

LAW RELATING TO DESIGNS

- 1] The Design Act protects the original design by giving the author proprietary rights upon a Design.
- 2] It focuses on the aesthetics of an article which can be judged by the eyes, and not with the functionality.
- 3] Design means feature of shape, pattern and further it could be composition of lines, colour or combination applied upon an article, whether 2D or 3D, by an industrial process and whether manual or mechanical which in the finished article can be judged solely by the eye.

Q] Who is a Proprietor of a Design?

- 1] Ordinarily, the author of the design is the proprietor.
- 2] Where a person acquires a design from any other person, then that acquirer becomes the proprietor.
- 3] Where the work is executed on the

behalf of a person, then the person on whose request the work is to be done, become the proprietor.

Q] State the prohibition in registration of certain design?

1] As per section-4 of the Design Act 2000, following designs are prohibited from getting registered:

a) If the design was not new or original

b) If it has been disclosed to the public anywhere by the publication in tangible form (anywhere, here means, India or outside India)

c) It is not distinguishable from an already known design

d) It contains scandalous or obscene matters.

2] The Supreme Court clarified, the expression new or original means, that the design which has not been published / registered or being

made known to the public anywhere in the world. And it has been invented / created for the first time.

Q] Registration head Process

1] The process of registration goes through various stages wherein the application is made through the controller in the patent office.

2] Further a design can only be registered in one class (Presently, there are 32 classes) in India where the Indian system follows the Locarno classification.

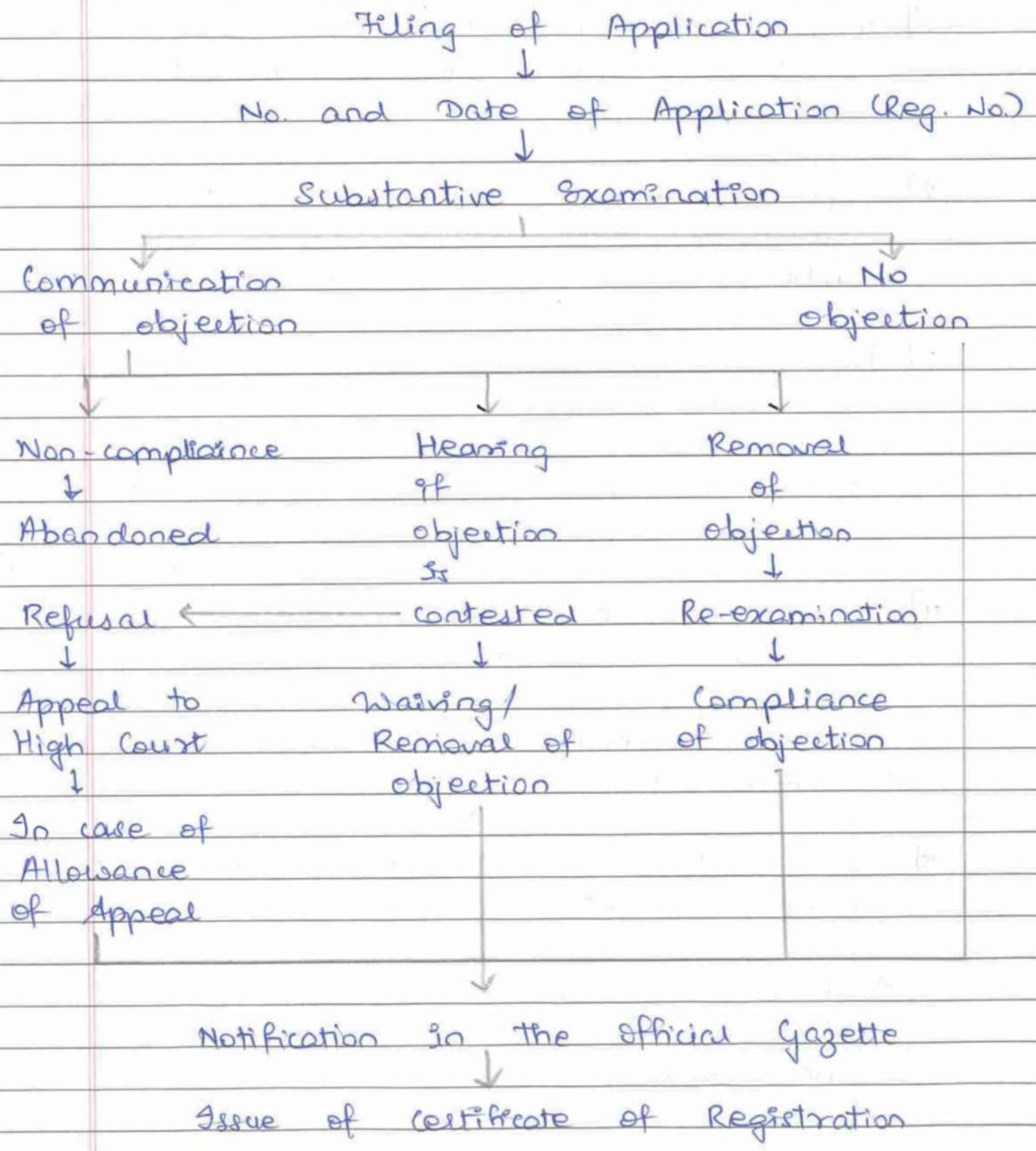
Eg: If its a shape of bottle, then in the application it can only cover one class. However, if that same design is to be applied in any other product, a separate application is to be applied.

