

INTELLECTUAL PROPERTY RIGHTS IN INDIA

Intellectual property Right (IPR) is a term used for various legal entitlements which attach to certain types of information, ideas, or other intangibles in their expressed form. Intellectual property laws vary from jurisdiction to jurisdiction, such that the acquisition, registration or enforcement of IP rights must be pursued or obtained separately in each territory of interest.

Intellectual property rights (IPR) can be defined as the rights given to people over the creation of their minds. They usually give the creator an exclusive right over the use of his/her creations for a certain period of time.

What is Intellectual Property Rights?

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Intellectual property (IP) refers to creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce.

Categories of Intellectual Property

One can broadly classify the various forms of IPRs into two categories:

- IPRs that stimulate inventive and creative activities (patents, utility models, industrial designs, copyright, plant breeders' rights and layout designs for integrated circuits) and
- IPRs that offer information to consumers (trademarks and geographical indications).

IPRs in both categories seek to address certain failures of private markets to provide for an efficient allocation of resources

IP is divided into two categories for ease of understanding:

1. Industrial Property

2. Copyright

Industrial property, which includes inventions (patents), trademarks, industrial designs, and geographic indications of source; and

Copyright, which includes literary and artistic works such as novels, poems and plays, films, musical works, artistic works such as drawings, paintings, photographs and sculptures, and architectural designs. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and those of broadcasters in their radio and television programs

Intellectual property shall include the right relating to:

- i. Literary, artistic and scientific works; ii. Performance of performing artists; iii. Inventions in all fields of human endeavour; iv. Scientific discoveries;
- v. Industrial designs; vi. Trademarks, service marks and etc; vii. Protection against unfair competition.

Rights protected under Intellectual Property

The different types of Intellectual Property Rights are:

- i. Patents
- ii. Copyrights
- iii. Trademarks
- iv. Industrial designs
- v. Protection of Integrated Circuits layout design
- vi. Geographical indications of goods
- vii. Biological diversity

viii. Plant varieties and farmers rights

ix. Undisclosed information

a. Intellectual Property

1. Inventions

2. Trademarks

3. Industrial design

4. Geographical indications

b. Copyright 1. Writings

2. Paintings

3. Musical works

4. Dramatics works

5. Audiovisual works

6. Sound recordings

7. Photographic works

8. Broadcast

9. Sculpture

10. Drawings

11. Architectural works etc.

IPR as Instruments of Development

a. Key drivers of economic performance in R&D based growth models

b. Intellectual property policies do affect the extent and nature of investments undertaken by multinational enterprises. At the same time, relative to other factors

determining foreign investment decisions, IPRs seem to be of relatively minor importance.

Duration of Intellectual Property Rights in a nutshell

- 1) Term of every patent will be 20 years from the date of filing of patent application, irrespective of whether it is filed with provisional or complete specification. Date of patent is the date on which the application for patent is filed.
- 2) Term of every trademark registration is 10 years from the date of making of the application which is deemed to be the date of registration.
- 3) Copyright generally lasts for a period of sixty years.
- 4) The registration of a geographical indication is valid for a period of 10 years.
- 5) The duration of registration of Chip Layout Design is for a period of 10 years counted from the date of filing an application for registration or from the date of first commercial exploitation anywhere in India or in any convention country or country specified by Government of India whichever is earlier.
- 6) The duration of protection of registered varieties is different for different crops namely 18 years for trees and vines, 15 years for other crops and extant varieties.

Initiatives of Government of India towards protection of IPR

1. The Government has brought out A Handbook of Copyright Law to create awareness of copyright laws amongst the stakeholders, enforcement agencies, professional users like the scientific and academic communities and members of the public.
2. National Police Academy, Hyderabad and National Academy of Customs, Excise and Narcotics conducted several training programs on copyright laws for the police and customs officers.
3. The Department of Education, Ministry of Human Resource Development, Government of India has initiated several measures in the past for strengthening the enforcement of copyrights that include constitution of a Copyright Enforcement Advisory Council (CEAC), creation of separate cells in state police headquarters, encouraging setting up of

collective administration societies and organization of seminars and workshops to create greater awareness of copyright laws among the enforcement personnel and the general public.

4. Special cells for copyright enforcement have so far been set up in 23 States and Union Territories, i.e. Andhra Pradesh, Assam, Andaman & Nicobar Islands, Chandigarh, Dadra & Nagar Haveli, Daman & Diu, Delhi, Goa, Gujarat, Haryana, Himachal Pradesh, Jammu & Kashmir, Karnataka, Kerala, Madhya Pradesh, Meghalaya, Orissa, Pondicherry, Punjab, Sikkim, Tamil Nadu, Tripura and West Bengal.
5. The Government also initiates a number of seminars/workshops on copyright issues. The participants in these seminars include enforcement personnel as well as representatives of industry organizations.

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3. OVERVIEW OF LAWS RELATED TO INTELLECTUAL PROPERTY RIGHTS IN INDIA

The Rules and Laws governing Intellectual Property Rights in India are as follows:

1. The Copyright Act, 1957, The Copyright Rules, 1958 and International Copyright Order, 1999

2. The Patents Act, 1970 The Patents Rules, 2003, The Intellectual Property Appellate Board (Patents Procedure) Rules, 2010 and The Patents (Appeals and Applications to the Intellectual Property Appellate Board) Rules, 2011
3. The Trade Marks Act, 1999, The Trade Marks Rules, 2002, The Trade Marks (Applications and Appeals to the Intellectual Property Appellate Board) Rules, 2003 and The Intellectual Property Appellate Board (Procedure) Rules, 2003
4. The Geographical Indications of Goods (Registration and Protection) Act, 1999 and The Geographical Indications of Goods (Registration and Protection) Rules, 2002
5. The Designs Act, 2000 and The Designs Rules, 2001
6. The Semiconductors Integrated Circuits Layout-Design Act, 2000 and The Semiconductors Integrated Circuits Layout-Design Rules, 2001
7. The Protection of Plant varieties and Farmers' Rights Act, 2001 and The Protection of Plant varieties and Farmers Rights' Rules, 2003
8. The Biological Diversity Act, 2002 and The Biological Diversity Rules, 2004 9. Intellectual Property Rights (Imported Goods) Rules, 2007

4. COPYRIGHT

4.1. What is 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 time period after which the work is said to enter the public domain. Copyright gives protection for the expression of an idea and not for the idea itself. For example, many authors write textbooks on physics covering various aspects like mechanics, heat, optics etc. Even though these topics are covered in several books by different authors, each author will have a copyright on the book written by him / her, provided the book is not a copy of some other book published earlier.

Copyright ensures certain minimum safeguards of the rights of authors over their creations, thereby protecting and rewarding creativity. Creativity being the keystone of progress, no civilized society can afford to ignore the basic requirement of encouraging the same. Economic and social development of a society is dependent on creativity. The protection provided by copyright to the efforts of writers, artists, designers, dramatists, musicians, architects and producers of sound recordings, cinematograph films and computer software, creates an atmosphere conducive to creativity, which induces them to create more and motivates others to create.

4.2. Copyright law in India

The Copyright Act of 1957, The Copyright Rules, 1958 and the International Copyright Order, 1999 governs the copyright protection in India. It came into effect from January 1958. The Act has been amended in 1983, 1984, 1992, 1994 and 1999. Before the Act of 1957, copyright protection was governed by the Copyright Act of 1914 which was the extension of British Copyright Act, 1911.

The Copyright Act, 1957 consists of 79 sections under 15 chapters while the Copyright Rules, 1958 consists of 28 rules under 9 chapters and 2 schedules.

4.3. Meaning of copyright

According to Section 14 of the Act, “copyright” means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:-

(a) in the case of a literary, dramatic or musical work, not being a computer programme, - (i) to reproduce the work in any material form including the storing of it in any medium by electronic means;

(ii) to issue copies of the work to the public not being copies already in circulation;

(iii) to perform the work in public, or communicate it to the public;

(iv) to make any cinematograph film or sound recording in respect of the work;

(v) to make any translation of the work;

(vi) to make any adaptation of the work;

(vii) to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi);

(b) in the case of a computer programme,-

(i) to do any of the acts specified in clause (a);

(ii) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme:

Provided that such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental.

(c) in the case of an artistic work,-

(i) to reproduce the work in any material form including depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work;

(ii) to communicate the work to the public;

(iii) to issue copies of the work to the public not being copies already in circulation;

(iv) to include the work in any cinematograph film;

(v) to make any adaptation of the work;

(vi) to do in relation to an adaptation of the work any of the acts specified in relation to the work in sub-clauses (i) to (iv);

(d) In the case of cinematograph film, -

(i) to make a copy of the film, including a photograph of any image forming part thereof;

(ii) to sell or give on hire, or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions;

(iii) to communicate the film to the public;

(e) In the case of sound recording, -

- (i) to make any other sound recording embodying it;
- (ii) to sell or give on hire, or offer for sale or hire, any copy of the sound recording regardless of whether such copy has been sold or given on hire on earlier occasions;
- (iii) to communicate the sound recording to the public.

Explanation : For the purposes of this section, a copy which has been sold once shall be deemed to be a copy already in circulation.

4.4. Classes of works for which copyright protection is available

Indian Copyright Act affords separate and exclusive copyright protection to the following 7 clauses of work:

1. Original Literary Work
2. Original Dramatic Work
3. Original Musical Work
4. Original Artistic Work
5. Cinematograph Films 6. Sound recording
7. Computer Programme

Copyright will not subsist in any cinematograph film if a substantial part of the film is an infringement of the copyright in any other work or in any sound recording made in respect of a literary, dramatic or musical work, if in making the sound recording, copyright in such work has been infringed. In case of work of architecture, copyright will subsist only in the artistic character and design and will not extend to processes or methods of construction.

4.5. Ownership of Copyright

The author of the work will be the first owner of the copyright in the following instances:

- i. In the case of a literary, dramatic or artistic work made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship, for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor will, in the absence of any agreement to the contrary, be the first owner of the copyright in the work in so far as the copyright relates to the publication of the work in any newspaper, magazine or similar periodical, or to the reproduction of the work for the purpose of its being so published, but in all other respects the author will be the first owner of the copyright in the work.
- ii. In the case of a photograph taken, or a painting or portrait drawn, or an engraving or a cinematograph film made, for valuable consideration at the instance of any person, such person will, in the absence of any agreement to the contrary, be the first owner of the copyright therein.
- iii. In the case of a work made in the course of the author's employment under a contract of service or apprenticeship, the employer will, in the absence of any agreement to the contrary, be the first owner of the copyright therein.
- iv. In the case of any address or speech delivered in public, the person who has delivered such address or speech or if such person has delivered such address or speech on behalf of any other person, such other person will be the first owner of the copyright therein notwithstanding that the person who delivers such address or speech, or, as the case may be, the person on whose behalf such address or speech is delivered, is employed by any other person who arranges such address or speech or on whose behalf or premises such address or speech is delivered.
- v. In the case of a government work, government in the absence of any agreement to the contrary, will be the first owner of the copyright therein.
- vi. In the case of a work made or first published by or under the direction or control of any public undertaking, such public undertaking in the absence of any agreement to the contrary, will be the first owner of the copyright therein.
- vii. In case of any work which is made or first published by or under the directions or control of any international organisation, such international organisation will be the first owner of the copyright therein.

