

Intellectual Property Rights - An Overview

**Prepared by IPR Cell,
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ABOUT THE BOOK

**This work has been created
with a view to increase
awareness about the
importance of IP and to
develop interest in the
whole new world of IP**

CONTENTS

MODULES

Primer on IP

Patents

Copyrights

Trademarks

Other forms of IP

PAGES

5

22

43

59

72

Bharathidasan University



Your Future with IP

Young minds are
the building blocks of a
better society

You should know
how to protect
your ideas

You should know
your rights

Opportunity to
become an IP
professional

Add to your
career enhancing
skills

MODULE -1

PRIMER ON IP

INTRODUCTION

Over the past two decades, intellectual property rights have grown to a stature from where it plays a major role in the development of global economy. **Intellectual property is everywhere**, i.e., the music you listen to, the technology that makes your phone work, the design of your favourite bike, the logo on your chocolate, etc. It exists in all the things you can see — all are the products of human creativity and skill, such as inventions, books, paintings, songs, symbols, names, images, or designs used in business, etc.

All inventions or creations begin with an 'idea'. Once the idea becomes an actual product, i.e., Intellectual Property, one can apply to the authority concerned under the Government of India for protection. **Legal rights conferred on such products are called 'Intellectual Property Rights' (IPR)**. Hence Intellectual property (IP) refers to products of human mind, hence, just like other types of property, the owners of IP can rent, give or sell it to other people.

Specifically, Intellectual property (IP) refers to the **creations of the human mind, like inventions, literary and artistic works, symbols, names, images and designs** used in business. Intellectual property is divided into two broad categories: industrial property, which includes inventions (patents), trademarks, industrial designs and geographical indications, while the other is copyrights, which includes literary and artistic works, such as novels, poems, plays, films, musical works, artistic works, such as drawings, paintings, photographs and sculptures and architectural designs.

The most noticeable difference between intellectual property and other forms of property is that intellectual property is **intangible**. The scope and definition of intellectual property is constantly evolving with the inclusion of newer forms. In recent times, **geographical indications, protection of plant varieties, protection of semi-conductors and integrated circuits and undisclosed information** have been brought under the umbrella of intellectual property.

WHY IS IPR IMPORTANT?

- It encourages creation of new, path breaking inventions, such as cancer cure medicines
- It incentivises inventors, authors, creators, etc., for their work
- It allows the work created by a person to be distributed and communicated to the public. It can be commercialised by licensing by the owner. Therefore, it helps in the prevention of loss of income
- It helps authors, creators, developers and owners to get recognition for their works

With the establishment of the World Trade Organisation (WTO), the importance and role of intellectual property protection has been crystallised in the **Trade-Related Intellectual Property Systems (TRIPS) Agreement**. With the establishment of WTO, and India being a signatory to the agreement on TRIPS, several legislations were passed for the protection of intellectual property rights to meet the international obligations.

KINDS OF IPR

Intellectual Property Rights as a collective term includes the following independent IP rights which can be collectively used for protecting different aspects of an inventive work for multiple protection

- Patents
- Design
- Trademarks
- Copyrights
- Geographical Indication
- Plant Variety protection
- Layout-Design protection

PATENTS

A Patent is a **statutory right for an invention** granted for a limited period to the patentee by the government, in exchange of full disclosure of their invention for **excluding others, from making, using, selling, importing the patented product or process** for producing that product for those purposes without their consent

Example



Ministry/Office administering: (Govt. of India)

- Department of Industrial Policy and Promotion, Ministry of Commerce & Industry
- Controller General of Patents, Designs and Trade Marks
- Concerned IP Act: The Patents Act, 1970 (as amended)

DESIGN

'Design' means only the **features of shape, configuration, pattern or ornament or composition of lines or colour or combination thereof applied to any article** whether two dimensional or three dimensional or in both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye

Example



Ministry/Office administering: (Govt. of India)

- Department of Industrial Policy and Promotion, Ministry of Commerce & Industry
- Controller General of Patents, Designs and Trade Marks
- Concerned IP Act: Designs Act, 2000

TRADEMARKS

A trademark 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

Example



Ministry/Office administering: (Govt. of India)

- Department of Industrial Policy and Promotion, Ministry of Commerce & Industry
- Controller General of Patents, Designs and Trade Marks
- Concerned IP Act: Trademarks Act, 1999 (as amended)

COPYRIGHTS

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, rights of reproduction, communication to the public, adaption and translation of the work. There could be slight variations in the composition of the rights depending on the work

Example



Ministry/Office administering: (Govt. of India)

- Department of Industrial Policy and Promotion, Ministry of Commerce & Industry
- Registrar of Copyrights
- Concerned IP Act: The Copyright Act, 1957 (as amended)

GEOGRAPHICAL INDICATIONS

Geographical indications of goods are defined as that aspect of industrial property which refer to the geographical indication referring to a country or to a place situated therein as being the **country or place of origin of that product**

Example



Ministry/Office administering: (Govt. of India)

- Department of Industrial Policy and Promotion, Ministry of Commerce & Industry
- Controller General of Patents, Designs and Trade Marks
- Concerned IP Act: The Geographical Indications of Goods (Registration & Protection) Act, 1999

PLANT VARIETY PROTECTION

Protection granted for plant varieties, **the rights of farmers and plant breeders** and to encourage the development of new varieties of plants

Example



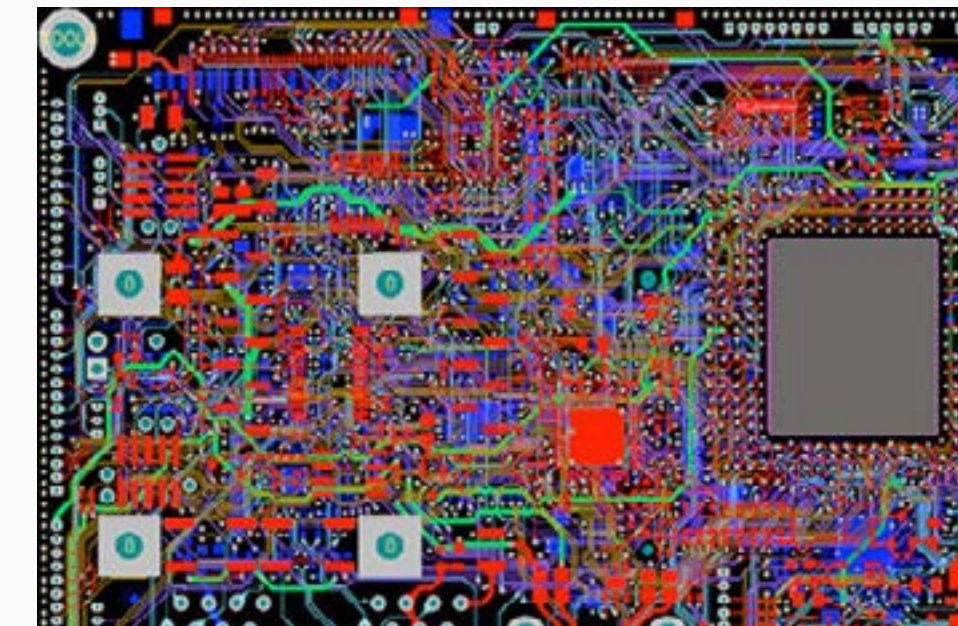
Ministry/Office administering: (Govt. of India)

- Ministry of Agriculture
- Protection of Plant Varieties & Farmers' Rights Authority
- Concerned IP Act: The Protection of Plant Varieties and Farmers' Rights (PPV&FR) Act, 2001

LAYOUT-DESIGN PROTECTION

Protection granted for **layout design in semiconductor integrated circuit** and for matters connected therewith

Example



Ministry/Office administering: (Govt. of India)

- Department of Industrial Policy and Promotion, Ministry of Commerce & Industry
- Semiconductor Integrated Circuits Layout-Design Registry
- Concerned IP Act: Semiconductor Integrated Circuits Layout-Design Act, 2000

GENETIC RESOURCES & TRADITIONAL KNOWLEDGE

Genetic resources (GRs) refer to genetic material of actual or potential value. Genetic material is any **material of plant, animal, microbial or other origin containing functional units of heredity**.

Traditional knowledge (TK) means the **knowledge, systems, innovations and practices of local communities** across the globe. Such wisdom has been developed and accumulated over the years and has been used and **passed down through several generations**. TK can be, for example, agricultural, environmental or medicinal knowledge, or knowledge associated with GRs.

The Biological Diversity Act, 2002 was enacted for preservation of biological diversity in India and provides mechanism for **equitable sharing of benefits** arising out of the use of traditional biological resources and knowledge.

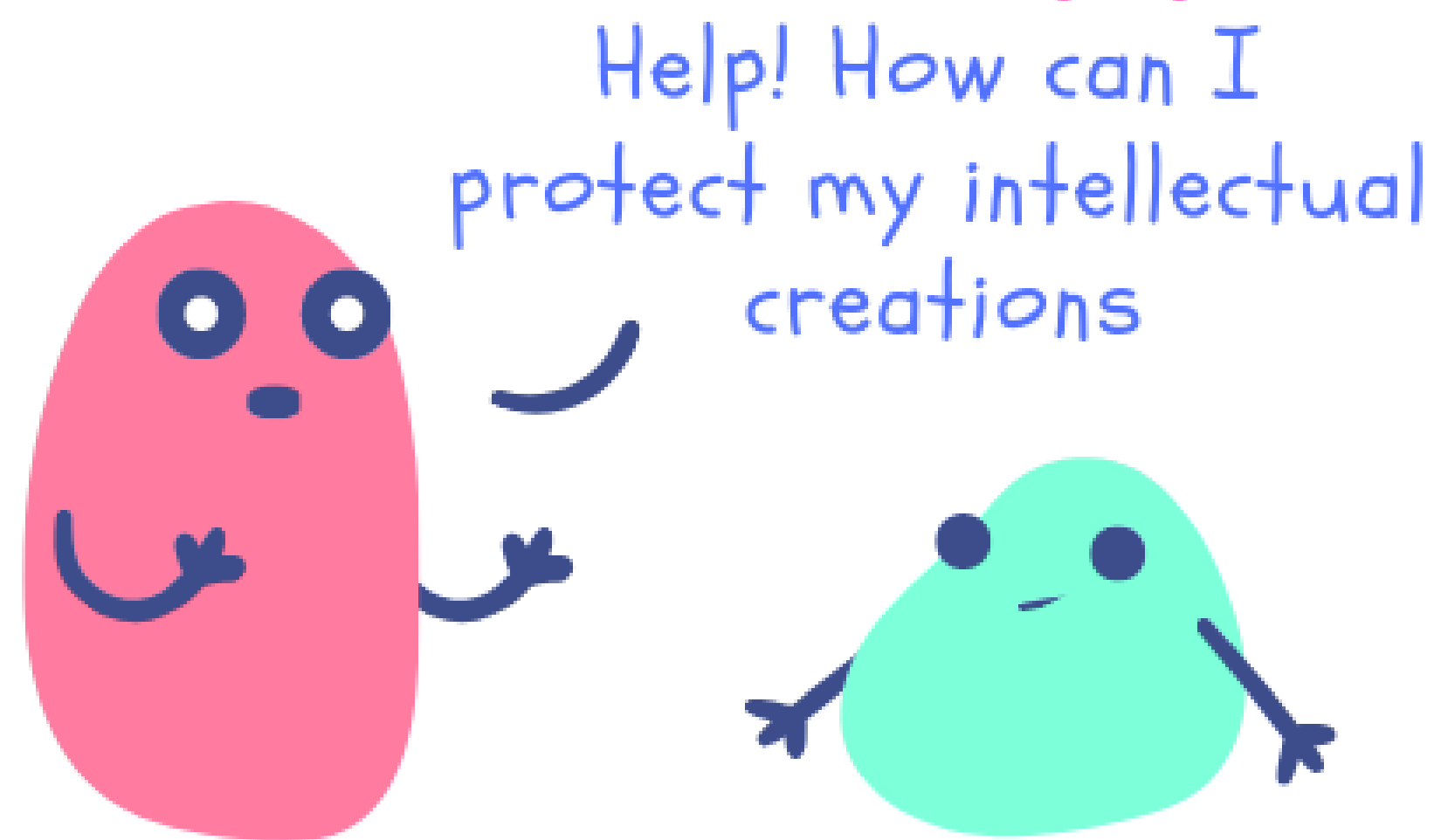
TRADE SECRET

Any **confidential business information which provides an enterprise a competitive edge** may be considered a trade secret. Trade secrets encompass manufacturing or industrial secrets and commercial secrets.

