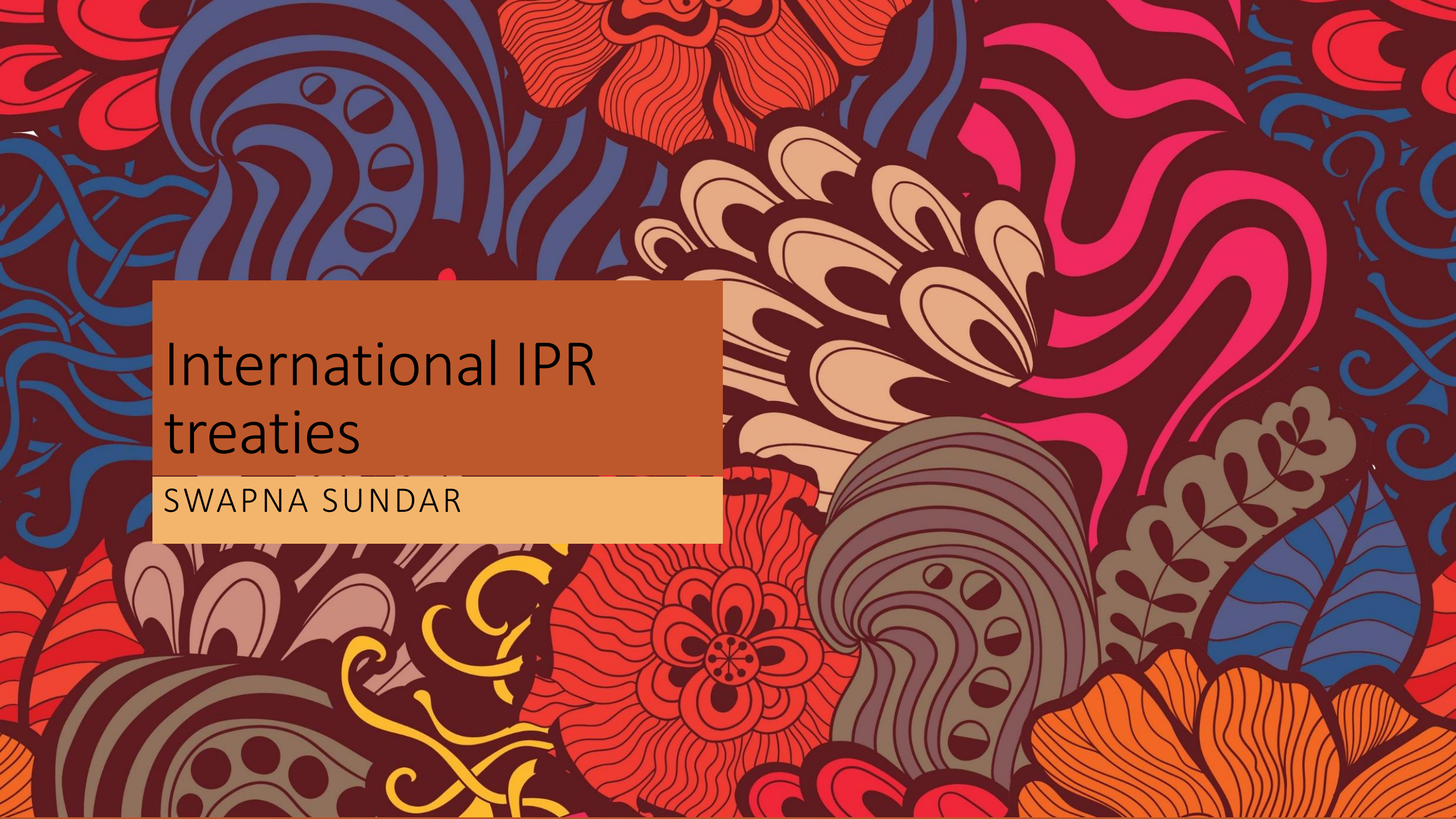
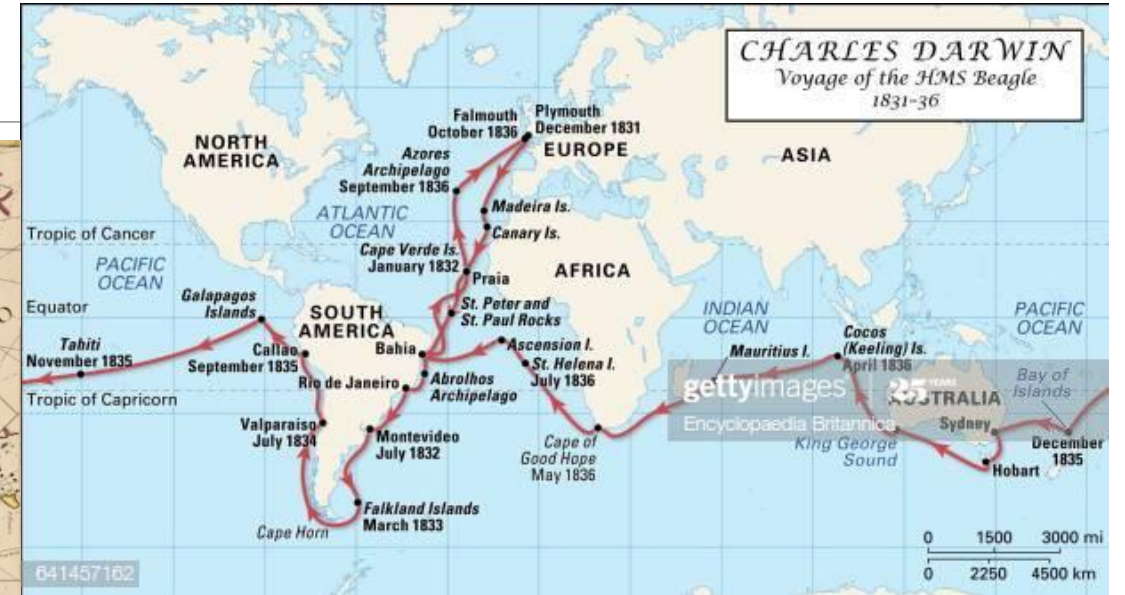
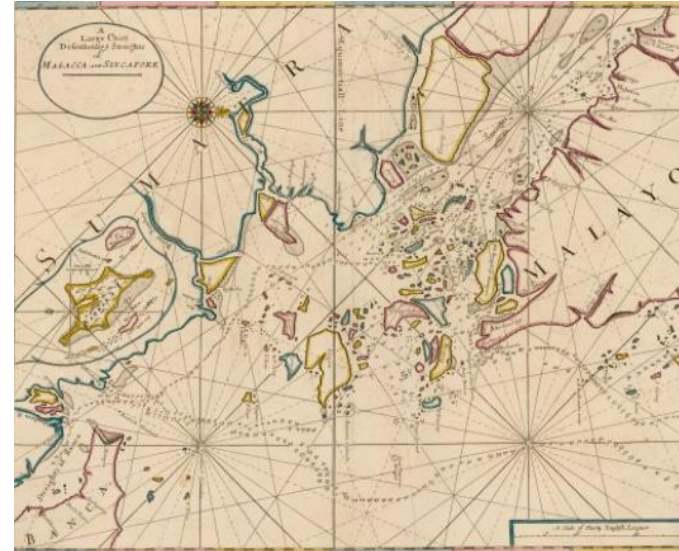
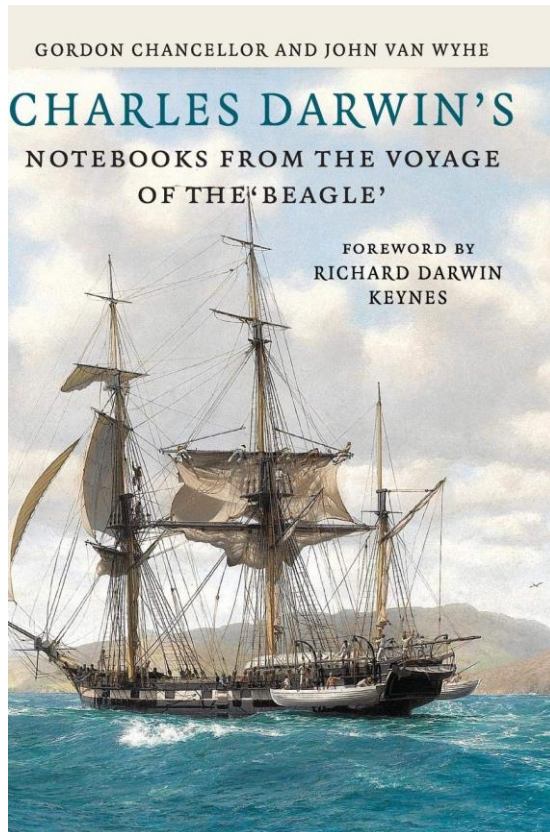




