



Presentation
for
INTELLECTUAL PROPERTY RIGHTS

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UNIT-I

INTRODUCTION TO

INTELLECTUAL PROPERTY

Overview

- ❖ Law governing IP
- ❖ Meaning
- ❖ Types of IP
 - ❖ Patent
 - ❖ Trademark
 - ❖ Copyright
- ❖ Infringement
- ❖ Case Studies
- ❖ Conclusion



- ❖ WIPO (World Intellectual Property Organization) was established by the WIPO Convention in 1967
- ❖ The WIPO is a specialized agency of the United Nations.
- ❖ It promote the protection of IP throughout the world.
- ❖ Its headquarters are in Geneva, Switzerland



World Intellectual Property Day April 26



World Intellectual Property Day 2012 *Visionary Innovators*

Your favorite visionary innovators



Source: Number of «likes» on World IP Day Facebook Page

How many countries reported events?



About World IP Day

IP Day offers an exciting chance each year to join with others around the globe, to highlight, discuss and demonstrate how the IP system contributes to the flourishing of music and the arts and to driving the technological innovation that helps shape our world.

April 26

WIPO's birthday (1970)
World IP Day since 2000

www.wipo.int/ipday

On World Intellectual Property Day this year, WIPO's focus is on promoting **VISIONARY INNOVATION** as the key to a secure future.



Intellectual Property Law In India



- ❖ There are many big and small intellectual property law firms worldwide, like in India, USA, UK, Chicago etc, providing qualitative help to inventors and creators of product.
- ❖ In India intellectual property rights are safely protected and controlled by well- established statutory and judicial framework.
- ❖ Apart From that, there are many attorneys and law firm of intellectual property in India in various states.

What is “Intellectual Property”?



Intellectual Property is a property that arises from The human intellect. It is a product of human creation.

Intellectual Property comprises 2 distinct forms:

- * Literary & Artistic Works
- * Industrial Property

“Literary & Artistic Works”

They are books, paintings, musical compositions, plays, movies, radio/tv programs, performances, & other artistic works.

How are they Protected?
Protected by “COPYRIGHT”

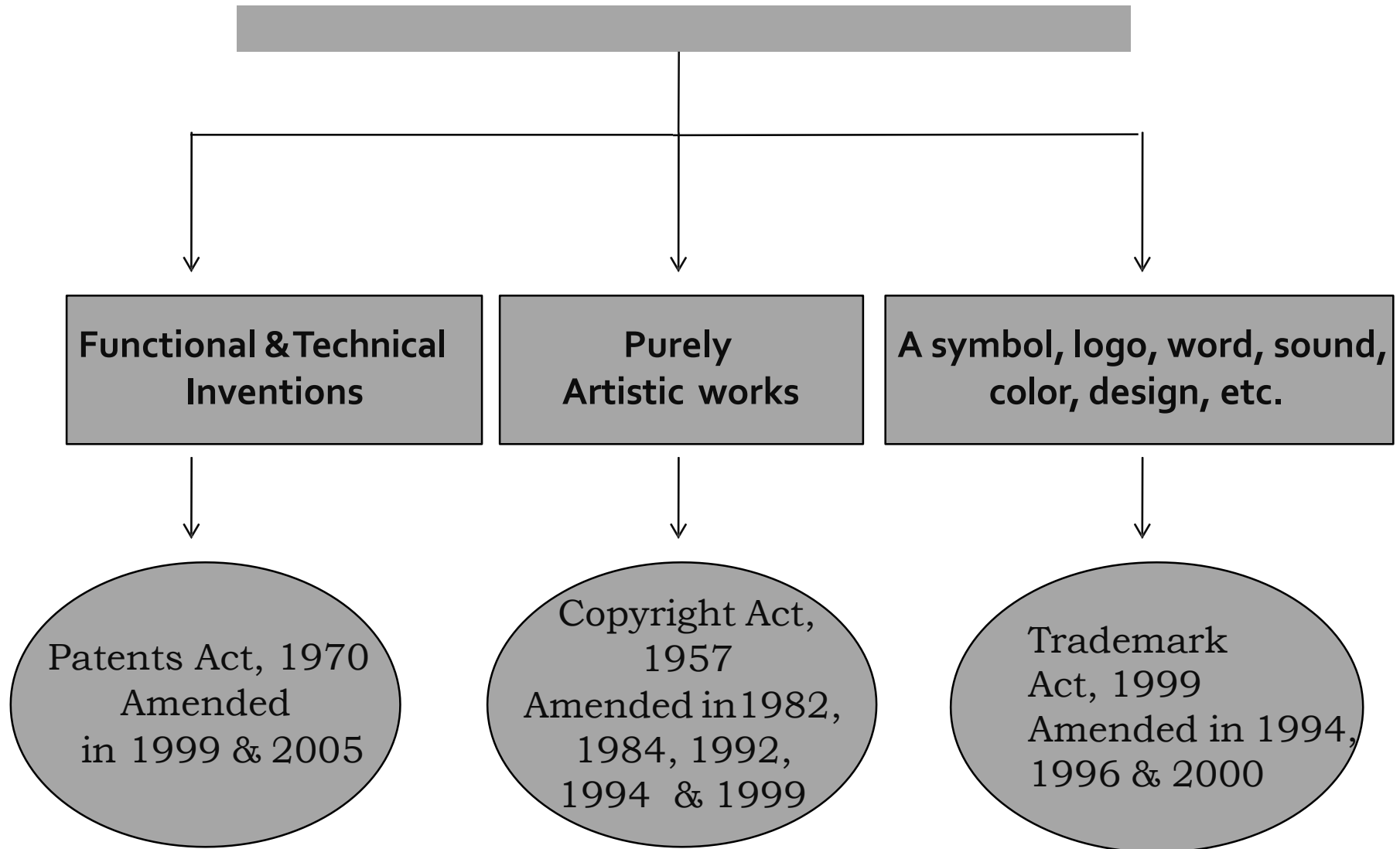
“Industrial Property”

- ❖ Industrial Property describes physical matter that is the product of an idea or concept for commercial purposes.

