



# Intellectual Property in the Fashion industries in Latin America and India

*Why is IP relevant in the internationalisation process?*

*8th July 2022 - Torino*

**LATIN AMERICA**  
IP SME HELPDESK



**INDIA**  
IP SME HELPDESK

# What is Intellectual Property?

Legal jargon	Translation
<u>Rights</u> over the innovative aspects of products and services	Mere ideas are excluded. You must know and apply the relevant regulation (eg. Registration requirements)
Legal/Business tool	Exclusive and exploitable
Registral nature (First to file)	You must register and do it fast
Territorial character	You must register where you aim to operate. There is no worldwide protection
Limited in time	Then anyone can use it
Limited scope of protection	Each right protect one aspect. One product can be protected by various IPR
Horizontal	Every company has and deals with them

# 1

## **Why IPRs matter?**

# Why IPRs matter?

Laces taped at end to create end seal.



**UnReal**

Laces burned to create end seal.



**Real**

Logo not burned in (stamped).

## Other Things to Look For:

- Leather is not as supple as the real Timberland boot.
- Counterfeit Timberland lace eyelets are stamped to the boot rather than sewn in.



# Why IPRs matter?

COMPONENTS *of* S&P 500 MARKET VALUE



SOURCE: OCEAN TOMO, LLC INTANGIBLE ASSET MARKET VALUE STUDY, 2020  
\*INTERIM STUDY UPDATE AS OF 7/1/2020

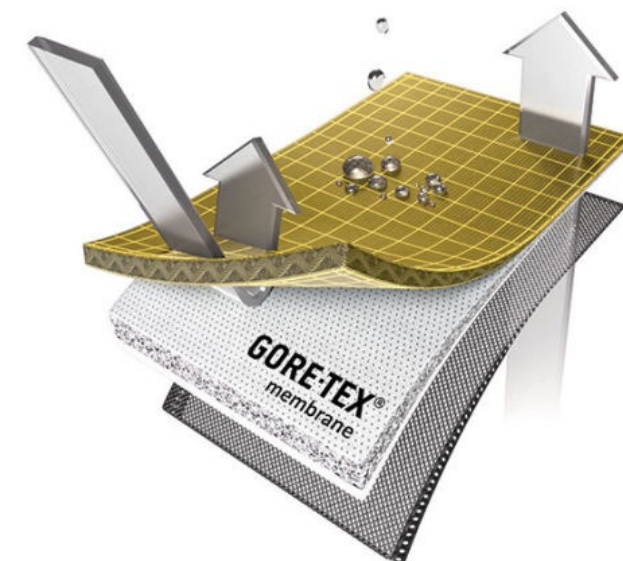
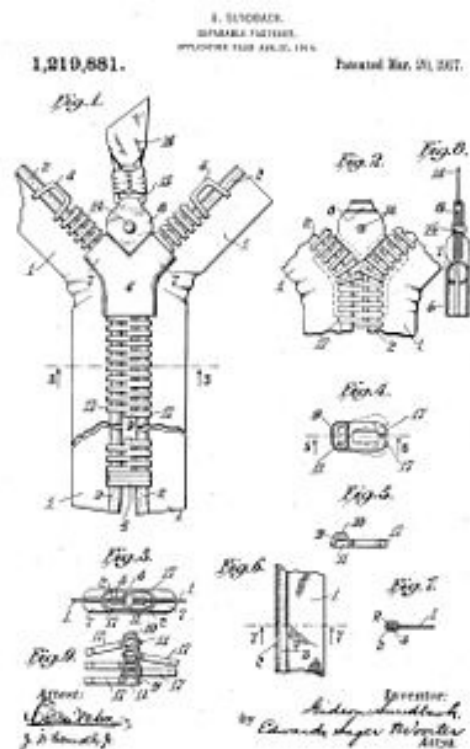


