive step (is non-obvious over similar products that have been known/described before).
- 3/ That it is capable of industrial application (useful).

Since similar periwinkle-based products have been described before her invention, most likely she will not be able to satisfy the novelty and/or inventive step requirements.



## PATENT EXERCISE continued

Assume that A was granted a patent. Another pharmacist, B has bought A's syrup, analyzed it and made a syrup with the same ingredients. B wants to sell his syrup in the same country under a different name.

*Question 2:* May B do so?



## PATENT EXERCISE continued

*Answer to Patent Exercise Question 2:*

If A obtains a patent protection for her invention then she would have an exclusive right to make, use, sell, offer for sale and import the patented product. In that case, B would not be able to sell the same product in that country.



## PATENT EXERCISE continued

B has bought A's syrup, analyzed it and made a syrup with the same ingredients. However, B prepares a very diluted version of A's syrup and wants to sell it as a medicine for very young children.

*Question 3: May B do so?*



PATENT EXERCISE continued

*Answer to Patent Exercise Question 3:*

If A obtains a patent protection for her invention, mostly likely B's diluted version of the product would infringe the A's patent since it contains the same formula as the patented invention.



# Types of Marks

- Trademarks
- Trade Names
- Service Marks
- Certification trademark
- Collective Marks
- Trade Dress



# TRADE MARK

***A name of an enterprise or a Mark*** capable of being represented ***graphically, distinguishing the goods or services*** of one person from those of others e. g., LUX, ***Godrej, TVS, Telco, 555, APPLE***

**Trade Mark can be -**

- *sign , words, letters, numbers,*
- *drawings, pictures, emblem,*
- *colours or combination of colours,*
- *shape of goods,*
- *graphic representation or packaging or*
- *any combination of the above as applied to an article or a product.*



# Registration of Trade Mark

Trade Marks are registered by national trade mark registries and are valid in that country

Registration is made after examination and publication

Period of registration is for 10 years but can be renewed indefinitely



**Service Marks** include banking, education, finance, insurance, real estate ,entertainment,repairs, transport, conveying news and information, advertising etc

**Certification Trade marks:** Certified by the Proprietor as having characteristics like geographical origin, ingredients, quality e.g. **AGMARK, WOOLMARK**  
**Certification mark cannot be used as a trade mark.**



Certifies that the goods on which it is applied are made of 100% wool. It is registered in 140 countries and licensed to the companies which assure that they will comply with the strict standards set out by the Woolmark company , the owner of the mark.



## COLLECTIVE MARK

COLLECTIVE MARK is a Mark that distinguishes the goods -or services of members of association from **marks** of other undertakings

Who owns collective Mark ?

Association of persons

It could be manufacturers, producers, suppliers, traders or other profession bodies like institute of chartered accountants, test cricketers association etc.



# Trademark Exercises

## *Exercise 1*

Two college students have developed a software program that makes access to the Internet faster. They decide to sell their software program to people and companies that operate “internet cafés.” They use the mark “Moscrosoft” for their new software program because it will tell people that their software is as good as the software developed by “Microsoft.”

Question: Does their use of the “Moscrosoft” mark on their software violate any trademark rights of the Microsoft Company?



## Trademark Exercises continued..

*Answer to Trademark Exercise 1 Question:*

Yes. Although the mark is not identical to the Microsoft mark, it is sufficiently similar, and is used on sufficiently similar goods, that the unauthorized use of the mark is likely to confuse the public regarding the source or affiliation of the Moscrosoft goods.

A vertical decorative bar on the left side of the slide. It features a red arrow pointing right at the top, a blue arrow pointing left at the bottom, and a yellow arrow pointing up the middle. The bar has a gradient from red at the top to blue at the bottom.

Trademark Exercises continued..