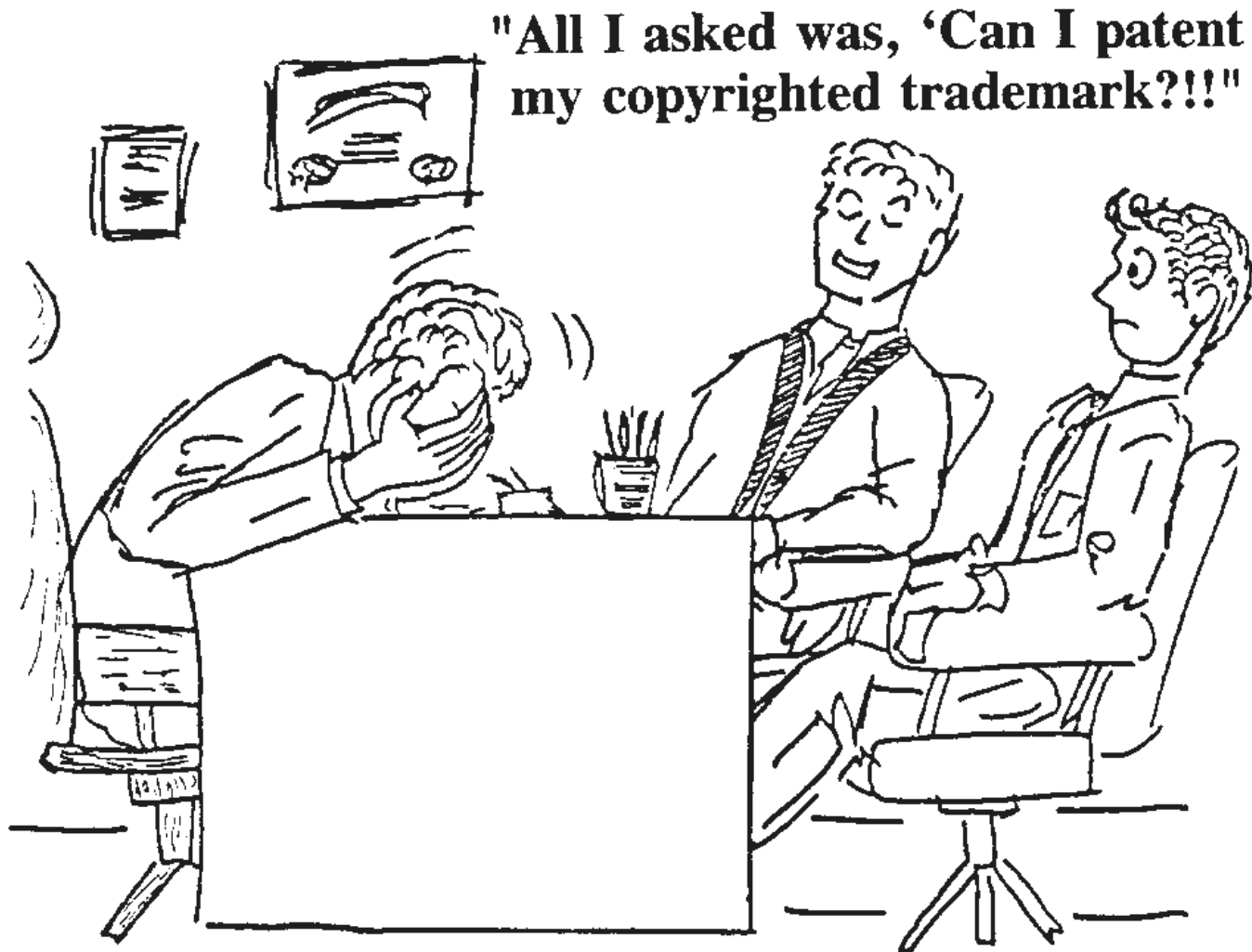
How are they Protected?

- ❖ By Patented objects
- ❖ By Trademarks
- ❖ By Industrial Designs
- ❖ By Trade Secrets
- ❖ By Layout-designs
- ❖ By Geographical Indications

Major Types of IP



If you don't see a problem with this question, you need the class!



PATENTS

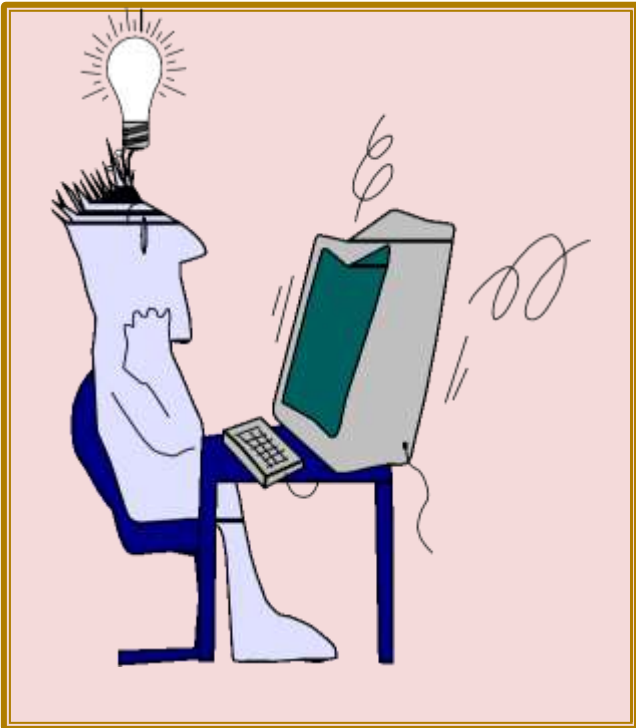
- (1) It is covered under the Act called the Patents Act, 1970 [Amended by Patents Act, 2005]
- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may publish, by notification in the Official Gazette.



