



**LAW RELATING TO PATENTS, TRADE MARKS, COPYRIGHT AND DESIGNS, (1999). By B.L. Wadehra, Universal Law Publishing Co. Pvt. Ltd. Delhi.**

FREE ACCESS to global market with an avowed objective of transfer of technology to developing nations, reciprocated by the changes in their legal regime of intellectual property, was realised in 1995 by the establishment of World Trade Organisation (WTO). India along with other 123 countries signed the agreement, which means automatic acceptance of all the 28 agreements signed under WTO regime. TRIPS agreement is one of them. India is, therefore, committed to implement the provisions of the TRIPS agreement. In the backdrop a re-evaluation of the existing laws on intellectual property with an eye on the demand of the developed nations and Indian needs, have to be made. The book<sup>1</sup> under review is an attempt in this direction. However, to encompass areas like patents, trademarks, copyright and designs in a single volume is possible only by elucidating basic principles without treading on tricky issues, which involve extensive as well intensive analysis. The same is true about the book under review.

The book is divided into five parts, spread over fifty-five chapters. The first fourteen chapters have been devoted to patents and covers important issues like rationale of patents, principles underlying grant of patents, patentable inventions, procedure for obtaining patent, provisional and complete specification, rights conferred on a patentee, transfer and infringement of patents, action for infringement and patent agents. A two-page chapter on 'patent in computer programmes' forms the tenth chapter of the book. It has been pointed out in this chapter that the Indian Patent Act, 1970 does not recognise patent protection for computer programmes, when the global trend is tilting towards recognising more sophisticated computer programmes as inventions entitled to patent protection. Even in England where from Indian Patent Act has been borrowed, the courts<sup>2</sup> have taken a stand that computer programmes used to produce desired result is a patentable subject matter and this position has been maintained in spite of the fact that the UK Patent Act of 1977 expressly lays down that a computer programme is not a patentable

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1. B.L. Wadehra, *Law Relating to Patents, Trade Marks, Copyright and Design* (1999).

2. See for instance, IBM Corporation's application (1980 FSR 564); Borough's Corporation patent application (1974 RPC 147 at 160).



invention.<sup>3</sup> However, the author has not made any personal comment on this thorny issue nor has he highlighted merits or demerits of this new global trend. He has not suggested measures, which the Indian think tank should adopt in this regard. Should Indian Patent Act, 1970 be amended so as to include computer programmes or is there any scope to read in between the lines of the Indian Patent Act to give protection to computer programmes or the present protection under section 2(o) of the Copyright Act, 1957 to computer programmes and computer data sufficient and thus do not warrant legislative or judicial intervention?

The Eleventh Chapter captioned 'patent protection for micro-organism' deals with the most debatable issues pertaining to bio-technological developments including cloning. In addition to ethical debate on the propriety or recognising and patenting of inventions in the field of biotechnology, the author has also touched the distinctive features of discovery and invention and has concluded that when it comes to the patenting of living organisms, this distinction which is otherwise well maintained becomes blurred as certain discoveries in the field of bio-technology may be considered as inventions in spite of the fact that most of such discoveries relate to the living entities. The author has rightly admitted that this is a grey area but has expressed optimism that with the passage of time the definition and differentiation between invention and discovery in the field of biotechnology would crystallise.<sup>4</sup>

Part third of the book covers issues revolving round the copyright laws based on the Copyright Act of 1957 and has been divided into eighteen chapters. A thread bare discussion has been made on the issues like meaning, characteristics and requirements of copyright, works in which copyright subsists, the issue pertaining to literary, dramatic, musical and artistic works. The concept of author and ownership, rights conferred by copyright term, assignment, infringement and its remedies, registration of copyright, regulatory authorities, rights of broadcasting organisations, performers' right and copyright societies have been discussed at length in the light of the Indian law and international instruments.

Part fourth of the book deals with the law on designs and is spread over seven chapters. The basic issues pertaining to designs, e.g., what designs are registrable, conditions for registration of a design, persons entitled to file an application for registration of a design, procedure for registration, privacy of a registered design, have been discussed with the help of illustrations.

The last part of the book covers recent developments in the field of intellectual property. The issues like trade related aspects of intellectual property rights dispute settlement mechanism of World Trade Organisation

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3. *Supra* note 1 at 82-83.

4. *Id.* at 89.



and exclusive marketing rights and its implications have been analysed.

The author has throughout the book adopted an unusual approach by discussing case law in a separate chapter at the end of each part. This departure from the traditional approach has in no way added any advantage to the book. In fact it appears that the cases have been discussed out of the context and do not form part of the discussion made in the preceding chapters. By this novel approach, the chain of continuity has been lost which is so essential for a reader of a popular book. Instead of maintaining a separate chapter on cases, it would have been better to discuss these cases at the appropriate places in the text so that a clear picture would have emerged. At the end of each part, a chapter has been carved out with a common title 'let's go fishing' in which a good number of tricky problems based on the discussion made in preceding chapters, have been formulated for the readers to solve. These problems will invoke mental gymnastics and help the students to cultivate interpretational and logical skill, which is essential for a practising lawyer. The book has been divided into fifty-five chapters and most of the chapters comprise less than six pages, the logic of which is not known.

In all, the book traverses the areas of considerable utility and with the changing global scenario on economic and marketing management, the forgotten issues of yester years have occupied now the central stage. A debate has been set in both at the national and international level on the issues covered in the book. The book, therefore, is timely and will help in understanding the basic issues to those students who want to undertake intellectual property as a special subject. It will be equally helpful to lawyers, researchers, NGO's and to all those who are in any way connected with the areas covered in the book. The publisher also deserves a special mention as the book is almost free from spelling mistakes and has been brought up in a nice get up. The price of the book is also reasonable.

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