



INSTITUTE OF AERONAUTICAL ENGINEERING

(Autonomous)

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INTELLECTUAL PROPERTY RIGHTS

Aeronautical Engineering

III B.Tech II SEM

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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



- 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

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

**Functional & Technical
Inventions**

Patents Act, 1970
Amended
in 1999 & 2005

**Purely
Artistic works**

Copyright Act,
1957
Amended in 1982,
1984, 1992,
1994 & 1999

**A symbol, logo, word, sound,
color, design, etc.**

Trademark
Act, 1999
Amended in 1994,
1996 & 2000

PATENTS

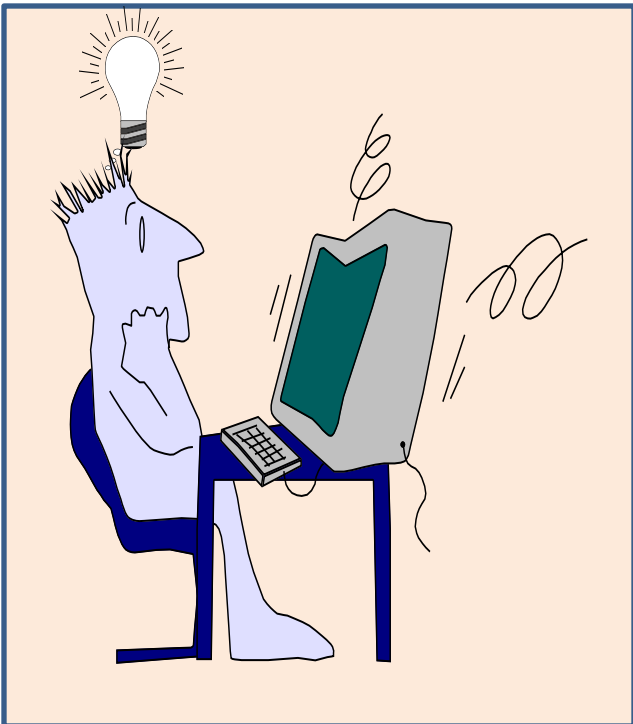
- (1) It is covered under the Act called the Patents Act, 1970 [Amended by Patents Act, 2005]
- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may publish, by notification in the Official Gazette.



Patents

Definition:

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



INVENTION PATENABLE IF.....

- ✓ **NEW (Novel)**
- ✓ **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.

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

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

Trademarks

- **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 :

TM 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.

Applicability Of Trademark

- A trademark is a sign **Used on**, or in connection with the marketing of goods or services.
- “**Used on**” the goods means that it may appear not only on the goods themselves but on the **container or wrapper** in which the goods are when they are sold.

A) Set apart from surrounding text....

Correct use:

Raymond Textile is India's leading producer of worsted suiting fabric with over 60% market share.

'Raymond Textile' is India's leading producer of worsted suiting fabric with over 60% market share.

Incorrect use:

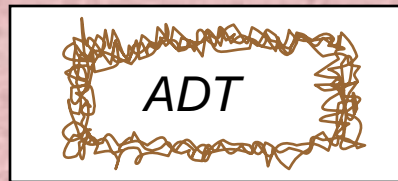
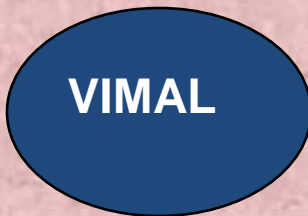
Raymond Textile is India's leading producer of worsted suiting fabric with over 60% market share.

B) Specify font, size, proportion and placement

Correct use:



Incorrect use:



C) Do not change spelling

Correct use:

- Calvin Klein
- Tommy Hilfiger
- MPC POTTERIES GWALIOR

Incorrect use:

- Kalvin Klein
- Tommy-Hilfiger
- MPC P/G

Trademarks



Name

Logotype

Symbol

Slogan

Shape

Color



Copyright

- The **Indian Copyright Act, 1957** governs the system of copyrights in **India**.
[Amended in 1982, 1984, 1992, 1994 & 1999]
- **Meaning** : It is a right which Grants protection to the unique expression of Ideas.

Original

- The term original in the copyright law means that the work *originated* with the author.
- There is no requirement for *novelty or uniqueness* as there is in patent law.
- Copyright law protects the expression of an idea. Not the idea itself.

What is covered by copyright?

Literary



Films



Dramatic



Musical



Artistic



Sound Recording



What is not covered by copyright?

- Ideas
- Facts
- Recipes
- Works lacking originality (e.g. The phone book)
- Names, titles or short phrases



Duration of Copyright



Copyright lasts for the-

- Author's lifetime + 50 years from the end of the calendar year in which the author dies,
- 50 years for films and sound recordings,
- 25 years for typographical arrangements of a published edition,
- Copyright protection always expires on December 31 of the last calendar year of protection.

What is “Fair Use”?

- Gives permission to use copyrighted materials if certain criteria are met
- Protects freedom of speech
- Promotes public benefits like education.



Apple sued HTC over iPhone patents

- Apple sued phone maker HTC and has filed a complaint with the U.S. International Trade Commission, alleging that the Taiwanese company is infringing 20 Apple patents related to the [iPhone](#)



- Steve Jobs, Apple's CEO, said in a statement "We think competition is healthy, but competitors should create their own original technology, not steal ours."

Remedies for Trademark Infringement



A suit can lie in District or High court

- Punishment extends from **6 months to 3 years**
- A permanent bans on engaging in commercial activities

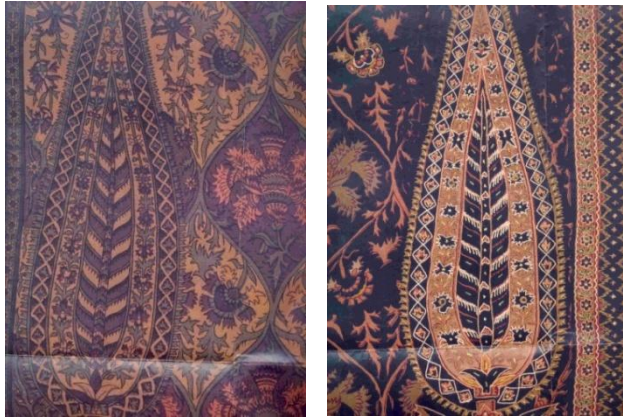
Remedies for Copyright Infringement



- A **suit** can lie in the district court or in a high court u/s 63 of the copyright act, 1957
- Punishable with imprisonment upto **3 years** and fined as per the claims.

COPYRIGHT CLAIMS ON THE BASIS OF UNDERLYING ARTISTIC WORKS

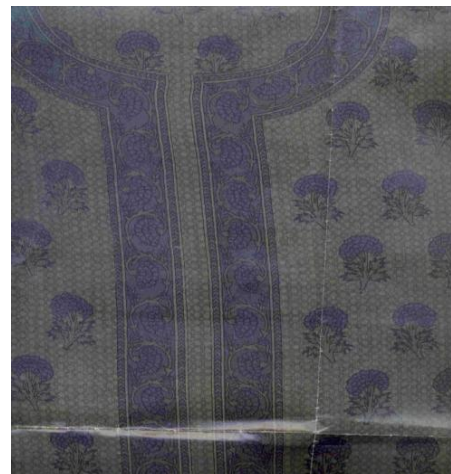
Ritika Limited v. Ashwani Kumar



Ritika Limited v. Nina Talukdar



Ritika Limited v. Sajid Mobin



“...but I didn't know!”

