Chapter II

Historical development of Intangible Asset

A. Preindependence position of Intangible Assets

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B. Post Independence position of Intangible Assets

(i) India

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Sociology and applied economics agree with business historians in outlining the significance of intangible assets in the creation and development of business in the world. Intangible asset is commonly defined as a resource that is not physical in nature. Corporate intellectual property such as patents, trade marks, industrial designs, copyright to knowledge and brand recognition are all common intangible assets in International accounting rules an intellectual asset can include a network of clients, the reputation of a brand name and knowhow. Therefore, it is a wide-ranging concept, which includes issues related to marketing, strategy, leadership, and above all, cultural valves often linked to religion, politics and family life. It has a great significance in studies on internationalization of brands and firms. Recent works on the contribution of intangible assets to the competitiveness of firms include among them such assets as entrepreneurial reputation product reputation, innovative skills, working networks, employees providers and distributors know-how, public knowledge, contracts intellectual copyrights, commercial secrets and databases. According to some authors the most critical aspect of implementing strategies in a firm depends on managing four key internal groups of intangible assets: operations, customer relationships, innovation, and regulatory and serial process. 

1 Intangible assets and competitiveness in Spain: an approach based on trade mark registration data in Catalonia (1850-1946) J PatgricioSaiz (UAM) and PalomaFernadez (UB).
**Historical development of Intangible Asset:**

Brands are a firm’s resources in which at least three of these four groups of intangible assets are combined. Despite this, they still are in the economic and business history literature, ‘a neglected intangible asset’. However, they have played a very important role in the rise of the modern corporation, and at the same time in the integration of small and medium enterprises in consumer-goods industries in global markets.

Brands and branding are very old forms of marketing. For most authors advertising first appeared with the invention of the printing press in the mid-fifteenth century and the emergence of newspapers a century later. For other scholars there was evidence of branding earlier on, from historical periods beginning 2250 B.C. in the Indus Valley, through to 300 B.C. in Greece. An evolutionary approach to branding since antiquity to modern times has revealed a gradual transition of brands as intangible assets that historically first provided information origin and quality, to brands that include more complex assets like status, power, added value and finally brand personality. A major difference between the first brands and advertisements and the modern industry – the shape of which began in the nineteenth century lies in the context of consumption. Modern advertising and brands were born alongside mass consumption made possible by the
industrial revolution and experienced a golden age during the 1960 onwards. Brands became an essential tool for manufacturers setting out to conquer their national markets, no longer content to rely on local distributors to promote their products. The introduction of an oil and electricity-powered economy, the proliferation of cars, and the establishment of radio and then T.V. stations, in North America and across Europe during the twentieth century, constituted powerful platforms through which brands spread among consumers around the world. This was particularly true in the food and drink industries.

Brand management involves a good knowledge of market tastes and needs, they often require innovative knowledge exchange among employees, clients and distributors and in order to be legally acknowledged and protected they must fulfill official regulations and become registered trade marks. The intangible prestige of brands is often much more difficult to imitate than the technological information contained in patents and there is an increasing value of enduring brands in crossing national borders, which help corporations to conquer the global markets. Therefore, we would like to focus our attention on the origins and contribution of brands and trade marks to the process of accumulation of intangible assets among firms. The significance of brands, marketing knowledge and distribution as firm specific intangible assets and competitive advantages change overtime. When
market conditions and conditions of a particular industry are significantly altered due to external strong challenges that lead to a process of market integration and greater competition, growth and survival of firms require faster creation or rebuilding of specific firm advantages. This process is path-dependent of previous marketing knowledge, which includes knowledge of specific brands and particular regional/national market. The importance of branding as a cost reduction strategy in early stages of penetration in foreign markets for small and medium firms has been theoretically and empirically demonstrated.

Despite its importance for the internationalization of firms and for the accumulation of commercial intangible assets in a territory or a corporation, which are long-term processes that cannot be rightly explained with a short-term view, there are very solidly based empirical studies with a long-term approach to branding in a sector, or cross-sector approaches to the uses of branding in a region or country and vary rare attempts to provide international comparisons over a long period of time.

