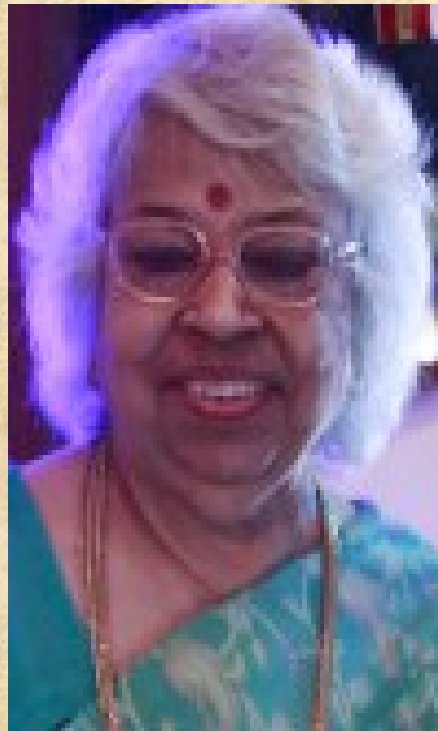


Intellectual Property Rights 5.16

Book 1



Thank you for downloading this document.
This is part of the series “Unusual careers”. Lesser known careers are being researched and compiled by Mrs. Shobha Mathur.

This document provides valid links to various sites. All the links are working and secure as on May 2016.
For any suggestion, amendment, criticism or praise, please contact me at shobham@yahoo.com

Unusual Careers

Intellectual Property Rights

Preface

Intellectual Property Rights is a growing field for specialized employment.

I wrote about Patent Agents in 2010, and am still getting inquiries. So I decided to revamp with more current and connected info. This became too vast for one eBook, difficult to upload and download, so I have split the content in three parts.

1. This Book - about Intellectual Property Rights basic concepts.
2. How to become Patent Agent
3. How to become Trade mark / Copyright Agent

Hope this will be more relevant and helpful.

This document will explain in simple language the basics of the Intellectual Property, its definition, types, rights, limitations, registration, benefits and the system to follow.

For detailed info or queries please visit the sites.

I have provided flow charts wherever I could get from public sites. At the end I have given a chart for instant comparisons between rights. There is also a case analysis of Coca-Cola to explain various protections.

All information and links are valid, secure and working as on May 2016.
You can open Bookmarks to instantly jump to any topic.

About Intellectual Property Rights

All societies and cultures respect and uphold the right of a person to his personal property.

Three kinds of personal properties are recognized:

- Movable Property _____ Cars, Furniture, Phones
- Immovable Property _____ Land, Buildings, Farms
- Intellectual Property _____ Literary works, inventions

We know about the first two as they are always visible and recognizable.
The third kind is more abstract and, difficult to recognize and define.

This is also of various kinds, used for a variety of purposes and need a wide variety of protection processes too. The idea is to protect the original person for at least some time so he can recoup his investment. But this protection is valid for a limited time, as then public can benefit from it too at more reasonable price.

Most of these protections are country specific, but you can apply and obtain international protection from international bodies

Most of the processes are similar but not identical in application.

1. Search – This is two kinds and there are separate databases to make this search both on National and International status.
 - I. There is a list of things which cannot be granted protection to anyone.
 - II. You have to search for any duplicate before a new one is granted
2. Examination – The registrar examines the application and if any questions are raised they have to be answered.
3. Publishing - This is published for public view and anyone can object which will be noted and has to be replied by the prospective owner.
4. If there are valid concerns both parties are confronted and asked to present their case.
5. If the case is won the protection is granted for a specified time which may or may not be renewable.

All this takes considerable time and effort so all of these need a fee. They can also take up to two years to finalize.

These are legal processes and quite complicated so it is advisable to use a trained and certified agent to work for you. Many law firms also undertake this. Shop around before settling on one. A good agent should draft your application and see you through all stages competently.

6. Once the protection is granted the owner has legal rights over his product and can claim damages in a court if someone uses it without permission. There are national and international judicial tribunals and courts to settle any dispute.

IP as a property	IP protection is given for
<ul style="list-style-type: none">• Can be sold	<ul style="list-style-type: none">• Capital expenditure for new products
<ul style="list-style-type: none">• Can be bought	<ul style="list-style-type: none">• R and D
<ul style="list-style-type: none">• Can be leased or rented	<ul style="list-style-type: none">• Marketing and advertisement
<ul style="list-style-type: none">• Can be willed	<ul style="list-style-type: none">• profit
<ul style="list-style-type: none">• Can be assigned	

1. What are Intellectual Property Rights?

<http://www.wipo.int/about-ip/en/>

WIPO - World Intellectual Property organization is a UN body streamlining IP related concerns under one umbrella.

According to it Intellectual Property Rights are “creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce.”

It can be an original painting, book, medicine or process that can be copyrighted or patented, so if anyone wanting to use it must have permission from the owner.

To end plagiarisation or piracy many treaties have come into effect and most countries are bound to uphold such laws.

The Statute of Monopolies (1624) and the British Statute of Anne (1710) were the origins of patent and copyright respectively, firmly establishing the concept of intellectual property.

There is clear demarcation between purely intellectual pursuits like writing, music, all kinds of art – paint, sculpture, photography, cinematography and other kinds of more tangible products and they all have different laws and protection methods.

The basic Principle is to safe guard the interest of the creator as well as the general public.

For example, a pharma company spends considerable time, money and resources to perfect a drug, which can benefit millions around the world. The company should be granted a patent so it can sell exclusively at high price or transfer technology for a fee for some time, and should be able to recoup its expenditure. But the formula goes to general domain after a stipulated time so general public can also benefit from it as other companies start making it for lower price.

Hence many patents are granted for a limited time, though they can be renewed.

2. Nature of Intellectual Property Rights

IPR are largely territorial rights, meaning they are specific to the country, except copyright, which is global in nature. It means it is immediately available to all the members of the Berne Convention.

These rights are awarded by the State and are monopoly rights meaning that no one can use these without the consent of the right holder.

It is important to know that these rights have to be renewed from time to time for keeping them in force except in case of copyright and trade secrets.

Intellectual Property Rights are for fixed terms, except trademark and geographical indications. These two have indefinite life provided they are renewed after a stipulated time by paying official fees.

Trade secrets also have an infinite life but they don't have to be renewed.

IPR can be assigned, gifted, sold and licensed like any other property.

Unlike other moveable and immoveable properties, these rights can be simultaneously held in many countries at the same time.

There is an exhaustive list of items which cannot be patented or owned by anyone.

These lists are available at both national and international levels and can be searched for a fee. This search is a must to avoid duplication.

3. Categories

The Intellectual Property Rights are classified into eight categories with different laws and life of protection.

1. Copyright
2. Patent
3. Industrial Design
4. Trade Marks
5. Geographical Indication
6. Designs of Integrated Circuits
7. Trade Secrets
8. Plant Breeder

Here is brief information about each: and later detailed one.

But this is just a preliminary study and does NOT cover all the aspects. Anyone wishing for further details should use the links.

Copyright

Copyright is a legal right that creators have over their literary and artistic works.

Works covered by copyright are books, music, paintings, photographs, sculpture and films, computer programs, databases, advertisements, maps and technical drawings.

Copyright is not granted for unexpressed thoughts and ideas.

Patents

A patent is an exclusive right granted for an invention.

It provides the patent owner the right to decide how - or whether - the invention can be used by others. In exchange for this right, the patent owner makes technical information about the invention publicly available in the published patent document.

Trademarks

A trademark or Logo identifies the goods or services of enterprises. In fact in ancient times too craftsmen used to put their signature or "mark" on their products.

Industrial designs

An industrial design is the ornamental or aesthetic aspect of an article. A design may consist of three-dimensional features, such as the shape or surface of an article, or of two-dimensional features, such as patterns, lines or color.

Geographical indications(GI)

Geographical indications are signs used on goods that have a specific geographical origin and have qualities, reputation or characteristics belonging to that place.

Mostly a GI includes the name of the place of origin of the goods.

Plant breeders Rights (PBR)

Plant Breeders Rights include new varieties all plant species (except algae and bacteria)

4. Why Protect Intellectual Property

Protection is done to compensate the originator for investment in time, money or other resources which are used to create new contribution to technology, commerce and entertainment.

This officially encourages Creators to disclose their creations to the public in order to promote the progress of science and arts.

It fosters economic growth, Provides incentives for technological innovation, and attracts investment to create new jobs and opportunities.

Copyright ©

Broadly speaking, commonly copyrighted works include:

- Literary works such as novels, poems, plays, reference works, newspaper articles;
- Computer programs, databases;
- Films, musical compositions, and choreography;
- Artistic works such as paintings, drawings, photographs, and sculpture;
- Architecture;
- Advertisements, maps, and technical drawings.

Copyright protection extends only to expressions and not to ideas, procedures, and methods of operation or mathematical concepts as such.

Copyright may or may not be available for a number of objects such as titles, slogans, or logos, depending on whether they contain sufficient authorship.

1. Rights

There are two types of rights under copyright:

1. Moral rights, which protect the non-economic interests of the author.

- Right of Authorship
- Right of Integrity
- Digital Manipulation

2. Economic rights, which allow the owner to gain financial reward from the use of his works by others.

- Right of Reproduction
 - Making copies e.g. an edition of a novel
- Storage in computer memory
 - Right of Distribution/Issuing Copies
 - Digital Distribution
- Right of Communication to the Public
 - Public Performance
 - Internet Communication
- Adaptation Rights
 - Conversion into another form e.g. literary to drama
 - Picturizations, comic formats
 - Right to make a cinematograph film or sound recording

- Translation Rights
- Rental Rights
- Resale Rights for original artistic works.

2. Deciding Ownership

Usually the ownership belongs to the person who creates the piece, except when it is done for someone for some payment.

So the magazine has the copyright for the work of the Photographer or the writer. Or the producer has the copyright of the cinematographer's work for a film.

Copyright protects the expression of ideas (e.g. words and illustrations). Ideas alone are not protected.

So a written poem or story is copyrighted, but just the idea of it is not.

3. Copyright and registered designs

When an artistic, not literary work, such as a drawing or a sculpture, is industrially produced (i.e. more than 50 copies of the products are produced), the copyright protection will no longer cover that artistic work.

It may be protected as a registered design under the Registered Designs Act (Cap. 266), if the registration criteria are met.

For more information on registered design and its registration criteria, please see [Registered Designs](#).