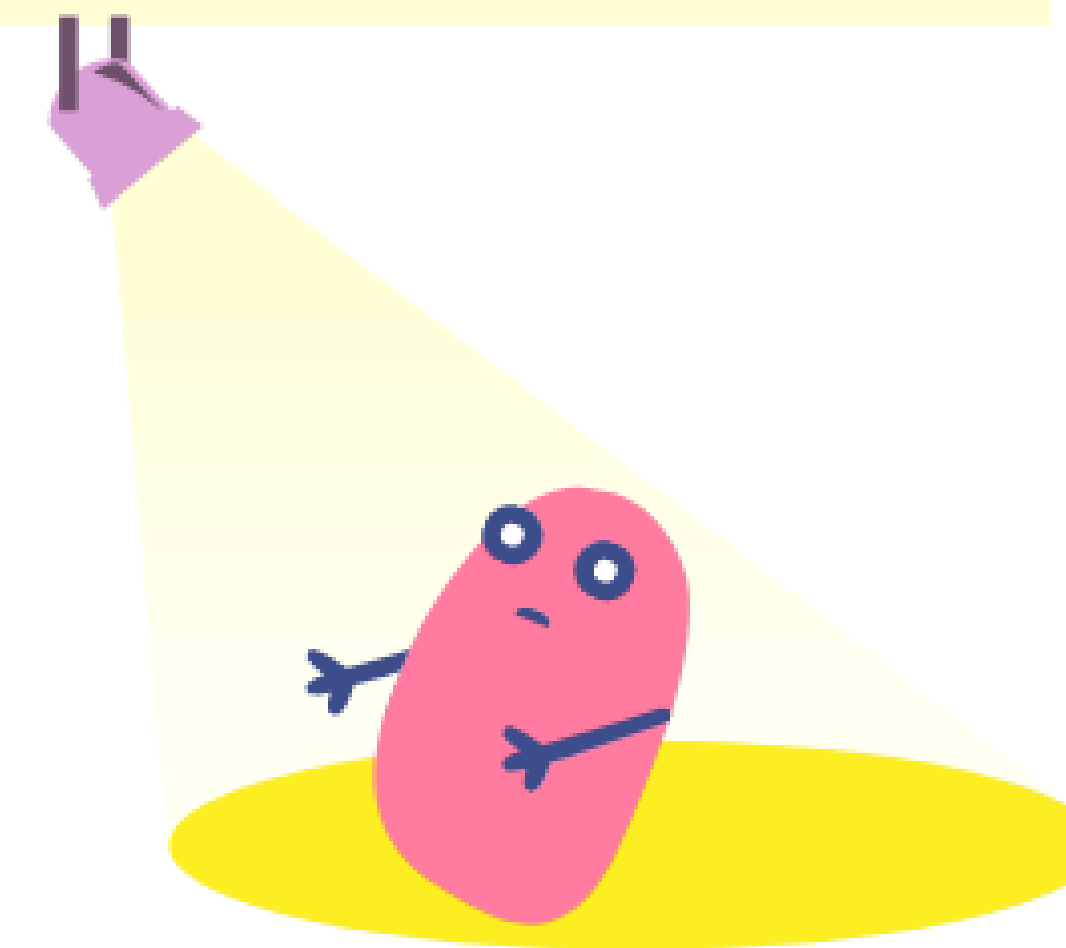
Trade Secrets may include R&D Information, Software Algorithms, Inventions, Designs, Formulas, Financial Records, Ingredients, Lists of Customers, Devices, Methods, Consumer Profiles and Advertising Strategies or Policies of a Company, etc.

A trade secret can be **protected for an unlimited period**. Depending on the legal system, the protection of trade secrets forms part of the general concept of protection against unfair competition or is based on specific provisions or case law on the protection of confidential information.

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If you get protection, that be the light of your life!



Home

Patents

Useful Links

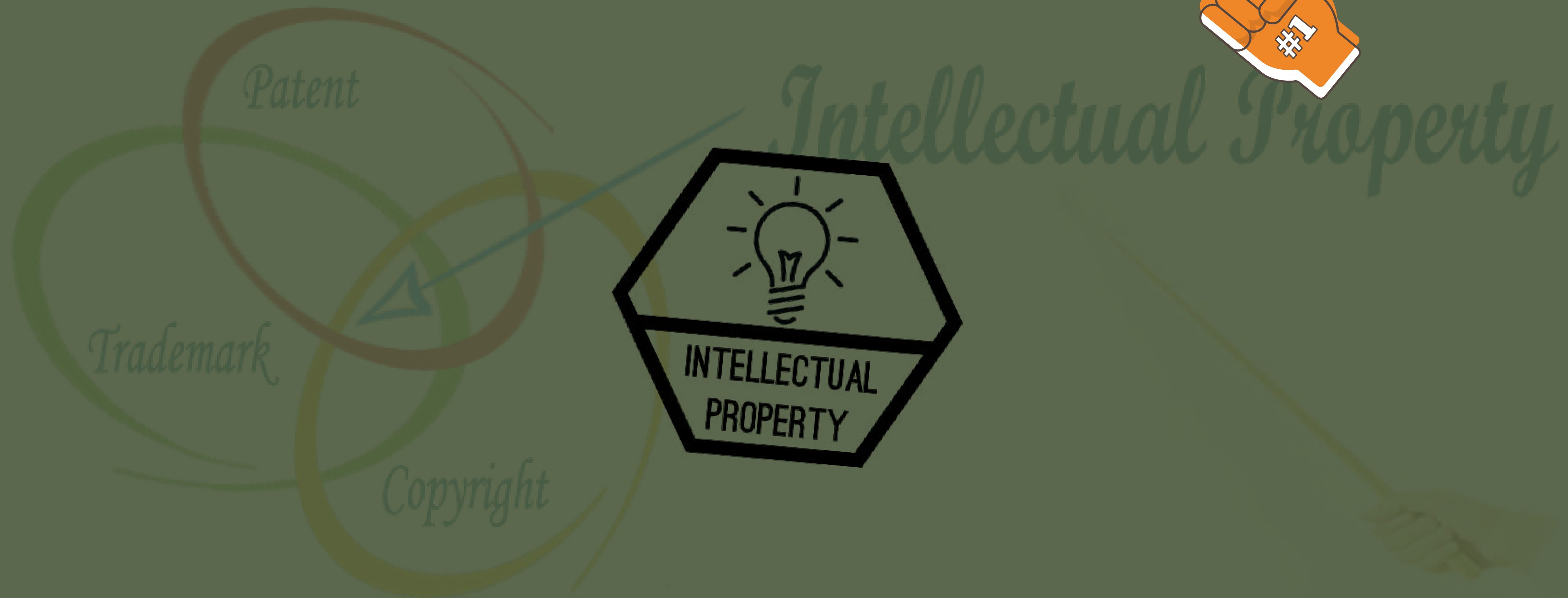
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IPR National Policy

Activities

Contact

TOUCH HERE



Self - evaluation

1. What does an IP right entitle a person?

- a) Right to file a suit in case of infringement
- b) Right to exclude others
- c) Right to transfer
- d) All of the above

2. Which one of the following cannot be protected by Intellectual Property Rights?

- a) A composition of a song
- b) A programme code
- c) A book
- d) A piece of land

MODULE -2

PATENTS

INTRODUCTION

A Patent is an intellectual property right relating to inventions and is the grant of exclusive right, for limited period, provided by the Government to the patentee, in exchange of full disclosure of their invention, for excluding others, from making, using, selling, importing the patented product or process producing that product for those purposes.

The purpose of this system is to **encourage inventions by promoting their protection and utilization** so as to contribute to the development of industries, which in turn, contributes to the promotion of technological innovation and to the transfer and dissemination of technology.

Patent right is **territorial in nature** and a patent obtained in one country is not enforceable in other country. The inventors/their assignees are required to file separate patent applications in different countries for obtaining the patent in those countries.

ELEMENTS OF PATENTABILITY

A new product or process should be technical in nature and should meet the following criteria

Novelty : The matter disclosed in the specification is not published in India or elsewhere before the date of filing of the patent application in India.

Inventive Step: The invention is not obvious to a person skilled in the art in the light of the prior publication/knowledge/ document.

Industrially applicable: Invention should possess utility, so that it can be made or used in an industry.

NON-PATENTABLE SUBJECT MATTER

- An invention which is frivolous, or which claims anything obviously contrary to well established natural laws
- An invention the primary or intended use or commercial exploitation of which could be contrary to public order or morality or which causes serious prejudice to human, animal or plant life or health or to the environment
- The mere discovery of a scientific principle or the formulation of discovery of any living thing or non-living substances occurring in nature
- The mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance or the mere discovery of any new property or new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant

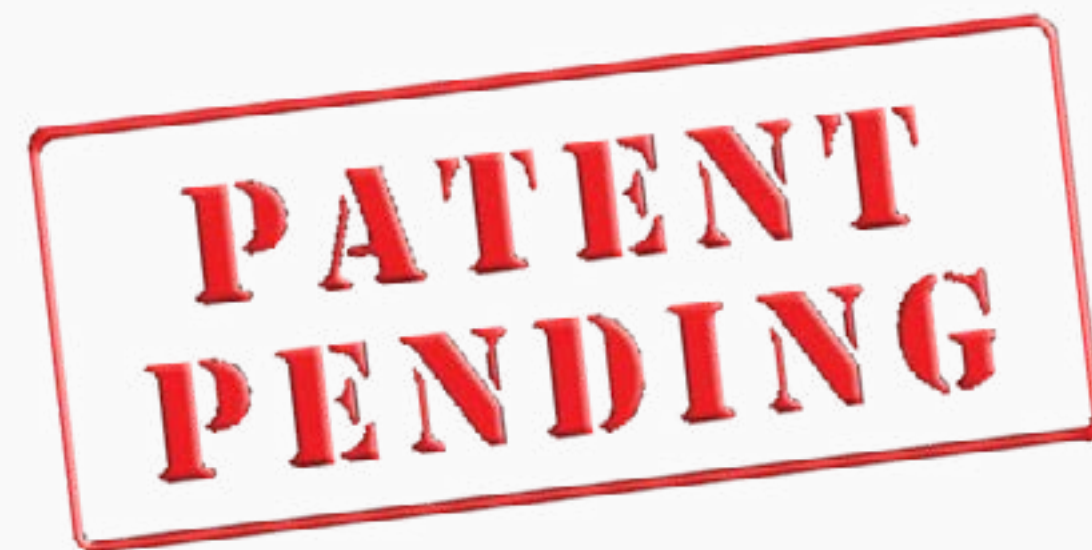
NON-PATENTABLE SUBJECT MATTER ...

- A substance obtained by a mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substance.
- The mere arrangement or re-arrangement or duplication of known devices each functioning independently of one another in a known way
- A method of agriculture or horticulture
- Any process for the medicinal, surgical, curative, prophylactic diagnostic therapeutic or other treatment of human being or any process for a similar treatment of animals to render them free of disease or to increase their economic value or that of their products
- Plants and animals in whole or any part thereof other than microorganisms but including seeds, varieties and species and essentially biological processes for production or propagation of plants and animals

NON-PATENTABLE SUBJECT MATTER ...

