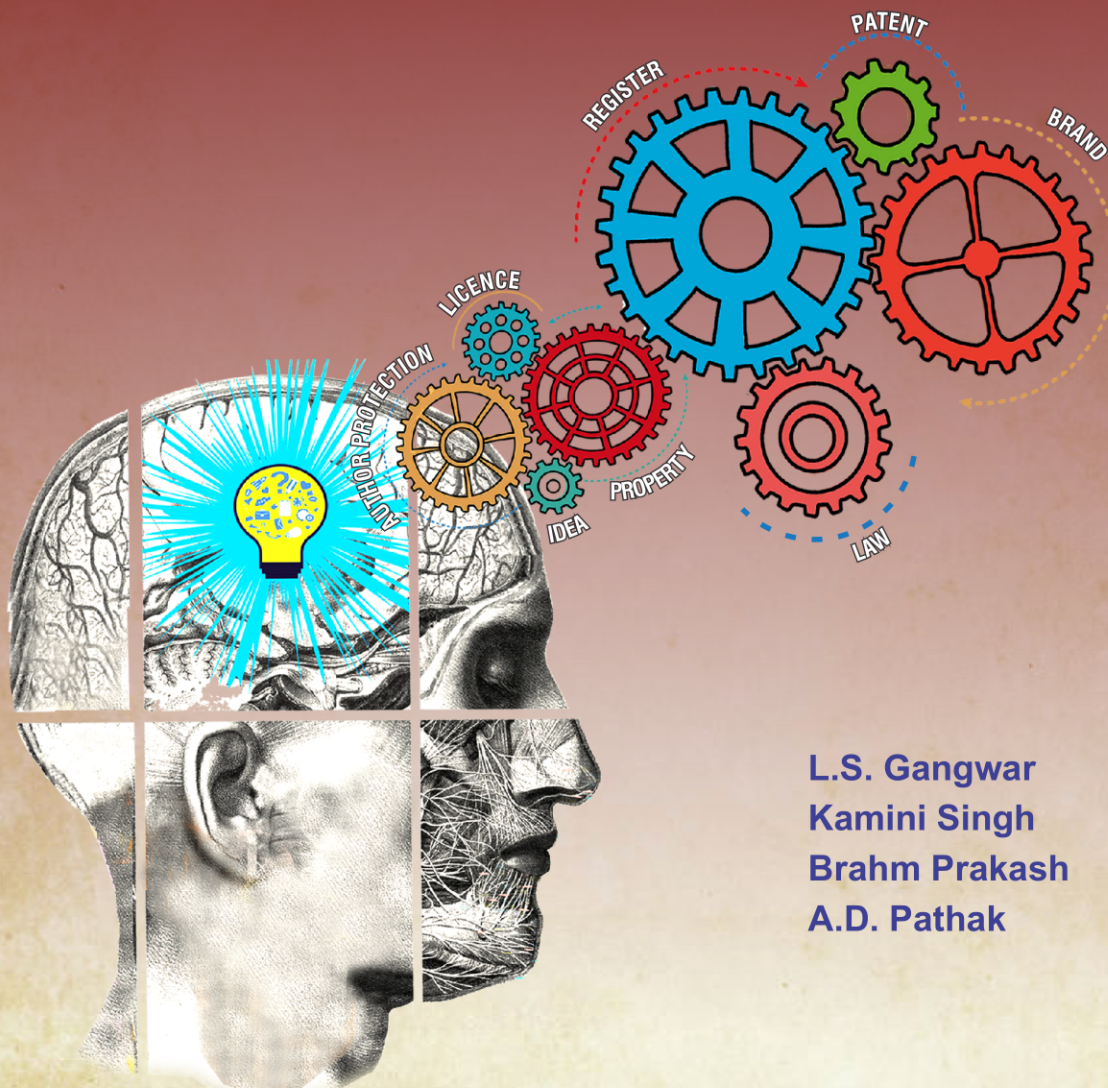


INTELLECTUAL PROPERTY RIGHTS

Transforming Knowledge to Prosperity

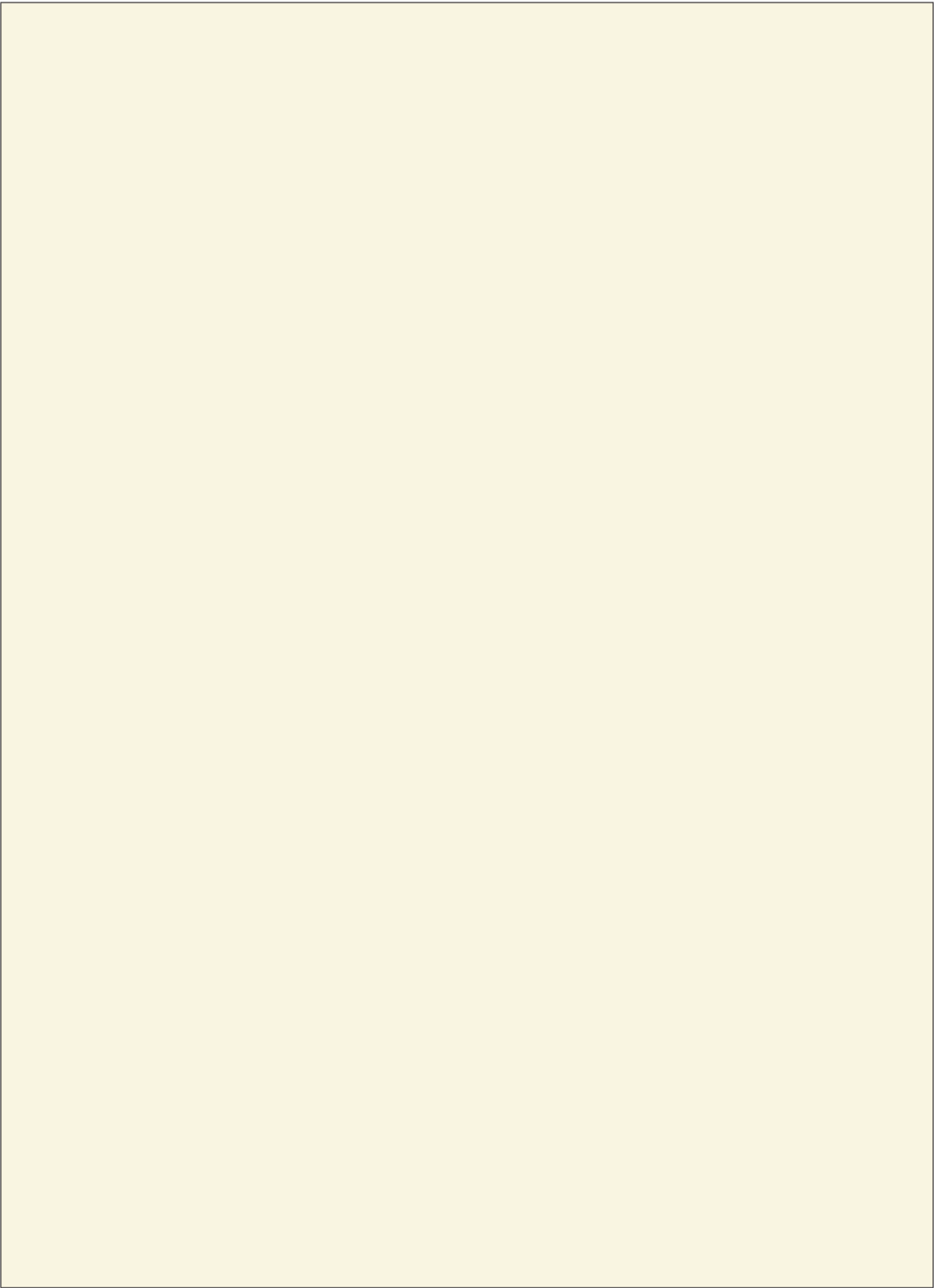


L.S. Gangwar
Kamini Singh
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ICAR - INDIAN INSTITUTE OF SUGARCANE RESEARCH
LUCKNOW - 226002





INTELLECTUAL PROPERTY RIGHTS

Transforming Knowledge to Prosperity

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सहायक महानिदेशक
(बौद्धिक सम्पदा एवं प्रौद्योगिकी प्रबंधन)

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FOREWORD

Agriculture and its allied sectors still remain a key sector because of its sustained role in income, employment and national food security. It contributes nearly 16.55% to the total GDP and provides employment to over 58% of the population. The innovative technologies developed by Indian Council of Agricultural Research (ICAR) and SAU's are still main base for the agricultural sector development during post-independence era. The role of National Agricultural Research System (NARS) in development of improved crop varieties and animal breeds, farm machinery, dairy science, fisheries sector and value addition products *etc.*, cannot be underestimated. The NARS has played a significant role in bringing phenomenal improvements in agricultural production. The Council has served as a milestone in respect of the global interdependence for food and agriculture and free exchange of genetic material and technology to the world. The technological development will be driving force for future growth of Indian agriculture as the dimension of agricultural research is bound to change to generate new competitive technologies, need based production, protection, processing technologies and their commercialisation for the benefits of society. These inventions need some protection to safeguard the economic interest of researchers from their unauthorized use. It highlights the need to understand the IPR rules and regulations not only for commercial gains but also to support further agriculture research and development work. The significance of Intellectual Property Rights protection has increased tremendously to realize economic wealth and value creation in knowledge-based economy.

The public perception and expectations from agriculture are changing fast with increase in awareness for health, environment and bio-diversity protection. Rapid advances on technological fronts have expanded the products range and technologies that are today covered by proprietary rights and influencing incentives to innovate, intellectual property rights protection may affect economic growth in several ways.

The ICAR recognizes role of IPRs for creating passive wealth in form of licence fee, royalty and benefits sharing with society in a knowledge-based economy in competitive technological world. The majority of agricultural scientists are not familiar with the benefits of protecting their intellectual property as it is time taking, costly and cumbersome process. Under changing scenario of global trade, where promotions of trades are basically depends on the innovation and commercial applicability, importance of IP protection has increased immensely. This highlights an urgent need for agricultural scientists to understand the all-dynamic aspects of intellectual property and its associated rights. This manual entitled "Intellectual Property Rights: Transforming Knowledge to Prosperity" contains the information on identification of the Intellectual Property Rights related issues and the procedures of filing them for its protection in their respective offices in India. We are hopeful that this manual will certainly be helpful in creating awareness about Intellectual Property Rights amongst scientists, researchers, farmers, agri-based industries and businessmen.

February 5, 2021
New Delhi



(Sanjeev Saxena)

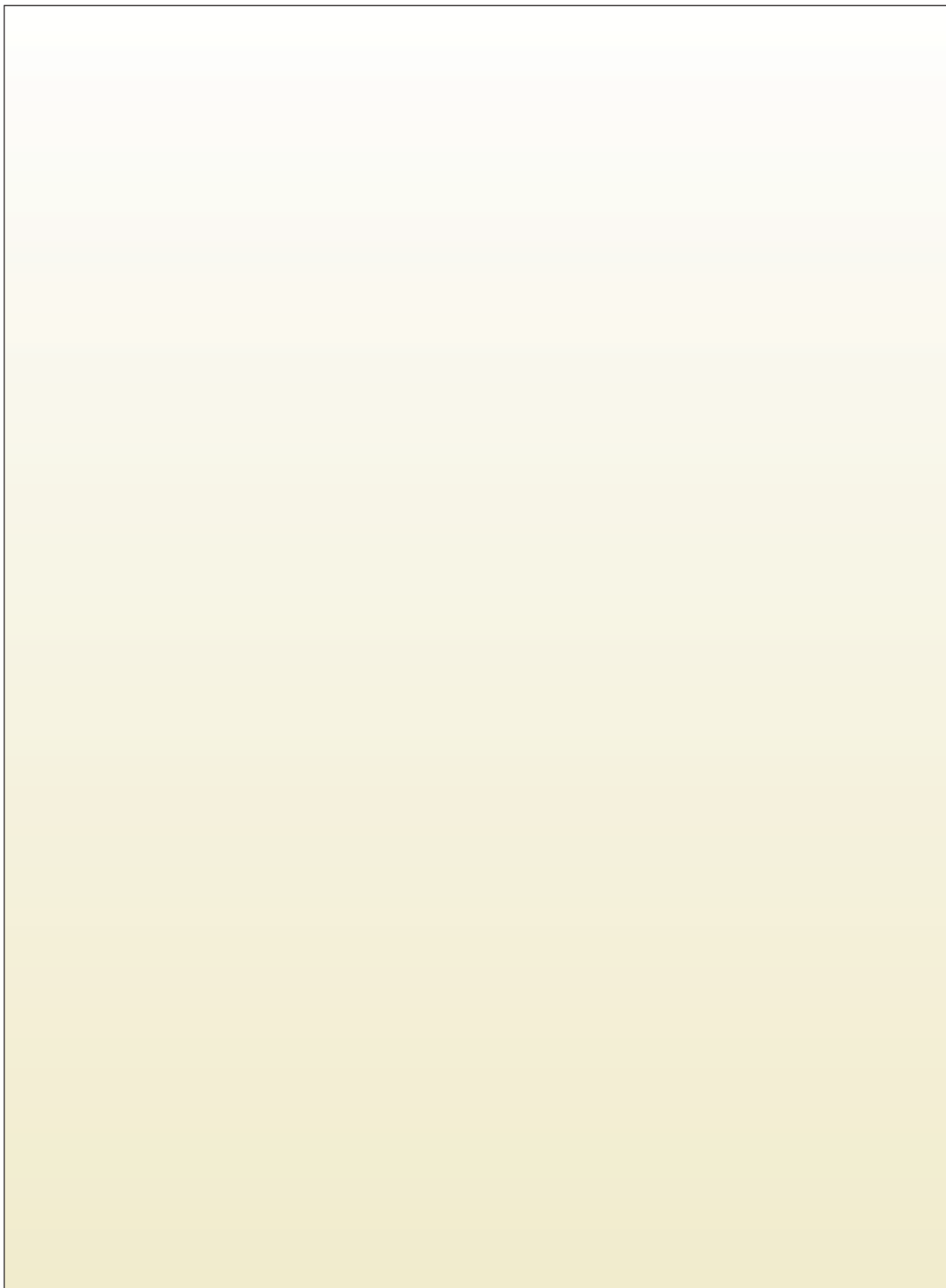
PREFACE

In the modern era, a vibrant competitive environment and human progress are largely driven by creativity and innovation. Building confidence and motivating creative initiatives are crucial for sustained prosperity. In this case, intellectual property (IP) is morally a concept of human thought and can play an important role because all areas of life are affected by it. The global economy is rapidly transforming into a knowledge economy, and physical resources are being replaced by the IP resources. Wealth creation in the modern world is mainly based on intellectual property rights. Intellectual property regulations has to play a key role in ensuring the establishment of a mechanism for the protection and fair evaluation of knowledge-based output.

In modern era of science, IP has a sustainable competitive advantage. The trade-related aspects of intellectual property rights (TRIPS) under the World Trade Organization provide a basic framework for creating intellectual property rights. The beneficial aspects of intellectual property have begun to attract the attention of policy makers, academicians and corporate executives. In order to obtain these beneficial characteristics, it is essential for all organizations and individuals to understand and obtain knowledge related to IP regulations and laws. Any organization and individual can practice this knowledge, not only to legally protect their IP rights, but also to avoid infringement of these rights owned by others. On the one hand, structured and compulsory intellectual property regulations encourage corporate organizations to actively invest in R&D and knowledge-based programme, and on the other hand, they also help customers to ensure the authenticity of products and services at a reasonable price.

There are many aspects in the field of IP, from creation and acquisition to protection and their commercialization. In order to obtain the advantages of IP, it is necessary to understand the overall view of the IP domain. The interdisciplinary nature and diversity of IP rights have brought difficulties to readers and owners of commodities in understanding and practicing commodities. The manual entitled "Intellectual Property Rights: Transforming Knowledge to Prosperity" contains information on identifying issues related to IP rights and submitting procedures for the protection of IP rights in their respective Indian Offices. We are not only hopeful, but also convinced that this manual will definitely help in building confidence and understanding of intellectual property among scientists, researchers, farmers, agri-industries, policy makers and businessmen.

Authors



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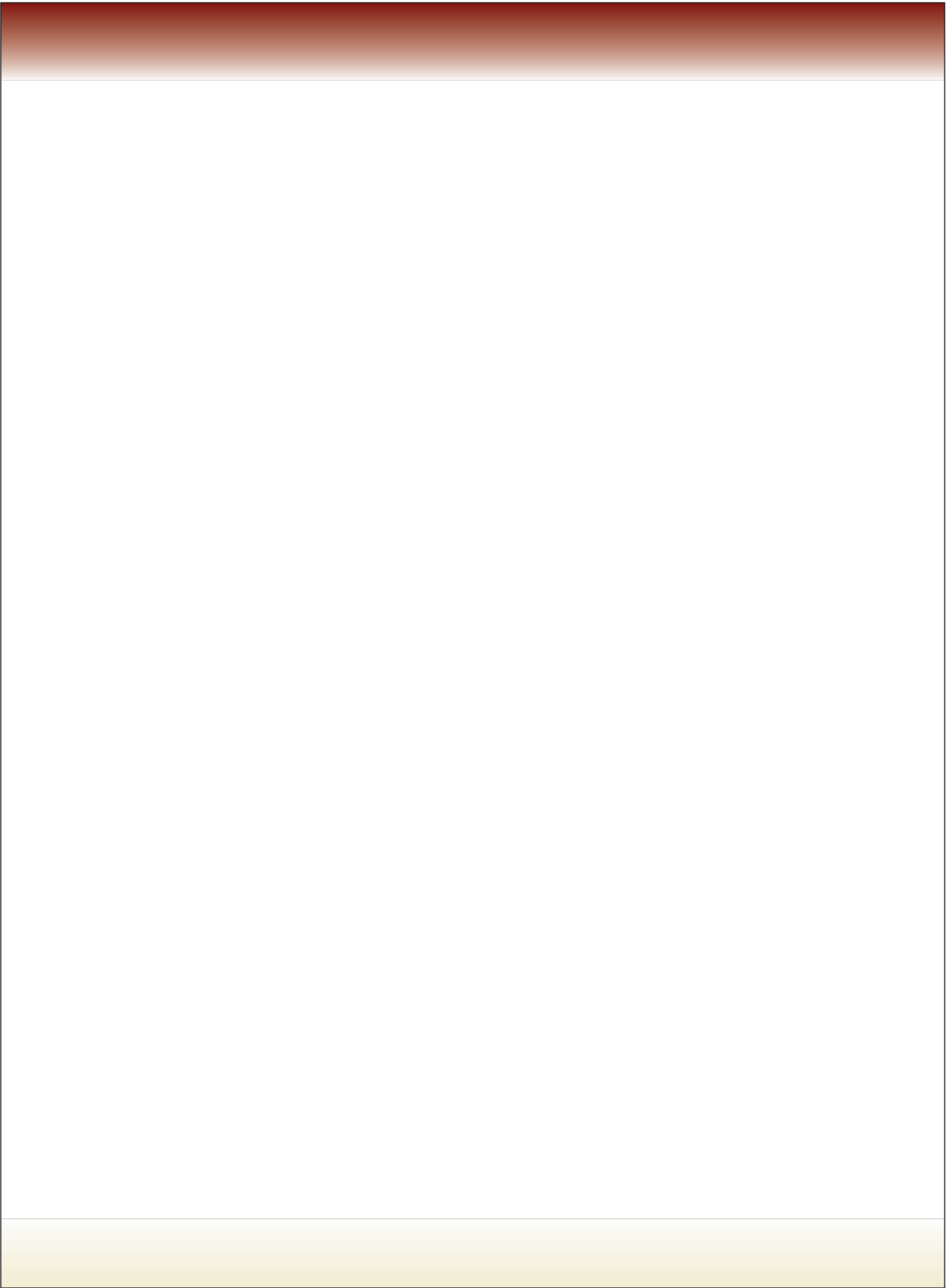
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ABBREVIATION

BDA	Biological Diversity Act
CAs	Certifying Authorities
CBD	Convention on Biological Diversity
CGPDTM	Controller General of Patents, Designs and Trade Marks
DIPP	Department of Industrial Policy and Promotion
EDV	Essentially Derived Variety
EMRs	Exclusive Marketing Rights
FPO	Farmers Producer Organisation s
GATT	The General Agreement on Tariffs and Trade
GI	Geographical Indications
ICAR	Indian Council of Agricultural Research
IP	Intellectual Property
IPRS	Indian Performance Rights Society Limited
IRRO	Indian Reprographic Rights Organization
ISRA	Indian Singer Rights Association
ITKs	Indigenous Technical Knowledge
IPRs	Intellectual Property Rights
IPAB	Intellectual Property Appellate Board
MNCs	Multi-National Companies
NARS	National Agricultural Research System
NBA	National Biodiversity Authority
PCT	Patent Cooperation Treaty
PBR	People's Biodiversity Register
PPV&FRA	Protection of Plant Varieties and Farmers' Rights Act
PVJ	Plant Varieties Journal of India
R&D	Research and Development
SHG	Self-Help Groups
SICLDR	Semiconductor Integrated Circuit Layout Design Registry
SICLD	Semiconductor Integrated Circuit Layout Designs
SBC	State Biodiversity Committee
TRIPS	Trade-Related Aspects of Intellectual Property Rights
UPOV	International Union for the Protection of New Varieties of Plants
WIPO	World Intellectual Property Organization
WTO	World Trade Organization



1. INTELLECTUAL PROPERTY RIGHTS

1.1 Introduction

Intellectual property (IP) is a key factor in the economic development, competitiveness, and ultimately achieving the “prosperity”. The Intellectual property pertains to any new creation of the human intellect such as scientific, literary, technical, or artistic creations. It provides legal right to the inventors to protect their invention and to exclude others for its manufacturing, utilization, selling of invented goods for a specified duration. At the statutory, administrative and judicial levels, the value of IPs are well known. The agreement of creation of World Trade Organization (WTO) was ratified by India. This agreement includes treaty on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which came into force on January 1, 1995. It sets minimum standards for protection and enforcement of IPRs of member countries, which is a necessary condition for promoting effective and adequate protection of IPRs to minimize obstacles in international trade of commodities and services. The obligations under TRIPS agreement involve the provision of minimum standards of protection within the member countries. A well-designed IPRs system encourages innovators to disclose their knowledge so that future innovators could continue to develop new technologies/innovations which help in accelerating the pace of innovation based cutting-edge novel technological development for fulfilling the future demand of society.

In early 20th century, industrial activities depended on availability of production machinery, raw materials and capital investment. It should be noted that in addition to patents, copyrights, trademarks, geographical indicators and many new forms of IP protection have emerged. The technologies, processes and products which were not patented few years ago, are now patented in many countries, such as computer programmes, business methods, new plant varieties, hybrid seeds, genetically modified organisms, agriculturally important micro-organisms, insects, new life forms, and transgenic plants. Therefore, commercial adoption of the innovative process and the firm's production activities have globalized rapidly in IP regime

during past three decades. It poses challenges in cross-border management, protection, and intellectual property rights enforcement. Hence, it is understood that proper protection of innovation in present IP regimes is the need of the hour. It could play a crucial role in recovery of cost of technologies development to the organization and resources generation for future R&D work.

