



## INTELLECTUAL PROPERTY FACTS

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### SUMMARY

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Adopted on 12th May 2016, the policy was formulated after intensive consultation with nearly 300 stakeholders and individuals by an IPR Think Tank, as well as 31 departments of the Government of India and 5 foreign Governments. Its aim is to spur creativity and stimulate innovation and ensure effective IPR protection in India.

The Vision statement envisages an India where creativity and innovation are stimulated by Intellectual Property for the benefit of all; an India where intellectual property promotes advancement in science and technology, arts and culture, traditional knowledge and biodiversity resources; an India where knowledge is the main driver of development, and knowledge owned is transformed into knowledge shared.

Its clarion call is "Creative India; Innovative India: रचनात्मक भारत; अभिनव भारत. Department of Industrial Policy & Promotion (DIPP), Ministry of Commerce, Government of India, has been appointed as the nodal department to coordinate, guide and oversee the implementation and future development of IPRs in India.

The 'Cell for IPR Promotion & Management (CIPAM)', setup under a professional body under the aegis of DIPP, is to be the single point of reference for implementation of objectives of the National IPR Policy.

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### OBJECTIVES

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The Policy is a comprehensive document that lays down seven objectives which have been elaborated with actionable steps to be undertaken by the identified nodal ministry/department:

1. **IPR Awareness: Outreach and Promotion** - To create public awareness about the economic, social and cultural benefits of IPRs among all sections of society.
  2. **Generation of IPRs** - To stimulate the generation of IPRs.
  3. **Legal and Legislative Framework** - To have strong and effective IPR laws, which balance the interests of rights owners with larger public interest.
  4. **Administration and Management** - To modernize and strengthen service-oriented IPR administration.
  5. **Commercialization of IPRs** - Get value for IPRs through commercialization.
  6. **Enforcement and Adjudication** - To strengthen the enforcement and adjudicatory mechanisms for combating IPR infringements.
  7. **Human Capital Development** - To strengthen and expand human resources, institutions and capacities for teaching, training, research and skill building in IPRs.
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### STRENGTHS OF THE INDIAN IPR REGIME

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The IPR framework in India is stable and well established from a legal, judicial and administrative point of view and is fully compliant with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

India is committed to a number of international treaties and conventions relating to IPRs

A number of awareness programs enumerating the types of intellectual property rights and its protection are being conducted by the Government, targeting audience from industry, universities, and schools.

During the last few years, Indian IP offices have undergone major improvements in terms of upgradation of IP legislation, infrastructure facilities, human resources, processing of IP applications, computerization of the IP offices, IP databases, quality services to stakeholders, transparency in functioning and free access to IP-data through a dynamic website.

State of the art, integrated and IT-enabled office buildings have been setup in the last few years in Delhi, Kolkata, Chennai, Mumbai and Ahmedabad, housing offices of Patents, Designs, Trademarks and Geographical Indications. The Patent Office is headquartered in Kolkata with branches in Delhi, Chennai, and Mumbai. The Trade Marks Registry, headquartered at Mumbai has branches in Ahmedabad, Chennai, Delhi, and Kolkata. The Design Office is located in Kolkata and the GI Registry is in Chennai. Separate facilities house the International Searching Authority (ISA) / International Preliminary Examining Authority (IPEA) in Delhi; an Intellectual Property Office Archives centre has been setup at Ahmedabad.

The procedure for filing and processing of IP applications has been simplified, E-filing facilities and incentives for Small and Medium Enterprises (SMEs) and Startups are some of the other initiatives in the area of promoting IPRs in India.

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### TYPES OF IPR IN INDIA

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#### PATENT

##### **DEFINITION AND SIGNIFICANCE**

A patent is granted for an invention which is a new product or process involving an inventive step and capable of industrial application.

"New invention" means the subject matter has not fallen in public domain or that it does not form part of the state of the art;

Inventive step is the feature(s) of the 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.

Capable of Industrial application means that the invention is capable of being made or used in an industry.

##### **MINISTRY/OFFICE ADMINISTERING THE PATENT**

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 in 2005)

#### DESIGN

## **DEFINITION AND SIGNIFICANCE**

A design refers only to the features of shape, configuration, pattern, ornamentation, composition of colour or line or a combination thereof, applied to any article, whether two or three dimensional or in both forms by any industrial process or means which, in the finished article, appeal to and are judged solely by the eye.

