

MODULE-IV

**INTELECTUAL
PROPERTY
RIGHTS**

Nature of Intellectual Property

- ✓ **Intellectual Property**
- ✓ **Intellectual Property Rights**
- ✓ **Categories of Intellectual Property**
 1. **Industrial property**
 2. **Copyright**
- ✓ **Intellectual property shall include the right relating to:**
 1. Literary, artistic and scientific works;
 2. Performance of performing artists;
 3. Inventions in all fields of human endeavour;
 4. Scientific discoveries;
 5. Industrial designs;
 6. rademarks, service marks and etc;
 7. Protection against unfair competition.

Property

- Properties are of two types - tangible property and intangible property i.e. one that is physically present and the other which is not in any physical form.
- Building, land, house, cash, jewellery are few examples of tangible properties which can be seen and felt physically.
- On the other hand there is a kind of valuable property that cannot be felt physically as it does not have a physical form.
- Intellectual property is one of the forms of intangible property which commands a material value which can also be higher than the value of a tangible asset or property.

Rights protected under Intellectual Property

The different types of Intellectual Property Rights are:

- ✓ Patents
- ✓ Copyrights
- ✓ Trademarks
- ✓ Industrial designs
- ✓ Protection of Integrated Circuits layout design
- ✓ Geographical indications of goods
- ✓ Biological diversity
- ✓ Plant varieties and farmers rights
- ✓ Undisclosed information

Intellectual Property

- ✓ Inventions
- ✓ Trademarks
- ✓ Industrial design
- ✓ Geographical indications

Rights protected under Intellectual Property

Copyright

- ✓ Writings
- ✓ Paintings
- ✓ Musical works
- ✓ Dramatics works
- ✓ Audio-visual works
- ✓ Sound recordings
- ✓ Photographic works
- ✓ Broadcast
- ✓ Sculpture
- ✓ Drawings
- ✓ Architectural works etc.

IPR as Instruments of Development

1. Key drivers of economic performance in R&D based growth models
2. Intellectual property policies do affect the extent and nature of investments undertaken by multinational enterprises. At the same time, relative to other factors determining foreign investment decisions, IPRs seem to be of relatively minor importance.

Duration of Intellectual Property Rights in a nutshell

1. Term of every patent will be 20 years from the date of filing of patent application, irrespective of whether it is filed with provisional or complete specification. Date of patent is the date on which the application for patent is filed.
2. Term of every trademark registration is 10 years from the date of making of the application which is deemed to be the date of registration.
3. Copyright generally lasts for a period of sixty years.
4. The registration of a geographical indication is valid for a period of 10 years.
5. The duration of registration of Chip Layout Design is for 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.
6. The duration of protection of registered varieties is different for different crops namely 18 years for trees and vines, 15 years for other crops and extant varieties.

PATENTS

Patent is a grant for an invention by the Government to the inventor in exchange for full disclosure of the invention.

Meaning of 'Invention' under Patent Law

Sec.2(1)(J)- Invention” means a new product or process involving an inventive step and capable of industrial application

What is not an 'Invention'?

- ✓ According to Sec 3 of the Patent Act, 1970
- ✓ Frivolous inventions
- ✓ Inventions contrary to well established natural laws
- ✓ Commercial exploitation or primary use of inventions,
 - ✓ which is contrary to public order or morality
 - ✓ which causes serious prejudice to health or human, animal, plant life or to the environment
- ✓ Mere Discovery of a Scientific Principle or
- ✓ Formulation of an Abstract Theory or
- ✓ Discovery of any living thing or
- ✓ Discovery of non-living substance occurring in nature
- ✓ 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.
- ✓ Substance obtained by mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substance
- ✓ Mere arrangement or re-arrangement or duplication of known devices, each functioning independently of one another in a known way
- ✓ Method of Agriculture or Horticulture

What is not an 'Invention'? (Contd...)