4. Definition and Rights of a copyright owner

Article	Owner	Exclusive right to	Duration
Literary, dramatic and musical works	Author	<ul style="list-style-type: none"> ▪ reproduce the work; ▪ publish the work; ▪ perform the work in public; ▪ communicate the work to the public; and Make an adaptation of the work.	<ul style="list-style-type: none"> ▪ Life + 70 years

Article	Owner	Exclusive right to	Duration
Artistic works	Artist	<ul style="list-style-type: none"> reproduce the work; publish the work; and communicate the work to the public.	<ul style="list-style-type: none"> Life + 70 years
Published editions of literary, dramatic, musical or artistic works	Artist/ Publisher	Make a reproduction of the edition.	Life + 70 years
Sound recordings	Producer/ Sound Recordist	<ul style="list-style-type: none"> make a copy of the sound recording; rent out the sound recording; publish the sound recording if it is unpublished; and make available to the public a sound recording by means or as part of a digital audio transmission.	<ul style="list-style-type: none"> 60 years
Films	Producer	<ul style="list-style-type: none"> make a copy of the film; cause the film to be seen in public; and communicate the film to the public.	<ul style="list-style-type: none"> 60 years
Television and radio broadcasts	Producer/ Broadcaster	<ul style="list-style-type: none"> make a recording of the broadcast; rebroadcast; communicate the broadcast to the public; and cause the broadcast to be seen or heard by a paying audience.	<ul style="list-style-type: none"> 50 years
Cable programmes	Producer/	<ul style="list-style-type: none"> make a recording of the cable programme; communicate the cable programme to the public; and 	<ul style="list-style-type: none"> 50years

Article	Owner	Exclusive right to	Duration
		cause the cable programme to be seen or heard by a paying audience.	
Performances	Performer	<ul style="list-style-type: none"> allow the performance to be seen and heard, or seen or heard, live in public; make a direct or indirect sound recording of his live performance; 	<ul style="list-style-type: none"> 50 years

5. Registering

Usually, and according to the [Berne Convention](#), copyright protection is obtained automatically without the need for registration. As soon as you finish a work, it is copyrighted to you.

Still there is a system to allow for the voluntary registration of works. This can help solve legal disputes over ownership or creation, help financial transactions, sales, and the assignment and/or transfer of rights.

WIPO does not offer a copyright registration system or a searchable copyright database. [Find out more about copyright registration and documentation systems.](#)

Read the [full list of copyright FAQs.](#)

In India the applications for registration of works can be filled at the counter, or send by post. Now on line E-filing is also available all the time.

6. Steps For getting Copyright

Filing – It can be done personally, by post or electronically along with the prescribed fee. There is 30 day's waiting period. If there is any contest, another 30 days are needed.

Examination – If there is no objection it is examined and any extra material needed is asked for.

Registration - If there are no objections registration is done.

7. Legal points

There are no special courts for copyright cases. The regular courts try these cases. There is a Copyright Board to adjudicate certain cases.

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

The District Court concerned has the jurisdiction in civil suits regarding copyright infringement.

Anyone who knowingly infringes 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/-. For second and subsequent conviction the minimum punishment is imprisonment for one year and fine of Rs. one lakh.

8. Links

For more information please visit

Registrar of Copyrights

4th Floor Jeevan Deep Building ,
New Delhi- 110 001.

<http://copyright.gov.in/>

For E filling you can fill the form yourself online here:

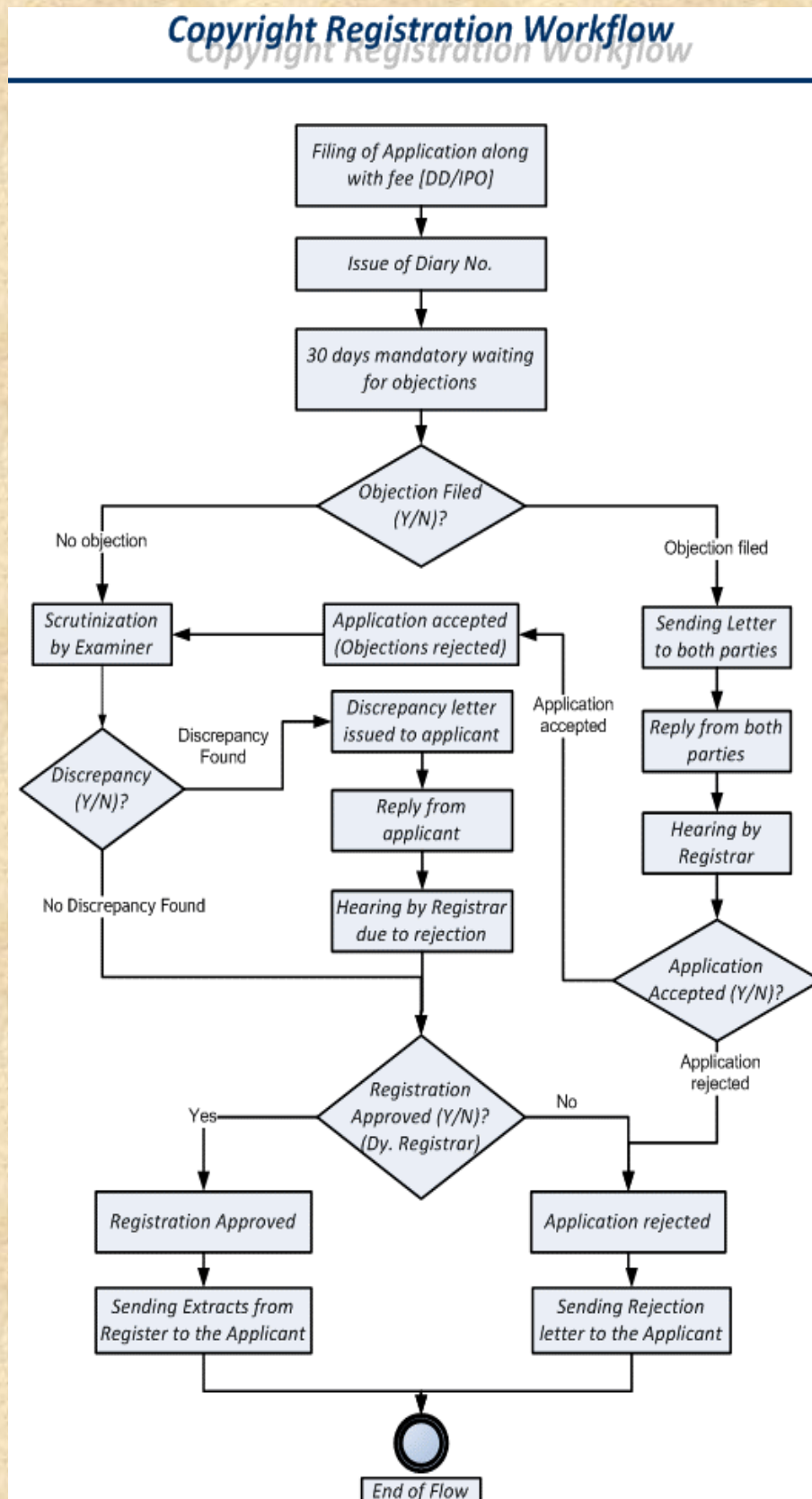
<http://copyright.gov.in/UserRegistration/frmLoginPage.aspx>

The fee for copyright differs from article to article and varies from Rs.200 – 40000. For full detail please see <http://copyright.gov.in/frmFeeDetailsShow.aspx>

Usually an agent is not required to register your work, but now many law companies have special divisions and trained people to help. Some courses are also available as part of Patent and Trade mark Agents.

9. The following flow chart from the site explains all the steps.

<http://copyright.gov.in/frmWorkFlow.aspx>



Patent

A patent is an exclusive right granted for an invention, which can be a product or a process that provides a new way of doing something, or offers a new technical solution to a problem.

To get a patent, technical information about the invention must be disclosed to the public in a patent application.

Patent protection means that the invention cannot be commercially made, used, distributed, imported or sold by others without the patent owner's consent.

In general, the exclusive rights are only applicable in the country or region in which a patent has been filed and granted.

The protection is granted for a limited period, generally 20 years from the filing date of the application.

1. Grant of Patent

- Patents are granted by national patent offices after publication and substantial examination of the applications
- In India provisions exist for pre-grant and post grant opposition by others
- They are valid within the territorial limits of the country
- Foreigners can also apply for patents

2. The benefits of registering a patent

Once you register a patent, apart from using the patent to prevent others from exploiting your invention, you can employ it to raise funds for your business, license it to third parties for commercial returns or sell the patented invention.

3. Conditions of Patentability

1. New – The invention should not be publicly known in any way, anywhere in the world

- Owners of inventions should keep the invention secret until a patent application has been successfully made.
- Once a Date of Filing has been obtained for the patent application, the invention can claim a "Patent Pending" status and the applicant can proceed to disclose the invention as indicated in the patent application to interested parties.
- The patent application will be published after 18 months if the statutory requirements are met. Once published, details of the invention will be made available for public inspection.

2. Inventive step – The invention must be something that represents an improvement over any existing product or process that is already available.

The improvement must not be obvious to someone with technical skills or knowledge in the invention's particular field. If an invention is new yet obvious to a person skilled in the art, the invention would not fulfil the inventive step requirement.

Industrial application – The invention must be useful and have some form of practical application. It should be capable of being made or used in some form of industry.

4. Types of Patent Applications

The patent system in India is governed by the Patents Act, 1970 as amended by the Patents (Amendment) Rules 2006 effective from 05-05-2006.

Following are different types of application which can be filed before Indian Patent Office.

1. Provisional Application
2. Non Provisional Application/Complete Application
3. Conventional Application
4. PCT- International Application
5. PCT-National Application
6. Application for Patent of Addition
7. Divisional Application

1. Provisional Application

It is a tentative, preliminary application which is filed to claim priority. This application is filed when an invention requires additional time to improve upon.

Such an application needs a complete specification filed within 12 months from the date of filing of application else it will be abandoned.

This application should briefly explain the invention and must be drafted very carefully to ensure that the priority rights are secured for your invention.

2. Ordinary Application

It is accompanied by a complete specification which is a techno-legal document.

Complete specification should describe the invention in-depth
Disclose the best known method of carrying it out
End with one or more claims which define the scope of the invention.

Complete specification can be filed in 2 ways

1. Direct filing- Complete specification is filed directly with the Indian Patent office without any provisional specification
2. Subsequent filing- Complete specification is filed subsequent to provisional filing.