## **MINISTRY ADMINISTERING DESIGN**

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

## **TRADEMARK**

### **DEFINITION AND SIGNIFICANCE**

A trademark means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one undertaking from those of other undertakings.

A trademark can be a sign, words, letters, numbers, drawings, pictures, emblem, colours or combination of colours, shape of goods, graphic representation or packaging or sound or any combination of the above as applied to goods or services.

### **MINISTRY/ OFFICE ADMINISTERING THE TRADEMARK**

Department of Industrial Policy & Promotion, Ministry of Commerce & Industry  
Controller General of Patents, Designs and Trade Marks  
Concerned IP Act: Trade Marks Act 1999 (as amended in 2010)

## **GEOGRAPHICAL INDICATIONS**

### **DEFINITION AND SIGNIFICANCE**

A geographical indication identifies agricultural or natural or manufactured goods as originating or manufactured in the territory of a country or region or locality in that territory, where a given quality, reputation or other characteristics of such goods is essentially attributable to its geographical origin and, in case where such goods are manufactured goods, one of the activities of either the production or processing or preparation of the goods concerned takes place in such territory, region, or locality, as the case may be.

### **MINISTRY/ OFFICE ADMINISTERING THE GEOGRAPHICAL INDICATIONS**

Department of Industrial Policy & 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

## **COPYRIGHT**

### **DEFINITION AND SIGNIFICANCE**

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.

### **MINISTRY ADMINISTERING COPYRIGHT**

Department of Industrial Policy & Promotion, Ministry of Commerce & Industry  
Registrar of Copyrights  
Concerned IP Act: The Copyright Act, 1957 (as amended). It has been revised latest in 2012 to conform to WIPO internet treaties

## **SEMICONDUCTOR INTEGRATED CIRCUITS LAYOUT-DESIGN**

### **DEFINITION AND SIGNIFICANCE**

The aim is to provide protection of Intellectual Property Right (IPR) in the area of Semiconductor Integrated Circuit Layout-Designs and for matters connected therewith or incidental thereto.

### **MINISTRY ADMINISTERING THE SEMICONDUCTOR INTEGRATED CIRCUITS LAYOUT-DESIGN**

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

## **PLANT VARIETY PROTECTION AND FARMER'S RIGHTS**

### **DEFINITION AND SIGNIFICANCE**

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

### **MINISTRY/ AUTHORITY ADMINISTERING THE PLANT VARIETY PROTECTION IPR**

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

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## **INTERNATIONAL AGREEMENTS**

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India is a member of the World Trade Organisation and committed to the Agreement on Trade Related Aspects of Intellectual Property. India is also a member of World Intellectual Property Organization, a body responsible for the promotion of the protection of IPRs throughout the world.

India is also a member of the following important WIPO-administered International Treaties and Conventions relating to IPRs:

- Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure
- Paris Convention for the Protection of Industrial Property
- Convention Establishing the World Intellectual Property Organization
- Berne Convention for the Protection of Literary and Artistic Works
- Patent Cooperation Treaty
- Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks- Madrid Protocol
- Washington Treaty on Intellectual Property in respect of Integrated Circuits
- Nairobi Treaty on the Protection of the Olympic Symbol
- Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms
- Marrakesh Treaty to Facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities

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## **IP ADMINISTRATION IN INDIA**

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### **PATENTS**

India has taken strong steps in strengthening the patent system in the country. The Government aims at establishing a patent regime that is conducive to technological advances and is in line with its global commitments.

Patent application filing at Indian Patent Office has been increasing consistently over the years which demonstrates the confidence of the global industry in the Indian patent ecosystem.

Patent filing has increased by 5.3%, while domestic filing has increased to 32.5% from 29.2% in 2016-17. Number of patent applications examined increased to more than double (108.2% increase over previous year).

Grant of patents increased by 32.5% and disposal of applications increased by 57.6%.

Filing and processing of patent applications viz., examination, grant and post-grant proceedings are carried out at the appropriate Patent Office under whose jurisdiction the applicant normally resides or has his domicile or has a place of business or the place from where the invention actually originated; however, there is only one virtual Patent Office for the purpose of grant of patents.