4.6. Assignment of copyright

Sec.18 of the Copyright Act, 1957 deals with assignment of copyright. The owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or partially and either generally or subject to limitations and either for the whole term of the copyright or any part thereof.

The mode of assignment should be in the following manner:

- Assignment should be given in writing and signed by the assignor or by his duly authorized agent.
- The assignment should identify the work and specify the rights assigned and the duration and territorial extent of such assignment.
- The assignment should also specify the amount of royalty payable, if any, to the author or his legal heirs during the currency of the assignment and the assignment may be subject to revision, extension or termination on terms mutually agreed upon by the parties.
- Where the assignee does not exercise the rights assigned to him within a period of one year from the date of assignment, the assignment in respect of such rights will be deemed to have lapsed after the expiry of the said period unless otherwise specified in the assignment.

The period of assignment will be deemed to be 5 years from the date of assignment unless specifically mentioned. If the territorial extent of assignment of the rights is not specified, it will be presumed to extend within India.

If any dispute arises with respect to the assignment of any copyright the Copyright Board may, on receipt of a complaint from the aggrieved party and after holding such inquiry as it considers necessary, pass such order as it may deem fit including an order for the recovery of any royalty payable, provided that the Copyright Board may not pass any order to revoke the assignment unless it is satisfied that the terms of assignment are harsh to the assignor, in case the assignor is also the author, provided further that no order of revocation of assignment, be made within a period of five years from the date of such assignment.

4.7. Transmission of copyright by testamentary disposition

Where under a bequest a person is entitled to the manuscript of a literary, dramatic or musical work, or to an artistic work, and the work was not published before the death of the testator, the bequest can, unless the contrary intention is indicated in the testator's will or any codicil thereto, be construed as including the copyright in the work in so far as the testator was the owner of the copyright immediately before his death. Manuscript means the original document embodying the work, whether written by hand or not.

4.8. Relinquish copyright

The author of a work can relinquish all or any of the rights comprised in the copyright in the work by giving notice in Form I to the Registrar of Copyrights and thereupon such rights will cease to exist from the date of the notice. On receipt of notice the Registrar of Copyrights will publish it in the Official Gazette and in such other manner as he may deem fit. The relinquishment of all or any of the rights comprised in the copyright in a work will not affect any rights subsisting in favour of any person on the date of the notice given to the Registrar.

4.9. Term of copyright

Section 22 to 29 of the Copyright Act, 1957 deals with the term of copyright. Copyright generally lasts for a period of sixty years.

- ✓ In the case of literary, dramatic, musical or artistic works, the sixty year period is counted from the year following the death of the author.
- ✓ In the case of cinematograph films, sound recordings, photographs, posthumous publications, anonymous and pseudonymous publications, works of government and public undertakings and works of international organisations, the 60-year period is counted from the date of publication.

- ✓ In case of Broadcast reproduction right - 25 years from the beginning of the calendar year next following the year in which the broadcast is made.
- ✓ In case of Performers right - 25 years from the beginning of the calendar year next following the year in which the performance is made.

4.10. Rights of Broadcasting Organisation and of Performers

Every broadcasting organisation will have a special right to be known as 'broadcast reproduction right' in respect of its broadcasts. The broadcast reproduction right will subsist until twenty-five years from the beginning of the calendar year next following the year in which the broadcast is made.

This would prevent any person other than the broadcasting organisation from:

- i) Re-broadcasting what has already been broadcasted
- ii) Causing the broadcast to be seen or heard by the public on payment of charges
- iii) Making any sound/visual recording of the broadcast
- iv) Making any reproduction of such sound recording or visual recording where such initial recording was done without licence or, where it was licensed, for any purpose not envisaged by such licence
- v) Selling or hiring or offering to sell or hire sound/visual recordings.

Where any performer appears or engages in any performance, he will have a special right known as the 'performer's right' in relation to such performance. The performer's right will subsist until fifty years from the beginning of the calendar year next following the year in which the performance is made. These rights are:

- i) No person may make a sound/visual recording of the performer's performances
- ii) Reproduce a sound/visual recording

iii) Broadcast the performance

iv) Communicate to the public otherwise than by broadcast

4.11. Intellectual Property Rights (IPR) of Computer Software

In India, the Intellectual Property Rights (IPR) of computer software is covered under the Copyright Law. Accordingly, the copyright of computer software is protected under the provisions of Indian Copyright Act 1957. Major changes to Indian Copyright Law were introduced in 1994 and came into effect from 10 May 1995. These changes or amendments made the Indian Copyright law one of the toughest in the world.

The amendments to the Copyright Act introduced in June 1994 were, in themselves, a landmark in the India's copyright arena. For the first time in India, the Copyright Law clearly explained:

- The rights of a copyright holder
- Position on rentals of software
- The rights of the user to make backup copies

Since most software is easy to duplicate, and the copy is usually as good as original, the Copyright Act was needed.

Some of the key aspects of the law are:

- According to section 14 of this Act, it is illegal to make or distribute copies of copyrighted software without proper or specific authorization.
- The violator can be tried under both civil and criminal law.
- A civil and criminal action may be instituted for injunction, actual damages (including violator's profits) or statutory damages per infringement etc.
- Heavy punishment and fines for infringement of software copyright.

- Section 63 B stipulates a minimum jail term of 7 days, which can be extended up to 3 years

4.12. Copyright Infringements

Some of the commonly known acts involving infringement of copyright:

- Making infringing copies for sale or hire or selling or letting them for hire; ○ Permitting any place for the performance of works in public where such performance constitutes infringement of copyright;
- Distributing infringing copies for the purpose of trade or to such an extent so as to affect prejudicially the interest of the owner of copyright ;
- Public exhibition of infringing copies by way of trade; and ○ Importation of infringing copies into India.

Civil Remedies for Copyright Infringement

A copyright owner can take legal action against any person who infringes the copyright in the work. The copyright owner is entitled to remedies by way of injunctions, damages and accounts.

The Criminal Offence

Any person who knowingly infringes or abets the infringement of the copyright in any work commits criminal offence under Section 63 of the Copyright Act. The minimum punishment for infringement of copyright is imprisonment for six months with the minimum fine of Rs. 50,000/. In the case of a second and subsequent conviction the minimum punishment is imprisonment for one year and fine of Rs. one lakh.

4.13. International Copyright

Copyrights of works of the countries mentioned in the International Copyright Order are protected in India, as if such works are Indian works. Copyright of nationals of countries who are members of the Berne Convention for the Protection of Literary and Artistic Works, Universal Copyright Convention and the TRIPS Agreement are protected in India through the International Copyright Order. The list of such countries is mentioned in the schedule of the International Copyright Order, 1999.

4.14. Licences

Provisions with regard to licences are detailed in Chapter VI of the Copyright Act, 1957.

Copyright Licence is granted by the owner of the copyright in any existing work or the prospective owner of the copyright in any future work in writing signed by him or by his duly authorized agent. In the case of a licence relating to copyright in any future work, the licence will take effect only when the work comes into existence. Where a person to whom a licence relating to copyright in any future work is granted dies before the work comes into existence, his legal representatives, in the absence of any provision to the contrary in the licence, will be entitled to the benefit of the licence.

Any person can apply for the grant of copyright licence in Form II to produce and publish translation of a literary or dramatic work in any language in general use in India after a period of three years from the publication of such work, if such translation is required for the purpose of teaching, scholarship or research.

The Copyright Board after holding an enquiry may direct the registrar to grant copyright licence to the person to publish the work or translation thereof in the language mentioned in the application. The applicant should deposit the amount of royalty as specified by the Copyright Board in the account of the original owner of the work.

The copyright licence will be terminated at any time after the granting of a licence to produce and publish the translation of a work in any language, if the owner of the copyright in the work or any

person authorized by him publishes a translation of such work in the same language and which is substantially the same in content at a price reasonably related to the price normally charged in India for the translation of works of the same standard on the same or similar subject.

No termination will take effect until after the expiry of a period of three months from the date of service of a notice in Form IIB on the person holding such licence by the owner of the right of translation intimating the publication of the translation as aforesaid.

Registration of a work under the Copyright Act, 1957

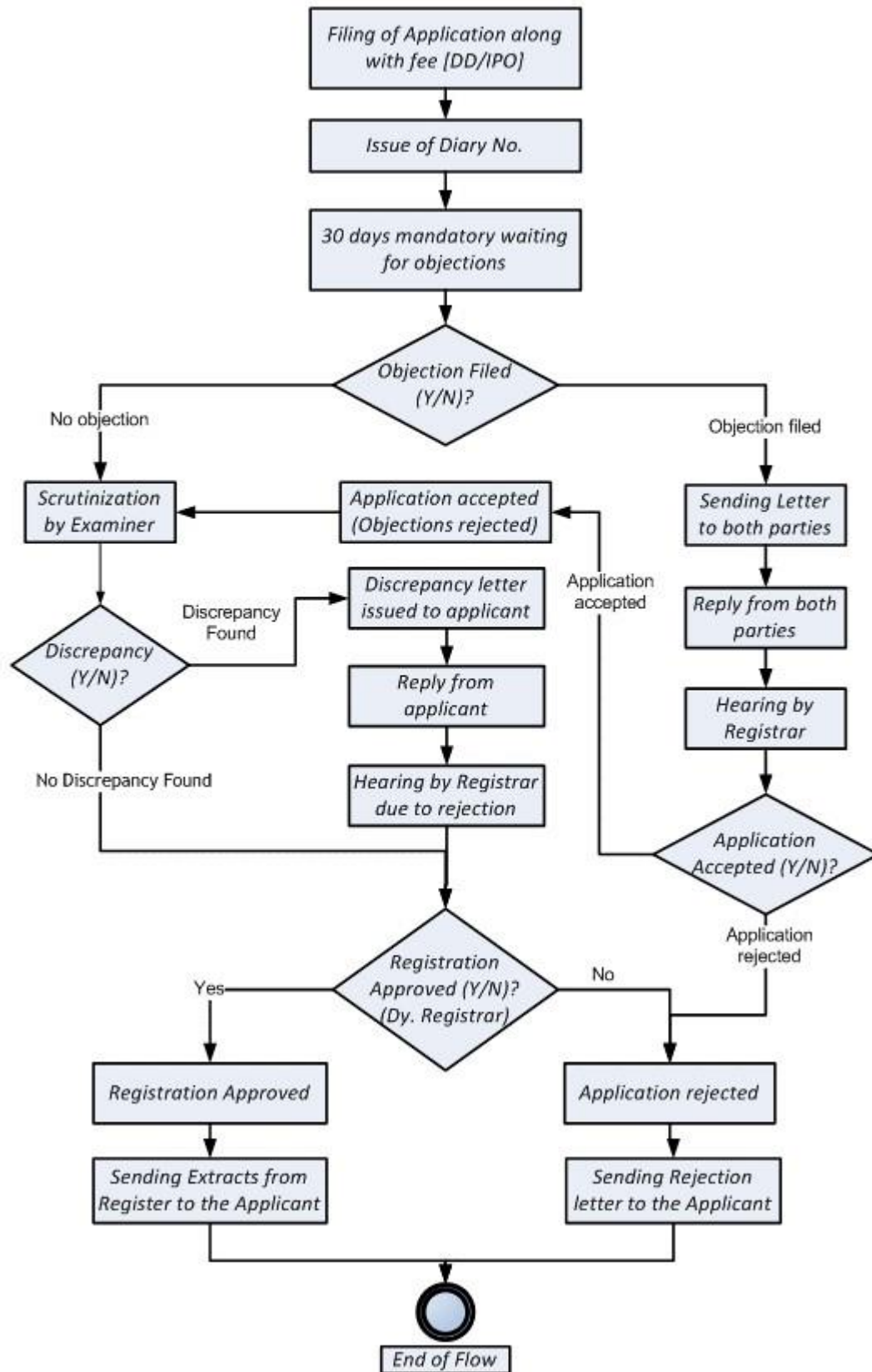
Copyright comes into existence as soon as a work is created and no formality is required to be completed for acquiring copyright. However, facilities exist for having the work registered in the Register of Copyrights maintained in the Copyright Office of the Department of Education. The entries made in the Register of Copyrights serve as *prima-facie* evidence in the court of law.