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- A patent describes an invention for which the inventor claims the exclusive right.

- **INVENTION PATENABLE**
IF.....



- ✓ NEW
- ✓ USEFUL
- ✓ NOT OBVIOUS
- ✓ PERTAINS TO PATENTABLE SUBJECT MATTER

Patentable Subject Matter



Invention Relates To A Process Or Product Or Both

- ❖ Involves An Inventive Step
- ❖ Be Capable Of Industrial Application
- ❖ A Machine

Life & Duration



- ❖ Term of the patent is 20 years from the date of filing for all types of inventions.
- ❖ Priority date- first to file
- ❖ The date of patent is the date of filing the application for patent.
- ❖ The term of the patent is counted from this date.

Fees For Filing Patent



- ❖ The Government fee for filing a patent application in India is Rs.750/- for individuals and Rs.3,000/- for legal entities.
- ❖ No fee for 1st and 2nd year
- ❖ Renewal fee, on yearly basis, is required to be paid for 3rd to 20th for keeping the patent in force.
- ❖ Patent lapses if renewal fee is not paid
 - ❖ within the prescribed period.

Youngest Patent-holder on wheelchair



- ❖ JAIPUR: Drawing inspiration from scientist Stephen Hawking, a wheelchair-bound nine-year-old boy here has invented a game of six-player circular chess. The boy, Hridayeshwar Singh Bhati has got the game's design patented in his name.

What Does a Patent look Like?



Certificate of Grant of Patent

COPY


Patent Number: GB2399473
Proprietor(s): Nicholas P Le Feuvre
Inventor(s): Nicholas P Le Feuvre

This is to Certify that, in accordance with the Patents Act 1977,

a Patent has been granted to the proprietor(s) for an invention entitled
"Loudspeaker with low distortion precise imaging and deep bass"
disclosed in an application filed **8 March 2004**.

Dated 19 October 2005




Ron Marchant
Comptroller General of Patents,
Designs and Trade Marks
UNITED KINGDOM PATENT OFFICE

The attention of the proprietor(s) is drawn to the important notes overleaf.

Trademark

1. It is covered under the Act called the Trade Marks Act, 1999.
2. The Act came into effect on September 15, 2003. It replaced the Trade and Merchandise Marks Act, 1958.
3. It extends to the whole of India.
4. It shall come into force on such date as the Central Government may publish, by notification in the Official Gazette

■ **Trademark:**

- A symbol, logo, word, sound, color, design, or other device that is used to identify a business or a product in commerce.
- Different Symbols are :

- ™ Intent to use application filed for product
- SM Intent to use application filed for services
- ® Registered trademark

Registration Procedure



- ❖ Application for search.
- ❖ Application for registration.
- ❖ Examination of trademark.
- ❖ Advertisement of trademark.
- ❖ Filing of opposition.
- ❖ Certificate issued.

DURATION & FEES OF TRADEMARK



- Trademark is valid for 10 years from the date of application which may be renewed for further period of 10 years on payment of prescribed fees.
- Service mark Rights are reserved exclusively for owners for 17 year & it can also be renewed.
- The Govt. fees is Rs. 2,500 for each class of goods or services.

UNIT-II

TRADEMARKS



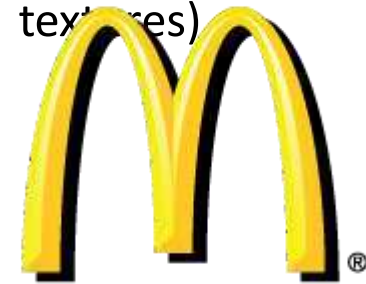
UNIT-II

TRADEMARK



TRADEMARKS

A trademark is typically a name, word, phrase, logo, symbol, design, image, sound or a combination of these elements. There is also a range of non-conventional trademark comprising marks which do not fall into these standard categories, may therefore be *visible signs* (e.g. colors, shapes, moving images, holograms, positions), or *non-visible signs* (e.g. sounds, scents, tastes, textures)



i'm lovin' it®



Indian Trademark law

- Indian trademark law provides protection to trademarks statutorily under the Trademark Act, 1999 and also under the common law remedy of Passing Off.
- Passing off is a common law tort which can be used to enforce unregistered trademark rights. The tort of passing off protects the goodwill of a trader from a misrepresentation that causes damage to goodwill.
- Statutory protection of trademark is administered by the Controller General Of Patents, Designs and Trade Marks, a government agency which reports to the Department of Industrial Policy and Promotion(DIPP), under the Ministry of Commerce and Industry.

- ❖ The law of trademark in India before 1940 was based on the common law principles of passing off and equity as followed in England before the enactment of the first Registration Act, 1875.
- ❖ The first statutory law related to trademark in India was the Trade Marks Act, 1940 which had similar provision like the UK Trade Marks Act, 1938.
- ❖ In 1958, the Trade and Merchandise Marks Act, 1958 was enacted which consolidated the provisions related to trademarks contained in other statutes like, the Indian Penal Code, Criminal Procedure Code and the Sea Customs Act.