Over study provides for the first time, solid empirical grounds to carry out a long term, cross-sector research on the evolution of branding in one of the most dynamic regions of Southern Europe.
There have been some studies on the origins of trade marks in the Western world though in general for only a few years and usually taking into account summarized records published by government publications. Our study has used these summaries for the four previously mentioned year of the 20th century, but above all its main empirical contribution comes from the more complete information provided in the first 17,000 individual applications registered with the public administration for the period 1850-1905. Thus required a detailed cataloguing which lasted for several years and which was carried out based on the original files. Thus, we were able to count on an ample database, difficult to find in other countries, which contains the complete administrative life of the trade marks including the scanned images.

Moreover, and in contrast with the few available international analyses on the origins of trade marking in the western world, our study includes some data on trademark prices when the brand was transmitted which allowed a pioneering effort to provide a solid basis for studying the first attempts to measure intangible assets in a firms accounting. Data is also significant because it sheds light on and provides a solid base for understanding the first stages of the process of the creation of intangible assets among small and medium enterprises in regions that experience a
transition from a traditional to an industrialized and globalized economy. The analysis of trademark registration by firms and entrepreneurs living in Catalonia between 1850 and 1946 is therefore used, not just as an interesting case study in itself, but rather as a model to test how firms operating in emergent economies use the regulatory framework, inherited human capita, commercial know how of distant markets, and new knowledge about products and marketing skills to improve their individual competitive advantage.

Our study aims at two different goals. First, to use history as a tool to learn about how processes of knowledge exchange and innovation in marketing are much more complex and path-dependent therein usually considered by the academic literature with a few exceptions. History is important to understand the design and production of manufacturer marketing or retail marketing. Not only consumers are affected by inherited traditions and tastes, but also owners and employees of manufacturers and brands are influenced by regionally embedded historical traditions. Moreover, a correct understanding of what some call “enduring brands” which have successfully survived in consumers preferences during centuries usually in the alcohol or cosmetic and fashion industries indicate the endurance of values firmly rooted in distant historical situations. History not only is important to understand brands. Brands usually are successful when
they use history. However, there is very little solid empirical evidence of the history of branding and registered marks in industrialized countries in open contrast with the case of patents, widely analyzed and studied throughout Europe and the U.S.

Neither has a theoretical framework for brand research been especially profuse. Traditionally, economic theory has only approached brands tangentially as a subset of the economics of information, signal theory and enterprise theory, in which they were conceived almost exclusively as the result of defensive idiosyncratic investments related to commerce competitiveness and entrepreneurial prestige. So, brands are distanced from other types of intellectual property such as patents, copyright and therefore, from the theory of public goods.

Recent research continues a deal with this topic from the economics of transaction costs without radical changes in theoretical concept of brands which are analyzed as private goods of little or no social value and more closely related to ‘tort law’ than to property rights theory contrary to the rest of inventive, artistic or intellectual activity.

According to this traditional analysis, brands do not present characteristics of public goods because, if a prestigious brand which
identifies a product could be freely copied, the signaling value and reputation would be destroyed immediately, something that would not happen with the value of inventions or literary creations, no matter how easily the ability to copy would reduce the economic incentives to make new creations. Recent works reclaim the social value of brands as public goods without rejecting their value as a private good above all from the point of view of the consumer, given that the information they have accumulated can be used simultaneously by many parties without interfering with or diminishing the utility among different consumers, as happens with information contained in a patent or a copyrighted book. This requires that trade marks be studied from multipurpose not only that of economics, including cultural and ideological view points, if we want to contribute to clarification and understanding of their role in the construction of the enterprise and the modern mass consumption society, as well as the intellectual and moral implications. This poster reinforces the empirical and historical analysis of trade mark included in this work, highlighting “customary uses of marks which arise from the communicative value of marks as cultural symbols that transcend the marks ‘source indicating function. Brands are one of the intangible assets of the enterprise that can best be studied thanks to the existence of official registries from very early dates that have hardly effectively minded until now. It is true that for recent dates studies have been carried out on brands in some specific sectors and products, as well as
analyses of manufacturing and retail branding in current marketing research journals; however, researches lacking for the second half of the 19th century, a period in which an entire branding culture was created and consolidated, directly related to the formation of intangibles in consumer goods industries.

Secondly, this work additionally suggests that the study of branding in emergent economies in that century, such as that of Catalonia, illustrates certain factors and historical strategies which condition the development of branding in current emergent economies. Currently, as in the past, it has not been complete countries which have led the growth of strong new economies but rather regions and district controlled by families, personalisms, foreign technology transfer and trust networks based on relationships and affection. Population migrations and the establishment of mercantile clans maintained in spite of distance have favoured and often have preceded the formation of an excellent and difficult to acquire market know-how which is essential to provide an emergent economy with human and social capital. There are numerous examples currently as well as in the past, and this paper offer a panoramic view of the first Catalonian trade mark registrations, the largest in Spain demonstrating that the sectors dominated by enterprises and entrepreneurs who, very early can, created human chains of commercial distribution throughout national territory and foreign countries were those
which most often used trade mark registration as a strategy of product differentiation within Spain. Food beverages and cosmetics continue to dominate branding.