Procedure for registration of a work is covered under Chapter VI of the Copyright Rules, 1958

Time taken for registration

After filing application and receiving diary number the applicant should wait for a mandatory period of 30 days so that no objection is filed in the Copyright office against the claim that particular work is created by the applicant. If such objection is filed it may take another one month time to decide as to whether the work could be registered by the Registrar of Copyrights after giving an opportunity of hearing the matter from both the parties. If no objection is filed the application goes for scrutiny from the examiners. If any discrepancy is found the applicant is given 30 days time to remove the same. Therefore, it may take 2 to 3 month's time for registration of any work in the normal course. The cooperation of the applicant in providing necessary information is the key for speedy disposal the matter. Any person aggrieved by the final decision or order of the Registrar of Copyrights may, within three months from the date of the order or decision, appeal to the Copyright Board.

Copyright Registration Workflow



5. PATENTS

5.1. What is Patent?

Patent is a grant for an invention by the Government to the inventor in exchange for full disclosure of the invention. A patent is an exclusive right granted by law to applicants / assignees to make use of and exploit their inventions for a limited period of time (generally 20 years from filing). The patent holder has the legal right to exclude others from commercially exploiting his invention for the duration of this period. In return for exclusive rights, the applicant is obliged to disclose the invention to the public in a manner that enables others, skilled in the art, to replicate the invention. The patent system is designed to balance the interests of applicants / assignees (exclusive rights) and the interests of society (disclosure of invention).

5.2. Meaning of 'Invention' under Patent Law

Sec.2(1)(J) - Invention” means a new product or process involving an inventive step and capable of industrial application

5.3. What is not an 'Invention'?

According to Sec 3 of the Patent Act, 1970

- Frivolous inventions
- Inventions contrary to well established natural laws
- Commercial exploitation or primary use of inventions, ○ which is contrary to public order or morality
 - which causes serious prejudice to health or human, animal, plant life or to the environment

- **Mere Discovery of a Scientific Principle or**
- **Formulation of an Abstract Theory or • Discovery of any living thing or**
- **Discovery of non–living substance occurring in nature**
- **Mere discovery of any new property or new use for a known substance or of the mere use of a known process, machine or apparatus, *unless such known process results in a new product or employs at least one new reactant.***
- **Substance obtained by mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substance**
- **Mere arrangement or re-arrangement or duplication of known devices, each functioning independently of one another in a known way**
- **Method of Agriculture or Horticulture**
- **Any process for medicinal, surgical, curative, prophylactic, diagnostic, therapeutic or other treatment of human beings *or* a similar treatment of animals to render them free of disease *or* to increase their economic value or that of their products**
- **Plants & animals in **whole or any part thereof** other than micro- organisms, but including seeds, varieties and species and essentially biological process for production or propagation of plants & animals**
- **mathematical method or**
- **business method or**
- **algorithms or**
- **computer programme *per se***
- **A literary,dramatic, musical or artistic work or any other aesthetic creation including cinematographic work and television productions**
- **Presentation of information**
- **Topography of integrated circuits.**

- **Inventions which are Traditional Knowledge or an aggregation or duplication of known properties of traditionally known component or components**

5.4. What is meant by ‘New’?

The invention to be patented must not be published in India or elsewhere, or in prior public knowledge or prior public use with in India or claimed before in any specification in India

A feature of an invention that involves technical advance as compared to the existing knowledge or have economic significance or both and makes the invention not obvious to a person skilled in the art.

5.5. What can be patented?

Any invention concerning with composition, construction or manufacture of a substance, of an article or of an apparatus or an industrial type of process.

5.6. What cannot be patented?

Inventions falling within Section 20(1) of the Atomic Energy Act, 1962

5.7. Who are the beneficiaries of the patent grant?

1. The inventor is secure from competition and can exploit the invention for his gain.
2. For the public the invention becomes public knowledge. The technology is freely available after expiry of patent and cheaper and better products become available.

5.8. Patent System In India

The Patent System in India is governed by the Patents Act, 1970 as amended by the Patents (Amendment) Act, 2005 and the Patents Rules, 2003, as amended by the Patents (Amendment) Rules 2006 effective from 05-05-2006.

5.8.1. Administration

Patent system in India is administered under the superintendence of the Controller General of Patents, Designs, Trademarks and Geographical Indications.

The Office of the Controller General functions under the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry. There are four patent offices in India. The Head Office is located at Kolkata and other Patent Offices are located at Delhi, Mumbai and Chennai. The Controller General delegates his powers to Sr. Joint Controller, Joint Controllers, Deputy Controllers and Assistant Controllers. Examiners of patents in each office discharge their duties according to the direction of the Controllers.

The Patent Information system (PIS) at Nagpur has been functioning as patent information base for the users. The PIS maintains a comprehensive collection of patent specification and patent related literature, on a world-wide basis and provides technological information contained in patent or patent related literature through search services and patent copy supply services to various users of R&D establishments, Government offices, private industries, business, inventors and other users within India.

Hierarchy of Officers in Patent office

- Controller General of Patents, Designs, Trademarks & GI
- Examiners of Patents & Designs
- Assistant Controller of Patents & Designs
- Deputy Controller of Patents & Designs
- Joint Controller of Patents & Designs
- Senior Joint Controller of Patents & Designs

Jurisdiction of Patent offices in India

An applicant or first mentioned applicant in case of joint applicants can file application for patent at the appropriate Patent Office under whose jurisdiction he normally resides or has his domicile or has a place of business or the place from where the invention actually originated. For the applicant, who is non-resident or has no domicile or has no place of business in India, the address for service in India or place of business of his patent agent determines the appropriate patent office where applications for patent can be filed.

Office	Territorial Jurisdiction
Patent Office Branch, Mumbai	The States of Maharashtra, Gujarat, Madhya Pradesh, Goa and Chhattisgarh and the Union Territories of Daman and Diu & Dadra and Nagar Haveli
Patent Office Branch, Chennai	The States of Andhra Pradesh, Karnataka, Kerala, Tamil Nadu and the Union Territories of Pondicherry and Lakshadweep.
Patent Office Branch, New Delhi	The States of Haryana, Himachal Pradesh, Jammu and Kashmir, Punjab, Rajasthan, Uttar Pradesh, Uttaranchal, Delhi and the Union Territory of Chandigarh.
Patent Office, Kolkata	The rest of India.

5.8.2. Types Of Patent Applications

- 1) Ordinary Application

- 2) Application for Patent of Addition (granted for Improvement or Modification of the already patented invention, for an unexpired term of the main patent).
- 3) Divisional Application (in case of plurality of inventions disclosed in the main application).
- 4) Convention application, claiming priority date on the basis of filing in Convention Countries.
- 5) National Phase Application under PCT.

5.8.3. Who can apply for Patent?

The inventor may make an application, either alone or jointly with another, or his/their assignee or legal representative of any deceased inventor or his assignee.

5.8.4. How is a patent obtained?

- File an application for patent
- With one of the patent offices based on territorial jurisdiction of the place of office or residence of the applicant /agent
- Pay the required fee
- Information concerning application form and details of fee available at www.ipindia.nic.in
- Guidelines for applicants also available on this website

The Patent Office then

- Conducts searches to ascertain the prerequisites
- Publishes the application
- Conducts in-depth examination
- Raises objection to the application
- Grants the patent

5.8.5. General precautions for an applicant

The first to file system is employed, in which, among persons having filed the same invention, first one is granted a patent, therefore, a patent application should be filed promptly after conceiving the invention. It is common experience that through ignorance of patent law, inventors act unknowingly and jeopardize the chance of obtaining patents for their inventions. The most common of these indiscretions is to publish their inventions in newspapers or scientific and technical journals, before applying for patents. Publication of an invention, even by the inventor himself, would (except under certain rare circumstances) constitute a bar for the subsequent patenting of it. Similarly, the use of the invention in Public, or the commercial use of the invention, prior to the date of filing patent application would be a fatal objection to the grant of a patent for such invention, thereafter. There is, however, no objection to the secret working of the invention by way of reasonable trial or experiment, or to the disclosure of the invention to others, confidentially.

Another mistake, which is frequently made by the inventors, is to wait until their inventions are fully developed for commercial working, before applying for patents. It is, therefore, advisable to apply for a patent as soon as the inventor's idea of the nature of the invention has taken a definite shape.

It is permissible to file an application for a patent accompanied by a "Provisional Specification" describing the invention. The application may, therefore, be made even before the full details of working of the invention are developed. The filing of an application for a patent disclosing the invention would secure priority date of the invention, and thereby, enable the inventor to work out the practical details of the invention and to file complete specification within 12 months from the date of filing of provisional specification.