International IPR treaties

SWAPNA SUNDAR

How to rule with IPR

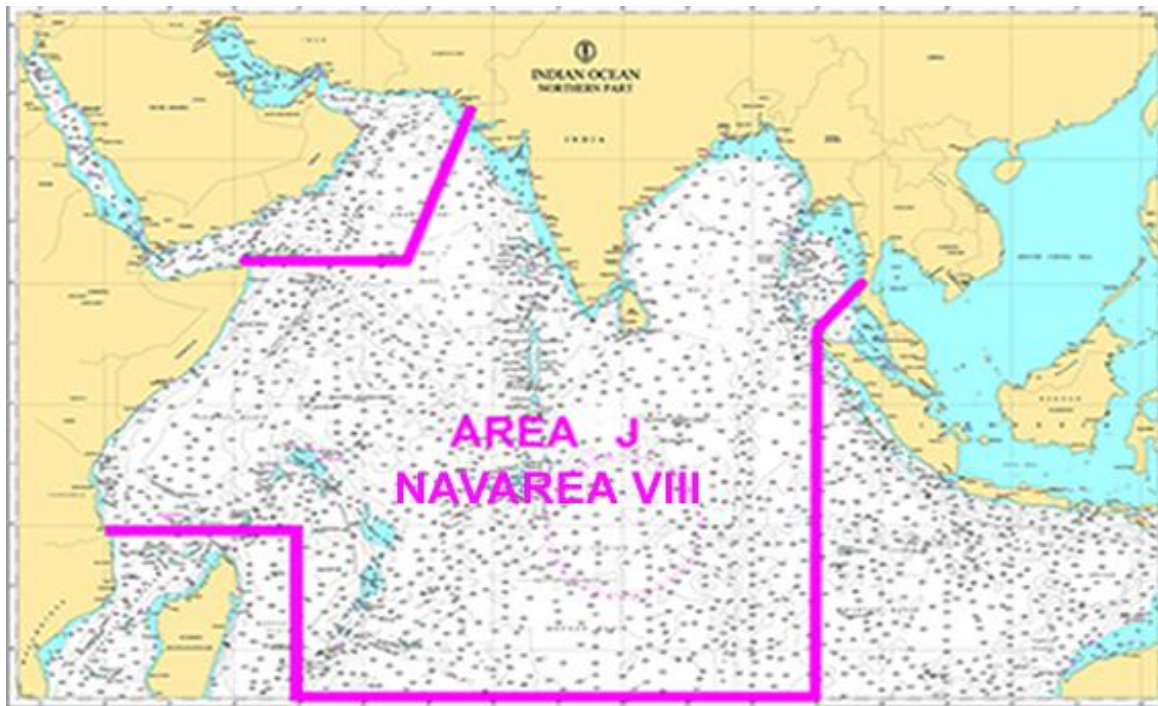


English Pilot – 1689 onwards
Voyage of the Beagle 1831-36
UKHO and the IHO – NIOHC
Why Darwin never came to India?