- ✓ Any process for medicinal, surgical, curative, prophylactic, diagnostic, therapeutic or other treatment of human beings or a similar treatment of animals to render them free of disease or to increase their economic value or that of their products
- ✓ Plants & animals in whole or any part thereof other than micro- organisms, but including seeds, varieties and species and essentially biological process for production or propagation of plants & animals
- ✓ mathematical method or
- ✓ business method or
- ✓ algorithms or
- ✓ computer programme per se
- ✓ A literary, dramatic, musical or artistic work or any other aesthetic creation including cinematographic work and television productions
- ✓ Presentation of information
- ✓ Topography of integrated circuits.
- ✓ Inventions which are Traditional Knowledge or an aggregation or duplication of known properties of traditionally known component or components.

PATENT

What is meant by ‘New’?

- The invention to be patented must not be published in India or elsewhere, or in prior public knowledge or prior public use with in India or claimed before in any specification in India
- A feature of an invention that involves technical advance as compared to the existing knowledge or have economic significance or both and makes the invention not obvious to a person skilled in the art.

What can be patented?

- Any invention concerning with composition, construction or manufacture of a substance, of an article or of an apparatus or an industrial type of process.
- What cannot be patented?
- Inventions falling within Section 20(1) of the Atomic Energy Act, 1962

Who are the beneficiaries of the patent grant?

1. The inventor is secure from competition and can exploit the invention for his gain.
2. For the public the invention becomes public knowledge. The technology is freely available after expiry of patent and cheaper and better products become available.

Patent System in India

The Patent System in India is governed by the Patents Act, 1970 as amended by the Patents (Amendment) Act, 2005 and the Patents Rules, 2003, as amended by the Patents (Amendment) Rules 2006 effective from 05-05-2006.

✓ Administration

✓ Hierarchy of Officers in Patent office

1. Controller General of Patents, Designs, Trademarks & GI
2. Examiners of Patents & Designs
3. Assistant Controller of Patents & Designs
4. Deputy Controller of Patents & Designs
5. Joint Controller of Patents & Designs
6. Senior Joint Controller of Patents & Designs

✓ Jurisdiction of Patent offices in India

Types of Patent Applications

- ✓ Ordinary Application
- ✓ Application for Patent of Addition (granted for Improvement or Modification of the already patented invention, for an unexpired term of the main patent).
- ✓ Divisional Application (in case of plurality of inventions disclosed in the main application).
- ✓ Convention application, claiming priority date on the basis of filing in Convention Countries.
- ✓ National Phase Application under PCT.

Who can apply for Patent?

The inventor may make an application, either alone or jointly with another, or his/their assignee or legal representative of any deceased inventor or his assignee.

How is a patent obtained?

1. File an application for patent
2. With one of the patent offices based on territorial jurisdiction of the place of office or residence of the applicant /agent
3. Pay the required fee
4. Information concerning application form and details of fee available at www.ipindia.nic.in
5. Guidelines for applicants also available on this website The Patent Office then
6. Conducts searches to ascertain the prerequisites
7. Publishes the application
8. Conducts in-depth examination
9. Raises objection to the application - Grants the patent

General precautions for an applicant

1. The first to file system is employed, in which, among persons having filed the same invention, first one is granted a patent, therefore, a patent application should be filed promptly after conceiving the invention.
2. Another mistake, which is frequently made by the inventors, is to wait until their inventions are fully developed for commercial working, before applying for patents. It is, therefore, advisable to apply for a patent as soon as the inventor's idea of the nature of the invention has taken a definite shape.

What is meant by patentable invention?

A new product or process, involving an inventive step and capable of being made or used in an industry. It means the invention to be patentable 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.

What is not patentable?

The following are Non-Patentable inventions within the meaning of Section 3 of Patents Act, 1970 -

- ✓ 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; (For e.g. process of making brown sugar will not be patented.)
- ✓ The mere discovery of a scientific principle or the formulation of an abstract theory (or 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 mere 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;
- ✓ 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; (For e.g. the method of terrace farming cannot be patented.)