5.8.6. What is meant by patentable invention?

A new product or process, involving an inventive step and capable of being made or used in an industry. It means the invention to be patentable should be technical in nature and should meet the following criteria –

- Novelty: The matter disclosed in the specification is not published in India or elsewhere before the date of filing of the patent application in India.
- Inventive Step: The invention is not obvious to a person skilled in the art in the light of the prior publication/knowledge/ document.
- Industrially applicable: Invention should possess utility, so that it can be made or used in an industry.

5.8.7. What is not patentable?

The following are Non-Patentable inventions within the meaning of Section 3 of Patents Act, 1970

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- (a) an invention which is frivolous or which claims anything obviously contrary to well established natural laws;
- (b) an invention the primary or intended use or commercial exploitation of which could be contrary to public order or morality or which causes serious prejudice to human, animal or plant life or health or to the environment; (For e.g. process of making brown sugar will not be patented.)
- (c) The mere discovery of a scientific principle or the formulation of an abstract theory (or discovery of any living thing or non-living substances occurring in nature);
- (d) the mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance or the mere discovery of any new property or mere new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant;
- (e) a substance obtained by a mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substance;
- (f) the mere arrangement or re-arrangement or duplication of known devices each functioning independently of one another in a known way;
- (g) a method of agriculture or horticulture; (For e.g. the method of terrace farming cannot be patented.)

- (h) any process for the medicinal, surgical, curative, prophylactic, diagnostic, therapeutic or other treatment of human beings or any process for a similar treatment of animals to render them free of disease or to increase their economic value or that of their products; (For e.g. any new technique of hand surgery is not patentable)
- (i) plants and animals in whole or any part thereof other than micro-organisms but including seeds, varieties and species and essentially biological processes for production or propagation of plants and animals;
- (j) a mathematical or business method or a computer programme per se or algorithms;
- (k) a literary, dramatic, musical or artistic work or any other aesthetic creation whatsoever including cinematographic works and television productions;
- (l) a mere scheme or rule or method of performing mental act or method of playing game; (m) a presentation of information;
- (n) topography of integrated circuits;
- (o) an invention which in effect, is traditional knowledge or which is an aggregation or duplication of known properties of traditionally known component or components.
- (p) Inventions relating to atomic energy and the inventions prejudicial to the interest of security of India.

5.8.8. Appropriate office for filing an application & for other Proceedings

Application is required to be filed according to the territorial limits where the applicant or the first mentioned applicant in case of joint applicants, for a patent normally resides or has domicile or has a place of business or the place from where the invention actually originated. If the applicant for the patent or party in a proceeding having no business place or domicile in India, the appropriate office will be according to the address for service in India given by the applicant or party in a proceeding . The appropriate office once decided in respect of any proceedings under the Act shall not ordinarily be changed. The four patent offices are located at Kolkatta, Mumbai, Delhi & Chennai.

From 20th July, 2007 the Indian Patent Office has put in place an online filing system for patent application.

5.8.9. Publication and Examination of Patent Applications

Publication:

All the applications for patent, except the applications prejudicial to the defence of India or abandoned due to non-filing of complete specification within 12 months after filing the provisional or withdrawn within 15 months of filing the application, are published in the Patent Office Journal just after 18 months from the date of filing of the application or the date of priority whichever is earlier. The publication includes the particulars of the date of the application, application number, name and address of the applicant along with the abstract. The applications for patent are not open for public inspection before publication. After the date of publication of the application, as stated above, the complete specification along with provisional and drawing, if any, abstract, application on any form or on plain paper and any correspondence between the office and applicant may be inspected at the appropriate office by making a written request to the Controller in the prescribed manner and on the payment of prescribed fee.

Request for examination

An application for patent will not be examined if no request is made by the applicant or by any other interested person in Form-18 with prescribed fee of Rs.2,500/- or Rs.10,000/- for natural person and other than natural person respectively, within a period of 48 months from the date of priority of the application or from the date of filing of the application, whichever is earlier. Where no request for examination of the application for patent has been filed within the prescribed period, the aforesaid application will be treated as withdrawn and, thereafter, application cannot be revived.

Examination

Application for patent, where request has been made by the applicant or by any other interested person, will be taken up for examination, according to the serial number of the requests received on Form 18. A First Examination Report (FER) stating the objections/requirements is communicated to the applicant or his agent according to the address for service ordinarily within six (06) months from the date of request for examination or date of publication whichever is later.

Application or complete specification should be amended in order to meet the objections/requirements within a period of 12 months from the date of First Examination Report (FER). No further extension of time is available in this regard. If all the objections are not complied with within the period of 12 months, the application shall be deemed to have been abandoned. When all the requirements are met the patent is granted, after 6 months from the date of publication, the letter patent is issued, entry is made in the register of patents and it is notified in the Patent Office, Journal.

5.8.10. Withdrawal of patent application

The application for patent can be withdrawn at least 3 (Three) months before the first publication which will be 18 (Eighteen) months from the date of filing or date of priority whichever is earlier. The application can also be withdrawn at any time before the grant of the patent. The application withdrawn after the date of publication cannot be filed again as it is already laid open for public inspection. However, application withdrawn before the publication can be filed again provided it is not opened to public otherwise.

5.8.11. Opposition proceedings to grant of patents

Where an application for a patent has been published but a patent has not been granted, any person may, in writing represent by way of opposition to the Controller against the grant of any Patent. The representation shall be filed at the appropriate office and shall include a statement and evidence, if any, in support of the representation and a request for hearing if so desired.

The above representation may be made on the following grounds

- (a) that the applicant for the patent or the person under or through whom he claims, wrongfully obtained the invention or any part thereof from him or from a person under or through whom he claims;
- (b) that the invention so far as claimed in any claim of the complete specification has been published before the priority date of the claim—
 - (i) in any specification filed in pursuance of an application for a patent made in India on or after the 1st day of January, 1912; or (ii) in India or elsewhere, in any other document:

Provided that the ground specified in sub-clause (ii) shall not be available where such publication does not constitute an anticipation of the invention by virtue of sub-section (2) or sub-section (3) of section 29;

(c) that the invention so far as claimed in any claim of the complete specification is claimed in a claim of a complete specification published on or after the priority date of the applicant's claim and filed in pursuance of an application for a patent in India, being a claim of which the priority date is earlier than that of the applicant's claim;

(d) that the invention so far as claimed in any claim of the complete specification was publicly known or publicly used in India before the priority date of that claim.

Explanation —For the purposes of this clause, an invention relating to a process for which a patent is claimed shall be deemed to have been publicly known or publicly used in India before the priority date of the claim if a product made by that process had already been imported into India before that date except where such importation has been for the purpose of reasonable trial or experiment only;

(e) that the invention so far as claimed in any claim of the complete specification is obvious and clearly does not involve any inventive step, having regard to the matter published as mentioned in clause (b) or having regard to what was used in India before the priority date of the applicant's claim;

(f) that the subject of any claim of the complete specification is not an invention within the meaning of this Act, or is not patentable under this Act;

(g) that the complete specification does not sufficiently and clearly describe the invention or the method by which it is to be performed;

(h) that the applicant has failed to disclose to the Controller the information required by section 8 or has furnished the information which in any material particular was false to his knowledge; (i) that in the case of convention application, the application was not made within twelve months from the date of the first application for protection for the invention made in a convention country by the applicant or a person from whom he derives title;

(j) that the complete specification does not disclose or wrongly mentions the source or geographical origin of biological material used for the invention;

(k) that the invention so far as claimed in any claim of the complete specification is anticipated having regard to the knowledge, oral or otherwise, available within any local or indigenous community in India or elsewhere, but on no other ground.

The Controller shall, if requested by such person for being heard, hear him and dispose of such representation. If the opposition is decided in favour of the applicant, the patent is granted and the grant of Patent is published in the Patent Office Journal thereby opening the application, specification and other related documents for public inspection on payment of prescribed fee.

Post grant opposition - Any interested person can file notice of opposition (along with written statement and evidence, if any) anytime after the grant of Patent but before the expiry of a period of one year from the date of publication of grant of a Patent in the Patent Office Journal .The above notice under Section 25(2) should be filed on Form-7 along with a fee of Rs. 1500/ or Rs. 6000/- for natural person and other than natural person respectively, in duplicate at the appropriate office. The grounds of opposition under section 25 (2) are the same as given before in case of pre grant opposition. The post grant opposition is decided by an *Opposition Board* followed by a hearing and the reasoned decision by the Controller.

5.8.12. Grant of Patent

When all the requirements are met or in case of opposition under section 25(1),if the opposition is decided in favour of the applicant ,the patent is granted, after 6 months from the date of publication under section 11 A, the letter patent is issued, entry is made in the register of patents and it is notified in the Patent Office, Journal, thereafter opening the application, specification and other related documents for public inspection on payment of prescribed fee.

5.8.13. Term and Date of Patent

Term of every patent will be 20 years from the date of filing of patent application, irrespective of whether it is filed with provisional or complete specification. Date of patent is the date on which the application for patent is filed. The term of patent in case of International applications filed under the Patent Cooperation Treaty designating India, will be 20 years from the International

filing date accorded under the Patent Cooperation Treaty. A patent will have cease to effect on the expiration of the period prescribed for the payment of any renewal fee, if that fee is not paid within the prescribed period.

5.8.14. Renewal and restoration

To keep the patent in force, Renewal fee is to be paid every year. The first renewal fee is payable for the third year and must be paid before the expiration of the second year from the date of patent. If the patent has not been granted within two years the renewal fees may be accumulated and paid immediately after the patent is granted, or within three months of its record in Register of Patents or within extended period of 9 months, by paying extension fees of six month on Form 4, from the date of record. If the renewal fee is not paid within the prescribed time, the patent will cease to have effect. However, provision to restore the patent is possible provided application is made within eighteen months from the date of cessation.

Renewal fee is counted from the date of filing of the Patent application. Six month's grace time is available with extension fee for payment of renewal fee. No renewal fees is payable on Patents of Addition, unless the original patent is revoked and if the Patent of Addition is converted into an independent patent; renewal fee, then, becomes payable for the remainder of the term of the main patent. Application for restoration of a patent that lapses due to non-payment of renewal fees must be made within 18 months of lapse. The application is to be filed in the appropriate office according to the jurisdiction.

5.8.16. Rights of the Patentee (Sec.48 of Patents Act, 1970)

Where a patent covers a product, the grant of patent gives the patentee the exclusive right to prevent others from performing, without authorisation, the act of making, using, offering for sale, selling or importing that product for the above purpose.

Where a patent covers a process, the patentee has the exclusive right to exclude others from performing, without his authorisation, the act of using that process, using and offering for sale, selling or importing for those purposes, the product obtained directly by that process in India.

Where a patent is granted to two or more persons, each of those persons will be entitled to an equal undivided share in the patent unless there is an agreement to the contrary. **5.8.17. Restoration of lapsed patents**

Where a patent has ceased to have effect due to failure to pay the renewal fee within the prescribed period, the patentee or his legal representative can within 18 months from the date on which the patent ceased to have effect make an application in Form 15 for restoration of the patent. If the Controller is satisfied that failure to pay the renewal fee was unintentional and that there has been no undue delay in the making of the application, then the patent will be restored.