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# 2

## **Why is IP so important for the fashion industry?**

# Why is IP so important for the fashion industry?





# Why is IP so important for the fashion industry?

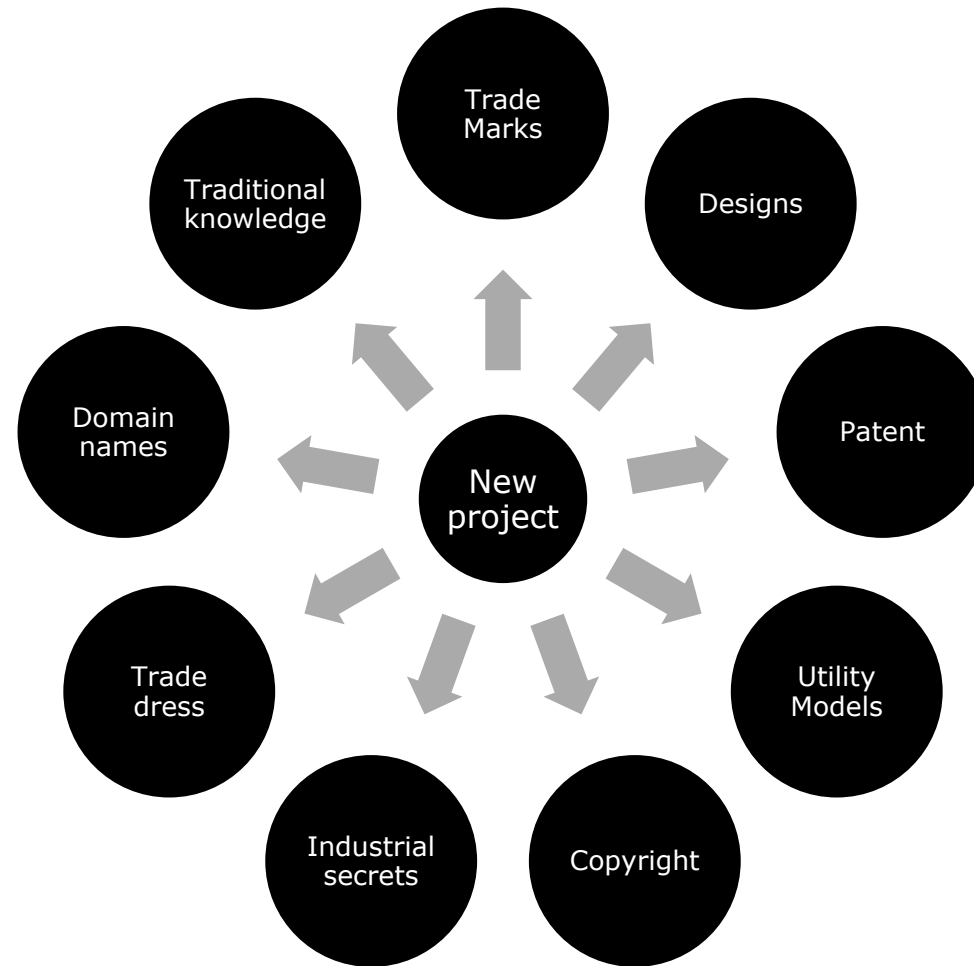
- 1. Highly competitive environment*
- 2. Differentiating your products from your competitors' → success/failure*
- 3. Your reputation and goodwill are vital*
- 4. Products' short life cycle*
- 5. IPR are an effective internationalisation tool*

## ***It is necessary to:***

- Create an identity*
- Secure its ownership*
- Carefully consider the business model in the internationalization process*
- Be prepared for counterfeit*



# Why is IP so important for the fashion industry?



# Why is IP so important for the fashion industry?



HAWKERS



# 3

## **How to safely exploit your creations in Latin America & India**

# A

## **Secure ownership**

# Securing ownership

## **TRADEMARKS IN LATIN AMERICA**

- *Register before you go → the bad faith registration scenario*
- *What to register*
- *Traditional vs non-traditional trade marks*
- *Registration requirements*
- *Duration of registration proceedings and protection*
- *Well-known trade marks*