Complete specification should essentially contain the following:

1. Title
2. Preamble to the invention
3. Technical field of the invention
4. Background of the invention
5. Objects of the invention
6. Statement of the invention
7. Brief description of the drawings
8. Detailed description of the invention
9. Claims
10. Abstract

3. Convention Application

This is an application filed by an applicant to claim priority date as a similar application is filed in one of the convention country. The application should be filed in an Indian Patent Office within twelve months from the date of first filing in the convention country.

4. PCT International Application

Here the applicant gains an international filing date in all the designated countries to the national offices without affecting the priority date. This is the best and most comprehensive method for applicants seeking protection for the inventions in many countries.

The Indian Patent Office is a receiving office for international applications too.

5. PCT National Phase Application

An international application, as mentioned above, can enter the national phase within 31 months from the international filing date. Called the PCT National Phase Application, this application filed before the Controller in the Indian Patent Office claims the priority and international filing date.

6. Application for Patent of Addition

Application for Patent of Addition happens when an applicant feels that his/her invention is a modification on the invention for which he/she has already applied for/has patent in India.

There is no need to pay separate renewal fee for the patent of addition during the term of the main patent and expires along with the main patent unless it is made independent.

7. Divisional Application

In certain cases, when the applicant claims more than one invention, he may divide the application and file two or more applications as applicable for each of his/her invention.

The priority date for all the divisional application would be same as the one claimed by the parent application.

5. DOCUMENTS REQUIRED FOR FILING AN APPLICATION

<http://madaan.com/patents.html>

1. Application form in triplicate.
2. Provisional or complete specification in triplicate. If the provisional specification is filed it must be followed by complete specification within 12 months (15 months with extension).
3. Drawing in triplicate (if necessary).
4. Abstract of the invention (in triplicate).
5. Information and undertaking listing the number, filing date and current status of each foreign patent application in duplicate.
6. Priority document (if priority date is claimed).
7. Declaration of inventorship where provisional specification is followed by complete specification or in case of convention application.
8. Power of attorney (if filed through Patent Agent).
9. Fee in cash/by local cheque/by demand draft.

6. Process of Patent Registration

Step 1: Write down the invention (idea or concept) with as much details as possible

- Area of invention
- Description of the invention what it does
- How does it work
- Advantages of the invention
- If you have a dated lab record it helps immensely.

Step 2: include drawings, diagrams or sketches explaining working of invention

Step 3: check whether the invention is patentable .

http://ipindia.nic.in/IPActs_Rules/updated_Version/sections/ps3.html

Step 4: Patentability search

Find out if your invention meets all criteria as per Indian patent act.

- Novelty
- Non-obviousness
- Industrial application

Step 4: Decide whether to go ahead with patent

Step 5: Draft (write) patent application

If you are not yet at the final stage of your invention, you have an option to go for provisional specification. It helps to:

- Secures filing date
- Get 12 months of time to file complete specification
- Is Low cost

Step 6: Publication of the application

After filing the complete specification along with application for patent, the application is published after 18 months.

You can pay a fee and make a request for early publication. Generally the patent application is published within a month of request for early publication.

Step 7: Request for examination

The patent application is examined only after receiving request for examination. After receiving this request the controller gives your patent application to a patent examiner who examines the patent application with different patentability criteria like:

- Patentable subject matter
- Novelty
- Non-obviousness
- Inventive step
- Industrial application
- Enabling

The examiner creates a first examination report of the patent application after reviewing it for above terms.

This is called **patent prosecution**. Everything happening to patent application before grant of patent is generally called as patent prosecution.

The first examination report submitted to controller by examiner may contain prior existing documents which are similar to the claimed invention, and same is reported to patent applicant.

Step 8: respond to objections

Majority of patent applicants receive some type of objections based on examination report.

Analyse it with patent agent and craft a response to the objections raised. This response should prove that the invention is indeed new and should be patented.

Step 9: clearing all objections

This communication should ensure that all objections raised in the patent application are resolved, or the patent will not be granted.

If the patent application found in order patent will be granted speedily.

Step 10: Grant of patent

The application is placed in order for grant once it meets all patentability requirements. The grant of patent is notified in the patent journal which is published time to time.

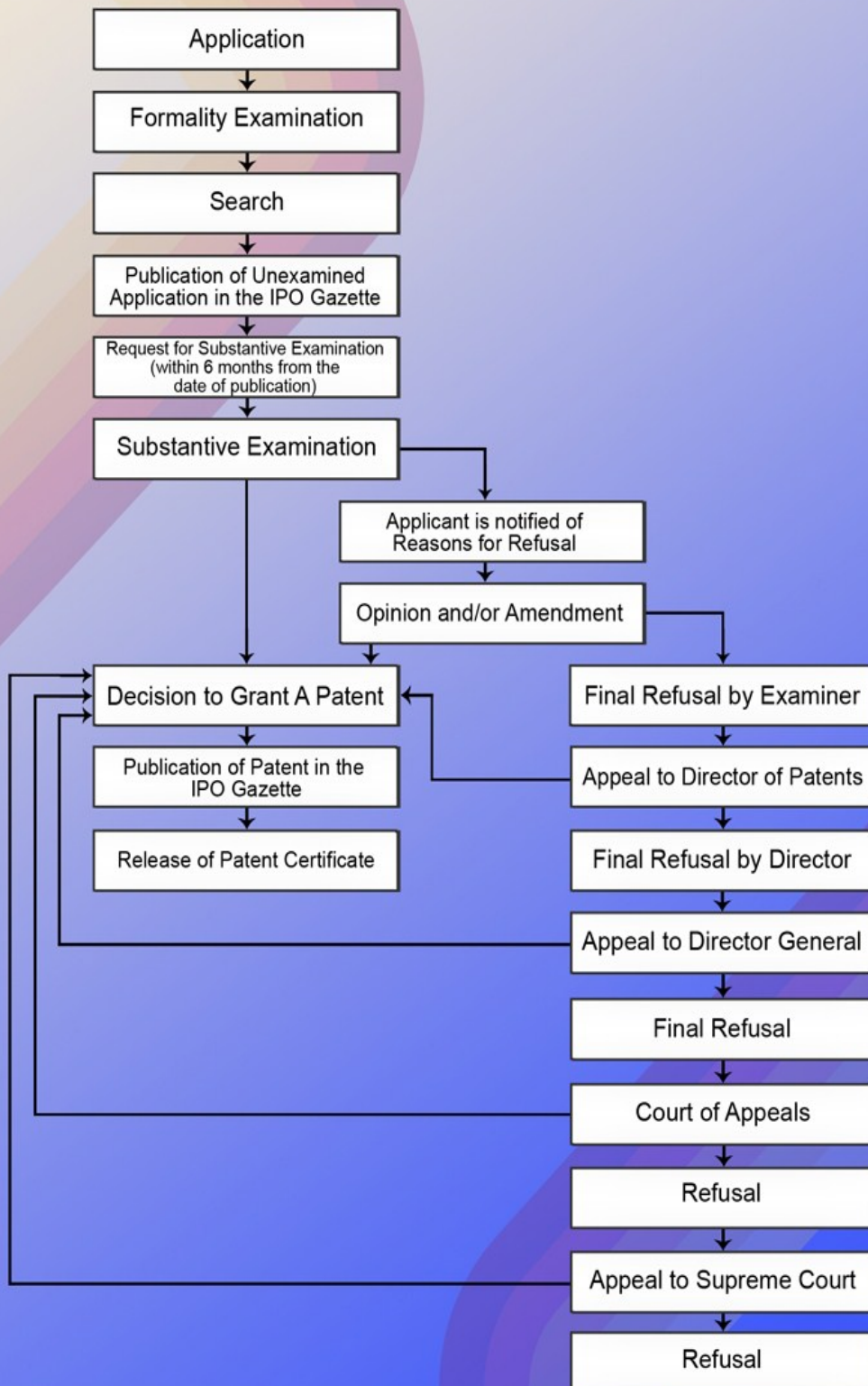
From 20th July, 2007 the Indian Patent Office has put in place an online filing system for patent application. More information for filing online application is available on the website of Patent Office i.e. www.ipindia.nic.in. This facility is also available for filing trademarks application.

Please go through the FAQ page of the site for clarifications:
http://www.ipindia.nic.in/ipr/patent/FAQ_Patent.htm