The science and technology are the prominent parameters for economic and intellectual growth for a country. It plays a pivotal role in export trade growth and enhances competitiveness. The IPRs have accomplished a prime position in scientific development and provide the regulatory construct to overcome market failure by providing an incentive to the Government organizations/private firms for investment in R&D programmes. Prior to the WTO regime, India, as a developing nation, would only grant process patents for food articles, medicines and chemicals. Therefore, the Indian industry was free to develop and utilize new products, as long as they have applied for and obtained a process patent for a particular new patented product. This was one of the patent policies measures which allowed the Indian pharmaceutical industry to flourish during past two and half decades. However, after India signed the TRIPS agreement 1995 (as part of WTO agreement); the Indian pharmaceutical industry realized that if they want to succeed in future, they must compete with giant multi-national companies (MNCs) successfully in the global market. They have to develop new products and increase their product quality and production efficiencies to offer better products to the consumers.

The main aim of IPRs is to generate funds for R&D work and to encourage researchers, industrialists and businessmen for investment in cutting edge technological development. This would provide economic inducements for their innovative new ideas and concepts. It enables people to earn profit from the IP based information, processes and knowledge products they have created. These incentives probably may inspire scientists and researchers for quality innovation and play a major role in the technological development of the nation, depending on degree of IP protection granted to the innovators.

1.2 International Aspect of Intellectual Property Rights

The innumerable international conventions have recognized the international nature of intellectual property rights. The role of technology and science in all works of human activity has changed and developing with every passing moment. Hence, it is essential to understand, adopt and implement, international laws related to IPRs protection, benefits sharing with the indigenous traditional knowledge (ITKs) providers for the welfare of society in good spirit. The globalization of trade and commerce has enormous impact on the expansion of IP system. India is a member of almost all the noteworthy international conventions. These International Conventions describe the importance and scope of intellectual property rights in various fields of innovation and technological development. The obligations of the member states under the Convention should be implemented on a reciprocal basis. It must be ensured that no law, rights or obligations has to be enforced unilaterally. Therefore, it is in the interest of the country to negotiate and implement the recommendations of the conventions by enacting its own IP laws. The important international conventions on IP rights are as follows:

- (i) The Paris Convention for the Protection of Industrial Property, 1967
- (ii) The Berne Convention for the Protection of Literary and Artistic Works, 1971
- (iii) The Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, 1961
- (iv) The Intellectual Property Treaty on Integrated Circuits Washington, DC, 1989
- (v) The Geneva Convention for the Protection of New Varieties of Plants (UPOV 1961)
- (vi) The General Agreement on Tariffs and Trade (GATT 1948) and World Trade Organization (WTO) agreements, including the TRIPS agreement (1995)
- (vii) The World Intellectual Property Organization (WIPO) Convention (1967)

- (viii) The Patent Cooperation Treaty (PCT 1970)
- (ix) The Budapest Treaty (WIPO 1997)
- (x) The Nagoya Protocol (2010)

1.3 IPRs Legislations in India

In India, IPRs are recognized under following legislations:

- (i) The Patents Act, 1970
- (ii) The Copyright Act, 1957
- (iii) The Trademarks Act, 1999
- (iv) The Designs Act, 2000
- (v) The Geographical Indications of Goods (Registration & Protection) Act, 1999
- (vi) The Semiconductor Integrated Circuits Layout Design Act, 2000
- (vii) The Biological Diversity Act, 2002
- (viii) The Protection of Plant Varieties and Farmers' Rights Act, 2001

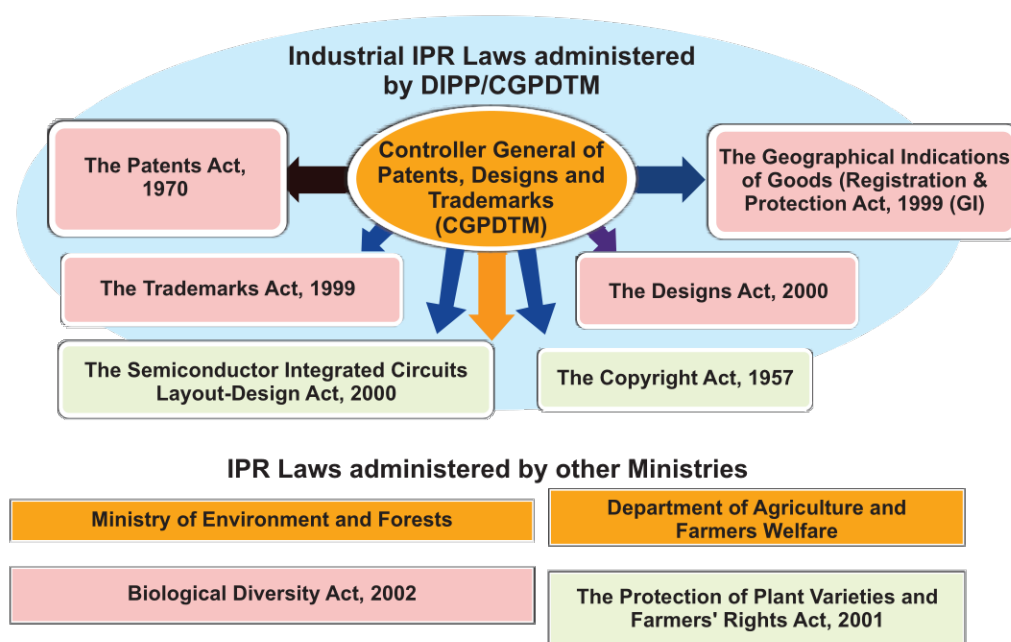


Fig. 1. Intellectual Property Rights Laws in India

Source: <https://ipindia.gov.in/organization-structure-patent.htm>

1.4 Intellectual Property Rights Offices in India

In India, the Intellectual Property is administered by the Controller General of Patents, Designs & Trade Marks (CGPDTM) which is a subordinate office of the Government of India and administers the Indian law of Patents, Designs, Trademarks and Geographical Indications.

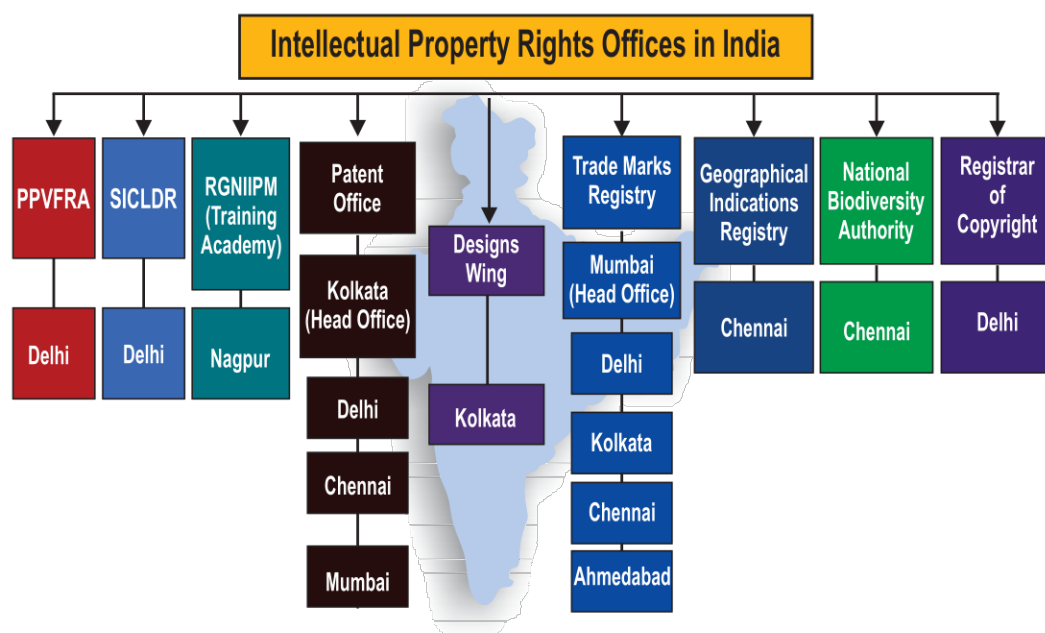


Fig. 2. Offices of Intellectual Property Rights in India

Source: <https://ipindia.gov.in/organization-structure-patent.htm>

1.5 History of Indian Patent Laws

India has IPR history since time immemorial. Even during *Harappa* civilization, India has granted IP rights as special trademarks were found on pottery. It indicates that they are trademarks of that glorious human civilization. India's first patent-related legislation was Act VI of 1856. The purpose of the legislation was to encourage the invention of new and useful products and prompt inventors to disclose the secrets of inventions. The history of modern Indian Patent law starts from 1911 when the

Indian Patents and Designs Act, 1911 was enacted. The present Patents Act, 1970 came into force in the year 1972, through amendment and consolidation of the existing Patents law. The Patents Act, 1970 was again amended by the Patents (Amendment) Act, 2005, wherein product patent was extended to all technological innovation in the area of food, drugs, chemicals and microorganisms. After this amendment, the provisions relating to Exclusive Marketing Rights (EMRs) have been revoked, and a provision to enable compulsory license grant has been introduced. The new provisions related to pre-grant and post-grant opposition have been introduced. Since then, number of amendments have been introduced in various acts to protect novelty, uniqueness and non-obviousness of the innovative product or process invention. A product or process invention which is new, involve inventive step and have industrial practical utility can be patented in India. However, it must not fall into the category of inventions that are non-patentable as provided under Section 3 and 4 of the (Indian) Patents Act, 1970. In India, a patent application can be filed, either alone or jointly, by the first inventor or his assignee.

The brief summary of various amended Acts of India has been presented in Table 1.

Table 1. History of Indian Patent System

Year	Legislation
1856	The Act VI of 1856 on protection of inventions based on the British Patent Law of 1852. Certain exclusive privileges granted to inventors of new manufacturers for a period of 14 years.
1859	The Act modified as Act XV; Patent monopolies called exclusive privileges (making, selling and using inventions in India and authorizing others to do so for 14 years from date of filing specification)
1872	The Patents & Designs Protection Act
1883	The Protection of Inventions Act
1888	Consolidated as the Inventions & Designs Act
1911	The Indian Patents & Designs Act
1972	The Patents Act (Act 39 of 1970) came into force on April 20, 1972
1999	The Patents (Amendment) Act 1999 came into force on January 1, 1995.
2002	The Patents (Amendment) Act 2002 came into force on May 20, 2003
2005	The Patents (Amendment) Act 2005 effective from January 1, 2005

2. PATENTS

The Patent Act, 1970 is a twenty-year monopoly right granted by the Government to inventors. The patent is a form of commercial identity of economic importance or intellectual property. A patent is the right granted to people who have invented new useful items, improved existing items or new processes for products manufacturing. It is composed of exclusive rights, which can produce invented new objects within a limited time or according to the process of invention. After granting of patent, the patent gives the inventor the right to exclude others from manufacturing, marketing, importing or offering to sell the inventor's invention within the time limit specified by the Patent Act. After the expiration (twenty years) of the patent, the patent is in the public domain and anyone can use the invention without the consent of the patentee. The patent owners can sell their patented property. They can also grant others a license to use the patent. The property in patents is similar to other forms of property in many respects. Granting a patent is not for such an idea or principle, but for certain articles or the process of applying the idea to certain articles. The inventor can protect their inventions only in the region or country, where the invention is granted patent because patent rights are territorially based.

The language used in a patent application plays an important role in defining its scope. We should avoid using words such as must, contains and required. The inventor should describe the elements of the present invention as a broad scope for example, using terms such as writing device instead of saying pen. As long as there is more than one patentee, the patent rights can be shared. The rights of patentee are as follows:

- a) Right to initiate legal action against infringement
- b) Commercially sold or licensed
- c) Commercially exploit its potential without fear of copying

According to the rules and regulations of the Indian Council of Agricultural Research (ICAR), the Council owns all research results conducted by its employee's

during their entire service period or *Ad-hoc* or collaborative projects funded by the Govt. of India. The scientists can individually or jointly with other scientists can apply for the protection of the IP generated by their research and development team work in ICAR or NARS. The rights of technology generated by them personally or jointly with other organizations based on the project conducted in collaboration with ICAR financial support.

2.1 Physical locations of Patent Application Filing in India

India has four patent offices at different locations such as Chennai, Mumbai, Delhi and Kolkata. Based on the address, applicants can file a patent application in their nearby patent office for their region. The details of Patent Offices in India are mentioned in Table 2.

Table 2. Patent Offices and their Jurisdiction in India

Patent Office	Territorial Jurisdiction
Chennai	The States of Andhra Pradesh, Telangana, Karnataka, Kerala, Tamil Nadu and the Union Territories of Puducherry and Lakshadweep
Delhi	The States of Haryana, Himachal Pradesh, Punjab, Rajasthan, Uttar Pradesh, Uttarakhand, Delhi and Union Territory of Chandigarh, Laddakh, Jammu and Kashmir
Mumbai	The States of Maharashtra, Gujarat, Madhya Pradesh, Goa and Chhattisgarh; and Union Territories of Daman and Diu, Dadra and Nagar Haveli
Kolkata (Head Office)	Rest of India

2.2 Patentability Criteria

A novel product, process or method that involves creativity and can be manufactured or used in industry should meet the following conditions:

2.2.1 Novelty

The novelty means that the issues disclosed in the specification are not disclosed in India or anywhere else. If the priority of an earlier patent application is claimed, the invention is not considered new and non-patentable. The novelty of the invention can

be obtained by conducting a search called the prior art. The term "art" refers to a related technical field. A prior art search is usually performed to prove that the invention is new or old. The prior art search can be performed by using large-scale patent databases, scientific papers, publications and keyword searches of any Internet search engine.

2.2.2 Inventiveness (Non-obviousness)

A patent application involves an inventive step, if the proposed invention is non-obvious to a person skilled in the art *i.e.*, skilled in the subject matter of the patent application. The prior art should not point towards the invention implying that the practitioner of the subject matter could not have thought about the invention prior to the filing of the patent application. The inventiveness may not be decided on the material; contained in unpublished patents. The complexity of an inventive step does not have any bearing on the grant of patent.

2.2.3 Usefulness

An IP invention must have utility for granting of patent. The inventions without utility shall not be granted patents. The patentable inventions should have industrial applicability. They should be used for revenue generation through its commercial utilization by the industry or business identity that has purchased the IP based innovation.

2.3 Patent Document

There are two types of patent documents known as patent specification:

- I. Provisional specification
- II. Complete specification

2.3.1 Provisional Specification

The provisional specification is the initial application before the filing regular patent. It defines the invention in a broad view, but not complete. When the inventors are at the stage of their research work, they can disclose the invention on paper, but it is not the final invention. They can use the description as a temporary explanation and

submit it to the Patent Office to ensure the priority invention date. The provisional specification is not a draft; and no need to describe claims. It defines the field of invention, and up to certain extent also defines scope of invention. If inventor submits the complete specification, it will not replace the provisional specification in future as it remains in record. According to the provisional specification received, the Patent Office would match the application date with patent application number. If the complete specification is not submitted within 12 months after submission date of the provisional specification, the patent application will be deemed abandoned. The claims are not the part of provisional application. If an inventor has submitted the provisional specification, it has following benefits:

- Ensure the filing date
- Save twelve months to submit a complete specification
- Involves low cost to obtain a patent

2.3.1.1 Contents of Provisional Specification

- Title of invention
- Description of invention starts with preamble and specification describes the invention.
- The field of invention and background information of the invention
- Object of invention and statement of the invention.

2.3.2 Complete Specification

A complete specification document is required to obtain a patent. It reveals the details of inventions which need patent protection. This document has technical legal effect and contains complete scientific information of inventions and claims. Therefore, the legal rights of the patent are based on the disclosure in the specification. The complete specification has the following elements:

- Title of invention
- Preamble
- Field of invention
- Background of invention

- Objects of invention
- Brief description of figures
- Statement of the invention
- Elaborate description of invention
- Claims
- Abstract

2.4 How to Write Patent Specification

A properly drafted application plays a vital role in the success of the prosecution, management and maintenance of the invention during its tenure and turns it into a monetary return. The description should be as follows:

2.4.1 Title of Invention

The invention title should reflect the main art of invention. It should be precise and expressive. The name of inventor, patent words, other languages words and abbreviation, *etc.*, and attractive words are not allowed in the title of the invention.

2.4.2 Field of Invention

The field of the present invention should describe the scope and subject matter of the present invention, for example, "The present invention relates to..." so that patent examiners can easily understand the nature of the present invention.

2.4.3 Background of Invention

By referring to the experiments conducted in the field, patents and patent applications pending in specific fields and focusing on the prior art related to the present invention. The state of technology in the field of the present invention is shown. When the present invention relates to improvements to existing equipment or methods, the closest prior art should be pointed out.

2.4.4 Objects of Invention

The invention's objects should reflect the advantages of scientific innovation. It should describe solutions to existing problems related to the prior art field. The utility,

purpose and advantage of the present invention should be described in details in a separate sentence or paragraph.

2.4.5 Description of Drawings

If specification requires photo support, it should be prepared as a printing plate with index letters to highlight those specification aspects that use a particular photo. These photos should have separate legends. When using multiple photo plates, they should be arranged in order. You should also add an index to the drawing and complete the legend as well. The drawing must be on A4 size paper, with a margin of 2.5 cm from all edges, drawn with permanent ink, draw the lines firmly, draw on the scale to show the details, use reference letters and numbers and 0.3 cm index letter of the size. The large figure should be drawn on continuous paper and must be arranged in order. The photographic plates, pictures and figures must refer to the text for detailed instructions. The upper left corner of the drawing board should have the name of the inventor; the lower right corner should have inventor signature.

2.4.6 Statement of Invention

This part is useful for declaring the inventiveness of present invention and the exact novel features related to the prior art. The invention's statements commonly resemble the scope, structure and breadth to the claims and recite only necessary features of invention which should be corresponding to the language and scope of dependent claims. There might be statements of advantages, summarizing useful technical effects associated with each statement of invention, corresponding with the objective(s) and explains how these are achieved.

2.4.7 Description of Invention

The description of the invention should provide the necessary facts about the invention. The manufacture and use of the invention and the purpose, advantages or solutions achieved by the application of the invention should be explained in detail. The details of the present invention should be explained with the aid of the drawings. If a person of ordinary skill in the art can implement the present invention without conducting experiments, it should be considered that the detailed information provided by the inventor in this section is sufficient. This section may also include

examples to promote a better understanding of the invention. It should also disclose the best method known to the applicant to implement the invention.

2.4.8 Claims

The claims are a necessary description of the application of the complete specification. The initial part of the sentence used to describe the claim is printed on the application form which reads, "I/We claim that_ _ _ ". It is requisite to complete the sentence by putting up the unitary claim(s) in relevance to the invention. The claims must be single, regardless of the total number of such claims in the patent, because these claims are always related to a single invention under this application. If more than one claim is made, everyone must mention the serial number and insert it in a separate paragraph, but without breaking the sentence/punctuating the full stop. The principal claim should fully cover the scope of the invention, define its novelty and other aspects, and compare it with the latest available technologies and should be presented in precise, concise, and practical language. Whenever subordinate claims are mentioned in a patent application, then it must define the certain points of the principal/subordinate claim. When writing such claims, always a reference has to be made to the principal or the relevant subordinate claim and no subordinate claim has to stand alone, without making a reference either to the principal claim or the preceded subordinate claim.

2.4.9 Abstract

The last part of patent document is invention's abstract, which reflects a brief description of the invention, the specification and the claims. It should be submitted on a separate page. The abstract text should be short and should contain 250-300 words.

2.5 Filing of Patent Application

- Submit a patent application with provisional description or complete description
- If the provisional application is submitted earlier, a complete specification must be submitted (within 12 months of submission of the provisional application + 4 months with late fee).
- The Patent Office examines patent applications
- Acceptance of applications and publication in the Gazette

- Responding and satisfactorily overcoming the opposition/objections, if any
- Sealing of patent

Any concerned person can perform a free of cost search of published and granted patents on Indian Patent database. It can be found on website of Patent Office at http://ipindiaservices.gov.in/public_search and <https://www.ipindia.gov.in>. It contains innovative tools under dynamic utilities that can provide information about processing of various stages of patent application. The information pertaining to patent applications is published in Patent Office Journal on every Friday. It is also available in electronic form on the website of Patent Office i.e., www.ipindia.gov.in.