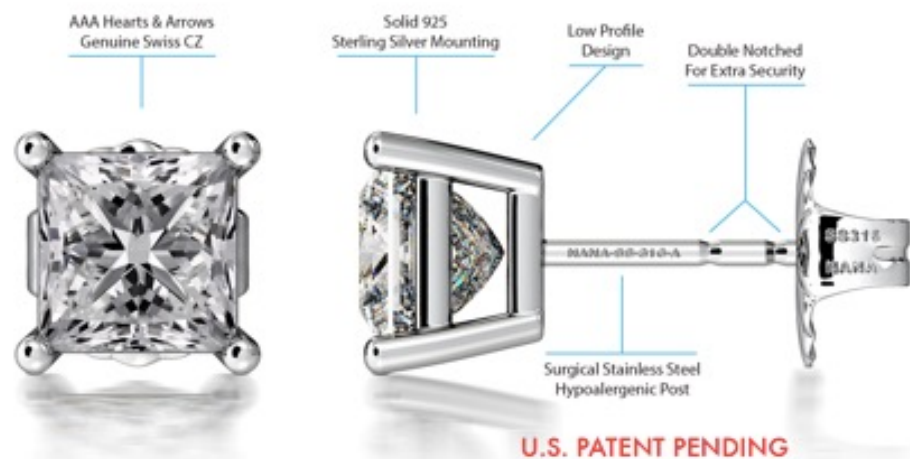
# Securing ownership

## ***INDUSTRIAL DESIGNS IN LATIN AMERICA***

- *What does it protect specifically*
- *Modelo vs dibujo*
- *Registration requirements*
- *Grace period*
- *Duration of protection*
- *Non-registered designs*

# Securing ownership

## *PATENTS IN LATIN AMERICA*





# Securing ownership

## ***COPYRIGHT IN LATIN AMERICA***

- *What does it protect*
- *Protection requirements*
- *Registration vs Berne Convention*
- *Duration of protection*
- *Applied art*

# Securing ownership

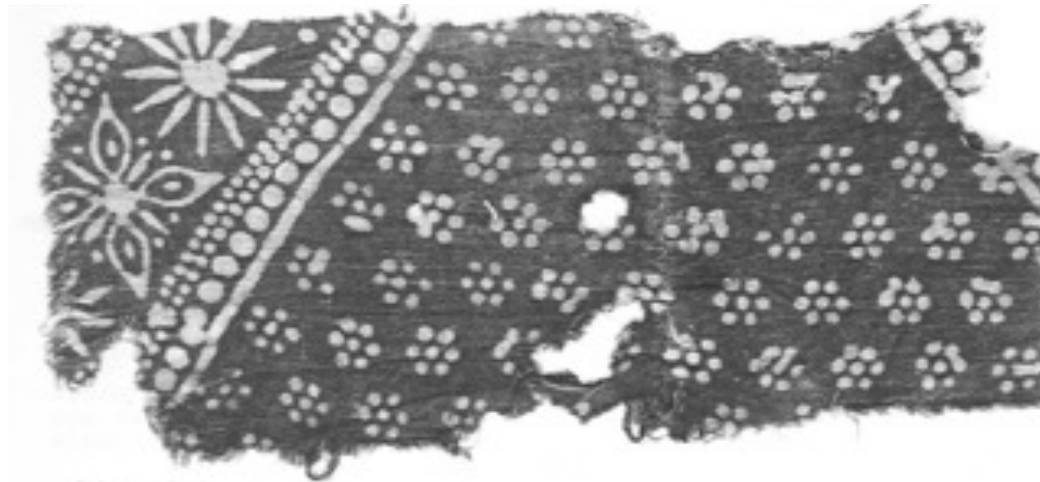
- *Trade Dress, Traditional Knowledge + Trade Secret and Domain Names particularities in Latin America*



