

# ECIPL PART II

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**property right**

**Patent**

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# Intellectual Property Rights

## CHAPTER - 15

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### \* Intellectual Property Rights

- > Intellectual Property means a property created by "Intellectual Facility" (created through brain)
- > Vital component of economic growth and a tool for corporate competitiveness.
- > Area of intellectual property covers - copyrights & rights related to Trademark, Geographical indications, Design and Patents
- > It also includes new layout designs, trade secrets and trade data.

### \* Nature of Intellectual Property

- > Intangible rights over Tangible Property
- > Right to sue
- > Rights & duties
- > Coexistence of different rights (एक साथ बहुत सारे)
- > Dynamist (changing)
- > Exhaustions of rights (खत्म होना)

### \* General Agreement on Trade in Services (GATS)

'GATS' is the first ever collection of legally binding multinational regulation governing global trade in services.

## GATS Functions -

GATS Functions on three basic level -

- > Contains basic principal & obligation.
- > Annexes which deals with rules for particular sector and individual nations.
- > It explicit commitments to allow access to their market.

### \* Two key point to support the GATS

- > Increasing the openness and predictability of commitment rules and regulation.
- > Fostering progressive liberalisation.

### \* Objective of GATS.

- Idea of progressing liberalisation following developing nations to gradually expand market access.
- Freedom to developing nations to central who can access and utilise their fully communication transport network and service. They have a goal of supporting growing participation of developing nations in service trade.

### \* World Intellectual Property Organisation. (WIPO)

- > The United Nations Organisation devoted to using the Intellectual property as a faster Innovation and creativity is known as WIPO.

- > It was Founded in 1970 with a mission from its member states to advance the protection of Intellectual property all over the globe through intergovernmental & international organisation corporation
- > Its main office is in Geneva.
- > It signed a cooperation agreement with the WTO in 1996

\* Legal Framework under WIPO.

> Patent Cooperation Treaty (PCT) -  
By this one can apply for protection of Innovation in large no. of nation by submitting a single patent application under PCT.

> Madrid Agreement -  
This agreement was signed in 1891 and the 4th Protocol pertaining to that agreement was signed in 1989, by this agreement one can get international registration of marks across wide range of Nations.

> Lisbon System / Agreement  
By using this single reg. one can get internationally reg. of geographical indication.

> Vinna agreement  
Marks which contains Figurative Features this agreement creates an international classification.

of such marks known as Vienna agreement.

> Nice Agreement -

International classification of Goods & Services for the reg. of marks right agreement came into force.

> WIPO copyright treaty (WCT)

Protection of works and the rights of the author in a digital space

- i) Computer programme.
- ii) Database.

> TRIPS - Trade Related Aspects of IPR

TRIPS agreement is essential for facilitating IP trade settling IP trade disputes & giving WTO members the freedom to pursue their own national

\* Trade Related Aspects of IPR (TRIPS)

> The TRIPS agreement is essential for facilitating intellectual property trade settling IP trade disputes and giving WTO members the freedom to pursue their own national goals.

> WTO countries have the flexibility under the TRIPS to make their methods of IP protection & enforcement to meet their needs & realise public policy objective.

\* National Intellectual Property Right Policy-

- The National IPR policy was put into place to encourage innovation enhance business environment/ utilise IP climate, and make it easier to commercially utilise IP this decade in the "Decade of Innovation"

\* IPR Focus on-

Improving access to health care food security & environment protection among other areas of critical social, economic & technological importance.

\* TRIPS agreement addresses five main topics-

- > How general rules and fundamental ideas of the global trade system apply to international IP.
- > What are the minimum protection criteria for IPR that members should offer-
- > What mechanisms should members offer to defend those right in home country.
- > Specific interim framework for resolving I:P dispute between WTO member in order to implement TRIPS requirement
- > Special transition agreement for implementation of TRIPS provision.

## \* National IPR Policy ~

This right policy was put into place to encourage innovation enhance the business climate and make it easier to commercially utilise IP. This India period were known as "Decade of Innovation".

### \* The policy outline seven Goals that are-

1. IPR awareness
2. Generation of IPR
3. Legal and legislative Framework.
4. Administration and management
5. Commercialization of IPR.
6. Enforcement and Adjudication.
7. Human Capital Development.

## \* INTRODUCTION

- Patent Section 2(1)(m) of the patent Act, 1970.
- A patent is a statutory right for an invention granted for a limited period of the time.
- The patentee by the Government, in exchange of full disclosure of his invention for excluding others, from making, using, selling, importing.
- The patented product or process for producing that product for those purpose without his consent.

## \* PATENT COOPERATION TREATY (PCT)

- The PCT is an international treaty with more than 150 Contracting States.
- Which are bound with certain formal requirements set out in the Treaty and Regulation
- The PCT makes it possible to seek patent protection for an invention simultaneously in a large no. of countries by filing a single international.
- Patent application instead of filing several separate national or regional patent application.
- The national phase application is assessed as per patent law of that jurisdiction.

## \* ADVANTAGES OF PATENT.

- Patentee have the complete rights to restrict outsiders from making, operations, providing accessibility to be bought.
- Providing or putting in the product generated by him, without his consent.
- The patentee has a privilege to file the suit for encroachment of his patent and can ask for remedies like, injunction, compensation.
- Patentee can commercially exploit or pitch his creation to any skilled individual and concede permit to him to abuse his item.
- The holder of the exclusive permit can also avail the rights given to the patentee and can bring a suit.

## \* What are the Criteria of Patentability?

- An invention is patentable subject matter if it meets the following criteria
  - It should be Novel.
  - It should be capable of Industrial application
  - It should have inventive step
  - It must be non-obvious.
  - It should not attract.

### CASE:

In Raj Prakash v. Mangal Ram Choudhary It was held that a invention creation is about the discovering or finding something not previously known ever simple invention is claim Novel can be considered as an invention.

\* What are not Inventions. [Section 3]

- (1) An invention which is frivolous or which claim anything obviously contrary to well established natural laws.
- 2) An Invention the primary or intended use or commercial exploitation.
- 3) Which could be contrary to public order or morality.
- 4) The mere discovery of a scientific principle.
- 5) The formulation of an abstract theory or discovery of any living thing or non-living.
- 6) A substance obtained by a mere admixture resulting
- 7) The mere arrangement or re-arrangement or duplication.
- 8) A Method of agriculture or horticulture.
- 9) Any process of the medicinal, surgical, curative, prophylactic diagnostic therapeutic.
- 10) A mathematical or business method or a computer programme per se or algorithms.
- 11) A presentation of Information.
- 12) Topography of integrated circuits.
- 13) An Invention which in effect, is traditional knowledge.

• Section - 4

- Prohibits the grant of patent in respect of an invention relating to atomic energy falling.

\* PERSONS ENTITLED TO MAKE APPLICATION FOR PATENT.  
[Section - 6]

- Person claiming to be true and First Inventor of the invention.
- Person being the assignee of the person claiming to be the true and First inventor in respect of the right to make such an application.
- The legal representative of any deceased person who immediately before his death was entitled to make such an application.

\* FORM OF APPLICATION. [Section 7]

- Dealing with Form of Application requires every application for a grant to be made for one invention only.
- Where the application is made by virtue of an assignment of the right of apply for a patent for the invention.
  - There shall be furnished with the application proof of the right to make the application.
- Every international application under the patent Cooperative Treaty (PCT)
  - Patent, as may be filed designation India shall be deemed to be an application under the Act.
- If a corresponding application has also been filed before Controller in India.

- Every such application, not being a convention application or an application filed under PCT designating India, shall be accompanied by a provisional or a complete specification.

### \* PROVISIONAL & COMPLETE SPECIFICATION. [Section 9].

- Stipulates that where an application for a patent is accompanied by a provisional specification.

- A complete specification shall be filed within twelve months from the date of filing of the application.

- If the complete specification is not so filed, the application shall be deemed to be abandoned.

- Where two or more applications is the name of the same application are accompanied by provisional specification in respect of inventions.

- Which are cognate or of which one is a modification of another and the Controller is of opinion.

- The whole of such inventions are such as to constitute a single invention.

- May properly be included in one patent, he may allow one complete specification to be filed in respect of all such provisional specifications.

However, the period of twelve months shall be reckoned from the date of filing of the earliest provisional specification.

### \* CONTENTS OF SPECIFICATION [Section 10]

- Dealing with contents of specifications provides that every specification, whether provisional or complete, shall describe.
- The invention and begin with a title sufficiently indicating.
- The subject matter to which the invention relates.

Every complete specification is required to-

- 1) Fully and particularly describe, the invention and its operation or use and the method by which it is to be performed.
- 2) Disclose the best method of performing the invention.
- 3) Which is known to the applicant and for which he is entitled to claim protection.
- 4) end with a claim or claims defining the claim scope of the invention for which protection is claimed.
- 5) be accompanied by an abstract to provide technical information on the invention.