5.8.18. Compulsory Licence

Compulsory Licensing (CL) allows governments to license third parties (that is, parties other than the patent holders) to produce and market a patented product or process without the consent of patent owners.

Chapter XVI i.e. Sections 82 to 94 of the Patents act, 1970 deals with ‘Working of Patents, Compulsory Licenses and Revocation’. Chapter XVII also deals with use of inventions for the purpose of government and acquisition of inventions by Central Government.

Chapter XIII i.e. Rules 96 to 102 of Patents Rules, 2003 deals with ‘compulsory licence and revocation of patent’.

Sec.84 of Patents Act, 1970 deals with general Compulsory Licences to be issued by the Controller on application.

Any time after three years from date of sealing of a patent, application for compulsory licence can be made, provided

- a) reasonable requirements of public have not been satisfied;
- b) patented invention is not available to public at a reasonably affordable price or

c) patented invention is not worked in India.

Applicant's capability including risk taking, ability of the applicant to work the invention in public interest, nature of invention, time elapsed since sealing, measures taken by patentee to work the patent in India will be taken into account by the Controller of Patents before granting licence. In case of national emergency or other circumstances of extreme urgency or public non commercial use or an establishment of a ground of anti competitive practices adopted by the patentee, the above conditions will not apply.

Section 92 of Patents Act, 1970 deals with special provision for compulsory licences on notifications issued by Central Government. If the Central Government is satisfied in respect of any patent in force, in case of national emergency or extreme urgency or in case of public noncommercial use, then compulsory licences can be granted at any time to work the invention and make a declaration in this regard in the Official Gazette.

Section 92A of Patents Act, 1970 provides for compulsory licensing of patents relating to the manufacture of pharmaceutical products for export to countries with public health problems. This section is an "enabling provision" for export of pharmaceutical products to any country having insufficient or no manufacturing capacity in the pharmaceutical sector in certain exceptional circumstances, to address public health problems. Such country has either to grant compulsory licence for importation or issue a notification for importation into that country.

The general purpose for granting compulsory licence is that –

- a. that patented inventions are worked on a commercial scale in India without undue delay and to the fullest extent that is reasonably practicable;
- b. that the interests of any person for the time being working or developing an invention in India under the protection of a patent are not unfairly prejudiced.

While settling the terms and conditions of compulsory licences, the Controller should endeavour to secure –

- that the royalty and other remuneration, if any, reserved to the patentee or other person beneficially entitled to the patent, is reasonable, having regard to the nature of the invention, the expenditure incurred by the patentee in making the invention or in developing it and obtaining a patent and keeping it in force and other relevant factors;
- that the patented invention is worked to the fullest extent by the person to whom the licence is granted and with reasonable profit to him;
- that the patented articles are made available to the public at reasonably affordable prices;
- that the licence granted is a non-exclusive licence;
- that the right of the licensee is non-assignable;
- that the licence is for the balance term of the patent unless a shorter term is consistent with public interest;
- that the licence is granted with a predominant purpose of supply in the Indian market and that the licensee may also export the patented product if required;
- that in the case of semi-conductor technology, the licence granted is to work the invention for public non-commercial use;
- that in case the licence is granted to remedy a practice determined after judicial or administrative process to be anti-competitive, the licensee shall be permitted to export the patented product, if need be.

Compulsory licence under Paris convention

The Paris Convention is an international convention for promoting trade among the member countries, devised to facilitate protection of industrial property simultaneously in the member countries without any loss in the priority date. All the member countries provide national treatment to all the applications from the other member countries for protection of industrial property rights. The convention was first signed in 1883. Since then the Convention has been revised several times; in 1900 at Brussels, in 1911 at Washington, in 1925 at the Hague, in 1934 at London, in 1958 at Lisbon and in 1967 at Stockholm. The last amendment took place in 1979.

India became a member of the Paris Convention on December 7, 1998.

The principal features of the Paris Convention are:

- National treatment
- Right of priority
- Independence of patents
- Parallel importation
- Protection against false indications and unfair competition

The Paris convention recognized that non working of registered patents may amount to abuse of the patent system.

- Article 5A (2) permits members of Paris union to “take legislative measures for the grant of compulsory licenses, to prevent the abuses which might result from the exercise of exclusive rights conferred by the patent. For example - failure to work.
- According, to Article 5A (3) persistent inaction on the part of the patent holder may even be remedied by forfeiture, of the patent right, but not before the expiration of two years from the grant of a first compulsory license.
- According to Article 5A (4) however insufficient working shall not result in compulsory license before the expiration period of 4 years from the date of filing of patent application or 3 years from the date of grant of patent, whichever period expires last. The patent holder is allowed to justify his inactions by legitimate reasons stemming from “the existence of legal, economic, technical obstacles to exploitation, or more intensive exploitation of the patent in the country”.

Compulsory licence under TRIPS

The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) is an international agreement administered by the World Trade Organization (WTO) that sets down minimum standards for many forms of intellectual property (IP) regulation as applied to nationals of other WTO Members. It was negotiated at the end of the Uruguay Round of the General

Agreement on Tariffs and Trade (GATT) in 1994. (The Uruguay Round was the 8th round of multilateral trade negotiations (MTN) conducted within the framework of the General Agreement on Tariffs and Trade (GATT), spanning from 1986-1994 and embracing 123 countries as “contracting parties”. The Round transformed the GATT into the World Trade Organization.)

The TRIPS agreement introduced intellectual property law into the international trading system for the first time and remains the most comprehensive international agreement on intellectual property to date.

According to the TRIPS agreement patent protection must be available for inventions for at least 20 years. Patent protection must be available for both products and processes, in almost all fields of technology. Governments can refuse to issue a patent for an invention if its commercial exploitation is prohibited for reasons of public order or morality. They can also exclude diagnostic, therapeutic and surgical methods, plants and animals (other than microorganisms), and biological processes for the production of plants or animals (other than microbiological processes).

The agreement describes the minimum rights that a patent owner must enjoy. But it also allows certain exceptions. A patent owner could abuse his rights, for example by failing to supply the product on the market. To deal with that possibility, the agreement says governments can issue “compulsory licences” (Article 31) for allowing a competitor to produce the product or use the process under licence. But this can only be done under certain conditions aimed at safeguarding the legitimate interests of the patent-holder.

5.8.19. Procedure to check if invention is already patented

The person concerned can perform a preliminary search on Patent Office website in the Indian patent data base of granted patent or Patent Office journal published every week or by making search in the documents kept in the Patent Office Search and Reference Room, which contains Indian patents arranged according to international patent classification system as well in serial number. It is open to the general public from Monday to Friday, except Gazetted holidays. The public can also conduct search free of charge on the website of Patent Office. The person concerned can also make a request for such information under section 153 of the Act.

5.8.20. Patent Agent

A Patent agent is a registered person with Indian Patent Office whose name is entered in the patent agent register after being declared qualified the patent agent examination conducted by the patent office and who is entitled— (a) to practice before the Controller; and

(b) to prepare all documents, transact all business and discharge such other functions as may be prescribed in connection with any proceeding before the Controller under this Act.

Eligibility conditions for registration as patent agents are below.-

A person shall be qualified to have his name entered in the register of patent agents if he fulfills the following conditions, namely—

(a) he is a citizen of India;

(b) he has completed the age of 21 years;

(c) he has obtained a degree in science, engineering or technology from any university established under law for the time being in force in the territory of India or possesses such other equivalent qualifications as the Central Government may specify in this behalf and, in addition,—

(i) has passed the qualifying examination prescribed for the purpose; or

(ii) has, for a total period of not less than ten years, functioned either as an examiner or discharged the functions of the Controller under section 73 or both, but ceased to hold any such capacity.

It is not necessary under the patent law to engage a registered patent agent for filing an application for patent. The applicant is free to file an application by himself or through the patent agent. However, an applicant who is not a resident of India is required to file either through the registered patent agent or must give an address for service in India.

5.8.21. Infringement of Patents

Infringement of a patent consists of the unauthorized making, importing, using, offering for sale or selling any patented invention within the India.

Remedies against infringement of a patented invention

1. Interlocutory Injunction

A patent owner at the start of a trial can request for an interim injunction to restrain the defendant from committing the acts complained of until the hearing of the action or further orders. Permanent injunction is given based on the merits of the case at the end of the trial.

2. **Relief of damages:** An award of damages focuses on the losses sustained by the claimant. A patent owner is entitled to the relief of damages as compensation to the patentee and not punishment to the infringer.
3. **Account of profits:** Account of profits focuses on the profits made by the defendant, without reference to the damage suffered by the claimant at the hands of the defendant. The purpose of the account is to prevent the unjust enrichment of the defendant by the use of the claimant's invention. The patent owner may also opt for the account of profits where he has to prove use of invention and the amount of profit derived from such illegal use.

5.8.22. Penalties

- 1) Contravention of secrecy provisions relating to certain inventions (Sec.118) - If any person fails to comply with any directions given under section 35 or makes or causes to be made an application in contravention of section 39 he shall be punishable with imprisonment up to 2 years or with fine or with both. (Section 35 deals with secrecy directions relating to inventions relevant for defence purposes and Section 39 deals with residents not to apply for patents outside India without prior permission.

- 2) Falsification of entries in register etc (Sec.119) - If any person makes, or causes to be made, a false entry in any register kept under this Act, he shall be punishable with imprisonment for a term that may extend to 2 years or with fine or with both.
- 3) Unauthorized claim of patent rights (Sec.120) - If any person falsely represents that any article sold by him is patented in India or is the subject of an application for a patent in India, he will be punishable with fine that may extend to Rs.1,00,000. The use of words 'patent', 'Patented', 'Patent applied for', 'Patent pending', 'Patent registered' without mentioning the name of the country means they are patented in India or patent applied for in India.
- 4) Wrongful use of words, "patent office" (Sec.121) - If any person uses on his place of business or any document issued by him or otherwise the words "patent office" or any other words which reasonably lead to the belief that his place of business is, or is officially connected with, the patent office, he will be punishable with imprisonment for a term that may extend to 6 months, or with fine, or with both.
- 5) Refusal or failure to supply information (Sec.122) - If any person refuses or fails to furnish information as required under section 100(5) and 146 he shall be punishable with fine, which may go up to Rs 10,00,000/-. If he furnishes false information knowingly he shall be punishable with imprisonment that may extend to 6 months or with fine or with both.
- 6) Practice by non-registered patent agents (Sec.123) - Any person practicing as patent agent without registering is liable to be punished with a fine of Rs 1,00,000/- in the first offence and Rs.5,00,000/- for subsequent offence.
- 7) Deals with offences by companies (Sec.124) - When offence is committed by a company as well as every person in charge of and responsible to the company for the conducts of its business at the time of the commission of the offence will be deemed to be guilty and will be liable to be proceeded against and punished accordingly. Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that

the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

6. TRADEMARK

6.1. What is Trademark?

A trade mark (popularly known as brand name) in layman's language is a visual symbol which may be a word signature, name, device, label, numerals or combination of colours used by one undertaking on goods or services or other articles of commerce to distinguish it from other similar goods or services originating from a different undertaking.

