

# Module 3

## Part 1

### Industrial Designs

#### ❖ Introduction

- ▶ **Refer Textbook** : Dr. R. Radhakrishnan and Dr. S. Balasubramanian, “**Intellectual Property Rights: Text and Cases**”, Excel Books  
(Page No: 174-176)

## Index

- ❖ Introduction
- ❖ Need for protection of design
- ❖ Requirements for registration of designs
- ❖ Design Act, 2000
- ❖ Duration of registration of design
- ❖ Application procedure

#### ❖ Need for protection of design

- 1) Industrial designs **make an article attractive and appealing**; hence, they add to the commercial value of a product and **increase its marketability**
- 2) The owner that has registered the design is **assured an exclusive right against unauthorized copying of the design** by third parties, this helps to **ensure a fair return on investment**
- 3) Promoting **fair competition and honest trade practices**, encouraging creativity, and promoting more aesthetically attractive products

- 4) Helps **economic development**, by encouraging creativity in the industrial and manufacturing sectors
- 5) It **increases interest in innovating more designs** in the field of consumer products
- 6) It can **increase the commercial value of a company** and its product
- 7) A protected design may also be **licensed (or sold) to others for a fee**

- ☐ Designs of artistic nature such as painting, sculptures and the like which are not produced in bulk by any industrial process are **excluded** from registration under the Act
- ☐ The **design should not include any trademark or property mark or artistic works**
- ☐ It should be **significantly distinguishable from known designs or combination of known designs**
- ☐ It **should not comprise or contain scandalous or obscene matter**

## ✓❖ Requirements for registration of designs

- ☐ The design should be **new or original**, not previously published or used in any country before the date of application for registration
- ☐ The **design should relate to features of shape, configuration, pattern or ornamentation** applied or applicable to an article. Thus, **designs of industrial plans, layouts and installations are not registrable under the Act**
- ☐ The design should be applied or applicable to any article by any industrial process

- ☐ The **features of the designs in the finished article should appeal to and are judged solely by the eye**. This implies that **the design must appear and should be visible on the finished article**, for which it is meant
- ☐ Any **mode or principle of construction or operation or anything, which is in substance a mere mechanical device, would not be a registrable design**. For instance, a key having its novelty only in the shape of its corrugation or bend at the portion intended to engage with levers inside the lock it is associated with, cannot be registered as a design under the Act

## ❖ Design Act, 2000

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

- but does not include any mode or principle or construction or anything that is in substance a mere mechanical device, and does not include any trade mark, as defined in clause (v) of sub-section of Section 2 of the Trade and Merchandise Marks Act, 1958, property mark or artistic works as defined under Section 2(c) of the Copyright Act, 1957
- Under the Designs Act, 2000 the "article" means any article of manufacture and any substance, artificial, or partly artificial and partly natural; and includes any part of an article capable of being made and sold separately

## ❖ Duration of registration of design

- The total term of a registered design is 15 years
- Initially the right is granted for a period of 10 years, which can be extended, by another 5 years by making an application and by paying a fee of Rs. 2000/- to the Controller before the expiry of initial 10 years period
- The proprietor of design may make the application for such extension even soon as the design is registered

## ❖ Application procedure

- Any person who desires to register a design is required to submit the following documents to the
- Design Office at Nizam Palace, 2nd M.S.O. Building, The Patent Office, 234/4. A.J.C. Bose Road, Kolkata - 700 020
- or any of the branch offices of the Patent Office at Delhi, Mumbai and Chennai
- The applications received by the branch offices shall be transmitted to the head office for processing and prosecuting

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