# India

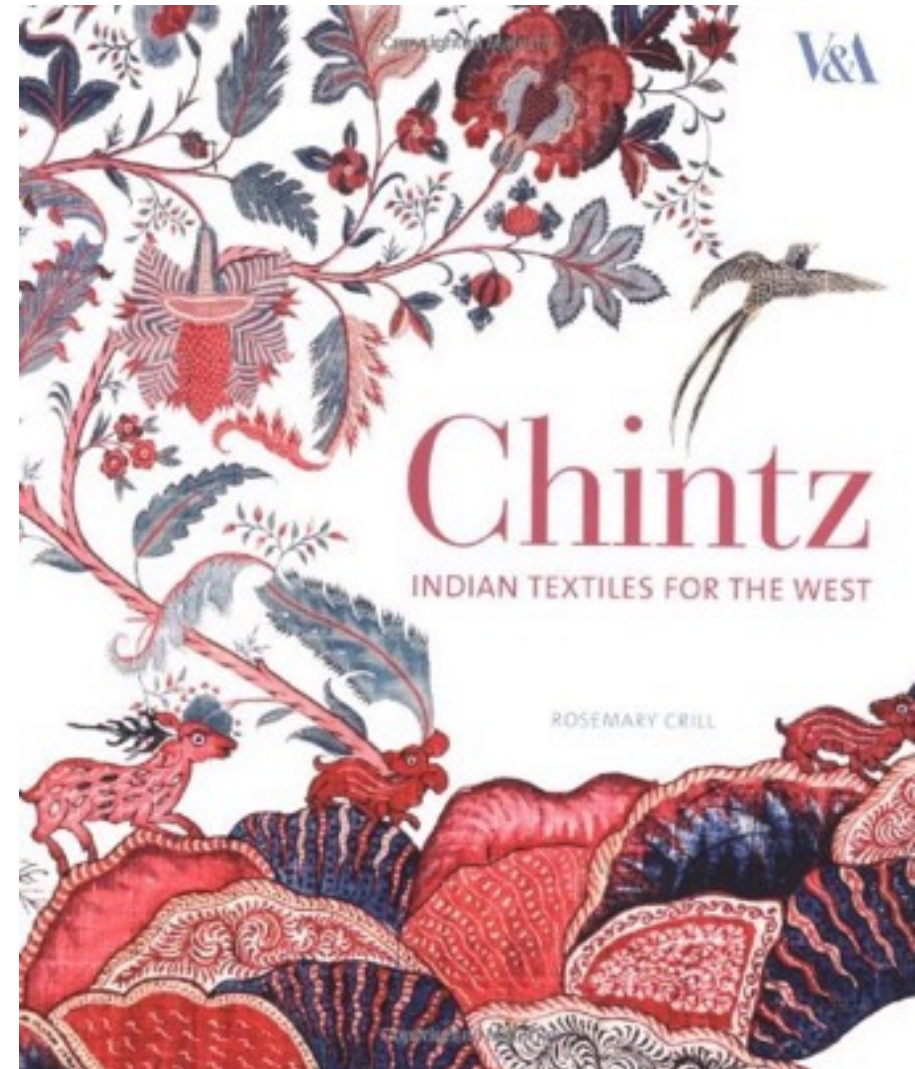
possibility that the movement of textiles from these areas had impact on visual developments in the places where they were distributed. This, however, also opens up the question of origin again. Beyond doubt, much of the apparently Indian fabric does have its origin in Gujerat. But is some of it possibly from Persia, or was it produced in Egypt? A major export article in the medieval trade was dye stuff, in particular indigo, as well as certain red dyes.

One fragment in the Newberry collection is characteristically Gujerati, both in design and quality of dye technique (Fig.7). Prior to printing, the textile has been sewn together from two widths, a practice still common in Gujerati block-printed textiles. There is no doubt that this preceded so far the