A patent is granted for a uniform period of 20 years from the filing date of patent application for inventions in all fields of technology and it is a territorial right.

The Indian Patent Office has been recognized as an International Searching Authority and an International Preliminary Examining Authority (ISA/IPEA) by World Intellectual Property Organization in October 2007 under the Patent Cooperation Treaty, and has operationalised the status since 15th October 2013, thus joining an elite group of 17 countries.

### **IT ENABLED PROCESSING AND COMPUTERIZED WORK-FLOW**

All IP –related records are digitized before taking any action on the document and made freely available to the public at the appropriate stage through the official website, [www.ipindia.nic.in](http://www.ipindia.nic.in). The entire processing of patent applications is electronic and information relating to processing is made available on the website in real time, thereby providing valuable information to the applicants and public.

### **INSTANT ELECTRONIC COMMUNICATION WITH APPLICANTS**

Consequent to the filing of a document, instant e-mail is sent to the applicant at the mail IDs and numbers registered with the office. Such messages are QR coded to preserve their authenticity.

### **DYNAMIC INFORMATION**

Dynamic utilities are available on the website which provides useful real-time information such as the issuance of examination reports in a given month, disposal of applications, information about lapsed and ceased patents etc

The entire records in respect of all matters, which are not prohibited from publication by the statute, are made available to the public in real time through the official website.

The Patent Office has a strong pool of experts for processing of patent applications. At present, it has the strength of 526 Examiners (which includes 130 Senior Examiners and 396 new Examiners) and 137 Supervising Officers.

### **CLEARING BACKLOG/ REDUCING PENDENCY:**

The recruitment of 456 examiners of patents in various fields of technology has enabled the Office to set itself a target of reducing pendency and bring down backlog in examination from the present 5 to 7 years to just 18 months by March 2018.

### **PATENT COOPERATION TREATY (PCT)**

India is a contracting party to PCT that allows the patent applicant to seek patent protection for an invention simultaneously in a large number of countries by filing a single “international” patent application instead of filing several separate national or regional patent applications.

### **INDUSTRIAL DESIGNS**

Every design to be registerable must pass the universal test of novelty. A registered design is valid for 10 years and can be further extended by another 5 years.

A design cannot be registered if it is not new or original or has been disclosed to the public in India or anywhere in the world by publication.

In order to establish a Quality Management System (QMS) in respect of design registration activities, the office of the CGPDTM has acquired ISO 9001:2008 certification for the Design application registration process. The accreditation was awarded by the BSI (British Standard Institution) on 13/04/2015.

An increase of 15.9% in filing of design applications has been witnessed in 2017-18 over previous year. Further, the design registrations increased by 21.07% and disposal of applications increased by 29.48% in 2017-18 compared to 2016-17.

### **AUTOMATED AND TRANSPARENT FUNCTIONING OF THE DESIGN WING**

The IPO website contains separate Gateway for E- Filing of design applications and free online public search facilities for the search of identical or similar designs. E-Journal on Designs is published every Friday giving the details of accepted applications for registration of designs and other information.

## OTHER INFORMATION

Design applications and free online public search facilities for the search of identical or design are available on the IPO website.

## FACILITIES OFFERED BY THE DESIGNS WING TO APPLICANTS/STAKEHOLDERS

Manual of Designs Practice and Procedure is available at the official website for processing an application for registration of designs to ensure uniformity and consistency in examination.

Design applications can be filed by foreign applicants taking priority of their foreign applications.

Design registration is granted within 6 months of the filing of an application if all requirements are met.

## TRADE MARKS

A trademark is used or proposed to be used to distinguish the goods or services of one person from those of others in the course of trade. Though the registration of a trademark is not compulsory, registration is a prima facie proof of the title and it gives the registered proprietor an exclusive right to use the trademark and take legal action in case of infringement.

If a trademark is not registered and if someone not having the right in the trademark uses that trademark, the proprietor of the trademark can take the common law action of passing off.

The initial registration is valid for a period of 10 years from the date of registration which is renewable for the period of every 10 years, for an indefinite period of time.

The number of trademark registrations has shown an increase of 20.3% in 2017-18 when compared to previous year. Further, final disposal of applications, which includes registered, refused, withdrawn and abandoned applications was 91.4% more as compared to 2016-17.