Trademark

According to Section 2 (zb) of the Trade Marks Act, 1999, “trade mark means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours.” A mark can include a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any such combinations

PRODUCTS



- Class 1 (Chemicals)
- Class 2 (Paints)
- Class 3 (Cosmetics and Cleaning Preparations)
- Class 4 (Lubricants and Fuels)
- Class 5 (Pharmaceuticals)
- Class 6 (Metal Goods)
- Class 7 (Machinery)
- Class 8 (Hand Tools)
- Class 9 (Electrical and Scientific Apparatus)
- Class 10 (Medical Apparatus)
- Class 11 (Environmental Control Apparatus)
- Class 12 (Vehicles)

PRODUCTS



- Class 13 (Firearms)
- Class 14 (Jewelry)
- Class 15 (Musical Instruments)
- Class 16 (Paper Goods and Printed Matter)
- Class 17 (Rubber Goods)
- Class 18 (Leather Goods)
- Class 19 (Non-metallic Building Materials)
- Class 20 (Furniture and Articles Not Otherwise Classified)
- Class 21 (Housewares and Glass)
- Class 22 (Cordage and Fibers)
- Class 23 (Yarns and Threads)

- Trademark in India is classified in about 45 different classes, which includes chemical substances used in industry, paints, lubricants machine and machine tools, medical and surgical instruments, stationary, lather, household, furniture, textiles, games, beverages preparatory material, building material, sanitary material, and hand tools, other scientific and educational products.
- These classes again are further sub-divided. The main objective of trademark classification is to group together the similar nature of goods and services. Here are the classes for product and for services.

- **WHAT ARE THE TYPES OF TRADEMARKS THAT CAN BE REGISTERED?**
 - Under the Indian trademark law the following are the types of trademarks that can be registered:
 - Product trademarks: are those that are affixed to identify goods.
 - Service trademarks: are used to identify the services of an entity, such as the trademark for a broadcasting service, retail outlet, etc. They are used in advertising for services.

1. Filing of an application for registration by a person claiming to be the proprietor of a trademark, in the office of the Trade mark Registry, within the territorial limits of the place of business in India.
2. Examination of the application by the Registrar to ascertain whether it is distinctive and does not conflict with existing registered or pending trademarks and examination report is issued.
3. Publication of the application after or before acceptance of the application in the Trademark Journal.
4. After publication if any person gives notice of his opposition to the registration within three months which may be extended to the maximum of one month.

Trade mark registration

The term of registration of trademark is 10 (Ten) years, but may be renewed subject to the payment of the prescribed fee, in accordance with the provisions of the Trademarks Act, 1999. An application for renewal of a trademark can be filed within six months from Constantia (Body) the expiry of the last registration of trademark.

Use of the .TM. and ® symbols

Generally, one who has filed an application (pending registration) can use the TM (trademark) designation with the mark to alert the public of his exclusive claim. The claim may or may not be valid. The registration symbol, ®, may only be used when the mark is registered.

Ipindia.nic.in



 **Government of India**
Controller General of Patents Designs and Trademarks
Department of Industrial Policy and Promotions
Ministry of Commerce and Industry

 **INTELLECTUAL PROPERTY INDIA**
Patents | Designs | Trademarks | Geographical Indications

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Gateways
• Filing of Application Patents | Trademarks
• Status of Patents | Trademarks | GI
• Public Search Patents | Trademarks | Designs
• Electronic Register of Patent Agents
• Interactive Guidance Patents | Trademarks

Resources
• NICE Classification
• Applications related to Traditional Knowledge Food & Pharmaceuticals
• List of Pending applications & Granted Patents in the field of Food & Pharmaceuticals
• Right to Information Act
• Bilateral Cooperation | List of Scientific Advisors
• Research Studies | Controller's Decision
• International Non Proprietary Names (INN)
• Notice Board Tenders | Office Circulars | Vacancy Announcement

Our Publications
• Journal Patent | Trademark | GI
• Annual Reports
• Revised List of Pharma Patents
• Trade Marks Agents
• Patent Examiners Training Syllabus
• Manual of Geographical Indications Practice and Procedure
• Manual of Patent Office Practice and Procedure
• Manual of Design Practice and Procedure
• Revised Draft Manual Of Trademarks Practice and Procedure



News

- CGPDTM makes available the list of [Pending Applications and Granted Patents related to Food and Pharmaceutical along with Traditional Knowledge](#) (23 August, 2012)
- CGPDTM issues Appointment and Posting orders for 2 Examiners of Patents and Designs [Posting Details](#) (22 August, 2012)
- RFP for providing (i) patent database & interface; and (ii) developing a customized search platform and related interface.
NOTICE: Pursuant to requests received in this office, last date for submitting proposals has been extended. Relevant timelines have been re-established as follows:
1. Last date for submitting proposals: 31st August 2012 (5 p.m.)
2. Opening of qualification (eligibility criteria) & technical proposal: 4th September 2012 (10:00 a.m.)
3. Opening of financial proposal: 5th September 2012 (11:00 a.m.)
Parties fulfilling the eligibility criteria will be required to make a presentation on technical aspects of the proposal and will also be required to clarify any queries that may arise with respect to the proposal on 4th September 2012 (11:00 a.m.) [RFP](#) | [RFP \(Track Changes\)](#) | [Minutes of the meeting](#) | [Clarification](#) (17th August 2012)
- The CGPDTM invites suggestions for publication of classification of goods and services for the purpose of registration of Trade Mark [More...](#) (16 August, 2012)
- [CGPDTM makes available the list of pending applications & granted patents in the field of Food & Pharmaceuticals](#) (9 August, 2012)
- All the requests for making corrections in the electronic Register of Patent Agents have been disposed of. Registered Patent Agents are requested to verify (6 August, 2012)
- CGPDTM invites tenders for providing Facility Management Services in Intellectual Property Offices at Delhi, Mumbai, Kolkata and Chennai [More...](#) (3 August, 2012)
- CGPDTM issues circular for Third Party Observation System in respect of International Patent applications which have already been published. [Circular](#) | [ePCT Third Party Observations](#) (2 August, 2012)
- Stakeholders meeting on Patents, Designs & Geographical Indications chaired by the CGPDTM will be conducted at IPO, Chennai on 03-08-2012 (Friday) from 04:00 P.M. to 05:00 P.M. All Patent Agents/Attorneys/Stakeholders are invited to participate in the meeting and offer their valuable suggestions. (2 August, 2012)
- IMPORTANT: CGPDTM issues instructions for filing of PCT National Phase Applications. These instructions also apply to cases under reference which are filed through online filing facility [More...](#) (2 July, 2012)