## *Exercise 2*

PHARMAGALEN is a well-known drug manufacturer. In several countries, PHARMAGALEN holds a patent for a drug that helps prevent heart attacks in people who suffer from high blood pressure. It markets its patented drug under the registered trademark “Plasmoff.” PHARMAGALEN has discovered a number of counterfeit versions of its patented drug being sold in Country Y. These counterfeit versions are sold under various marks including “Plasmoff” “Plasmaff”, “Plasmov.” PHARMAGALEN does not have a patent in Country Y.

Question: Which of the marks above, if any, violate PHARMAGALEN’s trademark rights?

*Answer to Trademark Exercise 2 Question:*  
All of them since they are virtually indistinguishable from the Plasmoff mark. The unauthorized use of the marks violate PHARMAGALEN's trademark rights. It does not matter whether or not the drugs at issue are subject to patent protection. The violation lies in the unauthorized use of the confusingly similar trademarks.



# COPYRIGHTS-Key Concepts

Copyright law protects original works of authorship fixed in any tangible medium of expression.

- Literary works
- Musical, dramatic and choreographic works
- Pictorial, graphic and sculptural works
- Audiovisual works
- Sound recordings
- Architectural works
- Compilations and collective works



## Copyright Exercises

### Exercise 1

Using directories and websites from all major Country X research institutions and universities, A creates a web-based database of 1000 scientists from Country X; this database makes it possible to conduct searches by scientific fields and to find scientists who have published scientific papers in each field.

Question 1: Does A have a copyright?

Question 2: Can A charge people for using his database?



## Copyright Exercises continued...

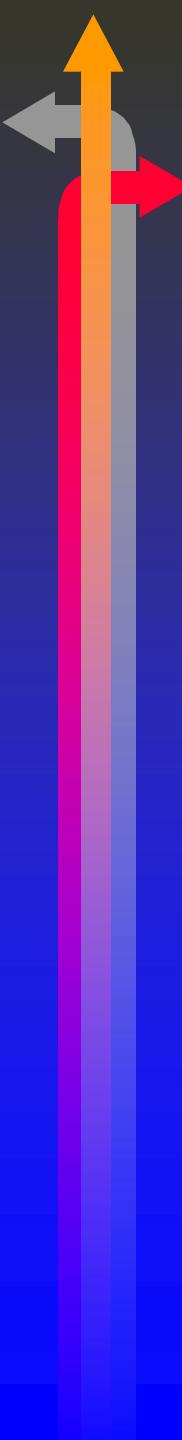
Answer to Copyright Exercise question 1: Possibly, provided that the selection and arrangement of the contents in the compilation of data constitutes an original intellectual creation. Assuming such originality exists in the selection or arrangement of the data compilation, it is important to note that such copyright protection would extend ONLY to the original manner in which the data has been selected and/or arranged and would not extend to the data or material itself. To the extent the data itself is in the public domain or otherwise not subject to copyright protection, others would be free to copy such data. Copyright protection would also exist for the display of the information on the website.

Answer to Copyright Exercise question 2: Nothing under copyright law prevents A from charging for access to his website.

## Exercise 2

B and C have developed a computer program that makes it possible to conduct searches in databases of pharmaceutical patents to identify domains of possible pharmaceutical research that are not covered by patents. They call this computer program “Pharmasearch”. B and C send their computer program to Company Y, a software company that specializes in “data mining”, and offer to sell or license this computer program to Company Y. A month later, Company Y sends back the computer program to B and C with a letter saying that Company Y is not interested in buying or licensing the computer program. A year later, Company Y publishes and starts selling computer program that makes it possible to conduct searches in databases of pharmaceutical patents to identify domains of possible pharmaceutical research that are not covered by patents. Company Y calls this computer program “Moleculesearch”. B and C obtain a copy of “Moleculesearch”, analyze it, and conclude that the source code of the computer program, its structure, and the screen displays are different from the source code, the structure, and the screen displays of “Pharmasearch”.

*Question:* Has Company Y infringed B and C’s copyright?