Patent flow chart

<http://www.ipophil.gov.ph/services/patents/patent-application-flow-chart>

PATENT APPLICATION FLOW CHART



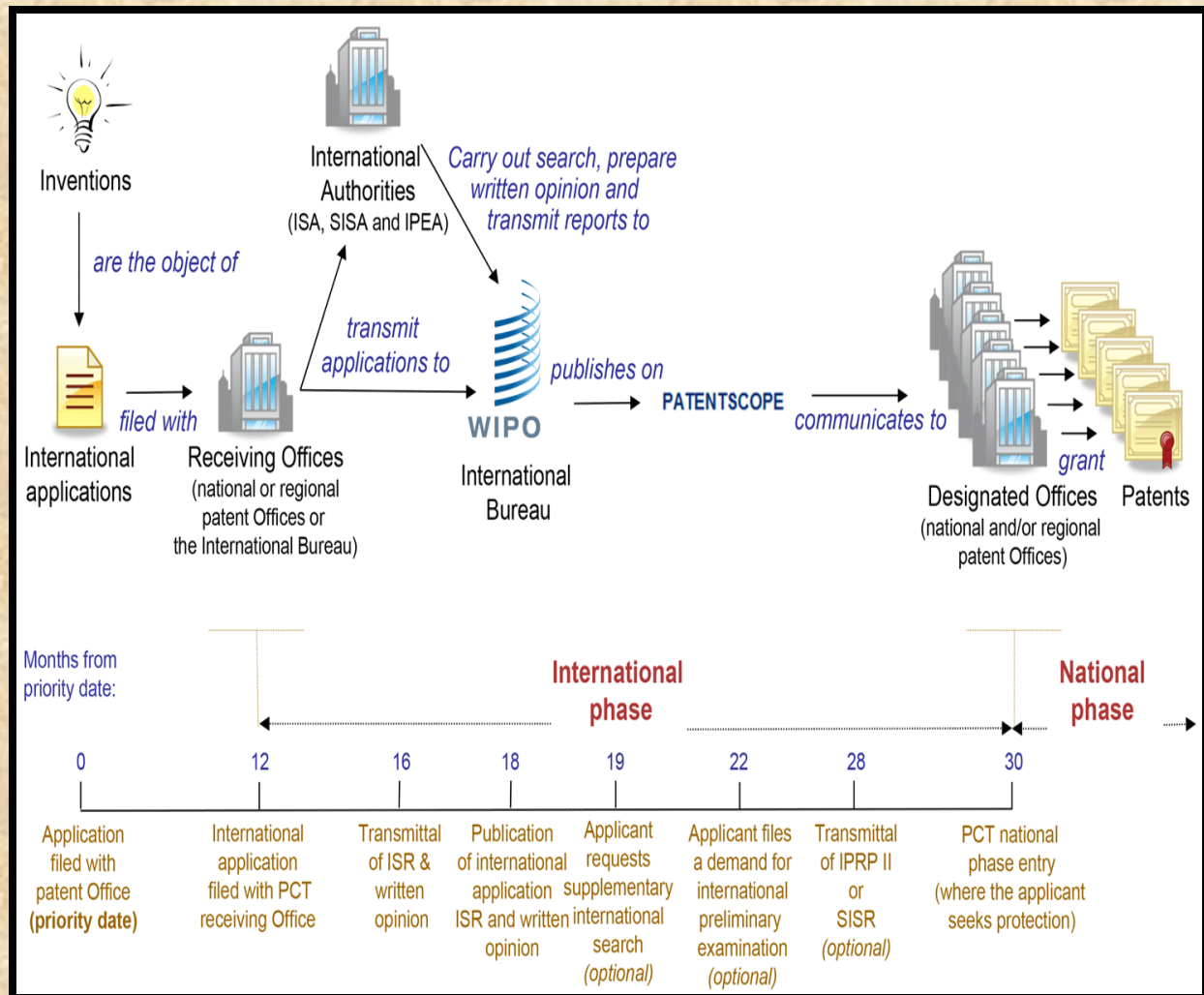
PCT –The International Patent System

The Patent Cooperation Treaty (PCT) assists applicants in seeking patent protection internationally for their inventions, helps patent Offices with their patent granting

decisions, and facilitates public access to a wealth of technical information relating to those inventions.

By filing one international patent application under the PCT, applicants can simultaneously seek protection for an invention in [148 countries](#) throughout the world.

This is a flow chart for PCT



<http://www.wipo.int/pct/en/faqs/faqs.html>

The PCT makes it possible to seek patent protection for an invention simultaneously in a large number of countries by filing a single “international” patent application instead of filing separate national or regional patent applications.

The granting of patents remains under the control of the national or regional patent Offices in what is called the “national phase”.

The PCT procedure includes:

Filing: you file an international application with a national or regional patent Office or WIPO, complying with the PCT formality requirements, in one language, and you pay one set of fees.

International Search: an “International Searching Authority” (ISA) (one of the world’s major patent Offices) identifies the published patent documents and technical literature (“prior art”) which may have an influence on whether your invention is patentable, and establishes a written opinion on your invention’s potential patentability.

International Publication: as soon as possible after 18 months from the earliest filing date, the content of your international application is disclosed to the world.

National Phase: after the end of the PCT procedure, usually at 30 months from the earliest filing date of your initial application, from which you claim priority, you start to pursue the grant of your patents directly before the national (or regional) patent Offices of the countries in which you want to obtain them.

The PCT is used by the world’s major corporations, research institutions, and universities when they seek international patent protection. It is also used by small and medium sized enterprises (SMEs) and individual inventors.

The Regional offices are :

Office Address	Officer
Intellectual Property Office Boudhik Sampada Bhawan, Antop Hill, S. M. Road, Mumbai - 400 037. Phone: 24101144, 24148165	Dr. Rakesh Kumar Deputy Controller of Patents & Designs Phone: 022-24153651, Fax: 022-24130387 E-mail: mumbai-patent@nic.in
Intellectual Property Office Intellectual Property Office Building, Plot No. 32, Sector 14, Dwarka, New Delhi-110075 Phone: 011-28034304-05	Dr. K. S. Kardam Joint Controller of Patents & Designs Phone: 011-28034317, Fax:011-28034315 E-mail: delhi-patent@nic.in
Intellectual Property Office Intellectual Property Office Building,	Shri. G.P. Roy Deputy Controller of Patents & Designs Phone: 044-22502080, Fax: 044-2502066

Office Address	Officer
G.S.T. Road, Guindy, Chennai-600032 Phone: 044-22502081-84	E-mail: chennai-patent@nic.in
Intellectual Property Office Intellectual Property Office Building, CP-2 Sector V, Salt Lake City, Kolkata-700091 Phone: 033-23679101	Shri D. K. Rahut Joint Controller of Patents & Designs Phone: 033-23671987, Fax: 033-23671988 E-mail: kolkata-patent@nic.in

Conclusion

Unlike copyrights, applying for Patents is a highly skilled job both for legal and practical reasons. That is why Patent Agents or attorneys are needed.

The draft has to be written in a certain way, and the person writing it has to have some knowledge about the subject. For example, an Engineer will not do justice to a medical invention.

Also the agent has to know about all the national and international laws and bylaws. There are comprehensive databases of all patents granted and the agent should be able to search and advise.

This is a highly rewarding career and there is need for all kinds of graduates and postgraduates. Apart from Patent Agent, you can also become Patent Examiner. There are courses and examinations for both.

7. Links

Controller General of Patents

<http://www.ipindia.nic.in/ipr/patent/patents.htm>

Controller General of Patents Designs and Trademarks ,

<http://www.ipindia.nic.in/>

1. What is a trademark?

A trade mark or logo is a sign that you can use to distinguish your business' goods or services from those of other traders.

A registered trade mark protects your brand by restricting other people so no one else can use it.

Once acquired, a trade mark can last indefinitely as long as you renew it every 10 years. Because a registered trade mark is a form of IP, you can license or assign it to others.

2. How can I protect my trademark?

At the national/regional level, trademark protection can be obtained through registration, by filing an application for registration with the national/regional trademark office and paying the required fees.

At the international level, you have two options:

1. you can file a trademark application with the trademark office of each country in which you are seeking protection, or
2. You can use WIPO's [Madrid System](#).

3. What rights does trademark registration provide?

The registered trademark can be exclusively used by its owner, or licensed to another party for payment.

The term of trademark registration is usually ten years. It can be renewed indefinitely on payment of additional fees.

Trademark rights are private rights and protection is enforced through court orders.

4. What kinds of trademark can be registered?

Kinds of Trademarks

1. Marks on goods
2. Service Marks
3. Certification trademark
4. Collective Marks
5. Well known marks
6. Trade Names

Marks on Goods

Used “on” the goods means that a trademark may appear not only on the goods themselves but on the container or wrapper in which the goods are when they are sold.

Used “in connection with” the marketing of the goods refers to:

The appearance of the sign in advertisements (newspaper, television, etc.)

In the shop windows of the shops in which the goods are sold.

Service Mark SM

A service mark is a word, phrase, symbol or logo that is used to brand, identify, and distinguish a *service*.

This is in contrast to a [trademark](#), which is a word, phrase, symbol or logo that is used to brand, identify, and distinguish a product.

These include banking, education, finance, insurance, real estate, entertainment, repairs, transport, conveying news and information, advertising etc



Certification marks

These are given for compliance with defined standards, but are not confined to any membership.

They may be used by anyone who can certify that the products involved meet certain established standards. Famous certification marks include WOOLMARK which certifies that the goods on which it is used are made of 100% wool.



Certification marks may be used together with the individual trademark of the producer of a given good. The label used as a certification mark will be evidence that the company's products meet the specific standards required for the use of the certification mark.

A collective trademark, collective trade mark,

A **collective mark** is a trademark owned by an organization (such as an association), used by its members to identify themselves with a level of quality or accuracy, geographical origin, or other characteristics set by the organization.

A collective trademark can be used by a variety of people, rather than just one individual concern, provided that the concern or individual belongs to the association.

Collective trademarks differ from certification marks.

Who owns collective Mark? Association of persons !

It could be manufacturers, producers, suppliers, traders or other profession bodies like institute of chartered accountants, test cricketers association etc.

For example all teams of IPL can use the IPL logo along with their own.



Trade Mark can be made of -

Sign, words, letters, numbers,
Drawings, pictures, emblem,
Colors or combination of colours,
Shape of goods,

Graphic representation or packaging or

Any combination of the above as applied to an article or a product.

Only when a trademark or service mark is registered with the competent office, the owner of the trademark may the registration symbol, ®.

For unregistered marks, symbol for a trademark would be ™, and for a service mark would be ™.

State Emblems, Official Hallmarks, Emblems of Intergovernmental Organizations **cannot** be used as TM.

WELL KNOWN MARKS



Trade Names

A **trade name** is the official name under which a company does business. It is also known as a “doing business as” name, assumed name, or fictitious name.

A trade name does not afford any brand name protection or provide you with unlimited rights for the use of that name. However, registering a trade name is an important step for some businesses.

Naming your business is an important branding exercise. If you choose to name your business as a “trade name”, then you’ll need to register it with the appropriate authority as a “doing business as” (DBA) name.

You need a DBA in the following scenarios:

- **Sole Proprietors or Partnerships** – If you wish to start a business under any name other than your real one, you'll need to register a DBA name so you can do business under the DBA name.
- **Existing Corporations or LLCs** – If your business is already incorporated and you want to do business under a different name, you will need to register a DBA.

Many sole proprietors maintain a DBA or trade name to give their business a professional image, yet still use their own name on tax forms and invoices.



The Five Categories of Trademarks: Legal and Marketing Considerations

Courts divide trademarks into five different categories, ranked by degree of inherent distinctiveness.

Marks are categorized as:

1. Fanciful
2. Arbitrary
3. Suggestive,
4. Descriptive,
5. Generic,

Fanciful Trademark: A fanciful trademark is made-up, invented for the sole purpose of functioning as a trademark.

This is also called a neologism when it describes a single word. Kodak and Xerox are famous examples of fanciful trademarks.



Arbitrary Trademark: An arbitrary trademark has a common meaning, but the meaning is unrelated to the goods or services offered for sale under the mark.

Apple (computers) is a good example of this type of trademark.



Suggestive Trademark: A suggestive trademark is so named because it suggests a quality or characteristic of goods and services.

However, a suggestive trademark requires a subtle leap in thought for the consumer to reach a conclusion as to the exact nature of the goods. Citibank (financial services), Greyhound (bus lines), Jaguar (automobile), and Playboy (magazine) are examples of well-known suggestive trademarks.