Register your Grievance

http://ipindia.nic.in/tmr_new/default.htm



Controller General of Patents Designs and Trademarks
Office of the Registrar of Trade Marks



Trademarks

[Home](#) | [Interactive Guidance](#) | [e-Filing of Trade Mark Application](#) | [Trade Marks Journal](#) | [Public Search](#) | [Trade Mark Status](#) | [Current News](#) | [Other Related Links](#) | [Help Desk](#)

- General Information**
 - Administrative Steps involved
 - Workflow Chart
 - Free Express Service Facility
 - Frequently Asked Question
 - Future Vision
 - Quality Policy of Office
 - Locations and Jurisdiction
 - Contact Person Details
 - Classification of Goods and Services
 - International Non Proprietary Names (INN)
- Other Information**
 - Oppositions
 - Renewals
 - Hearing Board | TLA Hearing Board
 - Post Registration Hearing
 - Office Circulars
 - Returned Registration Certificate
 - List of Removed Trade Marks
- Trade Mark Acts and Rules**
 - Trade Marks Act, 1999
 - Trade Marks Act, 1999 (हिन्दी)
 - Trade Marks Rules (हिन्दी)
 - New Elements in the Trade Marks Act, 1999
 - Notification
 - Trade Marks Rules 2002, Forms & Fee
 - Trade Marks Forms and First Schedule
 - Trade Mark Forms (हिन्दी)
 - Form TM-54 (The Trade Marks Act 1999)
- Trade Mark Agents**

BRIEF BACKGROUND

The Trade Marks Registry was established in India in 1940 and presently it administers the Trade Marks Act, 1999 and the rules thereunder. It acts as a resource and information centre and is a facilitator in matters relating to trade marks in the country.

The objective of the Trade Marks Act, 1999 is to register trade marks applied for in the country and to provide for better protection of trade mark for goods and services and also to prevent fraudulent use of the mark.

The main function of the Registry is to register trade marks which qualifies for registration under the Act and Rules.

- Proposed Trade Marks Manual for Comments
- Comments on Trade Marks Manual
- Revised Draft Manual Of Trademarks Practice and Procedure



भारत सरकार
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[Patents](#) | [Designs](#) | [Trade Marks](#) | [Geographical Indications](#)

Trademark Infringement



- Trademark Infringement is a violation of exclusive rights attaching to a trademark without the authorization of the trademark owner or any licensee. Trademark infringement mostly occurs when a person uses a trademark which may be either a symbol or a design, with resembles to the products owned by the other party. The trademark owner may begin a legal proceeding against a party, which infringes its registration.
- Offences shall be punishable with imprisonment for a term of minimum of six months but which may extend to three years and with a minimum fine of fifty thousand rupees but which may extend to two lakh rupees or more. For adequate and special reasons mentioned in the judgement, the court may impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees

CONCLUSION



- The trade mark is for protecting the name of the product or services rather the product itself;
- Trade mark assures the customer about the source of a product, though the quality of the product is not assured by the trade mark;
- The trade mark should be distinctive;
- Deceptively similar marks, geographical names etc. can not be registered as a trade mark;
- In India, the Trade Mark Act of 1999 is presently in force;
- The term of trade mark protection is 10 years, which can be renewed from time to time, indefinitely;
- Trade mark can be assigned or transmitted;
- Using deceptively similar marks, falsifying the mark or using unregistered mark cause infringement under Trade Mark Act; and
- The penalties against offences related to trade mark can range from fine to imprisonment.

UNIT-III

LAW OF COPY RIGHTS AND

PATENTS

Structure of the Presentation

- **Three parts**
- (1) Copyright in India
- (2) Case Study: Copyrighting DNA
- (3) Infringement of Copyright

What is Copyright?

- “The exclusive right given by law for a certain term of years to an author, composer etc. (or his assignee) to print, publish and sell copies of his original work”
(*Oxford English Dictionary*)



Why Copyright?

- Fair Play*: Reward creative efforts. “*Thou shall not steal*”

- Exclusive rights for limited time → *Negative right*: prevent copying/reproduction

- Copyright is **necessary** → encourage dissemination of copyrighted works = public interest



UNIT-IV

TRADE SECRETS AND UNFAIR COMPETITION

What are trade secrets?

A trade secret is a formula, practice, process, design, legal instrument, pattern or compilation of information which is not generally known or reasonable ascertainable, by which a business can obtain an economic advantage over competitors or customers. In some jurisdictions, such secrets are referred to as "confidential information" or "classified information".



The term is very broad



Trade secrets may include:

- sales methods
- distribution methods
- consumer profiles
- advertising strategies
- lists of suppliers and clients
- manufacturing processes

Interesting Info...

One of the most famous examples of a trade secret is the formula for Coca-Cola. The formula, also referred to by the code name "**Merchandise 7X**" is known to only by two employees at any particular instance and kept in the vault of a bank in Atlanta, Georgia. The individuals who know the secret formula have signed non-disclosure agreements, and it is rumored that they are not allowed to travel together. In the past, you could not buy Coca-Cola in India because Indian law required that trade-secret information be disclosed. In 1991, India changed its laws regarding trademarks, and Coca-Cola can now be sold in that country.



