

Module 3

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IPR AND CYBER LAWS

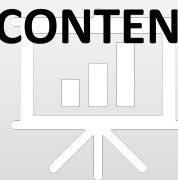
Course Introduction



SYLLABUS



CONTENT



EXPECTED QUESTIONS



Syllabus:

- **Industrial Designs**– Introduction – Need for protection of design– requirements for registration of designs – Design Act,2000 –Duration of registration of design – application procedure
- **Geographic Indications** –Introduction – Filing – Granting – Protection of geographic indications.
- **Trade Secret** – definition – discovering and protecting of trade secret.

- An industrial design may consist of three dimensional features, such as the shape of an article, or two dimensional features, such as patterns, lines or color.
- In a legal sense, it constitutes the ornamental aspect of an article.
- Industrial designs are applied to a wide variety of products of industry and handicraft items: from packages and containers to furnishing and household goods, from lighting equipment to jewelry, and from electronic devices to textiles.
- Industrial designs may also be relevant to graphic symbols, graphical user interfaces (GUI), and logos.

Difference between an industrial design right and a patent.

- An industrial design right protects only the appearance or aesthetic features of a product, whereas a patent protects an invention that offers a new technical solution to a problem.
- In principle, an industrial design right does not protect the technical or functional features of a product.
- Such features could, however, potentially be protected by a patent.

Eg: Industrial designs that combines aesthetic appeal with creative problem-solving.

- **Coke Contour Bottle**

- The Coca-Cola contour bottle is a masterpiece in industrial design that dates back to 1915 when the Coca-Cola Company asked its bottle suppliers to design a new bottle that would be distinctive and instantly recognisable - even in the dark.
- Designer Earl R. Dean took up the challenge, and following instructions issued by his boss, aimed to come up with a design based on the ingredients of the drink.



- KitchenAid stand mixer
- Pioneered in 1914 for industrial use on US Navy battleships, the KitchenAid stand mixer first entered homes in 1918, but it was in the 1930s that Egmont Arens' patented silhouette - relatively unchanged ever since - turned the product into an icon of American industrial design, which is exhibited in San Francisco's Museum of Modern Art.



- In principle, the owner of a registered industrial design or of a design patent has the right to prevent third parties from making, selling or importing articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.
- In most countries, an industrial design needs to be registered in order to be protected under industrial design law as a “registered design”.
- In some countries, industrial designs are protected under patent law as “design patents”.

- WIPO PROOF provides proof of existence and proof of active use that may be required by these laws to protect the designs.
- Industrial design laws in some countries grant – without registration – time- and scope limited protection to so-called “unregistered industrial designs”.
- Depending on the particular national law and the kind of design, industrial designs may also be protected as works of art under copyright law.

Industrial Design Protection In India: The Designs Act, 2000

- The Designs Act, 2000, is a complete code in itself and protection under it is fully statutory in nature.
- It protects the visual design of objects that are not purely utilitarian.
- Section 2(d) of the Act, defines a Design as:
- "design" means only the features of shape, configuration, pattern, ornament or composition of lines or colors applied to any article whether in 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 of construction or anything which is in substance a mere mechanical device, and

- The pre-requisites for a design to qualify for protection are as follows:
 - ✓ It should be novel and original.
 - ✓ It should be applicable to a functional article.
 - ✓ It should be visible on a finished article.
 - ✓ There should be no prior publication or disclosure of the design.

- **Locarno Classification**

- Designs are registered in different classes as per the Locarno Agreement.
- It is used to classify goods for the purposes of the registration of industrial designs which further helps in Design searches.

- The Locarno Classification, established by the Locarno Agreement (1968), is an international classification used for the purposes of the registration of industrial designs.
- <https://www.wipo.int/classifications/locarno/en/>
- <https://www.wipo.int/classifications/locarno/locpub>

Protection term : The Copyright on a registered design is in total for 15 years.

- Initially the Copyright in Design is registered for 10 years, which can further be extended by 5 years on making an application for renewal.