- The selected mark should be capable of being represented graphically (that is in the paper form).
- It should be capable of distinguishing the goods or services of one undertaking from those of others.
- It should be used or proposed to be used mark in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services and some person have the right to use the mark with or without identity of that person.

Trade Marks are distinctive symbols, signs, logos that help consumer to distinguish between competing goods or services. A trade name is the name of an enterprise which individualizes the enterprise in consumer's mind. It is legally not linked to quality. But, linked in consumer's mind to quality expectation.

Key Features of Trademark

- Trademark must be Distinctive

- Trademark must be used in Commerce

Types of Trademark

- Trademark,
- Servicemark,
- Collectivemark,
- Certification Mark

Functions of Trademark

Trademark performs four functions –

- It identifies the goods / or services and its origin;
- It guarantees its unchanged quality;
- It advertises the goods/services;
- It creates an image for the goods/ services.

6.2. Trade Marks law of India

The Trade Marks Act, 1999 and the Trade Marks Rules, 2002 govern the law relating to Trade Marks in India.

The Trade Marks Act, 1999 (TMA) protects the trade marks and their infringement can be challenged by a passing off or/and infringement action. The Act protects a trade mark for goods or services, on the basis of either use or registration or on basis of both elements.

6.2.1. Who can apply for Trademark?

Any person claiming to be the proprietor of a trade mark used or proposed to be used by him may apply in writing in **Form TM-1** for registration. The application should contain the trade mark,

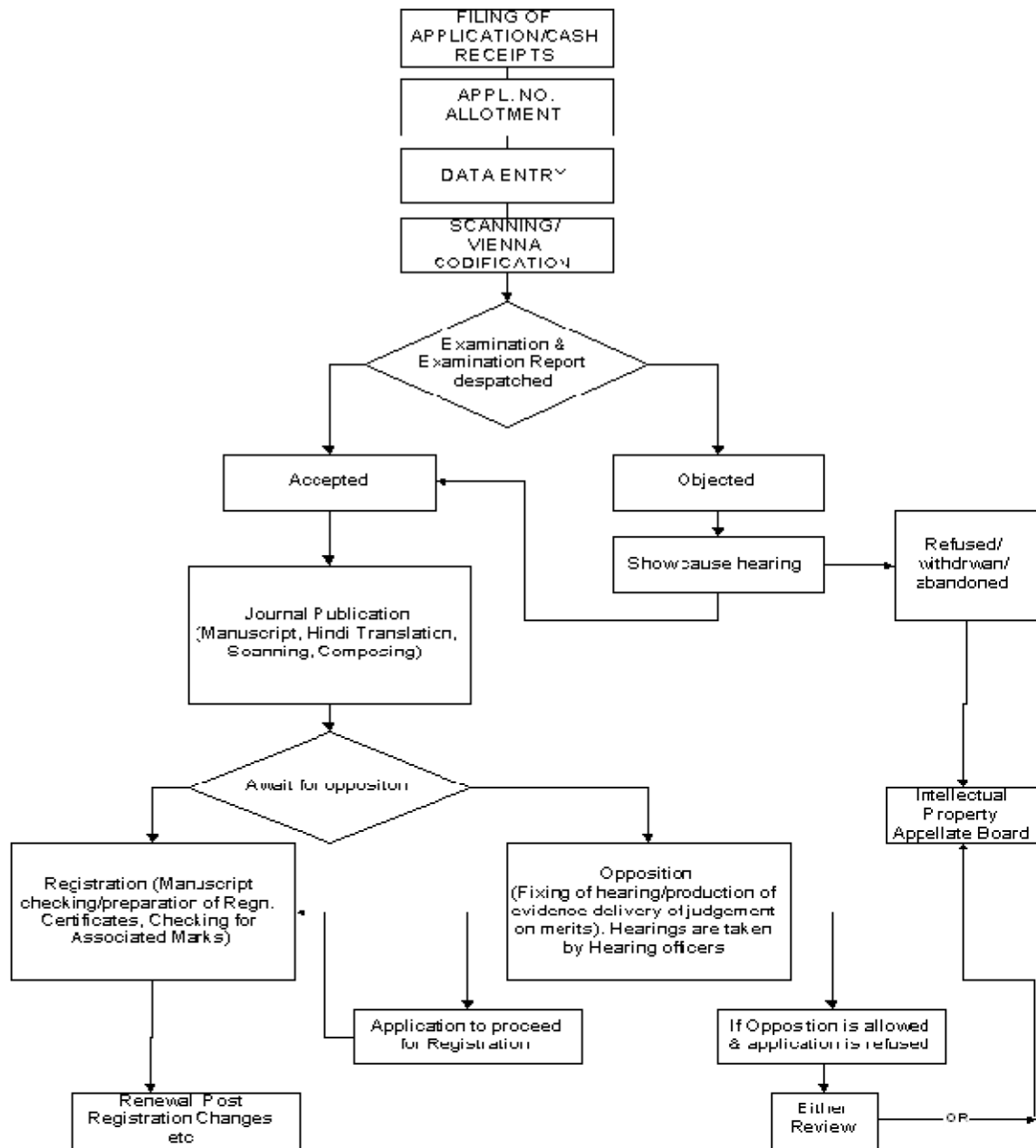
the goods/services, name and address of applicant and agent (if any) with power of attorney, period of use of the mark and signature. The application should be in English or Hindi.

It should be filed at the appropriate office.

6.2.2. Jurisdiction for filing application

A trade mark application should be filed at the appropriate office of the Registry within whose territorial limits, the principal place of business in India of the applicant is situate. In the case of joint applicants, the principal place of business in India of the applicant will be that of the person whose name is first mentioned as having a place of business. If the applicant has no principal place of business in India, he should file the application at that office within whose territorial jurisdiction, the address for service in India given by him is located. No change in the principal place of business in India or in the address for service in India shall affect the jurisdiction of the appropriate office once entered.

TMR Flow Chart



7. DESIGNS

7.1. What is Design?

A Design refers to the features of shape, configuration, pattern, ornamentation or composition of lines or colours applied to any article, whether in two or three dimensional (or both) forms. This may be applied by any industrial process or means (manual, mechanical or chemical) separately or by a combined process, which in the finished article appeals to and judged solely by the eye. Design does not include any mode or principle of construction or anything which is mere mechanical device. It also does not include any trade mark or any artistic work.

An industrial design registration protects the ornamental or aesthetic aspect of an article. Designs may consist of three-dimensional features, such as the shape or surface of an article, or of twodimensional features, such as patterns, lines or color. Designs are applied to a wide variety of products of different industries like handicrafts, medical instruments, watches, jewelry, house wares, electrical appliances, vehicles and architectural structures. An industrial design is primarily for aesthetic features.

Design law in India

The essential purpose of design law is to promote and protect the design element of industrial production. It is also intended to promote innovative activity in the field of industries.

The Designs Act, 2000 and the Designs Rules, 2001 presently govern the design law in India. The Act came into force on 25th May 2000 while the Rules came into effect on 11th May 2001. The object of the Designs Act is to protect new or original designs so created to be applied or applicable to particular article to be manufactured by Industrial Process or means. Sometimes purchase of articles for use is influenced not only by their practical efficiency but also by their appearance.

7.2. Need for registration of Design

The registration of a design confers upon the registered proprietor the exclusive right to apply a design to the article in the class in which the design has been registered. A registered proprietor of the design is entitled to a better protection of his intellectual property. 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. Registration initially confers this **right for ten years** from the date of registration. It is renewable for a further period of five years. If the fee for extension is not paid for the further period of registration within the period of initial registration, this right will cease. There is provision for the restoration of a lapsed design if the application for restoration is filed within one year from the date of cessation in the prescribed manner.

7.3. Essential requirements for registration of Design

A design should -

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

7.4. Exclusion from scope of Design

Designs that are primarily literary or artistic in character are not protected under the Designs Act. These will include:

- Books, jackets, calendars, certificates, forms-and other documents, dressmaking patterns, greeting cards, leaflets, maps and plan cards, postcards, stamps, medals.
- Labels, tokens, cards, cartoons.
- Any principle or mode of construction of an article.
- Mere mechanical contrivance.
- Buildings and structures.
- Parts of articles not manufactured and sold separately.
- Variations commonly used in the trade.
- Mere workshop alterations of components of an assembly.
- Mere change in size of article.
- Flags, emblems or signs of any country.
- Layout designs of integrated circuits.

7.5. Who can apply for registration?

Any person or the legal representative or the assignee can apply separately or jointly for the registration of a design. The term "person" includes firm, partnership and a body corporate. An application may also be filed through an agent in which case a power of attorney is required to be filed. An Application for registration of design may be prepared either by the applicant or with the professional help of attorneys.

7.6. Register of Design

The Register of Designs is a document maintained by the Patent Office, Kolkata as a statutory requirement. It contains the design number, date of filing and reciprocity date (if any), name and address of proprietor and such other matters as would affect the validity of proprietorship of the design such as notifications of assignments and of transmissions of registered designs, etc. and it is open for public inspection on payment of prescribed fee and extract from register may also be obtained on request with the prescribed fee.

8. GEOGRAPHICAL INDICATIONS OF GOODS

Geographical Indications of Goods are defined as that aspect of industrial property which refers to the geographical indication referring to a country or to a place situated therein as being the country or place of origin of that product.

8.1.

What is a Geographical Indication?

- Ø It is an indication
- Ø It originates from a definite geographical territory.
- Ø It is used to identify agricultural, natural or manufactured goods
- Ø The manufactured goods should be produced or processed or prepared in that territory.
- Ø It should have a special quality or reputation or other characteristics

Examples of Indian Geographical Indications -

- Ø Solapur Chaddar
- Ø Solapur Terry Towel
- Ø Basmati Rice
- Ø Darjeeling Tea

Ø Kanchipuram Silk Saree

Ø Alphanso Mango

Ø Nagpur Orange

8.2. Laws relating to Geographical Indication of Goods

Geographical Indications of Goods (Registration and Protection) Act, 1999 and The Geographical Indications of Goods (Registration and Protection) Rules, 2002 deal with registration and better protection of geographical indications relating to goods. The primary purpose of this Act is to provide legal protection to Indian Geographical Indications which in turn boost exports. Registration of Geographical indication promotes economic prosperity of producers of goods produced in a geographical territory.

