

Intellectual Property Rights : ***Contemporary issues***




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Intellectual Property Rights



- “Intellectual Property Rights (IPR)” is concerned with ownership of one's intellectual output, which is **unique, novel and unobvious having some economic value.**
- IPR usually gives the creator an exclusive right over the use of his creation for a certain period of time.
- There are various forms of IPR.
- The Trade Related Aspects of Intellectual Property Rights (TRIPS), which are recognized by the Agreement of the World Trade Organization (WTO), are **Patents, Designs, Trade Marks, copyrights, Geographical Indication, Integrated circuits and Trade secret.**



Intellectual Property Rights

- **Intellectual Property Rights(IPRs) are legal rights associated with the creations of the mind or “Intellect”. Depending upon the nature of `creations` there are eight different mechanisms to protect intellectual property :**
- **Patents**
- **Copyrights**
- **Trademarks**
- **Industrial designs**
- **Layout designs of integrated circuits**
- **Geographical indications (GI)**
- **Plant varieties Protection Act and**
- **Trade secrets**

The legal rights conferred on a person(s) under any of these eight mechanisms are called “Intellectual Property Rights”.

Importance of IPR

- **To encourage innovation .**
 - **To reap full benefits of the invention.**
 - **To avoid infringement.**
 - **Examples- (i)In 1979 ,Xerox lost US\$ 500 million during the lifetime of the patent.**
- (ii)Researchers at the Indian institute of science(IISc) missed filing a patent regarding a carbon nanotubes ,published it in Science.**
- (iii)In US over 150 patents are filed on Yoga Asana which has been used in India for more than 5000 years .**

Need for protection of IP

- **Any innovation generally involves huge input in terms of money, talent, skill, time, labor, etc. Thus, it becomes evidently essential to protect the IP to reserve its exclusive rights and possession and prevent use by others.**
- **The incentive or monetary gains which are critical to encourage research and discovery for future advances.**
- **Example- combined value of Wipro's brand patents, trademarks and copyrights is around Rs 180 crore (year 2009).**

CHOICE OF IP.....

- A cell phone's size, shape, color and overall look has as much to do with how desirable it is to consumers as to how well the phone actually functions.
- A cell phone owes its look to Industrial design.
- The microchips and boards can be protected as Integrated circuit topography.
- The technology used in its antenna, microphone, speaker and internal chips are protected by Patents. **Samsung versus Apple.**
- Additionally, the phone itself will usually carry the manufacturer's Trademark.
- © 2015 Nokia. Nokia is a registered trademark of Nokia Corporation.



Infrastructure in India

Before



Now



Delhi Patent office

LIBRARY

Before



Now



Delhi Patent office

Working Area

Before



Now



Delhi Patent office

Storage Space

Before



Now



Delhi Patent office

Multi-Purpose Area

Before



Now



Delhi Patent office

Modernized Waiting Area



Delhi Patent office

Infrastructure development in India

Delhi



Chennai



Construction of integrated IPO Buildings

Kolkata



Mumbai



New IPO Buildings have Patent Office and Trade Marks Registry at one location

Patent



- Patent is an exclusive right granted by a country, for a limited period to the owner of an invention to make, use, manufacture & market the invention, provided the invention satisfies certain conditions stipulated in the law.
- The Patents Act, 1970 amended in 2005 is fully TRIPS compliant Indian Patent law.



The Patent system added the fuel
of interest to the fire of genius.
-”Abraham Lincon”.



- A patent is the form of a certificate granted by a government.
- It gives the inventor the right to exclude others from imitating, manufacturing, using & selling the invention in question for commercial use during the specified period.
Gulshan Kumar (T series owner) and Bill Gates(Chairman, Microsoft Corporation, USA. Infringement of patent rights. Apple versus Samsung smart phones case.
- Patent is valid only in the country that has granted it. It is granted for an innovation, invention, process of producing a product, and a concept.

