

# **INTRODUCTION TO INNOVATION, IP MANAGEMENT & ENTREPRENEURSHIP**

**MGT-207**

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# UNIT - IV

## Intellectual Property Rights:

- ▶ **Introduction and the economics behind development of IPR: Business Perspective**
- ▶ **- IPR in India – Genesis and Development**
- ▶ **- International Context - Use of IPR to protect Innovation**
- ▶ **- Concept of IP Management,**
- ▶ **Use in marketing Patent- Procedure, Licensing and Assignment, Infringement and Penalty –**
- ▶ **Trademark- Use in marketing, example of trademarks- Domain name –**
- ▶ **Geographical Indications- What is GI, Why protect them? –**
- ▶ **Copyright- What is copyright –**
- ▶ **Industrial Designs- What is design? How to protect?**
- ▶ **Class Discussion- Major Court battles regarding violation of patents between corporate companies**

# Intellectual property rights

## ► The World Intellectual Property Organization (WIPO)

defines

**Intellectual property (IP)** as “creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce.”

More specifically, intellectual property refers to a broad collection of rights relating to such matters as works of authorship, which are protected under copyright law;

--inventions, which are protected under patent law;

---marks, which are protected by trademark law;

-- as well as trade secrets, designs and other related rights.

# Intellectual property rights

- ✓ IP, like any real property that
  - ❖ Can be bought, sold, licensed, exchanged, given away
  - ❖ The owner can prevent unauthorized use and can take legal action, in case someone else uses it without permission.
- ✓ Legal rights conferred on such property are called “Intellectual Property Rights” (IPRs).
- ✓ These rights are outlined in Article 27 of the Universal Declaration of Human Rights, which provides for the right to benefit from the protection of moral and material interests resulting from authorship of scientific, literary or artistic productions.

# Need to learn Intellectual Property (IP)

- ✓ Intellectual property rights deal with largely three things:
  - about the rights
  - the creation of those rights
  - its enforcement
- ✓ When you working on a team that invents something—that has potential commercial value. A basic understanding of the legal basis of IP can prepare to make the best choices involved with a commercialisable invention
- ✓ IP has become the new watchword in almost any career. Look around and find imprint of IP everywhere
- ✓ As a result, any person today who does not understand at least the basics of intellectual property and its value and role in science, business, arts, and the professions will find him or herself at a distinct disadvantage in the world of tomorrow

# Need of Intellectual Property (IP)

- ✓ Intellectual Property Rights (IPR) have become important in the face of changing trade environment such as
  - global competition
  - high innovation risks
  - short product cycle
  - need for rapid changes in technology
  - high investments in research and development (R&D)
  - highly skilled human resources
- ✓ With the opening of trade in goods and services, there is an possibility of infringement leading to inadequate return to the creators of knowledge
- ✓ IPR ensure R&D costs and other costs associated with introduction of new products are recovered and enough profits are generated in the market

# Need for IP-- History

- ▶ The needs for copyright and related laws have become more and more evident especially through the **opening up of the Information Society**. Music and software are examples on this.
- ▶ The intellectual property rights have changed over time but the main objectives have always been the same to encourage the inventing of new products and services to the benefit of the end-users.
- ▶ The word **copyright** is mainly used to protect the rights of writings or production by an author but nowadays also includes the software development.
- ▶ Copyright only protects the “expression” from the author and not the idea behind it.
- ▶ More and more products even in the mechanical industry nowadays have software included directly to the product or in the production of it which might be interesting for the company to protect.

# Need for IP-- History

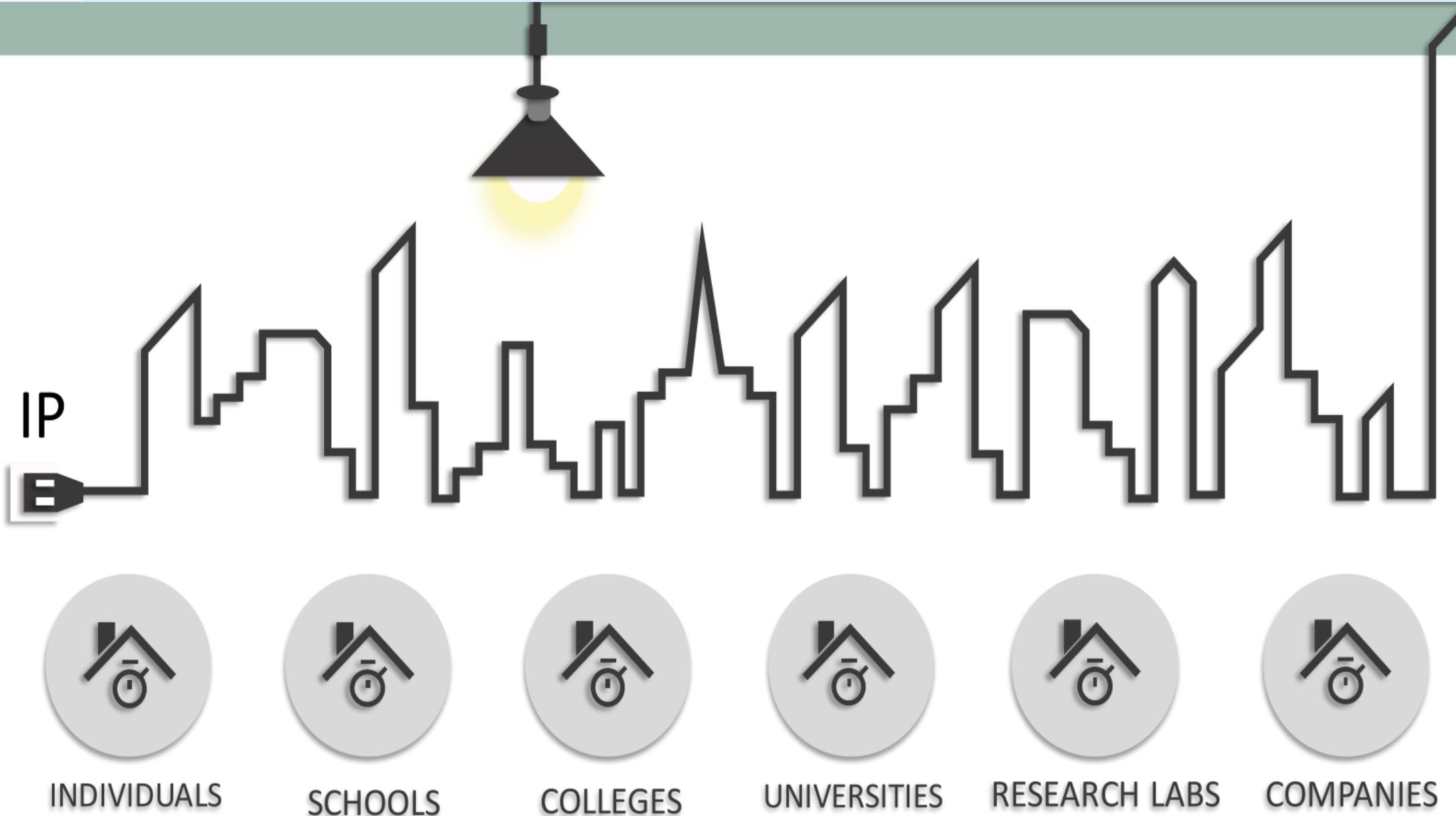
- ▶ Intellectual property rights (IPRs) give the owners of ideas, inventions, and creative expression the right to exclude others from access to or use of their property for a certain period of time.
- ▶ International treaties and the laws of the various countries differ significantly in terms of the degree of protection and enforcement available.
- ▶ The need for intellectual property rights and related laws is to protect innovative products and services and also to secure companies and persons on the investment they have made to be able to marketing and distributing them to end users not to be copied by others.
- ▶ The intellectual property rights are becoming increasingly important as they often cover huge economical values.

