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**GUJARAT TECHNOLOGICAL UNIVERSITY**

# **Module 1: Basics of IPR**

*From Research to Revenue*



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## Module- 1- Basics to IPR

### Topics

#### Introduction to IPR

- **Importance**
  - **Significance**
  - **Forms of IPR**
    - Patent
    - Trademark
    - Copyright
    - Geographical Indication
    - Design
    - Trade Secret
    - Plant variety & Farmer's Protection Right
    - Lay out design & Integrated circuit
- 

#### **Background**

God gifted a wonderful thing called Brain to Man and Mother Nature endowed him with the abundant physical and biological resources on the earth. Man started creating his own world by application of his brain or mind and by utilization of these natural resources. Man has also been bestowed with imagination and creativity. With his imagination and creativity, he has been producing various articles or products for his needs, comfort and convenience. In the earlier era, the creations and inventions by him fell in a public domain. These were the common properties. Anybody could use and copy these creations and inventions without any restriction, reservation or payment. However, with the passage of time, the importance and value of these creations was realized. The commercial aspect started playing a significant roll in these creations. By end of Twentieth Century, the things created and invented by the human mind were recognized as an **intellectual property** of the owner .The owner's right over these properties was accepted and is known as an **Intellectual Property Right** (commonly called I.P.R.). A new set of laws called **Intellectual Property Right Laws**, were enacted to protect these property rights. These I.P.R. laws provided a protection to the owners under different categories and names like Patents, Industrial designs, Copyrights, Trade- Marks etc.

#### **Intellectual Property (IP)**

It is basically intangible property that is created at the mind of the humans before being converted to material forms. Property here is the human thought process and the protection accorded to such thought process. Eg: idea, business method, invention etc.

### **Intellectual Property Rights (IPR)**

As the name indicates Intellectual Property Rights are exclusive rights over the creations of the mind. A creator can have exclusive rights over his creation for a certain period of time depending upon the type of Intellectual Property.

### **Significance of Intellectual Property Rights**

The intellectual property rights were essentially recognized and accepted all over the world due to some very important reasons. Some of the reasons for accepting these rights are:-

- a. To provide incentive to the individual for new creations.
- b. Providing due recognition to the creators and inventors.
- c. Ensuring material reward for intellectual property.
- d. Ensuring the availability of the genuine and original products

### **Importance of IPR**

Today, possession of land, labour and capital are just not enough for a country to succeed. Creativity and innovation are the new drivers of the world economy. The policies adopted by a country shall determine the nations well being and further as to how it is developing the trapped intellectual capital. An effective intellectual property system is the foundation of such a strategy. Within knowledge-based, innovation-driven economies, the intellectual property system is a dynamic tool for wealth creation providing an incentive for enterprises and individuals to create and innovate; and provide a stable environment for domestic and foreign investment. With efficient IPR system, India becomes prosperous in terms of “Knowledge Economy”, which is a boon towards the goal of vision-2020.

### **Types of Intellectual Property Rights**

The knowledge of intellectual property rights is must to a common man. A common man everywhere and every time come across the things created, invented, discovered and produced by some human mind. A design of a house , the material used in a house, its furnishings like a carpet, sofa, fridge ,television, telephone, paintings, photographs, wall clock ; the articles of daily use like a pens, books, the newspapers ,tissue papers, shoes etc ; the things that are worn by him like Jeans ,T-shirts , trousers, hats ties , shoes etc ; the items of conveyance like cycles, cars, bikes etc...The list is endless! Almost all the things that surround a common man are one way or other, property intellectual properties of some one. Somebody has spent his time, money and energy to invent and create them. Therefore, these all common things are intellectual property of someone and are protected by law. These items of intellectual properties can be classified into two main categories:-

- a. Industrial Property rights**
- b. Copyright and related rights**

The **industrial properties rights** include rights in form of **patents, trade marks, industrial designs, and geographic indication of source**. The copyrights and related rights items include all literary works which range from articles, news-paper items, novels, story books, poetry books, drawings, photographs, paintings, architectural design, music, dance, films and artistic performances.

## **A. PATENTS**

- Patent is a grant given by the Government to an inventor for having made an **invention**, which possesses the property of novelty, non-obvious and industrial utility. Once granted, a patent gives the inventor the right to exclude others from making, using, selling, importing or offering for sale the invention for the duration of the patent term, which is usually 20 years.

### **Invention:**

It means any new process or product involving inventive step and capable of industrial utility.