- A mathematical or business method or a computer program per se or algorithms
- A mere scheme or rule or method of performing mental act or method of playing game
- A presentation of information
- An invention which in effect, is traditional knowledge or which is an aggregation or duplication of known properties of traditionally known component or components
- Inventions relating to atomic energy and the inventions prejudicial to the interest of security of India.

Use



after filing patent application

REGISTRATION PROCEDURE

Filing an application

- Application form in duplicate (**Form 1**)
- Provisional or complete specification in duplicate. If the provisional specification is filed, it must be followed by the complete specification within 12 months (**Form 2**)
- Drawing in duplicate (if necessary)
- Abstract of the invention in duplicate
- Information & undertaking listing the number, filing date & status of each foreign patent application in duplicate (**Form 3**)
- Priority document (if priority date is claimed) in convention application, when directed by the Controller
- Declaration of inventor-ship where provisional specification is followed by complete specification or in case of convention/PCT national phase application (**Form 5**)
- Power of attorney (if filed through Patent Agent)
- Fee

REGISTRATION PROCEDURE ...

Publication

All the applications for patent, except the applications prejudicial to the defence of India or abandoned due to non-filing of complete specification within 12 months after filing the provisional or withdrawn within 15 months of filing the application, are **published in the Patent Office Journal just after 18 months from the date of filing of the application or the date of priority whichever is earlier**. The publication includes the particulars of the date of the application, application number, name and address of the applicant along with the abstract.

Early request for Publication

The applicant may also file a **request for early publication in Form-9** with a prescribed fee. The above application is published ordinarily within one month from the date of the request on Form-9. The applicant shall have provisional Rights from the date of publication.

REGISTRATION PROCEDURE ...

Request for examination

No application for patent will be examined if no request is made by the applicant or by any other interested person in **Form-18** with prescribed fee, **within a period of 48 months from the date of priority of the application or from the date of filing of the application**, whichever is earlier. Where no request for examination of the application for patent has been filed within the prescribed period, the aforesaid application will be treated as withdrawn and, thereafter, application cannot be revived.

Examination

A **First Examination Report (FER)** stating the objections/requirements is communicated to the applicant or his agent according to the address for service ordinarily within six months from the date of request for examination or date of publication whichever is later.

Application or complete specification should be amended in order to meet the objections/requirements within a period of 12 months from the date of First Examination Report (FER). No further extension of time is available in this regard.

Pre-grant Opposition

Where an application for a patent has been published but a patent has not been granted, **any person** may, in writing represent by way of opposition to the Controller against the grant of any Patent. The representation shall be filed at the appropriate office and shall include a **statement and evidence**, if any, in support of the representation and a request for hearing if so desired.

Grant of Patent

When all the requirements of the FER are met or in case of opposition, if the opposition is decided in favour of the applicant, the patent is granted, after 6 months from the date of publication, the letters patent is issued, entry is made in the register of patents and it is notified in the Patent Office Journal, thereafter opening the application, specification and other related documents for public inspection on payment of prescribed fee.

Post grant Opposition

Any **interested person** can file notice of opposition (along with written statement and evidence, if any) any time after the grant of Patent but before the expiry of a period of one year from the date of publication of grant of a Patent in the Patent Office Journal .The above notice shall be filed on **Form-7** along with a fee , in duplicate at the appropriate office. The grounds of opposition are the same as given before in case of pre-grant opposition. The post grant opposition is decided by an **Opposition Board** followed by a hearing and the reasoned decision by the Controller

Term of Patent

Register of Patent contains the name and address of the patentee, notification of assignment etc., in respect of validity or proprietorship of patent and payment of renewal fee. **Term of every patent in India is 20 years from the date of filing of patent application,** irrespective of whether it is filed with provisional or complete specification.

REGISTRATION PROCEDURE ...

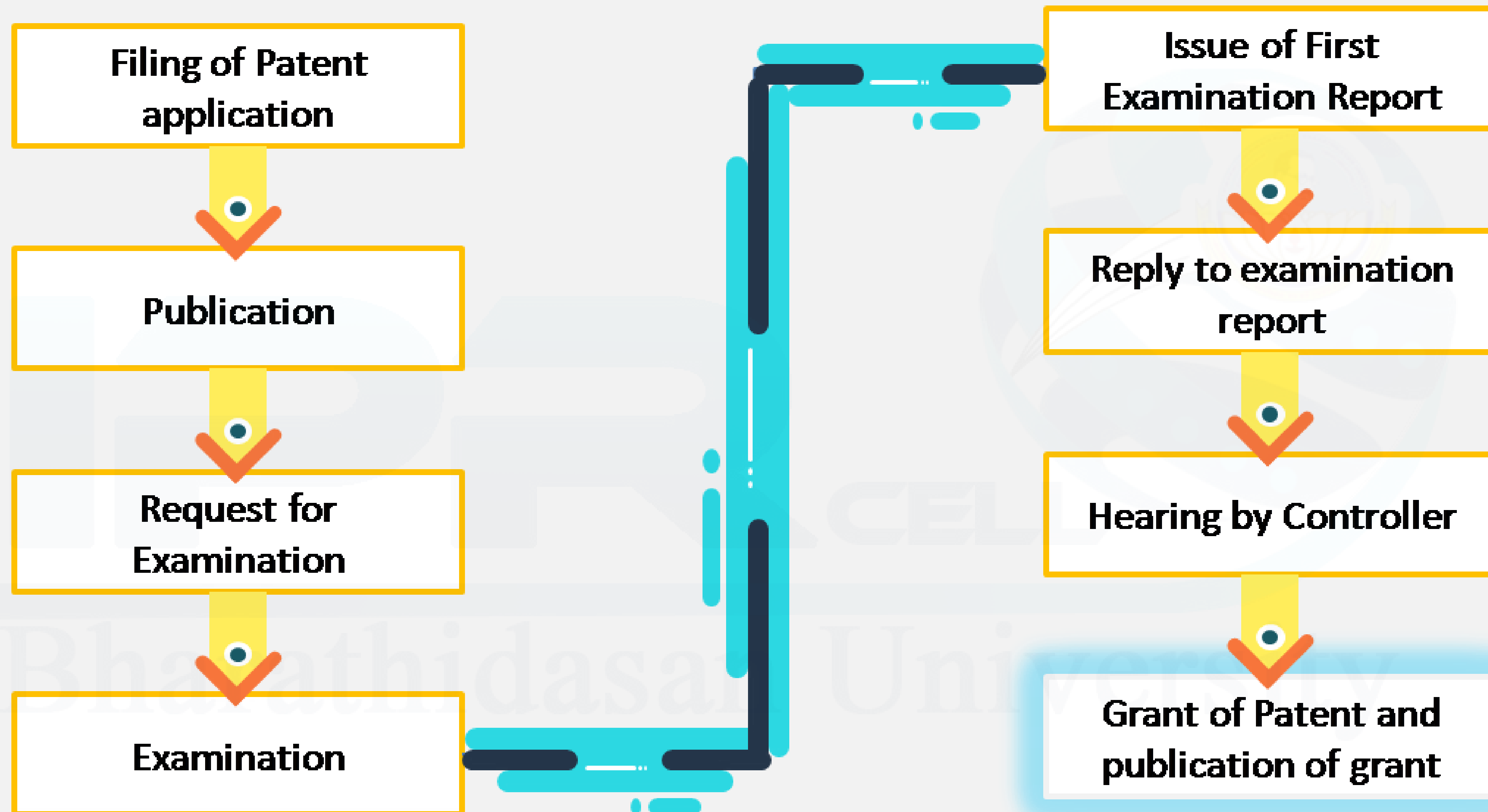
Renewal fee

To keep the **patent in force, Renewal fee is to be paid every year.** The first renewal fee is payable for the third year and must be paid before the expiration of the second year from the date of patent. If the patent has not been granted within two years the renewal fees may be accumulated and paid immediately after the patent is granted, or within three months of its recordal in Register of Patents or within extended period of 9 months, by paying extension fees of six months on Form 4, from the date of recordal. If the renewal fees are not paid within the prescribed time, the patent will cease to have effect.

Restoration

Application for restoration of a patent that lapses due to non-payment of renewal fees must be made **within 18 months** of lapse. The application is to be filed in the appropriate office according to the jurisdiction.

Patent Registration Process



RIGHTS OF THE PATENTEE

Where a patent covers a product, the grant of patent gives the **patentee the exclusive right** to prevent others from performing, without authorisation, the act of making, using, offering for sale, selling or importing that product for the above purpose. Where a patent covers a process, the patentee has the exclusive right to exclude others from performing, without his authorisation, the act of using that process, using and offering for sale, selling or importing for those purposes, the product obtained directly by that process in India.

ASSIGNMENT

A patentee may **assign the whole or any part of the patent rights** to the whole of India or any part thereof. There are three kinds of assignments: legal assignment, equitable assignment and mortgages. An assignment (or an agreement to assign) of an existing patent is a legal assignment, where the assignee may enter his name as the patent owner. A certain share given to another person is called an equitable assignment and a mortgage is when the patent rights are wholly or partly transferred to obtain money.

LICENSE

The Patents Act allows a patentee to grant a License. The types of licenses recognised in India are express, statutory, implied, exclusive and non-exclusive. Although the Patents Act grants the patentee **a right to license their patented invention**, a limitation on this is in the nature of compulsory licensing under special circumstances.

Compulsory License found a place in the Patents Act to prevent the abuse of patent as a monopoly and to make way for commercial exploitation of an invention by an interested person. Under this section, any person can make an application for grant of a compulsory license for a patent after three years, from the date of grant of that patent, on any of the following grounds:

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

SURRENDER OF PATENTS

A patentee may, at any time by giving notice to the controller, **offer to surrender their patent**. Where such an offer is made, the controller shall advertise the offer, and also notify every person whose name appears in the Register as having an interest in the patent. Any person interested may give notice of opposition to the surrender. The controller, after completing the procedure and hearing the parties may accept the offer and revoke the patent.

REVOCATION OF PATENTS

Subject to the provisions contained in the Act, a patent, whether granted before or after the commencement of this Act, may, be revoked (i) on a petition by (a) any person interested; or (b) the central government, or (ii) on a counter claim in a suit for infringement of the patent.

INFRINGEMENT

The Indian Patent Act does not specifically define activities that constitute infringement of patent rights. But violation of patentee monopoly rights would constitute infringement of patent.

REMEDIES

- Administrative Remedy
- Civil Remedy

PENALTIES

The penalty that a court may grant in any suit for infringement includes an injunction and at the option of plaintiff, either damages or an account of profits. The court may also order that the goods which are found to be infringing and materials and implements the predominant use of which is in the creation of infringing goods shall be seized, forfeited or destroyed.