# Need for IP-- History

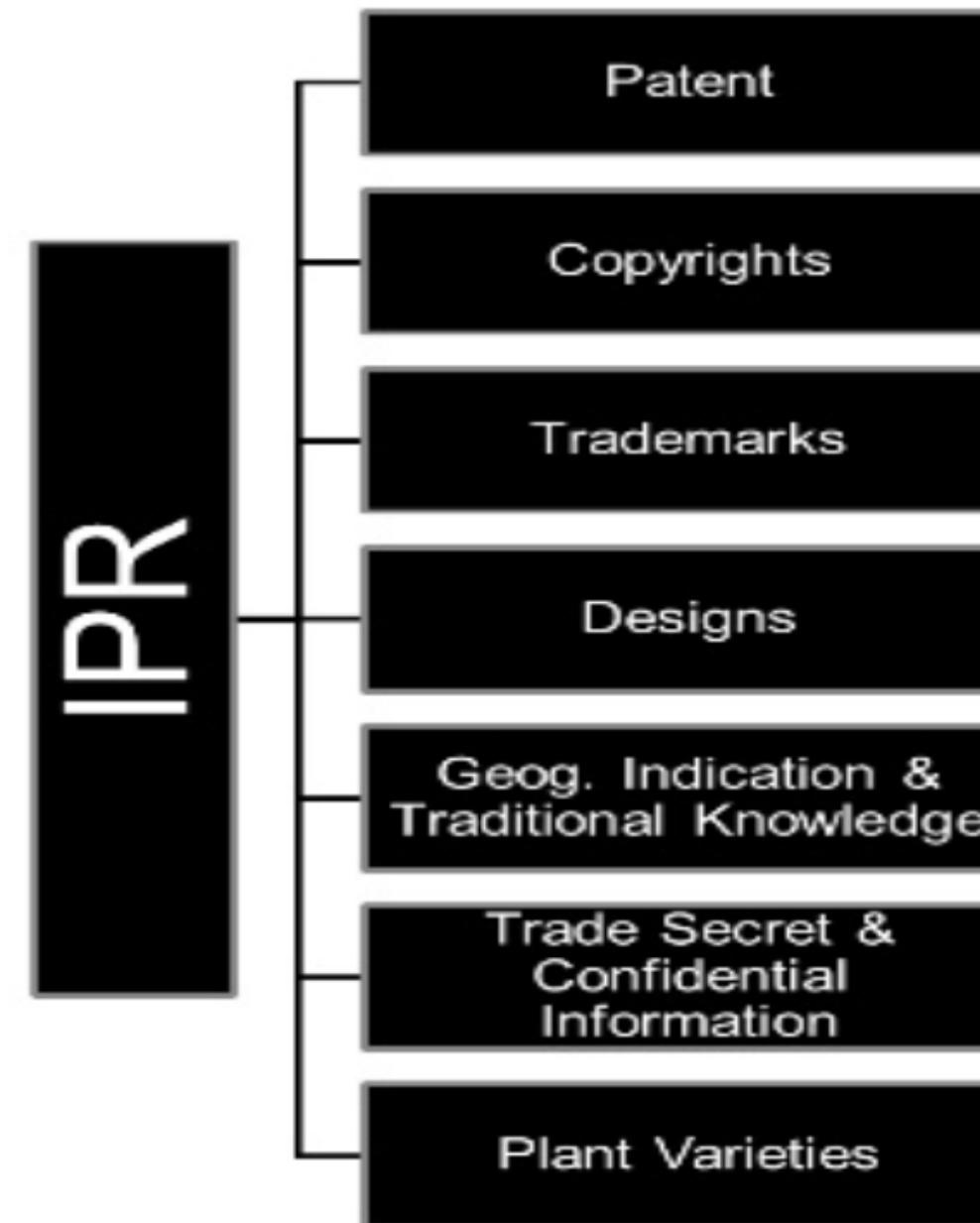
- ▶ **On the other hand not everything can be protected**
  - as it should prevent the free competition on the market and the laws for intellectual property are in that sense very complicated and differ from country to country.
- ▶ **Certain type of inventions, for instance results from academic research, can not be protected.**
- ▶ **Inventions that have not been protected could be copied and reproduced.**
- ▶ **A typical example on the needs of intellectual property rights is when a company wants to market a new product based on some technical invention.**
- ▶ **The company wants the product to be exclusive and easy to separate from other similar products and also be protected as far as possible from reproduction by competitors.**
- ▶ **In that case the company could think of patenting the technical solution behind the new product combined with some protection of the design (based on artistic rights) as well as a trademark of the product.**

# Need of Intellectual Property (IP)

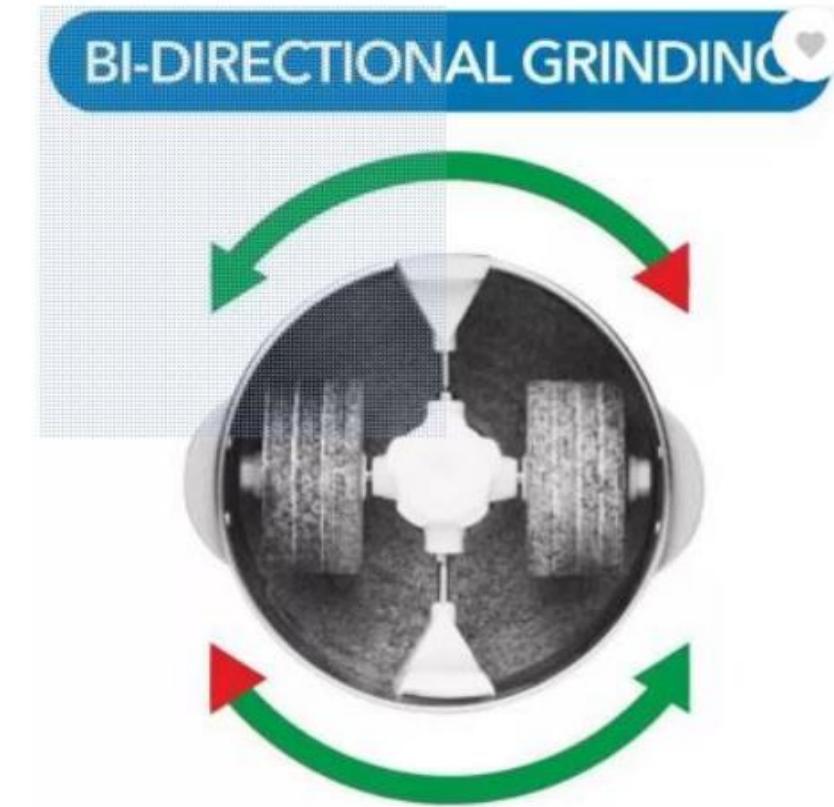
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# Branches of Intellectual Property :-



# Do you watch this?



PATENTED TECHNOLOGY

## Terminology

**A Patent gives monopolistic rights to its owner to exclude others, from making, using, selling, offering for sale or importing the product or the process for producing the product without his consent**

## What?

**Any product or process which is new, non-obvious and capable of industrial application can be patented. The term of every patent in India is twenty years from the date of filing the Patent application**



## Patents

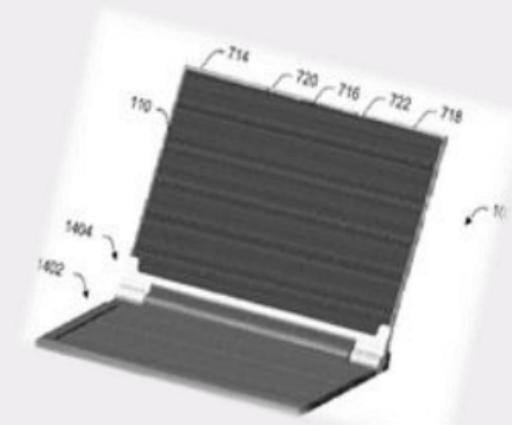


Do you watch this?