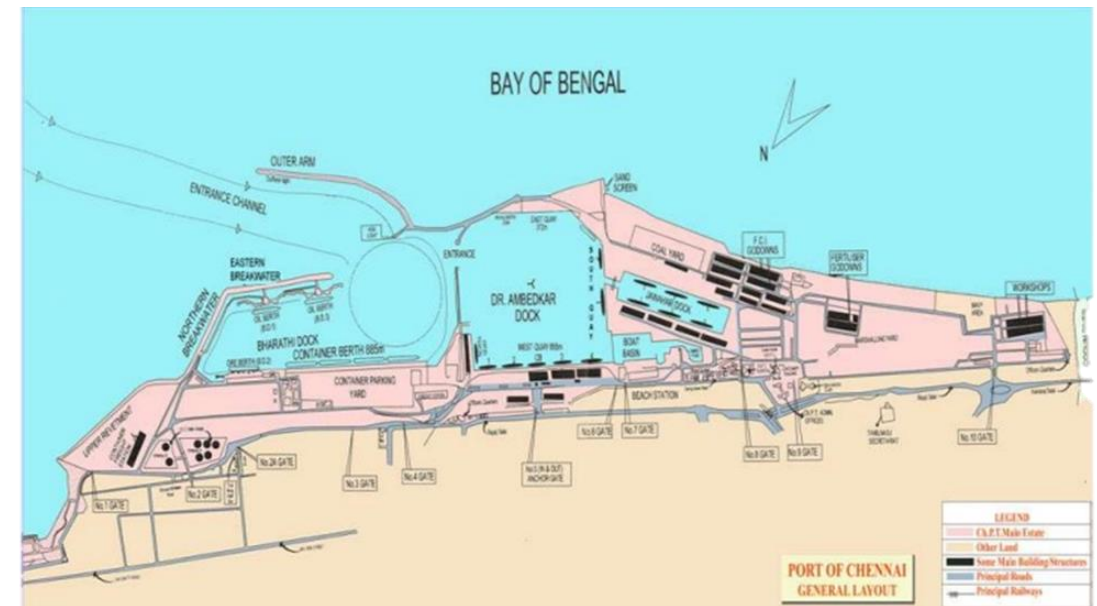


———— **ORV Sagar Nidhi** ————

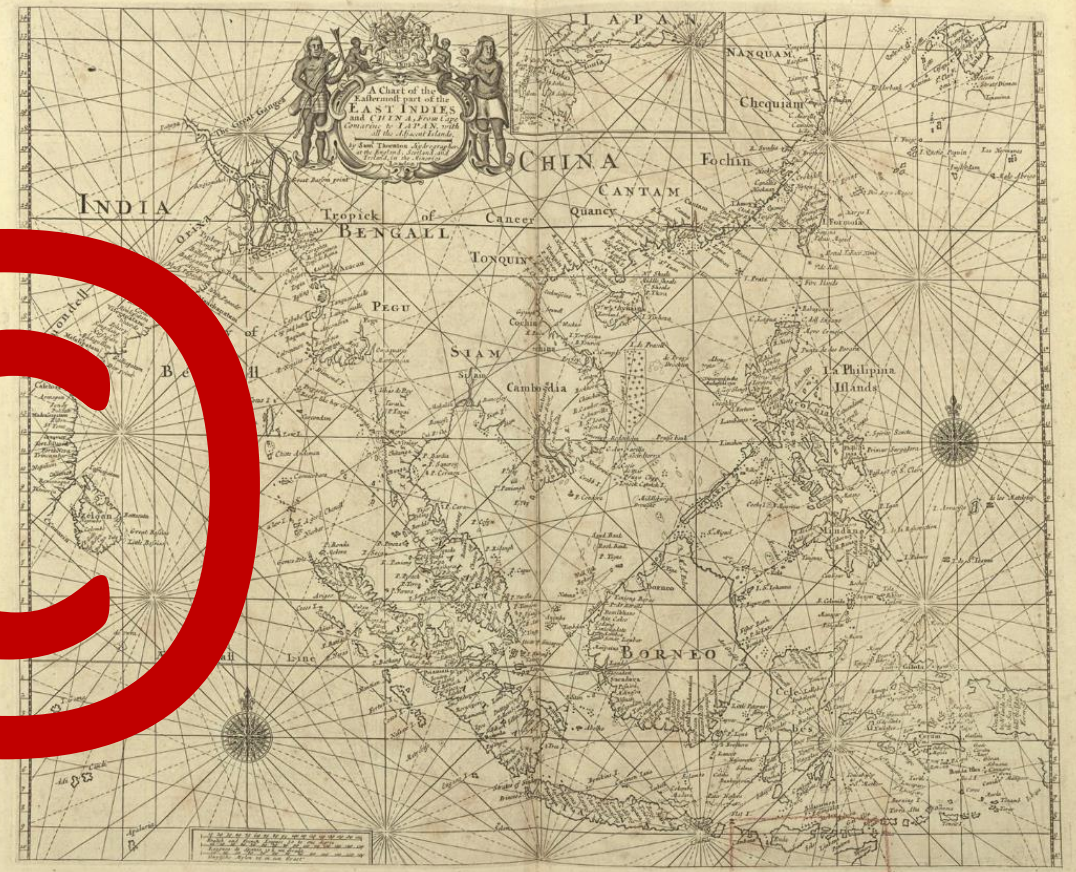
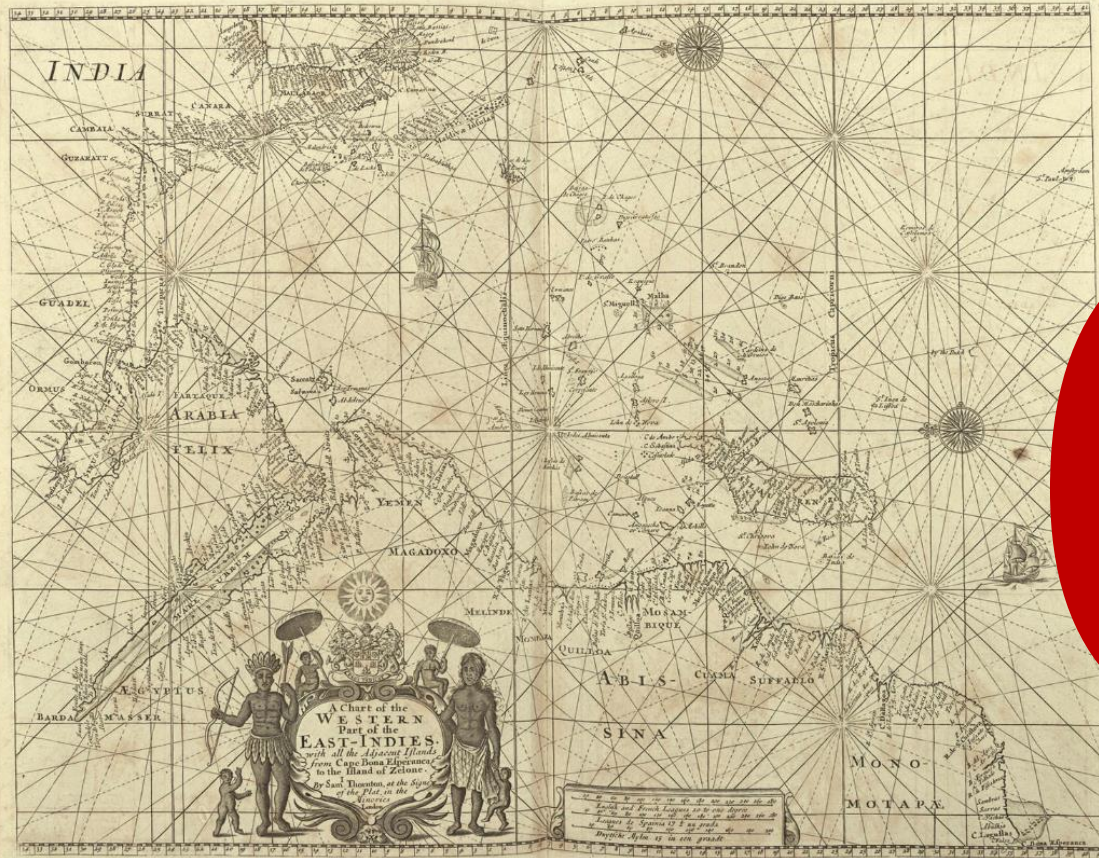
AN EXAMPLE OF AN ENC