- Called “Innocent Infringement”
 - Occurs when infringer was unaware that things were Protected.
 - No excuse if work properly displays..
 - “Patent”
 - Trademark symbol: ®, TM, SM
 - Copyright notice: © + name + year
- Example: Utsav Sarees © 2011-2012**

TRADE MARKS

- **Definition:**
- “A trademark is any sign that individualizes the goods of a given enterprise and distinguishes them from the goods of its competitors.”
- A trademark is a type of intellectual property, and typically a name, word, phrase, logo, symbol, design, image, or a combination of these elements.

Signs which May Serve as Trademarks

- **Words:**
- This category includes company names, surnames, forenames, geographical names and any other words or sets of words, whether invented or not, and slogans.
- **Letters and Numerals:**
- Examples are one or more letters, one or more numerals or any combination thereof.
- **Devices:**
- This category includes fancy devices, drawings and symbols and also two dimensional representations of goods or containers.

- **Colored Marks:**
- This category includes words, devices and any combinations thereof in color.

- **Three-Dimensional Signs:**
- A typical category of three-dimensional signs is the shape of the goods or their packaging.







Functions of the trade marks are:

- To identify the goods and their origin.
- To serve as a guarantee of unchanged quality of the goods.
- It acts as a marketing and advertising device.
- It creates an image of product in minds of consumers.

Essential features

- It should be distinctive
- TM should preferably be an invented word. Eg: ZEN
- It should be easy to pronounce and remember if it is word mark.
- In case of a device mark -should be capable of being described by a single word.
- It was be easy to spell correctly and write legibly.
- It should not be descriptive.
- It should be short.
- It should not belong to the class of marks prohibited for registration.
- It should satisfy the requirements of registration.

MARKS RELATED TO TM

- **SERVICE MARKS:**
- Where a trademark is used in connection with services, it may be called “service mark”.
- Service marks are used by hotels Service marks are used by hotels, restaurants, airlines, tourist agencies,

TRADE MARKS ACT, 1999

INTRODUCTION

- Patents, designs and copyright are protected only for a limited period. On the other hand, in general, a registered trade mark can be protected in perpetuity subject only to the following conditions:
 - ✓ It is used and renewed periodically and
 - ✓ The registered proprietor takes prompt action against infringers.

TRADE MARKS ACT, 1999

- The present Trade Marks Act, 1999 has replaced the Trade and Merchandise Marks Act, 1958. And the Trade Marks Act, 1999 has been brought into force only on 15th September 2003.
- The Trade Mark Rules, 2002 are passed under the Trade Marks Act, 1999.

Trademark Registration

⦿ Trade mark search:

- ⦿ A Trademark search is the first step in determining the uniqueness of your mark, and its similarity to other, pre-existing marks.
- ⦿ Without a search there may be a greater risk of being sued for Trademark infringement, the rejection of your Trademark application, and a third-party challenging your Trademark application.

⦿ Application for Registration:

- Applications for registration of a trademark are to be filed with the competent government authority, which in most countries is the same as the authority competent for processing patent applications. Usually, it is called “Industrial Property Office” or “Patent and Trademark Office” or “Trademark Office.”

PATENT

- A patent is a grant from the government which confers on the guarantee for a limited period of time the exclusive privilege of making, selling and using the invention for which a patent has been granted
- To enjoy the exclusive rights over the invention.
- The patent is to ensure commercial returns to the inventor for the time and money spend in generating a new product.

“NEW” MEANS.....

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

Inventive step means...

A **feature of an invention** that

- Involves technical advance as compared to the existing knowledge..

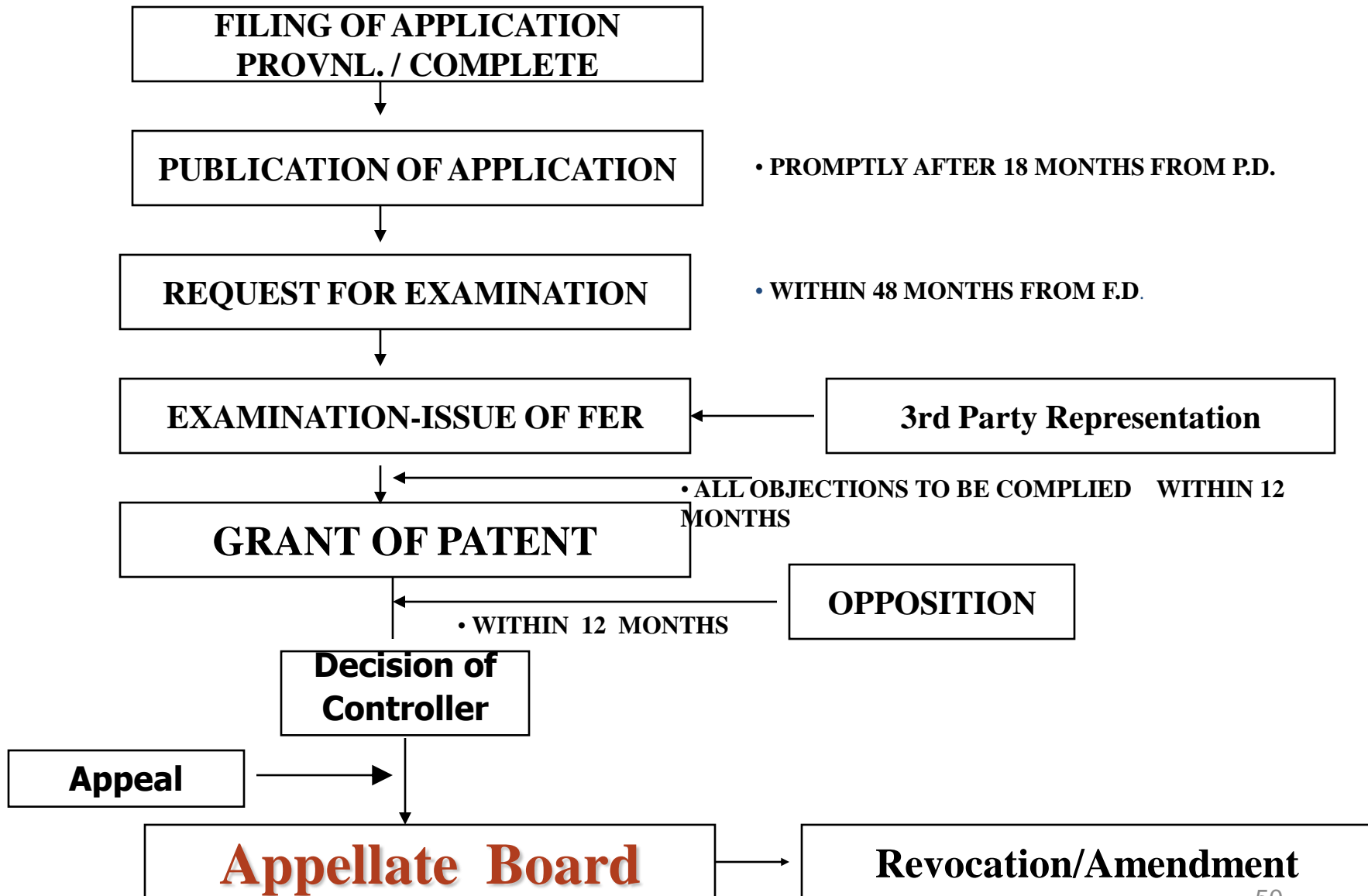
Industrial application means...