## Terminology

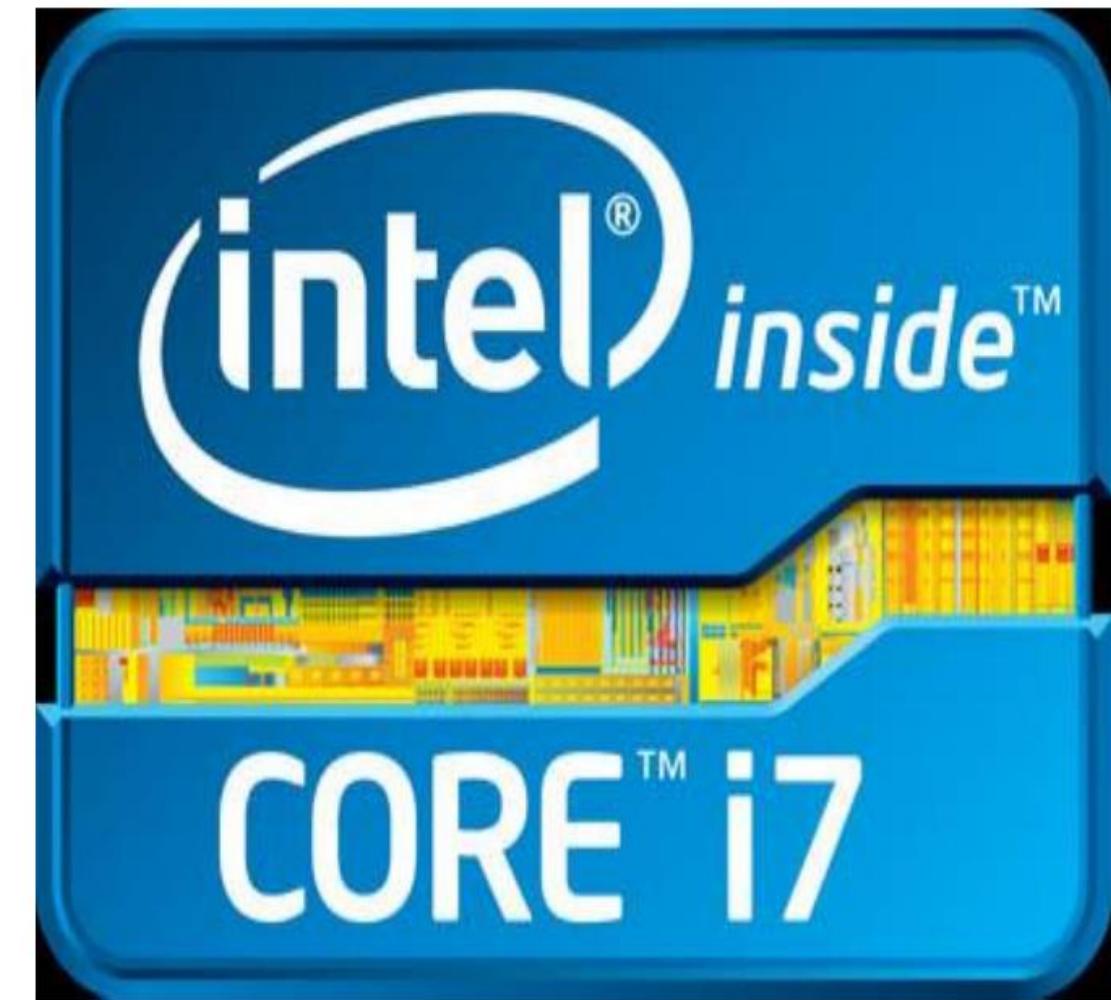
**Industrial Designs are the features of shape, configuration, pattern, ornament or composition of lines or colours applied to the product which makes it look different from other articles in the market.**



Designs

## What?

**The design must be new and distinct. The design protection is provided for 10 years. The period of protection is extendable to 5 years after the expiry of 10 years' duration.**



## Terminology

TM ®

**Trademark is a mark accorded with protection, intended to serve the purpose of recognizing the source/origin of the goods or services to which the particular mark belongs.**



## What?

**A trademark is a mark which is unique, distinctive, made up of names, symbols, signs etc., and capable of distinguishing one product from another. Term of registration of a trademark is ten years, which may be renewed for a further period of ten years on payment of prescribed renewal fees.**

Trademarks



All Rights  
Reserved



01

## Terminology

**Copyright is an exclusive legal right protects “original works of authorship” that are fixed in “a tangible form of expression.” Copyright owner has rights to reproduce, translate, adapt, perform, distribute and publicly display the work, etc.**



Lifetime of author + 60 years after death

60 years from publication

02

## What?

**Literary including Software, Artistic, Dramatic, Musical, Sound Recording, Cinematograph Films fall into copyrightable works**

Copyrights



# Do you watch this?



## What?

**Geographical Indication is primarily an agricultural, natural or a manufactured product (handicrafts and industrial goods) originating from a definite geographical territory.**

**10 Years + Renewal for other 10 years**

## Terminology

**Geographical indications of goods are defined as that aspect of industrial property which refer to the geographical indication referring to a country or to a place situated therein as being the country or place of origin of that product**



# Do you watch this?



**PROTECTION OF PLANT VARIETIES  
AND  
FARMERS' RIGHTS AUTHORITY  
MINISTRY OF AGRICULTURE,  
GOVT. OF INDIA**





**To provide an effective system for protection of Plant varieties and rights of farmers and plant breeders.**

**To recognize the farmers in respect of their contributions**

**New Variety,  
Derived  
Variety**

**Trees & Vines  
– 18 years;  
Other Crops  
– 15 years**

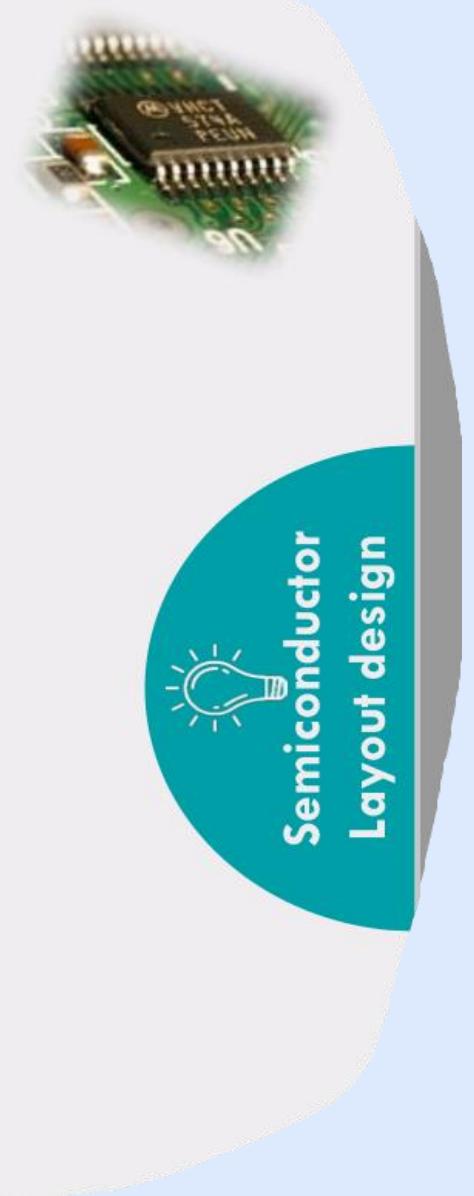
10 Years

## Terminology

**Protection provided for the 'layout-designs' of a semiconductor integrated circuit**

## What?

**Original,  
Distinctive,  
Capable of  
distinguishing  
from any other  
layout design**



# Patent

- ▶ A patent is an **exclusive right** granted for a product or a process that **provides a new way of doing something or offers a new technical solution to a problem.**
- ▶ A patent is regarded as a **property right** which can be issued nationally and/or in other countries where the company wants to protect its solution.
- ▶ The patent gives the company **exclusive right to manufacture, to use and to sell the product within a limited time period (20 years; can vary from country to country).**
- ▶ As it is a property it could be sold or licensed to others or be subject to contracts and/or other agreements.
- ▶ Once a patent is issued it is possible to make profit on it especially for the person(s) who is the inventor.
- ▶ The patent can not be global so it must be protected in the countries where you want to market and to sell the product.
- ▶ If there are many countries where the patent is needed, it might be a costly and administrative procedure.
- ▶ International Patent Application (PCT Application) exists, but it is more a matter of an application system which will not give a global patent but a number of national patents.

# Preconditions for patenting

- ▶ It is not possible to reward a patent to every invention.
- ▶ An invention must, in general, fulfil the following conditions to be protected by a patent.
- ▶ ----- practical use; it must show an element of novelty, that is, some new characteristic which is not known in the body of existing knowledge in its technical field.
- ▶ This body of existing knowledge, called "prior art", could be checked using e.g. patent databases or general and technology-specific search engines.
- ▶ The invention must show an inventive step which could not be deduced by a person with average knowledge of the technical field.

- ▶ Finally, its subject matter must be accepted as "**patentable**" under law.
- ▶ In many countries, scientific theories, mathematical methods, plant or animal varieties, discoveries of natural substances, commercial methods, or methods for medical treatment (as opposed to medical products) are generally **not patentable** (WIPO, 2006).
- ▶ The term "**patent**" ---- **exclusive right granted to anyone who invents any new, useful, and non-obvious process, machine, article of manufacture, or composition of matter, or any new and useful improvement thereof, and claims that right in a formal patent application.**
- ▶ The patent is a **government license that gives the holder exclusive rights to a process, design or new invention for a designated period of time.**
- ▶ Applications for patents are usually handled by a government agency.