For trade secrecy status, it must fulfill the following:

1. Not generally Known to the public



2. Economic Benefit



3. Reasonable Effort on Owners part to maintain secrecy



Determinants of Trade Secrets

An exact definition of a trade secret is not possible. Some factors to be considered in determining whether given information is one's trade secret are:

- The extent to which the information is known outside of one's business;
- The extent to which it is known by employees and others involved in one's business;
- The extent of measures taken by one to guard the secrecy of the information;
- The value of the information to one and one's competitors; the amount of effort or money expended in developing the information;
- The ease or difficulty with which the information could be properly acquired or duplicated by others.

PROTECTING A TRADE SECRET



Some of the ways to protect a trade secret are as follows:

- Restrict access to the information (lock it away in a secure place, such as a bank vault).
- Limit the number of people who know the information.
- Have the people who know the trade secret agree in writing not to disclose the information (sign non-disclosure agreements).
- Have anyone that comes in contact with the trade secret, directly or indirectly, sign non-disclosure agreements.
- Mark any written material pertaining to the trade secret as proprietary.

Difference Between T.S and Patent

A patent is the exclusive right (or monopoly) given by the Government to the owner of an invention, in return for the sharing of his knowledge and experiences in the making of the invention.

Only inventions can be patented.

The temporary monopoly on the subject matter of the patent is regarded as a quid pro quo for thus disclosing the information to the public.

There is an Exception to every rule...



Discoveries, scientific theories, mathematical methods and schemes, rules or methods for doing business, performing purely mental acts or playing games are among the inventions which are non-patentable under the Malaysian Patents Act.

Reasons to Opt for a T.S over a Patent



- If the invention is not likely to go out of date for a long time, it may be better to protect it as a trade secret rather than limit your advantage to 20 years.
- If the invention is not patentable
- If you cannot afford the cost of obtaining Patent status

Benefits of Trade Secrets



- Perpetual Protection: Not limited by time
 - Involve no registration costs:

The owner evades the expensive patent application process

- A trade secret is not publicly disclosed like a patent, therefore the inventor may make improvements to their invention without competition from other businesses.
 - Take immediate effect
- Do not require complex formalities such as disclosure to a Government Authority



Trade Secret Misappropriation

This occurs where someone acquires, uses and/or discloses your trade secrets without your permission and in an improper manner

In order for you to claim for misappropriation of your Trade Secret....

- 1 - Existence. The trade secret must be proven to exist. The courts will make this determination with a consideration of the six factors of a trade secret as set forth in Section 757 of the First Restatement of Tort.
- 2 - Ownership. It must be proven that the plaintiff had ownership rights to the trade secret information.



In order for you to claim for misappropriation of your Trade Secret....

3 - Access. It must be proven that the defendant had access to the trade secret information.



4 - Notice. It must be proven that the defendant knew or should have known that the information was a trade secret of the plaintiff.

In order for you to claim for misappropriation of your Trade Secret....



- 5 - Use. It must be proven that the trade secret information was actually used by the defendant.

- 6 - Damages. It must be proved that a remedy exists within the power of the court to apply.

Real Life Case...

I worked for a Bakery Company for a numbers of years after which I decided to open up my own Bakery Factory (selling ingredients) which I used the former company's formula. The company found out that I have been using their formulas and selling the products in the market and decided to take action against my company and the directors. There are three directors, two of my friends (sleeping partners) and myself (actively involved in the operation of the business).

The court awarded the injunction to prevent my company from continuing the operation of the business and filed a winding up notice against my company. The Bakery company also sued me (as the director of the company) for damages. The Court demanded a settlement sum of RM56K plus legal charges of RM30K from me. (not from the company and the two other directors).

This case has been dragged on for almost 9 years. I have not agreed with the settlement sum and requested for out-of court settlement with lesser sum but was rejected by the defendant.

Coca Cola Vs. Williams, Dimson, Duhaney

A federal grand jury indicted three people on Tuesday July 11, 2006 on a misappropriation of trade secrets conspiracy charge alleging they tried to sell Coca-Cola trade secrets to Pepsi and were willing to give the information to the “highest bidder,” as new details emerged about the scheme and the suspects.

The alleged plans were foiled after Pepsi, based in Purchase, N.Y., warned Coca-Cola.

Former Coca-Cola administrative assistant Joya Williams and ex-cons Ibrahim Dimson and Edmund Duhaney pleaded not guilty at their arraignment.

The three were arrested on a criminal complaint that included charges of wire fraud and unlawfully stealing and selling Coke trade secrets. The indictment for a single count of conspiracy sets the case on course for trial.

When is trade secret status lost?



- Negligent Disclosure
- Reverse Engineering
- Patenting

Injunctive Relief

- Even if your trade secret status is lost unwillingly, the court may grant you injunctive relief
- This means that although a third party may have access to your trade secrets, they cannot use the information for a given amount of time

References

- Intellectual Property of Malaysia, 2005. [Online] Patent Information > General Info. Retrieved on 12th October 2008 from:
http://www.mipc.gov.my/index.php?option=com_content&task=views&id=2&Itemid=9
- Microsoft[®] Encarta[®] 2006. © 1993-2005 Microsoft Corporation. All rights reserved.
- The Business Guide to Malaysia : Siew Cheang Loh, Loh Siew Cheang

- In case of fluctuations in price of materials, comparison between one job and the other becomes difficult because one job started a few minutes later than another of the same nature may be issued materials at different prices, merely because the earlier job exhausted the supply of the lower priced materials in stock.
- For pricing one requisition more than one price has often to be taken.
- When prices rise, the issue price does not reflect the market price as materials are issued from the earliest consignments. Therefore, the charge to production is low because the cost of replacing the material consumed will be higher than the price of issue.