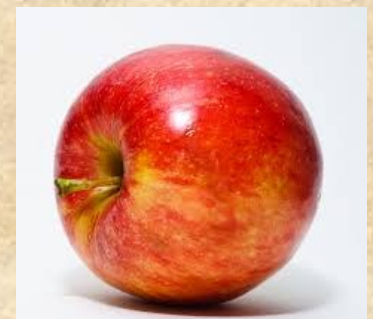


Descriptive Trademark: A descriptive trademark merely describes some portion of the goods or services to be sold under the mark. Courts often use the guidelines that a trademark is descriptive if it “conveys an immediate idea of the ingredients, qualities or characteristics of the goods”.

An example might be *Salty* used in connection with saltine crackers or anchovies



Generic Trademark: A generic trademark cannot be protected as a trademark because it describes a category of product or service. This is a matter of public policy; the federal government has determined that free use of such categorical trademarks benefits consumers.



Government agency marks

IPOS has a separate database for all logos or devices that are used by government agencies. These may not be registered marks if the agency isn't providing goods or services. However, if you are looking to register a logo that might be similar to one being used by a government agency, you will need to seek permission from that particular organisation before you utilise it.

5. Registration of Trade Mark

- Trade Marks are registered by national trade mark registries and are valid in that country
- Registration is made after examination and publication

Period of registration is for 10 years but can be renewed indefinitely

You can check whether the mark you wish to register is similar or identical to an earlier mark via [eFiling](#).

Registration Procedure

- Application for search.
- Application for registration.
- Examination of trade mark.
- Advertisement of trade mark.
- Filing of opposition.
- Certificate issued/hearing set.
-

6. How to Register Trademark For Your Brand in India

1: Decide a brand name

Before finalizing on one name, do a quick search to make sure that no one else is already using the name.

2: Making the trademark application

With your finalized name, fill in the trademark application i.e. [Form- TM 1](#). The application costs INR 3500 and is a one time fee.

Along with the application, you will need to submit supporting documents:

1. A Business registration concern: Depending on what type of a registered business you have, say sole proprietorship, etc. you will need to submit an identity proof of the directors of the company and an address proof.
2. An image of your brand logo in a standard size of 9 x 5 cms

3. If applicable, proof of claim of the proposed mark being used before in another country.
- 4.

3: Filling the brand name registration application

There are 2 ways to file the registration – manual filing or [e-filing](#).

In case of manual filing, you need to personally submit the application for registration to any one of the offices of the Registrar of Trade Marks located in Mumbai, Delhi, Kolkata, Chennai and Ahmedabad.

After which you receive the acknowledgement of the application and the receipt, usually within 15-20 days of the filing.

But in e-filing system, the acknowledgement of the application is issued immediately.

And after you receive the acknowledgement, you can start using the (TM) symbol next to the brand name!

4: Examining the brand name registration application

After receiving the application, the Registrar checks whether the brand name complies with the law and does not conflict or dispute with other existing registered or pending brands.

5: Publication in the Indian Trade Mark Journals

After examination, the logo or brand name is published in the Indian Trade Mark Journal.

If no one raises an opposition within 3 months i.e. 90 days or in some cases 120 days, from the date of publication, the brand name proceeds to acceptance.

6: Issuance of the trademark registration certificate

If no one raises any opposition, within the stipulated 90 days period, the Registrar accepts the trademark application! And issues a Certificate of Registration under the seal of Trademark Registry.

You are now allowed to use the registered trademark symbol (®) next to your brand name.

The whole process of registration of a brand name usually takes anything between 15-18 months. The trademark once accepted, is valid for a period of 10 years from the date of issuance of the Certificate of

Registration. After the end of 10 years, the trademark will need to be renewed.

A certified Trademark Agent can help you. This is one of the careers in Intellectual Property Rights arena. Many legal concerns also employ Patent and Trademark agents and have courses and examinations for same.

Why you need a trademark

1. **Registration of the mark creates a presumption of your ownership of the mark.** In case someone else violates your trademark, it is much easier to proceed against them if you own a registered trademark.

If you are an online business, your trademark would usually include your domain name. In fact, getting a trade mark for your domain name is the only effective way of protecting against people who use names sounding similar to yours to get some of your traffic – the Internet Corporation for Assigned Names and Numbers (ICANN) dispute resolution process is pretty much out of the reach of the average Indian entrepreneur.

2. Registration in India will be needed before registering your **trademark in other countries.**
3. **You can only use the ® symbol if you have a registered trademark.** if your trademark is applied for but not yet registered, you can put TM symbol next to it.
4. Your trademark and your goodwill is an important part of the value of your business.

How Does the Process Work?

The trademark registration process requires every applicant to specify the categories under which he would like to register his trademark.

There are 45 categories/classes in all:

Classes 1-34 deal with goods, while Classes 35-45 deal with services.

Say you manufacture shoes under the brand Aatish. your product would be registered under Class 25 – “Clothing, footwear, headgear”.

This means that you would only be protected against another person/company making any clothing, footwear or headgear under the same brand Aatish or a name which is misleadingly similar to that.

It does not mean that someone else cannot use the brand name Aatish for products in other categories e.g. Aatish cigarettes.

So it is important to choose your categories and check if your business can fall under multiple categories. The more categories you cover, the better protected you would be

Word and logo trademarks have to be filed separately. Therefore, you would have to file a trademark for the word “Aatish” under Class 25, and separately for any graphic representation (your logo) of Aatish under Class 25.

There are many small but important legal points, so it is better to consult an agent.

International Classification of goods

The Nice Agreement establishes a classification of goods and services for the purposes of registering trademarks and service marks (the [Nice Classification](#)).

The trademark offices of Contracting States must indicate, in official documents and publications in connection with each registration, the numbers of the classes of the Classification to which the goods or services for which the mark is registered belong.

7. Links

WIPO

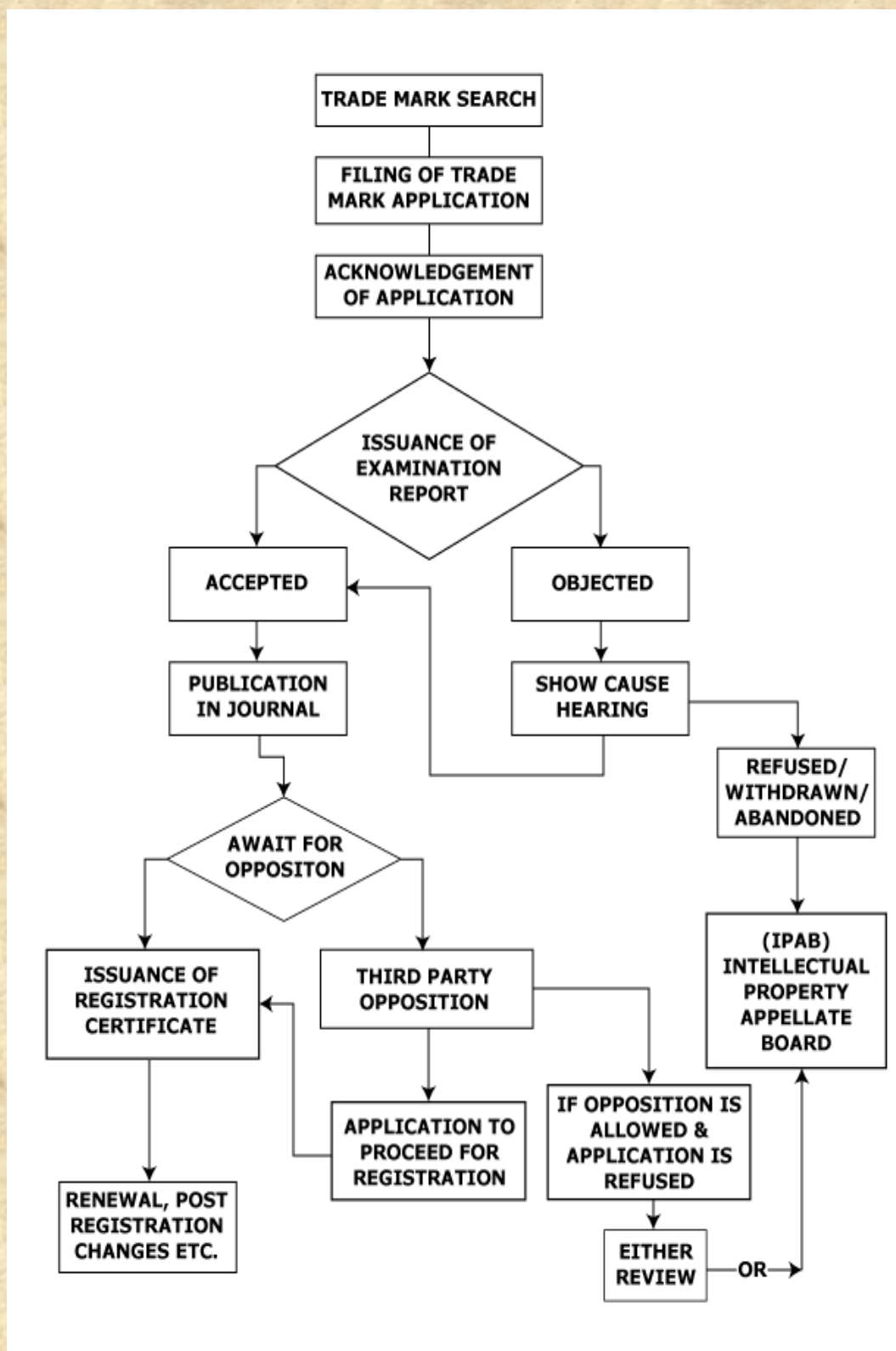
<http://www.wipo.int/treaties/en/classification/nice/>

Office of the Registrar of Trademarks

http://www.ipindia.nic.in/tmr_new/default.htm

8. Flow Chart of Trademark Registration Process

<http://www.iprconsindia.com/trademark-services-india/trademark-registration-process/>



Industrial design

<http://www.wipo.int/designs/en/>

1. What is Industrial Design

Design means only the features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article whether in two dimensional or three dimensional or in both forms.

This can be done by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye.

What kind of protection does an industrial design right offer?

The owner of a registered industrial design or of a design patent has the right to prevent third parties from making, selling or importing articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.

What kind of products can benefit from industrial design protection?