The Journal of the Patent Office contains information related to patent applications, restoration of the patent, invalid patent list, notice and about the announcement regarding the patent. Once a patent is granted, the patentee must maintain the patent by paying an annual renewal fee as per rule. There is no renewal fee for the first two years, and a renewal fee is required from the third year onward. If the renewal fee is not paid, the patent will be terminated, and then a request for restoration of the patent can be filed with the prescribed fee within 18 months from the date of suspension of the patent. The complete procedure of filing patent application is mentioned in Fig. 3. Any information about the applicable forms and fee structure of patent application may be obtained from the Patent Office or through https://www.ipindia.gov.in/writereaddata/Portal/IPOFormUpload/1_11_1/Fees.pdf

2.6 Online Filing of Patent Application

Indian Patent Office launched the e-filing services for Patents in the year 2007 which enabled online filing of new applications for patents, where all the communications, interactions and transactions between the office and stakeholders take place. The required information for filing online application is available on the website of Patent Office i.e., www.ipindia.gov.in and for filing patent applications through comprehensive online filing system at <https://ipindiaonline.gov.in/epatentfiling/goForLogin/doLogin> is used. There are some key features of comprehensive

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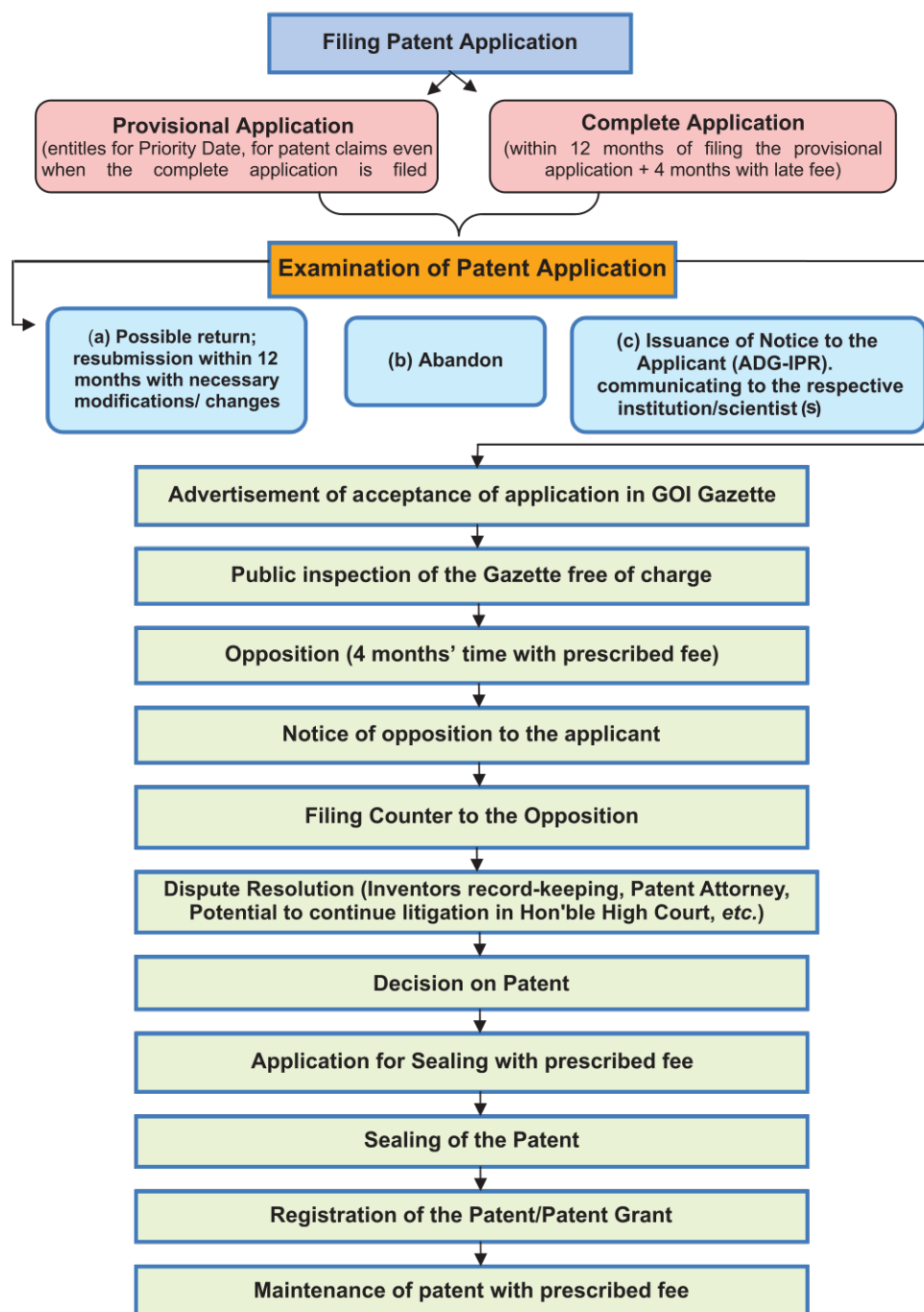


Fig. 3. Flow Chart of Patent Application Submission

E-filing services which are as follows:

- Web-based filing system
- Two-way login (digital signature and password) and password regeneration process
- According to the requirements for filing all entries
- Proper validation through IPO patent database
- Upgrade/update facility of digital signature
- User Profile
- Less transaction errors

2.6.1 Basic Requirements

- Operating system: Microsoft Windows XP with SP3 and above
- Web browser: Internet Explorer 6 and above
- Digital signature

2.6.2 Digital Signature

To register a patent application, the user must obtain a level II/III digital signature. After obtaining the digital signature, users can register on the CGPDTM website by creating their user ID and password. The digital signature can be obtained from a certification authority strengthened by the Controller of an Indian Certifying Authorities (CAs), and these signatures are integrated with the electronic application system of the Patent Office. A list of such Indian CAs can be found on the website of the Controller General of Patents, Designs & Trade Marks (www.ipindia.gov.in). The list of signature components and their respective URLs are described below:

Table 3. List of Competent Signatures of Indian Patent Office

Vendor(s)	Signature	URL
(n)Code Solutions	Class III / Class II	https://www.ncodesolutions.com
TCS	Class III / Class II	http://www.tcs-ca.tcs.co.in
Safe Scrypt	Class III / Class II	https://digitalid.safescrypt.co
e mudhra	Class III / Class II	https://www.e-mudhra.com
Capricorn	Class III / Class II	https://www.certificate.digital
Verasys	Class III / Class II	https://www.vsign.in/

2.6.3 Payment Gateway

- Net Banking (All major banks)
- Debit Card (All major banks)
- Credit Card (VISA & MASTER CARD)

2.7 International Patenting

2.7.1 Patent Cooperation Treaty (PCT)

The Patent Cooperation Treaty is administered by the World Intellectual Property Organization (WIPO). It is an international treaty that make patent protection for an invention in many countries/regions at the same time by filing a single international patent application instead of filing multiple application in separate national or regional patent applications. It is usually for patent submission system not a patent grant system. It simplifies the patent application process, and the final decision on granting patents is entirely in the patent office of each country or region. India joined the "Paris Intellectual Property Convention" and joined the "Patent Cooperation Treaty" (PCT) in August 1998. The Paris Convention is a treaty with a history of more than 100 years. It provides a 12-month grace period for inventors to file patent applications in other member states after filing a patent in their home country. It simplifies the patent application process, and the final decision on granting patents is entirely in the Patent Office of each country or region.

The PCT extends the benefits of Paris Convention by allowing inventors to file "international patent applications". The effect is to file a separate patent application in each PCT member country designated by the inventor. The Indian Patent Office has been designated as the receiving office for PCT applications. The procedures and sequence of the PCT are as follows:

- Prepare a set of formal requirements in single language in one office
- Postpone major costs and provide more time to consider various patent options
- Provide a solid base for patent decision-making

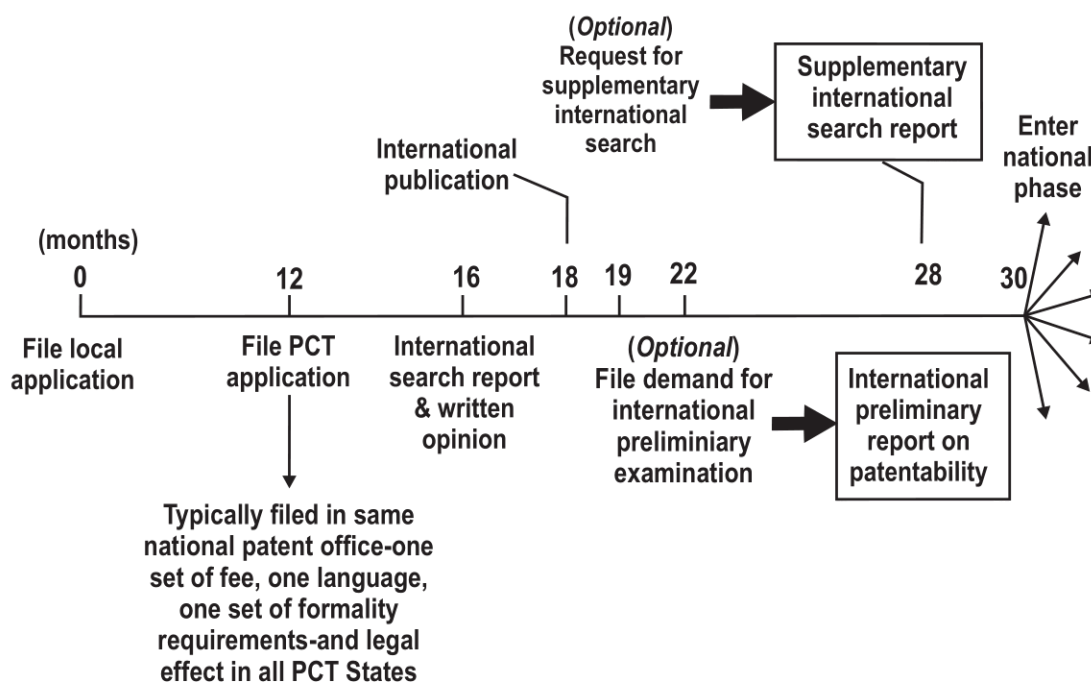


Fig. 4. Procedure and Sequence of Patent Cooperation Treaty (PCT)

2.8 Inventions which are not patentable

The following inventions are not patentable:

- The statement or claims for any invention contrary to the accepted laws of nature; such as the type of perpetual motion machine
- An invention with primary or intended use or commercial exploitation, which may run counter to public order or morals, or cause serious damage to the life, health or environment of humans, animals and plants
- Mere scientific principles or abstract theories or biological or non-biological substances exist in nature
- Mere discoveries of substances as they naturally occur in the world. The discovery of new property or use of the known substance, process, machine, or apparatus unless such known process results in a new product or a new reactant

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e.g., salts, esters, ethers, polymorphs, metabolites, particle size, isomers, complexes, combinations of known substances derivatives

- Mere arrangement or rearrangement of known devices functions independently of each other in a known manner
- Agriculture or horticulture methods *e.g.*, cultivation of mushroom and algae, preparation of an improved soil, and producing new form of a known plant, however, agricultural equipments are patentable.
- The process of medical, surgical, curing, preventive diagnosis, treatment or treatment of humans, or any process of treating similar animals to provide services to treat diseases or increase economic value
- All or any part of animals and plants except microorganisms, but including seeds, varieties and species, and essentially the biological process of producing or reproducing animals and plants
- Mathematical or business methods or computer programme themselves or their algorithms
- Artistic works, musical work, dramatic, literary or any other aesthetic creations, including film works and television works
- A merely schemes or methods for expressing mental behaviour and playing games
- Topography of the integrated circuit
- Inventions relating to atomic energy and nuclear power device.

2.9 Infringement of Patent

In India, patent infringement litigation can only be initiated after the patent is granted, but it can include claims that are retroactive from the date of publication of the patent application. Patent infringement includes the unauthorized manufacture, import, use or sale of any patented invention, and a civil lawsuit can be filed in the court. In addition, it is possible to defend infringement litigation on various grounds including the grounds that the patent cannot be granted in India and based on this defense; it is also possible to request the revocation of the patent.

Note:

1. Different types of application for filing of patent are given in Annexure-1.
2. Details of forms for filing of a patent application are given in Annexure-2.
3. List of forms for IPR are given in Annexure-3.
4. Suggested websites for relevant details on IPR are given in Annexure-4.
5. List of websites to find out details of patent are given in Annexure-5.
6. Some inventions related to defence are given in Annexure-6.
7. Stages of prosecution of IPR application in India are given in Appendix-1.
8. Case studies related to patent infringement are given in Appendix-2.

3. THE COPYRIGHT ACT, 1957

In 1914, "Copyright Act" was passed by the British in India which was based on the "British Act, 1911". After independence, in view of advanced communication methods like broadcasting and lithography, photography, the law needs to be revised. The administrative agencies had established protocols for the implementation of several provisions of the law. Therefore, the Copyright Act 1957 was promulgated, which provided path for establishment of a copyright office and the copyright committee. The copyright had been extended to cover radio proliferation. Separate copyrights are awarded to stories, music and films. The "Film Law" 1957 extended the validity period of copyright up to 50 years. The period of copyright protection had been extended up to 60 years in 1992 through amendment.

Technological advancement has made the copying of copyright materials easy and cheap, but at the same time, the piracy of copyright works has become very simple. It is difficult to regulate them. Technological inventions have made copyright infringement an international issue for debate. Therefore, many countries jointly formed an international convention to protect the copyrights owned by their nationals in other countries. The Berne Convention and Universal Copyright Convention are the result of such joint efforts. Globally, majority of the nations are members of these conventions. India is also a signatory member of these two conventions. Therefore, Indian copyright owners could protect their rights in all countries having similar IP laws.

After signing the General Agreement on Tariffs and Trade (GATT) in 1948, India entered the global market economy. Therefore, 1994 Act made many amendments to 1957 Copyright Act in order to realize the obligations arising from the signing of the GATT. The Copyright Act, 1957 came into force in January 1958. The law has been revised five times since 1983, the most important of which was the 2012 Copyright Law (Amendment). It involves the rights of knowledge creators in the creative process and secures least guarantee for creators' creative rights, thereby defending and rewarding creativeness. It is a comprehensive statute that provides copyright to works of authors, artists, designers, dramatists, musicians, sound recordings, motion

film, architects and developers cum producers of computer software. There is no copyright protection for ideas, procedures, operating methods and mathematical concepts, and titles or names, short word combinations, slogans, short phrases, methods, plots, factual information are not protected separately. The Copyright Office was established in New Delhi to provide registration services for all types of works. It is led by the Registrar of Copyright. Since February 2014, online registration facility has been initiated through e-filing tool, which enables applicants to apply at the time and from place of their choice.

3.1 Duration of Copyright Protection

The duration of copyright depends on the type of work. The duration of some copyrighted works are mentioned below:

- **Literary, dramatic, musical and artistic works:** The time of the author's life, and 70 years from the year of author's death
- **Computer-generated works:** 50 years from the creation of work. The work is considered to be computer-generated and there is no human author.
- **Sound recording:** 50 years from end of the production or publication year
- **Broadcasting:** 50 years from the end of the broadcasting year
- **Typographical arrangement for the published version:** 25 years from date of first publication.

3.2 Copyright Association

The Copyright Association is a collective management association registered under Article 33 of the Copyright Law 1957. The association is composed of authors and other owners. The copyright association may issue or grant a license for any work authorized by the author/owner. The author of any work and other copyright owners cannot track all uses of their work. The copyright associations can be vigilant about usage and collect royalties from users of their works. The key function of copyright association is to manage, distribution and licensing of copyrights owned by the authors or owners of works. There are three registered copyright associations in India, namely:

- Literary works related to musical works: Indian Performance Rights Society Limited (IPRS)

- Reprographic (Photocopying) works: Indian Reprographic Rights Organization (IRRO)
- Performer (Singer) Rights: Indian Singer Rights Association (ISRA)

3.3 Procedure of Copyright Registration

The Indian Copyright Act 1957 and Article 70 of the Copyright Rules 2013 mention the procedure for copyright registration in India:

3.3.1 Filing of Application

The application can be filed in the electronic mode through e-filing on official website and physically at Copyright Office by Speed/Registered Post. Each application in Form XIV should be accompanied by the necessary fees (Annexure 7). The fee can be paid in form of demand draft, money order or Indian postal order (Payable to Copyright Registry, New Delhi) or by electronic payment.

The flow chart of e-filing application of copyright has been described in Fig. 5. There should be single application for the work and related essential information mentioned below:

- a) Applicant's name, address and nationality
- b) The nature of the applicant's interest in the work
- c) The name of the work
- d) The name, address, nationality of author of the work, and date of death of author, if author is not alive
- e) Working language
- f) Whether work has been published or unpublished in which applicant have to submit the detail about year and country of first publication, name, address, nationality of publisher, and if any subsequent publication, then the applicant should mention name, address, nationality, year and country
- g) The name, address and nationality of person authorized to transfer/license rights including copyright
- h) No objection certificate signed by the author (if different from applicant)
- i) The power of attorney signed by the defender and the party (if application is made by advocate)

- j) Three copies of published work must be sent with the application.
- k) If the work has not been published, two manuscripts must be sent with the application. One copy properly stamped will be returned, while other copy will be kept for office record.
- l) Computer programme registration application must be submitted together with source and object code.
- m) The application for registration of an art of work that has been used for goods must be accompanied by the statement and certificate of no objection from the Trademark Registrar.
- n) Artistic work must be registered as a design and submitted in the form of a written affidavit stating that it has not been registered under the Design Act, 2000 and has not been applied to any article by the industrial process.
- o) The application should be signed by the applicant or defender.
- p) The applicants should provide the mobile number and email to obtain the application number.

3.3.2 Examination

After submission of the application, applicant will receive diary number. The mandatory waiting period is 30 days for objection against author's claims. If any objection is received against a claim, it may take another month. The copyright registration agency provides equal opportunity to both parties to hear the case. After deciding the ownership or rejecting objection, application will be reviewed. In case of any inconsistency observed, the applicant has to correct it within 30 days.

3.3.3 Registration

When submitting further documents, if registrar of copyright is satisfied with the completeness and correctness of claims made in the application, he enters the copyright details into copyright register and issues registration certificate.

3.4 Details of Filing of an Application for Different Works

The applicant can apply for copyright on both published and unpublished

works at the Office of Copyright or through mail or electronic filing tools on official website *www.copyright.gov.in*. The applicant should send two copies of published or unpublished work along with the Application Form XIV for registration (Annexure-7). For unpublished work, manuscript copy should be attached together with application for stamping with Copyright Office to prove that the work has been registered, and stamped original copy will be returned to the applicant and confidentially retained in Copyright Office. When unpublished registered works are subsequently published, the applicant can apply for amendment to the detailed information entered in the Copyright Register in Form XV (Annexure-7), along with prescribed fee.

3.4.1 Filing of an Application for Computer Software or Programme

The registration of computer software or programmes, databases, compilations and tables comes under the literary works. For registration of literary works, the source code and object code must also be submitted with the application.

3.4.2 Filing of an Application for Website

A website can be implicit as a web page or group of interconnected web pages hosted on or stored on a server and can be used by the public online. The users can access information and other basic tasks on website in various ways (scrolling web pages, using internal hypertext links or search functions). The website consists of different fundamentals that may be subject to copyright protection. But the entire website is not protected by the Copyright Act. There are many forms of components of the website such as digital files, computer databases, graphic symbols, programme, texts, tables, photos, paintings, maps, diagrammes or artistic, musical works and cinematographic films. Usually, it may contain unique non-copyright content of website, but not limited to the idea or future plans of website, the functional elements of website, useless materials, layout and formatting or look of website or pages; or other common non-original materials, like names, icons, or symbols. For filing of copyright for a component such as work and content appearing on website, applicant has to submit a separate application for each component.

3.4.3 Filing of Copyright Application for a Mobile App

A Mobile App is a comprehensive, self-contained software/programme designed to perform specific tasks, which simply referred as 'Apps'. The Apps applications are the most common form of software, and these are of many types. It mainly has dynamic content and designed for user interaction, and used directly or indirectly in handheld electronic devices. The applicants may register Mobile Apps as a computer programme under literary works. The applicants have to submit registration application under software category and attach source and object codes. It should be noted that the registration will cover any screen display generated by the programme; provided that the computer programme (code) generated on the screen, display was submitted by the applicant. The snapshots of a Mobile App displayed on screen do not have protection under the Copyright Act.

3.5 Infringement of Copyrights

The law provides civil and criminal liability. Any individual entity, who is engaged in commercial transactions of any copyright infringement works by buying, selling, renting, importing or selling pirated videos/films/music CD's also violates the law. The owner of copyright could file a civil lawsuit against the infringer in the jurisdiction where he or she lives or local court that caused the lawsuit. The owner can initiate criminal proceedings. If the case is decided in favour of owner of copyright, the infringer have to face imprisonment from 6 months to 3 years, and/or monetary fine from ₹ 50,000 to ₹ 2,00,000.

Note:

1. Details of form for filing of copyright application are given in Annexure-7.
2. Some important case laws related to copyright infringement are given in Appendix-3.

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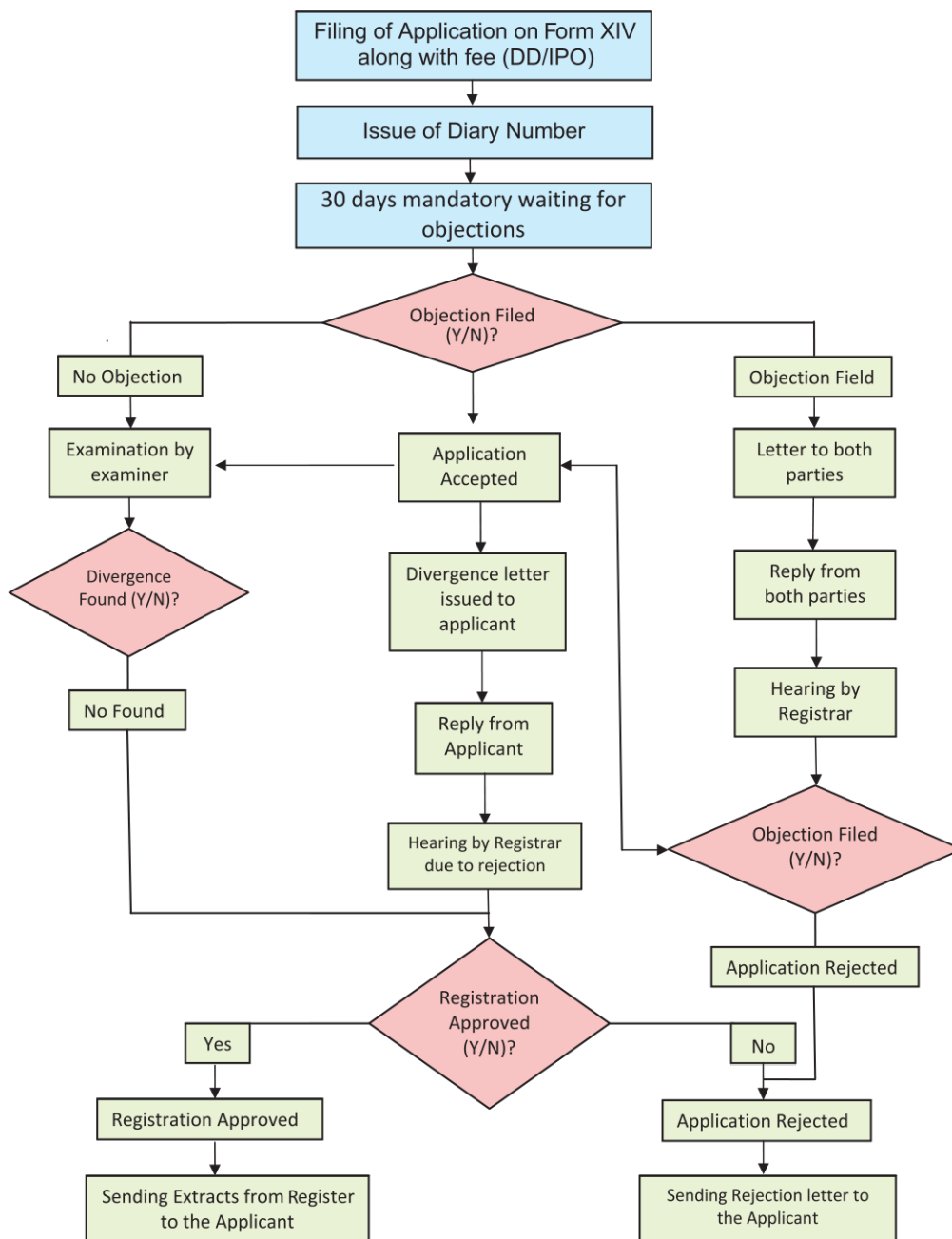


Fig. 5. Flow Chart of Filing Application of Copyright

Source: www.indiafilings.com/learn/wp-content/uploads/2014/10/Copyright-Registration-Process-Flow.png

4. THE TRADEMARKS ACT, 1999

A trademark is a visual symbol or logo in the form of a word or label. It is used to identify goods or services that are distinguishable from other similar goods and services. The logo is composed of one or more distinctive words, letters, numbers, graphics, pictures, colours or other special representations for the container or product packaging. Trademarks are commercial assets intended to be used by the traders for commercial purpose. It is a type of IP; owner has the permanent right to use it on its products and services as trademark. When a person's trademark is registered in law, he obtains valuable rights through such registration. Any individuals such as corporate bodies, proprietary, partnership businesses, start-ups, small business, institutions and trusts, who claim a trademark owner in India, can register a trademark under the Trademarks Act, 1999. The registration of a trademark grants them the exclusive right to use the trademark, which can be used for trademarks related to the goods registered, and if other person infringes the rights of trademark with same or deceptive trademark similar to that trademark, he can protect his trademark through litigation or infringement, in which he can obtain an injunction, damages or profit accounts from another person.