Patent

- **A PATENT means “exclusive rights granted by a country to the owner of an invention to make, use, manufacture and market the invention .**
- **A PATENT provides exclusive rights to the owner i.e. no one else can make, use, manufacture or market the invention without the consent of patent holder.**
- **There is nothing as “world patent”**
- **Proper patent legislation –Patent Act 1970**
- **Patent is granted for 20 years.**

Patenting is important so

as...

- **To encourage industrial growth.**
- **To encourage complete disclosure of the invention .**
- **To prevent duplication of research .**
- **To focus on commercial relevance of invention.**
- **To prevent exploitation of researchers by giving them recognition as inventor**
- **To generate revenue when invention gets commercialized**
- **To provide an important source of technical information.**

What is a Patent ?

A patent is a protection given to a patentee for an invention for a limited term by the government for disclosing the invention.

Right to exclude others from using your invention.

Owner has a qualified right to use the invention.

WHY PATENTS ?

- **Rewards to Inventor.**
- **Motivates / stimulates inventive research. Japan-Automobile Giants.**
- **Encourages maximum disclosure to enable further research and technological development of a company or a country.**

Patent - a Property Right (A Bundle of Rights) can be given away (assigned)

inherited

sold

bought

licensed

abandoned etc.

Patent – can be revoked

by state

by opponent in a suit.

Patent – can be defended

against infringement in a patent court.

What is Patentable

- “Any new and useful process , machine , manufacture , or composition of matter , or any new and useful improvement thereof....”.
- Only the inventor(s) may apply for a patent.
- An Invention to be Patentable, must satisfy the following three conditions:-
- It is novel ie. it is different from other similar inventions in one or more of its parts.
- **It is useful to the society. Vaccines, Drugs, Successful transplantation of organs, tissues or cells, transgenic plants and animals.**
- It is non-obvious to a person possessed of average skill in the art. An invention is non obvious if someone who is skilled in the field of the invention would consider the invention an unexpected or surprising development.

Copyrights



- © is the copyright symbols in a copyright notice.
- Copyright system protects original work of an author that is fixed in a tangible form of expression, is concerned with the publication and communication of the creative output of the authors. **Royalty to authors, painters, artists etc.**
- Copyright deals with original literary , dramatic, musical and artistic or cinematographic works.
- Software, engineering and architectural design are also covered under copyright.

COPYRIGHT

- **Copyright is the “set of exclusive rights granted to the author or creator of an original work including the right to copy ,distribute and adapt the work”.**
- **Copyright lasts for a certain period of time after which the work enters public domain.**
- **The Indian copyright Act ,1957**
- **“Copyright provides protection for the expression of an idea and not the idea whereas patent system provides protection for implementation of an idea.”**
- **The term of protection varies according to the work concerned.**

Copyrights of Books

- Best sellers and Text Books.
- Example – “**Principles of Biochemistry**” by Lehninger, Nelson and Cox.
- “All rights reserved. No part of this publication may be reproduced , stored in a retrival system , or transmitted in any form or by any means, electronic, mechanical, photocopying, recording ,or otherwise without prior written permission of the publisher.”



- The types of work which are subject to copyright has been expanded over time. Initially only covering **books**, copyright law was revised in the 19th century to include **maps, charts, engravings, musical compositions, dramatic works, photographs, paintings, drawings and sculptures**. In the 20th century copyright was expanded to cover **motion pictures, computer programs, sound recordings, choreography and architectural works**.