\* How a patent specification is prepared?

- A patent specification can be prepared the application himself or his registered and authorised agent.
- Field prior art, draw backs in the prior art the solution provided by the inventor.
- drawing and details of best method of its working.
- The complete specification must contain atleast one claim or statement of claim defining.
- The scope of the invention for which protection is sought for.

\* PUBLICATION OF APPLICATION [Section 11(A)]

Every application for patent is published after expiry of 18 months from the date of its filling or priority date whichever is higher.

Following application are not published:

- Application in which secrecy direction is imposed.
- Application which has been abandoned u/s 9.
- When a provisional application has been failed with and the complete application has been failed with 12 month from the filling application.
- Application which has been withdrawn 3 m prior to 18 months.

\* REQUEST FOR EXAMINATION [Section 11B] B

→ No application for a patent shall be examined unless the app. or any other interested person makes a request in the prescribed manner for such examination within the prescribed period.

→ In case the applicant or any other interested person does not make a request for examination of the application it shall be treated as withdrawn by the applicant.

\* EXAMINATION OF APPLICATION [Section -12]

When the request for examination has been failed in respect of an application for a patent the app. and specification and other documents related thereto shall be referred at the earliest by the controller to an examiner for making a report to him in respect of the following matters, namely -

- a) Whether the app. and the specification and other documents relating thereto, the requirement of the act and of any rules made thereunder.
- b) Whether there is any lawful ground of objection
- c) The grant of the patent in pursuance of the application.
- d) The result of investigation made under sec 13.
- e) any other matter which may be prescribed.

\* SEARCH FOR APPLICATION BY PREVIOUS PUBLICATION AND BY PRIOR CLAIM [Section - 13]

The examiner to whom the application for a patent is referred shall make investigation for the purpose of ascertaining.

- a) Has been anticipated by publication before the date of filing.
- b) Is claimed in any claim of any other complete specification.

\* CONSIDERATION OF THE REPORT OF EXAMINER BY CONTROLLER [Section - 14]

1. In case the report of the examiner is adverse to the applicant and requires any amendment
2. The app., specification or other documents.
3. The controller shall before proceeding to dispose
4. The app., communicate the gist of obligation to the applicant and afford him an OOBH.

\* POWER OF CONTROLLER TO REFUSE OR REQUIRE AMENDED APPLICATION IN CERTAIN MATTERS [Section - 15]

1. The controller refuse or to require the app., specification or other documents to be amended.

2. IF he is satisfied that the application or any specification or any other document filed in pursuance does not comply.

3. Power of controller to make orders respecting Dating of Application and cases of anticipation

### \* [Section-17]

- Provides that at any time after the filing of an application and before the grant of the patent.

- The controller may at the request of the applicant direct that the app. shall be specified in the past - dated to such date as may be specified

- The request and proceed with the application accordingly.

However, no app. shall be past dated to a date later than 6m from the date on it was actually made or could be deemed to have been made.

### \* [Section -18]

- sec-18 says that where it appears to the controller that the invention so far as claimed in any claim.

- The complete specification has been anticipated  
- He may refuse the app. unless the applicant-

- Shows to the satisfaction of the controller that the priority date.
- The claim of his complete specification is not later than the date on which the relevant document was published.
- Amends his complete specification to the specific satisfaction of the controller.

\* POTENTIAL INFRINGEMENT [Section-19]

→ Patent infringement is the violation of the exclusive rights of the patent holder.

→ The patent act 1970 does not specifically define activities or situation.

→ Sec-48 of the patents Act gives the patent holder/patentee an exclusive right to exclude any third party from making, using, offering, selling, manufacturing etc.

- The applicant shows to the satisfaction of the controller.
- The complete specification is amended to the satisfaction of the controller.

### \* SUBSTITUTION OF APPLICANTS [Section-20]

Direction for substitution of applicant can be given based on assignment or agreement for the assignment if following conditions are satisfied-

- a) Agreement must clearly mention the invention & patent application number.
- b) There must be acknowledgement by the assigner.
- c) The court must decide that a person claiming patent is justified.
- d) The controller can give directions for the app. process.

### \* TIME FOR PUTTING APPLICATION IN ORDER FOR GRANT [Section-21]

The act provides that an application for a patent shall be deemed to have been abandoned unless, the applicant, has complied within the prescribed period with all the requirements imposed on him by or under this Act.

- a) An appeal to H/C is pending in respect of the app. for the patent for the main invention.

- b) In case of an app. for a patent of addition, an appeal to the H/C is pending in respect of either that app. or the app. for the main invention.
- c) If the time within which the appeal mentioned in sub sec- (b) may be instituted has not expired.
- d) The Controller may extend the period as prescribed under sub sec (1), to such further period as he may determine.

IMP #

### OPPOSITION TO THE PATENT [Section 25]

Where an application for a Patent has been published but a patent has not granted or at any time after the grant of Patent but before the expiry of a period of 1 yr. from the date of publication of grant of a patent, may file an opposition on the following grounds -

1. Wrongful obtainment → The invention or any part thereof was wrongfully obtained from the opponent.
2. Prior publication → The invention was published before the priority date.

3. Prior claim → The invention was previously claimed in another Indian patent application.
4. Prior knowledge to use → The invention is known used by the public before the priority date.
5. Obviousness → The invention is obvious and does not involve any invention step.
6. False disclosure → The applicant has provided materially false information.
7. Time limit → The conventional app. was not filed within the specified period of 12 months from the date of the first patent application.
8. Traditional knowledge → The invention was anticipated taking into consideration the knowledge possessed by indigenous communities anywhere in the world.

### # RESIDENTS NOT TO APPLY FOR PATENTS OUTSIDE INDIA WITHOUT PRIOR PERMISSION [Section-39]

1. No person resident in India shall, except under the authority of a written permit sought in the prescribed manner.
2. The controller make or cause to be made any app. outside India for the grant of a patent for an invention.

2. Patent app. For the same invention has been made in India, not less than 6 weeks.

4. The app. in India or all such directors have been revoked.

However, IF the invention is relevant for defence purpose or atomic energy the controller shall not grant permit without the prior consent of the CG.

# GRANT OF PATENT [Sec- 43]

Once an app. for patent is found to be in order & complaint with act & unless the controller refuses an application based on legal provision, he is obligated to grant a patent & to public awareness.

CASE -> In Ravi Kumar Bali vs. Kala tech & other Bombay H/C patent of addition can only be granted if it has innovation stop.

\* GRANT OF PATENTS SUBJECT TO CONDITIONS. [Section - 47]

-> Any machine, apparatus or other article in respect of which the Patent is granted or any article made.

→ Any process in respect of which the patent is granted may be used by or on behalf of the govt. for the purpose of its own use.

### \* RIGHT OF PATENTEES OF LAPSED PATENTS WHICH HAVE BEEN RESTORED [Section - 62]

• Legal action for patent infringement committed during lapsed period cannot be initiated after restoration.

### \* RIGHT OF PATENTEES [Section - 48]

→ Where the subject matter of the patent is a product the exclusive right to prevent third parties, who do not have his consent from the act of making, using, offering for sale, selling or importing for those purposes that product in India.

### \* TERM OF PATENT [Section - 53]

• The term of every patent granted is 20 years from the date of filing of application.

However, for app. filed under national phase under patent Cooperation Treaty (PCT), the term of patent will be 20 years from the international filing date accorded under PCT.

## # PATENTS OF ADDITION

### \* [Section 54]

IF an applicant feels that he has come upon modification improvement of an already patented invention, another app. can be made for a patent of addition in respect to such improvement or modification.

Such app. may be granted by the controller as a patent of addition.

### \* [Section - 55]

Patent of addition is granted for a term equal to that of the patent for the main invention or so much thereof as has not expired and remains in force during that term or until the previous cessor of the patent for the main invention and no longer.

### \* [Section - 56]

A Patent of addition application cannot be rejected on the grounds that the disclosure in the primary app. or patent lacked innovative step.

However, the disclosure in the main app. or patent may be used as evidence of innovation against the patent addition application.

## # RESTORATION OF LAPSED PATENTS [Section 60]

- A patent which ceases to have effect because of a failure in payment of the prescribed fee within the period.
- The patentee, or the legal representative of Patentee or where the patent is held by two or more persons jointly.
- The permission of the controller of Patent, one or more of the joint owners, or without joining other can submit an application for Restoration of Lapsed Patent in India within 18 m from the date on which the patent ceases to have effect.

## \* PROCEDURE FOR DISPOSAL OF APPLICATIONS FOR RESTORATION OF LAPSED PATENTS. [Section - 61]

- IF, after hearing the app. in cases when the controller should be initially convinced that the failure to pay the restoration fee was accidental and there had been no unnecessary delay, the request for restoration will be issued in the official journal.
- (i) The failure to pay the renewal fee was not unintentional.
- (ii) There was been undue delay in making of the app.