UNIT—V

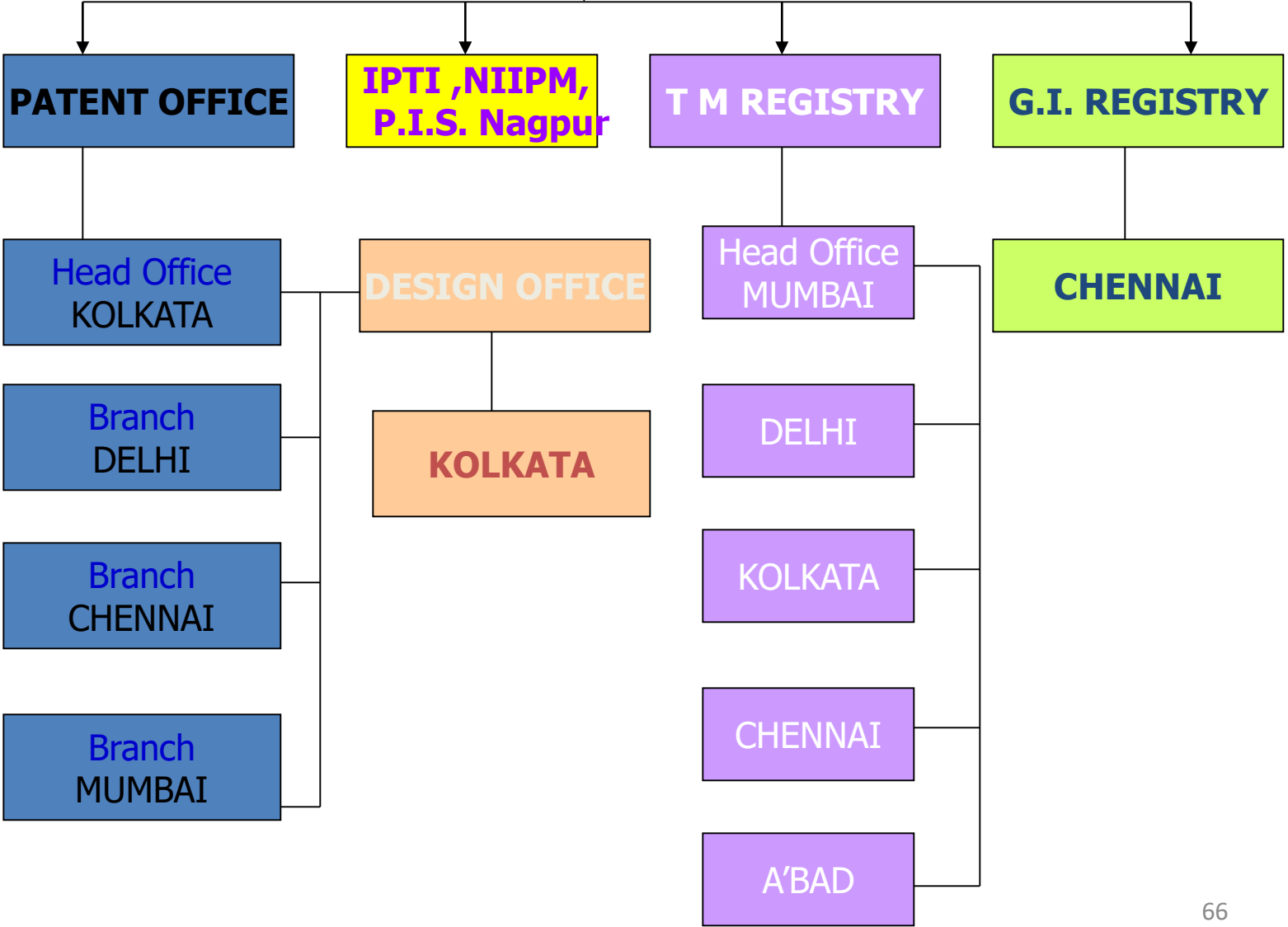
NEW DEVELOPMENT OF INTELLECTUAL PROPERTY

Legislative Framework of IP Administration

Department of IP &P covers

- ❖ The Patents Act, 1970 (as amended in 2005)
- ❖ The Patents Rules, 2003 (as amended in 2006)
- ❖ The Designs Act, 2000
- ❖ The Designs Rules, 2001 (as amended in 2008)
- ❖ The Trade Marks Act 1999
- ❖ The Trade Marks Rules 2002
- ❖ The Geographical Indications of Goods (Registration & Protection) Act, 1999
- ❖ The Geographical Indications of Goods (Registration & Protection) Rules, 2002.

CONTROLLER GENERAL OF PATENTS, DESIGNS AND TRADEMARKS (CGPDTM)



- ❖ Patents Act, 1970

 - Amended in

 - ❖ 1999

 - ❖ 2002

 - ❖ 2005

- ❖ Patents Rules, 2003

 - Amended in

 - ❖ 2005

 - ❖ 2006

Legislative Measures -Patents

- **From 1.1.1995**
 - Mail-Box for pharmaceutical and agrochemicals products
 - Exclusive Marketing Rights
- **From 1.1.2000**
 - Patent term increased to 20 years
 - Definition of invention – inclusion of inventive step
 - Reversal of burden of proof – on the infringer
 - Mandatory compulsory licence provision for food, drugs and chemicals removed
 - Right of patentee (importation also included)
- **From 1.1.2005**
 - Product patents for food, chemical and pharmaceutical

Patent Law - Salient Features

- ❖ Both product and process patent provided
- ❖ Term of patent – 20 years
- ❖ Examination on request
- ❖ Both pre-grant and post-grant opposition
- ❖ Fast track mechanism for disposal of appeals
- ❖ Provision for protection of bio-diversity and traditional knowledge
- ❖ Publication of applications after 18 months with facility for early publication
- ❖ Substantially reduced time-lines

- ❖ Compulsory license to ensure availability of drugs at reasonable prices
- ❖ Provision to deal with public health emergency
- ❖ Revocation of patent in public interest and also on security considerations

Scope of Patentability Under The Patents Act

What is an Invention?