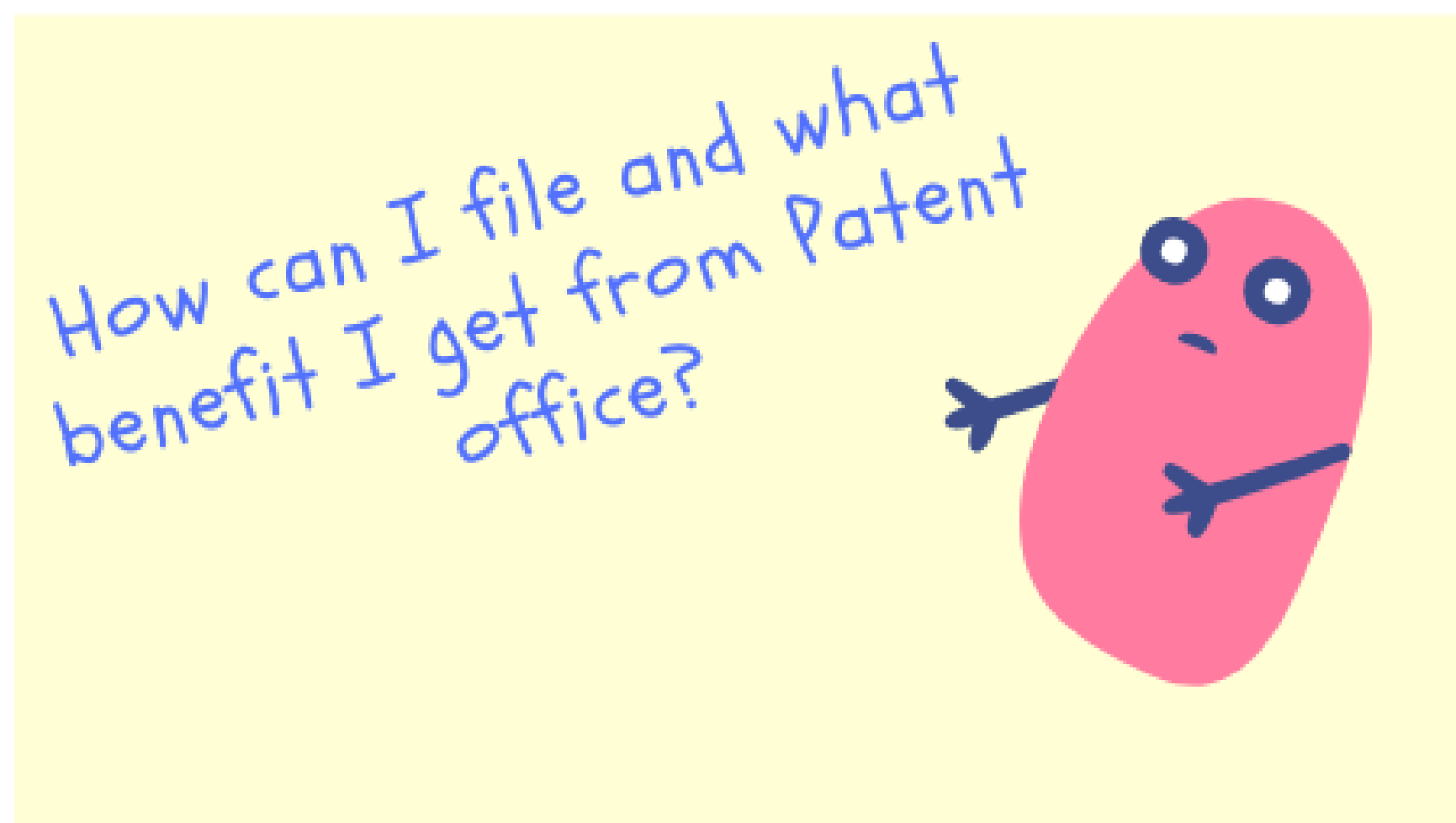
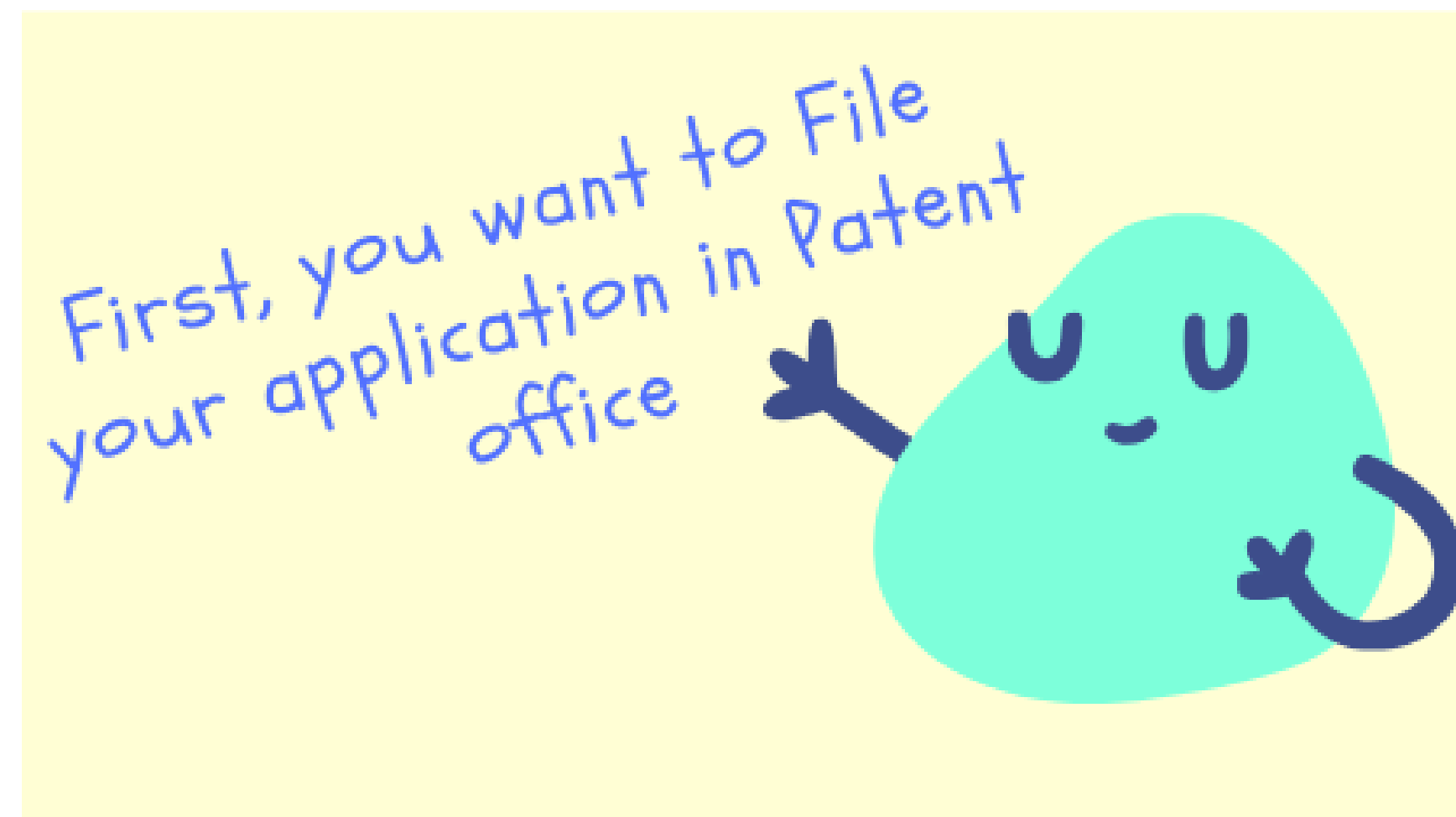
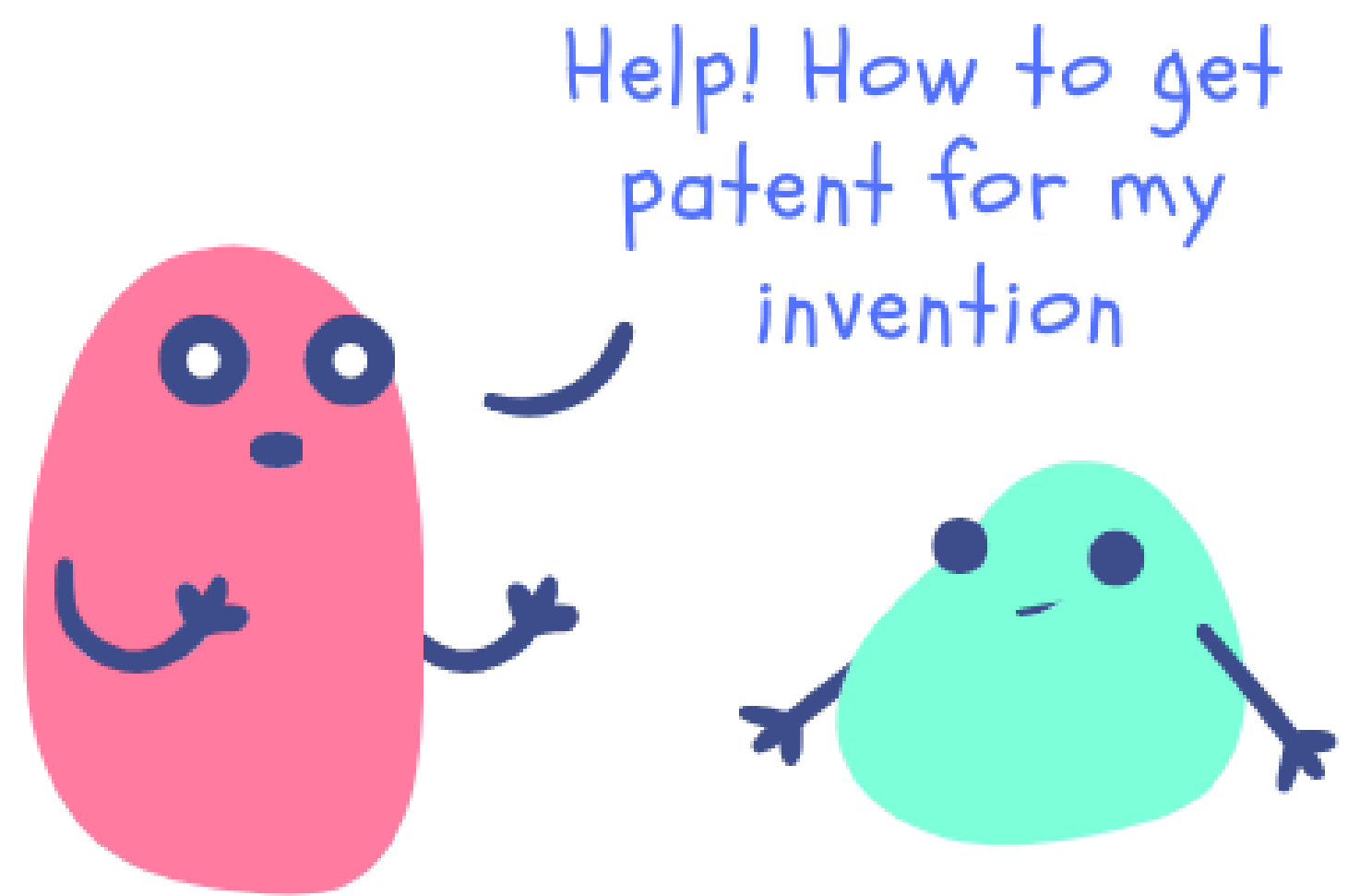
PATENT OFFICES

The Patent Office, under the **Department of Industrial Policy & Promotion (DIPP) , Ministry of Commerce & Industry**, performs the statutory duties in connection with the grant of patents for new inventions and registration of industrial designs. Patent Offices are located at **Kolkata , Mumbai, Chennai and Delhi** to deal with the applications for patents originating within their respective territorial jurisdictions.

APPELLATE BOARD

Intellectual Property Appellate Board (IPAB) , a statutory body under DIPP established under the provisions of the **Trade Marks Act on 15th September 2003 in Chennai** to hear appeals against the decisions of the Registrar of Trade Marks and Geographical Indications and Controller of Patents. Since its establishment in 2003, work has increased manifold. It takes up the administration of the IP legal regimes envisaged under the Trade Marks Act, 1999, the Geographical Indications (Registration & Protection), Act, 1999 and the Patents Act, 1970 (as amended).

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Home

Patents

Useful Links

Events

IPR National Policy

Activities

Contact

TOUCH HERE



Self - evaluation

1. The patent owner shall own patent right for a maximum period of

- a) 10 years and renewed
- b) 15 years from the date of filing of application
- c) 20 years plus life of the patentee
- d) 20 years from the date of filing of application

2. An application for a patent shall ordinarily be published after

- a) 18 months
- b) 24 months
- c) 48 months
- d) 12 months

MODULE -3

COPYRIGHTS

INTRODUCTION

Copyright is a form of **intellectual property protection granted under Indian law to the creators of original works of authorship such as literary works** (including computer programs, tables and compilations including computer databases which may be expressed in words, codes, schemes or in any other form, including a machine readable medium), dramatic, musical and artistic works, cinematographic films and sound recordings. Copyright law protects expressions of ideas rather than the ideas themselves.