- Invention is capable of being made or used in any kind of industry.

Expiry Of A Patent

- A patent can expire in the following ways:
 1. The patent has lived its full term.
 2. The patentee has failed to pay the renewal fee.
 3. The validity of the patent has been successfully challenged by an opponent by filing an opposition either with the patent office or with the courts.
 4. As soon as the patent expires, it pass to the general public domain and now anybody can use it without the permission of the original inventor

STAGES - FILING TO GRANT OF PATENT



Renewal Fee

- To be paid within 3+6 months from date of recording in the register [sec 142 (4)]
- 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
- Delay upto six months from due date permissible on payment of fee for extension of time
- Patent lapses if renewal fee is not paid within the prescribed period

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



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;

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.

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.

UNIT-II

TRADE MARKS

TRADE MARKS

- **Definition:**
- “A trademark is any sign that individualizes the goods of a given enterprise and distinguishes them from the goods of its competitors.”
- A trademark is a type of intellectual property, and typically a name, word, phrase, logo, symbol, design, image, or a combination of these elements.





functions of the trade marks are:

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Essential features

- It should be distinctive
- TM should preferably be an invented word. Eg: ZEN
- It should be easy to pronounce and remember if it is word mark.
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It was be easy to spell correctly and write legibly.

- It should not be descriptive.
- It should be short.
- It should not belong to the class of marks prohibited for registration.
- It should satisfy the requirements of registration.

MARKS RELATED TO TM

- **SERVICE MARKS:**
- Where a trademark is used in connection with services, it may be called “service mark”.
- Service marks are used by hotels Service marks are used by hotels, restaurants, airlines, tourist agencies,

COLLECTIVE MARK

- A Trade mark distinguishing the goods or services of members of an association of persons not being partnership firm from those of others”
- The proprietor of the mark is the association.
- The goods and services of a company or group of companies like GODREJ or HINDUSTAN UNILEVER LTD. may be the subject matter of collective Trade mark.

CERTIFICATION MARK:

- There is a species of trade mark called as Certification mark.
- Its function is to indicate that the proprietor of the mark has certified the goods bearing the mark as to certain characteristics of the goods.
- e.g. Geographical origin, ingredients and so on such as **ISI, AGMARK, FPO**

TRADE MARKS ACT, 1999

INTRODUCTION

- Patents, designs and copyright are protected only for a limited period. On the other hand, in general, a registered trade mark can be protected in perpetuity subject only to the following conditions:
 - ✓ It is used and renewed periodically and
 - ✓ The registered proprietor takes prompt action against infringers.

TRADE MARKS ACT, 1999

- The present Trade Marks Act, 1999 has replaced the Trade and Merchandise Marks Act, 1958. And the Trade Marks Act, 1999 has been brought into force only on 15th September 2003.
- The Trade Mark Rules, 2002 are passed under the Trade Marks Act, 1999.

OBJECTIVES OF THE TM ACT, 1999

- ✓ Developments in trading and commercial practices
- ✓ Increasing globalization of trade and industry
- ✓ The need to encourage investment flows and transfer of technology
- ✓ Need for simplification & harmonization of trade mark management systems and
- ✓ To give effect to important judicial decisions

Under tm act of 1999

- To provide for registration of trade mark for services, in addition to goods;
- Registration of trade marks, which are imitation of well known trade marks, not to be permitted, besides enlarging the grounds for refusal of registration;
- Amplification of factors to be considered for defining a well known mark;
- To provide only a single register with simplified procedure for registration and with equal rights;

- Providing for registration of “collective marks” owned by associations;
- Providing an Appellate Board for speedy disposal of appeals ad rectification applications;
- Providing enhanced punishment for the offences relating to trade marks;

- Prohibiting someone else's trademark as part of corporate names, or name of business concern;
- Provision for filing a single application for registration in more than one class
- Increasing the period of registration and renewal from 7 to 10 years;

Trademark Registration

◎ Trade mark search:

- ◎ A Trademark search is the first step in determining the uniqueness of your mark, and its similarity to other, pre-existing marks.
- ◎ Without a search there may be a greater risk of being sued for Trademark infringement, the rejection of your Trademark application, and a third-party challenging your Trademark application.

◎ Application for Registration:

- Applications for registration of a trademark are to be filed with the competent government authority, which in most countries is the same as the authority competent for processing patent applications. Usually, it is called “Industrial Property Office” or “Patent and Trademark Office” or “Trademark Office.”

Trademark registry in India

- **Trademark Registry, Mumbai (Head Office),**
Trademark Jurisdiction: State of Maharashtra, Madhya Pradesh, Chhattisgarh and Goa.
- **Trademark Registry, Delhi**
Trademark Jurisdiction: State of Jammu & Kashmir, Punjab, Haryana, Uttar Pradesh, Uttarakhand, Himachal Pradesh, Delhi and Chandigarh.
- **Trademark Registry, Kolkata,**
Trademark Jurisdiction: State of Arunachal Pradesh, Assam, Bihar, Orissa, West Bengal, Manipur, Mizoram, Meghalaya, Sikkim, Tripura and Union Territory of Nagaland, Andamar & Nicobar Island.
- **Trademark Registry, Ahmedabad,**
Trademark Jurisdiction: The state of Gujarat and Rajasthan and Union Territory of Damman, Diu, Dadra and Nagar Haveli.
- **Trademark Registry, Chennai,**
Trademark Jurisdiction: The state of Andhra Pradesh, Kerala, Tamil Nadu, Karnataka and Union Territory of Pondicherry and Lakshadweep Island.

Registrar and register

Appointment of Registrar and other officers

- (1) The Central Government may, by notification in the Official Gazette, appoint a person to be known as the Controller-General of Patents, Designs and Trade Marks, who shall be the Registrar of Trade Marks for the purposes of this Act.
- (2) The Central Government may appoint such other officers with such designations fit for the purpose of discharging functions, under the superintendence and direction of the Registrar

Register of register

- Trade marks register is kept at the head office of trade marks registry
- **Contents:**
Trademarks with names and addresses and descriptions proprietors, notifications of assignments, transmissions
- A copy of registrar is maintained at each branch office, along with the documents notified by govt in official gazette
- **CLASSIFICATION OF GOODS:**
- registrar publish an alphabetical index of classification of goods and services for the information of applicants

Filing of application

- The sign(trademark) filed for registration must appear in the application form. If it is intended that the sign should be registered in color, the colors must be claimed and a specimen in color or the description of the color(s) must be submitted.
- If a three-dimensional sign is filed for registration, it is necessary to claim protection of the sign in its three-dimensional form.
- The applicant has also to list the goods for which the sign is to be registered. In some countries a separate application has to be made for each class, while in others one application is sufficient for several classes.