### **New invention:**

It means any invention or technology which has not been anticipated by publication in any document or used in the country or elsewhere in the world before the date of filing of patent application with complete specification, i.e., the subject matter has not fallen in public domain or that it does not form part of the state of the art.

- *State of art :*

It applies to the level of development (as of a device, procedure, process, technique, or science) reached at any particular time usually as a result of modern methods. It usually used as synonym for "Prior-art"

- *Prior art:*

It means all information that has been made available to the public in any form before a given date that might be relevant to a patent's claims of originality.

### **Inventive Step (Non-obviousness)**

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

- *Person skilled in the art:*

This is one kind of hypothetical person to be considered who has the normal skills and knowledge in a particular technical field, without being a genius. He or she mainly serves as a reference for determining, or at least evaluating, whether an invention involves an **inventive step** or not. If it would have been obvious for this

hypothetical person to come up with the invention while starting from the prior art, then the particular invention is considered not patentable.

### **Capable of Industrial Utility**

In relation to an invention, means that the invention is capable of being made or used in an industry.

### **Benefit of Patent**

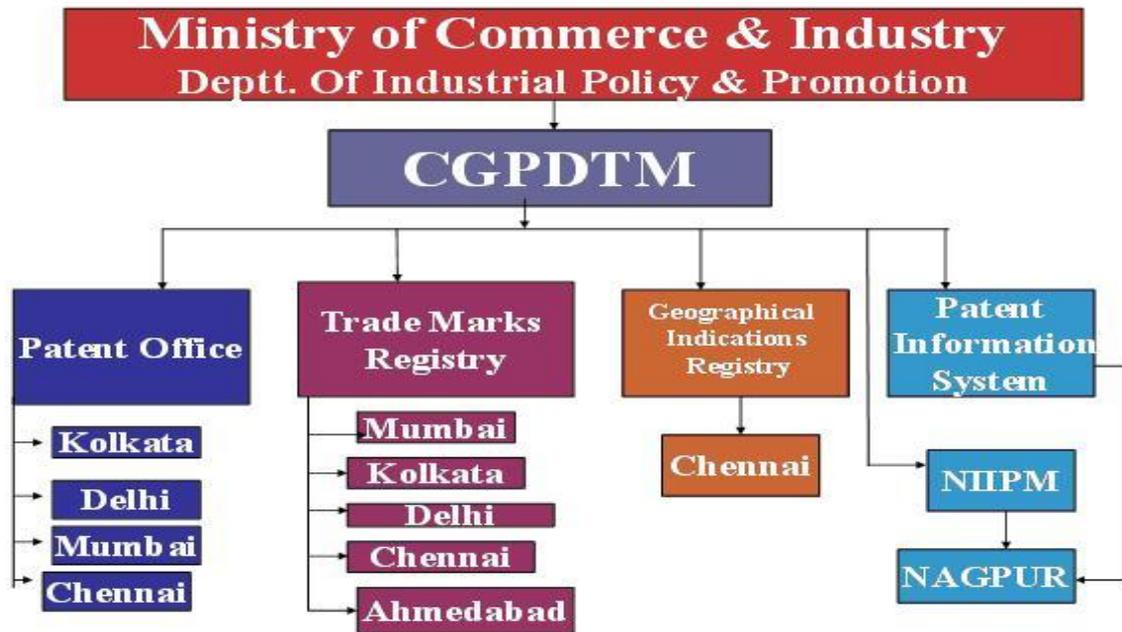
- A patentee enjoys exclusive right to prevent a third party from an unauthorized act of making, using, offering for sale, selling or importing the patented product or process within the country during the term of the patent.
- A patented invention becomes free for public use after expiry of the term of the patent or when the patent ceases to have effect on account of non-payment of renewal fee.

### **Term of Patent**

Term of patent is 20 years from the date of first filing of application (either provisional or complete application) and remains in force only by paying annual renewal fees on time.

### **Patent Act & Rules**

- In India, Patent rights are governed by the Patent Act, 1970 (39 of 1970). At present 3<sup>rd</sup> amendment of Act known as the **Patent (Amendment) Act, 2005** (15 of 2005) is in force.
- For application of Patent Act, rules are made by the Government, which are known as “Patent Rule, 2003”, as of now **Patent (Amendment) Rule, 2006** are in force.
- For better understanding of Act & Rules, “**Draft Manual of Patent Practice & Procedure (MPPP), 2008**” is published by the patent office.
- There are 4 patent offices in India having work distribution according to their geographical location viz. **Kolkata (Head office)**, Delhi, Mumbai & Chennai
- The working of the patent office comes under the “Department of Industrial Policy & Promotion (DIPP)” which comes under the “Ministry of Commerce and Industry” of Government of India. DIPP appoint one person as “**Controller General of Patent, Design & Trade Mark**” (CGPDTM), under whose guidance all patent offices, trade mark registry offices and Design offices are functioning.