Copyright refers to a bundle of exclusive rights vested in the owner of copyright. These rights can be exercised only by the owner of copyright or by any other person who is duly licensed in this regard by the owner of copyright. These rights include the right of adaptation, right of reproduction, right of publication, right to make translations, communication to public etc. Copyright protection commences the moment a work is created, and its **registration is optional**. However, it is always advisable to obtain a registration for a better protection.

SUBJECT MATTER OF COPYRIGHT

There is no copyright in ideas. Copyright subsists only in the material form in which the ideas are expressed. Works protected by copyright are:

1. Original, Literary, dramatic, musical and artistic works;
2. Cinematographic film; and
3. Records

Literary work– Copyright subsists in original literary works and relates to the expression of thought, but the expression need not be original or novel.

Dramatic work– Copyright subsists in original dramatic work and its adoption.

Musical work– Copyright subsists in original musical work

SUBJECT MATTER OF COPYRIGHT...

Cinematograph film includes the sound track, if any. It also includes any work produced by any process analogous to cinematography. A video film is considered to be a work produced by a process analogous to cinematography. A movie may be taken of a live performance like sport events, dramatic or musical performance.

Record includes

- Any disc, tape, perforated roll or other device in which sounds are embodied so as to be capable of being reproduced there from
- The sound tract in a cinematography film is not a record unless it is separately recorded in a disc tape or other device
- Where the record is made directly from a live performance the owner of the disc or tape in which the recording is made will be the owner of the copyright

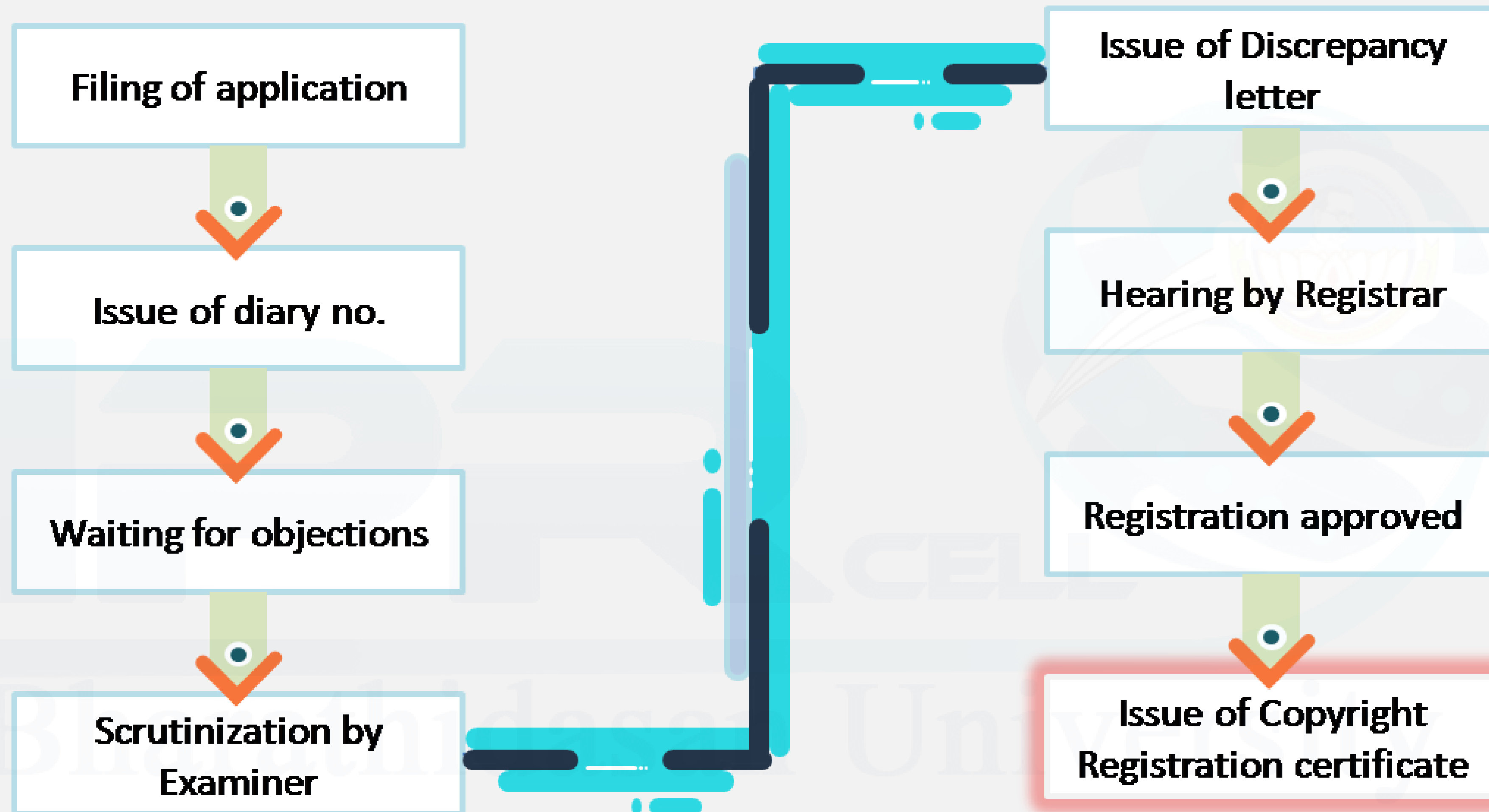
REGISTRATION PROCEDURE

- Application for registration is to be made on **Form XIV** (Including Statement of Particulars and Statement of Further Particulars) as prescribed in the first schedule to the Rules
- Separate applications should be made for registration of each work
- Each application should be accompanied by the requisite fee prescribed in the second schedule to the Rules
- The applications should be signed by the applicant. The Power of Attorney signed by the party and accepted by the advocate should also be enclosed, if applicable
- The fee is to be paid either in the form of Demand Draft or Indian Postal Order favouring "Registrar of Copyrights Payable at New Delhi" or through e-payment. Each and every column of the Statement of Particulars and Statement of Further Particulars should be replied specifically

REGISTRATION PROCEDURE ...

- Upon filing an application for copyright with complete details and copies, the author has to **wait for a mandatory period of 30 days** for any objection that may be filed in the copyright office against the claim that the concerned work is created by the applicant. If any objection is filed, it may take one month's time to decide as to whether the work could be registered by the registrar of copyrights after giving an opportunity of hearing the matter from both the parties
- If no objection is filed within the said period, the application is then formally examined and objections by the examiner, if any, are raised, or any extra documents required are requested for. **Response to the objections/examination report has to be filed within 30 days**
- A **copyright registration certificate** is issued by the copyright office after the objections, if any, are overcome to the satisfaction of the copyright office

Copyright Registration Process



TERM OF PROTECTION

The term of protection granted for works of copyright varies depending on the type of work sought to be protected. Literary or musical or artistic works, are granted copyright protection for a period which extends through the **lifetime of the author and 60 years from the year in which the author dies.**

Cinematograph films, photographs and computer programs are protected for **60 years from the end of the year in which the work is made available to the public** with the consent of the owner of the copyright. Sound recordings are protected for 60 years from the end of the year in which the recording is first published.

OWNERSHIP OF COPYRIGHT

The owner of copyright in a work is generally, at least in the first instance, the **person who created the work, i.e. the author of the work.** But this is not always the case. Certain national laws also provide that, when a work is created by an author who is employed for the purpose of creating that work, and then the employer, not the author, is the owner of the copyright in the work.

ASSIGNMENT OF COPYRIGHT

Under an assignment, the rights owner **transfers the right** to authorize or prohibit certain acts covered by one, several, or all rights under copyright. An assignment is a transfer of a property right. So, if all rights are assigned, the person to whom the rights were assigned becomes the new owner of copyright. In some countries, an assignment of copyright is not legally possible, and only licensing is allowed.

LICENCE OF COPYRIGHT

Licensing means that the **owner of the copyright retains ownership but authorizes a third party to carry out certain acts** covered by his economic rights, generally for a specific period of time and for a specific purpose. For example, the author of a novel may grant a license to a publisher to make and distribute copies of his work. At the same time, he may grant a license to a film producer to make a film based on the novel. A license, unlike an assignment, does not generally convey the right to authorize others to carry out acts covered by economic rights.

COPYRIGHT INFRINGEMENT

Copyright infringement occurs when someone other than the copyright holder **copies the expression of a work**. This means that the idea or information behind the work is not protected, but how the idea is expressed is protected. For example, there have been many movies about Pirates, but only one Jack Sparrow.

Copyright infringement can occur even if someone does not copy a work exactly. This example of copyright infringement is most easily apparent in music and art. Copyright infringement occurs if the infringing work is substantially similar to the copyrighted work.

An owner of a copyright owns a bundle of rights. Each of these rights can be sold or assigned separately. Copyright infringement occurs when one of those rights are used without the express consent of the copyright owner.

EXCEPTIONS

Subject to certain conditions, a fair deal for **research, study, criticism, review and news reporting, as well as use of works in library and schools and in the legislatures**, is permitted without specific permission of the copyright owners. In order to protect the interests of users, some exemptions have been prescribed in respect of specific uses of works enjoying copyright.

Some of the exemptions for the uses of the work:

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

REMEDIES

The remedies for copyright infringement are:

- a) Civil
- b) Criminal, and
- c) Administrative

RELATED RIGHTS

Related rights (also known as neighboring rights) are **rights of performers, producers of sound recordings and broadcasting organizations**. These related rights are secondary rights and cannot exist on their own, but they accrue from the copyrighted work. These are the rights given to the persons or legal entities who contribute to producing or making of the copyrighted work. Under some laws, additional rights are also granted. Remedies for infringement or violation of related rights are in general similar to those available to copyright owners.

DISTINCTION BETWEEN RELATED RIGHTS AND COPYRIGHTS

The term "copyright" in its narrow sense usually refers to the rights of authors in their literary and artistic works. The main social purpose of protection of copyright is to **encourage and reward creative work**. The income generated by copyright may allow authors to dedicate themselves to creative work and can help to justify the considerable upfront investment often entailed in the creation of certain types of works, such as films. Copyright is thus the economic backbone of cultural industries.

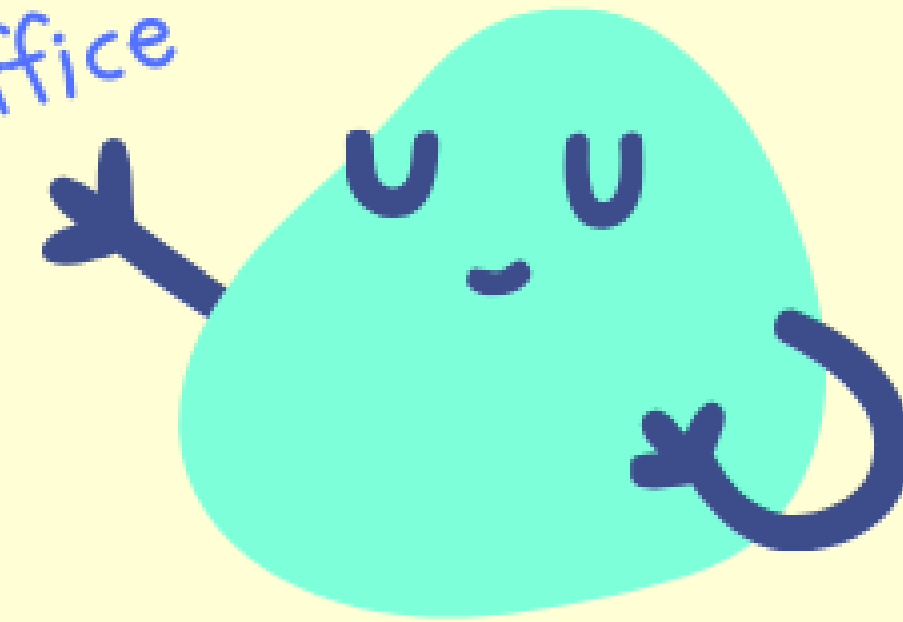
In the wider sense, copyright also includes "related rights". The main social purpose of protection of related rights is to **protect the Performers for their creative work**. Protection of phonogram producers and broadcasting organizations safeguards the investments required to produce sound recordings or the financial and organizational resources needed to bring a broadcast to the public.