Prior to India's independence, trademark had statutory protection as enacted by the Trademark Law 1940. The law is based on Trademark Act 1938 in the United Kingdom. Since 1940, major developments have taken place in the business and trade. After independence, Trade and Merchandise Marks Act was passed in 1958. Since then, due to the globalization of trade and industry, trade and business practices have undergone considerable changes to adapt changing trends of investment processes and technology transfer. At global level, there was eminence need for a comprehensive law on trademarks. Therefore, it was passed in 1999, which entered into force on September 15, 2003. This law abolished Trademark and Commodity Act, 1958.

The Indian Trademark Law provides statutory protection for trademarks in accordance with the "Trademark Act 1999" and the "Passing off law". The Passing off

could be used to enforce unregistered trademark rights and protected the goodwill of traders, so as not to damage goodwill due to false statements. The legal protection of trademarks is administered by the Controller General of Patents, Designs and Trademarks (CGPDTM), a government agency that reports to the Department of Industrial Policy and Promotion (DIPP) under the Ministry of Commerce and Industry, Govt. of India.

The trademark law deals with registration mechanisms, trademark protection and prevention of fraudulent trademarks. The law also stipulates the rights obtained through trademark registration, the transfer and assignment of rights, the nature of the infringement, penalties for such infringements and remedial measures that the owner can take in the event of infringement. The identical trademarks and similar goods or services with earlier trademarks may not be registered under the trademark law. According to the 1999 "Trademark Law", the period of trademark registration is ten years, and it can be renewed with the prescribed fee. To renew a trademark, the applicant must submit a renewal form within six months of the expiration of the last registration period of the trademark.

A trademark may be designated by the following symbols:

"TM" for an Unregistered Trademark

"SM" for an Unregistered Service mark

® Symbol for a Registered Trademark

4.1 Classification of Trademark

Trademark classification in India is done in 45 different classes. It includes chemical substances used in industry, paints, lubricants, machine and machine tools, medical and surgical instruments, stationery, leather, household, furniture, textiles, games, beverages preparatory material, building material, sanitary, and hand tools, scientific and educational products. These classes are further sub-divided. The main objective of trademark classification is to group together the similar nature of goods and services. Detail about classification of goods and services may be obtained from https://ipindiaonline.gov.in/tmrpublicsearch/classification_goods_service.htm.

4.1.1 Types of Trademark

There are four types of trademarks mentioned in the application form for registration of a trademark under the Trademarks Act, 1999, such as Standard, Collective, Certification and Series trademark.

- **Standard Trademark-** Standard character trademarks allow the applicant to register the word(s) of a trademark in any design, style, capitalization, or font. An application for a standard character trademark must include one representation of the standard character trademark in black on a white background and a statement to the effect that the trademark consists of standard characters.
- **Collective Trademark-** It is a trademark owned by an organization, used by its members to identify themselves with a level of quality or accuracy, geographical origin, or other characteristics set by the organization.
- **Certification Trademark-** It is the certification marks on the commercial product. These are known as a mark of validity or an assurance of fact that the manufacturer has tested the product. It ensured that it meets the quality standard. It also helps to specify the location of origin, materials of construction, mode of production, characteristics of goods *etc.* The Wool mark logo is used to certify goods of 100% wool.
- **Series Trademark -** It means a series number of trademarks which resemble each other to their material, particulars and differ only to matters of non-distinctive character not substantially affecting the identity of trademark.

4.1.2 Not Registrable Trademarks

As per Trademark Act, following trademarks may not be registered:

- Non-proprietary trademarks that cannot distinguish one person's goods or services from other goods or services.
- A descriptive trademark which indicates type, purpose, geographic origin, quality and quantity.

- Customary trademarks in current language and industry practices
- Deceive and confusion causing trademark
- Trademark that may deceive the public or cause confusion
- Religious susceptibilities related trademark
- Scandalous or obscene matter related trademark
- Trademarks prohibited under the Emblems and Names (Prevention of Inadequate Use, 1950)
- Trademarks comprising shapes such as resulting from the nature of the goods themselves.
- Contains the mark of the shape caused by the nature of the product.

4.2 Advantages of Trademark Registration

- Protect acquired consumers goodwill and faith
- Defend name/brand from being used in the similar way by other company
- Grants to products a reputation of branded goods.
- Give customers impression and satisfaction that the company is producing and selling standard quality products or services.
- Exclusive right to use trademark in relation to goods or services for which trademark registered.

4.3 Trademark Registration Process

Trademark registration is a long process involving multiple steps which are listed below:

4.3.1 Trademark Search

Before starting the process of trademark registration, the applicant must conduct a trademark search on the trademark database. The trademark search will provide information about the similar trademarks that have been filed in the trademark registry. You can conduct a trademark search by visiting the website of the trademark registrar (<https://ipindiaonline.gov.in/tmrpublicsearch/frmmain.aspx#>)

4.3.2 Trademark Filing

After completion of the trademark search, the trademark registration application can be submitted to the Trademark Registrar. Trademark applications can be filed in one of the five trademark registration offices with state jurisdiction or through online. The trademark registration application must contain the following information:

- Logo or the trademark
- Name and address of the Trademark owner
- Classification or Trademark class
- Trademark used since date
- Description of the goods or services

4.3.3 Trademark Application Allotment

After the trademark registration application is submitted to the Trademark Registration Office, the application allotment number will be provided within one or two working days. Then the applicant can also track trademark applications status online. Generally, when obtaining a trademark application assignment number, the trademark owner can paste the TM symbol next to the logo.

4.3.4 Vienna Codification

The "Vienna Classification" or "Vienna Codification Law" recognized by the Vienna Agreement (1973) is an international classification of the figurative rudiments of trademarks. Once the registration application is submitted, the trademark registration service provider will apply the Vienna Classification to the trademark based on the figurative elements of the trademark. In the process of this work, the status of the trademark application is usually reflected as "Sent for Vienna Codification".

4.3.5 Trademark Examination

After Vienna Codification is completed, the trademark registration application will be assigned to the Trademark Officer of Trademark Registrar Office, who will review the rightness of trademark application and issue a trademark review report.

The trademark officials have the ability to accept trademark registration applications and allow trademark journals to publish or oppose trademark registration applications. If the Trademark Officer is gratified with the trademark applicant's reasons, then the trademark will be allowed to publish in trademark journal. If application is opposed by Trademark Officer, then applicant has right to appear in Intellectual Property Appellate Board (IPAB) court before the Trademark Officer and file an opposition.

4.3.6 Trademark Journal Publication

After the acceptance of trademark registration application, the proposed trademark will be published in the "Trademark Journal" by the Trademark Registration Office. It is published once a week and contains all the trademarks accepted by the Trademark Registrar. After the trademark is published in the Trademark Journal, public has an opportunity to oppose the trademark registration. If there is no objection within 90 days after the trademark is published, the trademark has to be registered within 6 months. If application is conflicting by a third party, Trademark Officer will request for a hearing. Both trademark applicant and conflicting party have the opportunity to attend the hearing and provide reasons for registration or rejection of trademark application. Based on evidence presented on hearing, the Trademark Hearing Officer has to take decision whether that application should be acknowledged or rejected. The Trademark Hearing Officer judgment could be challenged by reporting to the IP Appeal Board.

4.3.7 Trademark Registration

When there is no objection to the trademark registration application, trademark document and registration certificate will be ready and once a trademark registration certificate has been issued for the owner's registered trademark to be dedicated to that trademark, and now a ® symbol can be placed next to the logo or trademark.

4.4 Comprehensive e-filing of Trademark

The Indian Trademark Registry has introduced the service of comprehensive e-filing of trademarks, which enable online e-filing of trademarks and facilitates the

entry of aforesaid particulars along with the uploading of requisite documents online. The e-filing system supports Windows 7 and above Operating Systems, Internet Explorer 10 and above web browser. The portal of comprehensive e-filing of trademarks and Class II digital signatures (capicom.dll component) can be accessed and downloaded at <http://ipindiaonline.gov.in/Trademarkefiling/user/frmlogin.aspx>. The detailed information related to trademark applications may be accessed through following link on website of trademark registry of India: <http://ipindia.nic.in/tmrnew/default.htm>. The complete flow chart of trademark registration is mentioned in Fig. 6.

4.5 Trademark Infringement

Without authorization of the trademark's owner or any licensee, trademark uses is an infringement of trademark exclusive rights. Trademark infringement usually occurs when a person uses a trademark that is similar to a product owned by another party. The trademark may be a symbol or design. Its owners can initiate legal proceedings against party which infringes the registered trademark. The infringement of trademark is a punishable offence with imprisonment of minimum six months to 3 years along with a minimum fine of ₹ 50,000 to ₹ 2,00,000 or both.

Note:

1. Well-known Trademark and Trans-border Reputation are given in Annexure 8;
2. Trademark Genericide in India are given in Annexure 9;
3. Example of some well-known registered trademarks are given in Annexure 10;
4. List of types of trademarks are given in Annexure 11;
5. Details of form for filing of trademarks application are given in Annexure 12.
6. Stages of prosecution of trademarks application in India are given in Appendix-4.
7. Some important case laws are given in Appendix-5.

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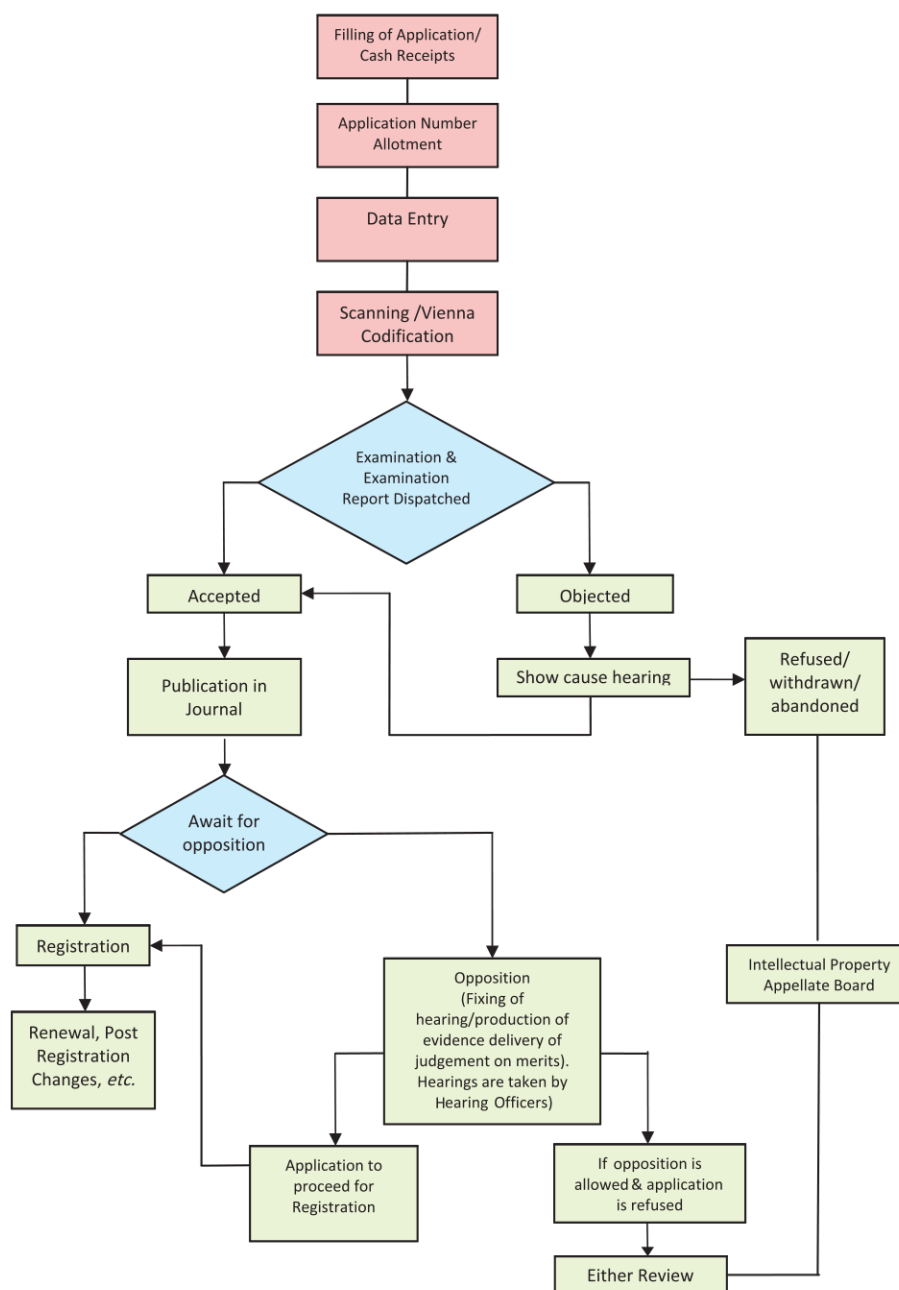


Fig. 6. Flow Chart of Trademark Registration

Source: <https://ssrana.in/ip-laws/trademarks/trademark-flowchart-india/>

5. THE DESIGNS ACT, 2000

The first decree of 1787 in the United Kingdom enacted a decree to protect designs. In 1883, the United Kingdom enacted patent, design and trademark laws. In 1905, with the enactment of a separate trademark law 1905, the patent and design laws were consistent. In British India, the earliest legislation was based on a model of British law, namely the Patent and Designs Act of 1872. Later on, Inventions and Designs Act 1888 was enacted to protect inventions and designs. According to British Patent and Designs Act of 1907, the Indian Patent and Designs Act of 1911 were enacted. The Patent Law 1970 abolished the patent provisions in the Patent and Design Law 1911. Since then, India has continued to adopt the Design Act 1911 to deal with designs. The 2002 "Design Law" came into effect on November 5, 2001 abolishing 1911 "Design Law". The new law is based on structure of Design Law, 1911. However, it also contains important provisions of TRIPS Agreement and other International Conventions. In accordance with the provisions of Design Law, the "Design Rules" 2001 was formulated. There are 48 parts under 11 chapters in new bill.

In India, protection and registration of industrial designs are subjected to Design Act, 2000 and corresponding Design Rules 2001. The Central Government exercised the powers conferred by Article 47 of the Design Law of 2000 (the "Law") and passed the Design (Amendment) Rules 2021 (the "Rules") on January 25, 2021 to treat start-ups, small entities and natural persons on an equal basis. The designs are applied for various products, such as handicrafts, jewellery, watches, fashion, luxury goods, household appliances, furniture, wallpaper, electrical appliances, textile designs, toys and pet accessories. In addition to natural persons, a new category of applicants, namely small entities has also been included. Industrial designs recognize the novelty and originality of new shapes, structures, surface patterns, decorations and lines or colours applied to objects. The design can be distinguished from trademarks, patents and copyrights, even though they look similar. The design is mainly for the appearance of the shape and has been registered as an industrial design, while the trademark is a label affixed to the product.

In Section 2(d), "design" only refers to the shape, figure, pattern, ornament, line or colour feature of any object that is applied to any item in two or three dimensions or both forms through any industrial process or means. Whether, it is manual, mechanical or chemical, alone or in combination. It is ultimately attracted and judged only by the eyes; but does not include any construction methods or principles, or anything that is not essentially a mechanical device, nor does it include any trademarks or property mark or any work of art. Therefore, the design has six characteristics. They are the composition of shapes, configurations, patterns, decorations, lines and colours. The terms shape and configuration refer to the form of an article, which is usually three-dimensional in nature. Patterns and decorations are decorative features commonly applied to the surface of products, such as wallpaper, textiles and playing cards. Pictures or equipment printed on packaging are also considered industrial designs and it is two-dimensional in nature.

5.1 Type of Applications

- a. **Ordinary application-** An ordinary application does not claim priority.
- b. **Reciprocity application-** Reciprocal application requires priority from applications previously filed in convention countries/regions. Such applications should be filed in India within six months from the date of submission to the convention country. The six-month period cannot be extended under any circumstances. Anyone who claims to be the owner of any new or original design can apply for registration. The applicant may be from India or a convention country and the owner can be the author of the design, the person who has obtained the design, the author who developed the design, or the person whose design has been transferred.

5.2 Not Registrable Subject Matter

The artistic work defined in Section 2(c) of the 1957 Copyright Law is not the subject of registration, and its contents are as follows:

"Art work" means:

- Paintings, sculptures, drawings (including diagrammes, maps or plans) on

- sculptures or photos, regardless of whether these works are of artistic quality
- Architectural work
- Any other work of art and craft

5.3 Essential Requirements for the Registration

- The design should be novel or inventive. They may not be published or used in any country/region before the registration application date
- The design should be related to the shape, structure, pattern, and decorative application or characteristics suitable for the article.
- The design should be applicable to any item through any industrial process.
- The design must appear and should be visible on the final product.
- Any structure or operation method or principle or anything that is essentially just a mechanical device, is not a registrable design.
- The design must not contain any trademarks or property marks or works of art as defined by the Copyright Act, 1957.

5.4 Filing Procedure of an Application

- The application should be submitted in Form 1 (Annexure 13), along with the approved fee and indicate the full name, address, nationality, article name, category number and address of service in India.
- If the applicants belongs to outside India, then he/she is also required to provide an Indian address for services, which can be the address of their agent in India.
- The class to which the article belongs should be correctly mentioned in Form-1. It may be noted that to register a design in more than one category, a separate application need to be submitted for each category.
- The application form should be signed by the applicant or its authorized agent/legal representative.
- Only registered patent agents or legal practitioners can be designated as authorized agents in India.
- If the applicant has registered a design in any other category of articles, the fact of the registration and the registration number should be mentioned in Form 1.

The applicant has to submit two copies of the design representation. The other relevant information of different types of forms and fees details can be searched from & download from official IP website (<https://www.ipindia.gov.in/form.htm>).

5.5 Infringement of Design Act, 2000

Infringement of a layout-design is considered a criminal offence in India. Any person who contravenes knowingly and wilfully shall be punishable with imprisonment for a term which may extend to three years, or with fine which shall not be less than ₹ 50,000 but which may extend to ₹ 10,00,000 or with both.

Note-

1. Details of form for filing applications under Design Act are given in Annexure-13.
2. A case study has been mentioned in Appendix-6.

6. GEOGRAPHICAL INDICATIONS OF GOODS (REGISTRATION & PROTECTION) ACT, 1999

The Government of India has established the Geographical Indications Registry with Geographical Indications of Goods (Registration & Protection) Act, 1999. This act is administered by the Controller General of Patents, Designs and Trade Marks (CGPDTM). India is a member of World Trade Organization (WTO) and the TRIPS agreement also provides protection for geographical indications. The Geographical Indications (GI) Act of India is a law. It is known as GI (Registration and Protection) Act of goods passed in 1999, which entered into force on September 15, 2003.

It is well known fact that the certain geographical products names have brand value and have gained importance in domestic as well as international market, especially in terms of products which are unique or uniformly associated with their name. The GI tag for an agricultural, natural or manufactured products, handicrafts or industrial products (including food) usually attracts the consumers' attention. It is possible to abuse the names of these place, or by mistake apply them to commodities/products which have no resemblance with place name. The GI tag provides protection for a product; prevent unauthorized persons from its misuse and helps in avoiding consumers cheating. This enhances economic prosperity of producers of GI products. Hence, international community has noticed that it is necessary to protect GI as marks of origin and "Appellations of origin".

This GI law aims to fulfill obligations under the WTO/GATT as signed by India in 1994. The purpose of decree is to prevent illegitimate benefits and profits by fraudulently using goods that have nothing to do with that geographical area with goods in a small number of areas, thereby preventing the person from misusing GI and protects consumers from deception. It is legal right of producers' GI tag to protect its identity and local names which had acquire reputation and credibility all over the world. The GI refers to a sign that identifies a product as originated from a certain area and has given quality, reputation that are attributable to its geographic origin. Therefore, GI does not contain the name of region where the goods are produced. It can be a word or a combination of words, such as Basmati rice, Darjeeling tea, Temi tea,

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Assam tea, Mysore silk, Mysore sandalwood oil, Mysore sandal soap, Mysore jasmine, Coorg orange, Madhubani paintings, Dharwad pedha, Alphonso mango, Tirupathi laddu, Kolhapuri chappal and Nanjangud banana *etc.*

The GI is not rights granted to individuals like trademarks and patents. If a GI is registered, it is equivalent to a public statement stating that the specific product originated from its geographical area. The protection is granted to GI through registration. The GI registration is not granted to an individual as it is granted to a place or commodity. It is national property, granted to group of individuals or producers' organizations or institutions which represents the interests of commodity producers, such as Coffee Board, Tea Board or the Indian Council of Agricultural Research. It hopes to register consumers' goodwill and strengthen relationship between GI and products/ commodities in the country. After first registering the GI in the name of association, separate registration and individual registration was carried out in the name of the actual user of the GI.

6.1 Benefits of GIs

- Identification of goods having special characteristics from a geographical area
- Use to recognize agricultural, natural or manufactured products
- Production/Processing/Preparation of manufactured goods in that area.
- Provide legal protection and prevent unauthorized uses
- Provide economic wealth to goods' producers produced in GI area which promotes exports by using GI tag as a source of goods identification for consumers
- Help producers to build brand value and consumer loyalty.

6.2 Not Registrable Indications

- Deceive or cause confusion.
- Contains scandalous or obscene material, any material that impairs current effectiveness religious sensitivity of community, caste or class of citizens.
- Territorial area of goods origin is literally correct, it is false for people to indicate that goods originated in another territory, or location
- Generic names or indications of goods

6.3 Registration Process for Geographical Indication

6.3.1 Filing of Application

The group of Individuals or Farmers Producer's Organization (FPO), Self-Help Groups (SHG), producers' associations or an organization or institution association of the concern goods could file the application for GI and after scrutiny, whether the indication comes within the ambit of definition of a GI under Section 2(1). Each and every application for the registration of a GI should be filed in the given format (GI-1A to ID, Annexure-14) and accompanied by prescribed fee of ₹ 5,000. The application should be submitted in triplicate along with certified copies of geographical indication related area map. It should also mention the details of special features about how to maintain the product safety norms and quality standards.

6.3.2 Preliminary Scrutiny

The content of the case statement is evaluated by an expert advisory panel having basic knowledge and subject proficient. They will carefully review application for any deficiencies and then determine correctness of the information. The applicant should take remedial measures in this regard within one month of communication and after that, inspection report is issued.

6.3.3 Show Cause Notice

After preliminary scrutiny and examination by the Registrar, if they had any objection in application, they would communicate objection to the applicant. The applicant should submit reply response or they may apply for hearing within two months. If applicant wishes to appeal, he can file an appeal within one month. If Registrar again finds any error, he has right to withdraw the GI application after giving the opportunity for hearing.

6.3.4 Publication in the GI Journal

It is mandatory that each application should be published in the "Journal of Geographical Indications" within three months of acceptance.

6.3.5 Opposition to Registration

Anybody could file an objection within three months to object the GI application

published in the Journal. The applicant will receive an objection notice from the GI Registrar Office. The applicant should send a copy of counter statement within two months. If he fails to do so, he will be deemed to have given up his application. If a counter-statement is filed, registrar should serve a copy to the person who made the notice of objection. After that, both parties will show affidavits and other supporting documents as their evidence. The court date of the case will be determined thereafter.