Design Rights

- As in case of any other IP rights, the design registration also bestows a monopolistic right to the Proprietor by which he/she can legally exclude others from reproducing, manufacturing, selling, or dealing in the said registered design without his/her prior consent.
- The design registration is particularly useful for entities where the shape of the product has aesthetic value and the entity wishes to have exclusivity over the said novel and original design applied to its product(s) or article(s).
- In addition to the above, the design sought for protection must be new or original, i.e., not disclosed to the public in India or elsewhere in the world by prior publication or by prior use or in any other way.
- The design should be significantly distinguishable from designs or combination of designs that are already registered or pre-existing or disclosed to the public.
- Furthermore, the design should not include any scandalous or

Piracy of Registered Designs

- Section 22 of the Designs Act, 2000, provides that any fraudulent or obvious imitation of a registered design without the consent of the proprietor is unlawful and also prohibits the import of such material which closely resembles a registered design.
- The section very specifically provides that in a civil case compensation payable shall not exceed Rs. 50,000/- in respect of infringement of one registered design.
- As the compensation payable is statutorily limited, it is a good ground for insisting an interim injunction even before the commencement of trial.

Comparison of Design Registration against different IPs

- **Design registration versus Patents registration:** A patent protection is granted over a novel product or process comprising inventive step (technical advance) and exhibiting industrial applicability.
- One of the prime differentiators for design vis-à-vis patent protection is that contrary to designs, patents must contain a functional and/or structural feature of technical significance.
- While a design is judged on aesthetics only and not the functionality/technicalities of the shape/pattern of an article, the patents on the other hand are judged solely on the functionality and not the aesthetics of the feature/shape.

- **Design registration versus Copyright:** Both design and copyright protections relate to aesthetic features of the article.
- The differentiating factor is clearly provided under Section 15(1) of the Copyright Act, 1957, which states that:
 - ✓ Copyright shall not subsist in any design registered under the Designs Act, 1911, or
 - ✓ Copyright in any design capable of being registered under the Designs Act, shall cease as soon as any article to which the design has been applied to has been reproduced more than fifty times by an industrial process.
- *Therefore, by virtue of Section 15 of the Copyrights Act, a design registration and copyright over the article cannot co-exist, both forms of IP protection are mutually exclusive.*

- **Design registration versus Trademark registration:** A registered design and a trademark (not yet registered) may have an overlapping area.
- Say if a unique shape is a registered design and the said unique shape of the article attains such level of popularity leading to brand recognition amidst available articles in the same classification of goods, the same may fall under consideration for a trade marks registration by the proprietor/company.
- Accordingly, a unique industrially applied shape or pattern shall be registered as design, and if and when the design becomes indicative of the origin of the article/products of the company, the company may consider applying for registration of the shape/pattern as a trademark.

Registration of designs

- Every application for registration of design In India undergoes examination the Act and Rules as amended time to time.
- The applications are examined in order in which the application is filed under Section 5 and 44 of the Act.
- Defects or objections in the application, if any, noticed during examination of the application are communicated to the applicant or to his agent at the address for service.
- The time period for removal of objection, pursuant to examination report, is six months from the date of application which may be extended up to further three months on a request made with the prescribed fee before expiry of the stipulated period of six months.
- An application which owing to any neglect or default of the

- ✓ **Acceptance & Notification:-** An application is accepted when all the shortcomings have been rectified. It is then notified in the Patent Office journal which is published on every Friday.
- ✓ **Refusal:-** In case the defects as required by the Controller are not rectified, a hearing will be provided to the applicant. After hearing the controller shall decide whether the application should be accepted or not. The decision of the Controller will be communicated in writing to the applicant or his agent stating the reasons for the decision.
- ✓ **Appeal :-** Any person aggrieved by the decision of the Controller refusing to register a design may appeal to the High Court. The appeal should be made within three months from the date of the Controller's decision.
- ✓ **Abandonment :-** An application which owing to any neglect or default on the part of the applicant has not been completed so as to enable registration to be effected within six months or within extended period will be treated as abandoned.

Standard Form of the statement of novelty

The novelty resides in the shape and configuration of the bookshelf as illustrated.

The novelty resides in the shape and configuration particularly in the portion (A) and (B) of the Bookshelf as illustrated.