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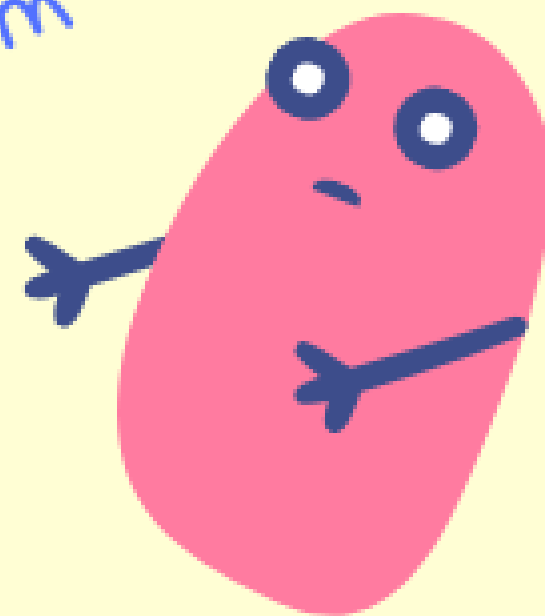
Help! How to get protection for my song



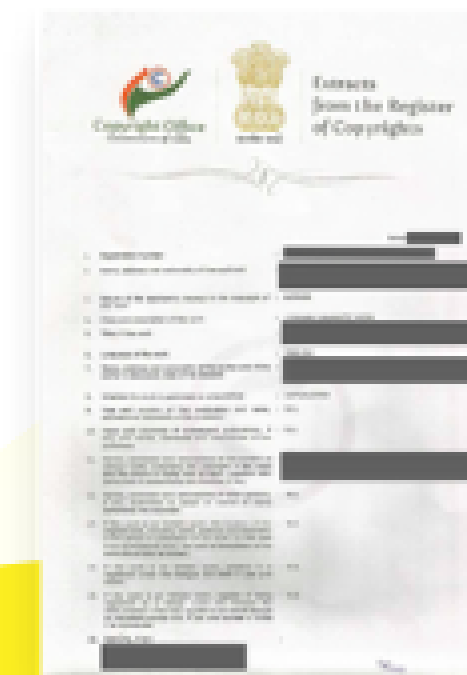
First, you want to File your application in Copyright office



How can I register and what benefit I get from copyright office?



You can register through e-filing @ copyright.gov.in and get your copyright certificate



Home

Patents

Useful Links

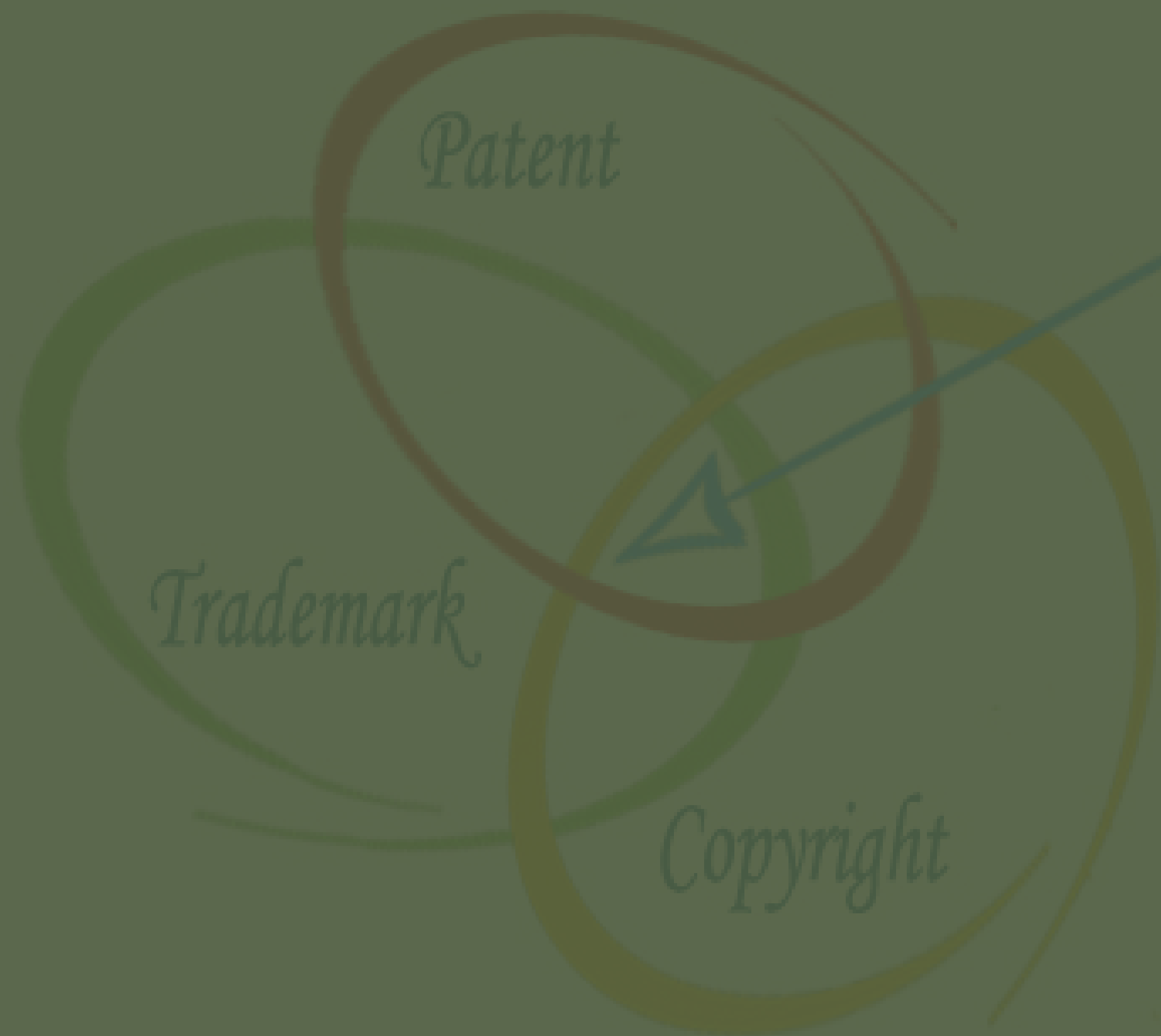
Livens

IPR National Policy

Activities

Contact

TOUCH HERE



Intellectual Property

Self - evaluation



1. Which of the following cannot be protected by copyrights?

- a) A book
- b) A sound recording
- c) A sculpture
- d) An invention

2. Which of the following IP Rights need not be necessarily registered to seek protection?

- a) Patents
- b) Designs
- c) Copyrights
- d) Trademarks

MODULE -4

TRADEMARKS

INTRODUCTION

A trademark is any sign that individualizes the goods of a given enterprise and **distinguishes them from goods of its competitors**. Marketing of a particular good or service by the producer is much better off as by trademark because recognition becomes easier and quality is assured. The owner of the mark can prevent the use of similar or identical signs by competitors if such marks can lead to confusion. By this way similar low-quality substitutes will be prevented from replacing good quality ones. A trademark is a word or symbol, or combination thereof used by manufacturer or vendor in connection with a product or service. The distinctiveness is maintained as well as sales are much smoother as people are able to identify with that particular commodity or service.

It is said that a **trademark is a valuable business asset and a marketing tool** which could help in financing of the business in a way.

DIFFERENT KINDS OF MARKS

Service Mark – A service Mark is any word, name, symbol, device, or any combination used or intended to be used in commerce to identify and distinguish the services of one provider by others and to indicate the source of services.

Collective Mark – A collective Mark is one used by members of a cooperative association, union or other collective group or other group or organization to identify source the of goods or services.

Certification Mark – A certification Mark is a mark which indicates that certain qualities of goods or services in connection with which the mark are used is certified.

Trade Dress – Trade dress refers to combination of elements that make up the look, feel, or environment of a product or business. Trade Dress is non-functional physical detail.

NON-REGISTERABLE TRADEMARKS

A mark shall not be registered as a trade mark if it consists exclusively of the **shape of goods which results from the nature of the goods themselves.** or

- a) the shape of good which is necessary to obtain a technical result, or
- b) the shape which gives substantial value of the goods

A mark shall not be registered as a trade mark if–

- It is of such nature as to deceive the public or cause confusion
- It contains or comprises of any matter likely to hurt the religious susceptibilities of any class or section of the citizens of India
- It comprises or contains scandalous or obscene matter
- Its use is prohibited under the Emblems and Names (Prevention of Improper Use) Act, 1950 (12 of 1950)

REGISTRATION PROCEDURE

Application

Any person claiming to be the proprietor of a trade mark used or proposed to be used by him, who is desirous of registering it, shall apply in writing to the Registrar in the prescribed manner for the registration of his trade mark.

A single application may be made for **registration of a trade mark for different classes of goods and services** and fee payable therefore shall be in respect of each such class of goods or services.

Every application shall be filed in the office of the Trade Mark Registry within whose territorial limits the principal place of business in India of the applicant or in the case of joint applicants the principal place of business in India of the applicant whose name is first mentioned in the application as having a place of business in India.

REGISTRATION PROCEDURE ...