What is not patentable? (Contd...)

- ✓ any process for the medicinal, surgical, curative, prophylactic, diagnostic, therapeutic or other treatment of human beings 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; (For e.g. any new technique of hand surgery is not patentable)
- ✓ plants and animals in whole or any part thereof other than micro-organisms but including seeds, varieties and species and essentially biological processes for production or propagation of plants and animals;
- ✓ a mathematical or business method or a computer programme per se or algorithms;
- ✓ a literary, dramatic, musical or artistic work or any other aesthetic creation whatsoever including cinematographic works and television productions;
- ✓ a mere scheme or rule or method of performing mental act or method of playing game;
- ✓ a presentation of information;
- ✓ topography of integrated circuits;
- ✓ 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.

Appropriate office for filing an application & for other Proceedings

- ✓ Application is required to be filed according to the territorial limits where the applicant or the first mentioned applicant in case of joint applicants, for a patent normally resides or has domicile or has a place of business or the place from where the invention actually originated.
- ✓ If the applicant for the patent or party in a proceeding having no business place or domicile in India, the appropriate office will be according to the address for service in India given by the applicant or party in a proceeding .
- ✓ The appropriate office once decided in respect of any proceedings under the Act shall not ordinarily be changed. The four patent offices are located at Kolkatta, Mumbai, Delhi & Chennai.
- ✓ From 20th July, 2007 the Indian Patent Office has put in place an online filing system for patent application.

Publication and Examination of Patent Applications

- ✓ **Publication**
- ✓ **Request for examination**
- ✓ **Examination**
- ✓ **Withdrawal of patent application**

Opposition proceedings to grant of patents

The representation may be made on the following grounds:

1. that the applicant for the patent or the person under or through whom he claims, wrongfully obtained the invention or any part thereof from him or from a person under or through whom he claims;
2. that the invention so far as claimed in any claim of the complete specification has been published before the priority date of the claim—
 1. in any specification filed in pursuance of an application for a patent made in India on or after the 1st day of January, 1912; or
 2. in India or elsewhere, in any other document: Provided that the ground specified in sub-clause 3. shall not be available where such publication does not constitute an anticipation of the invention by virtue of sub-section (2) or sub-section (3) of section 29;
3. that the invention so far as claimed in any claim of the complete specification is claimed in a claim of a complete specification published on or after the priority date of the applicant's claim and filed in pursuance of an application for a patent in India, being a claim of which the priority date is earlier than that of the applicant's claim;
4. that the invention so far as claimed in any claim of the complete specification was publicly known or publicly used in India before the priority date of that claim. Explanation —For the purposes of this clause, an invention relating to a process for which a patent is claimed shall be deemed to have been publicly known or publicly used in India before the priority date of the claim if a product made by that process had already been imported into India before that date except where such importation has been for the purpose of reasonable trial or experiment only;

Opposition proceedings to grant of patents (Contd...)

5. that the invention so far as claimed in any claim of the complete specification is obvious and clearly does not involve any inventive step, having regard to the matter published as mentioned in clause (b) or having regard to what was used in India before the priority date of the applicant's claim;
6. that the subject of any claim of the complete specification is not an invention within the meaning of this Act, or is not patentable under this Act
7. that the complete specification does not sufficiently and clearly describe the invention or the method by which it is to be performed;
8. that the applicant has failed to disclose to the Controller the information required by section 8 or has furnished the information which in any material particular was false to his knowledge;
9. that in the case of convention application, the application was not made within twelve months from the date of the first application for protection for the invention made in a convention country by the applicant or a person from whom he derives title;
10. that the complete specification does not disclose or wrongly mentions the source or geographical origin of biological material used for the invention;
11. that the invention so far as claimed in any claim of the complete specification is anticipated having regard to the knowledge, oral or otherwise, available within any local or indigenous community in India or elsewhere, but on no other ground.