Manpower has been augmented manifold on the trademark front with 100 Trademark Examiners added on contractual basis; 62 regular appointments are in pipeline through UPSC. Clearing Backlog/ Reducing Pendency

In Trademarks, the target is to bring down pendency in examination from the present 13 months to just 1 month by March 2017. Trademark pendency in examination has come down to 5.5 months at present.

## MADRID PROTOCOL

India has acceded to the Madrid Protocol which allows applicants to file applications in other countries that are members of the Protocol through a simple Form and by payment in one currency. Foreign applicants can also file indicating India as the designated country.

Indian office is receiving applications for protection of trademarks under the Madrid Protocol and making all correspondence relating thereto online through the gateway provided by this office. Similarly, all communications from the International Bureau regarding international applications or registration under the Madrid Protocol are made by Indian office through electronic means only.

## AUTOMATED AND TRANSPARENT FUNCTIONING OF THE TRADEMARKS REGISTRY (TMR)

All the functions of the TMR are performed through a Trade Marks System (TMS). The Data Entry of all vital information relating to a trademark application or a registered trademark is done and all available paper records relating to trademark applications or registered trademarks is digitised which are linked with the relevant application or registered trademarks, in the system.

## OTHER INFORMATION

The IPO website contains separate Gateway for E- Filing of trademark applications and free online public search facilities for the search of identical or similar trademarks.

The start up applicants are provided a fee concession of 50% in their trademark application filing and all subsequent procedures.

Trade Mark E-Journal is published every Monday giving the details of accepted applications for registration of trademarks & other information.

Details of all trademark applications or registered trademarks, the status of applications/registered trademarks, public notices, copies of important office orders, circulars and other useful information are available on the website of the Office of the Controller General of Patents, Designs and Trade Marks.

The public can see on a real-time basis the details of examination of trademark applications, show cause hearings, publication in the trademark journal, registration of trademarks, disposal of applications by way of abandonment, refusal etc.

## FACILITIES OFFERED BY THE TRADE MARKS REGISTRY TO APPLICANTS/STAKEHOLDERS

Comprehensive e-filing services are available for online filing of all Trade Mark related forms at the office website.

Entrepreneurs from all over the world can register their trademarks in India.

The pre-requisites, FAQ, and instructions for e-filing are hosted on the website.

Under the Madrid Protocol, through a single application for registration, facility of online filing of international applications can be availed.

Free Public search facility is available on the website to facilitate information dissemination.

Dynamic utilities for trademarks is available to provide real-time status of applications at different stages of processing.

Stock and flow of Patent and Trademark applications available at all stages in IPO website.

## COPYRIGHT

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.

The Copyright Act, 1957 has been amended latest in 2012 to bring the Act in conformity with two WIPO internet treaties concluded in 1996 namely, the WIPO Copyright Treaty (“WCT”) and WIPO Performances and Phonograms Treaty (“WPPT”); to protect the Music and Film Industry and address its concerns; to address the concerns of the physically disabled and to protect the interests of the author of any work; Incidental changes; to remove operational facilities; and enforcement of rights.

Important provisions include extension of copyright protection in the digital environment such as penalties for circumvention of technological protection measures and rights management information, and liability of internet service provider and introduction of statutory licenses for cover versions and broadcasting organizations; ensuring right to receive royalties for authors, and music composers, exclusive economic and moral rights to performers, equal membership rights in copyright societies for authors and other right owners and exception of copyrights for physically disabled to access any works.

#### **CLEARING BACKLOG/ REDUCING PENDENCY**

Filing of applications has increased by 7.4% and number of applications examined increased by 92.7% as compared to 2016-17

Pendency in examination of copyright applications has reduced to less than 1 month in 2017-18.

During 2017-18, there has been remarkable progress in copyright registrations which increased by 456%, whereas final disposal of applications increased by 631%, as compared to last year.

In order to further increase transparency and stakeholder participation, the Copyright Office has started displaying the applications received during the month, disposal and pendency on the office website. The applicants can also track the status of their application online.

#### **AUTOMATED AND TRANSPARENT FUNCTIONING IN COPYRIGHT OFFICE**

In its endeavour to facilitate seamless registration of works, the Copyright Office has introduced the provision to upload soft copies of Literary/Dramatic and Artistic works along with other related documents on its online portal.