## # SURRENDER AND REVOCATION OF PATENTS [Section - 63]

→ The patentee has the right to offer to surrender his patent, at any time by giving notice to the controller.

- Where such an offer is made, the controller shall publish the offer in the prescribed manner.
- And also notify every person other than the patentee whose name appears in the register as having an interest in the patent.

## \* GROUND FOR REVOCATION OF PATENTS [Section-64]

1. Where the invention as claimed in a valid claim of earlier priority date:
  2. Which is included in the complete specification
3. Where the patent app. was failed by a person who is not entitled under the provisions.
4. When the subject of a claim of the complete specification is not an invention within the meaning of the Act.

5. The complete specification does not disclose or mentions the wrong source.
6. The invention that is being claimed was secretly used in India before the priority date of the claim.
7. It invention is not useful.
8. If it lapse novality.
9. Claim scope is not properly defined.
10. H/C may revoke patent if patentee fails without reasonable cause to comply with CG request to use the invention for Govt purpass.

### # WORKING OF PATENTED INVENTIONS - GENERAL PRINCIPLES [Section - 83]

- a) That patents are granted to encourage inventions.
- b) That they are not granted.
- c) Patentee to enjoy a monopoly for the importation of the patented articles.
- d) The patented invention available at reasonably affordable prices to the public.

## # COMPULSORY LICENCES [Section 84]

→ Compulsory licences are authorization given to third party by the controller General to make, use or sell a particular product.

→ Which has been patented, without the need of the permission of the patent owner.

- The reasonable requirements of the public with respect to the patented invention have not been satisfied.
- The patented invention is not available to the public at a reasonable affordable price.
- The patented invention is not worked in the territory of India.

## \* [Section 65]

→ ~~Claim~~ scope CG can direct controller to revoke the patent related atomic energy if it is contravenes Atomic energy act, 1962

→ Controller will give @ COBH

→ Patentee will give may be allowed to amend the specification instead of revoking the patent.

\* APPEALS TO HIGH COURTS:

[Section 117A (1)]

- Unless expressly provided to sub sec-2 there shall be no appeal from any decision, order or direction made or issued by CG under the act or from any act or order by Controller.

[Section 117 A (2)]

- Appeal lies to HIC from decision of controller under Section 15, 16, 17, 18, 19, 20, sub sec-(4) 25, 28, 51, 54, 57, 60, 61, 63, 66, sub sec-(3) 69, 78, sub sec-(1) to (5) 84, 85, 88, 91, 92, 94.

Appeal to HIC should be in prescribed form & shall be accompanied by copy of decision order or direction appealed against and appellant must pay prescribed fees.

## Low relating to Trade Marks

### CHAPTER-17

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- Trade mark act 1999 is an act to amend and consolidate the law relating to trade marks.
- And for better protection of trademark for goods & services.

#### \* Two major international treaties are:-

- The Paris convention for protection of Industrial property
- Trade Related Aspects of Intellectual Property Rights.

#### \* Function of a Trade mark

- Advertises the goods / services
- Identifies goods / services
- Creates an image for goods / services
- Guarantees its unchanged quality

#### \* Trade Marks

- Means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of an enterprise from those of other enterprises.

• Trade mark may be a word, signature, names, device, label, numerals or combination of colours.

\* Essential requirements to register a trade mark

⇒ Selected Marks should be capable of being represented graphically (in the proper form)

⇒ Capable of distinguishing the goods or services of one undertaking from those of others.

⇒ Should be used or proposed to be used mark in relation to goods or services  
Purpose :- Indicate a connection in the course of trade between the goods or services.

\* Certification Trade Mark

1) Means a Trade mark that are used to certify that the goods or services on which they are fix comply with certain quality standards prescribed by a certifying entity

2) Certified by the proprietor by the mark in respect of origin, material, mode of manufacture of goods or performance of services.

3) And give quality accuracy of the goods & services.

Ex:- Hallmark, ISI Mark, Agmark etc.

### Collective Mark

Means a mark which owned by members of an association of persons and used by its members only to identify themselves with a level of quality or accuracy.

Ex:- ICSI use CS  
ICAI use CA etc.

### \* Well known trade Mark

-> Well known trade marks are recognised on the basis of their reputation, Nationally, internationally & the cross borders.

-> Well known trade mark ~~are~~ have its goodwill or reputation protected across the Nation.

\* With coming up of the Trade marks Rules 2017 a new procedure has been created that allows the Registrar to proclaim a particular trademark as "well known" owner can file an application in form TM-M

→ Ex: Google, Maggi etc.

### Permitted use of Trade Mark

- a) By a registered user of the trade mark in relation of goods & services.
  - He is connected in the course of trade
  - Which the trade mark remains registered for the time being
  - Which he is registered as registered user
  - Which complies with any condition or limitation.
- b) By a person other than the registered proprietor
  - Which he connected in the course of trade
  - Which the trade mark remains registered for the time being
  - by consent of such registered proprietor in a written agreement
  - Which complies with any condition or limitation.

## \* Who can apply For a Trade Marks and How?

Any person claiming to be the proprietor of a trademark used or proposed to be used by him (May apply in writing in prescribed manner for registration)

Application should contain -

Trademark

Goods / services

name & address of applicant

(if any) agent with power of attorney.

The application can be submitted personally or by post or through e-filing gateway.

## \* Different types of Trademarks that may be Registered in India.

- Any name (personal or surname or signature of the person)
- An invented word or any arbitrary dictionary word.
- Letters or numerals
- Devices, Monograms, Shape of goods
- Combination of colours or even a single colour.
- Three dimensional sign
- Sound Mark.

## \* Processing of Trade Mark Application in Trade Mark Registry

### A) Pre Examination Processing

(i) Filing of Application - application may be filed online or offline (Anyway in the end both online & offline are merged together)

(ii) Vienna codification - Is a system to examine your trademark request with the registered one to avoid duplicate. The Vienna codification checks trademark symbols / logos / designs under 29 categories

It is expected that all application which may require Vienna codification, then application moves for examination

### B) Examination of Applications

=> Trademark registration is done in two stages :-

1) First examination report is prepared by an Examiner, then

2) Application and examination report is forwarded to examination controller for approval.

- 3) Then examination controller evaluates the examination report -
- 4) If found proper, approves it and there after the examination report is issued to applicant and will be published in trade mark Journal.
- 5) If some deficiency then the examination report is reverted back to the concerned examiner with suggestion for re-examination.
- 6) Application may be accepted or an objection may be raised.
- 7) If accepted it will be published in trade mark Journal.
- 8) If objection ~~it will~~ may be raised examination report will be issued to the applicant containing office which need to be replied by the applicant within 30 days from the date of receipt of examination report.

## c) Post Examination Processing

- Consideration of Reply After receipt of examination report, Applicant needs to submit his reply to the office objections within one month:-
  - IF he fails - the application is abandoned.
  - IF reply submitted within the prescribed period the application is allotted to the authorised officers:-
- May accept application then it is published in the Trade mark Journal
  - IF they have objection, the office gives a hearing opportunity is offered to the applicant
- Show cause hearing the office are not met after consideration of reply to the examination report the applicant moves for show cause hearing.

## d) Post advertisement Processing

- After the acceptance of the mark trademark is published in trade Journal if no opposition is filed within 4 Months from the date of publication of the trademark published trademark becomes eligible for registration.

The trademarks are registered is valid for 10 years and can be renewed after every 10 years.

\* Opposition :-

- IF the trademark is opposed by any third party after the publication as per rules giving proper hearing opportunity to both the parties.
- IF the opposition dismissed - the trade mark proceeds for registration.
- IF opposition is allowed - the application gets refused as per Law.

\* Post registration trade Mark Management :-

→ The registered proprietor to record the post registration changes pertaining to proprietor :-

- Name, address, address for service, assignment or registered uses etc. in the Registered of Trademark by Filing a request on the prescribed form.

- If the concerned officer examining the request raises some objection and requires some compliance, should be processed ordinarily within 30 days (From the date of compliance)

- It also a practice of Registry to send one month notice to previous registered proprietor in case any change in proprietorship.

### \* Benefits of Registering a trademark:-

- Exclusive right to the use the trademark
- Builds Goodwill.
- Ensures product Quality
- Usage of ® Symbol
- Protection against infringement

### \* Absolute grounds for Refusal of Registration (Section - 9)

→ Trademark that lacks distinctive character (means not capable of distinguishing the goods or services from others)

→ Which show characteristics of the goods or services like kind, quantity, intended purpose, value, geographical origin.

- Which consist exclusively of marks or indications which have become customary (bona fide)
- Marks deceive the public or cause confusion
- Trademark hurts any religious sentiment
- Contain scandalous or obscene matter.