- **Acceptance of application or refusal to accept**
- an application for registration of a trademark is accepted only if the formal requirements are fulfilled.
- Before issuing a total or partial refusal of the application, the office should give the applicant an opportunity to make corrections.
- **Advertisement of application**
- When an application is absolutely accepted or subject to some conditions, the registrar should advertise the application.
- Purpose: for oppositions of interested persons with in time.
- **Opposition to registration**
- With in three months from date of advertisement with prescribed fee in prescribed manner.

- Registration

- Final step in the Trademark registration procedure is the issuance of Trademark registration certificate. After the application for Registration of Trademark is accepted by the Registrar, the Registrar shall issue to the applicant a Certificate of Registration under the seal of the Trademark Registry.
- **Time Duration:**
- If there is no objection and /or opposition raised, the process of Registration of Trademark usually takes 15 to 18 months
- A trademark is designated by the following symbols:
 - **TM** (for an unregistered trade mark)
 - **SM** (for an unregistered service mark)
 - **®** (for a registered trademark)

Infringement

- **Trademark Infringement**
- Under the Trademarks Act 1999 a person infringes a registered trademark if the person “uses as a trademark” a sign which is:-
- “*substantially identical*” with or “*deceptively similar*” to the registered trademark on goods or services covered by the trademark registration;
- substantially identical with or deceptively similar to the registered trademark on goods or services of the same description as, or closely related to, the goods or services of the registration, where such use is likely to deceive or to cause confusion;
- Which may be detrimental to proprietor

- There are many international agreements pertaining to trade marks. some of them are:
- Madrid agreement concerning international registration of marks
- Agreement of madrid for the prevention of false or misleading indications of source on goods and the additional act of stockholm
- Lisbon agreement for the protection of appellations of origin and international registration
- Trade law treaty and regulations(TLT)

Madrid agreement concerning international registration of marks:

Purpose: to simplify the procedures for the filing of trademarks & services in different countries.

Agreement of Madrid for the prevention of false or misleading indications of source on goods and the additional act of stockholm:

Purpose: to protect consumers against persons using false indications of source of goods.

Lisbon agreement for the protection of appellations of origin and international registration:

Purpose: to protect “appellations of origin”, defined as geographical name of a country, region or locality which serves to designate a product originating therein having quality and characteristics exclusively or essentially due to the geographical environment.

Trade law treaty and regulations (TLT):

Purpose: to simplify and harmonise the trade mark registration systems of the member countries.

UNIT- III

**LAW OF
COPYRIGHTS
&
LAW OF 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



England & Wales

- Indian copyright law similar to England & Wales. First Copyright Act in England (and the world)
- 1709 → Statute of Anne.



United States

- First Act in 1790: did **not** protect foreign authors
- Indigenous American literature suffered
- Today: *Copyright Act 1976* one of the major copyright laws in the world



THE COPYRIGHT ACT 1957

INDIAN PERSPECTIVES

Copyright in India

- First Act in 1914, followed by the Copyright Act 1957.
- 1957 Act: adopted many English provisions, introduced new ideas and concepts.



Copyright Act 1957 – Main Features

- Valid from **21 January 1958**
- *Created* Copyright Office and Copyright Board
- Introduced *civil and criminal remedies* against infringement

Copyright Act 1957 – Main Features (II)

- *Performing rights societies*' rights (for instance, music royalties)
- **Definition of categories** in which copyright actually subsists
- **International copyright**
- *Definition* of infringement



Copyright (Amendment) Act 1983 and 1984

Objectives

- Berne and Universal Copyright Conventions → *grant of compulsory licenses* by developing countries, publication by deceased authors
- 1984 Act: *discouraging and preventing widespread video piracy.*



Copyright (Amendment) Act 1992

- *Defined* ambit of the Copyright Board's powers
- *Introducing* special rights for performers
- Assignment and licenses of copyright
- Rights of copyright owners



Term of Copyright

- *Depends* on nature of work/owner of copyright and whether the work has been published



- Most works: **60 years**
- Broadcast Reproduction: **25 years**

About Fixation, Labour, Skill and Capital

THE NATURE OF COPYRIGHT

The Nature of Copyright

□ *Statute-based*, no registration **necessary**



□ Copyright = *intellectual property*

□ Combines *different rights* (literary works: the right to reproduce in hardback and paperback editions, the right of translation adaptation)

Labour, Skill and Capital

- *“It is the product of the labour, skill and capital of one man which must not be appropriated by another.”* (- per Lord Atkinson, *Macmillan v Cooper* AIR 1924 PC 75)



It's All About the Idea: Or isn't It?

- Copyright in form or expression, *not* in idea:
“There is nothing in the notion of copyright to prevent a second person from producing an



identical result...”

(Gregory Committee Report, 1952, para 9)

- Copyright **only in material form** → principle of fixation

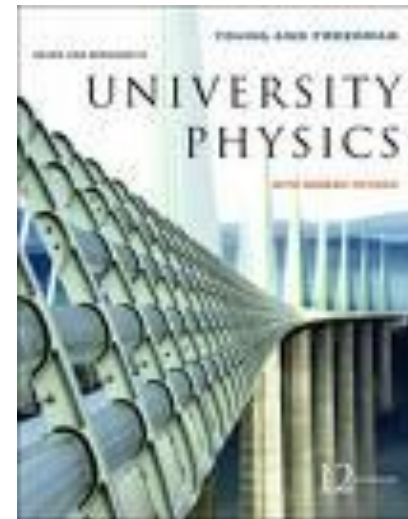
What Copyright Protects

- Original Literary, Dramatic, Musical and Artistic Works
- Cinematograph Films
- Sound Recordings



Literary Works

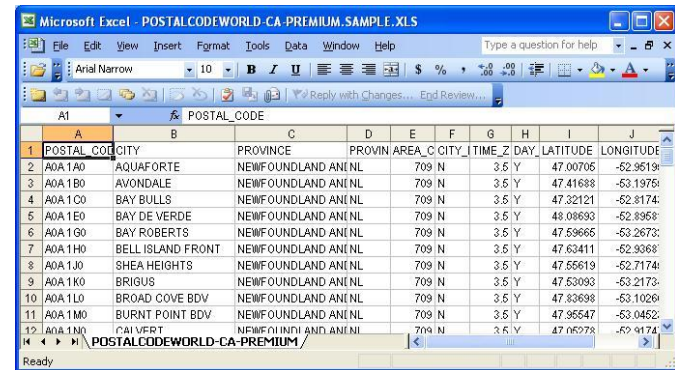
- Novels, poems, short stories
- Books on any subject
- Computer programmes, tables, computer databases
- Song lyrics



Computer Software

Includes

- Program Manuals
- Punched Cards
- Magnetic Tapes/Discs
- Computer printouts
- Computer programs



The screenshot shows a Microsoft Excel spreadsheet titled "POSTALCODEWORLD-CA-PREMIUM.SAMPLE.XLS". The spreadsheet contains a table with the following columns: A (POSTAL_CODE), B (CITY), C (PROVINCE), D (PROVIN), E (AREA), F (CITY), G (TIME), H (DAY), I (LATITUDE), and J (LONGITUDE). The data rows are numbered 1 through 14.