According to the Act, the term 'geographical indication' (in relation to goods) means "an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods, one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be".

8.3. Registration of Geographical Indication

The registration of a geographical indication is not compulsory; however, it offers better legal protection to facilitate an action for infringement. The registered proprietor and authorized users can initiate infringement actions. The authorized users can exercise the exclusive right to use the geographical indication.

The registration of a geographical indication is valid for a period of 10 years. It can be renewed from time to time for further period of 10 years each. If a registered geographical indication is not renewed it is liable to be removed from the register.

9. SEMICONDUCTOR INTEGRATED CIRCUITS LAYOUT-DESIGN

Semiconductor Integrated Circuit means a product having transistors and other circuitry elements, which are inseparably formed on a semiconductor material or an insulating material or inside the semiconductor material and designed to perform an electronic circuitry function.

The layout-design of a semiconductor integrated circuit means a layout of transistors and other circuitry elements and includes lead wires connecting such elements and expressed in any manner in semiconductor integrated circuits.

The layout of transistors on the semiconductor integrated circuit or topography of transistors on the integrated circuit determines the size of the integrated circuit as well as its processing power. That is why the layout design of transistors constitutes such an important and unique form of intellectual property fundamentally different from other forms of intellectual property like copyrights, patents, trademarks and industrial designs.

9.1. Semiconductor Integrated Circuits Layout-Design (SICLD) Act, 2000

The Semiconductor Integrated Circuits Layout-Design Act, 2000 was passed to fulfill India's obligations as a TRIPS signatory. It provides protection for semiconductor Integrated Circuit layout designs. The main purpose of the Act is to provide for routes and mechanism for protection of IPR in Chip Layout Designs created and matters related to it

The important provisions of the Act are –

- Jurisdiction to the whole of India;
- SICLD Registry - where the layout-designs of integrated circuit chips can be registered;
- Defines layout-designs of integrated circuits which can be registered under the Act;
- Duration of registration of layout-designs;
- Rights conferred by registration;
- Infringement of layout-designs;

- Procedure for assignment and transmission of registered layout- design;
- Appellate Board as a forum of redressal;
- Treatment of Royalties;
- Provisions in case of national emergency or extreme public urgency;
- Penalties;
- Provision for agents;
- Reciprocity provision with other recognized countries.

9.2. Administration

The Act is implemented by the Department of Information Technology, Ministry of Information Technology. The Act is applicable for IC Layout-Design IPR applications filed at the Registry in India. The Semiconductor Integrated Circuits Layout-Design Registry (SICLDR) is the office where the applications on Layout-Designs of integrated circuits are filed for registration of created IPR. The Registry has jurisdiction all over India.

9.3. Criteria for registration of Chip Layout Design

A Layout design that is:

- Original
- Not commercially exploited anywhere in India or convention /reciprocal country
- Inherently distinctive
- Inherently capable of being capable of being distinguishable from any other registered layout design

9.4. Duration of registration

A period of 10 years counted from the date of filing an application for registration or from the date of first commercial exploitation anywhere in India or in any convention country or country specified by Government of India whichever is earlier.

9.5. Person entitled to protection of Layout-Designs

Any person(s) who -

- a) Is a creator of a layout design and desires to register it;
- b) is an Indian national or national of country outside India which accords to citizens of India similar privileges as granted to its own citizens in respect of registration and protection of layout-designs and;
- c) has principal place of business in India or if he does not carry out business in India , has place of service in India.

10. BIOLOGICAL DIVERSITY

India has been a party to the Convention on Biological Diversity since 5th June 1992 and ratified the Convention on 18th February 1994. The Convention on Biological Diversity is one of the most broadly subscribed international environmental treaties in the world. Opened for signature at the Earth Summit in Rio de Janeiro Brazil in 1992, it currently has 189 Parties - 188 States and the European Community - who have committed themselves to its three main goals: the conservation of biodiversity, sustainable use of its components and the equitable sharing of the benefits arising out of the utilization of genetic resources. The Secretariat of the Convention is located in Montreal, Canada. India is also a signatory to Cartagena Protocol on Biosafety signed on 23rd January 2001 and ratified on 11th September 2003.

10.1. Biodiversity Act, 2002

India enacted The Biological Diversity Act, 2002 and The Biological Diversity Rules, 2004 to fulfill its commitments in the Convention on Biological Diversity and in the Cartagena Protocol on Biosafety.

Various states have also enacted state specific Biological diversity rules namely - Kerala Biological Diversity Rules, 2005; Sikkim State Biological Diversity Rules, 2006; Nagaland Biological Diversity Rules, 2010; Rajasthan Biological Diversity Rules, 2010; A.P. State Biological Diversity Rules, 2009, West Bengal Biological Diversity Rules, 2005; U.P. State Biodiversity Rules, 2010; Maharashtra Biological Diversity Rules, 2008 etc.

The Biodiversity Act - 2002 primarily addresses access to genetic resources and associated knowledge by foreign individuals, institutions or companies, to ensure equitable sharing of benefits arising out of the use of these resources and knowledge to the country and the people.

The Act has specific provisions about ownership of intellectual property rights associated with exploitation of biodiversity. Industries have to obtain prior consent of the National Biodiversity Authority before exploring the biodiversity in India. In the event of R&D based on exploitation of biodiversity and associated local knowledge, there is a provision for sharing of benefits of such work with the local community. No direct flow of funds is expected to the community.

Instead the Union Government will reach the benefits through State Governments to the community.

The Biological diversity Act of 2002 contains 65 sections under 12 chapters while the Biological Diversity Rules of 2004 consists of 24 rules and one schedule.

According to Section 2(b) of the Biological Diversity Act, 2002 “Biological Diversity means the variability among living organisms from all sources and the ecological complexes of which they are part and includes diversity within species or between species and of eco-systems.”

Access to Biological Diversity

Chapter II of the Biological Diversity Act, 2000 lays down certain regulations with reference to access to Biological Diversity. The following regulations have been placed in Section 3 to 7 of the said act. Section 3 of the above referred act, requires the following categories of persons to seek previous permission of the National Biodiversity Authority, to obtain any biological resource occurring in India or knowledge associated thereto for research or commercial utilization or for bio-survey and bio-utilization –

- A person who is not a citizen of India.
- A citizen of India who is a non-resident as per section 2(30) of the Income-tax Act, 1961.
- A body corporate, association, organization –
 - Not incorporated or registered in India; or
 - Incorporated or registered in India under any law for the time being in force which has any non-Indian participation in its share capital or management. **Rule 14** of the Biological Diversity Rules, 2004 mentions the procedure for access to biological resources and associated traditional knowledge.

Section 4 of the above referred act requires that every person shall seek the previous approval of the national bio-diversity authority before transferring the results of any research related to any biological resources occurring in, or obtained from India to any person as referred to in section 3 above. **Rule 17** of the Biological Diversity Rules, 2004 mentions the procedure for seeking approval for transferring results of research.

Section 5 of the Biological Diversity Act, 2002 provides that section 3 and 4 above shall not apply to collaborative research projects involving transfer of biological resources, between institutions including government sponsored institutions of India and such institutions in other countries if –

- If they conform to policy guidelines issued by central government in this behalf;
- Be approved by the central government

Section 6 of the Biological Diversity Act, 2002 (18 of 2003) requires that every person applying for any intellectual property rights in or outside India for any invention based on any research or information on a biological resource obtained from India before obtaining prior approval of the

national biodiversity authority. The provisions of this section are however not applicable on rights relating to protection of plant varieties. **Rule 18** of the Biological Diversity Rules, 2004 mentions the procedure for seeking prior approval before applying for intellectual property protection.

Section 7 of the said Act requires every Indian citizen or a body corporate, association or organization registered in India to prior intimate the state biodiversity board of the concerned area from which he/it plans to obtain any biological recourse for commercial utilization or biosurvey and bio utilization for commercial purpose. The Act empowers state biodiversity board, wide section 24 to from prohibit or restrict any such activity if it is of opinion that such activity is detrimental or contrary to the objectives of conservation and sustainable use of biodiversity.

Exclusion under Biological Diversity Act

The Act excludes Indian biological resources that are normally traded as commodities. Such exemption holds only so far the biological resources are used as commodities and for no other purpose. The Act also excludes traditional uses of Indian biological resources and associated knowledge and when they are used in collaborative research projects between Indian and foreign institutions with the approval of the central government.

Penalty

In cases where an approval of the National Biodiversity Authority is required for the use of Indian biological resources and associated knowledge and such approval is not obtained, the punishment can extend to five years imprisonment or a fine of ten lakh rupees or both.

In cases where the State Biodiversity Board needs to be intimated about the use of Indian biological resources and associated knowledge and this is not done, the punishment can extend to three years imprisonment or a fine of five lakh rupees or both.

National Biodiversity Authority

In exercise of the powers conferred by Sub-Section (1) of Section 8 of the Biological Diversity Act, 2002 (18 of 2003), the Central Government has established a body called the National

Biodiversity Authority, on and from the 1st day of October, 2003. The main functions of the Authority are:

- a) To lay down procedures and guidelines to govern the activities provided under Section 3, 4, and 6 and permission to foreigners/NRIs, foreign companies
 - For obtaining any biological resource (Section -3)
 - For transferring the results of any research (Section - 4).
 - Certain collaborative research projects exempted (Section - 5)
- b) To advise the Government of India. Specific areas mentioned as per the Act are the following:
 - i) Notification of threatened species (Section -38)
 - ii) Designate institutions as repositories for different categories of biological resources (Section -39)
 - iii) Exempt certain biological resources, normally traded as commodities (Section -40)
- c) To encourage setting up State Biodiversity Boards
- d) To build up database and documentation system
- e) To create awareness through mass media
 - i) Training of personnel
 - ii. Necessary measures in the areas of Intellectual Propriety RightsThe Act provides for a three tier structure for regulation and access to Biological Diversity. The structure can broadly be summed up as –
 - 1) National Biodiversity Authority (NBA): All matters relating to requests for access by foreign individuals, institutions or companies, and all matters relating to transfer of results of research to any foreigner will be dealt with by the National Biodiversity Authority.
 - 2) State Biodiversity Boards (SBB): All matters relating to access by Indians for commercial purposes will be under the purview of the State Biodiversity Boards (SBB). The Indian industry will be required to provide prior intimation to the concerned SBB about the use of biological resource. The State Board will have the power to restrict any such activity, which violates the objectives of conservation, sustainable use and equitable sharing of benefits.

- 3) Biodiversity Management Committees (BMCs): Institutions of local self government will be required to set up Biodiversity Management Committees in their respective areas for conservation, sustainable use, and documentation of biodiversity and chronicling of knowledge relating to biodiversity.

NBA and SBBs are required to consult the concerned BMCs on matters related to use of biological resources and associated knowledge within their jurisdiction.