- Copyright come to be governed by the statutory laws of each country . The main criteria for the copyright registration are its originality.
- Examples : Poems, artistic drawings , paintings , computer software/programs etc.
- Paintings of Shri **M.F. Hussain** fetched astronomical sums , thanks to copyrights.
- Infringement of photocopy rights of text books is very common in India. © **Balaji telefilms.**

Trademark



- A Trademark is a distinctive sign , which identifies certain goods or services as those produced or provided by a specific person or enterprises.
- A Trademark may be one or a combination of words , letters and numerals.
- It may also consist of drawing , symbols , three-dimensional colours and combination of colours.
- It is used by traders/companies/firms etc. to distinguish their goods and services from those of their competitors.-
- Consumer uses the Trademark for making a choice while buying a particular product. **Symbol of goodwill, guarantees consistency in quality & makes purchase decisions easy.**
- There are so many examples of registered trademarks in our day to day life such as **TATA , BATA , Liberty , Brook Bond , Dabur , Baidyanath , Nike, Puma , Reebok, Adidas ,Park Avenue , SAIL and so on.**



- A trademark is designated by the following symbols:
- TM (for an unregistered trade mark, that is, a mark used to promote or brand goods)
- SM (for an unregistered service mark, that is, a mark used to promote or brand services)
- ® (for a registered trademark).
- When a trademark is used in relation to services rather than products, it may sometimes be called a service mark, particularly in the United States.
- TM can be used with any common law usage of a mark, ® may only be used by the owner of a mark following registration with the relevant national authority, such as the [U.S. Patent and Trademark Office](#) (USPTO or PTO).

Service marks

- **Service marks means service of any description that is made available to potential users and includes the provision of services in connection with different sectors like banking ,communication, education, financing ,insurance, Hotel industry etc.**
- **The term of trademark is ten years initially however it can be renewed for an unlimited period on payment of renewal fees.**



SUBWAY
eat fresh.®



NIKE
JUST DO IT.