The novelty resides in the ornamental surface pattern of the bookshelf as illustrated.

Eg: Novelty resides in the floral ornamentation of tea-pot as illustrated.

- Where Trade Marks, words, letters or numerals are not the essence of the design, they shall be removed from the representations or specimens.
- Where they are essence of the design, a disclaimer shall be given in the representation sheet disclaiming any right to

Form of Disclaimers

- a.No claim is made by virtue of this registration of respect of any mechanical or other action of any mechanism whether or in respect of any mode or principle of construction of the article.
- b.No claim is made by virtue of this registration to any right to the exclusive use of trade marks, words or letters and numerals appearing in the design of the article.
- c.No claim is made by virtue of this registration to any right to the exclusive use of colour or colour combination appearing in the design of the article.
- d.No claim is made by virtue of this registration to any right to the exclusive use of any extraneous matter like xxxxxxxxxx etc. appearing in the representation sheets.

Filing an application for industrial design

Step 1: Finding out whether any registration already exists

- The Designs office can assist you to search whether the design has been previously registered.
- If the registration number is known, Form No.-6 should be 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

- A representation is the exact representation of the article on which the design has been applied. It should be prepared on white A4 size paper of durable quality. Do not prepare it on cardboard or mount it on other paper. Indicate details of the design and applicant clearly.

Step 3: Identifying the class of design

- Designs are required to be categorized in separate classes in order to provide for systematic registration. An internationally accepted classification of Industrial Designs based upon the function of the article is required. The class and sub-class should be mentioned in the application. There are 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. This will enable speedier examination and provide a more specific protection. The claim will protect the overall visual appearance of the design as described in the representation of drawing.

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

- If you have applied for protection of the design in convention countries or countries which are members of inter-governmental organizations, you can claim registration of the design citing a priority date in India. 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

- Applications are to be accompanied by the required fee through cheque or draft payable at Kolkata or in cash (if filed in Design Office, Kolkata). 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. This will help the office to take up your application for early examination.

Step 10 : Providing full details

- While filing an application make sure that all contact details and addresses are clearly and legibly filled in. This will enable the office to keep in touch with you and convey decisions.

Exclusion from scope of design

- Designs that are primarily literary or artistic character are not protected under the Designs Act. These will include :
- books, calendars, certificates, forms-and other documents, dressmaking patterns, greeting cards, leaflets, maps and plan cards, postcards, stamps, medals.
- labels, tokens, cards, cartoons.
- any principle or mode of construction of an article.
- mere mechanical contrivance.
- buildings and structures.
- parts of articles not manufactured and sold separately.
- variations commonly used in the trade.
- mere workshop alterations of components of an assembly
- mere change in size of article.
- flags, emblems or signs of any country.
- layout designs of integrated circuits.

Application Procedure

- Any person who desires to register a design is required to submit the following documents to the Design Wing of the Patent Office at "Intellectual Property Office", CP-2, Sector V, Salt Lake, Kolkata - 700 091 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 Patent Office, Kolkata for processing and prosecuting.
- (i) Application duly filed in on the prescribed form (Form-1) along with the prescribed fees, stating name in full, address and nationality, name of the article, class number and address for service in India.

The application shall also be signed either by the applicant or by his authorized agent. For small entity, Form 24 & documentary

