

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 5 | Issue 5

2022

© 2022 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

Dynamics of Intellectual Property in Inheritance Rights

PRERNA KHATRI¹

ABSTRACT

Intellectual property rights have a big impact on international trade in the modern period. The possibility of creative ideas being taken without the author's permission is increased in this digital age. Strong IP regulations are necessary since they contribute to the state's economy generally. IPR is one of the means of securing intangible assets. The property that is delivered to a descendant when a relative passes away can be broadly referred to as an inheritance. When someone passes away, their property, titles, debts, rights, and liabilities are transferred to another person by way of the right of inheritance. Some of the law regulating succession in India is the Hindu Succession Act, Indian Succession Act, Muslim Personal (Shariat) Law, etc. The purpose of this research paper is to analyse inheritance rights with respect to Intellectual Property.

Keywords: *Intellectual property, inheritance, succession.*

I. INTRODUCTION

Any fundamental act of human intelligence, such as works of art, literature, technology, or science, is covered by intellectual property (IP). The term "intellectual property rights" (IPR) refers to the legal privileges granted to the producer or inventor to safeguard their creation or manufactured goods. These legal rights provide the creator, maker, or user of the invention/product complete use of it for a set amount of time and grant them an exclusive right. To put it another way, we may argue that legal rights forbid anybody else from utilising the intellectual property for commercial gain without the owner's prior approval. Trade secrets, utility models, patents, trademarks, geographical indications, industrial designs, integrated circuit layout designs, copyright, and associated rights, and novel plant varieties are all examples of IP rights. It is widely accepted that IP is crucial to the modern economy.²

The notion of ownership in the twenty-first century now includes the most intangible of all assets—ideas or intellectual property—in addition to the sheer possession of the purely tangible (IP). Equally crucial is ensuring that this IP right benefits your heirs. While they can battle for this after you pass away, it would make their lives much simpler if your will expresses your

¹ Author is a Student at Kirit P. Mehta School of Law, NMIMS, Mumbai, India.

² (Sharma, 2017)

preferences clearly. It may take years or decades to sort out and distribute IP ownership due to the complex IPR regulations. Although the idea has been around for centuries, more contemporary interpretations of intellectual property have made it more difficult, if not impossible, to prove ownership definitively. Making sure that your legal heirs' profit from your work necessitates careful legal safeguards, with some even advocating IP waiver. "Obviously, the majority of the most valuable intellectual property (IP) assets belong to corporate entities, especially those that are used commercially, such patents and trademarks. For copyrights, individual ownership is normal "says Jyoti Sagar, managing partner at K&S Partners, a law firm that specialises in intellectual property. Therefore, it is crucial that you establish copyright since it will facilitate IPR succession more than anything else.³

II. TYPES OF INTELLECTUAL PROPERTY RIGHTS

Copyrights, patents, and trademarks may be examples of your intellectual property. Songs, written works including novels, screenplays, poems, artwork, photography, software, sound recordings, and motion pictures are all considered "original works of authorship" and are protected by copyright laws. Copyright entitles you to perform, show, and create derivative works based on the original work, as well as make and distribute copies of it. As soon as a piece of work is created, the creator owns copyright. There are varying expiration dates for older works.

Inventions are covered by patents. To obtain a patent, you must submit an application to the Patent and Trademark Office. The majority of patents are granted for an invention's practical elements (utility patents), but there are also design and plant patents. Design and utility patents each have a 14-year lifespan.

The items you use to identify your firm are covered by trademarks. You or your company may have registered trademarks for your company name, logo, or product names if you own a business. You may still retain state- or common-law trademark rights if your trademarks are not federally registered. As long as you keep using the mark and submit maintenance paperwork on schedule, a registered trademark will remain valid permanently.