## 2. Applying for a patent

→ A normal patent application could in Europe be done in three possible ways:

- National patent application which can be rewarded by the national organization
- International patent application (according to the international patent application- PCT- system) which are sent to international organizations that have been given the right to handle these applications. At the end the national organizations in the country/ countries involved will be given the final reward.
- European patent application, where the European organization for patents, European Patent Office-EPO, could reward a patent. The procedures are costly and take long time, often some years, and less than one year is very rare.
- Consulting organizations -----main actors on behalf of the company or individual ---patent.
- The more countries you want your patent rewarded in, the more costs you will have for consulting, translation and different fees.

## Patent protection abroad

- ▶ Protect a product also internationally even if always coming back to national patent protection.
- ▶ The international patent protection (Patent Cooperation Treaty – PCT) or the European patent protection (European Patent Convention – EPC) represent an opportunity for an international protection.

### PCT application

- ▶ The Patent Cooperation Treaty (PCT) is an international patent law treaty, concluded in 1970. It provides a unified procedure for filing patent applications to protect inventions in each of its contracting states.
- ▶ A patent application filed under the PCT is called an international application, or PCT application. PCT is based on agreements between more than 100 countries.

# Patent protection abroad

- ▶ The main idea ---- application could partly ----single application ---- define the countries where the patent should be issued.
- ▶ The application ----- the national patent registration office or, which often is the case, through the World Intellectual Property Organization (WIPO - [www.wipo.int](http://www.wipo.int)) in Geneva or the European Patent Office (EPO - [www.epo.org](http://www.epo.org)).
- ▶ The PCT application process -----international search ----- applicant a possibility to see what option there is to receive a patent.
- ▶ After that an examination -----expert -----opinion of the possibility to receive the patent.
- ▶ The international phase -----followed by national phases in the countries where the patent is sought.

# Application for European Patent – EPC

- ▶ **The European patent is based on the European Patent Convention, EPC, which came into force in 1977.**
- ▶ **So far 36 states have become parties to the Convention and four states have made a separate agreement (the so-called extension states) to the effect that the European patents are extended to cover them too**
- ▶ **According to a European agreement it is possible to receive a patent covering 40 European member states of European Patent Convention as well as some other countries by filing a single application for a European patent.**
- ▶ **The application must include a list of countries where it should be designated and if being approved it will be validated in those countries.**
- ▶ **It is done through a translated version of the patent to all national offices. The European Patent will result in national patents in designated countries.**

## Application for European Patent – EPC

- ▶ The application could be sent directly to the European Patent Offices in English, German or French languages.
- ▶ Application forms are available from the European Patent Office.
- ▶ As in the PCT-application the process starts with a search to find out any obstacles to the patent.
- ▶ If the applicant wants to continue, then the assessment of the application will be done.
- ▶ When it is ready for approval translation is needed in the three languages; English, French and German.
- ▶ It will also be published in the European Patent Bulletin.
- ▶ The European Patent is actually not a true European patent but a number of national patents.
- ▶ For that reason it still has to be validated in all countries which also will include translation to national languages.

# Trademark

► A **trademark**, **trade mark**, or **trade-mark** ----  
**distinctive sign or indicator**, used by an **individual**,  
**business organization**, or **other legal entity**, to  
**identify that the products or services with which the**  
**trademark appears originate from a unique source**,  
and to distinguish its **products or services from**  
**those of other entities**.

# Origin & development of TM

- During the British regime in India the big merchants and businessmen who had established their mark in the market in respect of certain goods under the particular brand name, style or design felt they should continue to be sold or traded under the same brand name, style or design and no other person shall be allowed to adopt that brand name, style or design.
- The Government earlier enacted the Indian Trademark Act 1940 then Indian Trade & Merchandise Marks Act, 1958 and finally it was replaced by Indian Trademark Act, 1999.

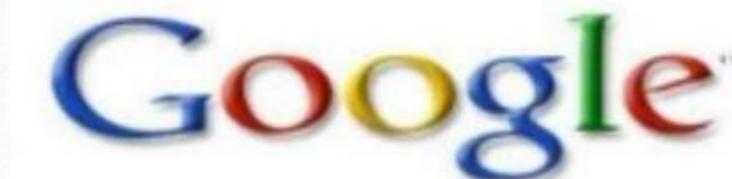
# Overview of TM Act 1999

- The Indian Trademark Act has **repealed Indian Merchandise Marks Act, 1958.**
- This Act is divided into **13 chapters with 159 sections**
- This Act provides for procedure of registration of trademark.
- It also provides for remedies for infringement of trademark.
- It consists of Appellate board, its powers and functions.

# "well-known trade marks"



The iconic red, script-style "Coca-Cola" logo is prominently displayed in the foreground, centered below the row of bottles.



The multi-colored "Google" logo is displayed in its characteristic font, positioned above the ICICI Bank ATM sign.



# Imp. Definitions

- (e) "**certification trade mark**" means a mark capable of distinguishing the goods or service in connection with which it is used in the course of trade which are certified by the proprietor of the mark in respect of origin, material, mode of manufacture of goods or performance of service.
- Examples: **Agmark** for all agricultural products, **ISI mark**, For industrial product, **BIS hallmark** certifies the purity of gold jewellery, **SILK Mark**, **Wool Mark** etc.

# Imp. Definitions

- (g) "collective mark" means a trade mark distinguishing the goods or services of members of an association of persons which is the proprietor of the mark from those of others.
- Examples: CS, CA, TATA Sons

## Symbols



## Designs



# What is Service Mark?

- Sec.2(1) (z) "service" means service of any description which is made available to potential users and includes the provisions of services in connection with business of any industrial or commercial matters such as banking, communication, education, financing, insurance, chit funds, real estate, transport, storage, material treatment, processing, supply of electrical or other energy, boarding, lodging, entertainment, amusement, construction, repair, conveying of news or information and advertising.

# Service Mark Examples



**WAL★MART®**

# Functions of a TM

- It identifies the product and its origin.
- It guarantees its quality
- It advertises the product
- It creates an image of the product in the mind of the consumer.

# Trademark Registry sec .5 & 6

- Established for the purpose of registration.
- **Head office @ Mumbai** and other branches @ Kolkata, Delhi, Chennai, and Ahmadabad.
- Registry is under the charge of Registrar,
- Assisted by Joint Registrar/ Assistant Registrar.
- **Registry maintains the indexes of:**
  1. Registered TM
  2. Applications for registration
  3. Names of proprietors
  4. Name of registered users

# Trademark Registry sec .5 & 6

- Register can be maintained in E-form.
- All the documents are accessible to the public on payment of certain fee.
- Registrar is vested with same powers as civil court.

# Trademark Symbols



# Advantages of Trademark Registration

1. Protects your hard earned goodwill in the business
2. **Protects your Name / Brand Name** from being used in a same or similar fashion.
3. Gives your products a **status of Branded Goods**.
4. Gives an impression to your customers that the company is selling some standard Products or Services.
5. The **exclusive right to the use of the trade mark** in relation to the goods or services in respect of which the trade mark is registered.
6. **To obtain relief in respect of infringement** (misuse by others) of the trade mark.
7. **Power to assign** (transfer) the trade mark to others for consideration.

# Registration of TM necessary?

- Remedies for registered TM.
- Remedies for unregistered TM. – prohibited by “Passing off” action
- Duration of TM- 10 years from the date of registration.
- Renewable from time to time
- Registration of TM in another countries is possible by Madrid Agreement i.e. Madrid system for the international registration of marks, Initiated By WIPO.
- The Madrid System is a convenient and cost-effective solution for registering and managing trademarks worldwide.

# Marks not registerable:

- The use of which would be **likely to deceive or cause confusion.**
- A mark comprising or containing scandalous or obscene matter
- A mark comprising or containing any matter **likely to hurt the religious sentiments of any class** or section etc etc.
- its **use is prohibited under the Emblems and Names (Prevention of Improper Use) Act, 1950.**
- Examples: *Indian National Flag, names of national leaders, satyamev jayate etc.*

# Marks not registerable:

- its **identity with an earlier trade mark** and similarity of goods services covered by the trade mark;
- **a likelihood of confusion on the part of the public**, which includes the likelihood of association with the earlier trade mark
- use of the applicants mark without due cause **would take undue advantage of the earlier TM.**

# Concept of distinctiveness:

- One TM has to be **distinctive** from another TM.
- **Test of similarity or distinctiveness** arises in the following cases:
  - ❑ At the time of registration of TM.
  - ❑ At the time of opposition.
  - ❑ Infringement by another.
  - ❑ In case of passing off action.