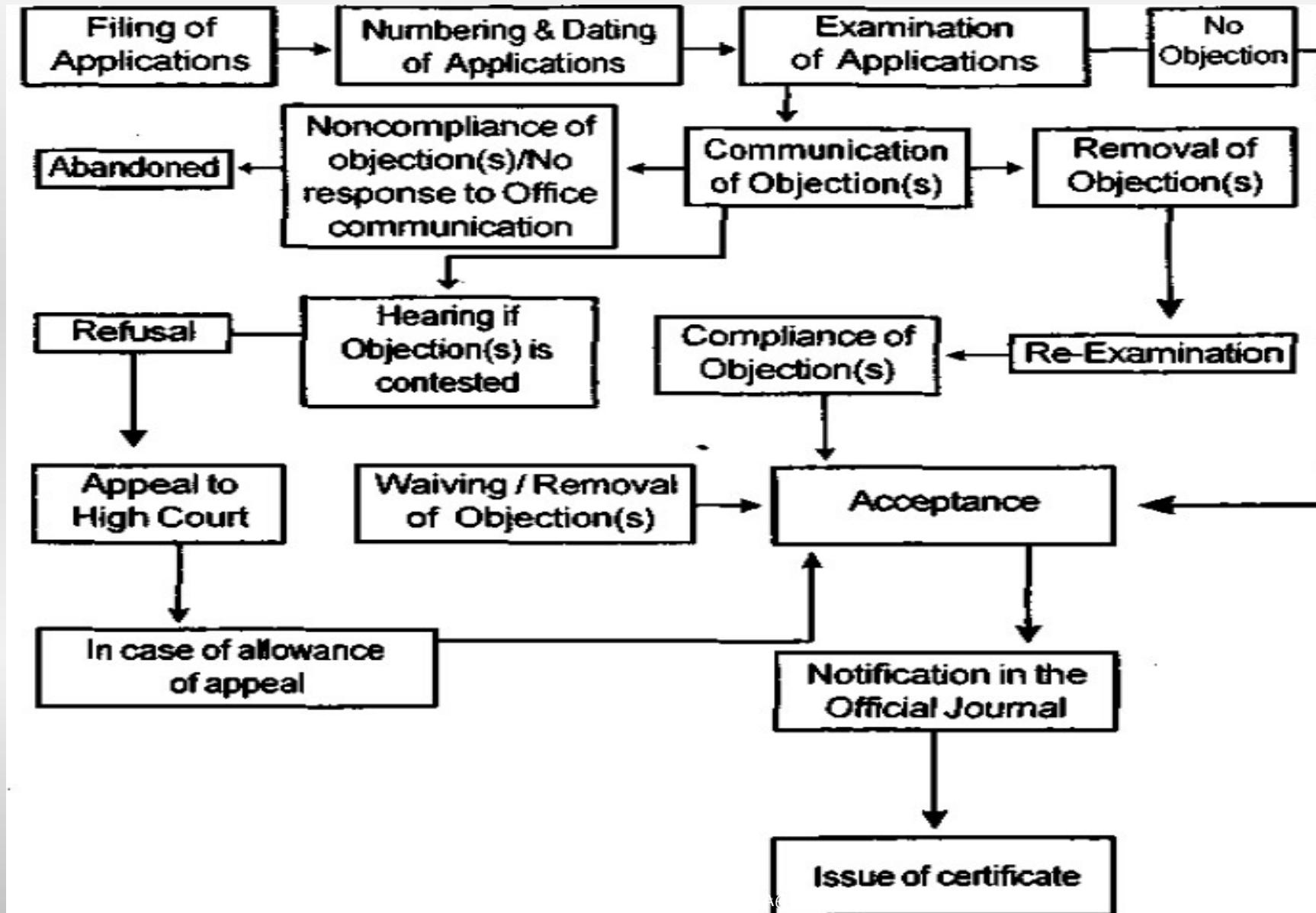
- (ii) Representation (in quadruplicate on durable paper of size 210mm x 296.9 mm with a suitable margin) of the article where drawings, photographs, tracings or other representations including computer graphics should clearly show the features of the design from different views.
- (iii) A statement of novelty and disclaimer (if any) in respect of mechanical action, trademark, work, letter, numerals should be endorsed on each representation sheet which should be duly signed and dated.
- (iv) Power of attorney (if necessary).
- (v) Priority documents (if any) in case of convention application claimed under Section 44 of the Designs Act, 2000

- The list of contracting countries under Paris Convention and WTO can be seen through the following urls :

http://www.wipo.int/treaties/en/ShowResults.jsp?treaty_id=2

https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm

Flowchart of design application upto acceptance



Geographical Indications

- A geographical indication (GI) is a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin.
- In order to function as a GI, a sign must identify a product as originating in a given place.
- In addition, the qualities, characteristics or reputation of the product should be essentially due to the place of origin.
- Since the qualities depend on the geographical place of production, there is a clear link between the product and its original place of production.
- Eg: Darjeeling tea, Pramesan Cheese