#### Examples of Patent:

- Tata has filed 34 patents for **TATA NANO**
- It becomes the world's cheapest car
- Begin a new concept of Engineering known as "**Gandhian Engineering**" synonymous to **Frugal Engineering**"



Official website of patent office

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

## **B. TRADEMARKS**

### **Definition**

A trade mark (popularly known as brand name) in layman's language is a visual symbol which may be a word signature, name, device, label, numerals or combination of colours used by one undertaking on goods or services or other articles of commerce to distinguish it from other similar goods or services originating from a different undertaking. The trademark owner will have monopoly over the usage of that symbol. It includes Brands, Logos, Service marks, Trade name etc.

### **Significance of Trademark**

Under modern business condition a trade mark serve following purposes:

- It identifies the actual physical origin of goods and services. The brand itself is the seal of authenticity.
- It guarantees the identity of the origin of goods and services.
- It stimulates further purchase.
- It serves as a badge of loyalty and affiliation.
- It may enable consumer to make a life style or fashion statement.

### **Trademark Act & Rule**

- The Trade Marks Registry was established in India in 1940 and presently it administers the **Trade Marks Act, 1999** and the **Trade Mark Rule, 2002** there under. It acts as a resource and information centre and is a facilitator in matters relating to trade marks in the country.
- The objective of the Trade Marks Act, 1999 is to register trade marks applied for in the country and to provide for better protection of trade mark for goods and services and also to prevent fraudulent use of the mark.
- The main function of the Registry is to register trade marks which qualify for registration.
- The head office of Trade Mark Registry is located at Mumbai and branch offices are at Kolkata, Delhi, Chennai & Ahmedabad.

### **Types of Trademark can be registered**

There are many forms of trademark, which can be registered:

- Any name (including personal or surname of the applicant or predecessor in business or the signature of the person), which is not unusual for trade to adopt as a mark.
- An invented word or any arbitrary dictionary word or words, not being directly descriptive of the character or quality of the goods/service.
- Letters or numerals or any combination thereof.
- The right to proprietorship of a trade mark may be acquired by either registration under the Act or by use in relation to particular goods or service.
- Devices, including fancy devices or symbols
- Monograms

- Combination of colors or even a single color in combination with a word or device
- Shape of goods or their packaging
- Marks constituting a 3- dimensional sign.
- Sound marks when represented in conventional notation or described in words by being graphically represented.

**Types of Trade marks: Can not be registered**

(1) In following situations, Marks can not be registered as Trade Mark....

- (a) Marks which are devoid of any distinctive character, that is to say, not capable of distinguishing the goods or services of one person from those of another person.
- (b) Marks which consist exclusively of marks or indications which may serve in trade to designate the kind, quality, quantity, intended purpose, values, geographical origin or the time of production of the goods or rendering of the service or other characteristics of the goods or services;
- (c) Marks which consist exclusively of marks or indications which have become customary in the current language or in the bona fide and established practices of the trade.

Provided that a trade mark shall not be refused registration if before the date of application for registration it has acquired a distinctive character as a result of the use made of it or is a well-known trade mark.

(2) A mark shall not be registered as a trade mark if ----

- (a) It is of such nature as to deceive the public or cause confusion;
- (b) It contains or comprises of any matter likely to hurt the religious susceptibilities of any class or section of the citizens of India;
- (c) It comprises or contains scandalous or obscene matter;
- (d) Its use is prohibited under the Emblems and Names (Prevention of Improper Use) Act, 1950.

(3) A mark shall not be registered as a trade mark if it consists exclusively of-

- (a) The shape of goods which results from the nature of the goods themselves; or
- (b) The shape of goods which is necessary to obtain a technical result; or
- (c) The shape which gives substantial value to the goods.

**Benefit of Trademark Registration**

The registration of a trade mark confers upon the owner the exclusive right to the use of the registered trade mark and indicates so by using the symbol I in relation to the goods or services in respect of which the mark is registered and seek the relief of infringement in appropriate courts in the country. The exclusive right is however subject to any conditions entered on the register such as limitation of area of use etc. Also, where two or more persons have registered identical or nearly similar mark due to special circumstances such exclusive right does not operate against each other.