\* Limitation as to colour (section-10)

⇒ A Trademark may be limited wholly or in part to any combination of colours. The use of colour will be considered when determine the trademark uniqueness. if no colour specified then trademark protected in all colours.

\* Relative grounds for Refusal of Registration (sec-11) [sec 11 (1)]

Those Trademark shall not registered if they create likelihood of confusion on the part of the public, with the earlier trademark.

- a) Identical with an earlier trademark & similar goods & services.

b) Similar with an earlier trademark & Identical goods & services.

[Section 11(2)]

If trademark is identical or similar to earlier trademark but the dissimilar of goods & services, it can not be registered if earlier trade mark is well known in India because the new trademark would take unfair advantage.

[Section 11(3)]

A trademark can not be registered if it used in India prevented by any other law.

[Section 11(4)]

Registration of trademark is allowed if proprietor of earlier trademark consents to registration.

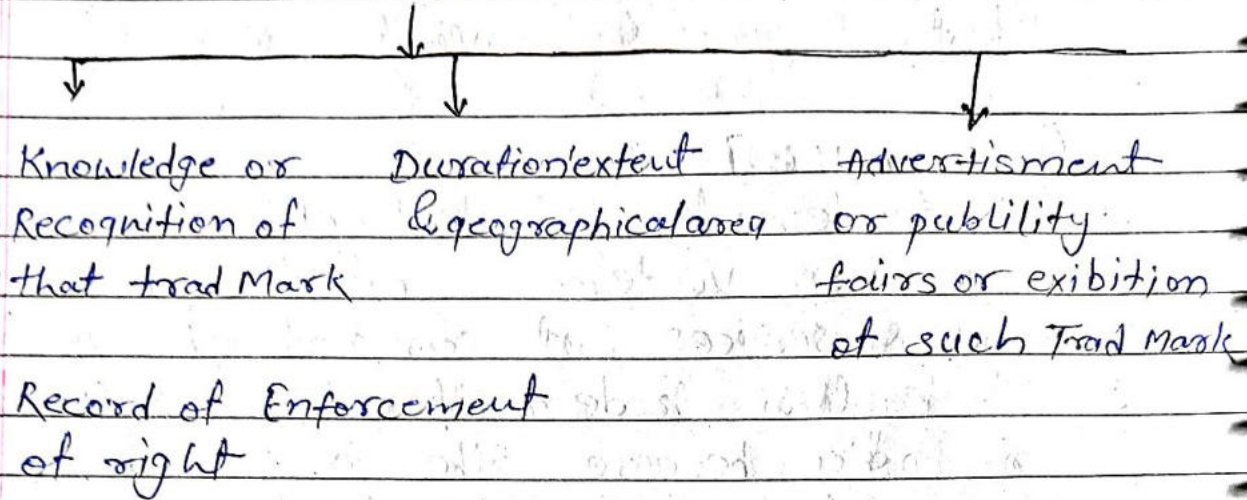
Earlier trademark -

Means registered trademark, International registration convention application and well known trademark.

[Section 11(6)]

Registrar were considered is various factor when determining if trademark is well know -

well known -



### Section 11(7)

Registrar will consider such factors

No of actual or potential Consumers	No of person involved in channel of distribution	Business circle dealing with goods or service.
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Registrar shall not require condition for determining whether a trade mark is well known:-

- Has been used in India
- Has been registered
- trade mark is well-known to the public at large in India.
- Application of registration filed in India.

## Prohibition of Registration of Names of chemical element Section 13

No word shall be registered as trade Mark if:—

Name of any  
Single chemical  
element or  
Single chemical  
Compound

which Declared by the  
World Health  
organisation as an  
international  
non-proprietary name)

## Use of Names and Representation of living Person or person Recently Dead.

falsely suggest a  
Connection with any  
living person. Can be declined  
by the Registrar

↓  
Unless consent of  
living person is  
obtained.

falsely suggest a  
Connection with any  
dead person (within  
20 years of submitting  
the application).

↓  
Can be declined by  
the Registrar

↓  
unless the consent  
of legal representatives  
of such person obtained.

## Withdrawal of Acceptance

Application has been accepted in error

In circumstances of the case the trade Mark should be registered or should not be registered

↓  
Subject to conditions or limitation or to condition additional

## Advertisement of Application

Once the application is registered, he shall get the application advertised in the prescribed manner Purpose - to give information to the public at large in respect of the trade Mark advertised.

## Registration [Section 28]

An application for registration of a trade Mark has been accepted & either

↓  
Application has not been opposed and time for notice of opposition is expired

↓  
Application has been opposed & the opposition has been decided in favours

register the said trade mark within 18 month of the filing.

Duration of Registration [Section 25]

It allows registration of a trade mark for a period of 10 years. Can be Renew for another 10 years.

Can Registered trademark be Removed form the Register

Can be removed on prescribed form on the grounds.

The Register also can suomoto issue Notice.

\* Infringement of Registered Trade Marke [Section 29]

Section 29 (1)

Provides that a registered trade mark is infringed by a person who not being a registered proprietor or a person using by way of permitted use use in course of trade mark that is identical or simillor to registered trade mark for goods or services.

Section 29(2)

Registered trade mark is infringed by a person not being register proprietor or permitted user, uses a mark because —

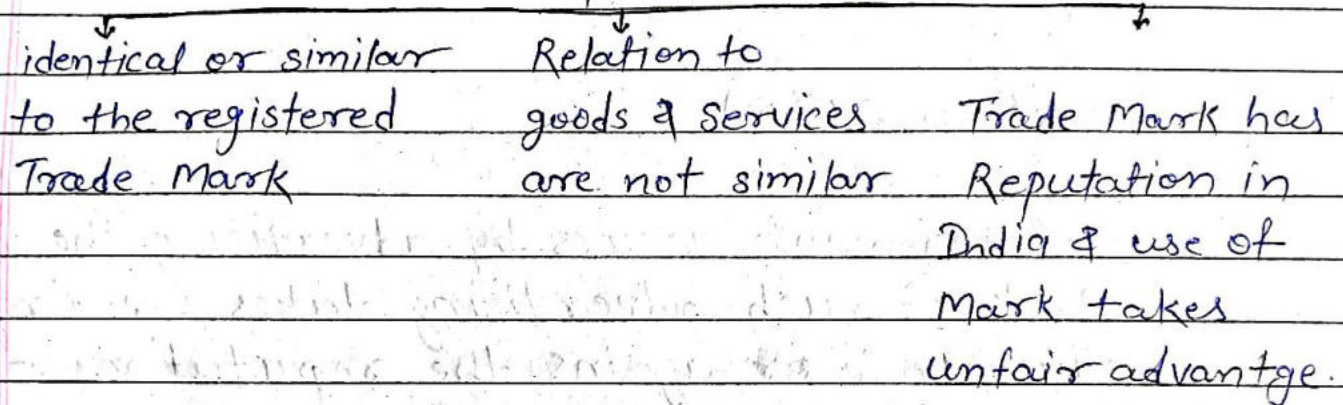
- a. its identity with registered trade mark and similar of goods or services
- b. its similar with registered trade mark and identity of goods ~~or~~ services.
- c. Identity with registered trade mark and identity of goods or services.
- d. likely to cause coinfusion on the part of the public.

Section 29(3)

Any case falling under section 29(2)(c), the court shall presume that it is likely to cause coinfusion on the part of the public.

Section 29 (4)

Registered trade mark is infringed by a person who not being a registered proprietor or a person using by way of permitted use.

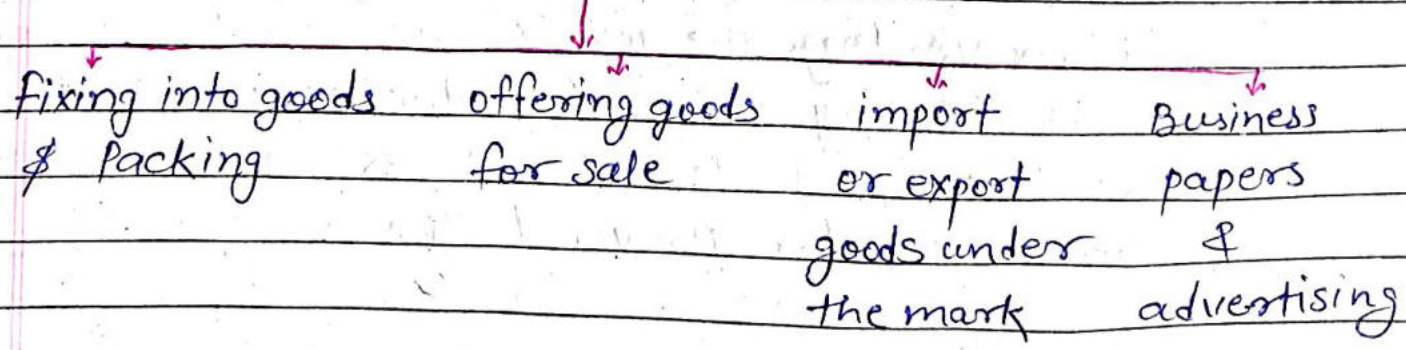


Section 29 (5)

Infringement occurs when person uses registered Trade Mark as a part of their trade name or Business name

Section 29 (6)

There are specific ways a person can use registered Trade Mark



### Section 29 (7)

Infringement occurs when person applies register trade mark for labelling packaging advertising without authorisation.