6.3.6 Registration

The GI application has to be registered by the registrar. The date of submission of registration application shall be considered as date of registration. The registrar will issue a certificate with the seal of the GI registry to the applicant. The complete flow chart of GI registration has been illustrated in Figure 7.

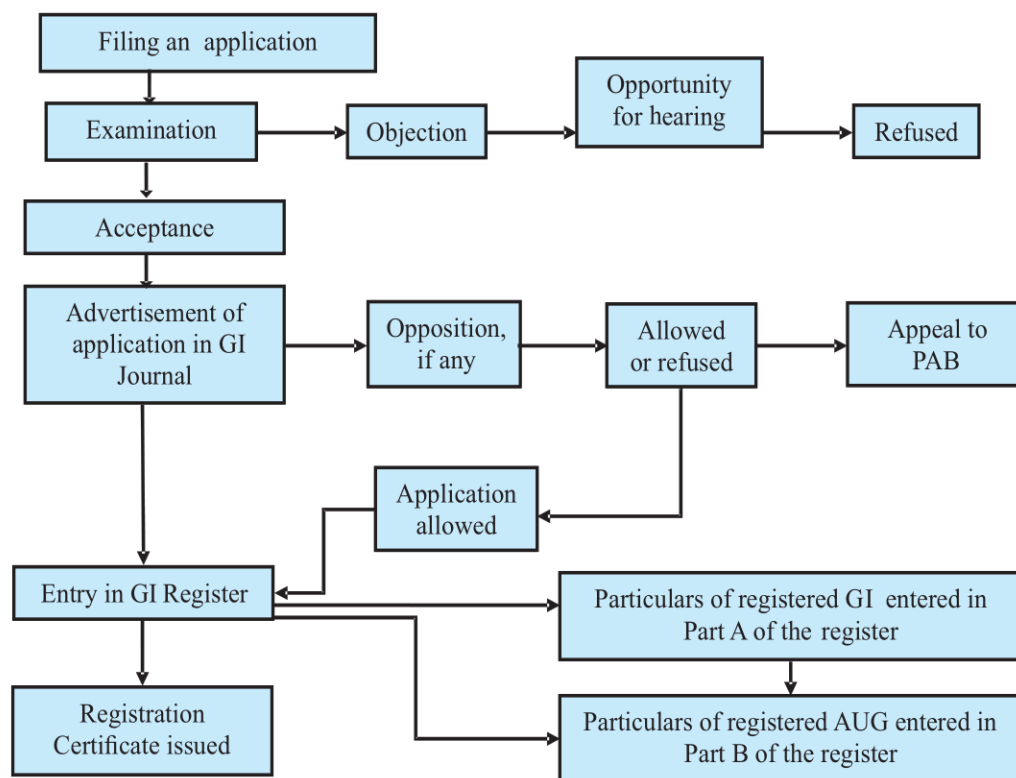


Fig. 7. Flow Chart of Geographical Indications of Goods

6.3.7 Renewal

The registered geographical indication is valid for 10 years and can be renewed with payment of the renewal fee.

6.3.8 Appeal

Anyone who is dissatisfied with the order or decision can appeal to the Intellectual Property Appeal Board (IPAB) within three months.

6.4 Infringement of Geographical Indications

As per the Geographical Indications (GI) of Goods (Registration and Protection) Act, 1999, forgery of the GI is a punishable offence with imprisonment of 6 months to 3 years and monetary penalty from ₹ 50,000 to ₹ 2,00,000 or both.

Note:

1. Details of form for filing the Geographical Indications of Goods (Registration & Protection) Act, 1999 is given in Annexure-14.
2. Some important case studies of the Geographical Indicators perspective are given in Appendix-7.

7. THE SEMICONDUCTOR INTEGRATED CIRCUITS LAYOUT DESIGN ACT, 2000

The Semiconductor Integrated Circuit Layout Design Registry (SICLDR) register the application of layout design which represents the layout of transistors and other circuit components, and includes the leads that connect such components and the semiconductor integrated circuit in any way created. Intellectual Property Rights under the The jurisdiction of the registry (SICLD) is the entire India. In accordance with the guidelines setout in Semiconductor Integrated Circuit Layout Designs (SICLD) Act, 2000 and the SICLD Rules, 2001, it reviews original layout design of semiconductor integrated circuits. The registration of the layout design gives the registered owner of the layout design exclusive rights to use the layout design and obtain infringement relief, and the registered owner of the layout design shall enjoy this right, regardless of the fact that the layout design is included in the article.

The registration of the layout design is given to the registered proprietor of the layout design the exclusive right to the use of the layout design and to obtain relief in respect of infringement and the right shall be available to the registered proprietor of that layout design irrespective of the fact as to whether the layout design is incorporated in an article or not. An integrated circuit layout design which meets the following standards can be registered under this Act:

- Original
- Distinct
- Can be distinguished from other layout designs
- Commercial development has not been carried out in India or anywhere in the convention country.

7.1 Layout Designs are prohibited from Registration

- Non-original
- Commercial development has been carried out in India or anywhere in the convention country
- There is no inherent uniqueness and can be distinguished from other registered layout design.

7.2 Procedure for Registration

- The application form can be submitted to the Registrar for Layout Design registration, and use the LD-1 form (Annexure 15) to make and attach the registration fee of ₹ 5,000 and three sets of mask layout or photos which describe the layout design.
- The applicant will receive a copy of acceptance of application. If it is found that the application is forbidden to register, the registration can also be withdrawn.
- After accepting the layout application, it will be advertised in the prescribed manner within 14 days. If there is any objection to the registration, the notice would be sent to the registrar in the prescribed manner within three months from the date of advertisement. The registrar can enquire both parties to provide evidence and take the final decision.
- If the application is not opposed or it has been decided in favour of the applicant by the Registrar of Layout Design, they will issue a certificate with the seal of the SICLD registry.

7.3 Duration of Registration and Protection

The registration of the layout design is valid for ten years, counting from the date of filing in the registration application or from the date of the first commercial development anywhere in the country.

7.4 Infringement of Semiconductor Layout Design Act, 2000

According to the Semiconductor Layout Design Act, 2000, infringement of registered layout designs shall be punishable offence with a maximum of three years imprisonment or a fine of ₹ 50,000/-, maximum fine upto ₹ 1,00,000/- or both.

Note:

Details of form of filing application has been shown in Annexure-15.

8. THE BIOLOGICAL DIVERSITY ACT, 2002

The biodiversity is a multi-disciplinary subject involving the activities and actions of multiple sectors. It contains the diversity of all life on earth. India is one of the world's top twelve countries with enormous biodiversity. India occupies only 2.5% of total land area and accounts for 7% to 8% of the world's recorded species. India is rich in indigenous traditional knowledge (ITK's) in coding and informal areas. Therefore, recognition of ITK's of that countries have the sovereign right to use their own biological resources. The United Nations Conference on Biological Diversity held in Rio de Janeiro in 1992, reaffirmed the sovereignty of all countries over their biological resources. In this meeting, the Convention on Biological Diversity (CBD) was signed in Rio de Janeiro on June 5, 1992, which entered into force on December 29, 1993. India signed the CBD, as it considered necessary to implement the Convention rule and regulation.

The Biodiversity Act, 2002 is a decree implemented by the Indian Parliament to protect India's biodiversity. The Act was promulgated to fulfill the obligations under the CBD to which India is a party. The United Nations Convention expects all parties to promote access to genetic resources by other parties for environmentally sound purposes (Articles 3 and 15) under mutually agreed conditions in compliance with national laws. Article 8(j) of the CBD recognizes the contribution of local and indigenous communities for conservation and sustainable use of diverse biological resources through ITK's, practices and innovations and benefit sharing with such people resulting from the use of their ITK's, benefits of knowledge, practice and innovation. The biodiversity is defined as variability between living organisms of various sources and their ecological complexes, including diversity within species or between species and ecosystems.

The biological resources are defined by this Act such as plants, animals, and microorganisms or their parts with actual or potential uses or value, their genetic material, and by-products (excluding value-added products), and excluding human genetic material. The stakeholders of biodiversity are the central government, state governments, local self-government agencies, scientific and technological institutions, non-governmental organizations, industry, *etc.* The main challenges

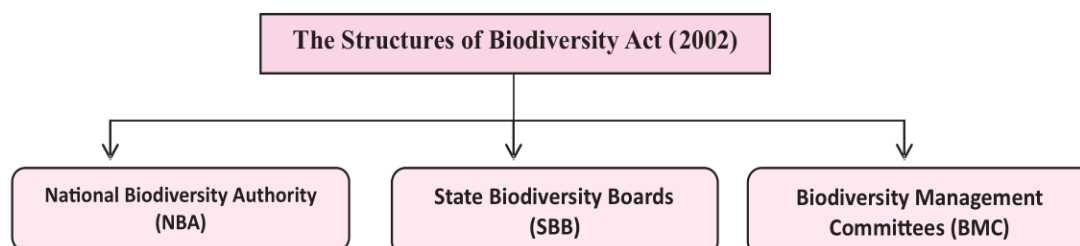
faced by India is the adoption of an instrument that will help to achieve the goal of fair sharing of benefits contained in the CBD.

8.1 Salient Features of the Biological Diversity Act (BDA), 2002

- To respect and protect the knowledge of local communities related to biodiversity
- To standardize access to country's biological resources
- Conservation and sustainable use of biodiversity
- To ensure the sharing of benefits with the local people who are the keepers of biological resources, owners of knowledge and information related to the use of biological resources;
- Protect and develop important areas from the perspective of biodiversity and declare them as biodiversity heritage
- Protect and rehabilitation endangered species
- Through the formation of committees, state government agencies are involved in a broad plan to implement the Biodiversity Act.

8.2 Convention on Biological Diversity (CBD)

The Convention is based on the principle that local communities who generated and rely on biodiversity should be benefited from its commercial use. The CBD was signed at United Nations Conference on Environment and Development (UNCED) held in Rio de Janeiro in 1992, and entered into force on December 29, 1993. More than 170 countries are the members of CBD. India became a signatory of the Convention on Biological Diversity (CBD) on June 5, 1992. The main objective of the Convention is to promote the protection of biodiversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising from the use of genetic resources.



8.2.1 National Biodiversity Authority (NBA)

The Government of India established the National Biodiversity Authority (NBA) in 2003 to implement India's Biodiversity Act (2002). The NBA is a statutory body that performs facilitative, supervision and advisory functions for the Government on issues such as protection, sustainable use of biological resources and fair sharing of economic benefits with stakeholders. The headquarters of NBA is located in Chennai. The NBA can establish offices elsewhere in India with prior approval from the Government. The NBA may constitute a committee to deal with agro-biodiversity to regulate the biological diversity, agriculture-related species, and their wild relatives.

8.2.1.1 Functions and powers of the National Biodiversity Authority

The functions and powers of the NBA are as follows:

- (a) The National Biodiversity Authority can advise the Central Government on matters related to the protection of biodiversity, sustainable use of its components and the fair sharing of benefits arising from the use of biological resources.
- (b) Provides advice to the State Governments when selecting areas of biodiversity importance as heritage sites and the measures to manage such heritage sites.
- (c) The National Biodiversity Authority can take necessary measures on behalf of the Government to oppose the granting of intellectual property rights to any biological resources obtained from India or knowledge related to such biological resources in any country/region other than India.

8.2.2 State Biodiversity Boards

As per Section 22 of the Act, the State Biodiversity Boards (SBBs) have been established in the States. Accordingly, SBBs have been established in all the 29 States of the country. The SBB focuses on the recommendations of the State Government and follow guidelines issued by the Central Government, covering matters related to the protection of biodiversity, the sustainable use of its components and fair sharing of the benefits generated by use of diverse biological resources.

8.2.2.1 Functions of the State Biodiversity Boards

The functions of the State Biodiversity Boards are as follows:

- a) To provide advice to the State Governments on matters related to the conservation of biodiversity, sustainable use of its components, and fair sharing of benefits arising from the use of biological resources.
- b) To regulate granting of approvals to Indians citizens to conduct commercial use or biological investigation and regulation of any biological resources.
- c) To perform other necessary functions of provisions of this law or specified by the State Governments.

8.2.3 Biodiversity Management Committees (BMC)

According to the Act, local agencies form the BMC in accordance with the provisions of Section 41 within their jurisdictions, with the purpose of promoting the protection, sustainable use and documentation of biodiversity, including the protection of habitats, protection of landraces, folk varieties and cultivation variety, a chronicle of domesticated animal population and species, microorganisms and knowledge related to biodiversity. The BMC is composed of a chairman and six members nominated by local institutions, including 1/3 women and 18% from SC/ST population.

Each local agency shall form a Biodiversity Management Committee in its area to promote the conservation, sustainable use and documentation of biodiversity, including protected habitats, landraces, folk varieties and cultivars, livestock populations, animal's breeds, microbial species and knowledge related to biodiversity.

The National Biodiversity Authority (NBA) and the National Biodiversity Commission (NBC) shall consult with the Biodiversity Management Committee (BMC), and at the same time, make decisions on the use of biological resources and knowledge related to such resources within the territorial jurisdiction of BMC.

8.2.3.1 Functions of the Biodiversity Management Committees

The functions of BMCs are as follows:

- a. In consultation with local people, prepare, maintain and verify the People's Biodiversity Register (PBR). BMC will maintain a register to provide detailed

information about the biological resources and traditional knowledge available under the jurisdiction of BMC.

- b. Guidance on any matter approved by the State Biodiversity Board or Authority to maintain data on the local *Vaids* and practitioners using the biological resources.

8.3 Regulation of Access to Biological Diversity

8.3.1 In reference of Citizenship Act

- (i) Without the prior approval of the National Biodiversity Authority, no person referred to in Sub-Section (2) (Citizenship Act, 1995) shall obtain any biological resource occurring in India or knowledge related to them for research or commercial or biological utilization.
- (ii) The person who must be permitted by the NBA such as a non-Indian citizen, an Indian citizen who is a non-resident referred to in Section 243 (30) of the Income Tax Act, 1961, and a corporate body, organization and association which are not established or registered in India, and an association, organization, and company incorporated or registered in India under any laws in force at the time, its share capital or management must have any non-Indian participation.

8.3.2 In Reference of Transfer of Research Result

Without the prior approval of the NBA, no one may transfer any research results related to any biological resources occurring in or obtained from India to anyone who is not an Indian citizen or an Indian citizen by monetary or other means a person in India who is a non-resident as defined in Section 2(30) of the Income Tax Act, 1961, or a legal entity or organization that is not registered or incorporated in India or has not any participation in its equity or management.

8.3.3 In Reference of Collaborative Research Projects

The provisions of Sections 3 and 4 do not apply to collaborative research projects involving the transfer or exchange of biological resources or related information between institutions, including institutions funded by the Government of India and institutions in other countries, provided that the conditions for satisfying such collaborative research projects are specified in subsection (3).

8.3.4 In Reference of Intellectual Property Rights

Without the prior approval of the National Biodiversity Authority of India, no one may apply for intellectual property rights of any invention in or outside India based on any research or information on biological resources obtained from India. If a person applies for a patent, he can obtain a license from the National Biodiversity Authority after accepting the patent but before stamping on that patent document by the Patent Office.

8.3.5 In Reference of Biological Resources

Indian citizens or any person in a legal entity, association or organization registered in India shall not obtain any biological resource for commercial use or use biological surveys and biological use for commercial use, unless it has given prior intimation to the State Biodiversity Board (SBB). The provisions of this Section do not apply to the local people and communities of the area, including growers and cultivators of biodiversity, and *vaid*s and *hakim*, who are engaged in practicing of indigenous medicine.

8.4 Infringement and Offences of Biodiversity

If someone violates the instructions or orders of the Government of India, State Government, National Biodiversity Authority or National Biodiversity Commission, there is no separate penalty under this law. Violations may lead to the fine of ₹ 100,000. In the case of one or more violations, it may be extended to ₹ 2,00,000, and in the case of continuous violations, an additional fine of ₹ 2,00,000 per day may be imposed. In heinous crimes, the offender shall be punished with up to five years' imprisonment or a fine of up to ₹ 10,00,000 and if the damage caused exceeds ₹ 10,00,000, such fine may commensurate with the damage caused.

Note:

1. Details of form for filing application under the BDA, 2002 are given in Annexure-16.
2. Details about filing different types of applications under BDA, 2002 and other details of specific activities are given in Annexure-17.
3. Details of guidelines for Citizenship Act 1995 can be accessed at <http://legislative.gov.in/acts-of-parliament-from-the-year/citizenship-act>.
4. Some case studies have been reported in Appendix-8.

9. THE PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS ACT, 2001

The Indian Government has adopted a *sui generis* system and promulgated the Plant Varieties and Farmers' Rights Protection Act (PPV&FR), 2001. The protection of new plant varieties provides legal protection to the breeders for their new plant varieties in the form of plant breeders' rights. The *sui generis* system is an effort by the Government of India, through which it identify and protect commercial plant breeders and farmers in conserving, improving, and providing plant genetic resources for expanding new plant varieties and motivating the development of new plant varieties.

India's legislation is not merely in line with the International Union for Protection of New Varieties of Plants (UPOV) in 1978, but also has adequate regulations to protect the interests of public/private sector breeding institutions and farmers. The law recognizes the benefits of commercial plant breeders and farmers in plant breeding activities and provides for the implementation of TRIPS in a way that supports the specific socio-economic interests of all stakeholders (including research institutions, private, public, and farmers with scarce resources). The law's protection of plant varieties has accelerated agricultural development, stimulated research and development investment in the development of new plant varieties, thereby promoting the development of the seed industry sector and ensuring the provision of high-quality seeds and plant materials to farmers. Farmers who have evolved the new varieties have the right to register and protect varieties just like a breeder. Farmers' varieties can also be registered as existing varieties. Farmers can save, use, sow, resow, exchange, share or sell protected seeds of their farm, but farmers have no right to sell seeds of branded varieties which are protected by the PPV&FR Act, 2001. Anyone claiming to be the breeder of the variety or any successor of the breeder of the variety, or anyone having the right to make such an application is the assignee or breeder of the variety, or any farmer or group of farmers or anyone who is a farmer claimed by the community to the breeder of the breed, or who is authorized to represent the breeder of the breed, or a university or public funded agricultural institution. According to the Act, following four types of plant varieties can be registered:

- a) **New Varieties:** Varieties which are not in community domain in India previously than one year before the date of application filing or outside India,

such as earlier than six years for trees or vines or four years in any other case.

- b) **Extant Variety:** Varieties declared under the Seed Law, 1966 or varieties with common knowledge, or varieties belonging to farmers or any other varieties in the public domain, are considered as extant varieties.
- c) **Farmers' Variety:** Traditionally cultivated varieties which are evolved by the farmers in their land and farmers have traditional knowledge on them such as wild varieties or local varieties.
- d) **Essentially Derived Variety (EDV):** The essentially derived variety is mainly derived from the initial variety, or from a variety that is primarily derived from the initial variety but retains the initial variety expression. It is the basic characteristic produced by the genotype or genotype combination of the initial variety and can be clearly distinguished from the initial variety. The EDV corresponds to an initial variant that is produced by the genotype or combination of genotypes of this initial variant.

9.1 The Exemptions Provided under the Act

Breeders' Rights

The plant breeders have the right to produce, sell, distribute, import or export the registered plant varieties by their Breeder's exclusive rights. Breeder can assign agent/ licensee and can exercise civil remedies in case of infringement of rights.

Researchers' Rights

The researcher can conduct experimental or research trials of the registered variety under this Act. This includes the utilization of the variety as the preliminary source of the variety in order to develop another variety, but repeated use requires the prior consent of the registered breeder.

Farmers' Rights

Farmers are entitled to receive acknowledgment and rewards for the protection of the genetic constitution of landrace and wild relatives of the remunerative plant. According to the Act, farmers are exempted to pay fee in any proceedings before the Administration or the Hon'ble High Court.

9.2 Criteria for Protecting Plant Variety

Fifty-four crop species has been notified by the Government of India for

registration under PPV&FR Act. The Authority has established species-specific guidelines/tests such as Distinctiveness, Uniformity and Stability (DUS) for individual crop species. In order to register a new plant variety, the following conditions must be fulfilled:

Distinct: A variety should be clearly distinguishable by at least one essential characteristic from existing or commonly known varieties in any country at the time of filing of the application. At the time of application, the existing varieties or well-known varieties in any country should have at least one basic characteristic to distinguish the obvious varieties.

Uniform: The basic characteristics of the variety must be sufficiently uniform.

Stable: After repeated propagation or when there is a specific breeding cycle at the end of each cycle, the basic characteristics of the breed must be stable.

9.3 Non-Registrable Plant Varieties in India

In India, all plant varieties cannot obtain legal protection. The PPVFR Act, 2001 excludes the protection of certain plant varieties. In order to protect public order or public morals or the life and health of humans, animals and plants, or to avoid serious damage to the environment, it is necessary to prevent commercial development of those species or any species of terminator technology and any species of any genus which is not listed in the notice issued by the Government of India shall not be registered under the Act.

9.4 Duration of Protection for a Registered Plant Variety

Trees and Vines: 18 Years

Other crops: 15 Years

Extant Varieties: 15 years from the date when the Government of India notified the variety in accordance with the 'Seed Act, 1966'

9.5 Procedure for Filing

The applicants are required to deposit a fixed number of seeds or propagation materials with an adequate rate of germination, physical purity and phyto-sanitary standards and a seed quality test report to the authority. The Registrar will review and accept it after satisfaction.

- Any eligible person can submit an application to the Plant Variety Registry. If a

variety basically meets the Distinctiveness, Uniformity and Stability (DUS) criteria. It is eligible for registration under the Act. The seed deposition is essential for conducting DUS test by PPV&FR Authority.

- The Government of India issues a notice in the official gazette, designating genera and species to register varieties. The Authority publishes its official journal "Plant Varieties Journal of India" (PVJI) in bilingual monthly (Hindi and English), and publishes it on its official website on the first working day of each month.

Applicants which fulfill all requirements are finally accepted by the Registrar. Any information about protection, applications, fee structure, *etc.* can be obtained from the office of PPV & FRA or through <http://www.plantauthority.gov.in/>.

The ICAR-Indian Institute of Sugarcane Research, Lucknow has already applied for registration of four sugarcane varieties namely, CoLk 11203 (Ikshu-5), CoLk 11206 (Ikshu-4), CoLk 12207 (Ikshu-6) and CoLk 12209 (Ikshu-7) for the Protection of Plant Variety under the Protection of Plant Variety and Farmers Right Act, 2001 to the PPV&FR Authority, New Delhi.

9.6 Infringements of Plant Varieties and Farmers' Rights

A person, who reproduces, sells, imports or exports any variety without permission of the owner, infringes the rights, of owner. The use of a denomination which is similar to a registered denomination and likely to confuse the general public also amounts to infringement. Infringement of any right under the Protection of Plant Varieties and Farmers' Rights (PPV&FR) attracts both civil and criminal action. A criminal action under the Act entails punishment in the form of imprisonment up to two years or a monetary fine up to ₹ 5,00,000 or both.