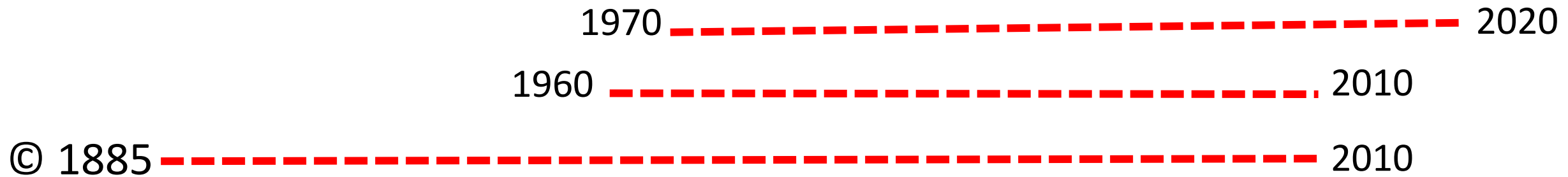


THE HARBOUR OF CHENNAI



The English Pilot, John Thornton, 1703





125 years from the end of the calendar year in which it was created

Preserves the status and official version of the documents

Prevents fraud and misrepresentation

...But also ensure financial viability of the official versions

VII

Availability of ENC's

The complete folios of Official Indian ENC's are distributed worldwide through JEPPESEN MARINE (formerly C-MAP), UKHO and Norwegian Hydrographic Service. UKHO distributes Indian ENC's through the world wide network of their agents and distributors. Updates are also made available as per the existing policy of the distributor. Mariners and other ENC users may contact the under mentioned for further details:

United Kingdom Hydrographic Office Admiralty Way, Taunton, Somerset TA1 2DN, UK Tel: +44 (0) 1823 337900 Fax: +44 (0) 1823 330561, 1823 284077 Web site: www.hydro.gov.uk	Navico Norway AS Nyaskaiveien 2, 4379 Egersund, Norway Ph: +47 51 464700, +91 2262233326 Mob: +91 9820238542 Fax: +47 51 464701, +91 2267939504 Email: enc@c-map.com , info@c-map.co.no Website: www.c-map.com
M/s Primar Norwegian Hydrographic Service, Postbox 60, 4001 Stavanger Norway Telephone - +47 - 51 85 87 00 Fax - + 47 - 51 85 87 08 E-mail: data@ecc.no Website: - www.primar.org	M/s IIC Technologies Limited B-2-350/5/B-22, Road No. 3 Banjara Hills Hyderabad - 500 034 Telangana Tel: +91 4039144444 Fax: +91 4039144455 Email: somnath.marthi@iictechnologies.com Web: www.iictechnologies.com



Industrial property and National

IP Clause in US Constitution - 1787

French – 1791

Paris Convention – 1883

Berne Convention – 1861

Madrid Agreement – 1891

Hague Agreement – 1925



TM Act, 1999

Patents Act, 1970

Designs Act, 2000

Copyrights Act, 1957

Geographical Indications Act, 2000



India Pavilion at the Great Exhibition, 1851

19th Century

1. The rules and negotiated principles that govern trade relations today evolved during the early 19th century, among the 'civilised nations' with little contribution from other peoples. The term 'civilised states' or 'civilised nations' served to distinguish European Christian states and those countries fashioned by Europeans on other continents - such as the US, Costa Rica, Paraguay and El Salvador - from countries not thought to possess similar legal systems or values.
2. The principles of
 - I. reciprocity,
 - II. most-favoured-nation treatment, and
 - III. national treatment.



Colonial countries

1. had no role in their negotiation or structure
2. either been adhered to the system by their colonial rulers
3. chose to join the system post-Independence to be able to participate in the global economic system

Industrial revolution

Battle of Plassey 1757

1760s onwards many devices were made in England – Belgium, France followed

Private ownership of ideas and knowledge

Freedom of capital from nobility

Stable currency – international transportation

1830s free trade treaties and customs unions were common

Institutionalism controlled state behaviour

International exhibitions

1851 – London

140 day long – 6.3 million people – profit of GBP186,000 –which was used to found the Victoria and Albert Museum, the Science Museum and the Natural History Museum. The remainder is still used to provide scholarships for industrial research

Trade moved from commodity exchange to production technologies

Vienna 5th expo 1873 offered a site for inventors and scientists – 12 congresses took place

Award of patents

Proposal for a harmonized international law

Temporary patent protection

1878 Paris Universal Expo – copyright – Victor Hugo – ALAI – 1886 Berne Convention

1883 – Paris Convention – Union – industrial property service and central office for patents, designs and trademarks.