### Section 29 (8)

Infringement occurs by advertising the trade mark if such advertising takes unfair advantage or against the reputation of trade mark.

### Section 29 (9)

Trade mark may be infringed not only by their visual representation but also by spoken use.

### Limits on Effect of Registered Trade Mark [Section 30]

It preventing the use of a registered trade mark by any person for the purposes of identifying goods or services or those of the proprietor provided the use -

Proprietor provided the use -

use of with honest  
practise in commercial  
matters.

use does not harm  
the reputation of  
Trade Mark.

### Section 30 (2)

Registered trade mark is not infringed where -

↓  
The use to  
indicating its  
↓  
Kind, Quality  
Value, geographical  
origin etc.

↓  
Trade Mark is  
registered with  
Some condition  
↓  
its use is the  
outside those  
boundries

↓  
use with  
the consent  
of Proprietor

used  
as accessories

↓  
using Registered  
Trade Mark  
(being one of  
two or more  
trade mark,  
registered)

Section 80(3)

When someone lawfully acquires goods with a registered trade mark, is not infringement of a trade mark:-

Trade Mark is later assign to someone else.

goods were legitimately put on the marked by trade mark owner or with their consent

Passing off

In case of the registered trade mark, the owner can move the court under the act for the infringement

In case of the unregistered trademark the Act recognizes the common law remedy of passing off.

Plaintiff has to established that his business or goods has acquired the reputation & his mark has become distinctive among public at large. He has to established that there is likelihood of coinfusion in the mind of public & it can cause damage.

Protect the interest of Trade mark owner

Protect the interest of consumers

Purpose of the Remedy of Passing off

Protect the Social interest

Registration to be Prima facie Evidence of validity.

Section 31 -

In all legal proceeding the original registration and subsequent transfer are considered to be prima facie evidence of its validity.

IMP

Section 34 -

Registered user cannot interfere or restrain the use of trade mark by another person if that person or predecessor has been using identical similar trade mark from prior date.

## Assignment and Transmission

Mark may be assigned or Transfer to another entity in following manners:-

Registered proprietor assign the trade mark & give effectual receipt for consideration	Assign & Transfer of registered Trade Mark with or without goodwill	Assign & Transfer of unregistered Trade Mark with or without goodwill
--	---	---

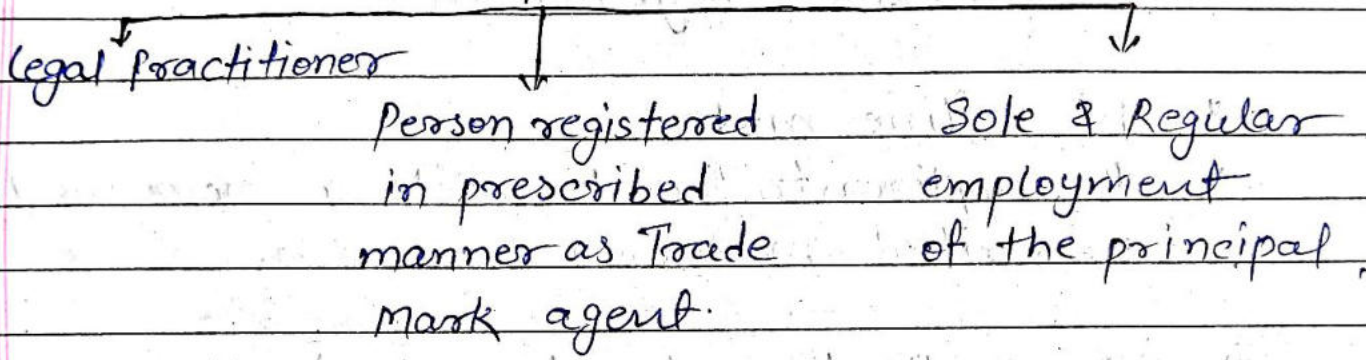
## Removal of Trade Mark for Non-use

### Section 47

Provides that a trade Mark which is not used within 5 years of its registration, become liable for removal

## Trade Mark Through Power of attorney.

The act may be done instead of by that person himself by a person duly authorised in the prescribed manner:-



## Qualification for Registration. (To be registered as trade Mark agent)

- Citizen of India.
- not less than 21 year of age
- graduate
- Member of the ICSI
- Considered by the Registrar as a fit person.

## # Introduction

\* The copyright Act provides an economic right to the author to reduce the work to issue copies, to perform or communicate in to the public to make any cinematograph, films or sound recording or to make any adaptation or translation of the work.

\* This act also provides a right to claim authorship of the work -

An integrity right - right to protect one's honor and reputation

A general right - right to not have a work falsely attributed to oneself

These moral rights remain with the author even after assignment of the copyright.

## # What is Copyright?

A legal term used to describe the rights that creators have over their literary and artistic works.

Works covered by copyright range from books, music, paintings, sculpture and films, to computer programs,

database, advertisement, maps and technical drawings. The © symbol stands for copyright.

### \* Why copyright should be protected?

- 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 & social development of a society is dependent on creativity.
- The protection provided by copyright to the efforts of writers, artists, designers, producers of sound recordings, cinematograph films and computer software, creates an atmosphere conducive to creativity, which induced them to create more and motivate others to create.

### \* Works in which copyright subsists.

[Sec-13]

Sec 13 (1) of the Act provides that copyright shall subsist through out india in the following classes of works, that is to say -

- a) Original, literary, dramatic, musical and artistic works.
- b) Cinematograph Films
- c) Sound recording.

### # Section 13(2)

Copyright shall not subsist in any work specified in subsection (1), other than a work to which the provision of sec 40 (deals with power to extend copyright to foreign works of certain international organisations) Apply unless-

- IF the work is published, it must be published in India.
- IF the work is published outside of India, the author must be an Indian citizen at the time of publication or at the time of his death.
- Except for works of architecture, the authors of unpublished work must be Indian citizens or have a place of residence in India.
- In case of a work of architecture the work is located in India.

Note ÷ In case of architecture, copyright shall subsist only in the artistic character and design and shall not extend to method of construction.

## # Section 13(3) Copyright shall not subsist -

- In any cinematograph film if a substantial part of the film is an infringement of the copyright in any other work.
- 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.

## # Section 14

Defines the term copyrights as to mean the exclusive right to do or authorise the doing of the following acts in respect of a work or any substantial part thereof namely -

(i) Copyright in the case of a literary, dramatic or musical work not being a computer programme.

\* To reproduce the work in any material form including the storing of it in any medium by electronic means:

\* To issue copies of the work to the public not being already in circulation.

- SAGAR  
Page No. 50
- \* To perform the work in public or communicate it to the public.
  - \* To make any cinematograph film or sound recording in respect of the work.
  - \* To make any adaptation of the work.
  - \* To make any translation of the work.
  - \* To do in a relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub clause (i) or (iv).

### (ii) Copyright in the case of computer programme.

- \* To do any of acts specified in respect of a literary, dramatic or musical work.
- \* 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 rental.

### (iii) Copyright in the case of an Artistic work

To reproduce the work in any material form including -

- \* The storing of it in any medium by electronic or other means;
- \* depiction in three-dimensions of a two dimensional work.
- \* depiction in two dimensions of a three dimensional work.

(iv) Copyright in the case of a sound recording.

- \* To make any other sound recording embedding it including storing of it in any medium by electronic or other means;
  - \* To sell or give on commercial rental or offer for sale or for such rental any copy of the sound recording.
  - \* To communicate the sound recording to the public.
- \* It may be noted that a copy which has been sold once shall be deemed to be a copy already in calculation

## # Term of Copyright

- Literary
- Dramatic
- Musical
- Artistic works  
(sec-22)

Lifetime of author + sixty years from the beginning of the calendar year next following the year in which the author dies

- Anonymous and Pseudonymous works  
(sec-23)

Until sixty years from the beginning of the calendar year next following the year in which the work is first published. However, where the identity of the author is disclosed before the expiry of the said period copyright shall.

- Cinematograph Film
- Sound records (sec-27)
- Government works  
(sec-28)

Until sixty years from the beginning of the calendar year next following [29] year in which the work is published.

- Public undertaking
- International Agencies
- Photographs  
(sec-25)

### • Posthumous works (sec-24)

The general rule is that Copyright lasts for 60 yrs. In case of original literary, dramatic, musical and artistic works, the 60-yr period is counted from the yr following the death of author.