Geographical Indications from India		Geographical Indications from other parts of world	
Name of the product	Associated place	Name of the product	Associated place
Darjeling tea	West Bengal	Champagne	France
Mysore silk	Karnataka	Havan Cigar	Cuba
Kullu Shawl	Himachal Pradesh	Scotch Whisky	United Kingdom
Coorg Orange	Karnataka	Tequila	Mexico
Madhubani Paintings	Bihar	Swiss knife	Switzerland
Feni	Goa	Cognac	France
TirupathiLaddu	Andhra Pradesh	Napa Valley wine	USA
BikaneriBhujia	Rajasthan	Washington Apple	USA
Phulkari	Punjab, Haryana & Rajasthan	Gorgonzola cheese	Italy
Nashik Valley Wine	Maharashtra	Irish Cream	Ireland
Hyderabadi Haleem	Andhra Pradesh	Roquefort Cheese	France

- GIs have traditionally been considered to be IP.
- Article 1(2) of the Paris Convention for the Protection of Industrial Property of 1883 (Paris Convention) refers to “indications of source” and “appellations of origin” as objects of industrial property.
- Paragraph (3) of the same article specifies that the term “industrial property” is not limited to “industry and commerce” proper, but applies also to agricultural and extractive industries and to all manufactured or natural products, such as “wines, grain, tobacco leaf, fruit, cattle, minerals, mineral waters, beer, flowers and flour”.
- A number of international treaties deal partly or entirely with the protection of geographical indications or appellations of origin.
- There are many relevant treaties administered by WIPO, as well as to the World Trade Organization’s Agreement on Trade Related Aspects of Intellectual Property Rights

Eg: SWISS WATCHES

- The appellation “SWISS” (or, in its most common form, “Swiss Made”) affixed to a watch means that the watch was manufactured in Switzerland according to the tradition, knowhow and quality criteria of Swiss watchmaking, which enjoys a great reputation around the world.
- The Federal Council Ordinance of December 23, 1971 to regulate the use of the “SWISS” appellation for watches was partially revised on June 17, 2016 at the request of the industry, in order to strengthen the protection of the geographical indication.
- According to the Federation of the Swiss Watch Industry, the intention is to “guarantee satisfaction of the consumer who, when buying a Swiss made watch, expect it to correspond to the quality and the reputation of Swiss watchmaking tradition and therefore to be manufactured in Switzerland and to incorporate a high added value of Swiss origin.”

According to that Ordinance, the geographical indication “Switzerland” or “Swiss” can be used on a watch if:

- its technical development is carried out in Switzerland;
- its movement (the motor of the watch) is Swiss;
- its movement is cased up in Switzerland;
- the manufacturer carries out the final inspection in Switzerland; and
- at least 60% of the manufacturing cost are generated in Switzerland.

A movement is considered to be Swiss if:

- it has been assembled in Switzerland;
- the technical development is carried out in Switzerland;
- it has been inspected by the manufacturer in Switzerland;
- at least 60% of the manufacturing cost are generated in Switzerland; and
- the components of Swiss manufacture account for at least 50% of the total value, without taking into account the cost of assembly.

Difference between a geographical indication and a trademark?

- Geographical indications and trademarks are distinctive signs used to distinguish goods or services in the marketplace.
- Both convey information about the origin of a good or service, and enable consumers to associate a particular quality with a good or service.
- Trademarks inform consumers about the source of a good or service. They identify a good or service as originating from a particular company. Trademarks help consumers associate a good or service with a specific quality or reputation, based on information about the company responsible for producing or offering it.
- Geographical indications identify a good as originating from a particular place. Based on its place of origin, consumers may associate a good with a particular quality, characteristic

- A trademark often consists of a fanciful or arbitrary sign that may be used by its owner or another person authorized to do so. A trademark can be assigned or licensed to anyone, anywhere in the world, because it is linked to a specific company and not to a particular place.
- In contrast, the sign used to denote a GI usually corresponds to the name of the place of origin of the good, or to the name by which the good is known in that place.
- A GI may be used by all persons who, in the area of origin, produce the good according to specified standards. However, because of its link with the place of origin, a GI cannot be assigned or licensed to someone outside that place or not belonging to the group of authorized producers.