Industrial designs are applied to a wide variety of products of industry and handicraft items: from packages and containers to furnishing and household goods, from lighting equipment to jewelry, and from electronic devices to textiles.

Industrial designs may also be relevant to graphic symbols, graphical user interfaces (GUI), and logos.

How are industrial designs protected?

In most countries, an industrial design needs to be registered in order to be protected under industrial design law as a “registered design”. In some countries, industrial designs are protected under patent law as “design patents”.

Depending on the particular national law and the kind of design, industrial designs may also be protected as works of art under copyright law.

Industrial design rights are granted for a limited period. The duration of the protection of industrial designs varies from country to country, but it amounts at least to 10 years. In many countries, the total duration of protection is divided into successive renewable periods.

What is the difference between an industrial design right and a patent?

An industrial design right protects only the appearance or aesthetic features of a product, whereas a patent protects an invention that offers a new technical solution to a problem.

In principle, an industrial design right does not protect the technical or functional features of a product. Such features could, however, potentially be protected by a patent.

2. Applying for industrial design protection

What are the conditions to obtain industrial design protection?

Depending on the applicable laws, independently created industrial designs must fulfil some or all of the following criteria: novelty/originality.

In general, an industrial design is considered to be new or novel if it has not previously been disclosed to the public and if it significantly differs from known designs or combinations of known design features.

Who grants industrial design registrations or design patents?

Industrial design registrations or design patents are granted by the IP office of the country (or region) where an application is filed.

In India the Design Wing of the Patent Office may be approached for finding out whether a design has been previously registered or not on prescribed form.

An Application for registration of design may be prepared either by the applicant or with the professional help of attorneys. A list of patent attorneys is available in the Register of Patent agents maintained by the Patent office.

How much does it cost to obtain industrial design protection?

As the costs for filing for protection vary from country to country, it is best to contact your national (regional) IP office for details on the fee structure. If protection abroad is sought, in addition to the ordinary filing fees, you should take into account the translation costs and the costs of using a local agent.

View a [list of national/regional IP offices](#).

Is the industrial design protection granted in one country valid in every country?

Industrial design rights are territorial. This means that these rights are limited to the country (or region) where protection is granted.

At present,(2016)no “world” or “international” industrial design right exists.

What is a Register of Designs?

The Register of Designs is a document maintained by The Patent Office, Kolkata as a statutory requirement.

It contains the design number, class number, date of filing (in this country) and reciprocity date (if any), name and address of Proprietor and such other matters as would affect the validity of proprietorship of the design and it is open for public inspection on payment of prescribed fee & extract from register may also be obtained on request with the prescribed fee.

What is the effect of registration of design?

The registration of a design confers upon the registered proprietor 'Copyright' in the design for the period of registration. 'Copyright' means the exclusive right to apply a design to the article belonging to the class in which it is registered.

3. THE REQUIREMENTS FOR FILING THE DESIGN APPLICATION IN INDIA

1. Full name, address and nationality of applicant / applicants.
2. Photographs / drawings of article showing different poses from all angles, five copies of each pose.
3. List of countries to claim the priority, if any, where the application / applications for design has / have been filed, along with date and application number.
4. POWER OF ATTORNEY

PROCEDURE FOR THE GRANT OF DESIGN

1. The application is examined by the Design Office and objections, if any, are raised thereto.
2. The certificate is issued by the Design Office after the objections, if any, are removed to the satisfaction of the department.

RENEWAL and TERM OF DESIGN

The design is renewed after ten years from the date of application.
Full term is 15 YEARS

Some examples of Industrial designs

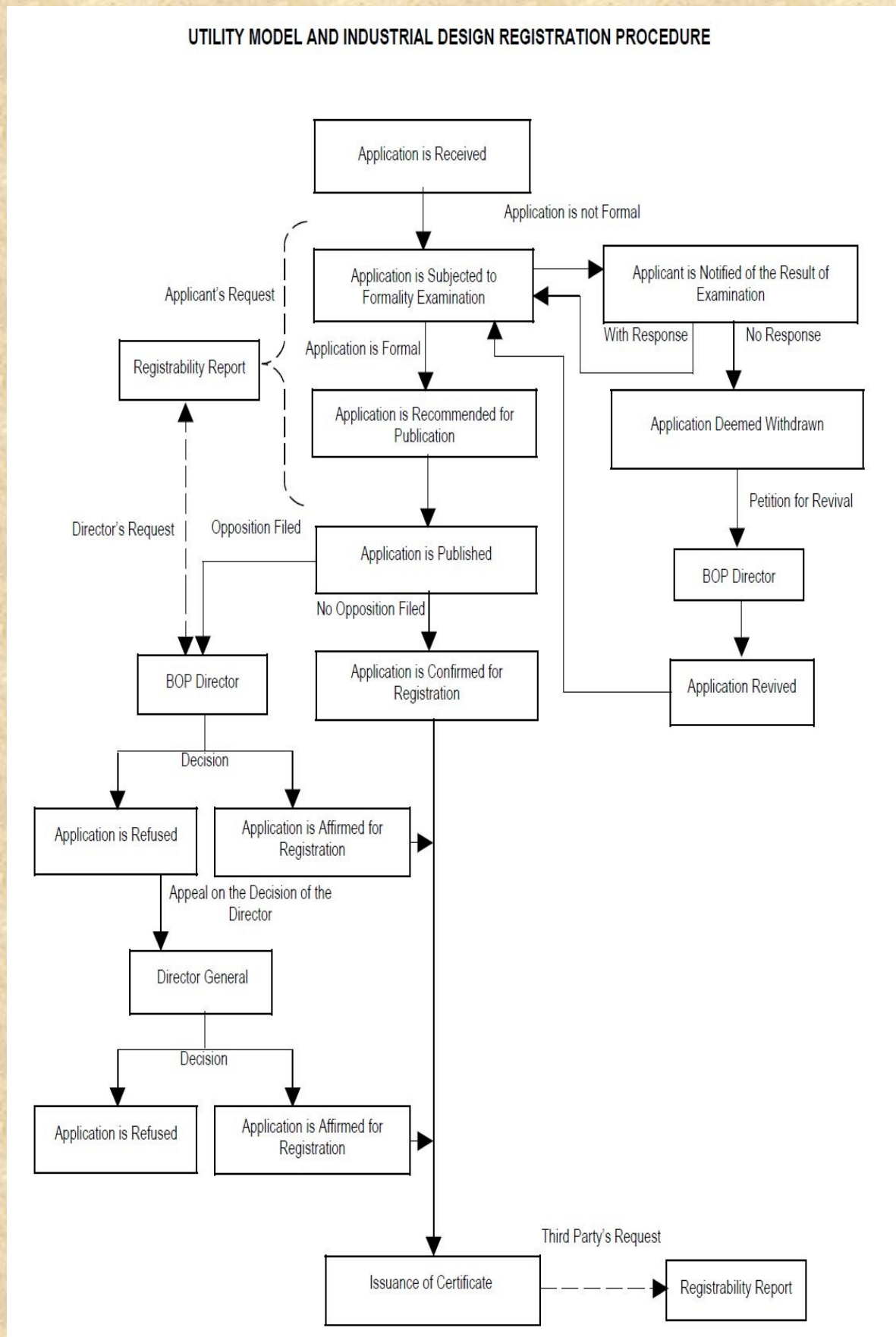
Consumer products



Pharmaceutical Products



4. APPLICATION PROCESS FLOW CHART (DESIGN)



5. Links

Read the Full FAQs http://ipindia.nic.in/ipr/design/faq_design.htm

How to file an application for industrial design? A ten step guide
<http://www.ipindia.nic.in/>

E filing <http://ipindiaonline.gov.in/eDesign/goForLogin/doLogin>

Controller General of Patents Designs and Trademarks ,
<http://www.ipindia.nic.in/>

Geographical indication

1. What is Geographical Indication (GI)

http://www.wipo.int/geo_indications/en/

A geographical indication (GI) is a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin.

Geographical Indication is an indication which identifies goods as

Agricultural goods
Natural goods or
Manufactured goods

GI identifies them as originating, or manufactured in the territory of 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**.

In order to function as a GI, a sign must identify a product as originating in a given place.

In addition, the qualities, characteristics or reputation of the product should be essentially due to the place of origin. Since the qualities depend on the geographical place of production, there is a clear link between the product and its original place of production.

Pochampalli Ikat, Chanderi , Lucknowi Chikankari, Darjeeling Tea, Blue Pottery of Jaipur are some registered GIs in India.

Sometimes though GI need not be a geographical name E.g. Alphonso, Basmati.

What rights does a geographical indication provide?

A geographical indication right enables those who have the right to use the indication to prevent its use by a third party whose product does not conform to the applicable standards.

For example, in the jurisdictions in which the Darjeeling geographical indication is protected, producers of Darjeeling tea can exclude use of the term “Darjeeling” for tea not grown in their tea gardens or not produced according to the standards set out in the code of practice for the geographical indication.

However, a protected geographical indication does not enable the holder to prevent someone from making a product using the same techniques as those set out in the standards for that indication. Protection for a geographical indication is usually obtained by acquiring a right over the sign that constitutes the indication.

GI and trade mark.

A GI informs consumers that a product comes from a certain place and has special qualities due to that place of origin, while a trade mark is used to distinguish a business' goods or services from those of its competitors.

A GI may be used by all producers or traders whose products originate from that place and which share typical characteristics, while a trade mark gives its owners the right to prevent others from using the trade mark.

Protection Methods

There are three main ways to protect a geographical indication:

- Sui generis systems (i.e. special regimes of protection);
- Using collective or certification marks; and
- Methods focusing on business practices, including administrative product approval schemes.

These approaches involve differences with respect to important questions, such as the conditions for protection or the scope of protection.

On the other hand, two of the modes of protection — namely sui generis systems and collective or certification mark systems — share some common features, such as the fact that they set up rights for collective use by those who comply with defined standards.

Broadly speaking geographical indications are protected in different countries and regional systems through a wide variety of approaches and often using a combination of two or more of the approaches outlined above. These approaches have been developed in accordance with different legal traditions and within a framework of individual historical and economic conditions.

2. Registration

- In India, geographical indications have to be registered.
- Geographical Indications Registry examines and publishes the application before registration

Registration is valid for 10 years but can be renewed indefinitely

The Registration Process

Just like other registrations, first you have to search that the item is not already taken.

STEP 1 : Filing of application

The association of persons or producers or any organization or authority should represent the interest of producers of the concerned goods and should file an affidavit how the applicant claims to represent their interest.