### **Term of Trademark**

The initial registration of a trademark shall be for a period of **ten years** but may be renewed from time to time for an unlimited period by payment of the renewal fees.

**Examples:** “RELIANCE” is a trade name registered and used by Reliance Ind. Ltd.



is a logo registered and used by Coca Cola

**Official website of Trade Mark Registry**

<http://www.ipindia.nic.in> OR <http://www.patentoffice.nic.in>  
[http://ipindia.nic.in/tmr\\_new/default.htm](http://ipindia.nic.in/tmr_new/default.htm)

## **C. COPYRIGHTS**

### **Definition**

Copyright is a right given by the law to creators of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings. In fact, it is a bundle of rights including, *inter alia*, rights of reproduction, communication to the public, adaptation and translation of the work. There could be slight variations in the composition of the rights depending on the work.

### **Classes of works for which copyrights protection is available in India**

Copyright subsists throughout India in the following classes of works:

- Original literary, dramatic, musical and artistic works;
  - Cinematograph films; and
  - Sound recordings.
- 
- **Musical work**  
“Musical work” means a work consisting of music and includes any graphical notation of such work but does not include any words or any action intended to be sung, spoken or performed with the music. A musical work need not be written down to enjoy copyright protection.
  
  - **Artistic work**  
It means-
    - a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality;
    - a work of architecture; and
    - any other work of artistic craftsmanship.
  
  - **Cinematograph film**  
“Cinematograph film” means any work of visual recording on any medium produced through a process from which a moving image may be produced by any means and includes a sound recording accompanying such visual recording and “cinematograph” shall be construed as including any work produced by any process analogous to cinematography including video films.
  
  - **Sound recording**  
“Sound recording” means a recording of sounds from which sounds may be produced regardless of the medium on which such recording is made or the method by which the sounds are produced. A phonogram and a CD-ROM are sound recordings.
  
  - **Computer programmes (Software)**  
Computer programmes are protected under the Copyright Act. They are treated as literary works.

### **Who is the first owner of copyright in a work?**

Ordinarily the author is the first owner of copyright in a work.

- **Author**

In the case of a literary or dramatic work the author, i.e., the person who creates the work.

- In the case of a musical work, the composer.
- In the case of a cinematograph film, the producer.
- In the case of a sound recording, the producer.
- In the case of a photograph, the photographer.
- In the case of a computer generated work, the person who causes the work to be created.

### **Need of Copyright protection**

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

### **Copyright Act**

- **The Copyright Act, 1957** came into effect from January 1958. This Act has been amended five times since then, i.e., in 1983, 1984, 1992, 1994 and 1999, with the amendment of 1994 being the most substantial.

- Prior to the Act of 1957, the Law of Copyrights in the country was governed by the Copyright Act of 1914. This Act was essentially the extension of the British Copyright Act, 1911 to India. Even the Copyright Act, 1957 borrowed extensively from the new Copyright Act of the United Kingdom of 1956.

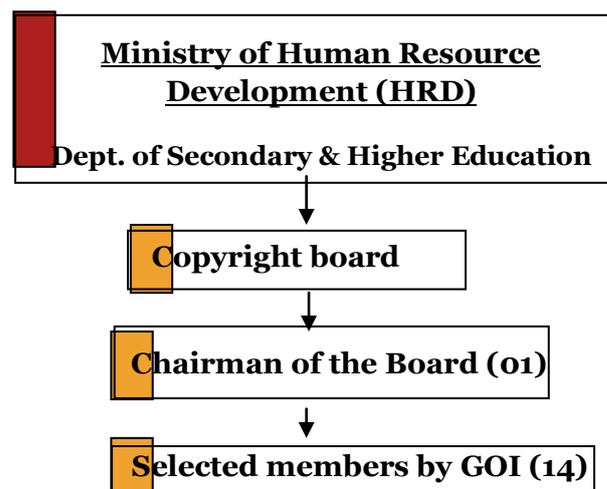
- The Copyright Act, 1957 continues with the common law traditions. Developments elsewhere have brought about certain degree of convergence in copyright regimes in the developed world.