# Concept of distinctiveness:

- Factors to be taken into consideration:
- Sec 2 (1)(h) "**deceptively similar**", - A mark shall be deemed to be deceptively similar to another mark if it so nearly resembles that other mark as to be likely to deceive or cause confusion.
- The **degree of resemblance** between the marks i.e. phonetic, visual and similarity in idea.
- **Nature of goods** in respect of which similarity is used.
- **The class of the persons** who are likely to buy the goods.

**Note:** Deceptive similarity includes not only confusion but also deception.

# Concept of distinctiveness:

- Written
- Looks
- Sounding
- Conceptual

**Cool/Kool**



**Basket / Buskit  
For You/ 4 U**

**Star/Staar**

# Features of a good TM

- ❖ It must be distinctive
- ❖ It must be easy to spell, pronounce, write legibly and remember.
- ❖ It must be short & must appeal to the eye as well as the ears.
- ❖ It should be short
- ❖ It must satisfy the registration requirement.

# Registration of a TM

- Who can apply:
- Any person who claims to be a proprietor of a trademark and is desirous of registration of the mark can apply.
- The application may be made in the name of an individual, partners of a firm, a Corporation, any Government Department, a trust or joint applicants.

# Procedure for registration:

- Submission of application.
- Publication/ advertisement of application.
- Opposition for registration by any interested party.
- Grant or refusal of Trademark with reasons.

# Procedure for registration

- Submission of application.
- Publication/ advertisement of application.
- **Opposition to registration by any interested party.**
- Grant or refusal of Trademark with reasons.

## Opposition to registration Sec.21

- Any person may take objection **within 4 months** from the date of advertisement.
- The registrar shall serve copy of notice of opposition to the original applicant of TM.
- The Applicant has to file **counter reply within 2 months**. If fails to file, his application shall be considered as abandoned.
- On the filing of Counter statement- Notice by Registrar to the opponent.

# Opposition to registration

## Sec.21

- Opportunity of hearing and collection of evidence by the registrar.
- Final decision by the Registrar.



## GEOGRAPHICAL INDICATIONS- DEFINITION

- It is an indication.
- It originates from a definite geographical territory.
- it is used to identify goods having special characteristics originating from a definite geographical territory
- It is used to identify agricultural, natural or manufactured goods.
- The manufactured goods should be produced or processed or prepared in that territory.

## BENEFITS OF GIs

- It confers legal protection.
- Prevents unauthorized use of a Registered Geographical Indication by others.
- It promotes economic prosperity of producers of goods produced in a geographical territory.
- Boosts the export.

# Contd....

- Can serve as source-identifiers for consumers.  
Helps the producers develop consumer loyalty.
- Plays a role in consumer decisions, including willingness to pay a higher price for regionally branded food products.

# EXAMPLES OF GIs

## INDIA

- Basmati rice
- Mysore silk
- Mysore sandalwood oil
- Mysore sandal soap
- Mysore jasmine
- Coorg orange
- Madhubani paintings
- Darjeeling tea
- Dharwad pedha
- Alphonso mango
- Tirupathi laddu
- Kolhapuri chappal



Sweet prospectus: A pair of Tirupathi laddus. The GI status is granted to identify a product as having a specific provenance, and with a certain quality or reputation associated with that origin.



## WORLD

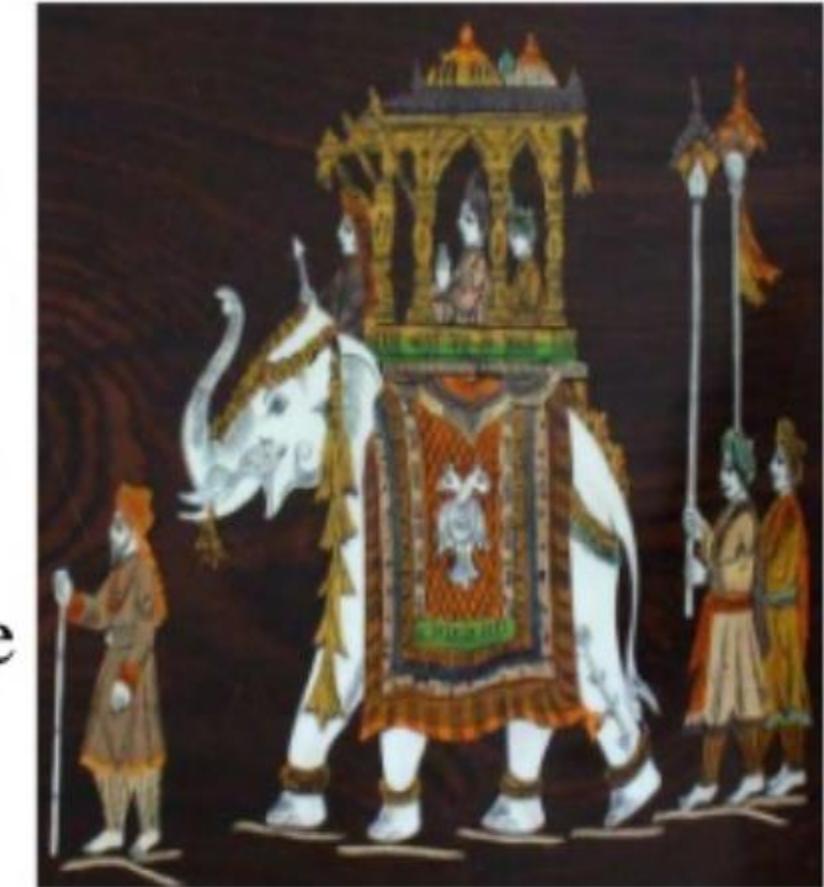
- Canadian whisky
- Swiss watches
- Florida oranges
- Champagne

## Who can apply for the registration of a geographical indication?

- Any association of persons, producers, organization or authority established by or under the law can apply
- The applicant must represent the interest of the producers
- The applicant should be in writing in the prescribed form
- The applicant should be addressed to the Registrar of Geographical Indications along with prescribed fee

## IMPACT OF GIs ON DEVELOPING COUNTRIES

- Encourages rural development.
- Facilitates market access.
- Saves local natural resources .
- Plays an important role in the preservation of cultural identity.



mysore rosewood inlay

## Is the registration of a Geographic Indication compulsory and how does it help the applicant

- Registration is not compulsory
- Registration affords better legal protection to facilitate an action for infringement
- The registered proprietor and authorized users can initiate infringement actions.
- The authorized user can exercise the exclusive right to use the Geographical Indication
- The registration of a geographical indication is valid for a period of 10 years and renewed from time to time

## Why GI is to be protected ?

- Denote quality and origin of products
- Good reputation for the product
- Preventing the product from generic products
- Protecting the domestic market from competitors



MYSORE JASMINE



CHANNAPATNA TOYS

## How are GIs protected?

- In accordance with international treaties and national laws under a wide range of concepts:
  - special laws for the protection of geographical indications or appellations of origin
  - trademark laws in the form of collective marks or certification marks
  - laws against unfair competition
  - consumer protection laws, or
  - specific laws or decrees that recognize individual geographical indications.

# GI in India

- India, as a member of the World Trade Organization(WTO), enacted the Geographical Indications of Goods (Registration and Protection) Act, 1999 has come into force with effect from 15 September 2003
- The Central Government of India has established the Geographical Indications Registry with all India jurisdiction in chennai
- The GI Act is being administered by the Controller General of Patents, Designs and Trade Marks - who is the Registrar of Geographical Indications

## What is Copyright?

Copyright comprises a bundle of rights which exists in various types of works including:

- Literary works such as books, pamphlets, magazines
- Dramatic works
- Music
- Artistic works including photographs
- Films
- Artistic architectural works

Copyright is the exclusive right as defined by the Copyright Act, 1957 to do or to authorize the doing of certain acts in respect of these works. Some of these rights are:

- to reproduce the work in any material form
- to publish the work
- to perform the work in public
- to produce, reproduce, perform or publish any translation of the work
- to communicate the work to the public
- to adapt the work
- to translate the work
- to include the work in a cinematograph film

## Fair Use

Indian Law does not specifically speak of fair use. However, there are a number of exceptions to copyright which are listed in the Copyright Act. The bulk of these exceptions allow the use of copyrighted material without a licence for the purposes of:

- research
- review
- criticism
- education

The Act spells out exactly which acts do not constitute an infringement of copyright. Some of these acts are:

- the reading or recitation in public of any reasonable extract from a published literary or dramatic work
- the performance of a literary, dramatic or musical work by an amateur club or society, if the performance is given to a non-paying audience, or for the benefit of a religious institution
- the publication in a newspaper, magazine or other periodical of a report of a lecture delivered in public
- the making or publishing of a painting, drawing, engraving or photograph of a work of architecture or the display of a work of architecture
- the reproduction of a literary, dramatic, musical or artistic work for the purpose of a judicial proceeding or for the purpose of a report of a judicial proceeding

## Who Owns the Copyright to a Work?

Usually, the first owner of copyright in a work is its author.