III. METHODS OF TRANSFER

Without a will, you can transfer intellectual property through intestate succession rules, your will, a trust arrangement, or a formal agreement you make while you're still alive. Intestate succession may result in outcomes you did not want or expect. For instance, in many states, if

³ ibid

you pass away without leaving a will while your spouse, parents, or children are still alive, your surviving spouse does not necessarily inherit all of your assets. The spouse often inherits a share of the estate, with the remaining assets going to the parents or children.⁴

The crucial fact is that, in the absence of a will, your state's courts will allocate your assets in accordance with a strategy created by the state legislature. Your assets will be distributed in accordance with your plan if you have a will. You must carefully construct your bequests if you decide to transfer rights through your estate planning documents. The most frequent method of asset transfer in most wills is a bequest of "tangible personal property," yet this language may not convey your intellectual property rights. As a result, instead of being transferred to specific individuals as you intended, your works and other intellectual property assets may end up in your "residuary estate" to be divided among your beneficiaries in accordance with the general instructions for asset distribution in your estate planning documents.

IV. TESTAMENTARY BEQUESTS AND LIFETIME TRANSFERS

Your IPAs can be transferred in a variety of ways. Typically, you can assign them by a formal contract that is signed while you are still alive, or you can give IPAs after your death through a trust arrangement, a will, or intestate succession rules if you don't have a will. Or, based on the characteristics of your IPAs, a hybrid approach might be the best option. It's crucial to take into account the possible tax implications of an IP transfer or bequest when deciding whether to transfer assets during your lifetime or as a testamentary bequest. The federal gift or estate tax treatment may influence your choice. Age, maturity, and the capacity of receipts to safeguard and benefit from IPAs are further considerations.

Making the decision to transmit your works while still living or to leave them in your will might be challenging. The practical factors and the tax repercussions should both be carefully considered. There are various reasons to leave your intellectual property to someone else in your will. For your own usage throughout your lifetime, you might want to keep these assets. Alternatively, you could desire to avoid having to pay the gift tax that a lifelong donation might entail. You may decide to leave your works and the intellectual property rights in them to others through your will if you don't anticipate that your gross estate will be greater than the amount exempt from federal estate tax by the unified credit.⁵

On the other side, there are several aspects that support giving intellectual property as a lifetime gift. Depending on the type of intellectual property, different laws apply. The three areas of

⁴ Find Law, "Estate Planning Issues and Intellectual Property". (2008)

⁵ Indian Institute of Patent and Trademark (IIPTA), "Who will inherit your property actually?"

intellectual property law that will be briefly discussed below and how they individually relate to estate planning issues will be covered.⁶

COPYRIGHT

The general rule is that copyright lasts for 60 years. In the case of original literary, dramatic, musical and artistic works the 60-year period is counted from the year following the death of the author. In the case of cinematograph films, sound recordings, photographs, posthumous publications, anonymous and pseudonymous publications, works of government and works of international organisations, the 60-year period is counted from the date of publication.

Ideas are not protected by copyright laws. It defends intellectual manifestations like books, computer programmes, plays, music, fine art, audio-visual works, and architectural creations. Recent legislation has made copyrights more durable than before. You should make plans for the disposal and control of the copyright rights if they could make up a sizeable portion of your estate since they might remain valuable after your death.

It is crucial to keep in mind that unless there is a written document explicitly transferring the copyright, the transfer of a physical object (such as a painting) does not convey any rights to the copyright. In order to carry out your goals, a lifetime gift or testamentary bequest of a copyright must be carefully worded. The executor or trustee of your estate should get clear instructions regarding how to handle your copyrights from the gift or bequest. While another executor handles the remainder of the estate, some authors designate a "literary executor" to handle the work and the intellectual property rights.