11. PROTECTION OF PLANT VARIETIES AND FARMERS RIGHTS

A plant variety represents a more precisely defined group of plants, selected from within a species, with a common set of characteristics.

The **Protection of Plant Varieties and Farmers' Right Act, 2001** has been enacted to provide for the establishment of an effective system for protection of plant varieties, the rights of farmers and plant breeders and to encourage the development of new varieties of plants.

The objectives of the Act are:

- to establish an effective system for protection of plant varieties, the rights of farmers and plant breeders and to encourage the development of new varieties of plants;
- to recognize and protect the rights of the farmers in respect of their contribution made at any time in conserving, improving and making available plant genetic resources for the development of new plant varieties;

- to protect plant breeders' rights to stimulate investment for research and development both in the public and private sector for development of new plant varieties;
- to facilitate the growth of seed industry in the country that will ensure the availability of high quality seeds and planting material to the farmers.

According to the Act, the term 'variety' means "a plant grouping except micro organism within a single botanical taxon of the lowest known rank, which can be:-

- (i) defined by the expression of the characteristics resulting from a given genotype of that plant grouping;
- (ii) distinguished from any other plant grouping by expression of at least one of the said characteristics; and
- (iii) considered as a unit with regard to its suitability for being propagated, which remains unchanged after such propagation; and includes propagating material of such variety, extant variety, transgenic variety, farmers' variety and essentially derived variety".

11.1. Duration of protection of a registered plant variety

The duration of protection of registered varieties is different for different crops which are as below:

1. For trees and vines - 18 years.
2. For other crops - 15 years.
3. For extant varieties - 15 years from the date of notification of that variety by the Central Government under section 5 of the Seeds Act, 1966.

11.2. Registration of Plants

Registration of a plant variety gives protection only in India and confers upon the rights holder, its successor, agent, or licensee the exclusive right to produce, sell, market, distribute, import, or export the variety.

11.3. Application for registration

The application for protection under the Act can be made by any of the following persons:

- Any person claiming to be the breeder of the variety;
- Any successor of the breeder of the variety;
- Any person being the assignee or the breeder of the variety in respect of the right to make such application;
- Any farmer or group of farmers or community of farmers claiming to be breeder of the variety;
- Any person authorized to apply on behalf of farmers; or
- Any university or publicly funded agricultural institution claiming to be breeder of the variety.

11.4. Criteria for registration of new variety

Novelty - A new variety is deemed to be novel if, at the date of filing of the application for registration for protection, the propagating and harvested material of such variety has not been sold or otherwise disposed of by or with the consent of its breeder or his successor for the purposes of exploitation of such variety for a certain period of time before the date of filing of the application. For sale or disposal of a new variety in India, this time period is earlier than one year. Outside of India, in the case of trees and vines, the time period is earlier than six years. In any other case in India, it is earlier than four years.

Distinctiveness - A new variety is deemed distinct if it is clearly distinguishable by at least one essential characteristic from any other variety whose existence is a matter of common knowledge in any country at the time of filing of the application.

Uniformity - A new variety is deemed uniform if subject to the variation that may be expected from the particular features of its propagation it is sufficiently uniform in its essential characteristics.

Stability - A new variety is deemed stable if it's essential characteristics remain unchanged after repeated propagation or, in case of a particular cycle of propagation, at the end of each such cycle.

12. UNDISCLOSED INFORMATION

Knowhow is another important form of intellectual property generated by R&D institutions that do not have the benefit of patent or copyright protection. Such know-how is kept undisclosed as trade secrets. A Trade Secret or undisclosed information is any information that has been intentionally treated as secret and is capable of commercial application with an economic interest. It protects information that confers a competitive advantage to those who possess such information, provided such information is not readily available with or discernible by the competitors. They include technical data, internal processes, methodologies, survey methods, a new invention for which a patent application has not yet been filed, list of customers, process of manufacture, techniques, formulae, drawings, training material, source code, etc. It therefore becomes imperative to strengthen the confidentiality around the trade secret by ensuring that contractual obligations are enforced on persons who are allowed to use the trade secret, especially, when it is licensed to a third party.

Since there is no documentary evidence such as a Letters Patent or a Copyright registration or a Trademark Registration to prove that the trade secret was originally created by the proprietor, it is essential to maintain proof of creation of trade secret either by mailing the information to oneself and retaining postmarked and sealed envelope or by depositing a copy of the information with a third party that would maintain a dated copy.

Trade secret remains confidential for indefinite period of time as per the will of the proprietor provided the security and its confidentiality is not breached. There is no specific legislation regulating the protection of trade secrets in India. India follows common law approach of protection and all matters relating to it are generally covered under the Contract Act, 1872. So, if

the information constituting trade secret is leaked, legal action can be brought against the parties who have leaked it under the Law of Contracts. However, in such a case the protection of trade secret will be lost and it becomes available in public domain.

13. INDIAN INTELLECTUAL PROPERTY - ADMINISTRATIVE MACHINERY

1. Patents, Designs, Trade Marks and Geographical Indication of Goods

The Department of Industrial Policy and Promotion under the Ministry of Commerce & Industry is responsible for Intellectual Property Rights relating to Patents, Designs, Trade Marks and Geographical Indication of Goods and oversees the initiative relating to their promotion and protection. These include the outlining of policy and its implementation through the **Office of the Controller General of Patents, Designs and Trade Marks**. It promotes awareness regarding protection of the Intellectual Property Rights inherent in industrial property in conjunction with the World Intellectual Property Organization (WIPO) and apex industry organizations apart from similar initiatives involving regional industry associations. It also provides inputs on various issues relating to the Agreement on Trade Related Aspects of Intellectual Properties (TRIPS) related to World Trade Organization (WTO) in these fields. The Department undertakes technical cooperation programmes with the World Intellectual Property Organization (WIPO), Geneva for the modernization and up gradation of intellectual property administration relating to patents, designs, trademarks and geographical indications and the organization of Human Resource Development and awareness generation activities in the country.

2. Copyrights

In the matter of protection of copyrights, the Copyright Office under the Department of Secondary and Higher Education in the Ministry of Human Resource Development provides all facilities including registration of copyrights and its neighboring rights. This Office has taken several

measures to strengthen the enforcement of copyright. These include setting up of Copyright Enforcement Advisory Council, organization of seminars/workshops to create greater awareness about copyright law among the enforcement personnel and the general public, setting up of collective administration societies and creation of separate cells in state police headquarters. The States and Union Territories of Assam, Goa, Gujarat, Haryana, Jammu & Kashmir, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Meghalaya, Orissa, Rajasthan, Sikkim, Tamil Nadu, West Bengal, Andaman & Nicobar Islands, Chandigarh, Dadra & Nagar Haveli and Daman & Diu have either set up copyright enforcement cells or special cells in the Crime Branch to look after copyright offence cases.

3. Plant varieties and Farmer Rights

To provide for the establishment of an effective system for protection of plant varieties, the rights of farmers and plant breeders and to encourage the development of new varieties of plants, a separate Authority is set up. India having ratified the Agreement on Trade Related Aspects of the Intellectual Property Rights has to make provision for giving effect to Agreement. To give effect to the aforesaid objectives the Protection of Plant Varieties and Farmers' Rights Act, 2001 has been enacted in India. For the purposes of this Act, The Protection of Plant Varieties and Farmers' Rights Authority has been established.

4. Integrated Circuits Layout Design

It provides protection for semiconductor IC layout designs. India has now in place Semiconductor Integrated Circuits Layout Design Act, 2000 to give protection to IC layout design. Layout design includes a layout of transistors and other circuitry elements and includes lead wires connecting such elements and expressed in any manner in a semiconductor IC. Semiconductor IC is a product having transistors and other circuitry elements, which are inseparably formed on a semiconductor material or an insulating material or inside the semiconductor material and designed to perform an electronic circuitry function.

The Semiconductor Integrated Circuits Layout-Design Registry (SICLDR) in the Department of Information Technology under the Ministry of Information Technology is responsible for receiving IPR applications and granting Registrations to qualifying cases.

5. Bio-diversity

The National Biodiversity Authority (NBA) under the Ministry of Environment and Forests is the concerned Authority for the purpose of Biodiversity.

India enacted the Biodiversity Act 2002 to ensure maintenance, sustenance and development of its biodiversity. The Act has specific provisions about ownership of intellectual property rights associated with exploitation of biodiversity. Industries have to have the prior informed consent of the National Biodiversity Authority before exploring the biodiversity in India. In the event of R&D based on exploitation of biodiversity and associated local knowledge, there is a provision for sharing of benefits of such work with the local community. No direct flow of funds is expected to the community. Instead the Union Government will reach the benefits through State Governments to the community.

6. Protection of Undisclosed Information

Undisclosed information, generally known as trade secret / confidential information, includes formula, pattern, compilation, programme, device, method, technique or process. Protection of undisclosed information is least known to players of IPR and also least talked about, although it is perhaps the most important form of protection for industries, R&D institutions and other agencies dealing with IPRs.

Laws relating to all forms of IPR are at different stages of implementation in India, but there is no separate and exclusive law for protecting undisclosed information / trade secret or confidential information. The Indian Contract Act of 1872 would however cover many aspects of trade secrets.

7. Other Centres/ Cells

Many government departments, educational institutions and PSU have started their IPR cells. Prominent among the government departments / agencies are Department of Biotechnology, Ministry of Telecommunications and Information Technology, Indian Council of Medical Research, Indian Council of Agricultural Research, ISRO, Department of Atomic Energy, Defence Research and Development Organization and Indian Council of Forest Research. The Technology Information, Forecasting & Assessment Council (TIFAC) under the Ministry of Science & Technology, an autonomous organization aims to keep a technology watch on global trends and formulating preferred technology options for India. IITs at Delhi, Mumbai, Kharagpur and Roorkee have also set up their cells and evolved their IPR policies.

8. Intellectual Property Appellate Board

Intellectual Property Appellate Board has been constituted by the Central Government in the Ministry of Commerce and Industry on 15th September 2003 to hear appeals against the decisions of the Registrar under the Trade Marks Act, 1999 and the Geographical Indications of Goods (Registration and Protection) Act, 1999.

The Intellectual Property Appellate Board has its headquarters at Chennai and will have sittings at Chennai, Mumbai, Delhi, Kolkata and Ahmedabad.

In terms of the Notifications No.12/15/2006-IPR-III) dated 2/4/2007 issued by the Ministry of Commerce & Industry, the provisions of the Patent Amendment Act, 2002 and the Patents Amendment Act, 2005, relating to the Intellectual Property Appellate Board have been brought into force. Thus, all the Appeals pending before the various High Courts will stand transferred to the IPAB. Likewise, fresh Rectification Applications under the Patents Act, 1970, will have to be filed before the Appellate Board.