Grant of Patent

- When all the requirements are met or in case of opposition under section 25(1), if the opposition is decided in favour of the applicant, the patent is granted, after 6 months from the date of publication under section 11 A, the letter 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.

Term and Date of Patent

Term of every patent will be 20 years from the date of filing of patent application, irrespective of whether it is filed with provisional or complete specification.

Renewal and restoration

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.

Designs

- **What is Design?**
- **Design law in India**
- **Need for registration of Design**
- **Essential requirements for registration of Design**
 - ✓ A design should -
 - ✓ Be new or original
 - ✓ Not be disclosed to the public anywhere 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.
 - ✓ Be significantly distinguishable from known Designs or combination of known designs.
 - ✓ Not comprise or contain scandalous or obscene matter.
 - ✓ Not be a mere mechanical contrivance.
 - ✓ Be applied to an article and should appeal to the eye.
 - ✓ Not be contrary to public order or morality.

Designs

Exclusion from scope of Design

Designs that are primarily literary or artistic in character are not protected under the Designs Act. These will include:

Books, jackets, calendars, certificates, forms-and other documents, dressmaking patterns, greeting cards, leaflets, maps and plan cards, postcards, stamps, medals.

- ✓ Labels, tokens, cards, cartoons.
- ✓ Any principle or mode of construction of an article.
- ✓ Mere mechanical contrivance.
- ✓ Buildings and structures.
- ✓ Parts of articles not manufactured and sold separately.
- ✓ Variations commonly used in the trade.
- ✓ Mere workshop alterations of components of an assembly.
- ✓ Mere change in size of article.
- ✓ Flags, emblems or signs of any country.
- ✓ Layout designs of integrated circuits.

Designs

Who can apply for registration?

✓ Any person or the legal representative or the assignee can apply separately or jointly for the registration of a design. The term "person" includes firm, partnership and a body corporate.

Register of Design

✓ The Register of Designs is a document maintained by the Patent Office, Kolkata as a statutory requirement.

✓ It contains the design number, date of filing and reciprocity date (if any), name and address of proprietor and such other matters as would affect the validity of proprietorship of the design such as notifications of assignments and of transmissions of registered designs, etc. and it is open for public inspection on payment of prescribed fee and extract from register may also be obtained on request with the prescribed fee.

Designs - Procedure for submission of application of registration

Any person who desires to register a design is required to submit the following documents to the Design Wing of the Patent Office at "Intellectual Property Office", CP-2, Sector V, Salt Lake, Kolkata - 700 091 or any of the Branch Offices of the Patent Office at Delhi, Mumbai and Chennai. The applications received by the Branch Offices will be transmitted to the Head Office for processing and prosecuting.

1. Application duly filed in on the prescribed form (Form-I) along with the prescribed fees, stating name in full, address, nationality, name of the article, class number, address for service in India. The application should also be signed either by the applicant or by his authorized agent.
2. Representation (in quadruplicate of size 33 cm x 20.5 cm with a suitable margin) of the article. Drawings \ sketches should clearly show the features of the design from different views and state the view (e.g. front or Side).
3. A statement of novelty and disclaimer (if any) in respect of mechanical action, trademark, work, letter, numerals should be endorsed on each representation sheet which should be duly signed and dated.
4. Power of attorney (if necessary).
5. Priority documents (if any) in case of convention application claimed under Section 44 of the Designs Act, 2000.

Designs

Cancellation of registration of Design:

The registration of a design may be cancelled at any time after the registration of design on a petition for cancellation in form 8 with a fee of Rs. 1,500/-to the Controller of Designs on the following grounds:

- ✓ That the design has been previously registered in India or
- ✓ That it has been published in India or elsewhere prior to date of registration or
- ✓ The design is not new or original or
- ✓ Design is not registrable or
- ✓ It is not a design under Clause (d) of Section 2.

Piracy of registered design

During the existence of copyright over any design, other persons are prohibited from using the design except or with the permission of the proprietor, his licensee or assignee. The following activities are considered to be infringement.