### # Assignment of copyright [sec-18]

- Sec 18 of the copyright Act discusses "Assignment of copyright"
- The owner of the copyright in an existing work or the prospective owner of future work has the right to assign to any person the copyright of that work.
- Author of literary or musical work included in cinematograph film cannot assign or waive right to receive royalty.
- This rule does not apply for public communication in a cinema hall.

There are two exceptions -

- (i) Assigning royalties to legal heirs of author is allowed.
- (ii) Assigning royalties to copyright society is allowed for purpose of collection & distribution.

→ Agreement contrary to this rule shall be void.

→ If assignor dies before work rule comes into existence the legal representative of assignor will get the rights.

### "Case Law"

⇒ K.A. Vinugopala Shetty v/s Dr. Suraykanta V. Kamath.

Oral assignment was declared invalid & impermissible in law.

### # Mode of Assignment [Sec-19]

→ The agreement will not be valid if it is not written and signed by the assignor.

→ The rights assigned along with the duration and the territorial extent must be clearly established.

→ The amount of royalty or any other consideration payable must be mentioned very clearly.

→ If the assignee fails to exercise the rights assigned within one year of the assignment will be deemed lapsed there is some provision to the contrary in the agreement.

- IF the period of assignment is not clearly mentioned then it will be for 5 yrs.
- IF territorial extent is not clearly mentioned then it will be presumed to extend within India.

### \* Disputes with respects to assignment of copyright.

- ⇒ IF the assignee fails to adequate exercise the right assigned to them without any fault on the part of the assignor, the Appellate board has the authority or revoke the assignments.
- ⇒ Upon receiving a complaints from the assignor the appellate board will conduct an inquiry to determine the validity of the claim.
- ⇒ In the event of a dispute arising from the assignment of copyrights the appellate board has the power to issue appropriate order after conducting a thorough inquiry based on complaint filled by aggrieved party.
- These order may include provisions for the recovery of any outstanding royalties that are due.

## \* Licenses

### (i) Licenses by owner of copyright

→ The owner of the copyright in a work may grant any interest in his copyright to any person by license in writing which is signed by him or by his duly authorised agent.

→ However, in the case of a licence relating to copyright in any future work, the license shall take effect only when the work comes into existence.

→ Where a license of the copyright in a future work dies before such work comes into existence, his legal representative shall be entitled to the benefit of the license if there is no provision to the contrary.

### \* Compulsory license in works withheld from public.

→ Under section 31, if the copyright owner denies republishing or performing the work, or refuses to allow the communication or broadcasting of the work to the public copyright board can intervene.

- After conducting an inquiry and providing an opportunity for the owner to be heard, the Board may direct the registrar of copyrights to grant a compulsory license to the complainant.
- The licenses enable the complainant to republish the original work, broadcast it or communicate it to the public as applicable.

\* Compulsory license in unpublished or published work.

- => Section 31A of Indian Copyrights Act, provide for the same in case of an unpublished work wherein the author is dead or unknown or cannot be traced anywhere any person may apply to the copyright Board seeking a license to publish such work.
- => Before making an application, the applicant shall publish his proposal in one issue of a daily newspaper in the English language having circulation in the major part of the country.
- => Where an application is made to the Commercial court it may after holding inquiry direct the registrar of copyright to grant to the applicant the a licence to publish the work or a translation thereof in the language mentioned in the application subject to the

payment of royalty in any A/c specified by commercial court so as to enable the owner of the copyright or as the case may be, his heirs, executors, or the legal representative to claim such royalty at any time.

⇒ IF the original author is dead, the CG may, if it considers that the publication of work is desirable in the national interest, require the heirs executors or legal representative of the author to publish such work within such period as may be specified by it.

\* Statutory license for broadcasting of literary and musical work and sound recording.

→ Any broadcasting organisation desirous of communicating to the public by way of a broadcasting or by way of performance of a literary or musical work and sound recording which has already been published may do so by.

→ Giving prior notice of its intention duration and territorial coverage of the broadcast and shall pay to the owner of rights in each work advanced royalties in the manner and at the rate fixed by commercial court.

- ⇒ Names of the author of the principal performance be announced with the broadcast
- ⇒ No fresh alternation shall be made without the consent of the owner of rights.
- ⇒ Maintain such records and books of account and render to the owners of rights.
- ⇒ Allow the owners of right or his duly authorised agent or representative to inspect all records and books of Account.

### \* Termination of License

- At Any time after the granting of a license the owner of the copyright of such work at a price reasonably related to the price normally charged in India the license so granted shall be terminated.
- However, such granted shall be termination take effect only after the expiry of a period of three months from the date of service of a notice.

### \* Copyright Society

- A legal body that protects or safeguards the interest of the owner in the product which copyright subsists.

→ It give assurance to the creative author of the commercial management of their works.

→ It can also be described as a registered collective administrator society for the management and protection of copyright.

### \* Registration of copyright society.

- Business of issuing or granting license shall be carried out only through a copyright society.

- The central Govt. will take a few considerations in order to grant registration.

- Interest of the authors and other owner of rights.

- Interest and convenience of the public

- Interest of the groups of person who want to seek license in respect of relevant rights.

- Capacity and professional competence of those who apply.

- Registration granted to a copyrights society shall be for a period of 5 yrs. and may be renewed.

- CG may renew the registration after considering the report of registrar of copyrights.
- CG if satisfied that a copyright society is being managed in a manner detrimental to the interests of "authors and other owners of right" concerned, cancel the registration of such society after such inquiry as may be prescribed.

\* Administration of rights of owner by copyright society:

Copyright society empowers to:

- Accept exclusive authorisation from an author.
- Enter into agreement with any foreign society or organisation administrative right corresponding to rights under the India Copyright Act
- Distribute such fees among authors and other owners after making deduction of its own expenses.
- Perform any other function consistent with the provision of section 35.

\* Control over the copyright society by the author and other owners or rights.

- As per sec 35 every copyright society is subject to collective control of the owners of rights it administers.
- It does not include administered by a foreign society or organisation.

\* Broadcast Reproduction Rights.

- The broadcast reproduction right shall subsist until twenty five years from the beginning the calendar year next following the year in which the broadcast is made.
- During the continuance of a broadcast reproduction right in relation to the broadcast or any substantial part thereof -
  - Re-broadcast the broadcast
  - Cause the broadcast to be heard or seen by the public payment of any charges.
  - Make any sound recording or visual recording of the broadcast
  - Make a reproduction of any sound recording made of the broadcast
  - Right to sell or give on commercial rental or offer for sale or such rental any such sound recording or visual recording referred to in clause (i) and (iv) above.

## \* Performance Right

→ The performance right subsist until Fifty yrs from the beginning of the calendar year next following the year in which the performance is made.

→ Performance have right to do any of the following acts :-

a) To make a sound recording or a visual recording of the performance including -

- Reproduction of it in any material form including the storing of it in any medium by electronic or any other means.
- Issuance of copies of it to the public not being copies already in circulation.
- Communication of it to the public
- Selling or offer for sale or for commercial rental any copy of the recording.

b) To broadcast or communication the performance to the public except where the performance is already broadcast.

Note -> Once a performer has by written agreement consented to the incorporation of his performance in a cinematograph film he shall not in the contrary object to the absence of any contract to the contrary.

object to the enjoyment by the producer of the film of the performer's right in the same films.

However, the performer shall be entitled for royalties in case of making of the performance for commercial use.

### \* Moral right of Performer & Author

#### (i) Right to claim authorship →

An author or performer has right to be identified as creator of their work & performance. This means, regardless of any agreement or assignment they can always claim authorship or performer status.

#### (ii) Right to restrain →

Author or performer has right to prevent or restrain actions that could damage their reputation.

This includes actions like Distortion modification mutilation of their work.

#### (iii) Moral rights continue after assignment.

Even when author or performer have assigned their economic rights they control over how their work is presented & protected in terms of their reputation.

### \* Copyright Protection to Foreign works.

- Copyright Act applies only to works first published in India irrespective of the nationality of the author.
- Section 40 of the Act empowers the CG to extend copyright to foreign works by publishing an order in the official Gazette.
- Foreign country must grant similar protection to works entitled to copyright under the Act.

### \* Registration of copyright.

- Registration of the work is not compulsory and is not a condition precedent for maintaining a suit for damage.
- Action for Infringement can be brought even if the registration has not been done.
- According to sec-45 of the Act, the author of any work may make an application in the prescribed form accompanied by the prescribed fees to the registrar of copyright.
- On receipt of an application registrar may after holding such inquiry as he may deem fit, enter the particulars of the work in the register of copyright.

\* Registrars of copyrights possess certain powers of civil courts.

→ Registrar of copyrights is to be mentioned of copyright officer to enter the names or titles of works and the name and addresses of authors.