- Application must be made in triplicate.
- The application shall be signed by the applicant or his agent and must be accompanied by a statement of case.
- Details of the special characteristics and how those standards are maintained.
- Three certified copies of the map of the region to which the GI relates.
- Details of the inspection structure if any to regulate the use of the GI in the territory to which it relates.
- Give details of all the applicant together with address. If there is a large number of producers a collective reference to all the producers of the goods may be made in the application and the G.I., If registered will be indicated accordingly in the register

Send the application to following Address:

Geographical Indications Registry
Intellectual Property Office Building
Industrial Estate, G.S.T Road , Guindy, Chennai – 600 032
Ph: 044 – 22502091-93 & 98
Fx : 044 – 22502090
E-mail: gir-ipo@nic.in
Website : ipindia.gov.in

STEP 2 and 3: Preliminary scrutiny and examination

- The Examiner will scrutinize the application for any deficiencies.
- The applicant should within one month of the communication in this regard, remedy the same.
- The content of statement of case is assessed by a consultative group of experts will versed on the subject.
- The will ascertain the correctness of particulars furnished.
- Thereafter an Examination Report would be issued.

STEP 4: Show cause notice

- If the Registrar has any objection to the application, he will communicate such objection.
- The applicant must respond within two months or apply for a hearing.
- The decision will be duly communicated. If the applicant wishes to appeal, he may within one month make a request.
- The Registrar is also empowered to withdraw an application, if it is accepted in error, after giving on opportunity of being heard.

STEP 5: Publication in the geographical indications Journal

Every application, within three months of acceptance shall be published in the Geographical Indications Journal.

STEP 6: Opposition to Registration

- Any person can file a notice of opposition within three months (extendable by another month on request which has to be filed before three months) opposing the GI application published in the Journal.
- The registrar shall serve a copy of the notice on the applicant.
- **Within two months** the applicant shall sent a copy of the counterstatement.
- Thereafter, both sides will lead their respective evidences by way of affidavit and supporting documents.
- A date for hearing of the case will be fixed thereafter.

STEP 7: Registration

- The registrar shall issue to the applicant a certificate with the seal of the Geographical indications registry.

STEP 8: Renewal

A registered GI shall be valid for 10 years and can be renewed on payment of renewal fee.

STEP 9: Additional protection to notified goods

Additional protection for notified goods is provided in the Act.

STEP 10: Appeal

Any person aggrieved by an order or decision may prefer an appeal to the intellectual property appellate board (IPAB) within three months.

The address of the IPAB is as follows:

Intellectual Property Appellate Board
Annexe 1, 2 nd Floor, Guna Complex,
443, Anna Salai, Chennai – 600 018

3. Links

Frequently Asked Questions <http://ipindia.nic.in/girindia/>
Registration Process <http://ipindia.nic.in/girindia/>

Geographical Indications Registry
<http://ipindia.nic.in/girindia/>

[Layout-Designs of Integrated Circuits Protection Act](https://www.riigiteataja.ee/en/eli/520052014001/consolide)
<https://www.riigiteataja.ee/en/eli/520052014001/consolide>

1. GENERAL PROVISIONS

Layout designs (topographies) of integrated circuits are a field in the protection of intellectual property.

In United States intellectual property law, a "mask work" is a two or three-dimensional layout or topography of an integrated circuit (IC or "chip"),

The layout is called a mask work because, , the multiple etched layers within actual ICs are each created using a mask, called the photomask, to permit or block the light at specific locations, sometimes for

hundreds of chips on a wafer simultaneously.

Because of the functional nature of the mask geometry, the designs cannot be effectively protected under copyright law (except perhaps as decorative art).

Similarly, because individual lithographic mask works are not clearly protectable subject matter, they also cannot be effectively protected under patent law, although any processes implemented in the work may be patentable.

So since the 1990s, national governments have been granting copyright-like exclusive rights conferring time-limited exclusivity to reproduction of a particular layout.

Under the IPIC Treaty, each Contracting Party is obliged to secure, throughout its territory, exclusive rights in layout-designs (topographies) of integrated circuits, whether or not the integrated circuit concerned is incorporated in an article.

Such obligation applies to layout-designs that are original in the sense that they are the result of their creators' own intellectual effort and are not commonplace among creators of layout designs and manufacturers of integrated circuits at the time of their creation.

Semiconductor Integrated Circuits Layout-Design Registry (SICLDR)

This is the office where the applications on Layout-Designs of integrated circuits are filed for registration of created IPR. The jurisdiction of this Registry is whole of India

What is meant by the Layout-Design of a Semiconductor Integrated Circuit?

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

Where is the SICLD Act 2000 applicable?

This Act is applicable for IC Layout-Design IPR applications filed at the Registry in India .

What are the criteria for Registration of a 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 distinguishable from any other registered layout design.

Who can apply for registration?

A creator of a layout design an Indian national or national of country outside India which accords to citizens of India similar and has principal place of business in India or if he does not carry out business in India , has place of service in India can apply for registration.

How to apply for registration?

An Application to the registrar for the registration of a layout design shall be made on form LD-1 accompanied with Registration fees and three set of drawing or photograph of mask layout which describe the layout design applied for registration. These can be submitted as GDS-II file along with the PDK information used in the design.

What is the registration fee?

The registration fee is Rs. 5000/-.

What is the period of validity 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.

What is the registration process cycle and time required for obtaining registration certificate?

The registration cycle includes

- Filing of application by the creator of the layout-design at the SICLD Registry.
- The acceptance of application.
- Registrar may accept, refuse the application or accept with some modifications.
- The accepted applications shall be advertised within 14 days of acceptance.
- Any opposition to the advertisement can be filed within 3 months from the date of advertisement.
- The counter-statement to the notice of opposition, if any, to be filed within 2 months from the date of receipt of copy of notice of opposition from the Registrar.
- A copy of the counter statement provided to the opposing party.
- The Registrar may take hearing with the parties.
- The Registrar will decide on the originality of the layout-design and grant or reject the application for registration based on the conclusions reached by him.
- Aggrieved party can appeal to Appellate Board or in its absence Civil Court for relief on any ruling of the Registrar.

2. Links

Department of Electronics and Information Technology (DEITY)

<http://deity.gov.in/content/frequently-asked-question-semiconductor-integrated-circuits-layout-design-act-2000>

FAQs

<http://deity.gov.in/content/frequently-asked-question-semiconductor-integrated-circuits-layout-design-act-2000#tab3>

SICLDR

Semiconductor Integrated Circuits Layout Design Registry

<http://sicldr.gov.in/>

Shri. Punyabrata Ghatak(Registrar)

+91-11-24364807

pghatak[at]deity.gov.in

+91-11-24366557

Semiconductor Integrated Circuit Layout Design Registry, Room No.: 3038,
Electronics Niketan, 6, CGO Complex, Lodhi Road, New Delhi - 110003, India

Smt. Sunita Verma(Public Grievances Officers)

+91-11-24364810

sunita.verma[at]nic.in

+91-11-24366557

Department of Electronics & Information Technology, Ministry of Communications
and Information Technology, A-Block, CGO Complex, Lodhi Road, New Delhi -
110003, India

Trade Secrets

1. What is a Trade Secret

http://www.wipo.int/sme/en/ip_business/trade_secrets/trade_secrets.htm

A trade secret is a formula, practice, process, design, instrument, pattern, commercial method, or compilation of information which is not generally known or reasonably ascertainable by others, and by which a business can obtain an economic advantage over competitors or customers.

In some jurisdictions, such secrets are referred to as "confidential information", but are generally not referred to as "classified information" in the United States, since that refers to government secrets protected by a different set of laws and practices.

There is no specific legislation in India to protect trade secrets and confidential information.

Nevertheless, Indian courts have upheld trade secret protection on basis of principles of equity, and at times, upon a common law action of breach of confidence

2. How are Trade Secrets Protected?

Contrary to patents, trade secrets are protected without registration, that is, trade secrets are protected without any procedural formalities.

Consequently, a trade secret can be protected for an unlimited period of time. For these reasons, the protection of trade secrets may appear to be particularly attractive for SMEs (Small and Medium Businesses).

There are, however, some conditions for the information to be considered a trade secret. Compliance with such conditions may turn out to be more difficult and costly than it would appear at first glance.

While these conditions vary from country to country, some general standards exist which are referred to in Art. 39 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement):

The information must be secret (i.e. it is not generally known among, or readily accessible to, circles that normally deal with the kind of information in question).

It must have commercial value because it is a secret.

It must have been subject to reasonable steps by the rightful holder of the information to keep it secret (e.g., through confidentiality agreements).

Example

An SME develops a process for the manufacturing of its products that allows it to produce its goods in a more cost-effective manner.

Such a process provides the enterprise a competitive edge over its competitors. The enterprise in question may therefore value its know-how as a trade secret and would not want competitors to learn about it.

It makes sure that only a limited number of people know the secret, and those who know it are made well aware that it is confidential.

When dealing with third parties or licensing its know-how, the enterprise signs confidentiality agreements to ensure that all parties know that the information is a secret. In such circumstances, the misappropriation of the information by a competitor or by any third party would be considered a violation of the enterprise's trade secrets.

Under U.S. law, a trade secret has three parts:

- I. Information;
- II. Reasonable measures taken to protect the information; and
- III. Which derives independent economic value from not being publicly known.

3. How to guard Trade Secret?

Restricting number of people having access to secret information
Signing confidentiality agreements with business partners and employees

Using protective techniques like digital data security tools and restricting entry into area where trade secret is worked or held.
National legislations provide protection in form of injunction and damages if secret information is illegally acquired or used.

Have employees sign non-disclosure agreements, which provide that they have to maintain confidential specific information that is disclosed to them.

Ensure that any individuals who come into contact with the business or company, such as consultants and vendors, sign non-disclosure agreements; and

Keep a clear record of all business deals that may contain any confidential information.

4. Links

Trade Secret Basics FAQ

<http://www.nolo.com/legal-encyclopedia/trade-secret-basics-faq-29099-4.html>

IPOS

<http://www.ipos.gov.sg/AboutIP/TypesofIPWhatisIntellectualProperty/Whatisatradesetconfidentialinformation.aspx>

Three Steps to Protect Your Trade Secrets

<http://www.finnegan.com/resources/articles/articlesdetail.aspx?news=2bec35b7-5ea8-4cb4-9988-73824efe2cdf>

USPTO

<http://www.uspto.gov/>

Plant varieties and farmer's rights

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.