- ✓ To apply the design or any fraudulent imitation of it to any article for sale;
- ✓ To import for sale any article to which the design or fraudulent or obvious imitation of it, has been applied;
- ✓ To publish or to expose for sale knowing that the design or any fraudulent or obvious imitation of it has been applied to it.

Copyright

What is Copyright?

- ✓ 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.

Copyright law in India

- ✓ The Copyright Act of 1957, The Copyright Rules, 1958 and the International Copyright Order, 1999 governs the copyright protection in India. It came into effect from January 1958.
- ✓ The Act has been amended in 1983, 1984, 1992, 1994 and 1999. Before the Act of 1957, copyright protection was governed by the Copyright Act of 1914 which was the extension of British Copyright Act, 1911.
- ✓ The Copyright Act, 1957 consists of 79 sections under 15 chapters while the Copyright Rules, 1958 consists of 28 rules under 9 chapters and 2 schedules.

Meaning of copyright

According to Section 14 of the Act, “copyright” means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:-

in the case of a literary, dramatic or musical work, not being a computer programme, -

1. to reproduce the work in any material form including the storing of it in any medium by electronic means;
2. to issue copies of the work to the public not being copies already in circulation;
3. to perform the work in public, or communicate it to the public;
4. to make any cinematograph film or sound recording in respect of the work;
5. to make any translation of the work;
6. to make any adaptation of the work;
7. to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi);

in the case of a computer programme,-

1. to do any of the acts specified in clause (a);
2. to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme:

Provided that such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental.

Meaning of copyright

in the case of an artistic work,-

1. to reproduce the work in any material form including depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work;
2. to communicate the work to the public;
3. to issue copies of the work to the public not being copies already in circulation; (iv) to include the work in any cinematograph film;
4. to make any adaptation of the work;
5. to do in relation to an adaptation of the work any of the acts specified in relation to the work in sub-clauses (i) to (iv);

In the case of cinematograph film, -

1. to make a copy of the film, including a photograph of any image forming part thereof;
2. to sell or give on hire, or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions;
3. to communicate the film to the public;

In the case of sound recording, -

1. to make any other sound recording embodying it;
2. to sell or give on hire, or offer for sale or hire, any copy of the sound recording regardless of whether such copy has been sold or given on hire on earlier occasions;
3. to communicate the sound recording to the public.

Explanation: For the purposes of this section, a copy which has been sold once shall be deemed to be a copy already in circulation.