Panasonic
ideas for life



TESCO
Every little helps



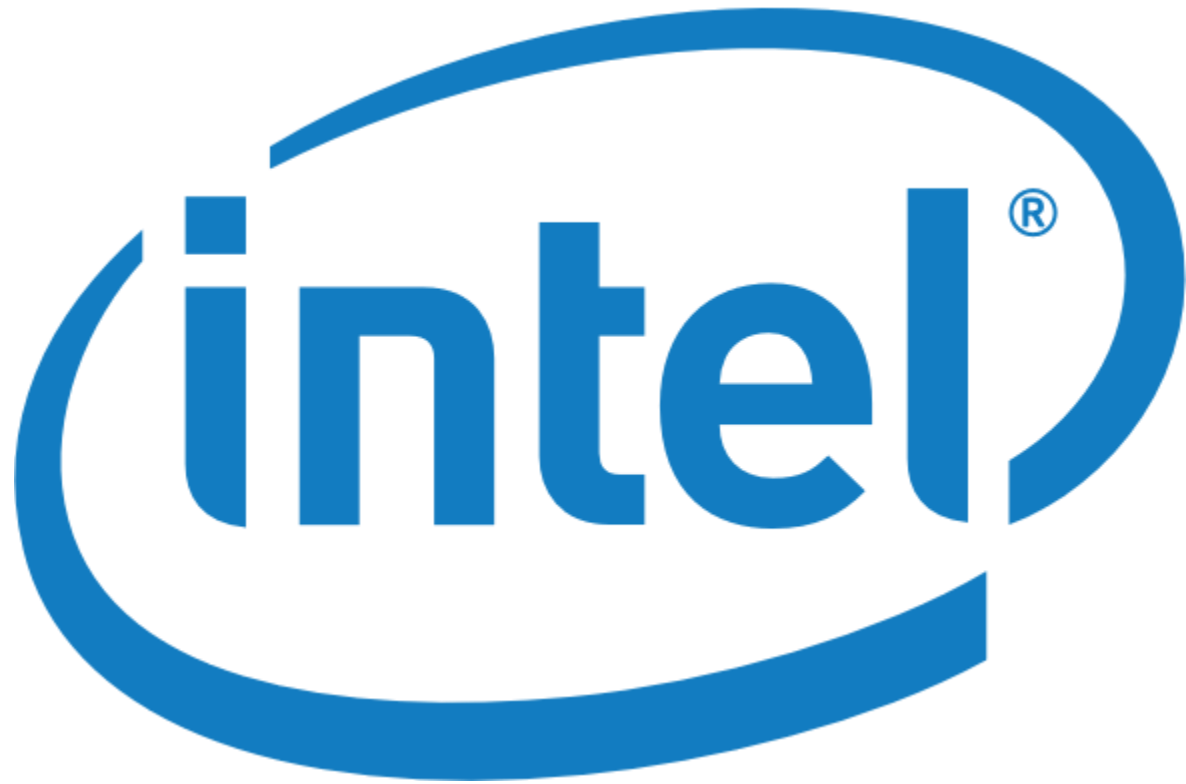
Audi
Vorsprung durch Technik



MAXFACTOR
THE MAKE-UP OF MAKE-UP ARTISTS







Madrid Agreement



- **The Madrid Agreement was adopted on April 14 , 1891 to facilitate protection of a Trademark or service mark in several countries by means of a single international registration.**
- **As on July 15, 1999 , 54 countries are party to this Agreement mainly belonging to Europe , countries of Africa and four countries in the Far East namely , China , the Democratic People's Republic of Korea , Mongolia and Vietnam . The United States of America , most Latin American countries , Japan and India are not signatories to this Agreement.**

Comparison with patents, designs and copyright



- Trademark law seeks to protect indications of the commercial source of products or services, patent law generally seeks to protect new and useful inventions, and registered designs law generally seeks to protect the look or appearance of a manufactured article.
- Trademarks, patents and designs collectively form a subset of intellectual property known as **industrial property** because they are often created and used in an industrial or commercial context.
- Copyright law generally seeks to protect original literary, artistic and other creative works. Continued active use and re-registration can make a trademark perpetual, whereas copyright usually lasts for the duration of the author's lifespan plus 70 years for works by individuals, and some limited time after creation for works by bodies corporate..



Protection of Industrial Design(Designs Act,2000)

INDUSTRIAL DESIGN



- “**Design**” Means only the features of shape , configuration, pattern, ornamentation or composition of lines or colors applied to any article whether 2 D or 3D or in both forms, by any industrial process or means which in the finished article appeal to and are judged solely by the eye.
- Making, selling or importing articles bearing **resemblance** or embodying design which is a copy or substantially a copy of protected design is considered infringement.

Benefits of Registering a Design



- A registered proprietor of the design is entitled to legal protection of his IP.
- He can sue for infringement, if his right is infringed by any person .
- He can license or sell his design as legal property for a consideration or royalty.
- Design registration provides exclusivity and hence edge over competitors. Fashion designers. **Reena Dhaka, Rohit Bal, Manish Malhotra, Bhanu Athaiya Famous Indian Designers.**

**Designs that are primarily literary or artistic character are not protected under the design
These will include-**



- **Jackets , calendars, certificates, forms, and other documents, dress making patterns , greeting cards , leaflets, maps and plans cards, post cards, stamps, medals.**
- **Labels, tokens , cards, cartoons.**
- **Any principle or mode of construction of an article**
- **Building and structures.**
- **More mechanical contrivance**



- Parts of articles not manufactured and sold separately.
- Mere workshop alterations of components of an assembly.
- Mere change in size and shape of an article.
- Flags, emblems or sign of any country.
- Layout design of integrated circuits.

Essential requirement for registration of design



- A design should be –new or original.
- Not be disclosed to the public any where by publication in tangible form or by use or in any other way prior to the filing date, or where applicable, the priority date of the application for registration.
- Significantly distinguishable from known design or a combination of known designs.
- Not comprise or contain scandalous or obscene matter.
- Be applied to an article and should appeal to the eye.
- Not to be contrary to public order or morality.

Layout Design of Integrated Circuits



- It provides protection to a product having transistors and other circuitry elements which are inseparably formed on a semiconductor material or an insulation material and designed to perform an electronic circuits function.
- Any layout design if it is the result of its creators own intellectual effort and is not known anywhere in India or in a convention country is the subject matter of lay out design of integrated circuits protection.