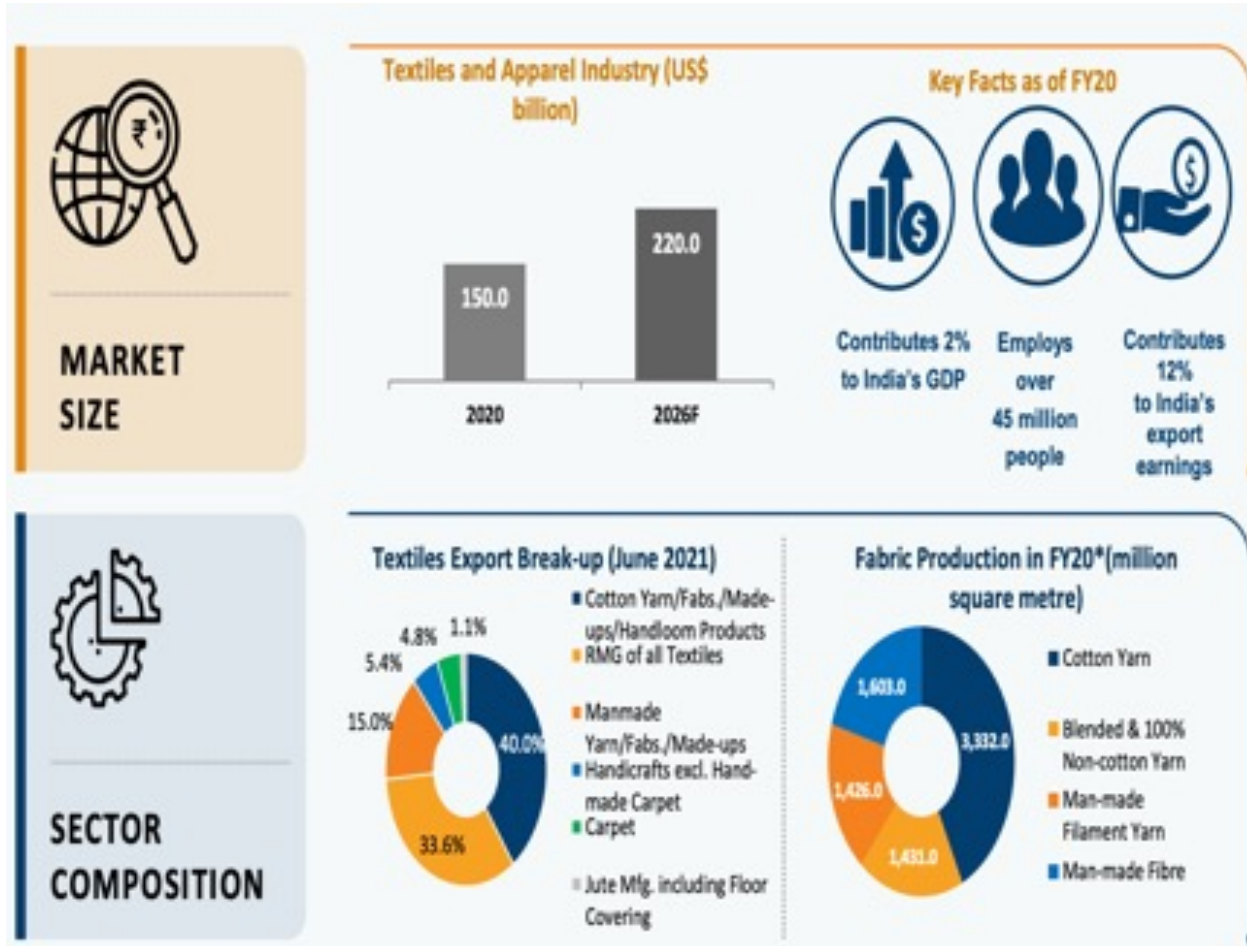
1930.121

Fig.7: Newberry Collection, Ashmolean Museum 1990.121





# Indian Market



- 1. One of the largest in the world with a large raw material base and manufacturing strength across the value chain.
- 2. Indian is the 2nd largest producer of Fibres. India is the **6th largest exporter** of Textiles & Apparel in the world.
- 3. **The second-largest producer of silk** in the world
- 4. **Largest consumer** and the second-largest producer of cotton
- 5. The industry contributes to 7% of industrial output in value terms, **2% of India's GDP** and 12% of the country's export earnings. <sup>2</sup>

# Securing ownership

## TRADEMARKS IN INDIA

- *What to register*
- *Requirements for protection of "Non-traditional trademarks"*
- *Term of Trademark protection - **10 years with possibility of renewal***
- *Registration requirements*
- *First to use versus first to file.*
- *Protection of "Well-known –Trademarks"*

### The International Trademark Registration Process



# Securing ownership

## ***INDUSTRIAL DESIGN IN INDIA***

- *What can be protected under Industrial Design*
- *Registration Requirements – Registration Mandated. ( Not party to Hauge Agreement).*
- *Term of Design protection is for a period of **10 years with possibility of extension for additional 5 years** .*
- ***No protection for unregistered design.***
- *Grace period of 6 months, conditions apply....*

# Securing ownership

## ***PATENTS IN INDIA***

- *What can be protected by patents in India*
- *Registration requirements*
- *Grace Period*
- *Term of Patent protection is for a period of 20 years*
- *No second use patentability*
- *Annual Statement of Working (SOW)*
- *Compulsory licensing*