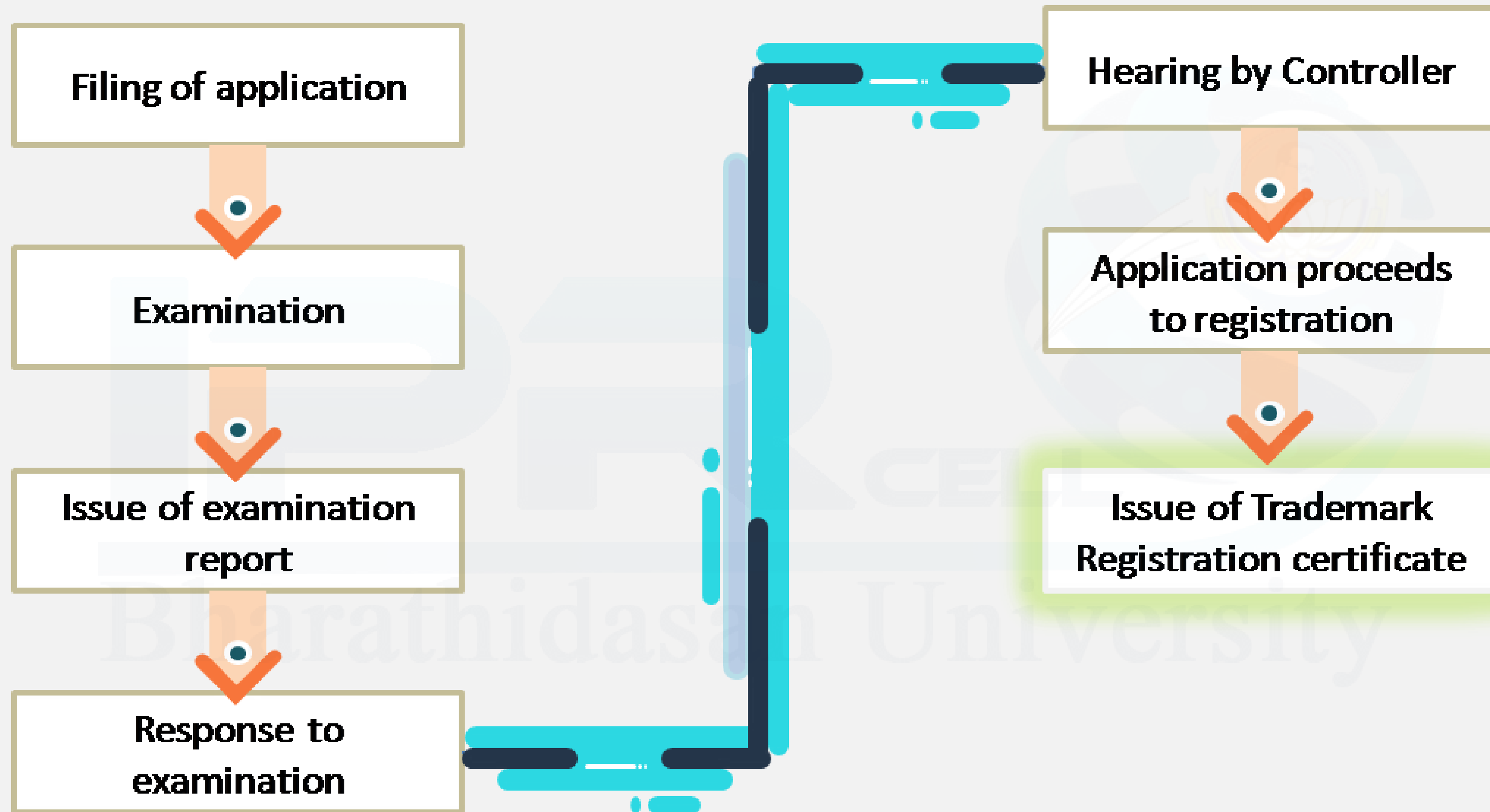
Registration

On the registration of a trade mark, the Registrar shall issue to the applicant a certificate in the prescribed form of the **registration thereof, sealed with the seal of the Trade Marks Registry.**

Where registration of a trade mark, is not completed within twelve months from the date of application by reason of default on the part of the applicant, the Registrar may, after notice to the applicant in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf in the notice.

The Registrar may amend the register a certificate of registration for the purpose of correcting a clerical error or an obvious mistake.

Trademark Registration Process



ASSIGNMENT AND LICENSING

Assignment is the legal term for **transfer of ownership** which simply means any act of parties by which interest or rights associated with property of any kind can be transferred from one party to another party.

The assignee will become the subsequent proprietor of the trademark assigned whether in part or in full based on the conditions agreed between the parties.

A License needs to be in writing and the Trademark Act allows the licensee to either be a registered or unregistered user. The licensee of a trademark will enjoy the same rights as that enjoyed by a registered trademark proprietor. Thus, the benefit of use of the mark by an unregistered user also accrues to the registered proprietor.

INFRINGEMENT OF TRADEMARK

A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a **mark which is identical with, or deceptively similar** to, the trade mark in relation to goods or services in respect of which the trade mark is registered and in such manner as to render the use of the mark likely to be taken as being used as a trade mark.

REMEDIES

The relief which a court may grant in any suit for infringement or for passing off includes injunction (subject to such terms, if any, as the court thinks fit) and at the option of the plaintiff, either **damages or an account of profits**, together with or without any order of the plaintiff, either damages or an account of profits, together with or without any order for the delivery-up the infringing labels and marks for destruction or removal.

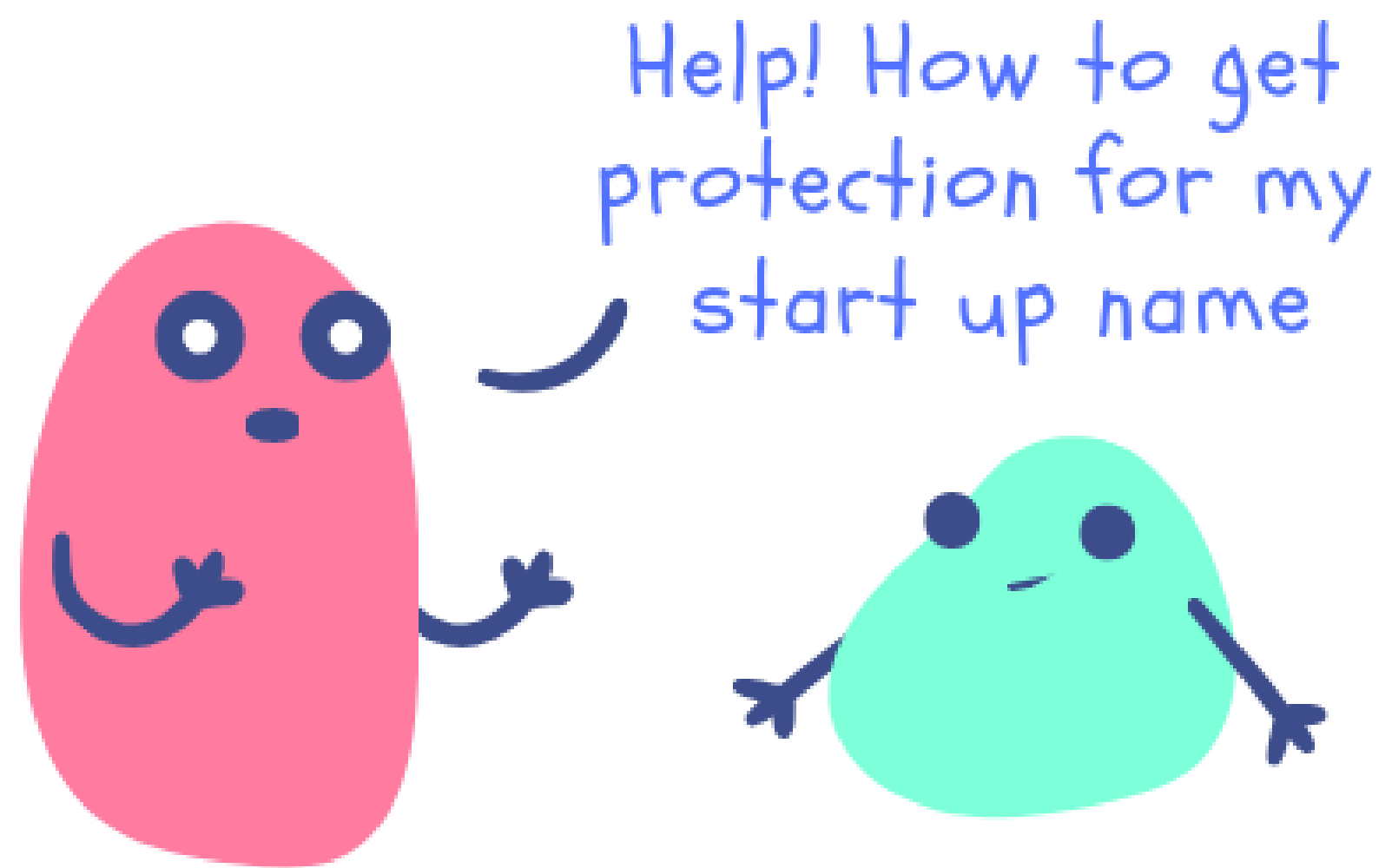
PENALTIES

- Penalty for applying false trademarks, trade descriptions, etc
- Penalty for selling goods or providing services to which false trade mark or false trade description is applied

TRADEMARK REGISTRY

A record called the **Register of Trade Mark** shall be kept at the head office of the Trade Marks Registry, wherein shall be entered all registered trade mark with the names, addresses and description of the proprietors, notifications of assignment and transmissions, the name, addresses and description of registered users, conditions, limitations and such other matters relating to registered trade mark as may be prescribed.

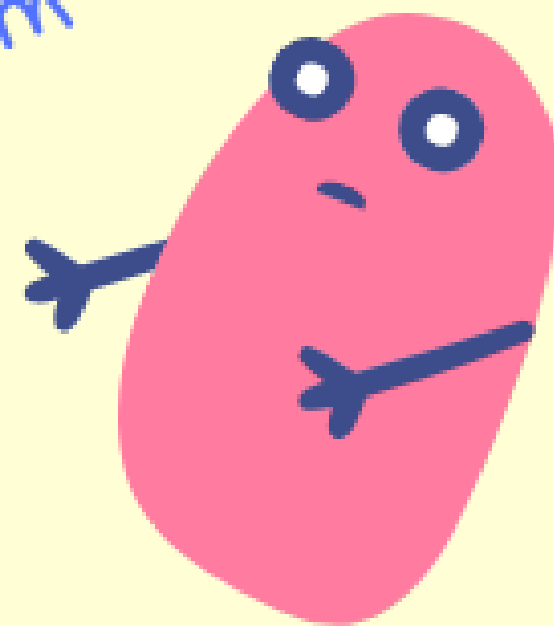
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First, you want to File
your application in
Trademark office



How can I register and
what benefit I get from
Trademark office?



You can register
through
e-filing @ ipindia.nic.in
and get your
trademark certificate



Home

Patents

Useful Links

Invents

IPR National Policy

Activities

Contact

TOUCH HERE



TM



Patent

Trademark

Copyright

Intellectual Property

Self - evaluation

1. The role of the trademark registry is to
 - a) Register trademarks
 - b) Notify trademark owner in case of infringement
 - c) Register trademark infringement proceedings
 - d) All of the above

2. Audi rings are protected by
 - a) Patents
 - b) Designs
 - c) Trade dress
 - d) Trademarks

MODULE -5

OTHER FORMS OF IP



1 DESIGN

Designs are applied to a wide variety of industrial products and handicrafts. They refer to the ornamental or aesthetic aspects of an article, including compositions of lines or colors or any three-dimensional forms that give a special appearance to a product or handicraft. The design must have aesthetic appeal. Moreover, it must be able to be reproduced by industrial means; this is the essential purpose of the design and the reason the design is called “industrial”.

NON-REGISTERABLE DESIGN

1. A design which
 - (a) is not new or original; or
 - (b) has been disclosed to the public anywhere in India or in any other country by publication in tangible form or by use or in any other way prior to the filing date, or where applicable, the priority date of the application for registration; or
 - (c) is not significantly distinguishable from known designs or combination of known designs; or
 - (d) comprises or contains scandalous or obscene matter, shall not be registered.
2. A design should not be contrary to public order or morality.

REGISTRATION PROCEDURE

Filing an application

Filing an application in prescribed form accompanied by the prescribed fee and four copies of the representation of the design. The application can either be filed at the Design wing of the Patent office in Kolkata or any of the Branch Offices at Delhi, Mumbai and Chennai. However, the applications received by the Branch offices shall be transmitted to the Head Office in Kolkata for processing and prosecution.

Examination

Design applications are taken up for examination by way of filing the application for registration of Design only.

REGISTRATION PROCEDURE ...

Notification of Objections

The applicant is required to correct the defects and resubmit the application to the patent office for acceptance within six months from the official date of the application.

Registration and Publication

An application is accepted when all the shortcomings raised in the Examination report have been rectified. If accepted, the Patent Office issues the registration certificate and thereafter, it is duly notified in the Patent Office's journal.

EFFECT OF REGISTRATION

Once a design is registered, it gives the legal right to bring an action against those persons (natural/legal entity) who infringe the design right, in the Court in order to stop such exploitation and to claim any damage to which the registered proprietor is legally entitled.

It is possible to transfer the right through assignment, agreement, transmission with terms and condition in writing or by operation of law.

TERM OF PROTECTION

The duration of the registration of a design is initially ten years from the date of registration, but in cases where claim to priority has been allowed the duration is ten years from the priority date. This initial period of registration may be extended by further period of 5 years on an application made in Form-3 accompanied by prescribed fees to the Controller before the expiry of the said initial period of ten years.