A paradigmatic and singular case which we show is that of the pioneering efforts of branding used by the paper manufacturers of Alcoy (Valencia) and Cape lades (Catalonia), entrepreneurs who had experience in moving freely throughout Spanish territory and South American markets already in the first half of the 19th Century. What we know about this mobility and what we describe here as to their trademark registration activity suggests that mobility over time allowed the accumulation of market knowledge in different territories of the poorly integrated at that time national market. Branding design allowed consumers living in distant territories to consistently identify one or several products with a specific manufacturer and region and therefore, create an image of quality and competitiveness to the nascent industry at the moment in these regions.

The Catalan case is important because it was is the first industrial region of Spain it has a very compact and diversified entrepreneurial density, and it has used diverse adaptive strategies to conquer national and international markets. Many Spanish economic historians have been studying the diverse business typologies small and medium enterprises, a
few big corporations, flexible districts of different typologies and used in this region to achieve a high degree of competitiveness in a Spanish and European context during the last time decades. Many approaches have studied firms and sectors, though very few have attempted to study the creation and accumulation of intangible assets such as brands in this or other Spanish regions in a long-term cross-sector perspective. This is a relevant topic, however. The early development and the growth of the public and private demand for consumer goods (paper, textile, food and beverages soap, etc.) in Spain and in the former Spanish territories in American from the 19th Century onwards had to take into account consumer patterns of other regions and foreign markets and required strategies of product differentiation and creation of reputation and other added values. Brands facilitated the conquest of the fragmented national market and of some Latin American markets, and (in beverages of a few European markets such as the U.K. and Northern Europe. The Creation of brands had similar features to those revealed in the few available studies for the U.K., France or the U.S., in terms of early development of legislation in the second half of the 19th Century and the leadership of beverages - alcohol above all – and food.

During the second half of the nineteenth century most European countries, the U.S. and many Latin American countries set up registration systems at the national level. Available research publications for the United
Kingdom, France, Germany and the United Stated show that the bulk of trade marks corresponded to small firms and the initial concepts were often bound by regions and related to non-durable consumer goods. But due to frequent changes in registration and reporting gross members and data, it is difficult to make comparisons on a national scale, and even more so at an international level.

Legal rights for the registration of names during the nineteenth century were restricted in countries with an Anglo-Saxon tradition, whereas in continental Europe countries such as France had traditions of protecting marked goods locally with greater continuity that went beyond changes which took place during the French Revolution. Thus, laws attempted to protect names and manufacturers’ brands at a regional level before the industrial revolution and parallel to that at the national and international levels during the period of growth of production and international trade in the second half of the nineteenth century. In a forthcoming work which constitutes the first serious attempt to construct an international trade mark data comparison during the nineteenth century. Duguid, Mercer and da Silva have shown that trade marking in France the United States and the United Kingdom was responsive to legislation and regulation, effects of war and economic cycles particularly affecting consumer goods such as food and drink.
In any case, the establishment of consistent registered trade marks on the national level arrived on the scene later than the patents of invention, and frequently much later. Although precursors of protection of products and producers already existed in Europe, in France trademark registration was not organized until 1857 in the U.S. not until 1870, and in the U.K. not until 1875. In Spain, however there also existed a system of protecting of manufacturing trademarks which, as in the case of France, went back to the guild system of production and was maintained throughout the modern era being intermittent, diffuse and disorganized during the first half of the 19th century. There was a well-known custom of insisting on marking, with exclusive and differentiating symbols, the craftsmen’s workshops themselves, which then extended to the stamping or sealing of the products themselves. Thus served to guarantee a respect for the strict guild regulations and the quality standards for that product, and allowed its circulation while, in certain professions, distinguishing the specific producer and at the same time monitoring the payment of corresponding taxes.