TRADEMARK

The use of distinguishing phrases, designs, and other elements to set your products and services apart from those of your rivals is protected by trademark law. The fundamental things or concepts themselves are not protected. The distinctiveness of a trademark has an impact on its strength; the more distinctive a mark is, the more protection it enjoys in comparison to other marks for related products or services. For instance, you might be the owner of your company's trademark, or the mark could be an identifiable person's name or a reference to one (in which case special rules apply). In either case, special consideration should be given in the development of an estate plan to the disposition of trademarks that you have licenced to the company as well as any uses of a person's name, likeness, or right of publicity in connection

⁶Mamaraimova, G. (2021). INHERITANCE ISSUES OF NON-PROPERTY (MORAL) RIGHTS OF INTELLECTUAL PROPERTY. *Norwegian Journal of Development of the International Science*, (65-1), 20-23.

with the company⁷. Your executor or trustee must submit paperwork to the appropriate agency as part of the administration of an estate holding state or federal trademark registrations in order to record the transfer of the registration and make it possible for the new owner to manage the registration of the marks. In order to effectively protect the mark, the fiduciary and/or the new owner should also be given instructions to keep an eye out for possible infringement and to assure continuous use of the mark.

PATENTS

Raw ideas are not covered under patent law. The term "innovation" is used to refer to any new and beneficial technique, machine, production, or composition of matter, as well as improvements to those already mentioned. It is not necessary for the innovation to be created, built, or tested. The legal definition of a "reduction to practise" is the simple act of filing an application with full disclosure. An invention must not be obvious to someone with ordinary skill in the "art" or field of invention in order for it to be patented.

Prior to any use, disclosure, or sale of the invention to the general public, a patent application must be submitted to the patent office. Transfers of patents must be made in writing. Who owns the patent, who has the authority to licence it, and who is responsible for maintenance payments should all be made explicit in your will.⁸

V. CASE ANALYSIS

Madhu Kishwar & Ors vs State of Bihar & Ors⁹

As modest family enterprises grow over time and become large corporations, battles over the legacy and name of fathers and predecessors are frequent in Indian courts. One such trademark issue involving two brothers who claimed they had inherited the right to utilise the goodwill in the mark "Sri Krishna Sweets" was resolved by the Madras High Court in 2017. The younger brother, M. Murali, was sued for trademark infringement by Mr. M. Krishnan, the owner of Sri Krishna Sweets Private Limited in Coimbatore. The District Court in Coimbatore denied the plaintiff's request for an injunction because Mr. M. Krishnan had not made a prima facie case in his favour. The Trial Judge stated that the said case has been filed with consent for more than 20 years. The Plaintiff filed an appeal with the Madras High Court after being upset by the aforementioned ruling of the Trial Judge, and there the plea for an injunction was also rejected

⁷ Christopher Heer, "The Inheritance of Intellectual Property". (2022)

⁸ Terrell, T. P., & Smith, J. S. (1985). Publicity, Liberty, and Intellectual Property: A Conceptual and Economic Analysis of the Inheritability Issue. *Emory LJ*, 34, 1.

⁹ 1996 AIR 1864

in the defendant's favour.

According to the case's circumstances, M. Krishnan's father and M. Murali opened the "Shri Krishna Bhawan" restaurant in Coimbatore in 1948. Later, in the year 1979, the eldest son, M. Krishnan, launched a company under the name "Shri Krishna Sweets" and simultaneously registered three trademarks: the stylized word "Krishna," the word mark "Krishna," and the word mark "Krishna" in capital letters. M. Krishnan asserted that he gave the Defendant an oral licence to use the trademarks in question in 1990 and appointed him as the company's director at the same time. Later, M. Krishnan gave his wife the rights to the trademarks. He then submitted an application for the full name "Sri Krishna Sweets" to be registered as a trademark, but he later withdrew it because he had already transferred the trademarks and did not own the previously registered trademark with which the current trademark has been ordered to be published as an associated trade mark.

M. Murali left his position as a director of M. Krishnan's Company in 2010 to create his own business. He then opened branches both in India and internationally. The dispute between the brothers began in 2015 when M. Krishnan's wife transferred all of his trademarks to him. M. Krishnan then wrote to his younger brother to confirm the verbal authorization he had previously received to use the trade names. In response, M. Murali argued that since their father founded both the company and the moniker "Sri Krishna Sweets," both brothers had an equal right to use the name for their respective businesses as part of their shared heritage. The elder brother addressed the Trial Court with this disagreement in hand, and the Trial Court dismissed its accusations of trademark infringement. He then filed an appeal with the Madras High Court.