	A	B	C	D	E	F	G	H	I	J
1	POSTAL_CODE	CITY	PROVINCE	PROVIN	AREA	CITY	TIME	DAY	LATITUDE	LONGITUDE
2	AOA 1A0	AQUAFORTE	NEWFOUNDLAND ANI NL	709	N		3.5	Y	47.00706	-52.96193
3	AOA 1B0	AVONDALE	NEWFOUNDLAND ANI NL	709	N		3.5	Y	47.41688	-53.19751
4	AOA 1C0	BAY BULLS	NEWFOUNDLAND ANI NL	709	N		3.5	Y	47.32121	-52.8174
5	AOA 1E0	BAY DE VERDE	NEWFOUNDLAND ANI NL	709	N		3.5	Y	48.08693	-52.8968
6	AOA 1G0	BAY ROBERTS	NEWFOUNDLAND ANI NL	709	N		3.5	Y	47.59665	-53.2673
7	AOA 1H0	BELL ISLAND FRONT	NEWFOUNDLAND ANI NL	709	N		3.5	Y	47.63411	-52.9368
8	AOA 1J0	SHEA HEIGHTS	NEWFOUNDLAND ANI NL	709	N		3.5	Y	47.55619	-52.7174
9	AOA 1K0	BRIGUS	NEWFOUNDLAND ANI NL	709	N		3.5	Y	47.53093	-53.2173
10	AOA 1L0	BROAD COVE BDV	NEWFOUNDLAND ANI NL	709	N		3.5	Y	47.83698	-53.1026
11	AOA 1M0	BURNT POINT BDV	NEWFOUNDLAND ANI NL	709	N		3.5	Y	47.95547	-53.0452
12	AOA 1N0	CAUVERT	NEWFOUNDLAND ANI NL	709	N		3.5	Y	47.05078	-52.9174

SPOTLIGHT ON COPYRIGHT FOR THE BIOTECH INDUSTRY

Work in the biotech industry involving copyrightable subject matter:

- Modification of genes of plants, animals
- To identify causes of diseases
- To make assays for the testing of various diseases
- Manufacture of vaccines

DNA and Copyright

- 1980s/1990s: scholars proposed that *biotechnology work = copyrightable*
- Copyright as *alternative to patent law*
- *Diamond v Chakraborty*: 447 US 303 (living organisms patentable)
- Practical problems prevented grants
- Computer industry successfully lobbied for amendment of 1976 Copyright Act

Arguments against copyrighting of DNA

- Facts lack originality
- Doctrine of merger and non-equivalence of DNA/computer programmes
- Utilitarian prohibitions

Arguments for Protection

- Copyright Subject Matter
- *Analogy* between “Literary Works” and computer programmes
- DNA as a *Compilation*
- *Sweat of the Brow* Doctrine

Copyright Subject Matter

The work concerned has to be

- *Original*
- *Work of authorship*
- *Fixed*

In the United States, Congress intended a wide reading of the term “literary works”

Why Patents Don't (Always) Work

- Patents confer monopolies and exclude competitors from conducting research
- Can offer rewards disproportionate to risk: *Genentech Inc's Patent* [1989] RPC 147, CA
- Public interest would be injured if every corporation could patent anytime, anywhere. Without them, corporations may lack incentive to conduct research
- No guarantee for independent researchers that their efforts will pay off

Copyright and Related Rights to the Rescue?

- Despite conferral of a monopoly, usually another option available: Copyright could be an option in cases without inventiveness
- Advantage of copyright system: no ban on creation of genomes, merely royalties; licensing schemes can be regulated.

Sequence = Original Literary Work?

- **S. 3 of Copyright, Design and Patents Act 1988** defines “literary work”
- Includes
 - a) table or compilation and
 - b) computer programme
- DNA sequence could be literary work as well: created by human mind, written

Telegraph Code Cases

- Based on these, there is copyright in seemingly arbitrary instances of letters
- *Anderson & Co v Lieber Code Co* [1917] 2 KB 469
- *Ager v Peninsular and Oriental Steam Navigation Co.* (1884) 26 Ch D 637
- *Ager v Collingridge* (1886) 2 TLR 291
- *Express Newspapers plc v Liverpool Daily Post and Echo plc* [1985] FSR 306

Originality

- Work may be original, even if derived from previous material, provided further independent skill, useful labour, knowledge or judgment have been bestowed on its creation
- Even if nature of subject matter can lead competent author with one solution: Walter v Lane [1900] AC 539

Infringement of Copyright in Molecular Sequences

- **CDPA 1988, s. 16**: copyright owner with exclusive right “to copy the work”
- **16(3)**: infringement by copying work “as a whole or any substantial part”
- Infringement cannot take place outside UK or when a legal copy has been purchased from which one adopts a scissor/paste approach:
Warne & Co v Seebohm (1888) 39 Ch. D. 73

Infringing Copy

- Thing in question has to derive from original literary work
- What is required is the reproduction of a substantial part of what is original in the copyrighted work: *Warwick Film Productions Ltd v Eisinger* 1 Ch 508, *Ladbroke v William Hill (Football) Ltd* [1964] 1 WLR 273, per Lord Pearson

Indian position - Eastern book Company case

- This case relates to compilation of Supreme Court judgements
- Test for originality
- The middle path approach adopted for Derivative works
- Sweat of the Brow Vs. Modicum of creativity
- U.K. approach (Ladbroke) Vs. U.S.A. (Feist)
- India follows the Canadian approach – CCH Canada

Case laws on Copyright

- There is no reported case on the copyright ability of biotech subject matter
- There is one case currently pending with respect to plant varieties on the basis of copyright and trade secrecy/confidential information

When (Copy)right becomes wrong

INFRINGEMENT OF COPYRIGHT

Statutory Definition

- **Copyright Act 1957, s. 51**
- Infringement: exercising rights of the copyright owner
- Making, distributing, exhibiting and importing infringing copies of the work