Note:

1. Details of application for registration of plant varieties can be downloaded from <http://www.plantauthority.gov.in/PVR.htm>
2. List of notified crop species for the purpose of registration has been presented in Annexure-18.

Annexure-1

Different Types of Applications for Filing of Patent

1. Ordinary Application

The ordinary application consists of two types of application which are discussed below:

- (i) Provisional specification
- (ii) Complete specification

2. Convention Application

A convention application is a kind of patent application, which claims a priority date based on similar applications filed in one or more convention countries. Applicants must submit a copy of the same application and the priority document and its English translation (if required) to the Patent Office of India within 12 months from the date of filing a similar application for the first time in a conventional country, and can track their application status.

3. PCT International Phase Application

The PCT application is a single international patent application governed by the Patent Cooperation Treaty. It provides protection for inventions in as many as 142 countries. After the priority date is obtained, the PCT application is internationally recognized and enters various countries from the international filing date or priority date within 30/31 months. PCT applications have brought benefits to applicants in terms of delays in fees related to patent applications in various countries.

This type of application provides an international search report citing prior art, which demonstrates the novelty of the innovation, and also provides the option of requesting an international preliminary inspection report based on opinions on the patentability of the invention. Through these types of searches, applicants can make more informed choices in the early stages of the patent process before the major expenditures in the national phase of the patent process begin, and modify the application to deal with any conflicting materials, so that the applicant can made fair treatment before charging fees for applications and prosecutions in each country.

4. PCT National Phase Application

The PCT patent application filing is easier than that of an ordinary national application, because most of the requisite formalities have been resolved earlier in the

international stage itself. The application entered the national phase PCT application within 31 months from the priority date. The national phase of a PCT patent filing application is similar to a national filing application in the corresponding country/region. The judgment to grant patent protection in a particular country/region ultimately depends on the Patent Office of that country/region.

5. Patent of Addition

The applicant feels that he has an invention that needs slight modification, and the inventor has already applied for or obtained a patent. If the invention does not involve substantive invention steps, the applicant can apply for addition in patent documents. The main advantage of the applicant is that they does not need to pay any renewal fees during the validity period of the main patent, and the additional patent expires with the main patent.

6. Divisional Application

When an application filed by the applicant requires more than one invention, the applicant may file an application separately or separate the application in order to satisfy official objections, and submit two or more applications for apply to each invention. This type of application is separated from the parent application and is called a divisional application. The priority date of all divisional applications will be similar as the priority date of the parent application.

Annexure-2

Details of Forms for Filing of a Patent Application

FORM 1						(FOR OFFICE USE ONLY)	
THE PATENTS ACT 1970 (39 of 1970) and THE PATENTS RULES 2003							
APPLICATION FOR GRANT OF PATENT							
(See Section 7, 54 and 135 and Sub-rule (1) of Rule 20)							
				Application No.			
				Filing date:			
				Amount of Fee paid:			
				CBR No:			
				Signature:			
1. APPLICANT'S REFERENCE / IDENTIFICATION NO. (AS ALLOTTED BY OFFICE)							
2. TYPE OF APPLICATION [Please tick (✓) at the appropriate category]							
Ordinary ()		Convention ()		PCT-NP ()			
Divisional ()	Patent of Addition ()	Divisional ()	Patent of Addition ()	Divisional ()	Patent of Addition ()		
3A. APPLICANT(S)							
Name in Full	Nationality	Country of Residence		Address of the Applicant			
				House No.			
				Street			
				City			
				State			
				Country			
				Pin code			
3B. CATEGORY OF APPLICANT [Please tick (✓) at the appropriate category]							
Natural Person ()		Other than Natural Person					
		Small Entity ()		Start-up ()		Others ()	
4. INVENTOR(S) [Please tick (✓) at the appropriate category]							
Are all the inventor(s)				Yes ()		No ()	

ICAR-Indian Institute of Sugarcane Research, Lucknow

same as the applicant(s) named above?					
If "No", furnish the details of the inventor(s)					
Name in Full	Nationality	Country of Residence	Address of the Inventor		
			House No.		
			Street		
			City		
			State		
			Country		
			Pin code		
5. TITLE OF THE INVENTION					
6. AUTHORISED REGISTERED PATENT AGENT(S)		IN/PA No.			
		Name			
		Mobile No.			
7. ADDRESS FOR SERVICE OF APPLICANT IN INDIA		Name			
		Postal Address			
		Telephone No.			
		Mobile No.			
		Fax No.			
		E-mail ID			
8. IN CASE OF APPLICATION CLAIMING PRIORITY OF APPLICATION FILED IN CONVENTION COUNTRY, PARTICULARS OF CONVENTION APPLICATION					
Coun-try	Applica-tion Number	Filing date	Name of the applicant	Title of the invention	IPC (as classified in the convention country)

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9. IN CASE OF PCT NATIONAL PHASE APPLICATION, PARTICULARS OF INTERNATIONAL APPLICATION FILED UNDER PATENT CO-OPERATION TREATY (PCT)

International application number	International filing date

10. IN CASE OF DIVISIONAL APPLICATION FILED UNDER SECTION 16, PARTICULARS OF ORIGINAL (FIRST) APPLICATION

Original (first) application No.	Date of filing of original (first) application

11. IN CASE OF PATENT OF ADDITION FILED UNDER SECTION 54, PARTICULARS OF MAIN APPLICATION OR PATENT

Main application/patent No.	Date of filing of main application

12. DECLARATIONS

(i) Declaration by the inventor(s)

(In case, the applicant is an assignee: the inventor(s) may sign herein below or the applicant may upload the assignment or enclose the assignment with this application for patent or send the assignment by post/electronic transmission duly authenticated within the prescribed period).

I/We, the above-named inventor(s) is/are the true & first inventor(s) for this Invention and declare that the applicant(s) herein is/are my/our assignee or legal representative.

- (a) Date
- (b) Signature(s)
- (c) Name(s)

(ii) Declaration by the applicant(s) in the convention country

(In case, the applicant in India is different than the applicant in the convention country: The applicant in the convention country may sign herein below or applicant in India may upload the assignment from the applicant in the convention country or enclose the said assignment with this application for patent or send the assignment by post/electronic transmission duly authenticated within the prescribed period)

I/We, the applicant(s) in the convention country declare that the applicant(s) herein is/are my/our assignee or legal representative.

- (a) Date
- (b) Signature(s)
- (c) Name(s) of the signatory

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(iii) Declaration by the applicant(s)

I/We the applicant(s) hereby declare(s) that: -

- I am/ We are in possession of the above-mentioned invention.
- The provisional/complete specification relating to the invention is filed with this application.
- The invention as disclosed in the specification uses the biological material from India and the necessary permission from the competent authority shall be submitted by me/us before the grant of patent to me/us.
- There is no lawful ground of objection(s) to the grant of the patent to me/us.
- I am/We are the true & first inventor(s).
- I am/We are the assignee or legal representative of true & first inventor(s).
- The application or each of the applications, particulars of which are given in Paragraph-8, was the first application in convention country/countries in respect of my/our invention(s).
- I/We claim the priority from the above-mentioned application(s) filed in convention country/countries and state that no application for protection in respect of the invention had been made in a convention country before that date by me/us or by any person from which I/we derive the title.
- My/Our application in India is based on international application under Patent Cooperation Treaty (PCT) as mentioned in Paragraph-9.
- The application is divided out of my/our application particulars of which is given in Paragraph-10 and prays that this application may be treated as deemed to have been filed on DD/MM/YYYY under Section 16 of the Act.
- The said invention is an improvement in or modification of the invention particulars of which are given in Paragraph-11.

13. FOLLOWING ARE THE ATTACHMENTS WITH THE APPLICATION

(a) Form 2

Item	Details	Fee	Remarks
Complete/ provisional specification) #	No. of pages		
No. of Claim(s)	No. of claims and No. of pages		
Abstract	No. of pages		
No. of Drawing(s)	No. of drawings and No. of pages		

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- # In case of a complete specification, if the applicant desires to adopt the drawings filed with his provisional specification as the drawings or part of the drawings for the complete specification under rule 13(4), the number of such pages filed with the provisional specification are required to be mentioned here.
- (b) Complete specification (in conformation with the international application)/as amended before the International Preliminary Examination Authority (IPEA), as applicable (2 copies).
- (c) Sequence listing in electronic form
- (d) Drawings (in conformation with the international application)/as amended before the International Preliminary Examination Authority (IPEA), as applicable (2 copies).
- (e) Priority document(s) or a request to retrieve the priority document(s) from DAS (Digital Access Service) if the applicant had already requested the office of first filing to make the priority document(s) available to DAS
- (f) Translation of priority document/Specification/International Search Report/International Preliminary Report on Patentability
- (g) Statement and Undertaking on Form 3
- (h) Declaration of Inventorship on Form 5
- (i) Power of Authority
- (j)

Total fee ₹.....in Cash/ Banker's Cheque /Bank Draft bearing No.....Date on Bank.

I/We hereby declare that to the best of my/our knowledge, information and belief the fact and matters stated herein are correct and I/We request that a patent may be granted to me/us for the said invention.

Dated this.....day of.....20.....

Signature:

Name:

To,

The Controller of Patents

The Patent Office, at.....

Note: -

* Repeat boxes in case of more than one entry.

* To be signed by the applicant(s) or by authorized registered patent agent otherwise where mentioned.

Tick (✓)/cross (x) whichever is applicable/not applicable in declaration in Paragraph-12.

* Name of the inventor and applicant should be given in full, family name in the beginning.

* Strike out the portion which is/are not applicable.

* For fee: See First Schedule"

THE GAZETTE OF INDIA: EXTRA ORDINARY

FORM 2

THE PATENT ACT, 1970

(39 of 1970)

The Patents Rules, 2003

PROVISIONAL/COMPLETE SPECIFICATION

(See Section 10 and Rule 13)

1. TITLE OF THE INVENTION

2. APPLICANT (S)

- a) NAME:
- b) NATIONALITY:
- c) ADDRESS:

3. PREAMBLE TO THE DESCRIPTION

PROVISIONAL

The following specification describes the invention.

COMPLETE

The following specification particularly describes the invention and the manner in which it is to be performed.

4. DESCRIPTION (Description shall start from next page.)

5. CLAIMS (not applicable for provisional specification. Claims should start with the preamble

"I/We claim" on separate page)

6. DATE AND SIGNATURE (to be given at the end of last page of specification)

7. ABSTRACT OF THE INVENTION (to be given along with complete specification on separate page)

- Repeat boxes in case of more than one entry.
- To be signed by the applicant(s) or by authorized registered patent agent. Name of the applicant should be given in full, family name in the beginning.
- Complete address of the applicant should be given stating the Postal Index No./Code, state and country.
- Strike out the column which is/are not applicable.

List of Forms for IPR

Form 1	Application for grant of patent
Form 2	Provisional/Complete specification
Form 3	Statement and undertaking under Section 8
Form 4	Request for extension of time
Form 5	Declaration as Inventorship
Form 6	Claim or request regarding any change in applicant for patent
Form 7	Notice of opposition
Form 8	Request or claim regarding mention of inventor as such in a patent
Form 9	Request for publication
Form 10	Application for amendment of patent
Form 11	Application for direction of the Controller
Form 12	Request for grant patent under Section 26 (1) and 52 (2)
Form 13	Application for amendment of the application for patent/complete specification
Form 14	Notice of opposition to amendment/restoration/surrender of patent/grant of compulsory license or revision of terms thereof or to correction of clerical errors
Form 15	Application for the restoration of patent
Form 16	Application for registration of title/interest in a patent or share in it or registration of any document purporting to affect proprietorship of the patent
Form 17	Application for compulsory licence
Form 18	Request/express request for examination of application of patent
Form 19	Application for revocation of a patent for non-working
Form 20	Application for revision of terms and conditions licence
Form 21	Request for termination of compulsory licence
Form 22	Application for registration of patent agent
Form 23	Application for the restoration of the name in the register of patent agents
Form 24	Application for review/setting aside Controller's decision/order
Form 25	Request for permission for making patent application outside India
Form 26	Form for authorization of a patent agent/or any person in a matter of proceeding under the Act
Form 27	Statement regarding the working of the patented invention on commercial scale in India
	3 rd Schedule- Form of Patent
	4 th Schedule- Fee Structure

Suggested Websites for Relevant Details on IPR

1. *www.IPWatchdog.com*
2. *www.IPLawportal.com*
3. *www.wto.org*
4. *www.esa.int/Specials/IntellectualPropertyRights*
5. *www.indianpatents.org.in*
6. *www.ipindia.nic.in*
7. *www.tifac.org.in*
8. *www.patentoffice.nic.in*
9. *www.uspto.gov*
10. *www.patent.gov.uk*
11. Patent Cooperation Treaty (PCT) 1970 *www.wipo.int/pct/*
12. General information concerning US Patents - *http://www.uspto.govt*

Annexure-5

List of Websites to Find Out Details of Patents

Patent sites in India

<http://www.nii.res.in/patentind.html>

<http://patinfo.nic.in/main.php>

Patent sites for major countries

<http://members.pcug.org.au/rossco/patentsearchina.htm>

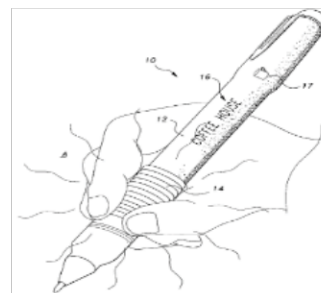
<http://www.ipmenu.com/patentresources.htm>

Annexure-6

Some Inventions Related to Defence

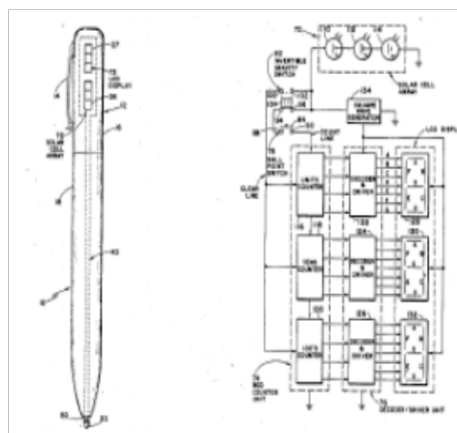
Pen with a scented housing 2004-02-12

- Pen has a grip incorporated into the pen barrel
- Barrel with scent coating
- Is useful as a promotional device
- Aroma of coffee



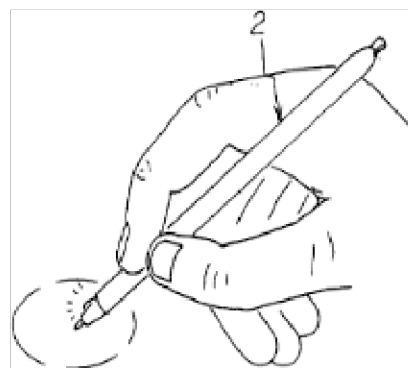
Writing instrument with solar-powered electronic counting and liquid crystal display

- Pen on pressing
- Connects solar cell array with counter
- LCD connected to counter displays counts



Writing apparatus with incorporated light 2002-04-04

- Light connected to battery –inside pen
- Same push button for pen and light



Source: Patent Office, Chennai

FORM XIV
Application for Registration of Copyright
[See Rule 70]

To,

The Registrar of Copyrights
Copyright Office
Boudhik Sampada Bhawan, Plot No. 32
Sector 14, Dwarka, New Delhi-110078
Phone: 011-28032496

Sir,

In accordance with Section 45 of the Copyright Act, 1957 (14 of 1957), I hereby apply for registration of copyright and request that entries may be made in the Register of Copyrights as in the enclosed statement of particulars' sent herewith.

1. I also send herewith duly completed the statement of further particulars relating to the work.
2. In accordance with Rule 70 of the Copyright Rules, 2012, I have sent by pre-paid registered post copies of this letter and of the enclosed statement(s) to the other parties concerned, as shown below:

Names and addresses of the parties	Date of dispatch
1	2

3. The prescribed fee has been paid, as per details below:
4. Communications on this subject may be addressed to:
5. I hereby declare that to the best of my knowledge and belief, no person, other than to whom a notice has been sent as per Paragraph 2 above has any claim or interest or dispute to my copyright of this work or to its use by me.
6. I hereby verify that the particulars given in this Form and the Statement of Particulars and Statements of Further Particulars are true to the best of my knowledge, belief and information and nothing has been concealed there from.
7. List of enclosures:

Yours faithfully,

(Signature of the Applicant)

Place:

Date:

ICAR-Indian Institute of Sugarcane Research, Lucknow

STATEMENT OF PARTICULARS

1.	Registration number <i>(To be filled in the Copyright Office)</i>	
2.	Name, Phone, Email, Address and Nationality of the Applicant	
3.	Nature of the applicant's interest in the copyright of the work	
4.	Class and description of the work	
5.	Title of the work	
6.	Language of the work	
7.	Name, address and nationality of the author and, if the author is deceased, the date of his decease	
8.	Whether work is published or unpublished	
9.	Year and country of first publication and name, address and nationality of the publishers	
10.	Years and countries of subsequent publications, if any, and names, addresses and nationalities of the publisher	
11.	Names, address and nationalities of the owners of the various rights comprising the copyright in the work and the extent of rights held by each, together with particulars of assignment and licenses, if any	
12.	Names, addresses and nationalities of other persons, if any, authorized to assign or license the rights comprising the copyright	
13.	If the work is an "artistic work", the location of the original work, including name, address and nationality of the person in possession of the work. (In the case of an architectural work, the year of completion of the work should also be shown)	
14.	If the work is an 'artistic work' which is used or is capable of being used in relation to any goods or services, the application shall include a certificate from the Registrar of Trade Marks in terms of the provision to Sub-Section (1) of Section 45 of the Copyright Act, 1957.]	
15.	If the work is an "artistic work" whether it is registered under the Designs Act 2000, If yes, give details.	
16.	If the work is an "artistic work" capable of being registered as a design under the Designs Act 2000, whether it has been applied to an article through an industrial process and, if yes, the number of times, it is reproduced.	
17.	Remarks, if any	

Place:

Date:

(Signature of the Applicant)

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STATEMENT OF FURTHER PARTICULARS

(For Literary, including Software, Dramatic, Musical and Artistic Works only)

1.	Is the work to be registered	
(a)	An original work?	
(b)	Translation of a work in the public domain?	
(c)	A translation of a work in which copyright subsists?	
(d)	An adaptation of a work in the public domain?	
(e)	An adaptation of a work in which copyright subsists?	
2.	If the work is a translation or adaptation of a work in which copyright subsists:	
(a)	Title of the original work.	
(b)	Language of the original work.	
(c)	Name, address and nationality of the author of the original work and, if the author is deceased, the date of his decease.	
(d)	Name, address and nationality of the publisher, if any, of the original work.	
(e)	Particulars of the authorization for a translation or adaptation including the name, address and nationality of the party authorizing.	
3.	Remarks, if any.	

Place:

Date:

(Signature of the Applicant)

Well-known Trademarks and Trans-border Reputation

India discerns the concepts of "well-known trademarks" and "cross-border reputation principles". A well-known trademark related to any goods or services refers to a trademark that has already accounted for a considerable proportion of the public using the goods or receiving such services.

The Apex Indian Court recognized and discussed the concept of cross-border reputation in the landmark *N.R. Dongre vs Whirlpool* (1996) 5SCC 714 case. The purpose of holding the trademark *WHIRLPOOL* is to gain reputation and goodwill in India. Although there is no evidence of actual sales, the *WHIRLPOOL* trademark is also considered to be associated with Whirlpool Corporation due to the publication of advertisements in the magazine. Therefore, the Whirlpool trademark is considered to have a cross-border reputation, regardless of its actual user or registration in India, the trademark enjoys protection in India.

Publication of the trademark(s) u/r 124 (4) of Trademarks Rules 2017, proposed to be included in the list of well-known Trademarks

Whereas request has been received by Registrar of Trademark (s) u/r 124 (4) of Trademarks Rules, 2017 for determination of well-known trademarks and after consideration of request and perusal of the documents, Registrar is of the view that objection, if any, from general public are to be called for in accordance to the provision of Rule 124(4) of the Trademarks Rules, 2017. Therefore, objection from general public, if any, is invited before the determination of the mark mentioned in scheduled I as well-known trademark. If anyone has any objection in this regard, may file his/her objection with reasons along with supporting documents, if any, within the duration of 30 days from the publication date to the Registrar of Trademarks at Trademarks Registry, Mumbai, *Boudhik Sampada Bhavan*, S.M. Road, Antop Hill, Mumbai 400037.

Example- Trademark proposed to be included in the list of well-known trademarks

Tm Application No.- 792399

Trademarks -TCS (In reference to the Software Development and Allied Services)

Application details- Bombay House, 24 Homi Mody Street, Mumbai-400001

Annexure-9

Trademark Genericide in India

A trademark genericide can be explained as the loss of trademark rights when a term becomes commonly used and consumers begin to indicate a specific product rather than its source. When a trademark becomes a general descriptive name for a product, the trademark owner will no longer have the exclusive right to use it.

Reason behind trademark genericide & how it can be avoided

The cause behind the genericidation of trademark is very simple. Since the public continues to use the trademark to indicate a specific product rather than its source, the trademark has been genericized. The more popular product generally becomes genericide expedite. Due to public misuse and continuous use, some popular brand names have now been commonly used-Aspirin, Cellophane, Thermos, Escalator, *etc.*

Improper policing of trademarks by trademark proprietors. It is a common practice to use trademarks and it is very harmful to the uniqueness of the trademark, which leads to the generalization of the trademark. For example, sentences such as search only on Google, I'm Xerox, I just tweeted, its photoshopped and other sentences make trademarks generic in nature. First of a kind trademarks are more likely to be generalized. This is because there are no other competing trademarks for similar products. The trademark enjoys a monopoly in the market. Due to lack of competition (for example, escalators), it eventually becomes synonymous with the product name. In addition to the brand name, the trademark owner's failure to give the trademarked product an easily recognizable common name is another reason for the genericization of the trademark. As a result, brand names are often easier to remember and reference products. For example, it is easier to say Thermos than a flask to keep the water cool.

Practical example of means to avoid genericide

- Emphasize Trademarks Apart from Product Names.
- Capitalize the Entire Word
- Use Initial Caps for Each Word
- Use Quotes
- Use italics, boldface or different colour type
- Additional emphasis can be added by using the word "brand."