- Copyright as provided by the Indian Copyright Act is valid only within the borders of the country. To secure protection to Indian works in foreign countries, India has become a member of the following international conventions on copyright and neighboring (related) rights:

- Berne Convention of 1886 (as modified at Paris in 1971), for the Protection of Literary and Artistic works.
- Universal Copyright Convention of 1951
- Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms.
- Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties.
- Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement of 1995

• Two new treaties, collectively termed as Internet Treaties, were negotiated in 1996 under the auspices of the **World Intellectual Property Organization (WIPO)**. These treaties are called the ‘**WIPO Copyrights Treaty (WCT)**’ and the ‘**WIPO Performances and Phonograms Treaty (WPPT)**’. These treaties were negotiated essentially to provide for protection of the rights of copyright holders, performers and producers of phonograms in the Internet and digital era. **India is not a member of these treaties as yet.**

## Organization of Copyright Board of India



### Fare Use of Copyrighted materials

Certain uses of copyrighted material, for particular purposes, are considered as “**Fare Use**” can not consider as infringement under the Copyright Act, 1957.

These include use of copyrighted material...

- i. for the purpose of research or private study,
- ii. for criticism or review,
- iii. for reporting current events,
- iv. in connection with judicial proceeding,
- v. performance by an amateur club or society if the performance is given to a non-paying audience, and
- vi. the making of sound recordings of literary, dramatic or musical works under certain conditions.

### **Proof of the authorship of a work**

Where, in the case of a literary, dramatic, musical or artistic work, a name purporting to be that of the author or the publisher appears on copies of the work as published, or, in the case of an artistic work appeared on the work where it was made, the person whose name so appears or appeared shall, in any proceeding in respect of copyright in such work, be presumed, unless the contrary is proved, to be the author or the publisher of the work, as the case may be.

### **Registration of work to claim copyright**

As such there is no need to do registration of work for copyright protection. **Acquisition of copyright is automatic** and it does not require any formality. However, certificate of registration of copyright and the entries made therein serve as *prima facie* evidence in a court of law with reference to dispute relating to ownership of copyright.

### **Process of Copyright Registration**

Chapter VI of the Copyright Rules, 1956, as amended, sets out the procedure for the registration of a work. Copies of the Act and Rules can be obtained from the Manager of Publications, Publication Branch, Civil Lines, Delhi or his authorized dealers on payment. The procedure for registration is as follows:

- a. Application for registration is to be made on Form IV ( Including Statement of Particulars and Statement of Further Particulars) as prescribed in the first schedule to the Rules ;
- b. Separate applications should be made for registration of each work;
- c. Each application should be accompanied by the requisite fee prescribed in the second schedule to the Rules ; and
- d. The applications should be signed by the applicant or the advocate in whose favour a Vakalatnama or Power of Attorney has been executed. The Power of Attorney signed by the party and accepted by the advocate should also be enclosed.

Each and every column of the Statement of Particulars and Statement of Further Particulars should be replied specifically. Both published and unpublished works can be registered.

### **Term of Copyright**

The general rule is that copyright lasts for 60 years. In the case of original literary, dramatic, musical and artistic works the 60-year period is counted from the year following the death of the author. In the case of cinematograph films, sound recordings, photographs, posthumous publications, anonymous and pseudonymous publications, works of government and works of international organizations, the 60-year period is counted from the date of publication.

**Examples:** Text book, E-learning CD, Movie VCD/DVD, Published paper in journals

### **Official website of Copyright Board**

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

## **D) GEOGRAPHICAL INDICATIONS**

### **Definition**

In relation of goods, it means an indication which identify such goods (whether it is an agricultural goods, natural goods or manufactured goods) as originating, or manufactured in the territory of the country, or a region or a locality of that territory, where a given quality, reputation, or other characteristics of such goods is essentially attributed to its geographical origin. In case of manufactured goods, one of the activities either of production or processing of concerned goods is take place in such territory, region or locality, as the case may be.

- **Goods**

It means any agriculture, natural or manufactured goods or any goods of handicraft or of industry including food stuff.

- **Indication**

It means any name, geographical or figurative representation or any combination of them conveying or suggesting the geographical origin of the goods to which it applies.

**Example:** It includes....

- i) GI with geographical name viz. Darjeeling tea, Kolhapuri Chappal, Kancheepuram Silk Sarees, Nagpur orange, Bikaneri Bhujia, Agra Petha, Tirupati Laddu, Kashmiri pashmina, Kachchhi Shawl, etc.
- ii) GI without geographical name viz. Basmati rice, Alphonso mangoes etc.