1890 – Madrid convention

BIRPI

In 1883, the Paris Convention for the Protection of Industrial Property came about to address this issue, and became the first step in intellectual property protection.

United International Bureaux for the Protection of Intellectual Property (BIRPI) was set up in 1893 to administer

- the Berne Convention for the Protection of Literary and Artistic Works and
- the Paris Convention for the Protection of Industrial Property.

1883 - Paris Convention for the Protection of Industrial Property In 1873, many exhibitors chose not to attend the International Exhibition of Inventions in Vienna, Austria fearing their ideas would be copied.

1886 - Berne Convention

1893 - BIRPI established, The International Bureau established by the Paris Convention and the International Bureau established by Berne Convention, both to carry out administrative tasks, merged to form the BIRPI

1960 – Move Originally based in [Bern, Switzerland](#), the BIRPI moved to [Geneva](#) in 1960.

BIRPI - 1893

Became WIPO in 1970 and in 1974 became a specialized agency of the UN. Catalogues for exhibition led to Classification – Nice and Vienna – TM

IPC – 1971

Design came into existence in 20th century

1787 – utility products with high aesthetic standards



The Indian delegation to Bretton Woods in 1944. It was led by two British officials—Jeremy Raisman and Theodore Gregory. The Indians in the team were C.D. Deshmukh, Shanmukham Chetty, A.D. Shroff and B.K. Madan. Photo: worldbankimflib.org

India

1928 – Berne

1967 – Stockholm protocol for enhanced access

Paris Convention – NAM

1945 – Founding member of IMF ratified in 1945.

Instead of ITO – GATT – 23 founding members

Uruguay round 1986 – WTO in April 1994.

1991 – bailout and liberalization

Doha development round 2001

Development focus on IP negotiations

Single undertaking

Upon becoming a signatory to the TRIPS agreement, therefore, India committed to amending the Indian Patents Act, 1970, in order to bring it into compliance with the TRIPS agreement.

Central principles of GATT

MFN status

Reduction and binding of national tariffs

National treatment

Transparency

Dispute settlement board

PRINCIPLES OF GATT

Most-favoured-nation treatment (MFN), also called normal trade relations, guarantee of trading opportunity equal to that accorded to the most-favoured nation; it is essentially a method of establishing equality of trading opportunity among states by making originally bilateral agreements multilateral.

Trade advantages include low tariffs or high import quotas; exceptions allow for preferential treatment of developing countries, regional free trade areas and customs unions.

Under **national treatment**, a state that grants particular rights, benefits or privileges to its own citizens must also grant those advantages to the citizens of other states while they are in that country.

Imported and locally produced goods should be treated equally — at least after the foreign goods have entered the market.

WTO

The WTO came into existence on 1 January 1995 as the only international organisation dealing with the global rules of trade. Its main function is to ensure liberalisation of trade policy and smooth flow of trade.

The Legal Text is a daunting list of about 60 agreements, annexes, decisions and understandings.

GATS commitments state how much access foreign service providers are allowed for specific sectors and include lists of types of services where countries state that they are not applying the 'most-favoured-nation' principle of non-discrimination.



Decisions are made by the entire membership of the WTO, typically by consensus as followed under GATT 1947.

The WTO's top level decision-making body is the Ministerial Conference, which meets every two years. The Ministerial Conference is attended by trade ministers and other senior officials from the member states.

The Functions of the WTO are found in Article III of the Marrakesh Agreement. The WTO is to facilitate the implementation, administration and operation of the Agreement, and the Multilateral and Plurilateral Trade Agreements. The WTO provides the forum for negotiations among its members concerning their trade agreements and for further negotiations, and implementation of results of such negotiations. The WTO is to administer the Understanding on Rules and Procedures Governing the Settlement of Disputes and the Trade Policy Review Mechanism. The WTO is to cooperate with the IMF and the IBRD and its affiliated agencies.

Dispute settlement

1. Sui generis: it stands midway between diplomatic negotiation and jurisdictional settlement. At the Dispute Settlement Body (DSB) level, it is a diplomatic procedure as the DSB consists of all the WTO member states. Appellate Body and constrictive proceedings to implement the opinions.
2. Integrated: There is only one legally integrated system for a member to approach to settle a particular dispute.
3. Resolution of disputes according to the agreements: the DSB can neither enhance nor lower the rights and obligations of the agreements. The Appellate Body reports must also be in conformity with the WTO agreements.
4. Exclusion of unilateral solutions: Members cannot impose unilateral trade sanctions against another member with a view to resolve a dispute.
5. An interstate system: Only WTO members can be allowed access to the dispute settlement process. Both parties must be members of the WTO.

Paris convention, 1883

1851 quick passing of the Protection of Inventions Act, with no discrimination on the grounds of nationality.