Ex: JOCKEY® briefs, 3D-Innovations® collection, 3D-Innovations® t-shirts, 3D-Innovations®briefs, JOCKEY® brand briefs

Annexure-10

Examples of Some Well-Known Registered Trademarks

- TMR maintains a “Register of Well-known Trademarks”
- Ninety seven well-known trade marks on the Register can be viewed at <http://www.ipindia.nic.in/writereaddata/Portal/Images/pdf/well-known-trademaks-updated-newone.pdf>



Annexure-11

List of Types of Trademarks

A trademark can be word, expression, logo, letter, number, slogan and combination of colours, sound, smell or a hologram

Sound



Letters



Words



Names



Number



Expression



Logo



Annexure-12

Application Form for Filing of Trademarks for a Single Class

FORM TM-A

The Trade Marks Act, 1999 Application for registration of a trademark

[The relevant information must be filled up in coloured box against the respective head]

1.	NATURE OF THE APPLICATION:	
	[(a) The applicant must choose either of the following categories-	
	1. Standard Trademark, 2. Collective Mark, 3. Certification Mark, 4. Series Marks	
	Standard Trademark here means an application for registration of a trademark not being a Collective or Certification trademark or Series of marks	
	(b) In case of Collective Mark or Certification Mark, the draft regulations with form TM-M must be submitted.]	
2.	Whether application filed as (Please choose and specify) In case of start-up/small enterprise, requisite certificate should be provided.	(Individual / Start-up / Small enterprise/Others)
	FEE:	(See First Schedule for Appropriate Fee)
3.	APPLICANT	
	Name: *	
	Trading as:	
	Address: *	
		(State) (Country)
	[This address should be the address of the applicant's principal place of business in India]	
	Address for service:	
		(State) (Country)
	[(a) Unless otherwise specifically stated, the applicant's address shall be the address for service of the applicant who has principal place of business in India.	
	(b) The address for service in India must be provided, in case the applicant does not carry business in India]	
	Mobile No.:	
	E-mail address*:	
	Nature of the applicant:	
	[The applicant must choose either of the following categories-	
	1. Individual, 2. Partnership Firm, 3. Body-incorporate including Private Limited/limited Company, 4. Limited Liability Partnership, 5. Society 6. Trust 7. Government Department 8. Statutory Organization. 9. Association of Persons 10. Hindu Undivided Family	

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4. APPLICANT'S AGENT (if any):	
Name*:	
Address*:	
[In case of authorization of agent, the address of the agent may be mentioned as the applicant's address for service]	
Mobile No.* :	
E-mail address*:	
Nature of the Agent:	
[The applicant must choose either of the following categories- 1. Registered Trade Marks Agent, 2. Advocate 3. Constituted Attorney]	
Registration No.:	
5. TRADEMARK:	(trademark to be mentioned here)
Category of mark:	
[The applicant must choose either of the following categories- 1. Word mark (it includes one or more words, letters, numerals or anything written in standard character), 2. Device mark (it includes any label, sticker, monogram, logo or any geometrical figure other than word mark), 3. Colour (when the distinctiveness is claimed in the combination of colours with or without device), 4. Three-dimensional trademark (it includes shape or packaging of goods), 5. Sound	
Description of the mark:	
[(a) Description of the mark must be provided in terms of Rule 26. (b) In case of trademarks submitted in specific combination of colours other than black and white, it shall be presumed that the distinctiveness of the mark is claimed in that combination of colours and application will be considered accordingly. (c) In case of colour marks, the description may be like "The trade mark consists of three vertical stripes in the colours PURPLE, GREEN and YELLOW applied to the fascias of buildings and to doors as shown in the representation of the mark." (d) In case of sound marks, representation of specific musical notes must be submitted at the place provided for the trademark. The applicant is also required to submit sound clipping in MP3]	
6. IF MARK IN A LANGUAGE OTHER THAN HINDI OR ENGLISH:	
Language:	
Transliteration of the mark in roman script:	
[Transliteration of the mark in roman script must be provided, in case, the mark is in a language other than Hindi or English]	
Translation of the mark in English:	
[Translation of the mark in English must be provided, in case, the mark is in a language other than Hindi or English]	

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7.	Conditions or Limitations to use the trademark, if any	
8.	CLASS OF GOODS OR SERVICE:	DESCRIPTION OF GOODS AND SERVICE:
9.	STATEMENT AS TO USE OF MARK:	<input type="checkbox"/> Proposed to be used <input type="checkbox"/> The mark is used by the applicant or its predecessor in title since in respect of all the goods and/or service mentioned in the application.
	[(a) The applicant must select either of the above (b) The date of use must be given in the format (DD/MM/YYYY) and shall refer to all items mentioned in the application. (c) In case the use of the Trade Mark is claimed prior to the date of application, the applicant shall file an affidavit testifying to such use along with supporting documents (d) The statement as to use of the mark once made shall be final]	
10.	PRIORITY CLAIM, IF ANY:	
	Priority claimed since	DD/MM/YYYY
	Priority claim based on application filed in the Name of the country or organization	
	Convention Country or organization	
	Priority Application No.	
	[The priority must be claimed in respect of all goods and services mentioned in the application]	
11.	ANY OTHER IMPORTANT INFORMATION OR STATEMENT:	
	[Applicant may provide here any other information or statement in relation to his application]	
12.	VERIFICATION:	I hereby verify that above mentioned facts are true and correct to best of my knowledge and belief.
13.	DETAIL OF THE PERSON SUBMITTING THE APPLICATION:	
	Signature:	
	Name:	
	Authority:	

FORM TM- 51
THE TRADE MARKS ACT, 1999

Agent's Code No:

Proprietors Code No:

A single application for registration of a trade mark for different classes of goods or services (other than a collective mark or a certification trade mark).

Section 18(2), Rule 25(9), 103.

(To be filed in triplicate accompanied by five additional representations of the trade mark)
One representation to be fixed within this space and five others to be sent separately.
Representation of a larger size may be folded but must then be mounted upon linen or other suitable material and affixed hereto (See Rule 28).
Application is hereby made for registration in the register of the accompanying trade mark in
(i) class¹ in respect of ²
(ii) class¹ in respect of ²
(iii) class¹ in respect of ²
in the name(s) of ³ whose address is ⁴ who claim (s) to be the proprietor(s) thereof and by whom the said mark is proposed to be used⁵ or (and by whom and his (their) predecessor(s) in title⁶ the said mark has been continuously used since in respect of the said goods or services.
1.....2.....3.....
All communications relating to this application may be sent to the following address in India
Dated this day of 20.....

FORM 1
¹[THE DESIGNS ACT, 2000]
APPLICATION FOR REGISTRATION OF DESIGNS
(See Sections 5 and 44)

² [For Fee see First Schedule]	You are requested to register the accompanying in
^A Insert number of class	Class No. ^Ain the name of ⁸
^B Insert (in full) the name address and nationality who claim(s) to be the proprietors) thereof.
^C State whether drawings, photographs, tracings or specimens.	Four exactly similarof the design accompanying this request. The design is to be applied to ^D
^D Insert name of article or articles to which the design is to be applied or state trade description of each of the articles contained in the set ^B The design has been previously registered in class(es) under No.....
^B Strike out these words, if previous registration has been affected.	Details of first application in UK or convention country or group of countries or inter-governmental organization. ³ [(i) Name of the country/inter-governmental organization, (ii) Date of filing, (iii) Application number, (iv) Name of the applicant] Address for service in India is-
^F Unless an address for service in India in given, the request may not be considered Declaration: The applicant claims to be the proprietors of the design and that to the best of his knowledge and belief, the design is new or original. Dated this day of..... 20..... (Signed) ^c
^c To be signed by the applicant or by authorized agent	To, The Controller of Designs The Patent Office

Annexure-14

**APPLICATION FOR REGISTRATION OF GEOGRAPHICAL
INDICATIONS OF GOODS**

**THE GEOGRAPHICAL INDICATIONS OF
GOODS (REGISTRATION AND
PROTECTION) ACT, 1999**

*(To be filled in triplicate along with the Statement of Case accompanied by five additional
representation of the Geographical Indication)*

One representation to be fixed within the space and five others to be send
separately

FORM GI-1

A	Application for the registration of a Geographical Indication in Part A of the Register Section 11 (1), Rule 23(2) Fee: ₹ 5,000 (See entry No.1A of the First Schedule)	
B	Application for the registration of a Geographical Indication in Part A of the Register from a convention country Section 11(1), 84(1), Rule 23(3) Fee: ₹ 5,000 (See entry No.1 B of the First Schedule)	

1. Application is hereby made by.....for the registration in Part
A of the Register of the accompanying geographical indication furnishing
the following particulars: -

- Name of the Applicant:
- Address:
- List of association of persons/producers/organization/authority:
- Type of goods:
- Specification:
- Name of the geographical indication [and particulars]
- Description of the goods:
- Geographical area of production and map:
- Proof of origin [Historical records]:
- Method of production:
- Uniqueness:
- Inspection body:
- Other:

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Along with the Statement of Case in Class^b ^b..... in respect of ^c.....in the name(s) of^d whose address is who claims to represent the interest of the producers of the said goods to which the geographical indication relates and which is in continuous use since in respect of the said goods.

2. The application shall include such other particulars called for in Rule 32(1) in the Statement of Case.
3. All communications relating to this application may be sent to the following address in India.
4. In the case of an application from a convention country, the following additional particulars shall also be furnished:
 - (a) Designation of the country of origin of the Geographical Indication.
 - (b) Evidence as to the existing protection of the Geographical Indication in its country of origin, such as the title and the date of the relevant legislative or administrative provisions, the judicial decisions or the date and number of the registration, and copies of such documentation.

SIGNATURE

NAME OF THE SIGNATORY (IN BLOCK LETTERS)

C	Application for the registration of a geographical indication In Part A of the Register for goods falling in different classes Section 11 (3), Rule 23(5) Fee: ₹ 5,000 for each class (See entry No.1C of the First Schedule)
D	A single application for the registration of a geographical indication in Part A of the Register for goods falling in different classes from a convention country Section 11(3), Rule 23(4) Fee : ₹ 5,000 for each class (See entry No.ID of the First Schedule)

1. Application is hereby made by.....for the registration in Part A of the Register of the accompanying geographical indication furnishing the following particulars : -
 - Name of the Applicant :
 - Address :
 - List of association of persons/producers/organization/authority:
 - Type of goods:
 - Specification:
 - Name of the geographical indication [and particulars]
 - Description of the goods :
 - Geographical area of production and map :
 - Proof of origin [Historical records] :
 - Method of production :
 - Uniqueness :
 - Inspection body :
 - Other:

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along with the Statement of Case in Class

- i) Class^b in respect of ^c.....
- ii) Class^b in respect of ^c.....
- iii) Class^b in respect of ^c.....

In the name(s) of ^d whose address is.....who claim (s) to represent the interest of the producers of the goods to which the geographical indication relates and which geographical indication is used continuously since in respect of the said goods.

- 2. The Application shall include such other particulars called for in Rule 32(1) in the Statement of Case.
- 3. All communications relating to this application may be sent to the following address in India.
- 4. In the case of an application from a convention country, the following additional particulars shall also be furnished:
 - a. Designation of the country of origin of the Geographical Indication.
 - b. Evidence as to the existing protection of the Geographical Indication in its country of origin, such as the title and the date of the relevant legislative or administrative provisions, the judicial decisions or the date and number of the registration, and copies of such documentation.

^eSIGNATURE

NAME OF THE SIGNATORY (IN BLOCK LETTERS)

For instruction, please see overleaf

G1-1A to 1D

The Registrar of Geographical Indications,
The office of Geographical Indications Registry.

- (a) Strike out whichever is not applicable.
- (b) The Registrars' direction may be obtained, if the class of the goods is not known.
- (c) Here specify the goods. Only goods included in one and the same class to be specified.
- (d) Insert legibly the full name, description (occupation and calling and nationality of the applicant). In the case of a body corporate or firm the country of incorporation or the registration, if any, as the case may be, should be stated, See Rule 15.
- (e) Signature of the applicant or his agent.

FORM LD-1

APPLICATION FOR REGISTRATION OF LAYOUT-DESIGN

[Section 8(1), Rule 22]

(to be filed in triplicate)

Application is hereby made for the registration of layout-design'
in the name (s)² of.....

whose address(s)³is claim(s) to be the proprietor thereof in
respect of the said layout-design.

Endorsed herewith is the duly completed Statement of Particulars relating to the
layout-design

The particulars set forth in the enclosed Statement of Particulars are true to the best
of my / our knowledge, information and belief.

Dated this day of 202

To,

The Registrar Semiconductor Integrated Circuits Layout-Design, Office of the
Semiconductor Integrated Circuits Layout-Design Registry at.....

1. Title of the layout- design
2. Insert legibly the full name, description and nationality of the applicant. In the case of a body corporate or firm the country of incorporation or the names and description of the partners composing the firm and the nature of registration, if any, as the case may be, should be stated. See Rule 15.
3. The applicant must state the address of his principal place of business in India, if any. See Rules 3 and 16.
4. Signature of the applicant or his agent (legal practitioner or registered layout-design agent or person in the sole and regular employment of the applicants. See Section 84).
5. State the name of the place of the appropriate office of the Semiconductor Integrated Circuits.
6. Layout-Design Registry. See Rule 4. Layout- design drawings should be preferably on a paper of size 33-centimeter by 20-centimeter.

Statement of Particulars

(Refer Form LD-1)

1. Application No. (to be filled in by the Semiconductor Integrated Circuits Layout-Design Registry):
2. Title of the layout-design
3. Classification of the semiconductor integrated circuit which can be manufactured using the layout-design
 - i. Structure¹
 - ii. Technique²
 - iii. Function³
4. Brief description of the layout-design
5. Whether the layout-design has been commercially exploited [Yes/No]
If yes, then in Place / Country on dated thisday ofYear
6. Documents enclosed
 - i. Drawings/ photographs (Three sets)
 - ii. Semiconductor integrated circuits (Four pieces)
 - iii. Where an Integrated Circuit (IC) has been made using layout-design applied for registration]
 - iv. Details of the fees deposited
 - v. Others
7. Name and address of the agent
Place:
Date:
1. Structure implies giving structure details like Bipolar, MOS, Bi-MOS, Optical IC, Other (specify).
2. Technique implies giving technique details like TTL, DTL, CMOS, NMOS, PMOS, Other (specify).
3. Function implies giving functional details like Logic, Memory, Linear, Microcomputer, Other (specify)
4. Signature of the applicant or his agent (legal practitioner or registered layout-design agent or person in the sole and regular employment of the applicant. See Section 84.)

FORM I
(See Rule 14)

**Application Form for Access to Biological Resources and Associated
Traditional Knowledge**

Part A

1. Full particulars of the applicant
 - I. Name:
 - II. Permanent address:
 - III. Address of the contact person/ agent, if any, in India:
 - IV. Profile of the organization (personal profile in case the applicant is an individual). Please attach relevant documents of authentication):
 - V. Nature of business:
 - VI. Turnover of the organization in US\$:
2. Details and specific information about nature of access sought and biological material and associated knowledge to be accessed
 - a. Identification (scientific name) of biological resources and its traditional use:
 - b. Geographical location of proposed collection:
 - c. Description / nature of traditional knowledge (oral / documented):
 - d. Any identified individual / community holding the traditional knowledge:
 - e. Quantity of biological resources to be collected (give the schedule):
 - f. Time span in which the biological resources is proposed to be collected:
 - g. Name and number of person authorized by the company for making the selection:
 - h. The purpose for which the access is requested including the type and extent of research, commercial use being derived and expected to be derived from it:
 - i. Whether any collection of the resource endangers any component of biological diversity and the risks which may arise from the access:
3. Details of any national institution which will participate in the Research and Development activities.
4. Primary destination of accessed resource and the location where the R&D will be carried out.
5. The economic and other benefits including those arriving out of any IPR, patent obtained out of accessed biological resources and knowledge that are intended, or

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- may accrue to the applicant or to the country that he/she belongs
6. The biotechnological, scientific, social or any other benefits obtained out of accessed biological resources and knowledge that are intended, or may accrue to the applicant or to the country that he/she belongs
 7. Estimation of benefits that would flow to India/communities arising out of the use of accessed bioresources and traditional knowledge.
 8. Proposed mechanism and arrangements for benefit sharing.
 9. Any other information considered relevant.

Part B Declaration

I/We declare that:

- Collection of proposed biological resources shall not adversely affect the sustainability of the resources;
- Collection of proposed biological resources shall not entail any environmental impact;
- Collection of proposed biological resources shall not pose any risk to ecosystems;
- Collection of proposed biological resources shall not adversely affect the local communities.

I/We further declare the Information provided in the application form is true and correct and I/We shall be responsible for any incorrect / wrong information.

Place
Date

Signed
Name
Title

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FORM A

(See Regulation 2)

Information to be furnished for use of biological resources by the
applicant self-disclosure

Common name of the biological resource proposed to be used:

Scientific name :

Plants or animals or parts thereof traded : _____

Specific purpose of access: _____

Locations / source from where procured*	Quantity in kgs	Rate per unit	State Biodiversity Board	Prospective Buyers/Users (if known)

*List of local body/BMCs, if already identified shall be attached.

Undertaking

1. I have read and understood the terms and conditions of ABS guidelines and I undertake to abide by relevant legal provisions applicable to biological resource.
1. I undertake to obtain the approval of the NBA/ SBB before making any change in the stated purpose.
3. I undertake to furnish/ share the relevant records with the NBA/ SBB, as and when required.
4. I further declare that the information provided in the form is true and correct and I shall be liable for any incorrect/wrong information and wilful suppression of the facts.

Signature

Name of the trader/company/manufacturer/ Authorized Representative
Complete Address of the trader/ company/ manufacturer along with phone number
and email address

Place

Date

Annexure-17

Details about Filing Different Types of Applications under the Biological Diversity Act, 2002 and Other Specific Activities

Application form	Purpose of application	Who should apply	Application fee
FORM I	Access of biological resources occurring in or obtained from India and/or associated traditional knowledge for research, commercial utilization, bio-survey or bio-utilization	Non-Indian, NRI, Foreign entity or Indian entity having non-Indian participation in share capital or management	₹ 10,000/-
FORM A	If the applicant is a Trader/Manufacturer/Company, he shall submit along with Form I , as per Regulation 2 of ABS Guidelines, 2014	Trader/Manufacturer/Company	
FORM II	Transfer the results of research	Any Indian/non-Indian or entity to any non-Indian, NRI, foreign entity or Indian entity having non-Indian participation in share capital or management	₹ 5,000/-
FORM III	Applying for Intellectual Property Rights for inventions based on any research or information on a biological resource obtained from India	Any Indian/non Indian or entity	₹ 5,000/-
FORM IV	Transfer of biological resources/knowledge already accessed, to a third party	Any person who obtained approval of NBA in Form I, to Indians/non-Indians or entities	₹ 10,000/
FORM B	Conducting of non-commercial research or research for emergency purpose outside India by Indian Researchers/ Government Institutions, as per regulation 13 of ABS Guidelines, 2014	Indian Researcher/ Government Institutions	
FORM C	Deposition of microorganism in non-Indian repository for claim of novel species	Indian Scientist/ Researcher	

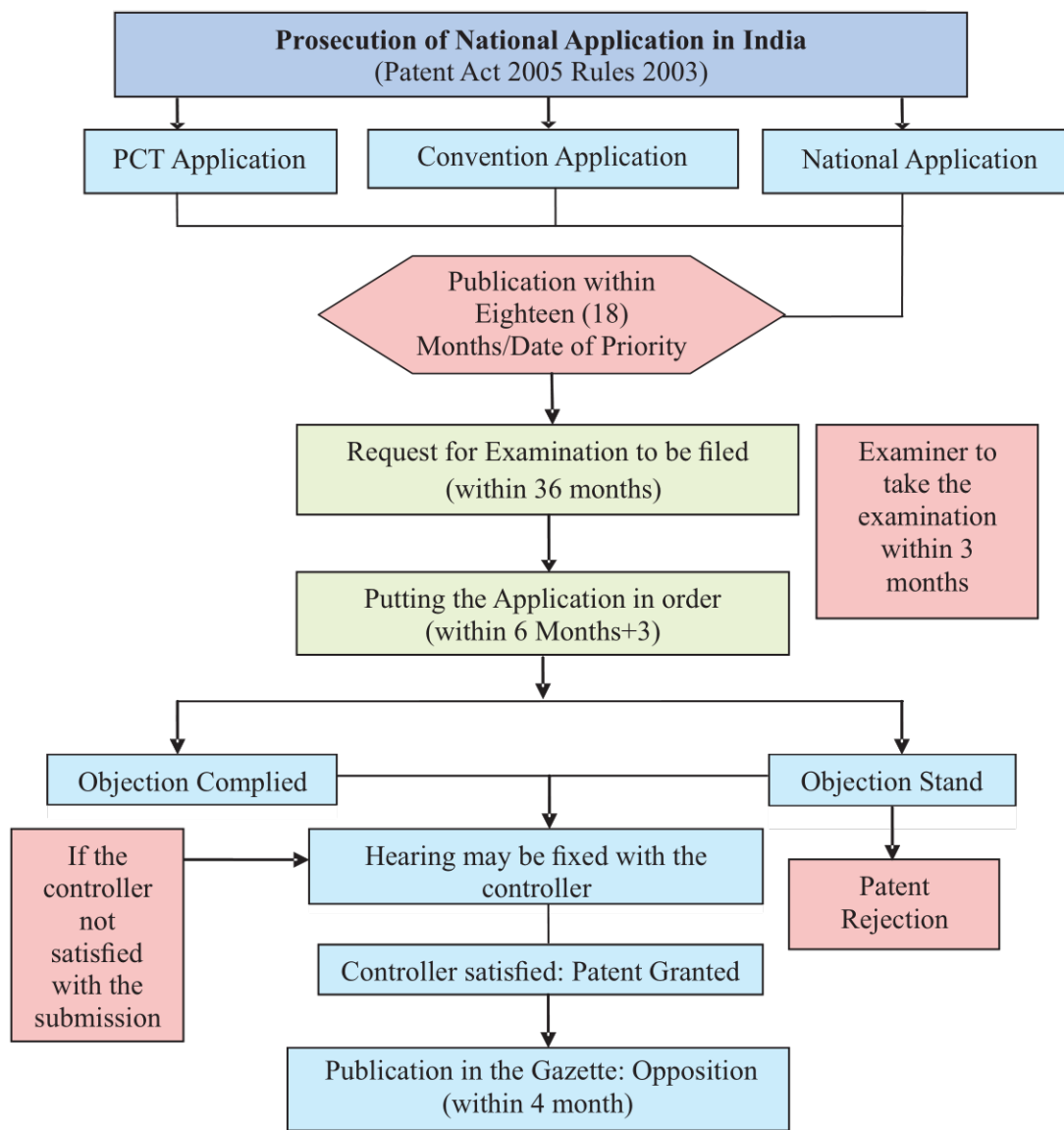
Annexure-18**List of Notified Crop Species by Central Government**

The Government of India has notified following crop species for the purpose of registration:

S.No.	Crop Species
1	Bread Wheat
2	Rice
3	Maize
4	Sorghum
5	Pearl Millet
6	Chickpea
7	Pigeonpea
8	Greengram
9	Blackgram
10	Fieldpea/Gardenpea
11	Kidneybean
12	Frenchbean
13	Lentil
14	Diploid Cotton (Two species)
15	Tetraploid Cotton (Two species)
16	Jute (Two species)
17	Sugarcane
18	Ginger
19	Turmeric
20	Indian Mustard
21	Karanrai
22	Rapeseed
23	Gobhi Sarson
24	Sunflower
25	Safflower

S.No.	Crop Species
26	Castor
27	Sesame
28	Linseed
29	Groundnut
30	Soybean
31	Black Pepper
32	Small Cardamom
33	Rose
34	Chrysanthemum
35	Mango
36	Potato
37	Eggplant
38	Tomato
39	Lady's Finger
40	Cauliflower
41	Cabbage
42	Onion
43	Garlic
44	Durum
45	<i>Dicoccum</i> and <i>Triticum</i> Species of Wheat
46	Isabgol
47	Menthol Mint
48	Damask Rose
49	Periwinkle
50	<i>Brahmi</i>

Appendix-1



If no opposition, exclusive rights to applicant for twenty years from the date of filing

Source: www.sristi.org/mdpipi2005/ppt/anild/patent%20filling%20clubbed%20- final.ppt

Stages of Prosecution of IPR Application in India

Case Studies Related to Patent Infringement

1. A case study of Patent application entitled "device used for manually hauling agricultural produce"

Dhanpat Sheth obtained a patent for a device for collecting agricultural products, especially fruits and vegetables. He makes the device very flexible and can adapt to people of all heights and sizes. The patent was granted, but was also revoked by Nil Kamal Plastic Crates Ltd. He represented in the Himachal Pradesh High Court. The patent was revoked due to lack of novelty. In the patented product, only a copy of the component traditionally called "*Kilta*" was used, and only raw materials such as plastic were used instead of bamboo.