GEOGRAPHICAL INDICATION



- Geographical indications are names associated with goods which identify such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country , or a region locality in that territory, where a given quality , reputation or other characteristics of such goods is essentially attributable to its geographical origin.
- Some examples of GI are **Darjeeling Tea , Pochampalli Saree , Chanderi Saree , Kanjeevaram silk , Scotch whisky, Lucknow Chikan Cloths (Chikan kari work), Agra Petha and dalmoth, Chennai Silk Sarees, Benarasi Silk Sarees ,Alphanso Mangoes, Malihabadi Dussheri etc.**

Who can apply for GI's registration



- Any association of persons or producers or any organization or authority established by or under any law for the time being in force representing the interest of the producers of the concerned goods , who are desirous of registering geographical indication in relation to such goods can apply writing to the Register. **Eg. Lucknow Chikan Manufacturer's Association.**
- The registration of a GI shall be for a period of ten years but may be renewed from time to time for an unlimited period by payment of the renewal fees.







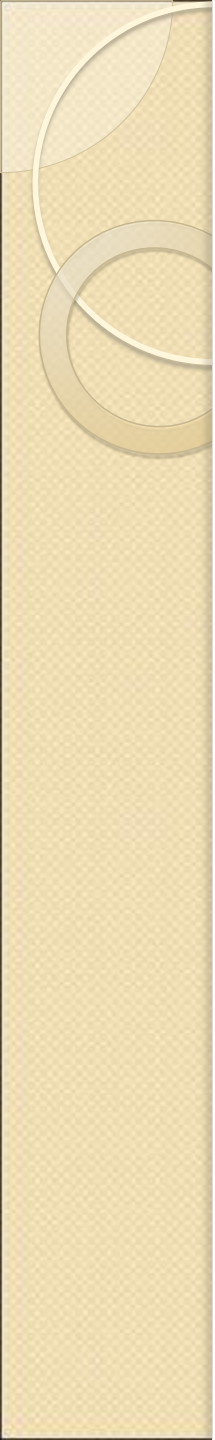


Nazir Pasand



Dashehari (Improved)





What kind of varieties are registrable under the Plant Variety Act?



- A new variety if it confirms to the criteria of novelty , distinctiveness , uniformity , and stability.
- An existing variety if it confirms to criteria of distinctiveness , uniformity , and stability.

Plant Variety Protection



- TRIPS provisions of WTO Agreement make it mandatory to the member countries to provide protection for the new Plant varieties.
- TRIPS provisions have given the member countries two options for the protection of new Plant varieties (i) under the Patent law itself and (ii) by a separate system (called Sui generis system).
- India has opted for the second category namely **Sui generis system**.
- “Protection of Plant Varieties and Farmers Rights Act” ,2001 covers Plant variety protection in India.



- In many countries Plant Variety can be protected through Breeders Rights , Patent and UPOV convention(union for protection for new varieties of Plant).
- UPOV is an International convention.
- Introduction of **desired trait** in the plant such as **salinity stress, drought stress, pesticide resistance etc. Bt Cotton, Hybrid seeds, Monsanto, USA.**