### **Geographical Indications of Goods (Registration & Protection) Act**

- Geographical indications are covered as an element of IPRs, under Articles 1(2) and 10 of the Paris Convention for the Protection of Industrial Property as well as covered under Articles 22 to 24 of the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement, which was part of the Agreements concluding the Uruguay Round of GATT negotiations.
- India, as a member of the World Trade Organization (WTO), enacted the **Geographical Indications of Goods (Registration & Protection) Act, 1999** which has come into force with effect from **15<sup>th</sup> September 2003**.
- **Geographical Indication Registry** is constituted under CGPDTM and office is located at Chennai.

### **Significance of GI**

- It confers legal protection to Geographical Indication in India
- Prevents unauthorized use of a Registered Geographical Indication by others
- It provides legal protection to Indian Geographical Indications, which in turn boost exports

- It promotes economic prosperity of producers of goods produced in a geographical territory

### **Registration of a geographical indication**

- Any association of persons, producers, organization or authority established by or under the law can apply:
  - The application must represent the interest of the producers
  - The application should be in writing in the prescribed form
  - The application should be addressed to the Registrar of Geographical Indications along with prescribed fee.
- After successful registration said association of persons, producers, organization or authority established by or under the law can be a registered proprietor.
  - Their name should be entered in the Register of Geographical Indications as registered proprietor for the Geographical Indication applied for.

### **Term of GI**

The registration of a Geographical Indication is valid for a period of **10 years** and can be renewed from time to time for further period of 10 years each till such products are available in the market.

### **Difference between GI & Trade Mark**

- A Trademark is sign, which is used in the course of trade, and it distinguishes goods or services of one enterprise from those of other enterprises.
- Whereas a Geographical Indication is an indication used to identify goods having special characteristics originating from a definite Geographical Territory.

### **Official website of Geographical Indication Registry**

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

## **E. DESIGN**

### **Definition**

It deals with the protection of a unique industrial design, shape, or ornamental look of an article.

- **Article**

It means any article of manufacture and any substance, artificial, or partly artificial and partly natural; and includes any part of an article capable of being made and sold separately

### **The Design Act & Rule**

- The essential purpose of design law is to promote and protect the design element of industrial production. It is also intended to promote innovative activity in the field of industries.
- The existing legislation on industrial designs in India is contained in the New **Designs Act, 2000** and Design Rule, 2001 which was amended recently and now **Design (Amendment) Rule, 2008** are in force.
- For registration of Design, application should be forwarded to the Controller of Design, situated at the Patent Office, Kolkata.

### **Criteria for Registration under Design Act, 2000**

- 1) The design should be new or original, not previously published or used in any country before the date of application for registration. The novelty may reside in the application of a known shape or pattern to new subject matter.

**Example:**

The known shape of “Kutub Minar” when applied to a cigarette holder, then said holder is registrable. However, if the design for which application is made does not involve any real mental activity for conception, then registration may not be considered.

- 2) The design should relate to features of shape, configuration, pattern or ornamentation applied or applicable to an article. Thus, designs of industrial plans, layouts and installations are not registrable under the Act.
- 3) The design should be applied or applicable to any article by any industrial process. Normally, designs of artistic nature like painting, sculptures and the like which are not produced in bulk by any industrial process are excluded from registration under the Act.

- 4) The features of the design in the finished article should appeal to and are judged solely by the eye. This implies that the design must appear and should be visible on the finished article, for which it is meant. Thus, any design in the inside arrangement of a box, money purse or almirah may not be considered for showing such articles in the open state, as those articles are generally put in the market in the closed state.
- 5) Any mode or principle of construction or operation or any thing which is in substance a mere mechanical device, would not be registrable design. For instance a key having its novelty only in the shape of its corrugation or bend at the portion intended to engage with levers inside the lock associated with, cannot be registered as a design under the Act.
- 6) The design should not include any Trade Mark or property mark or artistic works as define under the Copyright Act, 1957.

### **Type of article which can not be registered under the Design Act, 2000**

Article in form of stamps, labels, tokens, cards can not be considered an article for the purpose of registration of Design because once the alleged Design i.e., ornamentation is removed only a piece of paper, metal or like material remains and the article referred ceases to exist. Article must have its existence independent of the Designs applied to it. [Design with respect to label was held not registrable, by an Order on civil original case No. 9-D of 1963, Punjab, High Court]. So, the Design as applied to an article should be integral with the article itself.

### **Term for Design**

The initial term is for **10 years** from the date of application and can be further renewed for next 5 years. In short, maximum term can be of 15 years.