After the period of Liberal Revolution, in Spain as well as in the rest of Europe, these affairs continued to be managed on the local level as was to be expected in economies with low levels of market integration until in the second half of the 19th century the modern national trade mark registry was
founded through the Royal Decree of the 20th November, 1850 one of the first laws in this domain in the world. The most plausible hypotheses as to why the decree appeared at that moment in particular could be the possible pressure the Alcoy and Capelladar paper manufacturers brought to bear on the central government; in the decade of the 1840’s they had petitioned for protections against fraud and imitations and during the same period the demand of the state for paper increased as they needed to supply their traditional monopolies (tobacco, playing cards and lottery tickets), but also the effects of monitoring and registration due to the first modern tax reform in the history of Spain.

During the agitated period of the War of Independence against Napoleon and the subsequent civil strife between absolutists and liberals, the modern and still precarious system of industrial property was born in Spain, inaugurated with the patent legislation of 1811, 1820 and 1826 with a clear French influence.

The bilateral agreements with other countries were the prelude to the signing of the Paris Agreement (1883) for the creation of the International Union for the Protection of Industrial Property which precipitated both, the obligation of guaranteeing priority to residence of the signing countries and the publication of the official Bulletin of Industrial Property containing basic
information of the trade marks (1886) and the farmers Madrid Agreement (1891) which gave birth to the international manufacturing and commercial trade mark registry in Geneva which allowed through a single application, a multiple registration in all the designated countries, as long as it was not in conflict with the national legislation of each country.

The Royal Decree of 1850 was abolished and replaced with the Industrial Property Law of the 16 May 1902 and along with the specific Regulations of 1903 and 1924, collectively governed patents, trade marks and recently developed categories such as industrial models and drawing (industrial design) and commercial names (destructive signs including business headings). This continued with the Industrial Property Statute of 1929. The 1929 Statute, in addition to upholding the previous categories, introduced two new categories having to do with customs labels and films. The legislation of 1929 remained in force, at least concerning the distinctive signs throughout the France era and until the modernization of the system after joining the European community, first with the enactment of the Trademark Law 32/1998 and the Regulation of 1990, and more recently with the Trademark and Commercial Names Regulation of 1990 and more recently with the Trademark and Commercial Names 17/2001 with its Regulation of 2002, enabling the convergence with Community and international laws.
With respect to the nature of national legislation, as was mentioned previously the Decree of 1850 arose, according to its own Preamble, from the need to combat falsifications of brands in the incipient national market in which, little by little, the degree of mercantile integration increased, already high in some regions such as the Mediterranean and Andalusian coastline, especially in industries related to consumption such as food, beverages and tobacco, and in general the transformation of agricultural products. They scattered industries owned by family enterprises and individual entrepreneurs with little need for fixed capital investments.

According to the preamble of the Decree of 1850, the principle reason that Spanish legislation was among the leaders of the world in creating a protective state legislation of registered trademarks appears to be the need to combat an intense industrial piracy in some sectors. The Decree established the compulsory registration of trademarks in order to prosecute the usurpers as well as a periodic publication.

A fundamental question is that this registration was conceived only for factory trademarks i.e., for those enterprises and manufacturers either Spanish or foreign, as long as their establishment fell within national territory and they were adequately documented registering the marks and
images with which they distinguished their products. It was with the Royal Order of the 29th of September 1880 that through a specific resolution, the legislation was extended to commercial trademarks, it was with the Royal Order of the 16th January 1897 that the registration of agricultural and cattle trademarks were established; and the Law of the 16th May, 1902, professional and crafts men trademarks were taken into consideration finally opening the registration system to distinctive signs in all economic activities, while establishing that these trademarks could not lay dormant for more than three years.

Brands provide more added value in some sectors than in others, and pioneering brands provide substantial added value to the different firms that historically have owned such trademarks. Brands and advertising are important factors in the competitive advantages of firms. They provide consumer identification with particular values and rewards. They have rational and emotional elements. It is generally accepted that advertising alone does not create demand, though it is also generally accepted that it provides competitive advantages.

At early stages of their lives brands have usually been owned by family firms, and this has provided ideal environments for nurturing such brands. Families tend to have a long term approach to brands, and accumulate
‘sticky’ marketing knowledge which is pragmatic and path dependent and allows consistency in brand management in the long run. Brand developments reflect the governance of firms and at least in the case of the global alcoholic beverages industries, firms owned and managed by families tend to accumulate more sticky pragmatic and path dependent knowledge that often leads to successful and enduring brands. Studies suggest that in non-science based sectors with strong competition and concentration, brands and marketing knowledge of particular national markets are central to explaining growth and survival of firms.