Classes of works for which copyright protection is available

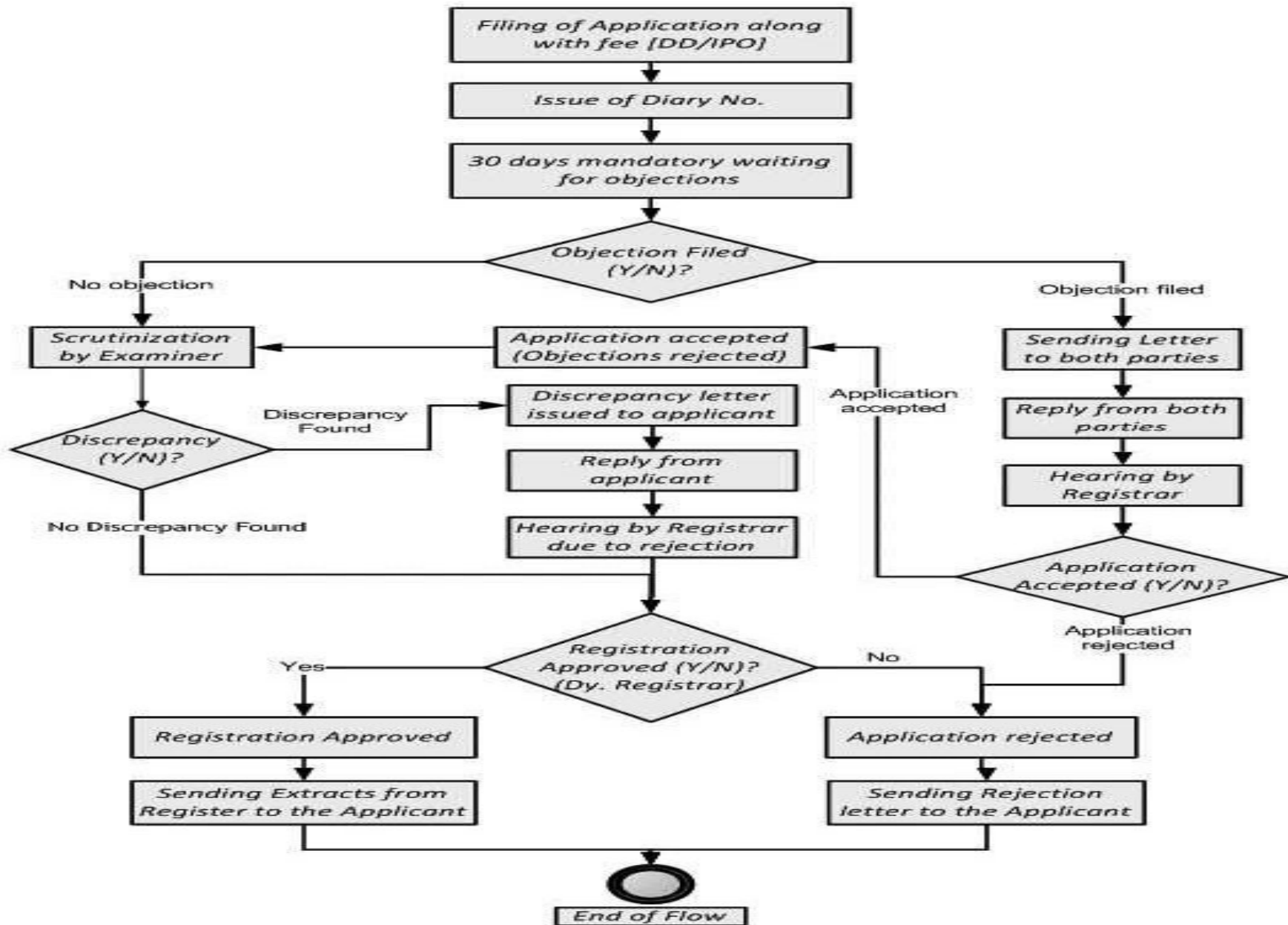
Indian Copyright Act affords separate and exclusive copyright protection to the following 7 classes of work:

1. Original Literary Work
2. Original Dramatic Work
3. Original Musical Work
4. Original Artistic Work
5. Cinematograph Films
6. Sound recording
7. Computer Programme

Copyright

- Ownership of Copyright
- Assignment of copyright
- Transmission of copyright by testamentary disposition
- Relinquish copyright
- Term of copyright
- Rights of Broadcasting Organisation and of Performers
- Intellectual Property Rights (IPR) of Computer Software
- Copyright Infringements
- Civil Remedies for Copyright Infringement
- The Criminal Offence
- International Copyright
- Licences
- Registration of a work under the Copyright Act, 1957
- Procedure for registration
- Time taken for registration
- Copyright Board
- Copyright Enforcement Advisory Council (CEAC)
- The Copyright (Amendment) Bill, 2012