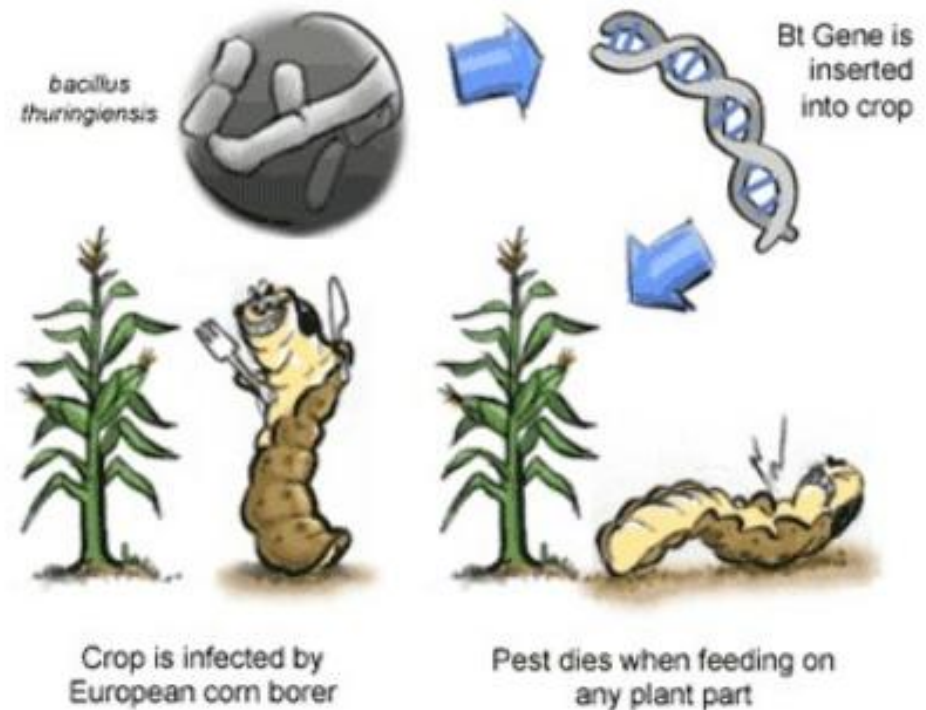
Objectives of Plant Variety Protection & Farmers Rights



- To stimulate investments for research and development both in the public and the private sectors for the **developments of new plant varieties with desired traits by ensuring appropriate returns on such investments.**
- To facilitate the growth of the seed industry in the country through domestic and foreign investment which ensure the availability of high quality seeds and planting material to Indian farmers. Increased productivity and higher per capita income of farmers. India –Agriculture based economy.
- To recognize the role of farmers as cultivators and conservers and the contribution of traditional , rural and tribal communities to the country's agro biodiversity by rewarding them through benefit sharing and protecting the traditional right of the farmers.