The 'author' is:

- in relation to literary or dramatic work, the author of the work
- in relation to a musical work, the composer
- in relation to an artistic work other than a photograph, the artist
- in relation to a photograph, the photographer
- in relation to a film, the owner of the film at the time of its completion and
- in relation to a record, the owner of the original plate from which the record is made, at the time of the making of the plate.

Since this is the law, this general rule is obviously subject to a number of exceptions. For example:

- The person who commissions a photograph is usually the first owner of the copyright in the photo if he has paid for it to be taken.
- An employer is usually the first owner of the copyright in works which his employees make in the course of their employment under a contract of service or apprenticeship.
- Subject to contract, the Government is the first owner of the copyright in a government work.

## The Term of Copyright

Copyright does not last indefinitely.

The term of copyright is sixty years. However, the term begins at different times depending on:

- the type of work and
- whether or not the author is known.

Some of the circumstances for which the Act makes provision are:

- if the author is known, and the work is a published literary work, copyright subsists for sixty years after the death of the author
- if a literary work whose author is known has not been published at the time of the death of its author, the term begins after it has been published
- in the case of a photo or a film, the term begins after its publication

## Assignment and Licences

The copyright in any work can be assigned. This can be done:

- either wholly or partially
- either generally or subject to limitations
- either for the whole term of the copyright or any part of the term

An assignment or licence must:

- be in writing
- be signed by the assignor / licensor or by his duly authorised agent
- identify the works assigned / licensed and specify the rights assigned / licensed
- specify the duration and territorial extent of the assignment/ licence
- specify the amount of royalty payable, if any, to the author or his legal heirs

An assignment may be revised, extended or ended by the parties on terms they agree to.

If the assignee or licensee does not make use of the rights assigned or licensed, as the case may be, within one year of the assignment or licence, the agreement automatically lapses.

## The Registration of a Copyright

The moment a work is created, copyright subsists in it. This copyright which has already come into existence can be registered.

The author or publisher of a work, or the owner of or other person interested in the copyright in any work may make an application to the Registrar of Copyrights to have the copyright registered.

On the receipt of an application in respect of any work, the Registrar of Copyrights may, after holding an inquiry, enter the particulars of the work in the Register of Copyrights.

Registration is not essential. It results in the names or titles of works, and the names and addresses of authors, publishers and owners of copyright being entered in the Register of Copyrights.

Entries in this Register are presumed to be true by courts although the presumption is rebuttable.

# Copyright infringement and remedies

- ▶ *Infringing acts*
- ▶ **What constitutes copyright infringement?**
- ▶ Copyright infringement occurs when any of the following occur:
  - unauthorised use of the exclusive rights of the owner of a copyright whether in relation to the whole or a substantial part of the copyright work;
  - permitting a place to be used for infringing purposes on a profit basis; and
  - displaying or exhibiting in public by way of trade or distributing for the purpose of trade or importing infringing copies of a work.

# What remedies are available against a copyright infringer?

- ▶ The remedies provided by the Copyright Act, 1957 against infringement of copyright are:
  - civil remedies - these provide for injunctions, damages, rendition of accounts, delivery and destruction of infringing copies and damages for conversion;
  - criminal remedies - these provide for imprisonment, fines, seizure of infringing copies and delivery of infringing copies to the owner; and
  - border enforcement - the Act also provides for prohibition of import and destruction of imported goods that infringe the copyright of a person with the assistance of the customs authorities of India.

- ▶ **Is there a time limit for seeking remedies?**
- ▶ Yes. The period of limitation for filing a suit for damages for infringement of copyright is three years from the date of such infringement.
- ▶ **Monetary damages Are monetary damages available for copyright infringement?**
- ▶ Yes, besides damages the copyright owner can also claim rendition of account of profits.

# Are there criminal copyright provisions? What are they?

- ▶ Yes. The Copyright Act, 1957 has provided for enforcement of copyright through a series of penal provisions under Chapter 13 of the Act. The following are the principal penal provisions under the Act:
  1. Under section 63, where any person knowingly infringes or abets infringement of the copyright in a work and any other right as covered by the Copyright Act, 1957 (broadcast reproduction rights, performers' rights, moral rights, etc), such person may be punished with imprisonment of a minimum term of six months and a maximum term of three years, and a fine of between 50,000 and 200,000 rupees.
  2. Section 65A penalises circumvention of effective technological measures that may be applied to copies of a work with the purpose of protecting any of the rights conferred under the Act (ie, copyright, performance rights). The punishment under this provision is imprisonment that may extend to two years and payment of a fine. Section 65A was inserted by the Copyright (Amendment) Act, 2012.

# Are there criminal copyright provisions? What are they?

1. Section 65B makes unauthorised removal or alteration of 'rights management information' punishable with imprisonment of up to two years and payment of a fine. The provision makes the unauthorised distribution, broadcast or communication to the public of copies of the work punishable in the same manner if the person is aware that electronic rights management information in the copy has been removed or altered. Section 65B was inserted by the Copyright (Amendment) Act, 2012.
2. Section 63A provides for enhanced penalty on second or subsequent convictions under section 63 (see point (i)).
3. Other provisions in the chapter provide penalties for offences such as using infringing copies of a computer program, making or possessing plates for the purpose of making infringing copies of works, and making false entries in the Register of Copyrights.

# *Online infringement*

- ▶ Are there any specific liabilities, remedies or defences for online copyright infringement?
- ▶ Yes. The 2012 amendments to the Act introduced certain provisions that are specifically relevant to copyright infringement and the internet.
- ▶ Under the fair use provisions of the Act, section 52(1)(b) provides that transient or incidental storage of a work or performance purely in the technical process of electronic transmission or communication to the public does not constitute infringement of copyright. This provision provides safe harbour to internet service providers that may have incidentally stored infringing copies of a work for the purpose of transmission of data.
- ▶ Section 52(1)(c) further provides that transient or incidental storage of a work or performance for the purpose of providing electronic links, access or integration that is not expressly prohibited by the rights holder would not be infringement of copyright, unless the person responsible is aware of infringement or has reasonable grounds for believing that such storage is that of an infringing copy.

- ▶ Under section 52(1)(c), if the owner of a copyright work, in a written complaint to the person responsible for digitally storing an infringing copy of the work, complains that such transient or incidental storage is an infringement, then the person responsible would have to refrain from facilitating access to the infringing copy of the work for a period of 21 days.
  
- ▶ If within 21 days, the person responsible does not receive an order from a competent court that directs the person responsible to refrain from providing access, then access may be resumed at the end of that period.

- ▶ Therefore, if A, the owner of a short story, finds that his or her short story has been published on the website of B, he or she may write a complaint to B declaring that B must refrain from providing the public with access to A's short story.
- ▶ B would then have to remove A's short story from visibility or accessibility on his or her website for 21 days, within which time A must persuade a competent court that it should order the complete removal of the infringing version or copy of the work.
- ▶ If the court does not issue such an order within that period of time, then B may resume making the short story available to the public on his or her website.
- ▶ This provision was inserted in the Act by the Copyright (Amendment) Act, 2012 which came into force on 21 June 2012. It is yet to be used in practice.

- ▶ Apart from the above-mentioned provisions, the entire scheme of the Copyright Act makes it amply clear that all the provisions of the Act must be applied to electronic and digital media in the same manner they are applied to conventional media.
- ▶ The Copyright (Amendment) Act, 2012 has also clarified this in many places.
- ▶ Remedies against copyright infringement on the internet are not dealt with separately under that Act as the provisions sufficiently cover all forms of exploitation of works, including exploitation over the internet, and the remedies for copyright infringement would apply to the internet as they would to any other medium or platform.

# How may copyright infringement be prevented?

- ▶ No degree of vigilance can guarantee an 'infringer-free' environment, but certain deterrent measures must be adhered to by copyright owners, for instance:
  - documentation of instances of use;
  - registration of copyright;
  - proper notice of copyright;
  - monitoring the activities of habitual infringers;
  - making independent contractors and employees subject to confidentiality;
  - having proper licensing agreements incorporating a proper control mechanism; and
  - publicising a successful infringement trial (if resources allow).