The most important sectors that led this strategy of product and quality differentiation were textile, paper making, beverage industries oil industries, cosmetics and other hygiene products. These were sectors dominated by small and medium enterprises, in which contacts with other regional and foreign markets had taken place, in some cases, since the 17th century, thus providing marketing knowledge of distant markets. This knowledge could have been crucial, from a regional perspective, to the explanation of growth and survival of these sectors and of the firms that owned the brands.

Recent studies on the historical origins of branding and advertising in some industrial sectors in Spain such as perfume industry, have
concentrated on their expansion during the golden age of capitalism, and have indicated that advertising as a valuable part of marketing was massively absent in Spain. Marketing and advertising were not however, a 20th century development in Spain. Evidence of trade marking for Spain in particular confirm the diversity of ways through which marketing development in Europe in the final decades of the 19th century. Moreover, they add a cross-sector perspective and knowledge to existing studies that have analyzed the transformation of commercial distribution in industrialized territories of Southern Europe, albeit only for some individual sectors, in the last of the 19th century. Thus, for example, we know that branding had been a basic added value before the twentieth century, as the early consolidation of some brands by pioneering Italian olive oil firms in Latin American markets created real barriers to Spanish olive oil firms in Latin American markets. Additionally, brands were a very important strategy of product differentiation of Catalan producers of paper and mine in Spanish Latin American and European markets during the 19th century, particularly in the final three decades.
The 1880s were times of transformation of marketing that were followed in other leading European regions of the time with railways connecting this region with the capital of country. First, textile manufacturers send travelling salesman to sell their product to distant territories, thus changing the traditional role of marketing played by agreements established with local independent distributors. Second, department stores began to appear in Barcelona and other large cities between the 1880s and 1920. Third, new magazines and journals as well as yearly commercial and industrial publications began to publish advertisements in which brands had a prominent role. Fourth, entrepreneurs increasingly participated after the 1880s in international exhibitions in which the design of brands and logos played a very important role in advertising and differentiating their products. The golden age of growth that economy experienced during the 1880s linked to wine exports due to French problems in their wine industry, was an opportunity to expend internationally and to use brands to add value and differentiate local consumer goods which had intrinsic low added value and a great number of competitors in distant markets.

There are foreign trademarks registered by residents or national brands. Some of them are of great tradition in the market while others are
key words that an enterprise cannot afford to lose, intangible assets which, in any case, have been accumulating or losing commercial value for more than a hundred years and, therefore, are part of the company’s daily life and of its long strategies for growing, penetrating markets, increasing competition and investing in advertising.

India,

Pre Independence

(a) Pre Independence Position in India

George Alfred DePenning is supposed to have made the first application for a patent in India in the year 1856. On February 28, 1856, the Government of India promulgated legislation to grant what was then termed as “exclusive privileges for the encouragement of inventions of new manufactures” i.e the Patents Act. On March 3, 1856, a civil engineer George Alfred DePenning of 7. Grant’s Lane, Calcutta petitioned the Government of India for grant of exclusive privileges for his invention- “An Efficient Punkah Pulling Machine “. On September 2, DePenning submitted the Specifications for his invention along with drawings to
illustrate its working. These were accepted and the invention was granted the first ever Intellectual Property protection in India.¹

Modern copyright law developed in India gradually, in a span of more than 150 years.

Copyright law entered India in 1847 though an enactment during the East India Company’s regime. According to the 1847 enactment, the term of copyright was for the lifetime of the author plus seven years post-mortem. But in no case could the total term of copyright exceed a period of forty-two years. The government could grant a compulsory licence to publish a book if the owner of copyright, upon the death of the author, refused to allow its publication. The act of infringement comprised in a person’s unauthorized printing a copyright work for (or as a part of attempt of) “sale hire, or exportation”, or “for selling, publishing or exposing to sale or hire.”

Suit or action for infringement was to be instituted in the “highest local court exercising original civil jurisdiction.” The Act provided specifically that under a contract of service copyright in “any encyclopedia, review, magazine, periodical work or work published in a series of books or parts” shall vest in the “proprietor, projector, publisher or conductor.” Infringing copies were deemed to be copies of the proprietor of

copyrighted work. Importantly unlike today, copyright in a work was not automatic. Registration of copyright with the Home Office was mandatory for enforcement of rights under the Act. However, the Act also specifically reserved the subsistence of copyright in the author and his right to sure for its infringement to the extent available in law other than the 1847 Act. At the time of its introduction in India, copyright law had already been under developed in Britain for over a century and provisions of the 1847 enactment reflected the learnings from deliberations during this period.