2. A case study of W.R. Grace, USA vs Indian *Neem*, Patent Infringement

Neem's patent was first filed by W.R. Grace and the US Department of Agriculture in the European Patent Office. This patent is a method for controlling plant fungi by using India *Neem* oil formula. India has cooperated with the International Federation of Organic Agriculture Movements (IFOAM) and the former Green Agriculture Development Organization (Magda Aelvoet) to file a legal objection to the grant of patents by the Research Foundation for Science, Technology and Ecology (RFSTE) in New Delhi, India. Since ancient time, The Indian *Neem* tree is an Indian pride from its roots to its spreading crown. There are many effective ingredients such as *Azadirachtin* found in the seeds of *Neem* tree and commonly used as an astringent in many fields. The bark, leaves, flowers, and seeds of the *Neem* tree are used to treat various diseases such as ulcers, leprosy, skin diseases, diabetes and *Neem*'s soft branches have been used as antiseptic tooth brushes. Opponents submitted evidence of ancient Indian *Ayurvedic* documents that describe the hydrophobic extracts of *Neem* seeds that have been known and used in India for centuries to cure human skin diseases and protect fungal infections of plants. The European Patent Office considered the lack of novelty, creativity, and possibly related prior art, and therefore revoked the patent.

3. A case study of the India-US turmeric Dispute

In 1995, two foreign Indians at the University of Mississippi Medical Center obtained a US Patent for turmeric use to treat wounds. The Council for Scientific and Industrial Research (CSIR) filed a lawsuit with the US Patent Office to challenge the patent on the grounds of "prior art" (that is, existing public knowledge). CSIR claimed that

turmeric has been used to treat wounds and rashes for thousands of years, so its medical use is not a novel invention.

The claim supported the written documents which contained the traditional wisdom or knowledge. CSIR even presented ancient Sanskrit texts and a paper published in the Journal of the Indian Medical Association in 1953. The US Patent Office supported the opposition and cancelled the patent. The turmeric case was a landmark decision because it is the first time that it had successfully challenged patents based on traditional knowledge in developing countries. The US Patent Office maintained its opposition and cancelled other several pending patent applications for turmeric.

4. A case study of Patent application entitled "Gene Family (LBFL313) associated with Pancreatic Cancer"

The invention particularly relates to human gene families that are differentially expressed in pancreatic cancerous tissue compared to corresponding non-cancerous pancreatic tissue. A hearing was held on April 10, 2014, and many outstanding objections were raised, but the applicant did not make following modifications: (a) The applicant used 777 base pairs, compared to 764 base pairs in the prior art. The claimed sequence ID has an additional 13 base pairs, but the applicant has not shown any advantages of these additional 13 nucleotide base pairs. In addition, 764 base pairs are likely to retain natural characteristics. (B) The production of polyclonal anti-LBFL313 antibody is directed against host cells, which is not allowed by the Act u/s 3(j). (c) According to Section 3(c) of the Act, the isolation of nucleic acid/PP sequences from genomic DNA of human is not allowed, and the genes/sequences are considered to be an isolated non-living substances existing in nature. There is no clear recombination in these molecules. (d) All the basic characteristics of a polypeptide refer to its amino acid sequence ID, not its nucleotide sequence ID. As mentioned above, the claim should be defined by its basic technical features (if any), otherwise, it will not be accepted in its current form.

In response to the hearing notice, the applicants stated that we are not interested in further proceedings for this letter, and therefore, we will not participate in any scheduled hearing. Taking into account the applicants unwillingness to apply immediately, the Hearing Committee decided that the requirements communicated in the hearing notice were still unresolved, and the application was, therefore, refused to grant the patent.

Appendix-3

A Case Study Related to Copyright Infringement

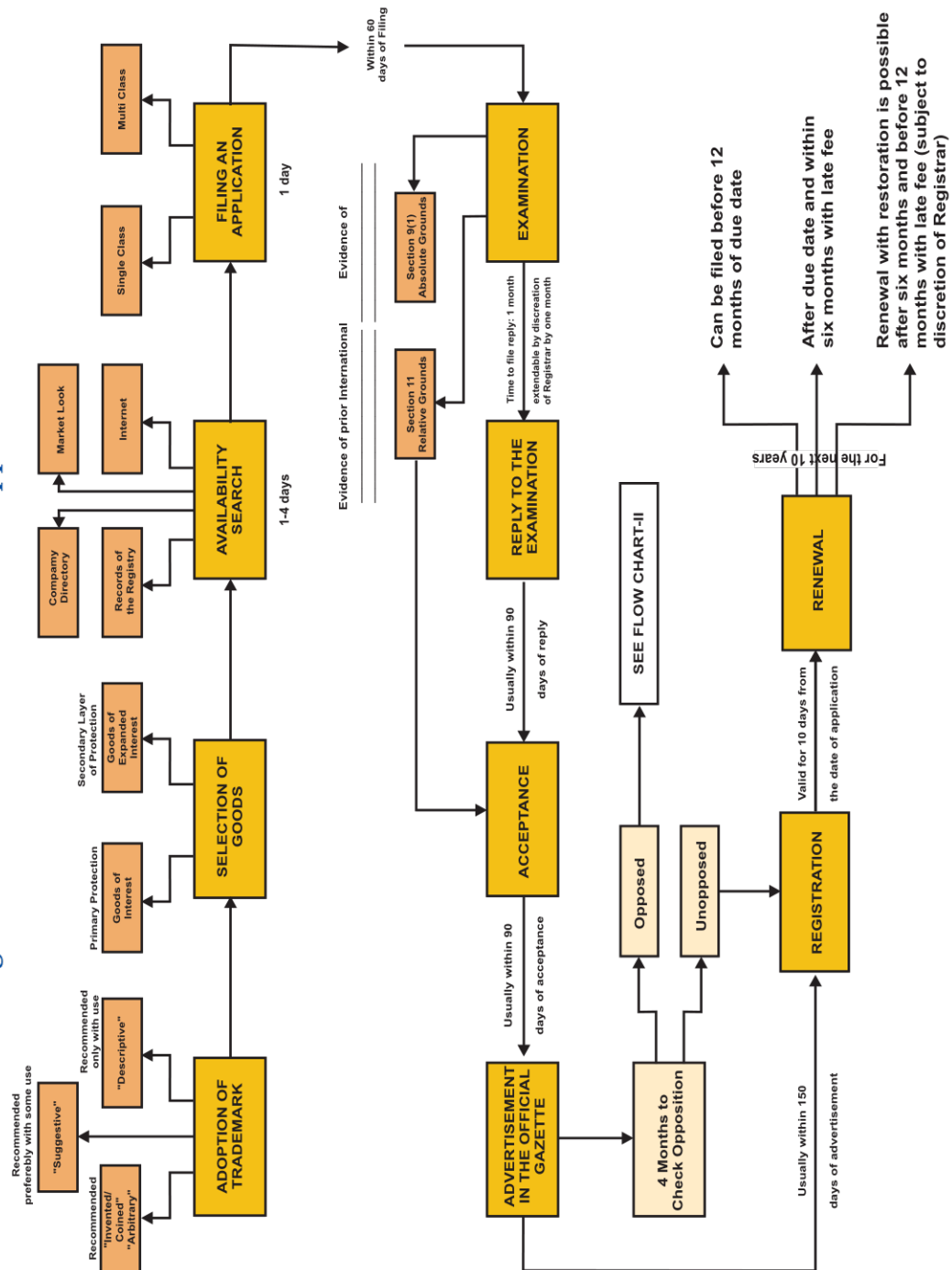
The Chancellors, Masters and Scholars of the University of Oxford and Others vs. Rameshwari Photocopy Services and Others

In year 2012, the Publishers (Oxford), University Press, Cambridge University Press and Taylor & Francis), filed a suit for infringement of Copyright against Rameshwari Photocopy Services and the University of Delhi for making Photostat course packs or study material available to the students, without taking permission from the publisher. The Hon'ble High Court of Delhi granted ad interim injunction whereby the defendant was restrained from making and selling course packs and also reproducing the plaintiff publication by compiling the same either in the book form or course packs. During the trial, Society for Promotion of Educational Access and Knowledge and Association of Students for Equitable Access to Knowledge (ASEAK) were impeded as Defendants.

In September 2016, Hon'ble Delhi High Court decided the case in favour of the Defendants and held that Copyright, especially in literary works, is thus not inevitable, divine, or natural right that confers on the authors the absolute ownership of their creators. It is designed rather to stimulate activities and progress the arts for intellectual enrichment of public. Aggrieved by the order of single Judge, the publishers filed an appeal to the Division Bench. In addition to withdrawing the case from the Hon'ble Delhi High Court, the Publishers assured that it was not going to take up the issue before any other higher court, such as the Supreme Court of India. On December 9, 2016, the Division Bench of the Hon'ble Delhi High Court decided the appeal interpreting Section 52(1) (i) of the Copyright Act as permitting photocopying of copyrighted works for preparation of course packs and remanded the suit to the single bench for a fact specific determination on whether the copyrighted materials included in the course packs in this case were necessary for the purpose of instructional use by the teacher. Later on, publishers withdrew suit from Hon'ble Delhi High Court.

Stages of Prosecution of Trademarks Application in India

Appendix-4



Appendix-5

Case Studies of Trademark Infringement

1. Amul won trademark case in Hon'ble Gujarat HC in 2007

The Hon'ble Gujarat High Court ruled in a major judgment that the registered trademarks used by proprietor have the right to restrict others from using their trademarks for different categories or commodities. Hon'ble High Court's verdict was having connection with the Kaira Region Cooperative Milk Producers Union (commonly known as Amul Dairy) and the Gujarat Cooperative Milk Sales Federation (GCMMF) against two local store owners, *Amul Chasmaghar* and *Amul Cut Piece*, in the local court. Although Kaira Union owns the brand Amul, GCMMF manages the brand. It was on April 25, 2007, that the district court passed an order that considered this to be a clear infringement case and restricted the use of the Amul trademark (Utterly Buttery Delicious Amul) by both.

2. B.V. Elango Himachalapathy vs. Rank Xerox Limited and Others (Use of an allegedly generic trademark)

The Intellectual Property Appellate Board (IPAB) rejected seven rectification applications filed by B.V. Elango Himachalapathy, four of which were against the registration of the trademark "XEROX" as a general trademark. The owner of the photocopy shop BV Elango Himachalapathy initiated a rectification procedure in IPAB after Xerox Corporation filed a lawsuit against them in 2004. Elango contended that the word XEROX has been used in a general sense, and has lost its uniqueness, and has entered the public domain by default.

The distinguished Justice, Mrs. Prabha Sridevan pointed out that "XEROX" has been updated regularly, and there is no opposition from any party, and since at least 2003, Xerox had begun to adopt such as "If you use Xerox with a zipper, our trademark may be wide open" and "If you use Xerox in the same way as aspirin, we will have a headache."

IPAB pointed out that although the public has used the trademark "XEROX" as a general term, it is obvious from the update and continuous use of the trademark that Xerox

is the owner of the trademark. In addition, it is observed that competitors are aware of the existence of the trademark "XEROX" and if their business is hindered by the continued use/existence of the trademark "XEROX" in the register, they will protest or take action.

Therefore, IPAB believes: "However, we have found that the long-term continuity in the register and the public acceptance of the trademark rights indicated are factors to be considered when we exercise our discretion." Therefore, the judicial trend is to deal with the correction provisions under Section 57, while deciding the matter, always give due consideration to all the facts of each case.

3. Red Bull AG *vs.* Dr. Reddy's Laboratories Limited and Ors. ('Gives You Wings' (Red bull's mark) *vs* 'Your Wings to Life' (Dr. Reddy's Laboratories mark))

Red Bull AG (Applicant) filed an application to delete the trademark "Your Wings to Life" (Class 09) of Dr. Reddy's Laboratories (Respondent) and submitted video No.1058481, from trademark registration. The applicant is an Austrian company with a wide range of energy drinks. It uses the slogan "Gives You Wings" to promote its brand but it very much resembles the slogan of the Red Bull trademark. In addition, the applicant of Red Bull energy drink, used cross-media animated characters and animal characters with wings to indicate that the user has obtained wings after consuming it.

In the absence of similarity between the marks of the Applicant and the Respondent, there could have been no direct impact on the Applicant's business. The IPAB dismissed the petition without costs.

Case Study of Design Act

Reckitt Benckiser (India) Ltd. *vs* Wyeth Ltd.

The Reckitt Benckiser case is a landmark decision that discussed the case law of Gopal Glass Works and Dabur. In the Reckitt Benckiser case, the single judge decided that according to Article 4(b) of the Design Act of 2000 (hereinafter referred to as the "Design Act"), prior registration in foreign countries such as the United Kingdom, the United States, and Australia should be considered is the "Prior Disclosure Act". The divisional judge upholds the single judge's decision. If it can be proved that the design has been disclosed to the public in India or any other country by any means specified in Article 4(b), the registration of a design in India may be cancelled. Therefore, according to Article 22(3), it can also be used as a defence against suspected design infringement. The judges of the Chamber also held that the knowledgeable single judge decided that if the design was not kept secret after registration, the prior registration should be regarded as a valid reason to defend against any subsequent allegations of infringement of similar designs.

Therefore, the double conclusion reached by the petition bench is: (I) Even if the design is published in India or abroad, it will continue to maintain novelty, that is, if the design is available in the public domain in India or abroad within six months after the foreign application is registered in a designated foreign country, Within the period of three months, there were also applications in India for the registration of a design filed outside the designated country. Due to the availability of Article 44 (2) and Article 4 (b) in the public domain, the availability of a design registered abroad in the public domain will cause the design to become stale.

Case Studies of the Geographical Indication Perspective

1. *Basmati* Rice (India-US *Basmati* Rice Dispute)

In the year 1997, when an American Company RiceTec Inc was granted a patent by the US Patent Office to call the aromatic rice grown outside India "*Basmati*", India objected to it as India has been one of the major exporters of *Basmati* to several countries and such a grant by the US Patent Office was likely to affect its trade. Since *Basmati* rice is traditionally grown in India and Pakistan, it was opined that granting patent to RiceTec violated the Geographical Indications Act under the TRIPS Agreement. Eventually, a request for re-examination of this patent was filed on April 28, 2000. Soon after filing, the re-examination request, RiceTec chose to withdraw its claims.

2. The *Tirupati Laddu* Controversy

The temple trust *Tirumala Tirupati Devasthanams* (TTD), which manages the richest temple in the world, had submitted an application to the Geographical Indication Registry to seek a GI label for the famous temple offering *Tirupati laddu*. They claimed that the growing demand for *Tirupati laddus* has led vendors to prepare and sell *laddus* under the name *Tirupati laddus* at their premises. This practice has been popular for many years, and the raid by TTD's security and security department to eradicate the business has proven to be futile. TTD's reason for certifying its application for GI status is that once the GI label is granted *Tirupati laddu*, it will help curb the problem, as violators will be punished under GI law. Finally, their request was accepted and *Tirupati laddu* was granted geographical indication status in September 2009. However, the granting of *laddu* geographical indication status had become a controversial issue and has been severely criticized. Many people questioned the necessity of appropriating such religious symbols and did not see the purpose behind TTD's move. They argued that if the idea is only to prevent the public from being deceived by those who sell counterfeit *laddus*, it can also be achieved by publicly declaring that the original *laddu* is only available in the temple area and not elsewhere. The application for the granting of geographical indication status seems completely unfounded. In addition, geographical indications are intended to benefit local producer communities and serve as names or indicators of the geographical origin of products. This means that everyone from *Tirupati* should have the right to use geographical indications on *Tirupati*, as long as their *laddu* is geographically originated in

Tirupati and has a preparation with a temple trust. *laddu* has the same taste and characteristics. This is because unlike trademarks and patents, geographical indications are a community right. A person or trust cannot monopolize and claim ownership. Implicitly, applications by individual entities are prohibited. Therefore, one of the most relevant reasons for opposing the granting of geographical indication status to *laddus* is that TDD is a single entity that cannot fairly protect or represent the interests of all *laddus* producers in *Tirupati*.

In addition, geographical indication labels are mainly designed to promote the economic prosperity of commodity producers in the geographical area. In contrast, the registration of geographical indications in *Tirupati laddu* has resulted in the monopoly of the *Tirupati laddu* name being granted to one of the richest religious institutions in the world. As important as maintaining product quality, the right to grant a single entity's name has been used by multiple independent manufacturers for a long period of time will not be an appropriate response.

In fact, if the product name has become a generic name and is widely used outside the country of origin, the geographical indication application may be questioned and invalid. Geographical indications give a region the exclusive right to use names for products with certain characteristics corresponding to its specific location. Based on this, some people think that *Tirupati laddu* is not worthy of GI status, because like other *laddus*, *Tirupati laddu* is also made of common raw materials, such as flour, sugar, butter, cardamom and dried fruits. Therefore, it does not have any unique characteristics that distinguish it from ordinary *laddus*, nor does it have any unique characteristics related to *Tirupati* land or TDD, which are not found in *laddus* prepared elsewhere. Interestingly, Section 9(d) of the Act prohibits the registration of geographical indications, provided that the geographical indication would damage the religious sensitivity of any type of Indian citizen.

Due to the above reasons, the granting of the famous geographical indication status of *Tirupati Laddu* has met with strong public opposition. But the Geographical Indication Registry ignored the dispute and continued to stick the geographical indication label on *Tirupati Laddu*. Along the route of the *Tirupati laddu* controversy, another intellectual property case intertwined with religion is the *Attukal* Temple Trust's claim to own the exclusive rights of temple gods. The rude commercialization cases where temples began to claim intellectual property rights to gods and offerings are absolutely shocking and force us to wonder whether the sacred *Ganges* will be the next one?

Appendix-8

Case Studies of the Biological Diversity Act, 2002

1. **Karnataka State Biodiversity Board vs Samba Masuri transgenic developed by Hyderabad based company**

A private research institute in Hyderabad developed a genetically modified Samba Masuri strain resistant to bacterial leaf blight through a marker-assisted breeding procedure and for these transformations breeding lines was acquiring from the National Gene Bank of National Bureau of Plant Genetic Resources (NBPGR), New Delhi. The institution has not applied for any intellectual property protection for the developed varieties and the license was provided to Hyderabad based Indian company for varietal multiplication and commercial selling at the cost of ₹ 10 lakh annual payments for 12 years. After that, the both Institutes had received a notice from the Telangana State Biodiversity Board stating that the commercial production and sale of this variety is equivalent to commercial use, and a notice from the State Biodiversity Board of Andhra Pradesh stating that the Institute have to pay certain amount as per rule according to Access and Benefit Sharing Law due to the being of origin place of parental line. They also received third letter from the State Biodiversity Board of Karnataka, which explained that the traditional community is the original (primitive) preserver of Samba Masuri and is now a resident of Karnataka. Therefore, both parties should pay an appropriate share of the benefit to the Karnataka State Board, and then the benefit will be transferred to the Karnataka community.

2. **A Hyderabad based ICAR Institute vs. Washington, MNC**

A Government research Institute in Hyderabad had undertaken a project to develop biopesticides to manage pod insects (*Helicoverpa*). A large-scale biological survey was conducted to collect dead larvae of pods in areas where chemical pesticides had never been used, and *Bacillus thuringiensis* (Bt 1) was isolated from a sample of Mehboob Nagar in Hyderabad. The Institute developed (in 5 countries including India) a formula containing Bt 1 and applied for a patent. The formula was based on long shelf life and suitable for use as a biopesticide for controlling pod borer insects in the field.

Several companies have expressed interest in commercializing this technology and going through a competitive bidding process. A multinational company in Washington

collaborated with the Institute to develop secure data. According to the state of agreement between the Institute and multinational companies, the technology had been fully licensed to multinational companies for commercial production, and the Institute will receive royalties of ₹ 5,00,000 per year.

3. Tea Board of India vs. ITC Ltd.

According to the plaintiff, the defendant violated the right to registered geographical indications with fraudulent and malicious intent, and the plaintiff's rights were thus hindered. The name of its place of business is *Darjeeling Lounge*, which is a registered geographical indication. The malicious defendant used the name *Darjeeling* to indicate and sale the goods. The defendant astray its customers, implying that the goods sold in the *Darjeeling Lounge* originated in the said geographic area. The defendant used the name *Darjeeling* to name the lounge, advertised and sold products in accordance with honest trade practices, which created unfair competition.

The Hon'ble Court heard the merits of the case, and Honible Judge Munshi pointed out: Nor did we find any infringements under the Commodity Geographical Indications Act, because the defendant's *lounge* has nothing to do with the goods. The right of the plaintiff is *Darjeeling*. The registration is only related to tea. *Darjeeling* is not a trademark. It is only used to indicate the geographical indication of the place of origin of tea from *Darjeeling*. Only laws related to geographical indications are restricted by it. The plaintiff did not use *Darjeeling* on any goods other than tea. *Darjeeling* has any rights, the Geographical Indications Act only applies to goods, and the defendant's lounge does not fall into this category.

The Hon'ble Court further determined that according to the definition of the Geographical Indications Act, there is no unfair competition because the plaintiff and the defendant have completely different business fields, and none of the 87 tea gardens raised any questions. However, the court pointed out that the Commission only owns the certification mark referred to in Section 2(e) of the "Trademark Act, 1999", which does not constitute a registered trademark. The court pointed out that there was no relationship between the defendant *Darjeeling Lounge* and the rights of the plaintiff under the Trademark or Geographical Indications Law. The allegations were groundless and the court rejected the ₹ 10 lakh lawsuit.

Examples of Some Indian Geographical Indications

Basmati Rice



Darjeeling Tea



Kanchipuram Silk Saree



Alphonso Mango



Nagpur Orange



Kolhapuri Chappal



Agra Petha



Tirupati Laddus



Mathura Peda



Kangra Tea



Banarasi Saree



Lucknow Chikan Craft



Deshari Mango



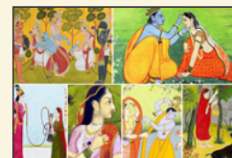
Kashmir Pashmina



Tulsiapanji rice



Kangra painting





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