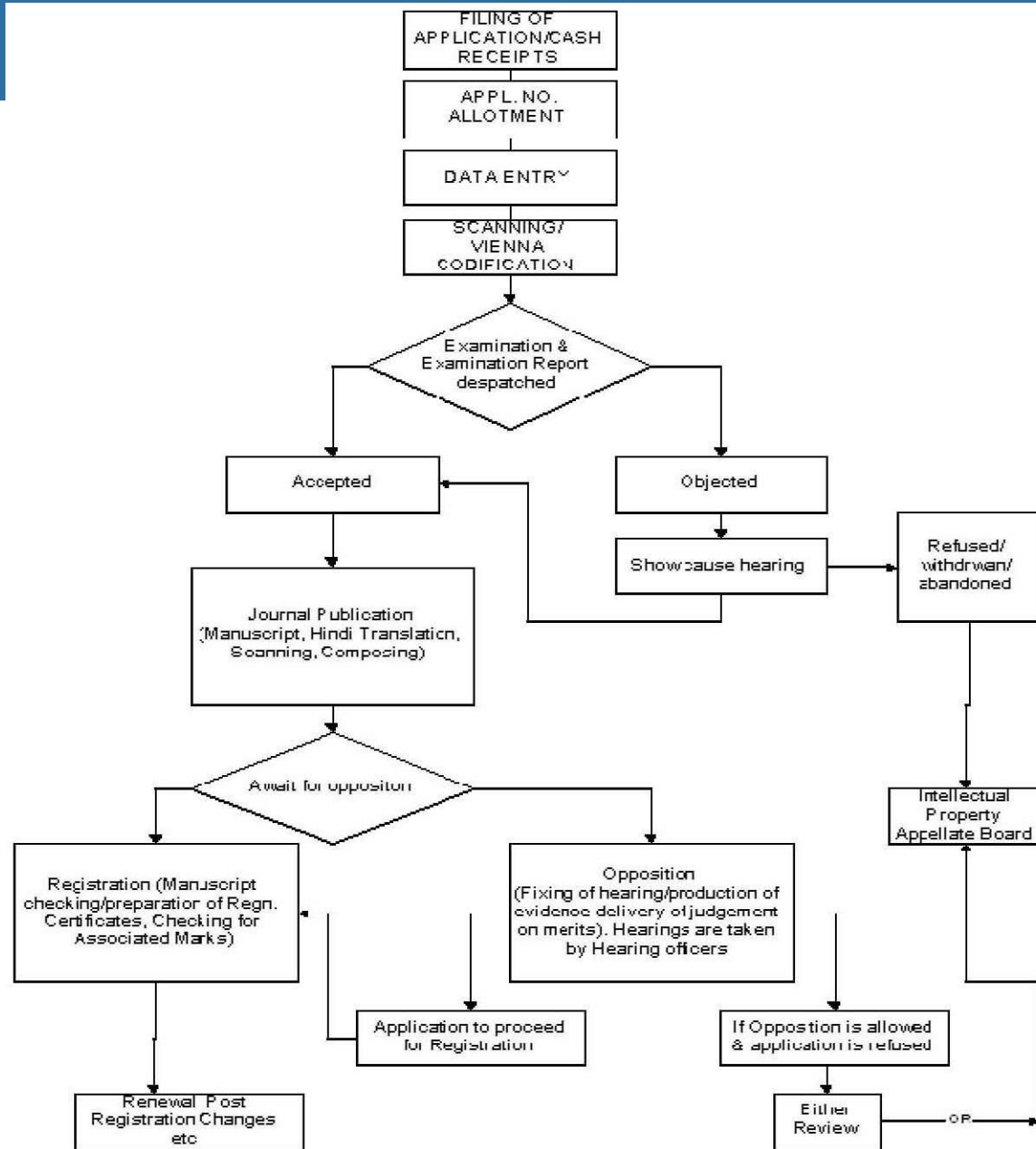
Copyright Registration Workflow



Trademark

- **What is Trademark?**
- **Key Features of Trademark**
- **Types of Trademark**
- **Functions of Trademark**
- **Trademarks law of India**
- **Who can apply for Trademark?**
- **Jurisdiction for filing application**
- **Location and Jurisdiction of Trademarks Office**
- **Particulars to be filed with application for registration**
- **Procedure for series registration**
- **Registration of Collective Marks**
- **Administrative procedure of registration of trademarks**
- **Correction and amendment of registration application**
- **Renewal of registration**
- **Offences & Penalties**
- **E-filing of Trademark application**