In 1914 the then Indian legislature enacted a new Copyright Act which merely extended most portions of the United Kingdom Copyright Act of 1911 to India. It did however make a few minor modifications. First, it introduced criminal sanctions for copyright infringement (sections 7 to 12). Second, it modified the scope of the term of copyright; under section 4 the “sole right” of the author to “produce, reproduce, perform or publish a translation of the work shall subsist only for a period of ten years from the date of the first publication of the work.” The author, however, retained her “sole rights” if within the period of ten years she published or authorized publication of her work a translation in any language in respect of that language.
The 1914 Act was continued with minor adaptations and modifications till the 1957 Act was brought into force on 24th January, 1958.

The first legislation in India relating to patents was the Act VI of 1856. The objective of this legislation was to encourage inventions of new and useful manufactures and to induce inventors to disclose secret of their inventions. The Act subsequently repealed by Act IX of 1857 since it had been enacted without the approval of the sovereign. Fresh legislation for granting exclusive privileges was introduced in 1859 as Act XV of 1859. This legislation contained certain modifications of the earlier legislation, namely, grant of exclusive privileges to useful inventions only and extension of priority period from 6 to 12 months. The Act excluded importers from the definition of inventor. The 1856 Act was based on the United Kingdom Act of 1852 with certain departures including allowing assignees to make application India and also taking prior public use or publication in India or United Kingdom for the purpose of ascertaining novelty.

The Act of 1859 provided protection for invention only and not for designs whereas United Kingdom had been protecting designs from
1842 onwards. To remove this lacuna, the ‘Patterns and Designs Protection Act’ (Act XIII) was passed in 1872. This Act amended the 1859 Act to include any new and original pattern or design or the application of such pattern to any substance or article of manufacture within the meaning of ‘new manufacture’. The Act XV of 1859 was further amended in 1883 by XVI of 1883 to introduce a provision to protect novelty of the invention, which prior to making application for their protection were disclosed in the Exhibitions of India. A grace of 6 months was provided for filing such applications after the date of the opening of such Exhibition.

In 1888, new legislation was introduced to consolidate and amend the law relating to invention and designs in conformity with the amendments made in the UK law.

In 1911, the Indian Patents and Designs Act, 1911(Act II of 1911) was brought in replacing all the previous legislations on patents and design. This Act brought patent administration under the management of Controller of Patents for the first time. This Act was amended in 1920 to provide for entering into reciprocal arrangements with UK and other countries for securing priority. In 1930, further amendments were made to incorporate, inter-alia, provisions relating to grant of secret patents,
patent of addition, use of invention by Government, powers of the
Controller to rectify register of patent and increase of term of the patent
from 14 years to 16 years. In 1945, another amendment was made to
provide for filling of provisional specification within nine months.
Pre Independence position in England

In England the statue of Monopolies of 1623 swept away all monopolies except those made by the true and first inventor of a method of manufacture. The English courts developed protection for trade marks through the action of passing off. For a variety of reasons, this proved unsatisfactory and statutory systems of trademark registration beganto make their appearance in England 1862 and 1875. Copyright follows a similar kind of pattern, modern copyright law being in England with the statute of Anne of 1709. The principles of patent law to be found in the English statute of Monopolies were gradually recognized the states. The English devised the first law on designs in 1787.

Pre Independence Position in U.S.A.

International copyright policy in the U.S.A. took a different turn to that of the U.K. The U.S.A. Copyright Act 1790 only granted copyright protection citizens and residents of the U.S.A. This form of national protectionism prevailed in US copyright policy for a surprisingly long period. For over a hundred years this nations not only denied copyright protection to published works by foreigners, applying the ‘nationality-of-the-author’ principle, but appeared to encourage the piracy of such works”. In fact, it was not until
after the Second World War that the U.S.A. began to exercise real leadership in international copyright. It did so with boldness that few could have foreseen.

The international period was a world in which a lot of free-riding was tolerated. The only enforcement mechanism under the various intellectual property treaties were appeals to the International Court of Justice and most states took reservations on such clauses. No state was in a position to cast the first stone when it came to free-riding. The U.S.A. was not a member of the Berne Convention, but U.S. publishers took advantage of its higher standards of protection ‘through back door’ method of arranging simultaneous publication in a Berne country like Canada.