Home

Patents

Useful Links

Livens

IPR National Policy

Activities

Contact

TOUCH HERE



Patent

Trademark

Copyright

Intellectual Property



2

GEOGRAPHICAL INDICATION

Geographical Indication (GI) is primarily an agricultural, natural or a manufactured product (handicrafts and industrial goods) originating from a definite geographical territory. A product is considered to be manufactured in a territory if one of the activities of either the production or of processing or preparation of the goods takes place there. GI conveys an assurance of quality and distinctiveness which is essentially attributable to the fact of its origin in that defined geographical locality.

DIFFERENCE BETWEEN GI AND TRADEMARK

Geographical indications (GIs) identify a good as originating from a particular place. By contrast, a trademark identifies a good or service as originating from a particular company.

A trademark often consists of a fanciful or arbitrary sign. In contrast, the name used as a geographical indication is usually predetermined by the name of a geographical area.

Finally, a trademark can be assigned or licensed to anyone, anywhere in the world, because it is linked to a specific company and not to a particular place. In contrast, a GI may be used by any persons in the area of origin, who produces the good according to specified standards, but because of its link with the place of origin, a GI cannot be assigned or licensed to someone outside that place or not belonging to the group of authorized producers.

REGISTRATION PROCEDURE

Filing an application

Application for the registration of a geographical indication is to be made in the prescribed form for single class or for multiple classes and accompanied by the prescribed fee. It must be made in triplicate along with three copies of a Statement of Case accompanied by five additional representations. The application is required to be signed by the applicant or their agent

Registration

After examination, If no notice of opposition is filed to an application for the registration of a geographical indication advertised or re-advertised in the journal within the period specified, the Registrar shall, enter the geographical indication in Part A of the register on receipt of a request

EFFECTS OF GI PROTECTION

Protecting a geographical indication (GI) enables those who have the right to use the indication to take measures against others who use it without permission and benefit from its reputation (“free-riders”). A geographical indication’s reputation is a valuable, collective, and intangible asset. If not protected, it could be used without restriction and its value diminished and eventually lost. In general, GIs, backed up by solid business management, can bring with

- Competitive advantage
- More added value to a product
- Increased export opportunities
- A strengthened brand

TERM OF PROTECTION

A geographical indication is registered for a period of ten years. The registration can be renewed from time to time for further ten years from the expiration of last registration

Home

Patents

Useful Links

Events

IPR National Policy

Activities

Contact

TOUCH HERE



Intellectual Property

**GEOGRAPHICAL
INDICATION** *because*

India Deserves The Best!



3

PLANT VARIETY PROTECTION

To protect the rights of the breeders and farmers, Government of India has enacted the Plant Varieties Protection and Farmers Rights (PVPFR ACT, 2001) and effective from January 2006. It has become imperative on the part of the Government of India to develop our own sui-generis (a Latin phrase meaning ‘of their own kind’) system to provide a frame work for Plant Variety Protection and Farmers Right.

REGISTERABLE PLANT VARIETIES IN INDIA

New Variety - A variety which is not in public domain in India earlier than one year before the date of filing; or outside India, in the case of trees or vines earlier than six years, or in any other case, earlier than four years.

Extant Variety - A variety which is notified under Seed Act, 1966 or a variety about which there is common knowledge or a farmers' variety or any other variety which is in public domain is considered as an Extant variety.

Farmers Variety - A variety which has been traditionally cultivated and evolved by the farmers in their fields or a variety which is a wild relative or land race of a variety about which farmers possess common knowledge.

Essentially Derived Variety (EDV) - An “essentially derived variety” shall be said to be essentially derived from initial variety

REGISTRATION PROCEDURE

Form of application

The application for registration of a variety must be accompanied with prescribed fees and enough quantity of seeds of the said variety for the purpose of conducting tests to evaluate whether seeds along with parental material conform to the specified standards.

Advertisement of reg. application

Once the application for registration of a plant variety is accepted, the Registrar will advertise the application with limitations, if any, and the specifications of the variety including its photographs or drawing in the prescribed manner for calling objections from the persons interested in the matter.

Opposition to the Acceptance

After the advertisement of acceptance, within three months from the date of the advertisement, any person, on payment of the prescribed fees, may give notice of opposition to Registration, in writing, to the Registrar.

Registration

Once the application for registration of a variety, other than an essentially derived variety, has been accepted with or without opposition, the Registrar shall register the variety; issue a certificate of registration to the applicant sealed with the seal of the Registrar.

The breeder is required to deposit such quantity of seeds or propagating material of the registered variety in the National Gene Bank as may be specified for reproduction purposes at breeder's expense.

GENE FUND

A gene fund is created under the Act from the contribution received from national and international agencies/ benefit sharing from breeder/ annual fee payable to authority by way of royalties. This will help in the conservation and sustainable use of genetic resources both in-situ and ex-situ and for strengthening the capabilities of the panchayat in carrying out conservation and sustainable use. Fund will be applied for disbursing shares to benefit claimers (individual and organization), for compensation to village communities and benefit sharing award. Central Government shall constitute a National Gene Fund.

TERM OF PROTECTION

The period of validity of certificate of registration is eighteen years in case of trees and vines; and fifteen years in case of other crops.

Home

Patents

Useful Links

Events

IPR National Policy

Activities

Contact

TOUCH HERE





4

LAYOUT DESIGN PROTECTION

A semiconductor layout design 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. Semiconductor Integrated Circuits Layout Design Registry (SICLDR) established for protection of original Layout-Designs of Semiconductor Integrated Circuits as per the provisions of the Semiconductor Integrated Circuits Layout- Design Act 2000

REGISTRATION PROCEDURE

- Filing of application by the creator of the layout-design at the SICLD Registry.
- Registrar may accept, refuse the application or accept with some modifications.
- The accepted applications shall be advertised within 14 days of acceptance.
- Any opposition to the advertisement can be filed within 3 months from the date of advertisement.
- The counter-statement to the notice of opposition, if any, to be filed within 2 months from the date of receipt of copy of notice of opposition from the Registrar.
- A copy of the counter statement provided to the opposing party.
- The Registrar may take hearing with the parties

REGISTRATION PROCEDURE ...

- The Registrar will decide on the originality of the layout-design and grant or reject the application for registration based on the conclusions reached by him.
- Aggrieved party can appeal to Appellate Board or in its absence Civil Court for relief on any ruling of the Registrar

REGISTERABLE SEMICONDUCTOR LAYOUT DESIGN

Any Integrated Circuit Layout Design satisfying following criteria can be registered under this Act:

- Original
- Distinctive
- Capable of distinguishing from any other layout design
- Have not been commercially exploited anywhere in India or in a convention country

REGISTRATION BENEFITS

Protects Intellectual Property (i.e. layout-design) of Semiconductor Integrated Circuits. Gives Exclusive Right to the creator of layout-design for 10 years.

Exclusive Right enables the owner to commercially exploit the creation and in case of infringement, get reliefs permitted under the Act.

TERM OF PROTECTION

A period of 10 years counted from the date of filing an application for registration or from the date of first commercial exploitation anywhere in India or in any convention country or country specified by Government of India whichever is earlier.

Home

Patents

Useful Links

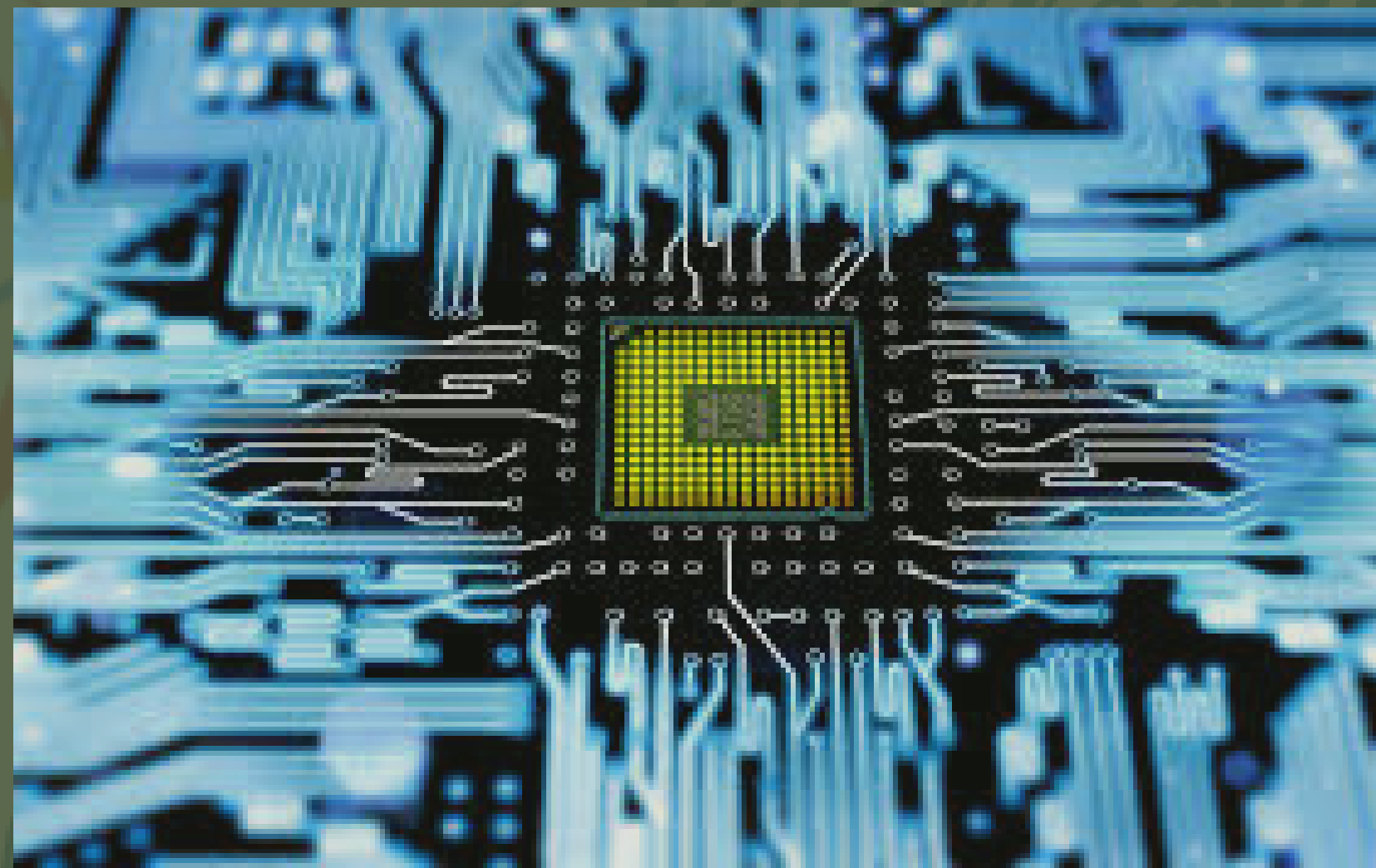
Events

IPR National Policy

Activities

Contact

TOUCH HERE



Patent

Trademark

Copyright

Intellectual Property

Self - evaluation

1. Which of these products embody integrated circuit topographies

- a) Television
- b) Computer
- c) Automobile
- d) All of the above

2. Which of these is a geographical indication

- a) World wide web
- b) BMW
- c) Play station
- d) Darjeeling tea

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IPTSE (Intellectual Property Talent Search Examination)

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CGPDTM: Manual of Trademarks Practice and Procedure

ipindia.nic.in/writereaddata/images/pdf/TMR_DraftManual_11March2015.pdf

Copyright Office: A Handbook of Copyright law

copyright.gov.in/Documents/handbook.html

Copyrights, Patents and Trademark, Vardhaman Mahaveer Open University, Kota

<http://assets.vmou.ac.in/PGDCL02.pdf>

Further readings

Cell for IPR Promotion and Management

(<http://cipam.gov.in/>)

Office of the Controller General of Patents, Designs and Trademarks

(<http://ipindia.nic.in/>)

Copyright Office

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

Protection of Plant Varieties & Farmers' Rights Authority

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

World Intellectual Property Organisation

(<http://www.wipo.int/portal/en/index.html>)

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