→ Registrar of copyright shall have the power of a civil court when trying a suit under the code of civil procedure 1908 in respect of the following matters namely -

- ~~Summoning of the following~~
- Summoning and enforcing the attendance of any person and enforcing matters examining him on oath.
- Requiring the discovery and production of any document.
- receiving evidence on affidavit.
- Issuing commission for the examination of witness or documents.
- requisitioning any public record or copy thereof from any court or office.
- Any other matter which may be prescribed.

## \* Procedure for registration.

- Copyright office has been set up to provide registration facilities and is headed by a Registrar of Copyright.
- Application accepted by part online registration through E-Filing Facility.

Procedure  
⊙ Applications for registration is as follow:-

- Application for registration is to be made on specified form.
- Separate applications should be made for registration of each work.
- Each application should be accompanied by the requisite fee prescribed in the second schedule on the rule.
- The applications should be signed by the applicant. The power of Attorney signed by the party and accepted by the advocate should also be enclosed if applicable.
- The fee is to be paid either in the form of Demand Draft or Indian postal order or through E-payment each and every column of the statement of further particulars should be replied specifically.

→ Book

## Copyright Registration workflow

Filing of Application  
along with fee [DD/TPO]

### \* Infingment of copyright.

Copyright Infingment refers to the unauthorized use of someone copyright work.

# According to Sec-51 of the Act, copyright is deemed to be infingned if-

- > A person without obtaining the permission of the copyright holder does any act which only the copyright holder is authorized to do.
- > A person permits the place to be used for communication, selling, distribution or exhibition of an infingning work unless to believe that such permission will result in the violation of copyright.
- > A person import infingning copies of work.
- > A person without obtaining the authority from the copyright holder reproduces his work in any form.

### Q- Which are the common copyright infringement

- > Making infringing copies for sale or selling or letting them for hire.
- > Permitting any place for the performance of work 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 into India.

### \* Infringing copies means -

(i) Literary, dramatic, musical or artistic work	Reproduction thereof otherwise than in the form of cinematographic films.
(ii) Cinematographic film	A copy of the film made on any medium by any means.
(iii) Sound recording	Any other recording embodying the same sound recording, made by any means -

(iv) Programme and performance.

The sound recording or a cinematographic film of such programme or performance, copy or sound recording is made or imported in contravention of provision.

\* Statutory Exceptions - certain acts not to be infringement of copyright [sec-52]

(i) A fair dealing with a work for the purpose of -

- Personal or private use including research
- Review or criticism of the work.
- Reporting of current affairs and event including the lecture delivered in public.

(ii) Storage of a performance or work.

(iii) Reproduction of work in a judicial proceeding

(iv) Supplied or made as per law.

(v) Reproduction of work in a certified copy

(vi) Reconstruction of a structure or building as per the architectural plans or drawings

(vii) Making a three-dimensional object from two dimensional artistic work for industrial application.

(viii) Publishing or making a drawing engraving or painting, display or photograph of a work of architecture.

- (ix) Recitation or reading in public of reasonable extracts from a published dramatic or literary work
- (x) Reproduction or publication of a work prepared by the secretarial of legislature for the exclusive use of the legislature members.

\* Remedies against infringement of copyright.

The copyright law in India provided for remedies to be made available to the author against a copyright infringement.

- (i) Civil remedies → Provide the injunctions, damage interpretation of accounts, delivery and destruction of infringing copies and damages for conversion.
- (ii) Criminal remedies → Provide for imprisonment fine, seizure of infringing copies and delivery of infringing copies to the owner.
- (iii) Border Enforcement → Also provides for prohibition of import and distribution of any imported goods that infringe the copyright of a person with the assistance of the customs authorities of India.

## \* Protection of Right of management Information

- Any person who removes, distributes, copies or broadcast any rights management information without authority shall be liable punishable with imprisonment which may extend to two years and shall also be liable to fine.

## \* Rights management Information means - (Section - 65B)

- a) The title or other information identifying the work or performance.
- b) The name of the author or performer.
- c) The name and address of the owner or rights.
- d) Terms and conditions regarding the use of the rights.
- e) Any number or code that represent the information referred to in sub-clause (a) to (d) but does not include any device or procedure intended to identify the user.

## \* Offences & Penalties (Section - 63)

Person who knowingly infringes or abates the infringement of the copyright (Except for resale share right in original copies)  
Liable to -

- Imprisonment for a minimum period of six months which may extend to 3 yrs
- Minimum fine of ₹ 50 thousand or more which may extend upto ₹ 2 lakh.

The court has been empowered to impose a sentence less than 6 months or a fine less than ₹ 2,50,000 if the infringement had not been made for ~~given~~ gain in the course of trade or business.

### \* Power of police to seize infringing copies

- Any police officer is allowed to not below the rank of sub-inspector may seize without warrant all copies of work, and all plates used to make infringing copies of the work.
- If he is in suspicion that an offence under sec- 63 in respect of Infringement of copyright committed and all copies and plates seized must be produced before magistrate as soon as possible.
- If original owner of work has an interest in the infringement then within 15 days of the seizure he can avail the remedy of restorative of the seized items.
- If any person knowingly makes or has possession of plate of created infringing copies of a copyright work,

then he will be punished for a period of not less than 2 yrs and will be fined along with it.

\* Introduction-

→ Geographical Indication of goods refers to a country or to a place situated as the origin of the product.

\* Object of Geographical Indication-

- Protect the interest the producers of such goods.
- To exclude unauthorized person from misusing geographical indication.
- Promote consumer from deception.
- To promote India goods in export market.

\* Geographical Indication-

• An Indication

- 1) It originate from a definite geographical territory.
- 2) Use of identify agricultural, natural and manufactured goods.
- 3) Goods should be produced or produced or prepared in that territory.
- 4) Should have a special quality or reputation.

\* Indication-

Includes any name, geographical or figurative representation or any combination of them suggesting the GI of the goods.

\* Example of Registered Geographical Indication

Darjeeling - tea, Nagpur - orange, Madhubani - Paintings, Banarasi - Saree etc.

\* Generic names or indications

The name of goods which although relates to the place where the goods were originally produced or manufactured has lost its original meaning and has become the common name of such goods.

\* Prohibition on registration of certain geographical Indication [sec-9]

- 1) The use of which would be likely to deceive or cause confusion.
- 2) Would be contrary to any law, (against the law)
- 3) Contain scandalous or obscene matter
- 4) Contain any matter likely to hurt the religious sentiments of class or section of people.

- 5) Disentitled to protection in a court.
- 6) Determined to be generic names
- 7) Ceased to be protected in their country
- 8) False representation of the origin, territory, region or locality.

### \* Registration of Geographical Indication (Section-8)

- A geographical indication may be registered in such class of goods as may be classified by a region in that territory.
- The Registrar may classify the goods in accordance with the international classification of goods and an alphabetical index of classification of goods.

### \* Application for Registration (Section-11)

- Any producer, organisation, authority or association of person.
- Who are desirous of registering a GI, can apply in writing to the Registrar in the manner specified

### \* Application shall contain.

- 1) A single application may be a statement as how the GI serve to designate the goods from the concerned territory

- 2) Class of goods to which GI shall apply  
particulars regarding
- 3) The geographical map of the appearance of GI, comprised of words or figurative elements or both.
- 4) The geographical map of the territory in which the goods are manufactured.
- 5) Statement containing particulars of producer of the goods.

\* Registration [Section -16]

- On Registration of GI, the registrar shall issue a certificate sealed with the seal of the Geographical Indication Registry to the applicant and authorised user.
- If Registration is not completed within 12 Months due to the default of Applicant and treat the application as abandoned.

\* Process of Registration -  
Filing of Application

→ Application must be in triplicate 3 copies.

- Signed by the applicant or his agent.
- Details by special characteristics & how those standards are maintained.
- 3 copies of the map.
- Details of inspection structure.
- Details of all the applicant together with address.

### \* Preliminary securities and Examination.

- The examiner will scrutinize the applicant for any deficiencies.
- The applicant should within 1 month of communication, remedy is the same.
- Ascertain the correctness of particulars furnished.
- Examination report would be issue.

### \* Show cause notice-

- IF Registrar has any objection, he will communicate such objection.
- Applicant must respond within 2 months or apply for a hearing.
- Decision will be duly communicated, if applicant wants to appeal he may within 1 months.
- Registrar is also empowered to withdraw an application if accept in error after OOBH.

\* Every application within 3 months of acceptance shall be published in GI Journal.

\* Opposition to Registration.

- 1) Any person can file a notice of opposition within 3 months from published in Journal.
- 2) Registrar shall serve copy of notice to applicant.
- 3) Within 2 months the applicant shall send a copy of ~~be deemed abandoned~~ counter statement.
- 4) If he doesn't do this application shall be deemed abandoned.
- 5) Both sides will lead their evidence by way of affidavit document.
- 6) A date of hearing can be fixed.