Not everybody in the U.S.A. was happy with this lasses faire attitude towards the enforcement of intellectual property rights. For the U.S. film and pharmaceutical industries in particular, intellectual property (copyright for the former, patents for the latter) represented the backbone of their industries.

(b) Post Independence Position in India

After Independence, it was felt that the Indian Patents & Designs Act, 1911 was not fulfilling its objective. It was found desirable to enact
comprehensive patent law owing to substantial changes in political and economic condition in the country. Accordingly, the Government of India constituted a committee under the Chairmanship of Justice (Dy.) Bakshi Tek Chand, a retired Judge of Lahore High Court, in 1949, to review the patent law in India in order to ensure that the patent system is conducive to the national Interest.

The Committee submitted its interim report on 4th August, 1949 with recommendations for prevention of misuse or abuse of patent right in India and for amendments to sections 22, 23 &23A of the Patents & Designs Act 1911 on the lines of the United Kingdom Acts of 1919 and 1949.

Based on the recommendations of Committee the 1911 Act was amended in 1950(Act XXXII of 1950) in relation to working of inventions and compulsory licence/revocation.

In 1952, an amendment was made to provide compulsory licence in relation to patents in respect of food and medicines, insecticide, germicide and a process for producing substance or any invention
relating to surgical or curative devices, through Act LXX of 1952. The compulsory licence was also available on notification by the Central Government. Based on the recommendations of the Committee a bill was introduced in the Parliament in 1953 (Bill Bo, 59 of 1953). However, the bill lapsed on dissolution of the LokSabha.

In 1957 the Government of India appointed Justice N. RajagopalaAyyangar Committee to examine the question of revision of the Patent Law and advice government accordingly. The report of the Committee which comprised of two parts, was submitted in September 1959. The first part dealt with general aspects of the patent law and the second part gave detailed note on the several clause of the lapsed bill of 1953, The first part also dealt with evils of the patent system and solution with recommendations in regard to the law. The committee recommended retention of the patent system, despite its shortcomings. This report recommended major changes in the law which formed the basis of the introduction of the Patents Bill, 1965. This bill was introduced in the LokSabha on 21st September, 1956, which, however, lapsed.
In 1967, an amended bill was introduced which was referred to a joint Parliamentary Committee and on the final recommendation of the committee, the Patents Act, 1970 was passed. This Act repealed and replaced the 1911 Act so far as the patents law was concerned. However, the 1911 Act continued to be applicable to designs. Most of the provisions of the 1970 Act were brought into force on 20th April, 1972 with the publication of the Patents Rules, 1972.

This Act remained in force for about 24 years till December 1994 without any change. An ordinance effecting certain changes in the Act was issued on 31st December 1994, which ceased to operate after six months. Subsequently, another ordinance was issued in 1999. This ordinance was later replaced by the Patents (Amendment) Act, 1999 that was brought into force retrospectively from 1st January, 1995. The amended Act provided for filing of applications for product patents in the areas of drugs, pharmaceuticals and agro chemicals though such patents were not allowed. However, such applications were to be examined only after 31st December 2004. Meanwhile, the applicants could be allowed Exclusive
Marketing Rights (EMRs) to sell or distribute these products in India, subject to fulfillment of certain conditions.

The second amendment to the 1970 Act was through the Patents (Amendment) Act, 2002 (Act38 of 2002). This Act came into force on 20th May, 2003 with the introduction of the new Patents Rules, 2003 by replacing the earlier Patents Rules, 1972.

The third amendment to the Patents Act, 1970 was introduced through the Patents(Amendment) ordinance, 2004 with effect from 1st January 2005, This Ordinance was later replaced by the Patents (Amendment) Act, 2005 (Act 15 of 2005) on 4th April, 2005 which was brought into force from 1st January 2005.

While some form of proprietary protection for marks in India dates back several millennia. India’s statutory Trademarks Law dates back to 1860. Prior to 1940 there was no official trademark Law in India. Numerous problems arouse on infringement, law of passing off etc and these were solved by application of section 54 of Specific Relief Act, 1877 and the registration was obviously adjudicated by obtaining a declaration as to the ownership of trademark under Indian Registration Act 1908.
To overcome the aforesaid difficulties the Indian Trademarks Act was passed in 1940, this corresponded with the English Trademarks Act. After this there was an increasing need for more protection of Trademarks as there was a major growth in Trade and Commerce. The replacement to this act was the Trademark and Merchandise Act 1958. This Act was to provide for registration and better protection of Trademarks and for prevention of the use of fraudulent marks on merchandise. This Law also enables the registration of trademarks so that the proprietor of the trademark gets legal right to the exclusive use of the trademark. The objective of this act was easy registration and better protection of trademarks and to prevent fraud.