**Examples:** New design of mobile launched by NOKIA, Design of Tata's NANO car

### **Official website of Design Office**

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

## **F. PLANT VARIETY & FARMER'S PROTECTION RIGHT**

### **Definition**

A new plant variety shall be registered under this Act if it conforms to the criteria of novelty, distinctiveness, uniformity and stability. It also provides right to farmers to sow, resow, exchange, share or sell his farm products including seed of a variety protected under this Act.

- **“plant variety” [U/s 2(za)]**

It means a plant grouping except micro organism within a single botanical taxon of the lowest known rank, which can be defined by the expression of the characteristics resulting from a given genotype of that plant grouping distinguished from any other plant grouping by expression of at least one of the said characteristics; and considered as a unit with regard to its suitability for being propagated, which remains unchanged after such propagation, and includes propagating material of such variety, extant variety, transgenic variety, farmers' variety and essentially derived variety.

**Examples:** Under this right, 4 types of varieties viz. New varieties, Extant varieties, Essentially derived varieties and Farmers' varieties can be registered.

### **Protection of Plant Varieties and Farmer Rights Act, 2001 (PPV& FR Act, 2001)**

The Indian Plant Variety Bill titled “Protection of Plant Varieties and Farmers' Right Bill”, was passed by the Lok Sabha on 9<sup>th</sup> August, 2001 is now an Act. This Act comes into force from 20<sup>th</sup> February, 2007.

This is the first piece of legislation in the world which recognizes the phenomenal contribution of the farm families in conserving biodiversity and developing the new plant varieties. India has purposefully opted for a *sui 19ulfilis* system of protection of plant varieties instead of patents in order to recognize contribution of farmers and tribal communities in conserving agro-biodiversity over centuries.

### **Objective of PPV& FR Act, 2001**

There are four major objectives of the Act viz.

- To recognize and protect the rights of farmers for their contribution made in conserving, improving and making plant genetic resources available for development of new varieties.
- To protect plant breeders' rights, to stimulate investment for research and development, both in public and private sector, for the development of new plant varieties.
- To facilitate the growth of seed industry in the country, to ensure the availability of high quality seeds and planting material to farmers.
- To give effect to Article 27.3(b) in Part II of the TRIPs Agreement.

### **Obligations under Article 27.3(b) Of TRIPs Agreement**

It can be broken down into three components viz.:

- A country MAY exclude from patentability plants, animals and essentially biological processes for the production of plants and animals;
- A country MUST allow patents for micro-organisms and non-biological and microbiological processes for the production of plants or animals; and
- A country MUST provide protection for plant varieties, either by patents or by an effective “**Sui generis**” system or a combination thereof.

### **Term of protection under PPV& FR Act, 2001**

- i) In the case of trees and vines, **eighteen years** from the date of registration of the variety;
- ii) In the case of extant variety, **fifteen years** from the date of the notification of that variety by the Central Government under section 5 of the Seeds Act, 1966; and
- iii) In other cases, **fifteen years** from the date of registration of the variety.

### **Official website of Plant Authority**

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

## **G. SEMI CONDUCTOR INTEGRATED CIRCUITS LAYOUT DESIGN**

The semiconductor Integrated Circuits Layout Design Act, 2000, (SICLD Act, 2000) provides protection for semiconductor IC layout designs. SICLD Act is a sui-generis (one of its kind) specifically meant for protecting IPR relating to Layout-Design (Topographies) of Semiconductor Integrated Circuit.

The subject of Semiconductor Integrated Circuits Layout Design has two parts, namely:

1. *Semiconductor Integrated Circuit*

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

2. *Layout-design*

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

### **Criteria for Registration of a Chip Layout Design**

If it follows following criteria...

- Original,
- Distinctive and
- Capable of distinguishing from any other lay-out design.

**Note:** “ Only the Layout-Design “ – which essentially is the mask layout- floor planning of the integrated circuits can be registered under the SICLD Act 2000 and not the other information like any idea, procedure, process, system, programme stored in the integrated circuit, method of operation etc.

### **Layout-designs are prohibited from registration under the Act**

If they are as follows:

- Not original;
- Have been commercially exploited anywhere in India or in a Convention country i.e. any country that the Government of India notifies in the Official Gazette for the fulfillment of a treaty, convention or an arrangement with any country outside India and which affords to citizens of India similar privileges as are granted to its own citizens;
- Not inherently distinctive;
- Not inherently capable of being distinguishable from any other registered layout-design.