“Invention” means a new product or process involving an inventive step and capable of industrial application.

Patentable subject matter

- ❖ Invention must
- ❖ relates to a Process or Product or both
- ❖ be new (Novel)
- ❖ involves an inventive step
- ❖ be Capable of industrial application
- ❖ not fall under Section 3 and 4

Invention must not be

- ❖ Published in India or elsewhere
- ❖ In prior public knowledge or prior public use with in India
- ❖ Claimed before in any specification in India

Section 3 exclusions

Section 3(a)

- ❖ Frivolous inventions
- ❖ Inventions contrary to well established natural laws

Examples

- ❖ Machine that gives more than 100% performance
- ❖ Perpetual machine

Stages from filing to grant of a patent

Formality Check

- An Examiner checks the formal requirements before accepting the application and the fee – this is done immediately
- Issue of application number and the cash receipt – this is done the same day
- In case of receipt of application by post, cash receipt, application number is sent by post within 2-3 days

Publication

- Application is kept secret for a period of 18 months from the date of filing
- In 19th month, the application is published in the official journal – this journal is made available on the website weekly
- Applicant has an option to get his application published before 18 months also
- In that case, application is published within one month of the request

Request for Examination

- Application is examined on request
- Request for examination can be made either by the applicant or by a third party
- A period of 48 months, from the date of filing, is available for making request for examination

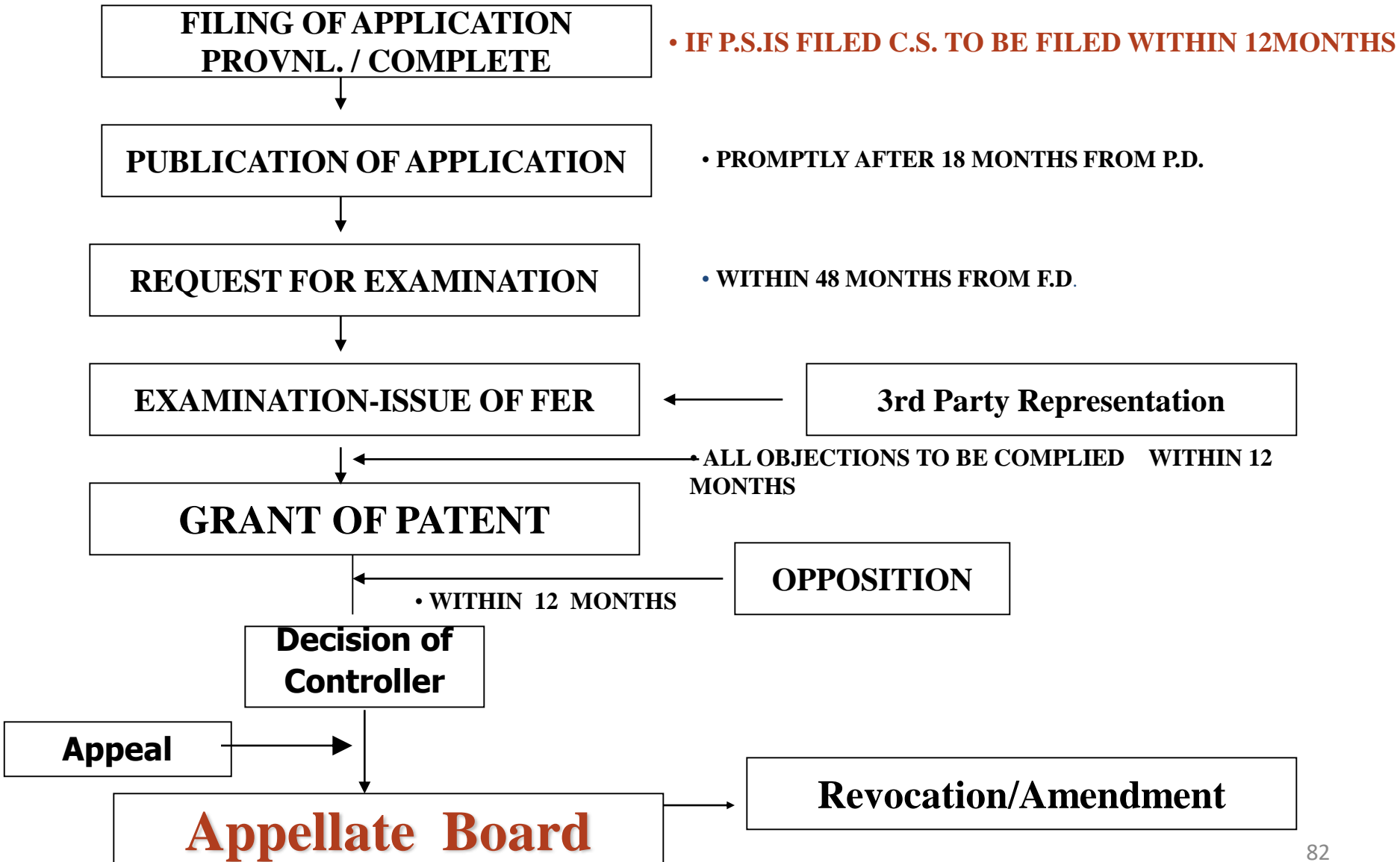
Examination

- Application is sent to an Examiner within 1 month from the date of request for examination
- Examiner undertakes examination w.r.t.
 - whether the claimed invention is not prohibited for grant of patent
 - whether the invention meets the criteria of patentability

Issue of FER

- A period of 1 to 3 months is available to Examiner to submit the report to the Controller
- 1 month's time available to Controller to vet the Examiner's report
- First Examination Report (FER) containing gist of the objections is issued within 6 months from the date of filing of request

STAGES - FILING TO GRANT OF PATENT



THANK YOU