Trademark



International cooperation on Intellectual Property

- **Objectives**
- **Development Cooperation in Relation to Intellectual Property**
- **Training**
- **Legal Advice and Assistance**
- **Institutional Assistance**
- **Promotion of Indigenous Creativity, Innovation and Inventiveness**
- **Use of Patent Information**
- **Programs for Legislators and the Judiciary**
- **Promotion of Awareness in Local Enterprises and Educational Institutions**

Procedure for grant of a patent

- **Filing an application**
- **Divisional applications**
- **Examination**
- **Acceptance, publication and sealing**

Patenting under PCT

- ✓ Paris Convention v. PCT
- ✓ PCT Member Countries
- ✓ International Stage
- ✓ National Stage
- ✓ Cost
- ✓ Conclusion

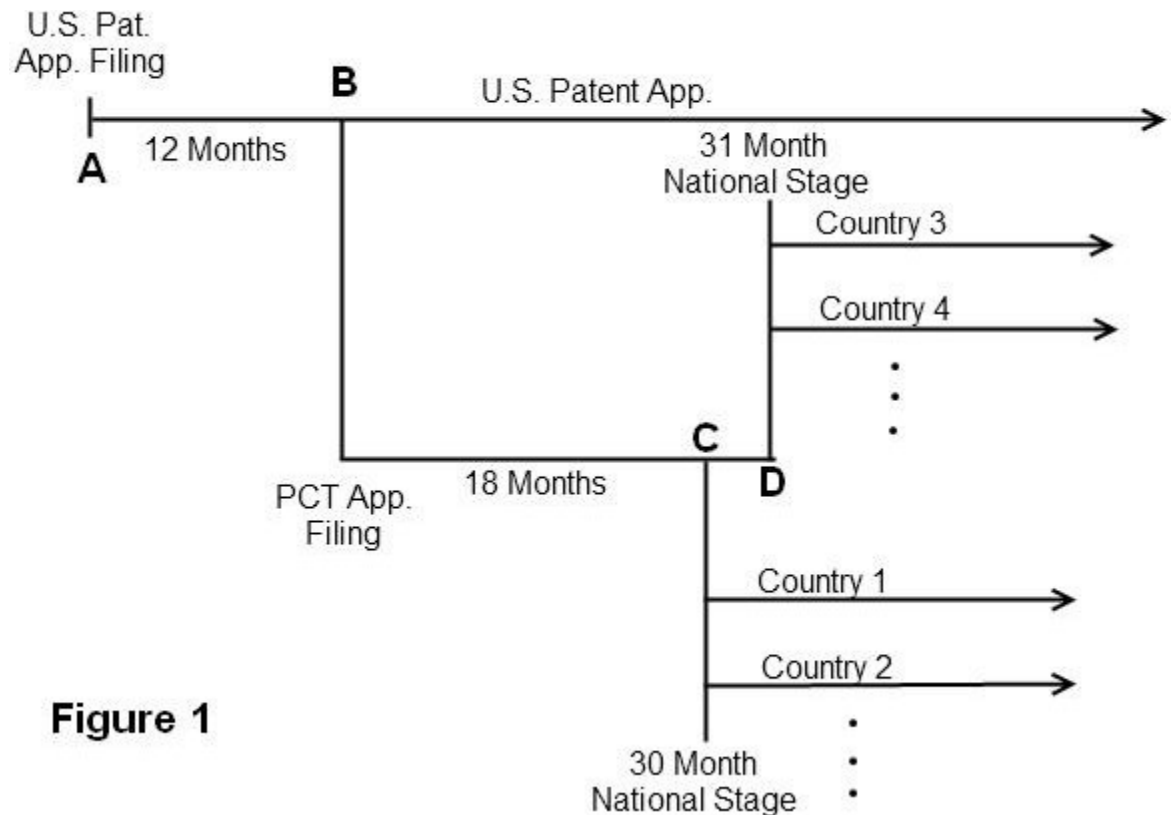


Figure 1