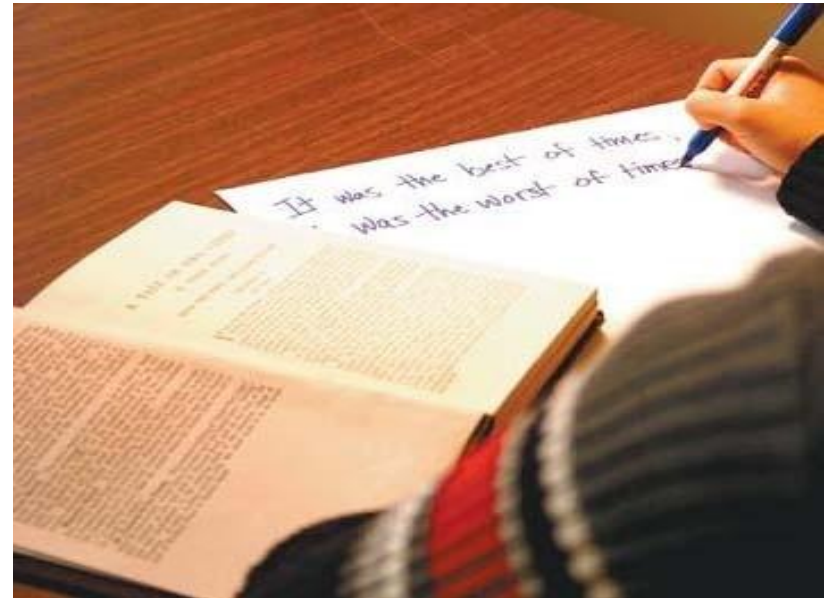
Factors Determining Infringement

Copying

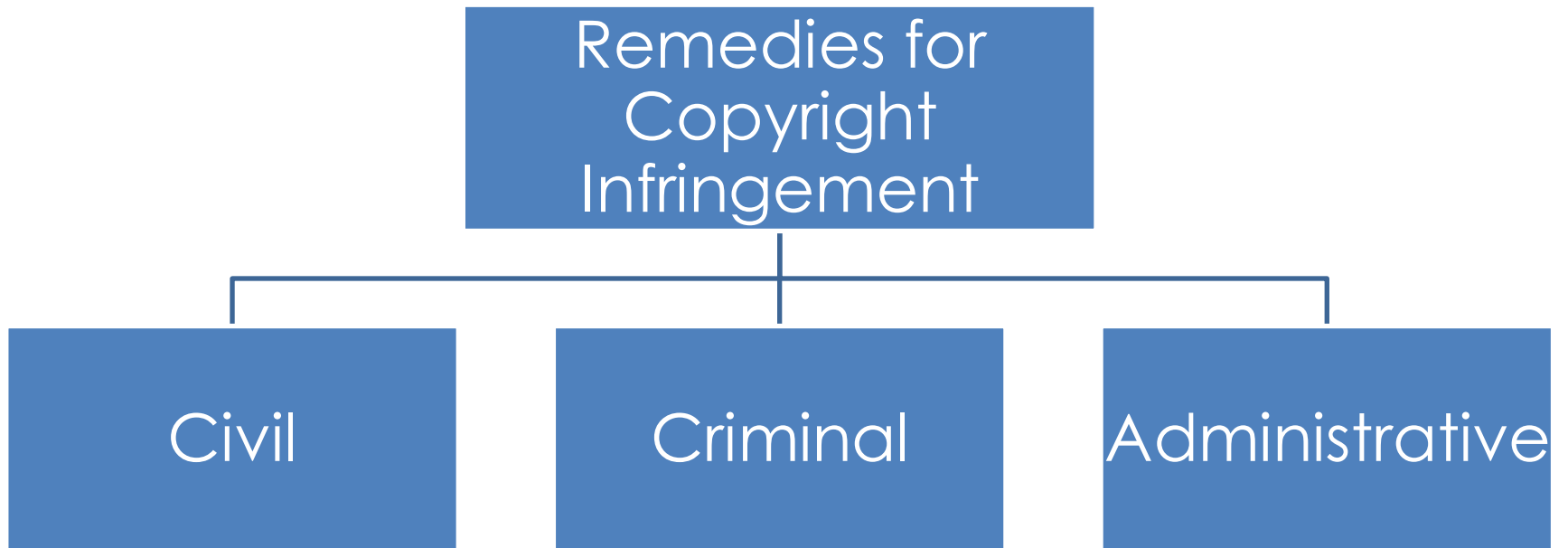
- Causal* Connection
- Subconscious* Copying
- Indirect* Copying

Substantial Taking

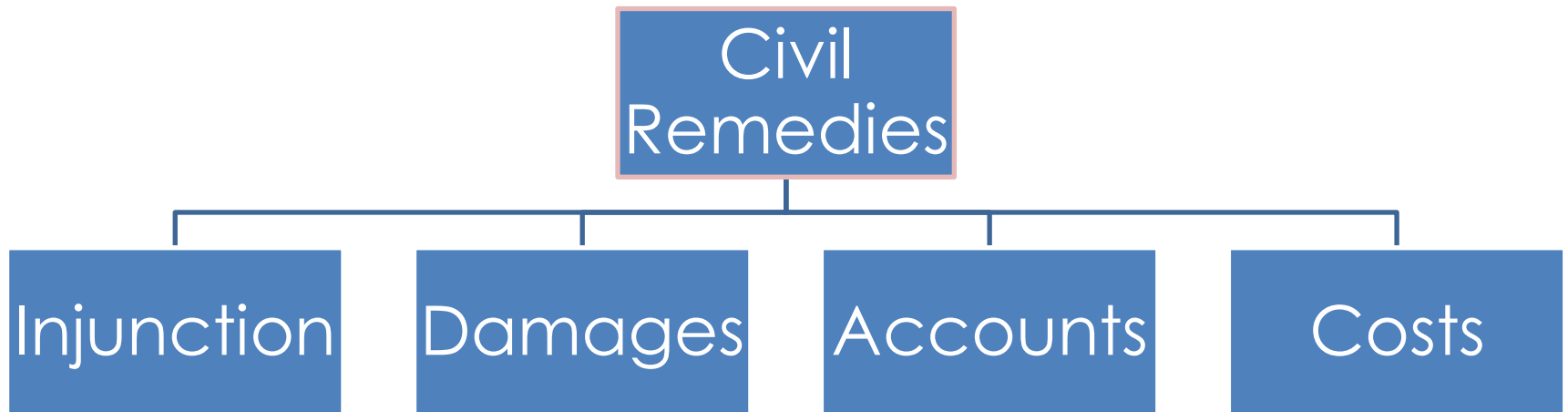
- Unaltered copying
- Extent of defendant's alteration
- Character of Plaintiff's and Defendant's works
- Nature and Extent of Plaintiff's Effort



Remedies



Civil Remedies



Civil Remedies (2)

Injunction

- Only effective remedy
- Court has to *weigh the damage* to the plaintiff if the injunction is not granted, as opposed to the damage to the defendant if it is
- Interlocutory injunction is the *preferred method* for preventing infringement, sometimes an *ex parte* injunction



Criminal Remedies



Criminal Remedies

- ***Copyright Act 1957, s.64*** empowers the Police (any officer not below the rank of sub-inspector) to seize infringing copies without warrant
- Police Raids (Power of *search, seizure & arrest* without a warrant)
- Fines (**min. 50,000-200,000 INR**)
- Imprisonment (**6 months to 3 years**)



Pros and Cons of Civil Remedies

PROS

- Judicial determination of rights
- Likelihood of damages award
- Less vulnerable to a challenge
- Commissioner's seizure orders more effective



Pros and Cons of Civil Remedies (2)

CONS

- Delays – Trial, Appeal Stages
- Damages not usually awarded
- No severe punishment for violation of rights



Pros and Cons of Criminal Remedies

PROS

- Quick remedy
- Greater opportunity to quickly counteract violation, with arrest acting as a deterrent

CONS

- Chances of seizure of goods low
- Difficulty in coordinating with the police



Conclusion

- Protection for DNA and protein sequences is in the nascent stage globally and in India;
- A tilt exists towards patenting;
- Copyright may be a viable option but there are problems with establishing priority etc.,
- A strong copyright registration mechanism is needed if the biotech industry is to adopting Copyright protection

Conclusion

- Requires complete overhauling of the Copyright offices
- At present most copyrightable works are not registered
- Even copyright registrations where the traditional examination and opposition procedures are not followed, take time sometimes even 3 years to get registered
- For biotech industry, a vibrant and robust copyright registration regime, is necessary
- Priority would be difficult to establish.