- *Appellations of origin* are a special kind of GI. The term is used in the Paris Convention and defined in the Lisbon Agreement.
- It consists of the name of the product's place of origin.
- However, it is interesting to note that a number of traditional indications that are not place names, but refer to a product in connection with a place, are protected as appellations of origin under the Lisbon Agreement (eg: Reblochon (cheese) and Vinho Verde (green wine)).
- Both appellations of origin and GIs both require a qualitative link between the product to which they refer and its place of origin.
- Both inform consumers about a product's geographical origin and a quality or characteristic of the product linked to its place of origin. The basic difference between the two terms is that the link with the place of origin must be stronger in the case of an appellation of origin.

Why GI should be protected in India?

- India is a rich storehouse of goods with reputation or quality which can be adduced to their geographical origin or place of manufacture, need to protect Indian Treasures
- The economic potential of these goods is enormous.
- To prevent GI goods becoming generic
- Need for a rule based system that is open, fair and provides for an enforcement mechanism

G.I. Registry

- The Geographical Indications Registry is located at Chennai.
- This Act is administered by the Registrar of Geographical Indications i.e Controller General Of Patents and Designs
- The registration and administration have been envisaged to be discharged by the Geographical Indications Registry under the Geographical Indications of Goods (Registration and Protection), Act, 1999

Why GI Registration?

- GI registration provides the registered proprietor and the authorized user the exclusive right to protect the registered GI on the specified goods
- Monopolization of the market enables the producers to control prices, i.e., can charge premium prices, thereby enhancing profits
- It has been revealed that 80 % consumers are prepared to pay 20 – 30 % higher prices for goods they believe are having better qualities over other goods

GI and Rural Economy

- GIs are mostly from villages or small towns
- Higher income for the producers from these regions have the potential to transform the rural economy for the better
- Assured market attracts investment

GIs and Industry

- Many registered and potential GIs of India are in the Micro and SME sector
- GI protection enables them to develop their market and increase returns

GIs and Tourism

- GIs are unique products coming from demarcated areas
- Cultivation or manufacturing process itself can attract tourists
- Handicrafts and handlooms with special characteristics are always attractive to tourists.
- Regions can provide attract tourists to taste the special GI foods or drinks or buy the unique products with

THE GEOGRAPHICAL INDICATIONS OF GOODS (REGISTRATION AND PROTECTION) ACT, 1999

- An Act to provide for the registration and better protection of geographical indications relating to goods.