# INDUSTRIAL DESIGN

Quality is no longer enough to make ones company distinguishable from others.



Design plays a critical role in adding to the commercial value and marketability of a product by making it more attractive and appealing.



Industrial design helps companies to differentiate their products from those of competitors and enhance the brand image of their products.



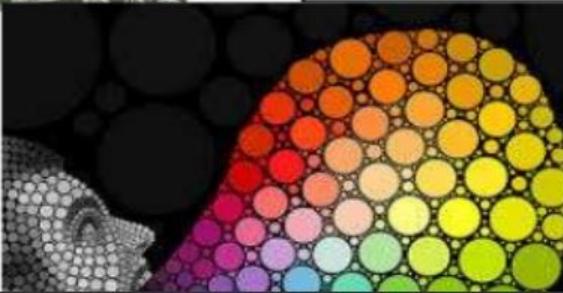
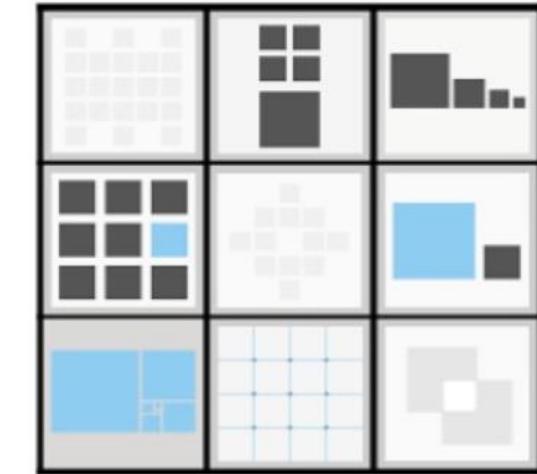
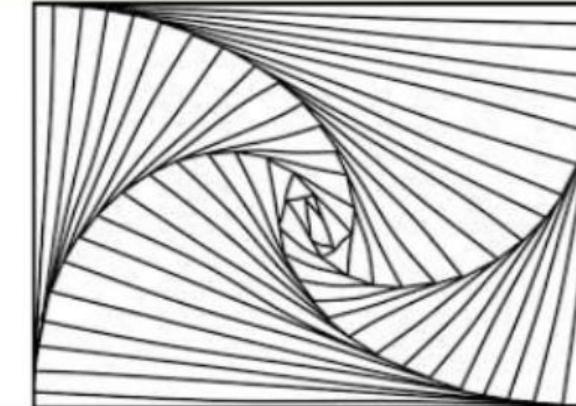
# Design

- This is why ensuring the proper protection of industrial designs is so important.

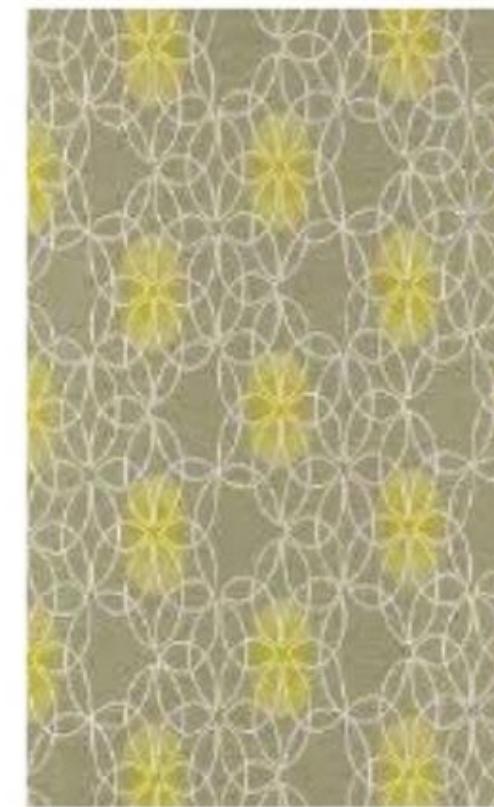
# Design

- Design makes an article attractive and visually appealing, thus adding to its commercial value
- original shape & external Configuration of a useful object is protected by an industrial design right.
- The protection - only for the appearance and not how it works.

It can be expressed in 2 D features like patterns, lines, composition, color;



# Example of 2D designs - textile



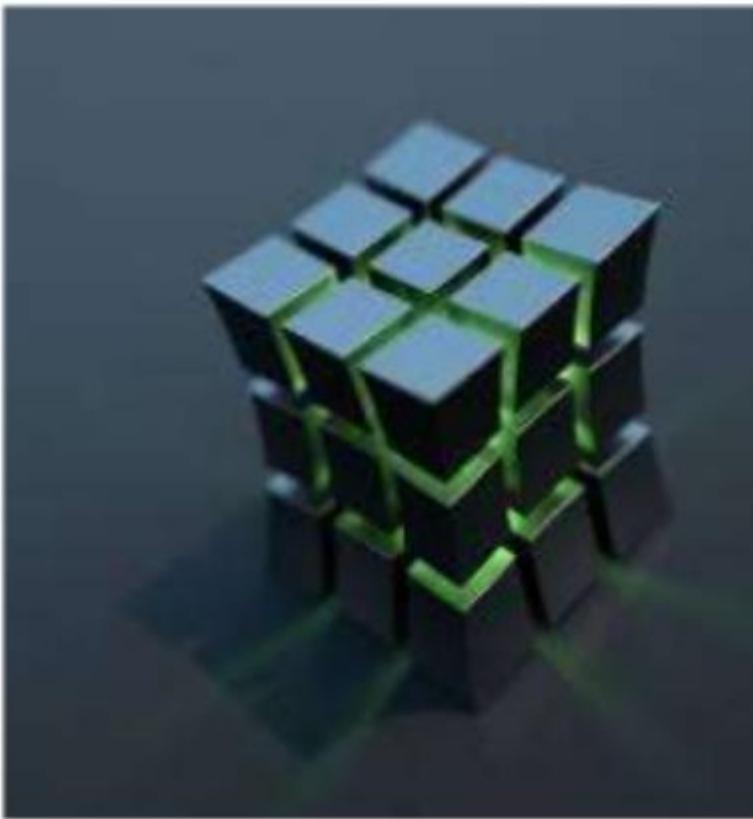
## Example of 2D designs- wall paper



# Example of 2D designs- carpet design



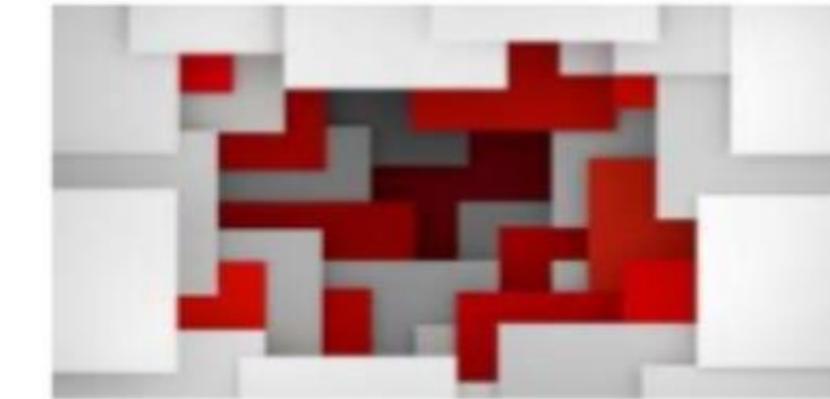
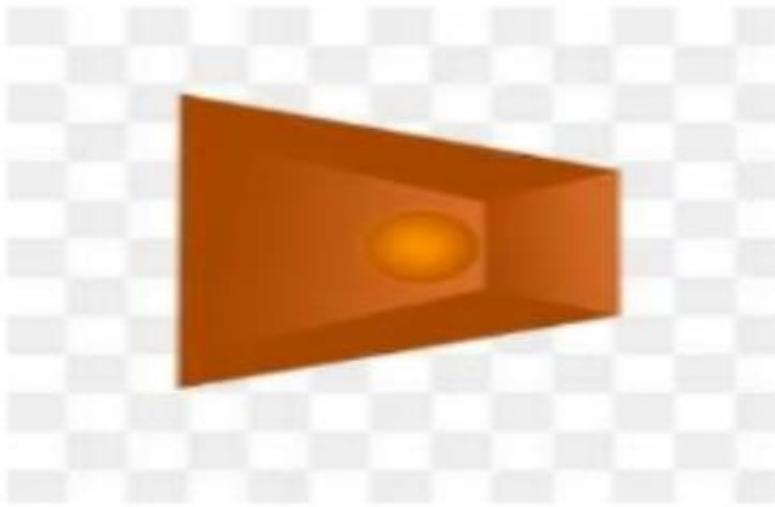
# Examples of 3d design - shape of toy