The Copyright Office has introduced the provision to upload scanned signatures, while online filing of a copyright application.

The Copyright Office has introduced video conferencing as an alternate mode of hearing in matters listed for hearing. The video conferencing will enable the applicant or their representative, to present their case without being present physically at Copyright Office, New Delhi.

#### **GEOGRAPHICAL INDICATIONS**

The Geographical Indications Registry is a statutory organization set up at Chennai for the administration of the GI Act with the objective of providing registration and protection of geographical indications (GI) relating to goods.

Applications for registration of Geographical Indications can also be filed by foreign entities for registration of their GI in India in accordance with the provisions of TRIPS.

A Manual of Practice and Procedure is in place to ensure uniformity and consistency in practice.

The Geographical Indications Registry has been awarded the ISO 9001: 2008 for registration and better protection of Geographical Indications relating to goods.

#### **PROTECTION OF PLANT VARIETIES & FARMERS’ RIGHTS AUTHORITY, INDIA**

India has ratified the TRIPS agreement and to give effect to this agreement, a sui generis system for The Protection of Plant Varieties and Farmers Rights Act, 2001 (PPV&FRA) was enacted.

The Act provides for establishment of an effective system for protection of plant varieties, the rights of farmers and plant breeders and to encourage the development of new varieties of plants.

Exclusive IPR are conferred to plant breeders and farmers on the new and extant plant varieties to produce, sell, market, distribute, import and export the varieties for a maximum period protection of 15 years in case of field crops and 18 years in case of trees/vines.

A variety is required to essentially fulfil the criteria of Distinctiveness, uniformity and stability.

A total of around 1200 applications for registration have been received by the Authority that includes 284 applications for new varieties, 900 applications for extant varieties and 9 applications for farmer’s variety.

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#### **FACILITIES OFFERED BY THE PATENTS OFFICE**

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##### **FILING APPLICATIONS BY FOREIGN APPLICANTS CLAIMING PRIORITY**

India, being a member country to Paris Convention and Patent Cooperation Treaty, provides all filing facilities as mandated under these arrangements to applicants for filing convention and national phase patent applications.

##### **SIMPLIFIED PROCEDURE FOR FILING OF NATIONAL PHASE APPLICATIONS**

The procedure for filing a national phase application in India (corresponding to PCT international application) is effortless in that, only one form is required to be filed and rest of the contents of the application are obtained by the Patent Office directly from the servers of International Bureau of the World Intellectual Property Organisation

##### **E-FILING FACILITIES**

For filing an application for patent or any document in the Patent Office, comprehensive e-filing service is available at the official website with a facility for making e-payment and there is no need to personally visit the office.

##### **INCENTIVE FOR ONLINE FILING**

Indian Patent office offers 10% reduction in fees for the online filing of all forms and documents relating to patents, at all stages of processing of an application, right from the stage of filing to the grant of the patent and post-grant processes.

##### **CONCESSION FOR SMALL ENTITIES**

Applicants belonging to the category of micro, small and medium enterprises (SMEs) are required to pay only 80% of the fee payable by other legal entities namely companies etc. As a result, the patent filing and processing fees for small entities is now at par with the fees for individual applicants and start-ups.

##### **CONCESSION TO STARTUPS**

80 % Fee concession, as compared to the fee for legal entities, is available for filing and other procedures in respect of patent applications filed by Startups.

DIPP has launched a "Scheme for Facilitating Startups Intellectual Property Protection (SIPP)" to encourage IPR protection amongst Startups", which shall be in force until March 2020. The scheme includes providing facilitators to start ups for filing and processing of their applications for patents, designs and trademarks and reimbursement of professional charges to facilitators by the Government.

A list of the facilitators for patents, designs and trademark has been uploaded on the website and the office of CGPDTM has taken necessary steps for effective implementation of the SIPP scheme.

Expedited Examination of Patent Applications

Applicants for international PCT applications who have selected Indian Patent Office as ISA/IPEA or Start-ups can request for Expedited Examination of their patent applications.

Electronic Payment Gateway For PCT Application Fees

This facility has been introduced w.e.f.1st April 2016 to avoid delay in transmission of fees for PCT applications to IB and Searching Authority.

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