THE INDIAN PATENT ACT - 1970

INTELLECTUAL PROPERTY

- Intellectual property is the product or creation of the mind. It is different from other properties in term that it is “intangible”. Hence it needs some different way for its protection.

INTELLECTUAL PROPERTY RIGHTS

- IPR is the body of law developed to protect the creative people who have disclosed their invention for the benefit of mankind. This protects their invention from being copied or imitated without their consent.

THE INDIAN PATENT ACT

- In India the grant of patents is governed by the patent Act 1970 and Rules 1972.
- The patents granted under the act are operative in the whole of India.

HISTORY

- ❖ The Patent Law of 1856
- ❖ The Patent and Designs Act, 1911.
- ❖ The Patents Act, 1970 and Rules 1972
- ❖ The Patent amendment act 2005

PATENTS

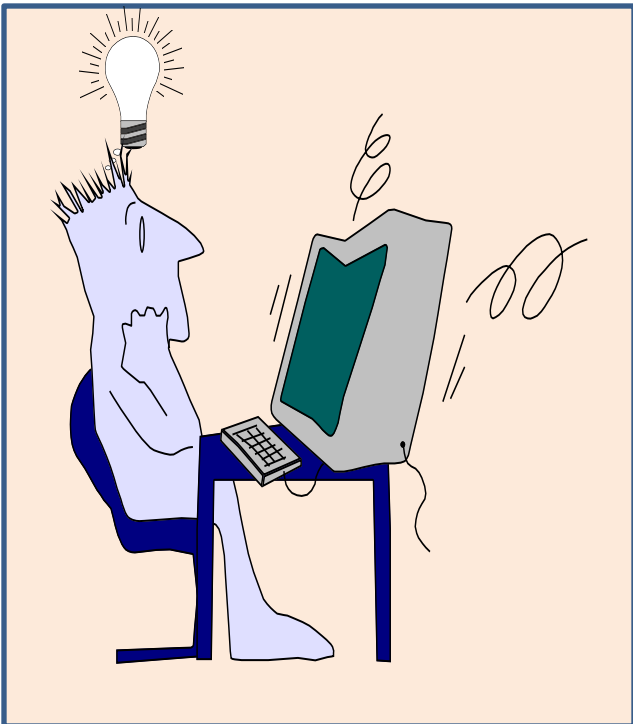
- (1) It is covered under the Act called the Patents Act, 1970 [Amended by Patents Act, 2005]
- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may publish, by notification in the Official Gazette.



Patents

Definition:

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



INVENTION PATENABLE IF.....

- ✓ **NEW (Novel)**
- ✓ **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.

Section 3 exclusions

Section 3(a)

- **Inventions contrary to well established natural laws**

Examples

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

Section 3(b)

Commercial exploitation or primary use of inventions, which is

- **Contrary to**
 - public order or
 - Morality

Examples

- Gambling machine,
- Device for house-breaking ,

Section 3(b)

Commercial exploitation or primary use of inventions, which

- **Causes serious Prejudice to**
 - health or
 - human, animal, plant life or
 - to the environment

Examples

- Biological warfare material or device, weapons of mass destruction
- Terminator gene technology,
- Embryonic stem cell

Non Patentable Inventions

- Inventions falling within Section 20(1) of the Atomic Energy Act, 1962 are not patentable

Eg: Inventions relating to compounds of Uranium, Beryllium, Thorium, Plutonium, Radium, Graphite, Lithium and more as notified by Central Govt. from time to time.

The Term Of Patent :

- ✓ In respect of a invention claiming process of manufacture of a substance intended to be used as food or medicine ---- 5 yrs from the date of sealing or 7 yrs from the date of patent whichever is shorter.
- ✓ In case of any other invention ---- 14 yrs from the date of patent.

STAGES FROM FILING TO GRANT OF A PATENT

Obtaining A Patent

- File an application for patent
 - With one of the patent offices based on territorial jurisdiction of the place of office or residence of the applicant /agent
 - Pay the required fee
- Information concerning application form and details of fee available at www.ipindia.nic.in
- Guidelines for applicants also available on this website

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 list of the objections is issued within 6 months from the date of filing of request

Response from the Applicant

- 12 months' time, from the date of issue of FER, is available to the applicant to meet the objections
- If objections are met, grant of patent is approved by the Controller – within a period of 1 month

Pre-grant Opposition

- After publication, an opposition can be filed within a period of 6 months
- Opportunity of hearing the opponent is also available

Examination of Pre-grant Opposition

- Opposition (documents) is sent to the applicant
- A period of 3 months is allowed for receipt of response