**Term of protection** This registration is valid for a term of **ten years** from the date of filing an application for registration or from the date of first commercial exploitation anywhere in the world, whichever is earlier.

**Location of Registry**

Semiconductor Integrated Circuits Layout-Design Registry of India is currently located in New Delhi, and comes under the purview of Department of Information & Technology (DIT), Ministry of Communications and Information Technology, Gov. of India.

**Official website of SICLD**

<http://www.mit.gov.in/default.aspx?id=317>

## **H. TRADE SECRETS**

- Unlike other forms of intellectual property, trade secrets are essentially internal instruments, the responsibility for their protection remaining with the owner of the secrets. They are not disclosed to any one including the Government and are kept confidential.
- The most quoted trade secret and the one which has established the credibility that trade secrecy can be ensured is the case of the Coca-Cola formula, which is kept locked in a bank vault in Atlanta, can be opened only by a resolution of the company's board and is known to only two employees at the same time. The public has no access to the names of those employees and they are not allowed to fly on the same air plane. It is obvious that such extreme systems and standards for protection of trade secrets are neither necessary nor practiced by many other corporations.

### **✚ Trade secrets protection in India**

- As per now no current legislation is in force to protect "Trade Secret" in India. Some of the provisions of contract in the trade can be handled by "The Contract Act, 1872"
- UNDER ARTICLE 39 of TRIPS, all member countries are obliged to ensure protection of undisclosed information through systems developed through appropriate legislations.
- As part of its obligations under WTO and to comply with Article 39 of TRIPS, India launched its first draft of "**National Innovation Act-2008**" on 1<sup>st</sup> October, 2008.
- This draft was prepared and submitted by Department of Science & Technology (DST) under Ministry of Science & Technology, Gov. of India and **yet to come in force after parliamentary approval.**

### **✚ Purpose of "National Innovation Act-2008"**

There are three fold purposes of this Act:

- To facilitate public, private or public- private partnership initiatives for building an Innovation support system to encourage Innovation;
  - Evolve a National Integrated Science and Technology Plan and
  - Codify and consolidate the law of confidentiality in aid of protecting Confidential Information, trade secrets and Innovation.
- **Confidential Information**  
It means information, including a formula, pattern, compilation, program device, method, technique, or process, that:

- (a) is secret in that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
- (b) has commercial value because it is secret; and
- (c) has been subject to reasonable steps under the circumstances by the person lawfully in control of the information, to keep it secret.

- **Innovation**

It means a process for incremental or significant technical advance or change, which provides enhancement of measurable economic value, and shall include:

- (a) introducing new or improved goods or services
- (b) implementing new or improved operational processes; and
- (c) implementing new or improved organizational / managerial processes

The definition of Innovation has intentionally been limited to processes directed towards achieving technical advance. Such processes are distinct from the new and innovative technology or advance achieved as a consequence of the Innovation. Although such technology may comprise a new product or even a new process, said new product or process could be protectable under the laws of intellectual property (Patent) and are not to be confused with the “Innovation” process of this statute.

- **Misappropriation**

It means:

- (a) acquisition of a trade secret of another by a person who knows or has reason to know that the confidential information was acquired by improper means; or
- (b) disclosure or use of confidential information of another without express or implied consent by a person who:
  - (i) used improper means to acquire knowledge of the Confidential Information; or
  - (ii) at the time of disclosure or use knew or had reason to know that his knowledge of the confidential information was
    - I) derived from or through a person who has utilized improper means to acquire it;
    - II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or
    - derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or;
    - before a material change of his position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

Explanation: In relation to sub clause (ii) (II), attorney- client privilege in relation to Confidential Information gives rise to a duty to maintain secrecy.

 **Term of Trade secret**

- Unlike patents, trade secrets are **protected without registration** i.e. without any procedural formalities.
- Trade secret can be protected for as long as the information remains confidential.

 **Criteria for infringement suit of Trade secret**

It can be broken down in three elements:

1. Subject matter involved must qualify for trade secret protection, i.e., the type of knowledge trade law was meant to protect, must not be generally known to all;
2. A trade secret plaintiff must prove the defendant acquired the wrongfully-misappropriate the trade secret. Acquiring through theft, or espionage but also in breach of contractual(express or implied) duty not to disclose;
3. Holder takes reasonable precautions under the circumstance to prevent its disclosure.

**For more information please visit following web sites**

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

[www.dst.gov.in/draftinnovationlaw.pdf](http://www.dst.gov.in/draftinnovationlaw.pdf)

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