## Copyright Exercises continued...

Answer to Exercise 2 Question: No. Copyright does not protect ideas but the expression of ideas. So long as Company Y has not copied any of the protected expression of “Pharmasearch”, it has not infringed B and C’s copyright. Copyright does not prevent someone from creating a computer program (1) which performs the same functions, as another program (2), so long as program 1 does not reproduce the protected expression of computer program 2, the original. This protected expression includes the code, its screen displays, and, in certain instances, the structure, sequence and organization of the program.



# Would there be any reason NOT to claim an IPR???





## Trade Secrets Key Concepts

A trade secret is any formula, pattern, device, technique, process or compilation of information that

- Is the subject of reasonable efforts to maintain secrecy, and
- Which derives economic value from not being generally known or readily ascertainable by others.

Trade secrets are protected by keeping the relevant information secret.



# Trade Secret Exercises

## Exercise 1

Company CB's engineers invented an industrial glue that made it possible to glue composites to metals. CB decided not to apply for a patent on its invention, but rather to keep the formula a secret. CB's glue is sold under the brand SUPRAMOLECULE. Company AD, a competitor, bought a container of SUPRAMOLECULE and analyzed its content. After several weeks, AD was able to determine precisely the chemical composition of SUPRAMOLECULE. AD then started manufacturing and selling glue with the same composition as SUPRAMOLECULE. AD's glue is sold under the brand BONDATOM.

***Question:*** Was CB's intellectual property violated?



## Trade Secret Exercises continued..

### *Answer to Trade Secret Exercise 1*

#### *Question:*

No. AD obtained the bottle of glue through legal channels and learned BC's secret composition through appropriate means (i.e. reverse engineering). Consequently, AD is allowed to use this information.

## Exercise 2

Company CB's engineers invented an industrial glue that made it possible to glue composites to metals. CB decided not to apply for a patent on its invention, but rather to keep the formula a secret. As part of its desire to keep the formula a secret, CB asked all the personnel of its research and development department to sign a confidentiality agreement under which each employee agreed not to disclose the glue's formula without authorization from CB. CB's glue is sold under the brand SUPRAMOLECULE. Company AD, a competitor, bought a container of SUPRAMOLECULE and tried to analyze its content. After several weeks, AD was unable to determine precisely the chemical composition of SUPRAMOLECULE. AD then asked an executive recruitment firm to hire CB's head of research and development, Samuel A. by offering him a very high salary. Samuel A. agreed to work for AD.

Six months after Samuel A. started working for AD, AD started selling a glue similar in its chemical composition to SUPRAMOLECULE. AD's glue is sold under the brand BONDATOM.

Question: Was CB's intellectual property violated?



Trade Secret Exercises, Questions continued..

*Answer to Trademark Exercise 2 Question:* If AD acquired the formula improperly (which would be subject to proof in court proceedings) it might be liable for trade secret misappropriation. If Samuel A. violated his confidentiality agreement by disclosing the trade secret to AD, he might be liable for breach of contract.

Geographical Indication is an indication which identifies goods as **agricultural** goods, **natural** goods or **manufactured** goods as originating, or manufactured in the territory of country, or a region or locality in that territory, where a given **quality**, **reputation** or **other characteristic** of such goods is essentially **attributable to its geographical origin**.



## Examples of GI

Darjeeling tea

Kolhapuri Chappals

Jaipuri Razaai

Tequila

Champagne





# Registration

In India, geographical indications have to be registered.

Geographical Indications Registry examines and publishes the application before registration

Registration is valid for 10 years but can be renewed indefinitely



# Rights

Exclusive right to use the Geographical  
Indication on the goods

Right to obtain relief for infringement of the  
Geographical Indication



# Fair Use

← Limited use without owners permission

← criticism, comment, parody, news reporting, teaching, scholarship or research

← criteria

    ← purpose and character of use

    ← nature of original work

    ← amount of work used

    ← extent of harm