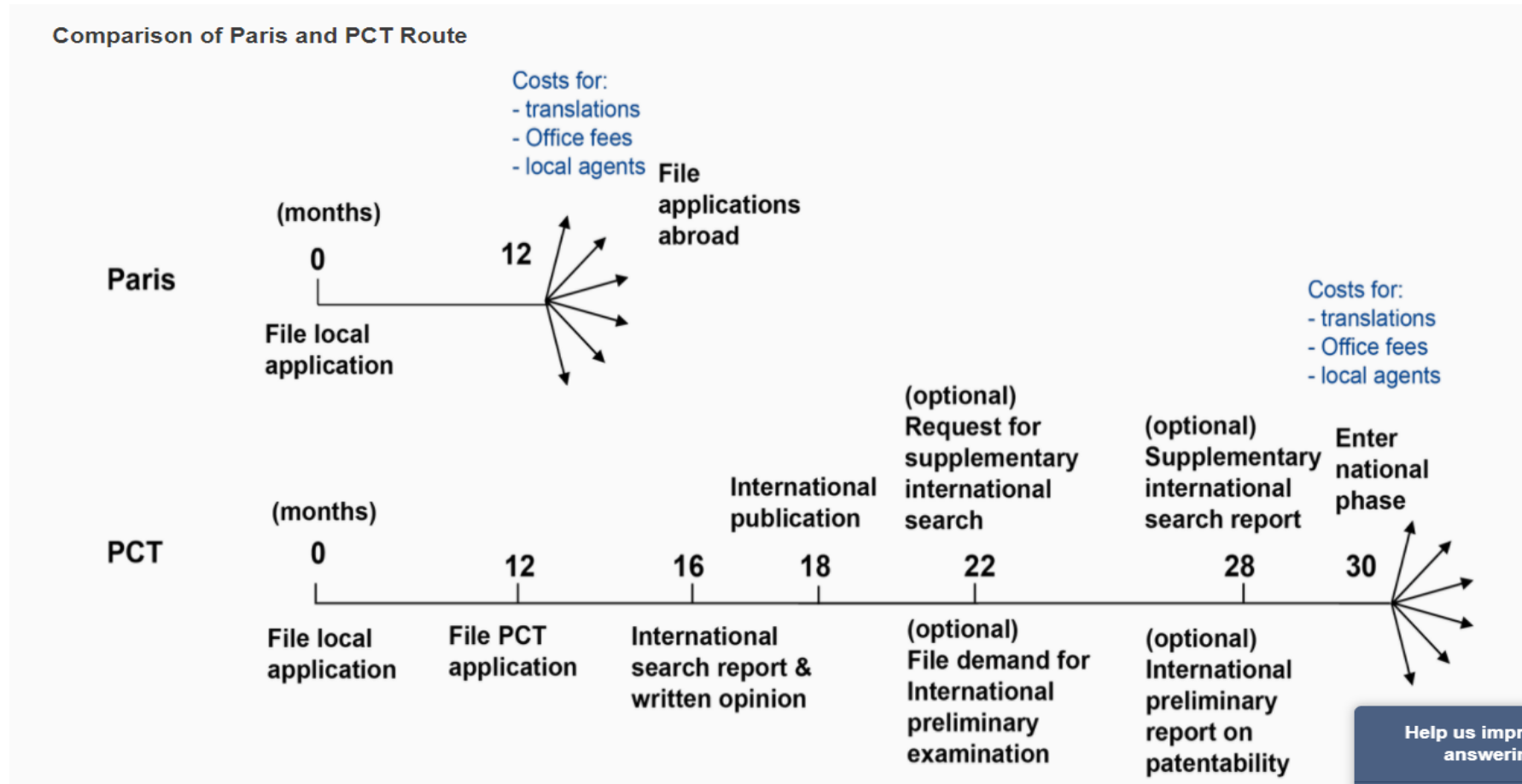
Any country may become party to the Paris Convention, provided it is in a position under domestic law to give effect to the provisions of the Convention.

The Paris Convention applies to inventions and to patents, utility models, industrial designs, trademarks and service marks, and indications of source of goods – whether geographical or relating to the manufacturer or distributor.

The Paris Convention defines unfair competition as ‘any act of competition contrary to honest practices in industrial or commercial matters – confusion, discredit, mislead public

Salient features – national treatment, right of priority, common rules, independence of protection, Inventor’s rights

How to use Paris Convention



Patent Cooperation Treaty, 1978

152 countries

A substantial number of applications were concerning the same inventions in different countries, thereby increasing the volume of applications to be processed - save effort and cost for the applicant and the patent offices

The PCT process ensures that if the application is in the form prescribed by PCT, it cannot be rejected on formal grounds by any Contracting State patent office during the national phase processing.

The IP5 Offices, comprising EPO, KIPO, JPO, SIPO and USPTO, endorsed a new framework, in 2018, wherein examiners from each of the IP5 offices collaborate for the establishment of a consolidated international search report and the written opinion under PCT Chapter 1, which although remaining the opinion of the chosen ISA, benefits from contributions of the participating offices.

India and PCT

India acceded to the Paris Convention and the Patent Cooperation Treaty on September 7, 1998

On October 15, 2013, an Agreement between WIPO and the Indian Patent Office came into force, whereby India became an International Searching Authority (ISA) and International Preliminary Examining Authority (IPEA)

Berne Convention, 1886

India was adhered to the Berne Convention through the United Kingdom on September 5, 1887, entering into force as relating to India on December 5, 1887.

The Convention text was revised in 1896, 1908, 1914, 1928, 1948, 1967, 1971 and 1979. Salient features:

1. National Treatment
2. Automatic Protection
3. Independence of Protection
4. Minimum standards – all literary and artistic works can be protected; resident of Berne Union country; Owners rights; Duration of protection; rights protected; limitations;

Delhi High Court - The Chancellor, Masters & ... vs Rameshwari Photocopy Services, 2016

Five plaintiffs, namely i) Oxford University Press, ii) Cambridge University Press, United Kingdom (UK), iii) Cambridge University Press India Pvt. Ltd., iv) Taylor & Francis Group, U.K. and, v) Taylor & Francis Books India Pvt. Ltd., being the publishers, including of textbooks, instituted this suit for the relief of permanent injunction restraining the two defendants namely Rameshwari Photocopy Service (carrying on business from Delhi School of Economic (DSE), University of Delhi) and the University of Delhi from infringing the copyright of the plaintiffs in their publications by photocopying, reproduction and distribution of copies of plaintiffs' publications on a large scale.

Association of Students for Equitable Access to Knowledge (ASEAK) impleaded

Educational use – fair use as an exception to copyright law

I therefore conclude the actions of the defendants to be not amounting to infringement of copyright of the plaintiffs.

Rules of International law incorporated

– **Gramophone Company of India Ltd. V Birendra Bahadur Pandey and Others (1984 AIR 667)** lays down the rule relating to application of international law in India. Mr. Justice O.C. Reddy said, ‘the doctrine of incorporation recognises the position that the rules of international law are incorporated into national law and considered to be part of the national law, unless they are in conflict with an Act of Parliament.’ Further, ‘Courts are under obligation within legitimate limits, to so interpret municipal statute as to avoid confrontation with the comity of nations or the well-established principles of international law’.