3] The registrar may refuse the application, in which case he has to provide reason for the same, as well as the aggrieved party has a right to file an appeal in the high court.

4) If an application is not complete because of the default or neglect of any party and the same is not completed within the prescribed time, the application is deemed to be abandoned.

5) Lastly, a design is considered registered not from the date of registration, but from the date of application.

* Design Registration Process Workflow



1] Step by step Registration Process

1] Step I : An application shall be filed in the patent office with the controller

2] Step II : The controller does the formality check and dating & numbering of the application.

3] Step III : Once the application completes the controller does a substantive examination of application, based on which, an objection or no objection is issued

4] Step IV : If no objection is issued then the application is accepted followed by a notification in the official gazette, and the certificate of registration is issued.

5] Step V : However, if the controller has issued an objection and -

a) If the same is not complied with, the application is considered abandoned.

b) If the objection is contested, then

the hearing is conducted, where if the objections are waived, then the application is accepted and a certificate of registration is issued.

c) If the registrar is not satisfied then he may refuse the registration.

d) In which case, an appeal to High Court can be made and if the appeal is allowed the application is deemed to be accepted.

a] Registration to be in respect of a Particular article

1] A Design can be registered in any or all of the articles comprised in a class.

2] In case of any confusion as to a design to fall in which class of article, the same shall be decided by the Controller.

3] When a design has been registered in a particular article and the proprietor wants to get it registered in any other article then the registration

should not be refused on the ground

a) that the design is not new or original

b) that the design has been previously published or registered in India.

4) Where a person not being the proprietor of a design makes an application of registration of design which has been previously registered by another person in respect of the same article or any other article, then the application shall be rejected unless before the application is further proceeded the applicant becomes the registered proprietor in which case the registration shall be granted.

6) State the essentials for registration of design.

a) Design should be new or original

b) Design should relate to features of shape, configuration, pattern

c) Design should be applied to any article by any Industrial Process.

d) Features of the design in the finished article should appeal and are judged solely by the eye

e) However, a mere mechanical design or a mode of principle construction can not be registered under designs act. The design cannot be registered under trade mark or copyright act

§ Substitution of applicant or joint claiming

1] The name of the applicant can be substituted or even joint claim can be made for an applied design provided

a) The application for substitution is made before the design has been registered

b) The right of claimant shall be created because of an assignment / written assignment / operation of law

c) The application for substitution shall be considered identified by making a clearly the design

reference to the application no.

- 2] If a request for substitution is made in form 2, along with requisite fees and if the controller is satisfied, then he shall proceed with the application in the name of the claimant or in the name of the claimant and the applicant.
- 3] In case of joint applicants, the controller will not proceed until the consent of other joint applicants.
- 4] In case of death of any joint applicant, the applicant can be proceeded in the name of the survivor however the consent of the legal representative of the deceased must be taken.

NOTE: If the controller is satisfied, it shall issue certificate of registration to the proprietor.

* Duration of Registration - 10 years from registration or the priority date which can further be extended by 5 years.

Q] Restoration of Lapsed Design

↓] If a design has ceased to have any effect by reason of failure to pay the extension fees then the proprietor may apply to the controller within 1 year of the lapse for restoration of the design.

Further, if it was jointly owned then any one of the proprietors with the leave of controller apply for restoration.

Q] Can Design Registration be cancelled?

↓] As per section 19, the registration of a design can be cancelled if the controller finds -

a) that the design has been previously registered.

b) It has been published anywhere

c) The design is not new.

d) It is not a design

e) the design is not registrable

NOTE: A registered design shall have the

same rights against the government, as it has against any private person.

6] Explain Piracy of Design:

1] Piracy of Design means using a design or making an imitation of a registered design, for the purpose of sale or importing the same for the purpose of sale without the consent of the proprietor.

2] Further, even publishing an article for sale where the person knows, that there is an unauthorised application of design also amounts to piracy of design.

3] So, in other words all of the foll. activities if done without the consent or license of the registered proprietor shall be considered piracy of an article

a) where the design is applied to any article for the purpose of sale where such design is already registered.

b) importing, for such an article for

the purpose of sale

c) Publishing the article for the purpose of sale.

Q] Industrial & International Exhibitions

1] The exhibition of a design upon which registration is to be applied shall not prevent the design from getting registered if -

a) The exhibitor before exhibiting the design, give a previous notice, to the controller.

b) The application for registration is made within 6 months from the date of first exhibition.

Q] Appeal

1] An appeal lies ^{in front of} to the High Court against the controller, which shall be made within 3 months from the order of the controller.

2] Following are the grounds on which

an appeal will be considered -

- a) Refusing the registration of a design
- b) Refusing registration on ground of public order.
- c) Cancellation petition
- d) Order passed in rectification.

NOTE: The time taken to receive the copy of order is to be excluded.

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