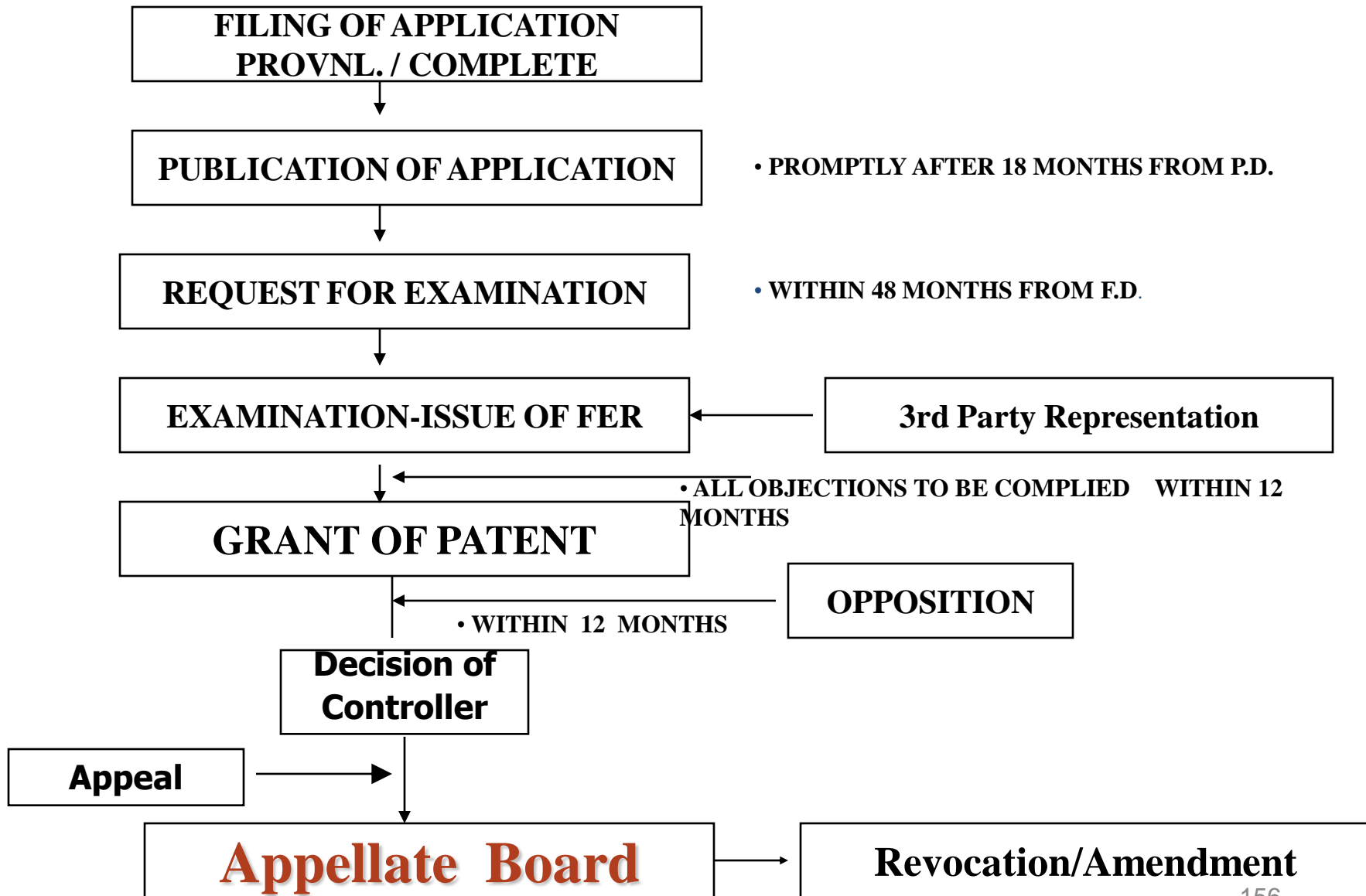
Consideration of Pre-grant Opposition

- After examining the opposition and the submissions made during the hearing, Controller may
 - Either reject the opposition and grant the patent
 - Or accept the opposition and modify/reject the patent application
- This is to be done within a period of 1 month from the date of completion of opposition proceedings

Grant of a Patent

- A certificate of patent is issued within 7 days
- Grant of patent is published in the official journal

STAGES - FILING TO GRANT OF PATENT



Renewal Fee

- To be paid within 3+6 months from date of recording in the register [sec 142 (4)]
- 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
- Delay upto six months from due date permissible on payment of fee for extension of time
- Patent lapses if renewal fee is not paid within the prescribed period

Rights of a patentee

1. Right to exploit the patent.

- ✓ The patentee has a right to prevent 3rd parties, from exploiting the patented invention.

2. Right to grant license.

- ✓ The patentee has a power to assign rights or grant license.

3. Right to surrender.

- ✓ The patentee is given the right to surrender the patent by giving notice in prescribed manner to the controller.

4. Right to sue for infringement.

- ✓ A patentee is given the right to institute proceeding for infringement of the patent in a district court .

UNIT – IV

TRADE SECRETS LAW

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

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



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



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

UNIT-V

NEW DEVELOPMENTS OF INTELLECTUAL PROPERTY

NEW DEVELOPMENT IN TRADE MARKS LAW

The Internet:

- Trademark owners throughout the world are struggling with new issues presented by increased electronic communication, primarily that occurring through the Internet.
- The Internet derives from a network set up in the 1970s by the Department of Defense to connect military and research sites that could continue to communicate even in the event of nuclear attack.

- In the 1980s, the National Science Foundation expanded on the system, and its first significant users were government agencies and universities.

- In the early 1990s, however, it became apparent that the system could provide a global communication network, allowing people from all over the world to talk with each other; send written messages, pictures, and text to each other; and establish web pages to advertise their ware and provide information to their customers.

Assignment of Domain Names:

- A company's presence on the internet begins with its address or domain name not only serves as a locator for a company but also functions as a designation of origin and a symbol of goodwill---a trademark.
- There are two portions to a domain name: the generic top-level domain, which is the portion of the name to the right of a period (such as .gov or .com) and the secondary level domain, which is the portion of the name to the left of a period (such as "kraft" in Kraft.com").
- Disputes frequently arise between owners of registered mark and owners of domain names whose domain names similar or identical to the registered marks.

Internet Corporation for Assigned Names and Numbers [ICANN]:

- To help resolve the problems in the domain names registration and use process
- The government created the ICANN
- It is a nonprofit corporation
- It is governed by a board of directors elected in part by various members of the Internet community.

PROTECTING A DOMAIN NAME:

• People register well-known marks as domain names to prey on consumer confusion by misusing the domain name to divert customers from the legitimate mark owner's site. This practice is commonly called cybersquatting.

- There are three approaches for against cybersquatter:
 - ✓ An action can be brought under the Federal Trademark dilution Act
 - ✓ A civil suit can be instituted under the recent Anticyber squatting consumer protection Act, or
 - ✓ An arbitration proceeding can be instituted through ICANN's disputes resolutions process

NEW DEVELOPMENT IN COPYRIGHT LAW:

- While acknowledging that clothing is a useful article and thus not subject to copyright protection, a New York Federal court ruled that lace design, copyrighted as writing and incorporated into wedding dresses, were protectable and enjoined another maker of wedding dresses from making or marketing copies.

-

- Similarly, detailed embroiders or some other two dimensional drawing or graphic work affixed to a portion of a garment may be copyrightable.

-

- A federal court in California recently held that while type fonts themselves are not protectable under copyright law, a software program that generated and created the typefaces was protectable.

NEW DEVELOPMENT IN PATENT LAW:

- Business method and software patent
- Biotechnology patent
- American Investors Protection Act of 1999 [AIPA]

Introduction of International Patent protection:

The rights granted by a U.S Patent extend only throughout the U.S and have no effect in a foreign country.

- The Paris convention (already it is in previous units)
- The European patent organization
- Agreement on Trade-Related Aspects of IPR (already it is in previous units)
- The patent Law Treaty
- Foreign Filing Licenses
- Applications for United States Patents by Foreign applicants

INTELLECTUAL PROPERTY AUDITS:

Conducting the Audit:

- The first step in the audit should be a face-to-face meeting of the legal team and company managers.
- The legal team should make a brief presentation on what Intellectual Property is, why it is important to the company, and why and how the audit will be conducted.
- Managers will be more likely to cooperate if they fully understand the importance of the audit.
- Obtaining this kind of “buying” from the clients managers and employees will speed the audit and reduce costs.

- Moreover, education about the importance of intellectual property helps ensure that managers consider ways to further protect a company's valuable assets and remain alert to possible infringements of the company's Intellectual capital or infringements by the computer of other's right.
- Finally, having, outside counsel involved in the process will ensure that communications related to the audit are protected by the attorney-client privilege.
- Once the company's managers have been advised of the need for the audit, the legal team should provide a work-sheet or questionnaire to the company specifying the type of information that the firm is looking for so that company files can be reviewed and materials assembled for inspection by the firm and its representatives.