The Plaintiff claimed that he founded the company "Sri Krishna Sweets" and that the Trial Court erred in determining that both sons shared equal rights to the goodwill and that the name was a part of their common father's estate. Additionally, he would be the sole owner of "Sri Krishna Sweets" after the word mark "Krishna" had been registered in his favour. Additionally, citing the family division deed, the plaintiff claimed that the father never asserted any ownership rights in the aforementioned trademarks, making M. Krishnan the rightful owner of those trademarks. The Plaintiff further argued that the Defendant's attempts to register the mark "Sri Krishna Sweets" in 2010 demonstrated conclusively that the Defendant's claim of a shared goodwill inherited from the father was made solely for the sake of the current lawsuit. He also cited the joint venture agreements between the plaintiff and the promoters in Dubai and the United States, both of which contained clauses that made it clear that the defendant was a co-signatory to the agreements and had acknowledged the plaintiffs' rights to the marks "Sri Krishna Sweets" and "SKS."

The Court further noted that the Defendant has been operating the company for approximately 20 years and that the Plaintiff has not objected to the use of the name "Sri Krishna Sweets" during this time. Therefore, the Plaintiff's actions cannot in any way grant the Plaintiff the authority to ask for an injunction against the Defendant. In the matter of *Narasus's Coffee Company v. Narasu's Roller Flour Mill*¹⁰, the court made it very plain that a trademark issue involving family members should not be handled as a trademark dispute but rather as a family conflict. The court dismissed the plaintiff's appeal after reviewing the pertinent documents and arguments presented by the parties and concluding that the balance of convenience favours the defendant, in accordance with the rules established in *Wander Limited & Anr. Vs. Antox India Pvt. Limited*.¹¹

VI. FINDINGS

1. Patents are valid for only 20 years and upon the owner's death, they devolve to the heirs.
2. Trademarks can be renewed indefinitely and inherited through succession laws.
3. Designs are initially valid for five years and there are provisions for heirs to take over ownership.

VII. CONCLUSION

In order to make sure that the transfer of your intellectual property runs as smoothly as possible, specificity, planning, and attention to detail are essential. You may have more control over how your intellectual property rights are utilised in the future through wills and other testamentary documents, including transfers made while you are still alive. Poorly written wills or intestacy could also result in unsatisfactory outcomes because the "random" beneficiary might not be able to fully utilise the rights to songs, photos, books, patents, trade secrets, trademarks, or other IP assets. As a result, you might want to make conscious efforts to make sure they go to someone or something that can best manage them moving forward for the benefit of the people you select.

¹⁰ O.S.A.Nos.234 to 237 of 2008

¹¹ 1990 (2) ARBLR 399 SC, 1990 Supp (1) SCC 727

VIII. REFERENCES

1. Terrell, T. P., & Smith, J. S. (1985). Publicity, Liberty, and Intellectual Property: A Conceptual and Economic Analysis of the Inheritability Issue. *Emory LJ*, 34, 1.
2. Find Law, "Estate Planning Issues and Intellectual Property". (2008).
3. Indian Institute of Patent and Trademark (IIPAT), "Who will inherit your property actually?"
4. Mamaraimova, G. (2021). INHERITANCE ISSUES OF NON-PROPERTY (MORAL) RIGHTS OF INTELLECTUAL PROPERTY. *Norwegian Journal of Development of the International Science*, (65-1), 20-23.
5. Christopher Heer, "The Inheritance of Intellectual Property". (2022)
6. Terrell, T. P., & Smith, J. S. (1985). Publicity, Liberty, and Intellectual Property: A Conceptual and Economic Analysis of the Inheritability Issue. *Emory LJ*, 34, 1.
7. 1996 AIR 1864
8. O.S.A.Nos.234 to 237 of 2008
9. 1990 (2) ARBLR 399 SC, 1990 Supp (1) SCC 727
10. Sharma, S., 2017. *All you want to know about Intellectual Property*. [Online] Available at: <https://blog.ipleaders.in/ipr-description/>