The repeal of the Trademarks and Merchandise Act gave rise to the Trademark Act 1999; this was done by the Government of India so that the Indian Trademark Law is in compliance with the TRIPS obligation on recommendation of the World Trade Organisation. The object of the 1999 Act is to confer the protection to the user of the trademark on his
goods and prescribe conditions on acquisition, and legal remedies for enforcement of trademark rights.¹

**Pre Independence Position in England**

In England the statute of Monopolies of 1623 swept away all monopolies except those made by the true and first inventor of a method of manufacture. The English courts developed protection for trade marks through the action of passing off. For a variety of reasons, this proved unsatisfactory and statutory systems of trademark registration began to make their appearance in England 1862 and 1875. Copyright follows a similar kind of pattern, modern copyright law beginning in England with the statute of Anne of 1709. The principles of patent law to be found in the English statute of Monopolies were gradually recognized the states. The English devised the first law on designs in 1787.

**Post Independence Position in England:**

During the nineteenth century state began to take a greater and greater interest in the possibility of international co-operation on intellectual property. The U.K. found in the eighteenth century and many of its authors

were having their works reproduced abroad without permission and without receiving royalties. The U.K. response to this problem was to pass in 1838 and 1844 Acts that protected works first published outside U.K. These Acts grounded a strategy of reciprocity. Foreign works would only gain protection in the U.K. if the relevant state agreed to protect U.K. works. The 1844 Act saw a considerable number of bilateral agreements concluded between U.K. and other European states.

**Pre Independence Period of U.S.A.**

International copyright policy in the U.S.A. took a different turn to that of the U.K. The U.S.A. Copyright Act 1790 only granted copyright protection citizens and residents of the U.S.A. this form of national protectionism prevailed in US copyright policy for a surprisingly long period. For over a hundred years this nations not only denied copyright protection to published works by foreigners, applying the ‘nationality-of-the-author’ principle, but appeared to encourage the piracy of such works.”¹ In fact, it was not until after the Second World War that the U.S.A. began to exercise real leadership in international copyright. It did so with boldness that few could have foreseen.²

¹Henn, op.citpp 43,52.
The international period was a world in which a lot of free-riding was tolerated. The only enforcement mechanism under the various intellectual property treaties were appeals to the International Court of Justice and most states took reservations on such clauses. No state was in a position to cast the first stone when it came to free-riding. The U.S.A. was not a member of the Breme Convention, but U.S. publishers took advantage of its higher standards of protection ‘through back door’ method of arranging simultaneous publication in a Breme country like Canada.³

Not everybody in the U.S.A. was happy with this lasses faire attitude towards the enforcement of intellectual property rights. For the U.S. film and pharmaceutical industries in particular, intellectual property (copyright forte former, patents for the latter) represented the backbone of their industries.

**Post Independence of U.S.A.**

During the 1980s the U.S.A. reshaped it trade law to give it a series of bilateral enforcement strategies against countries it considered had inadequate kevels of intellectual property enforcement or which were weak on the enforcement of such rights in 1984 the U.S.A. amended its Trade Act 1974 to include intellectual property in the ‘section 301’trade process.

The 1984 amendment had a sequel in the form of the Omnibus Trade and Competitiveness Act of 1988. This latter Act strengthened the 301 process by adding more processes called ‘Regular 301’, ‘Special 301’ and Super 301’. Essentially these provisions required the Office of the United States Trade Representative to identify problem countries, assess the level of abuse of US intellectual property interests and to enter into negotiations with those countries to remedy the problems. Ultimately, if this proved futile the U.S.A. could impose trade sanctions. Countries caught up in the 301 process came to learn a simple truth. If they failed to act on intellectual property they would, sooner or later, face retaliatory action from U.S.A.

At the Ministerial Meeting at Punta del Este in September pf 1986 the meeting which launched the Uruguay Round of trade talks, intellectual property was included as a negotiating issue. The U.S.A. had the support of Europe, Canada and Japan for the inclusion of intellectual property in the Round but it was basically a U.S. initiative. It was the U.S.A. more specifically the U.S. business community, which had made all the running on the matter of intellectual property.