The Convention on Transit Trade of Land-locked States and the treaties between India and Nepal, leave either country free to impose necessary restrictions for the purpose of industrial, literary or artistic property and preventing false marks, false indications of origin or other methods of unfair competition in order to further other general conventions.

Exceptions in the convention include - No. Contracting State shall be bound by this Convention to afford transit to persons whose admission into its territory is forbidden, or for goods of a kind of which the importation is prohibited, either on grounds of public morals, public health, or security or as a precaution against diseases of animals or plants or against pests.

3. Nothing in this Convention shall affect the measures which a Contracting State may be called upon to take in pursuance of provisions in a general international convention, whether of a word-wide or regional character, to which it is a party, whether such convention was already concluded on the date of this Convention or is concluded later, when such provisions relate:

(a) to export or import or transit of particular kinds of articles such as narcotics, or other dangerous drugs, or arms; or

(b) to protection of industrial, literary or artistic property, or protection of trade names, and indications of source or appellations of origin, and the suppression of unfair competition.

Seizure of Generic Drugs in Transit: Request for Consultations by India (DS408/1) and Brazil (DS409/1), 19 May 2010 WTO, DSB

- The dispute concerns the questions whether the seizure of goods in transit as border measures for enforcement of intellectual property rights is compatible with the TRIPS Agreement and GATT rules on freedom of transit, among others. Losartan/Cozaar among others, is a medication used to treat high blood pressure.
- Non- tariff barriers
- PARALLEL IMPORTS, GREY IMPORTS AND ‘EXHAUSTION’ OF RIGHTS - Parallel or grey-market imports are not imports of counterfeit products or illegal copies. These are products marketed by the patent owner (or trademark- or copyright-owner, etc) or with the patent owner’s permission in one country and imported into another country without the approval of the patent owner.
- For example, suppose company A has a drug patented in the Republic of Belladonna and the Kingdom of Calamine, which it sells at a lower price in Calamine. If a second company buys the drug in Calamine and imports it into Belladonna at a price that is lower than company A’s price, that would be a parallel or grey import.
- The legal principle here is “**exhaustion**”, the idea that once company A has sold a batch of its product (in this case, in Calamine), its patent rights are exhausted on that batch and it no longer has any rights over what happens to that batch.

Madrid Agreement, 1891

In the 19th century, with the great pace of industrial development, and as a consequence of it, emerged a revolution in transportation, notably the creation of railway networks. Trade and commerce crossed national borders and products reached distant destinations. Trademarks became increasingly valuable and vital for the producers and retailers who wanted to protect the good name of their products, use them for branding, and also protect their markets from counterfeits.

Egyptian masonry - 6,000 - distinguishable quarry marks and stonecutters signs, to identify the source of the stone and the laborer who carried out the work to claim their wages. Wine amphorae marked with seals indicated: the type of grape of the so-called signature wines, the name of the producer, the quality level and origins of the produce.



ஆதன்



குவிர்ன் ஆதன்



Madrid protocol

- a) Whereas the Madrid Agreement requires the international application to be based on a national registration, the Madrid Protocol allows it to be based on a national application, as well as a national registration. Countries whose offices examine applications ex officio both on absolute grounds and as to conflict with earlier rights, typically require more than six months to process the applications for registration,, which means that an applicant cannot file an application based on national registration within the six month period as required by the Madrid Agreement. India joined in 2013. Based on your Indian trade mark, you can file an international application, online, at the IP India designating all or some of the members of the Madrid Union. The application is transmitted to WIPO for examination, registration and publication. Thereafter the particulars of the international registration are notified by WIPO to each of the designated Members of theMadrid Union.
- b) The time limit for refusing the effect of an international registration under Madrid agreement (one year) was perceived to be too short for offices conducting a full ex officio examination. Hence, the Madrid Protocol allows eighteen months for refusals and an even longer period in the case of oppositions.
- c) The Madrid Protocol provides that the national office of a designated country may, if it so desires, receive the full amount of the fee, or a substantial proportion thereof, that it would charge for a national registration. This is necessary for those countries conducting a full ex officio examination, to maintain the resources required for the examination system.
- d) The Madrid Protocol allows the transformation of a failed international registration into a national application in each designated country, such national applications having the priority date of the international registration. This was necessary to overcome circumstances where the reasons for cancellation of a mark forming the basis of the international registration were valid only in the country of the national registration.

Madrid process into India



Before filing a trade mark application in India, you should make sure that the sign that you are planning to use as a trade mark is not excluded from protection by the Indian trade mark law (<http://www.ipindia.gov.in/acts-rules-tm.htm>). In addition, you should consult certain online sections of the IP India web site that will help you check that your trade mark is not excluded from protection because of being a well-known mark already protected in India by someone else (<https://ipindiaonline.gov.in/tmrpublicsearch/wellknownmarks.aspx>), or consisting of the international nonproprietary name for a pharmaceutical substance (<http://www.ipindia.gov.in/international-nonproprietary-names-inn.htm>); or another term prohibited for protection (<https://ipindiaonline.gov.in/tmrpublicsearch/prohibitedmarks.aspx>).

You should also check whether the sign that you are planning to use as a trade mark in India has not been already applied for or registered as a trade mark for the same goods or services by someone else. You can do so by consulting the IP India Public Search for Trade Marks interface at <https://ipindiaonline.gov.in/tmrpublicsearch/frmmain.aspx#>.

Delhi High Court - Bridgestone Corporation vs Controller General Of Patents 2022

‘It is found that due to certain administrative and technical reasons the present Notice of Opposition could not be communicated to the WIPO in the form of Provisional Refusal based on opposition within the period of 18 months from the date of notification of the international registration. In such circumstances the present IRDI is deemed protected in India.’

Amberstone and Bridgestone

Dermavita (juvederm) and Allergan holdings

Oppositions restored

Budapest Treaty, 1980

The Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, or Budapest Treaty, is an international treaty signed in Budapest, Hungary, on April 28, 1977.

By the early 1970s the depositing of microorganisms in culture collections for patent purposes had become fairly common, as IP Offices in an increasing number of countries either required or recommended that written disclosure of an invention involving the use of a new microorganism be supplemented by the deposit of the microorganism in a recognised culture collection.