The Protection of Plant Variety and Farmers Right Act, 2001 is an Act of the Parliament of India to set an effective system for protection of plant varieties, the rights of farmers and plant breeders, and to encourage the development and cultivation of new varieties of plants

Definition

A “breeder” means a person or group of persons or a farmer or group of farmers or any institution which has "bred, evolved or developed any variety."

A “farmer” means any person who -

Cultivates crops by cultivating the land himself; or

Cultivates crops by directly supervising the cultivation or land through any other person; or conserves and preserves, severally or jointly, with any other person any wild species or traditional varieties or

Adds value to such wild species or traditional varieties through selection and identification of their useful properties.

Rights of Breeders

- Production
- Sale
- Marketing
- Distribution
- Export
- Import

However, if the breeders' variety is essentially derived from a farmers' variety, the breeder cannot give any authorization without the consent of the farmers or communities from whose varieties the protected variety is derived.

Farmers' Rights

- To save, use, sow, re-sow, exchange, share or sell his farm produce including seed in the same manner as he was entitled earlier (Seeds for sale should not be branded)

- To full disclosure of the expected performance of the Seeds or planting material by the plant breeder.

Where these fail to perform in the manner claimed by the breeder, the farmer may claim compensation from the plant breeder.

Researchers' Rights

Free and complete access to protected materials for research use in developing new varieties of plants.

However, authorization of the breeder is required “whose repeated use of such variety as parental line is necessary for commercial production of such other newly developed variety”.

What is plant varieties protection?

A plant variety is defined as a plant group within a single botanical taxon of the lowest rank.

If you are a person who breeds plants, and has discovered and developed a new plant variety, you are called a "breeder" and you can seek protection for your new plant varieties by applying for a Grant of Protection for a Plant Variety.

Who can Apply and What can be Registered

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.

Period of protection

15 years for annual crops
18 years for trees and vines

The grant of protection can last for 25 years (as long as you pay an annual fee) and the plant variety is your personal property.

Benefits of registering for a plant variety protection

By registering, you have the exclusive right to produce for sale and sell propagating material of the variety and prevent others from using your plant variety without your permission. You will also be able to license the right to another party, collect royalties and commercially produce the variety.

Eligibility for Plant Varieties Protection

The new plant variety must meet the following criteria in order to enjoy protection:

Novelty;
Distinctness;
Uniformity; and
Stability.
Suitable denomination.

Novelty

The variety has not been sold or disposed of, by or with the consent of the breeder earlier than 1 year before the date of application in Singapore where the sale or disposal is made in Singapore; and where the sale or disposal is made outside of Singapore, earlier than 4 years before the date of application (6 years in the case of trees or vines)

Distinctness

The variety is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of filing of the application. A variety that is of common knowledge does not have to be a protected variety.

Uniformity

The variety is sufficiently uniform in its relevant characteristics, subject to the variation that may be expected from the particular features of its propagation.

Stability

The relevant characteristics of the variety remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.

Denomination

A denomination is the distinguishing name or identification for the plant variety.

The breeder of the new variety has to propose a suitable denomination as its generic designation for approval. An example, “Summer Snow” is a denomination under Rosa in a particular UPOV Convention member country.

Some denominations are not acceptable, for example:

Denominations with only numbers
Misleading or confusing denominations
Denominations that are contrary to public policy or morality

Exclusions of Plant Variety Protection

The rights conferred do not apply to acts done for:

- private and for non-commercial purposes;
- for experimental or research purposes; or
- For the purpose of breeding other varieties.
- In addition to the original plant variety, protection is extended to:
 - Any plant variety that is essentially derived from the original plant variety.
 - Any plant variety that is not distinct from the original plant variety; and
 - Any plant variety where the production requires the repeated use of the original plant variety.

5. Links

Protection of Plant Varieties and Farmers' Rights Authority

<http://plantauthority.gov.in/>

Dr. R.R. Hanchinal

Protection of Plant Varieties and Farmers' Rights Authority

Govt. of India, Ministry of Agriculture & Farmers Welfare,

Department of Agriculture and Co-operation,

NASC Complex, DPS Marg, Opp- Todapur Village,

New Delhi-110 012

Tel: +91-11-25848127

Fax: +91-11-25840478

Email: chairperson-ppvfra@nic.in

Embassy of the USA

<http://newdelhi.usembassy.gov/iprplantfarm.html>

Farmer's Rights – Resource Page for Decision Makers and Practitioners

http://www.farmersrights.org/bestpractices/success_seed_1.html

COPYRIGHT vs. TRADEMARK vs. PATENT

Copyrights, trademarks, Industrial Designs and patents are all designed to protect you and your intellectual property. But they can be confusing. Here is a comparison chart.

	Copy right	Trademark	Patent	Industrial Design
Who seeks this protection	Authors, artists, choreographers, architects, and other creative professionals	Business and product owners	Inventors.	Inventors and designers.
What does it protect?	Original works of authorship, books, articles, plays, songs, photographs, sculptures, choreography, architectural works, sound recordings, motion pictures, and other creative works. An idea itself cannot be copyrighted. A work must be in a fixed, tangible form to be protected.	Any name, word, slogan, symbol, design, and/or image that identifies a business or brand and distinguishes it from others.	Inventions with a new or improved function, such as machines, processes, or chemical compositions.	Any new, original, and ornamental design for an article of manufacture that does not affect the article's function.
What benefits does registration/filing include?	Copyright registration greatly enhances one's rights by providing legal evidence and public notice of ownership, and by allowing the copyright holder to bring suit in federal court in cases of infringement.	Trademark registration greatly enhances one's rights by providing legal evidence and public notice of ownership. It confers nationwide exclusive rights to the mark and allows the holder to	Filing a utility patent gives its owner the exclusive right to prevent others from making, using, selling, or importing the protected invention. If the creator does not file, then the law offers them no default	Filing a design patent gives its owner the exclusive right to prevent others from making, using, selling, or importing the protected design. If the creator does not

	Copy right	Trademark	Patent	Industrial Design
		bring federal lawsuits against infringers. In addition, only registered trademarks can use the ® symbol.	protection of the invention.	file, then the law offers them no default protection of the design.
Registration is necessary ?	It is not necessary to register, As soon as a piece is completed it is automatically copyrighted.	To safe - guard your business brand and logo it is better to register.	It is imperative to register.	It is imperative to register.
Self help or Agent?	Registering makes easy for legal claims. One can register oneself.	It is better to take help from registered agents	It is better o take help from registered agents	It is better o take help from registered agents
How long does it last?	A copyright typically lasts the author's lifetime, plus an additional 70 years. The term cannot be extended or renewed.	A trademark registration can potentially have an unlimited term, but must be renewed every ten years. The owner may renew the registration as long as the mark remains in continued use	A full non-provisional utility patent protects an invention for 20 years. It cannot be renewed. A provisional patent may be filed prior to that and lasts for 1 year.	A design patent protects a design for 14 years. It cannot be renewed.
Remuneration	Person is	Does not	Person is	Person is

	Copy right	Trademark	Patent	Industrial Design
	entitled for economic gains	apply.	entitled for economic gains	entitled for economic gains
The Process	Is Short and mostly administrative process	Is quite lengthy, involves checking of any similar article or design before protection is granted . Can take upto 18-24 months.		

Some more points

There may be occasions when both copyright and trademark protections are desired for the same business endeavour.

For example, a marketing campaign for a new product may introduce a new slogan for use with the product, which also appears in advertisements for the product.

However, copyright and trademark protection cover different things.

The advertisement's text and graphics, as published in a particular vehicle, will be covered by copyright - but this will not protect the slogan as such.

The slogan may be protected by trademark law, but this will not cover the rest of the advertisement.

If you want both forms of protection, you will have to perform both types of registration.

If you are interested in protecting a title, slogan, or other short word phrase, generally you want a trademark. Copyright law does not protect a bare phrase, slogan, or trade name.

Whether an image should be protected by trademark or copyright law depends on whether it will identify the source of goods or services.

If an image is used temporarily in an ad campaign, it generally is not the type of thing intended to be protected as a logo.

Understanding Intellectual Property Law through Coca Cola

Copyright

Coca-Cola owns copyright in the design of its bottles, the design of its logos, its advertising, and generally anything it creates that can be considered an original work requiring creative effort.



For example, the famous Coca-Cola logo and script design is an original artistic creation that is protected by copyright law.

Trade-mark

The Coca-Cola company holds registered trade-marks in its logo and script design.

Even the distinctive shape of the Coke bottle is trade-marked.



These things are trade-marks because they are distinctive marks used by the company to identify its goods and services as being uniquely Coca-Cola's.

The Formula for Coca Cola is a famous trade secret. It has not been patented because then you have to disclose the ingredients and also the patent has limited life. Trade secret is immortal!

6. Links

1. The Centre for Intellectual Property research and advocacy (CIPRA)

<http://iprlawindia.org/>

The Centre for Intellectual Property research and advocacy (CIPRA) was established with the objective of enhancing the intellectual property knowledge base and research capabilities of the country in general and the NLSIU in particular. The

centre attempts to achieve these aims through a two pronged strategy. Firstly, it attempts to disseminate information on intellectual property rights with a view to create awareness in the public in general. Secondly, it initiates research into relatively unexplored and novel areas.

Contact

Centre for Intellectual Property Rights and Advocacy
National Law School of India University Nagarbhavi, Bangalore-560 072
Phone: 91 - 80 - 231605532/33/35, 23213160
Fax: 91-80-23160534
Email: cipra@nls.ac.in
Web: iprlawindia.org

2. SRISTI

<http://www.sristi.org/cms/>

SRISTI is a developmental voluntary organization set up to strengthen the creativity of grassroots inventors, innovators and ecopreneurs engaged in conserving biodiversity and developing eco-friendly solutions to local problems

Contact

AES Boys Hostel Campus,
Near Gujarat University Library & SBI Bank,
Navrangapura
Ahmedabad - 380 009
Gujarat, India
Phone: (91-79) 27912792, 27913293
Fax: (91-79) 27913293, E-mail: info@sristi.org
Web: <http://www.sristi.org>

Summary

I Hope this document helps clear some conceptions about Intellectual Property Rights.

I have relied heavily on Government sites and WIPO for the information provided.

Flow charts are from various Government sites. Other comparison charts are made by me.

This is followed by two more e books about Patent Agent and Trade mark Agent jobs and courses.