# Examples of 3d design -package



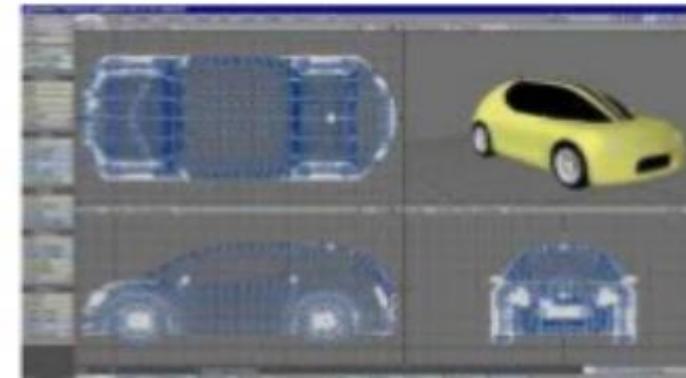
# 3 D model format like shape



# 3 D model format like surface



# Examples of 3d design - car



# Examples of 3d design – mobile phone



combination of both 2D & 3D



## Criteria for Design Registration

- Features of the design should appeal and easily judged by eye.  
After this
- New or original
- not prior published in any country and not publicly known in India

## Criteria for Design Registration

- It is significantly distinguishable from known designs or combination of known designs
- Not a technical or useful function of a product

## Design protection

Shape of Round car, Shape of Square idli – Not usually available, they will get design protection but should have industrial/commercial application.

# Not by change in the size



# Change in the shape is considered



Designs of stamps, labels, tokens, cards, cartoons, or parts of an article not sold separately, cannot be registered.



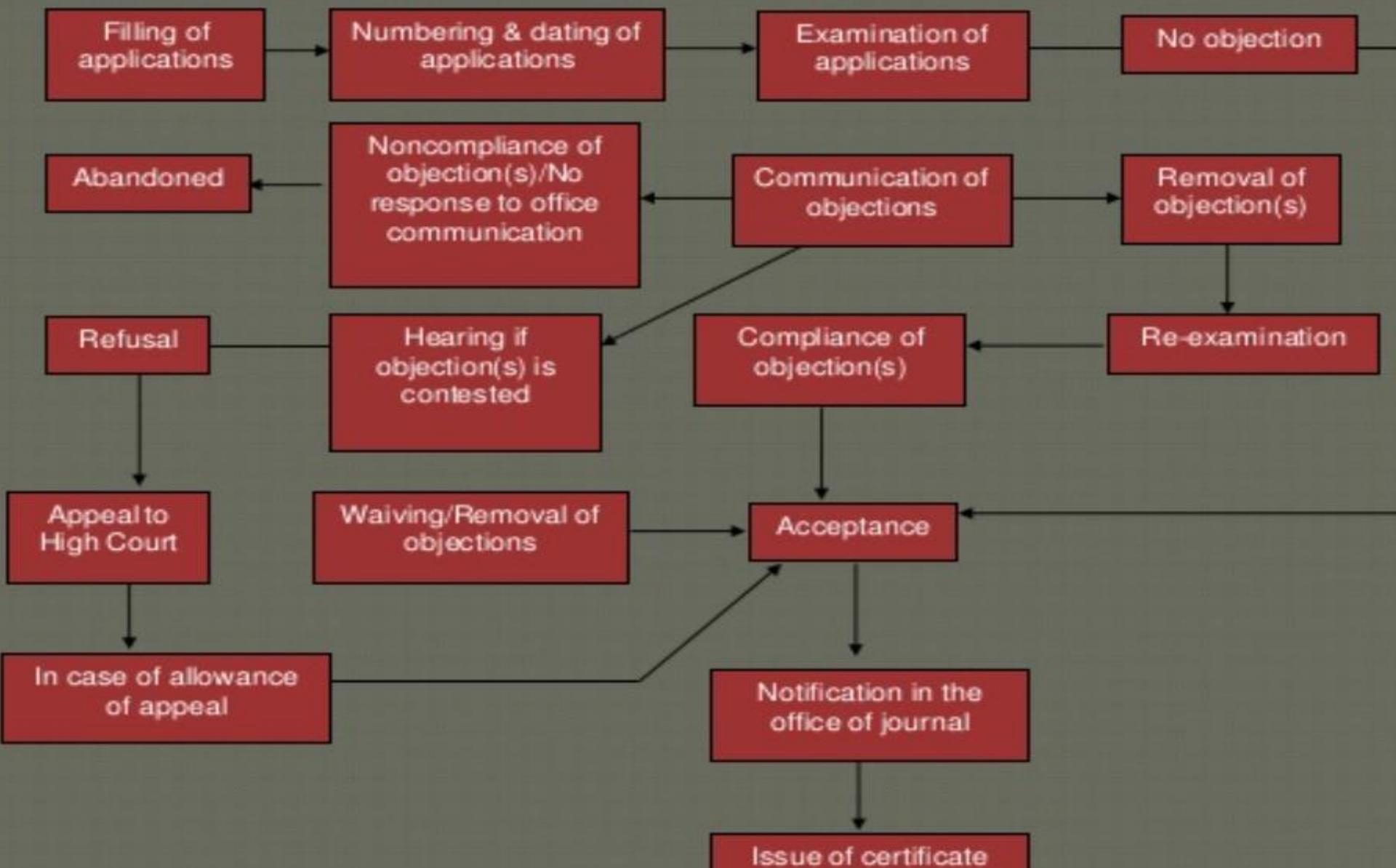
Eg: A sugar cubes of noticeable shape and configuration allowed



# Protection of design

- Protection for designs having industrial or commercial use.
- Duration of protection - 10 years – 25 years and extendable for another term of 5 years.
- When an industrial design is protected by registration, the owner is granted the right to prevent unauthorized copying or imitation by third parties.

# FLOW CHART OF DESIGN APPLICATION UPTO ACCEPTANCE



## TEN STEPS TO FILE AN APPLICATION FOR INDUSTRIAL DESIGN

### **Step 1 Finding out whether any registration already exists**

Registration number is known, Form No.-6 filed along with the prescribed fees of Rs. 500. If the representation of the article or the specimen of the article is filed Form No.-7 along with the prescribed fees of Rs. 1,000 is required.

### **Step 2 Preparing a representation of the design**

It should be prepared on white A4 size paper of durable quality.

### **Step 3 Identifying the class of design**

32 classes and most of the classes are further divided into sub-classes.

### **Step 4 Providing a statement of novelty**

A statement of novelty should be included on the representation of a design as per the Act in order to specify the claim.

## **Step 5 Including a disclaimer**

If the ornamental pattern on an article is likely to be confused with a trade mark, suggests any mechanical action or contains words, letters, numerals, etc., a disclaimer should be included in the representation.

## **Step 6 Claiming a priority date**

This is the date of filing of the application in any of such countries provided the application is made in India within six months.

## **Step 7 Determining the fee to be paid**

Application for the registration of design is Rs 1,000 and for renewal it is Rs. 2, 000.

## **Step 8 Ensuring all enclosures are attached**

File an application only after ensuring that all enclosures and fee in the required numbers are attached. Applications can be filed in either the Design Office in Kolkata or the branch offices of the Patent office in Delhi, Mumbai or Chennai.

## **Step 9 Complying with objections (if any)**

If the Design Office seeks additional information or clarifications after preliminary examination, please ensure that these are provided promptly.

## **Step 10 Providing full details**

While filing an application make sure that all contact details and addresses are clearly and legibly filled in.

## Revocation

**In case of revocation:** Sec-19A petition in Form-8 with fee Rs. 15, 00/- by an interested person may file for revocation/cancellation of registration at any time after the registration on the following grounds to the controller:

- (1) Any person interested may present a petition for the cancellation of the registration of a design at any time after the registration of the design, to the Controller on any of the following grounds, namely:-
  - (a) that the design has been previously registered in India; or
  - (b) that it has been published in India or in any other country prior to the date of registration; or
  - (c) that the design is not a new or original design; or
  - (d) that the design is not registrable under this Act; or
  - (e) it is not a design as defined under clause (d) of section 2.