# Securing ownership

## ***COPYRIGHT IN INDIA***

- *What does Copyright protect in India*
- *Registration Requirement – **Not mandated but Advised.***
- *Term of copyright protection depends on nature of work – **60 years from the death of the creator.***
- *Dilemma in Indian Fashion Industry – Copyright versus Design – More than 50 products produced, **designs is the way to go.***

# Geographical Indication



People Tree vs Christian Dior

# Enforcement

## Civil Remedies-

- Interlocutory Injunctions,
- Mareva, Anton Piller Orders (Search and Seizures)
- Damages or Accounts of Profit

## Criminal Remedies-

- Falsifying and falsely applying trademarks
- False descriptions.

## Custom Measures

- Prohibit import/ export of goods.

## Criminal Enforcement



## Civil Enforcement



# International registration

## ***Patent Cooperation Treaty – PCT***

- *India*
- *Argentina, Paraguay, Bolivia, Venezuela are **NOT** members*

## ***Madrid System***

- *India*
- *Brazil, Colombia, Cuba, Mexico and Chile*

## ***Hague Agreement***

- *Mexico*

# B

**Choose the right  
Business model**

# Exploitation strategies

- ✓ *Control over how the product/service reaches the end consumer*
- ✓ *Investment required*
- ✓ *Profitability*
- ✓ *Risks assumed*
- ✓ *Specificities of the business model*



# Exploitation models

- *Assignment*
- *Licensing*
- *Distribution agreement*
- *Franchise*
- *Subsidiaries*

## **Other ways:**

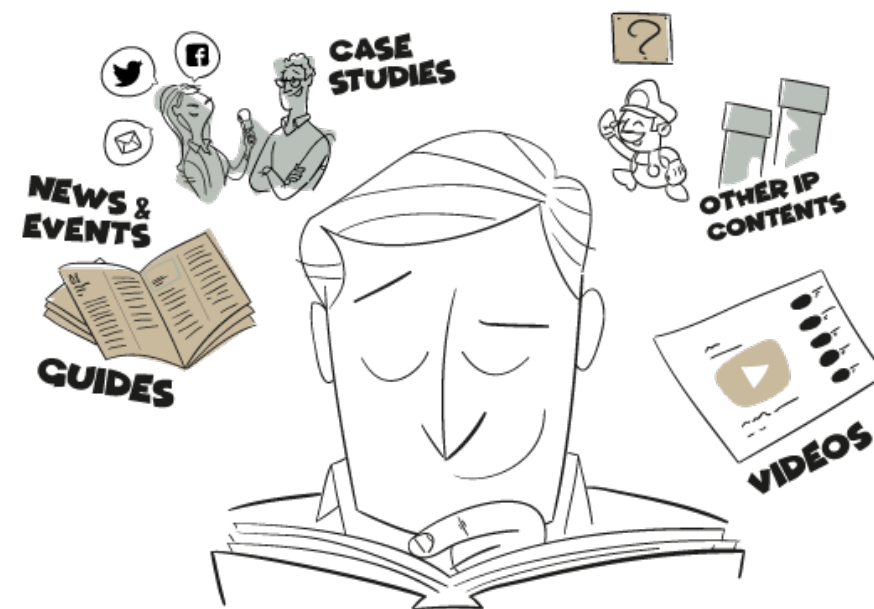
- *Using it as a negotiation tool*
- *Increasing your company valuation in the framework of merger and acquisition transactions*
- *Attracting investors*
- *Offering it as a collateral to obtain financing*
- *Tax-deducting purposes*



# 4

## How can we help you?

# How can we help you?



European  
Commission

# How can we help you?



## HELPLINE

# Post Assessment

## *1. Trademark protection is granted for an initial period of ?*

- 10 years from the granting or filing date (depending on the country)
- 10 years from the granting date
- Forever

## *2. Protection for unregistered Industrial Designs is-*

- Not available in Latin America, nor in India
- Available in just three Latin American countries, but not in India
- Available both in Latin America and India, just like in Europe

## *3. Patent registration requires ?*

- Worldwide novelty
- National novelty
- No novelty, but originality

INTERNATIONAL

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