Patent applicants benefit because the need to deposit in many countries in which they seek patent protection is dramatically reduced. A single deposit in any "international depositary authority" will satisfy the national disclosure requirements of any member state, significantly lowering applicants' expenses. There are currently 47 IDAs in 25 different countries.

India accession – 17th September 2001. the Microbial Culture Collection (MCC) at the National Centre for Cell Science, University of Pune, and the Microbial Type Culture Centre and Gene Bank (MTCC) at the Institute of Microbial Technology, Council of Scientific and Industrial Research, Chandigarh.

WIPO

On July 14, 1967,
the Convention
establishing the
World Intellectual
Property
Organisation –
WIPO, was signed in
Stockholm

WIPO's role in facilitating Transfer of Technology to developing countries is again emphasised in Article 10, towards assisting the recipient countries in attaining their objectives in the fields of science and technology and trade and development.

WIPO undertakes a number of activities, including: (i) normative activities, involving the setting of norms and standards for the protection and enforcement of intellectual property rights through the conclusion of international treaties; (ii) program activities, involving legal and technical assistance to States in the field of intellectual property; (iii) international classification and standardization activities, involving cooperation among industrial property offices concerning patent, trademark and industrial design documentation; and (iv) registration and filing activities, involving services related to international applications for patents for inventions and for the registration of marks and industrial designs.

DATABASES

PATENTSCOPE

BRAND DATABASE

MADRID MONITOR

DESIGN DATABASE

LISBON EXPRESS

WIPO ACADEMY

ARBITRATION AND MEDIATION

INDIA IN WIPO

Joined WIPO in 1975.

Berne Convention, Budapest Treaty, Madrid Protocol, Marrakesh VIP Treaty, Nairobi Treaty, Paris Convention, Patent Cooperation Treaty, Phonograms Convention, Rome Convention, WIPO Convention, WIPO Copyright Treaty, and WIPO Performances and Phonograms Treaty.

TRIPS

Prior to the inclusion of TRIPS in the GATT framework, the only GATT provision promoting IP was Art.IX:6 which called on the contracting parties to cooperate with each other in the protection of distinctive regional or geographical names . TRIPS bundled together the main provisions of the major, and hitherto independent, international IPR agreements, into a whole and indivisible package that cannot be agreed separately. This is known as: ‘Single Undertaking’ – or ‘Nothing is agreed until everything is agreed.’

A Council for TRIPS was established to monitor the operation of the agreement and governments’ compliance with it. The main principles enshrined in the TRIPS are

National Treatment provided for in Article 3 requires that the same rights be equally available to nationals and foreigners. This principle has been followed in every IPR treaty from the 19th century.

Most-favoured-nation provided for in Article 4 requires equal treatment for nationals of all trading partners in the WTO. This principle is new to IPR agreements, but is central to the other WTO agreements.

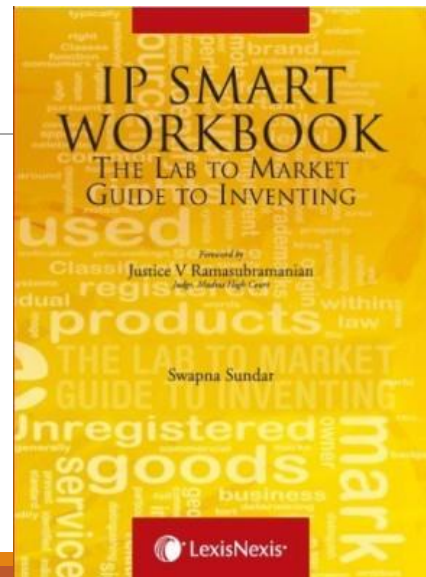
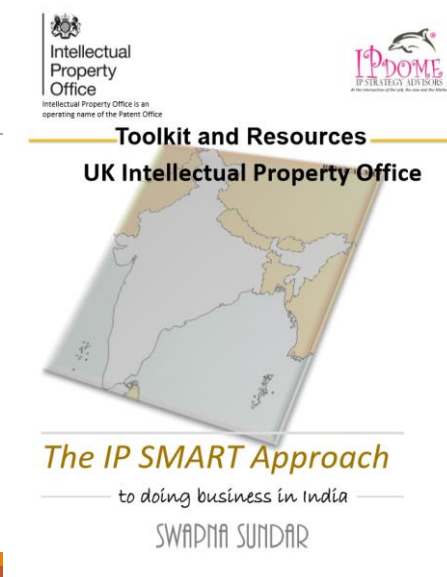
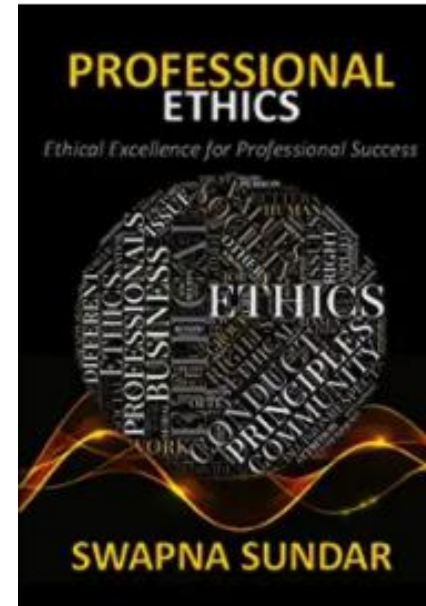
Minimum standards of IPR protection to be provided by each member in each area of intellectual property is achieved by spelling out the subject matter to be protected, the rights to be conferred along with the permissible exceptions, and the minimum duration of protection.

Transparency requires member governments to publish and make publicly available all laws, regulations, final judicial decisions and administrative rulings relating to IPR that have been made effective by the member state.

Plant Varieties Authority Delhi

In the matter of revocation filed by Kavitha Kuruganti against registration of FL2027 in favour of Pepsico – incorrect information furnished:

- the registered breeder has claimed new variety instead of extant variety
- Robert Hoopes is the plant breeder, but in the declaration – Rajeev Wakhle
- Hoopes assigned to FLNA – no document to prove assignment from FLNA to PIH



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