11. \* Registration -

- ⇒ Application for GI has been accepted the Registrar shall register the GI.
- ⇒ If registered then date of filing application shall be deemed as date of registration.

\* Registered GI shall be valid for 10 years and renewed on payment of renewal fees.

## \* Benefit of registration of GI-

- It confers legal protection to GI in India
- Prevents unauthorised use by others
- Provides legal protection which then boost exports.
- Promotes economic prosperity.

\* As per section -20 No person can institute any proceeding to prevent or recover damages for the infringement of unregistered GI.

## \* Infringement of Registered GI (sec-22)

- A registered GI is considered to be infringed when a person who is not authorised to use it uses GI which-
  - a) Indicate or suggest that goods originate in a different geographical area than their true place of origin.
  - b) Misleads public regarding origin of goods
  - c) Engage in any use of geographical indication that constitutes an act of unfair competition.

\* Act of unfair advantage includes -

- > Anything that creates confusion with competitors establishment, goods or industrial or commercial activities.
- > False allegations made during trade that discredit competitors goods or industrial or commercial activities.
- > Use of GI that mislead people about manufacturing process or quality etc.

\* Assignment of Transmission -

Section - 24 prohibits assignment or transmission of GI or transmission, Licensing, pledge, mortgage of registered GI.

On the death of an authorised user the rights shall devolve on his successor.

\* Prohibition of Registration of GI as Trade mark.

- A trade mark cannot be registered as a GI.
- It can confuse or mislead the person.

## \* Offences, Penalties & Procedure.

# Section - 37 Meaning of Applying GI  
person shall be deemed to apply GI to goods who.

- 1) Apply GI to goods themselves
- 2) Apply GI to any package of goods
- 3) Placing, enclosing, annexing GI to any goods.
- 4) Uses GI which is likely to believe the goods are in connection with that GI.
- 5) Uses GI in any advertisement Invoice category, business, letter, price list or any other commercial document.

## \* Falsely applying GI-

A person shall be deemed to Falsely apply a GI who without the assent of authorised user of GI.

1. Applies such GI or a deceptively similar GI to goods or any package
2. Uses identical or deceptively similar GI of authorised user for the purpose of packing or wrapping therein any goods other than genuine goods.

\* Introduction

- Industrial Design Refers to creative activity which result in the ornamental or formal appearance of product and Design.

\* Design Includes [section 2(d)]

- a) Features of shape, configuration, pattern ornament composition of line, colour or combination of these elements.
- b) These features are applied in 2D or 3D article through industrial process wether manual mechanical or chemical
- c) Which in finished articles, be judged solely by the eye.

Design does not Includes-

- a) Modes or principles or construction.
- only b) Mere mechanical devices.
- c) Trademark, property mark or artistic work.

\* Proprietor of a new or Original Design

- a) When author of design in exchange of good consideration creates the design for someone else proprietor will be person - for whom the design was created.

b) If any person acquires the design or exclusive right to apply the design to an article proprietor will be person who has acquired the design of the right.

c) If design has transferred from - original proprietor to another person proprietor will be - that another person.

- Objective of law is to protect innovation and ornamental design while features & methods remain in public domain for the benefit of technological progress & competition.

### \* Prohibition of Registration to certain Design

→ A Design which prohibited of registration under section → 4 of Design act, 2000 are as follow -

- The design is not new or original
- has been disclosed to the public in India or in any other country by publication to tangible form.
- Used in any other way before the Filing date or prior date of the application.
- Not significantly distinguishable from known design.

- Contains any scandalous or obscene matter all these designs shall not be registered.

### \* Application for Registration of Design (sec-5)

- a) The controller may, on the application of any person claiming to be the proprietor of new or original design country and is not opposite (contrary) to public order or morality, can register the design under this act.
- b) The application shall be in prescribed form and shall be submitted to the patent office in the prescribed manner with the fees.
- c) A design should not be registered in more than one class. In case of doubt as to the class in which the design is ought to be registered, the controller may decide the class.
- d) The controller may refuse to register any design presented to him, if he thinks that design are not fit for registration.
- e) Any person aggrieved by refusal may appeal to the High court.

- F) An application which contains any default or neglect by the applicant or the application has not completed as to enable registration the applicant should correct it within time, or it may be deemed to be abandoned.
- G) A design is registered on the date of application made for registration.

### \* Registration to be in respect of Particular Article (Section - 6)

1. Design can be registered in respect of all article belongs to prescribed class of article
2. Any question arising as to class within which any article falls shall be determined by the controller and his decision is final.
3. If design has been already being registered from one article within class, the owner of design can apply to register some other article within some class in such cases -

\* design cannot be refused on ground of not being new or original.

\* Design is not invalid if it was previously published in India or in any other country.

**Note** Subsequent registration does not extend the period of copyright in the design beyond what was granted from previous registration.

4. If person applies for registration of a design that is same as previously registered by another person, either for some article or a different article with some class but with modification and variation that do not significantly change the identity or character of the design the provision of section shall apply.

5. If applicant becomes registered proprietor of previously registered design during the applicant is registered.

### \* Publication of Particulars of Registered Design [Section-7]

- The act provides that the controller shall after the registration of the design, publish a particulars of design in such manner as prescribed and it shall be open to public inspection.

## \* Substitution of Applicant or Joint claiming [Section-8]

a) Name of an applicant can be substituted or a Joint claim can be made for an applied design if the following requirements are met -

- The claim for substitution shall be made before the design has been registered.
- Right of claimant shall be created only by
  - An Assignment
  - Agreement in writing by any of the applicants.
  - Operation of law.

b) The request for substitution of applicant shall be filed in Form-2 along with the required fees.

If the controller is satisfied from the above requirements then he will direct the application in the interest of the claimant & shall proceed.

- In the name of claimant or
- On the name of claimants in joint ownership.

c) In case of Joint applicants controller shall not pass any order without the consent of other applicant.

- d) In case of Joint applicants, if any applicant dies before the design has been registered a request may be made for substitution by the survivor applicant. or the controller may direct that the applicants shall proceed in name of survivor alone. No direction shall be issued with the consent of legal representative of deceased.
- e) If there is any dispute among the applicants than the controller may direct them. The controller shall not pass any order without giving an opportunity of be heard to the concerned parties.

### \* Certificate of Registration

[Section - 9] of the Act provides that the controller shall grant a certificate of registration to the proprietor when the design is registered.

In case of loss of original certificate controller can furnish more copies of certificate.

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## \* Registration of Design -

[Section - 10] provides that there shall be a register of design address of proprietors of design, these assignment and transmission and such other matters related to design. The register may be maintained wholly or partly on computer floppies, subject to safeguards of Information.

## \* Copyright on Registration [Section - 11]

When a design is registered, the registered proprietor of design have copyright to the design during ten years from the date of registration.

Before the expiry of the said period (ten years), application for extension of period shall be made to the controller with the prescribed fees.

period of (five years) is given scribed fees period to the applicant as the second period of copyright from expiry of the original ten years.

## \* Registration of Lapsed Design -

[Section - 12] provides that when design has ~~esse~~ ceased to have effect by

reason of Failure to pay the fees for extension of copyright the proprietor or joint proprietors of design ceased may within one year from date of design ceased make an application for the restoration of ~~make an application for the~~ design in prescribed manner with fees.

\* Can the Registration of a Design be cancelled? [Section-19]

The registration of a design may be cancelled at any time after the registration of design due to the following grounds -

1. That the design has previously registered in India
2. It has been published in India or elsewhere
3. Prior to due date of registration
4. Design is not original or new.
5. Design is not registrable.

\* Design to Blind Government.

As per [Section-20] a registered design shall have to all intents the like effect as against the Government.

The provision of chapter XVII of the patents Act shall apply to all persons including the government.

### \* Appeal -

An appeal should be made to High court against the order passed by controller in following matters.

1. An order under section 5, refusing registration of a design.
  2. An order ~~is~~ U/s 19, passed in a cancellation petition.
  3. Order U/s 31, passed in a ~~cancelation~~ rectification petition.
  4. Order U/s 35, refusing registration on the ground of public order or morality.
- Appeal shall be made within 3 months from the date of order.
  - Time taken in granting a copy of the order shall be excluded.
  - High court may obtain the assistance of an expert in deciding such appeals & the decision of High court shall be final.

\* Piracy-

If any unauthorised person sell or manufacture the registered design for commercial purpose then it is called piracy of design.

[Section-22] of design act deals piracy & it says that anyone who commit piracy of design shall be liable.

What is Piracy of a Design?

→ Piracy of Reg. design During the existence of copy in any design it shall not be lawful for any person without license or without written consent of reg. proprietor.

- a) Apply the design for clear Enactance / copy to Right for sale
- b) Import such article for sale
- c) Publise or expose articles with design for sale.