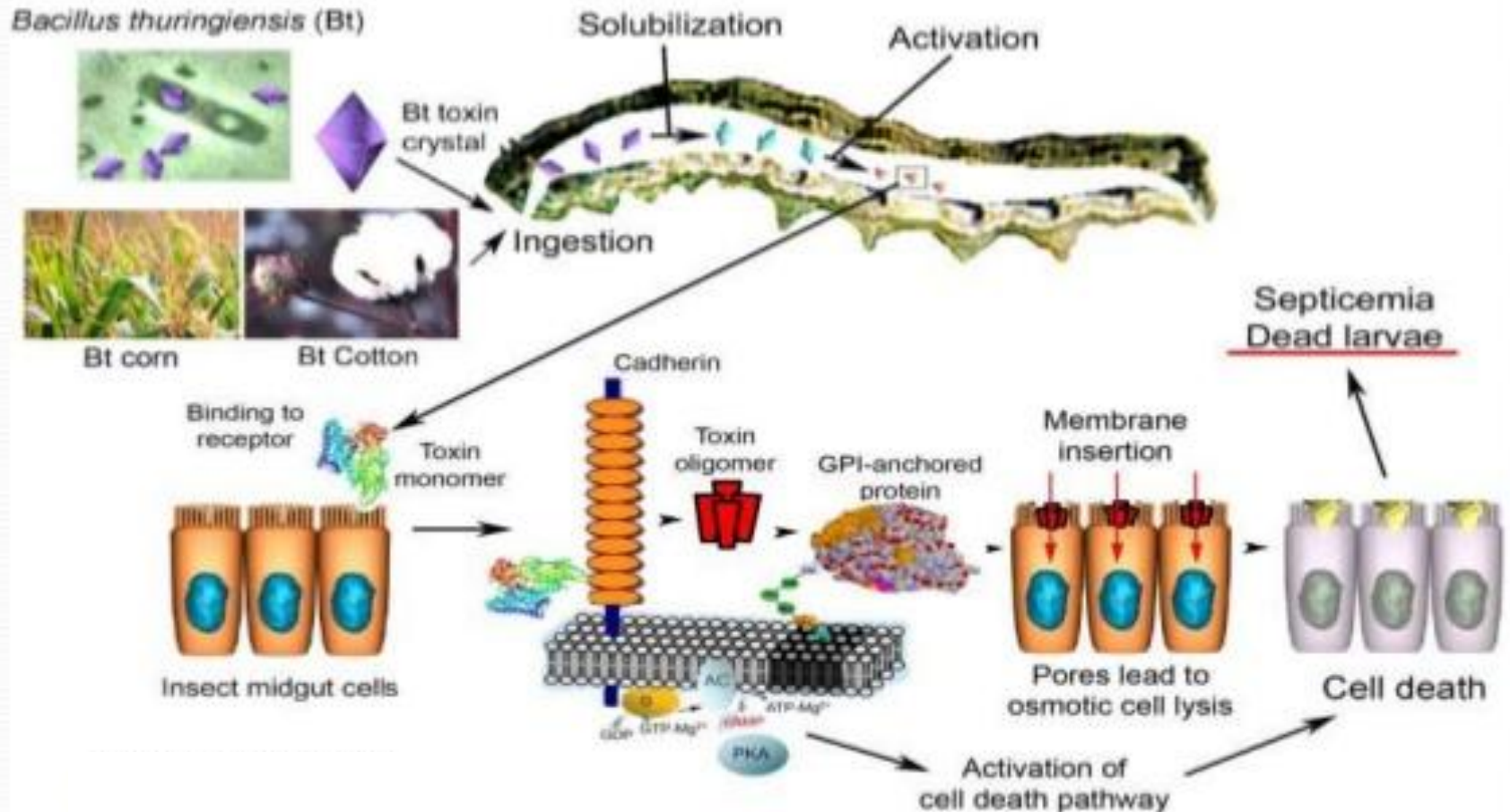
Bt gene

- *Bacillus thuringiensis* is a bacteria found in soil.
- It produces a protein that paralyzes the insects digestive system. The insect dies of starvation.
- The gene that is responsible for coding for the protein that kills insects is inserted into the DNA of many plants such as corn and cotton.
- The plant then produces the protein that is responsible for killing insects (its own personal insecticide)



How Bt works ?

1. **Ingestion**
2. **Solubilization & proteolytic activation**
3. **Binding to target site**
4. **Formation of toxic lesions**



Trade Secret



- **Trade Secret is an information , potentially valuable to its owner and is not known nor readily ascertainable to the public.**
- **This may be an idea , process , details , drawing , composition , formula , pattern , compilation , device , business model , method , programmes , techniques , any information or even an invention for which patent has not taken.**
- **Owner of trade secret has to keep it secret on their own.**
- **Examples-Like formulas for products , such as the formula of Coca-Cola, Bantini Goud brothers of Hyderabad - magical treatment of asthma patients.**

Advantages of Trade secrets



- **It include unlimited duration.**
- **Lack of legal formalities and requirements.**

Conclusions



- **IPRs especially patents are meant for the benefits of inventors, innovators, and ultimately society e.g. mobile phones have become very versatile gadgets, while rewarding inventors by granting them exclusive rights, they also lead to progress and technological innovation, since the latest technology and advancements get disseminated and are used freely by others ,wherever patents do not exist , and also licensing where patents do exist.**



- ***Intellectual property is a product of the human mind.*** No aspect of our lives is untouched by it. Intellectual Property Rights include rights related to protection of inventions in all fields of human Endeavour (including scientific, technological, literary and artistic works) and provides protection against unfair competition.



THANKYOU