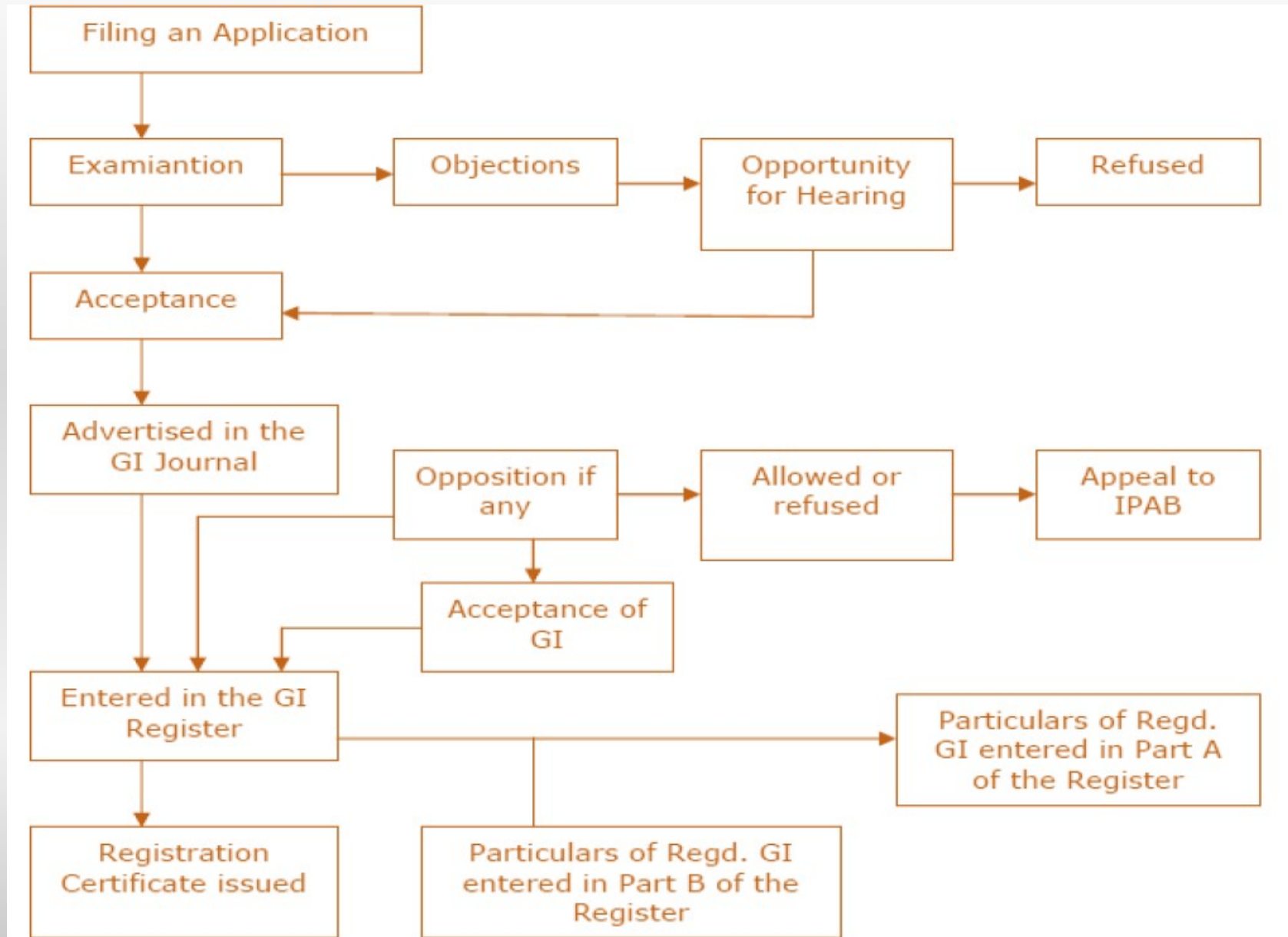
Goods which can be Registered

- Agricultural
 - Natural
 - Goods of Handicrafts
 - Industry
 - Manufactured goods
 - Food Stuffs
- Section (2) (1) (f) of G.I. Act 1999.

What is to be done to protect a GI?

- Identify all the potential GIs in the country
- Prepare detailed documentation on each of them
- Organize the producers
- Take measures for protecting the quality.
- Apply to Register the potential ones

- Registration process of GI in India



STEP 1 : Filing of application

- Please check whether the indication comes within the ambit of the definition of a GI under section 2(1)(e).
- The association of persons or producers or any organization or authority should represent the interest of producers of the concerned goods and should file an affidavit how the applicant claims to represent their interest.
- Application must be made in triplicate.
- The application shall be signed by the applicant or his agent and must be accompanied by a statement of case.
- Details of the special characteristics and how those standards are maintained.
- Three certified copies of the map of the region to which the GI relates.
- Details of the inspection structure if any to regulate the use of the GI in the territory to which it relates.
- Give details of all the applicant together with address. If there is a large number of producers a collective reference to all the

- Address of the office of Geographical Indications Registry:

Intellectual Property Office Building

Industrial Estate, G.S.T Road

Guindy, Chennai – 600 032

Phone: 044 – 22502091-93 & 98

Fax: 044 – 22502090

[E-mail: gir-ipo@nic.in](mailto:gir-ipo@nic.in)

Website:

ipindia.gov.in

- The applicant must have an address for service in India.

Generally, application can be filed by

(1) a legal practitioner

STEP 2 and 3: Preliminary scrutiny and examination

- The Examiner will scrutinize the application for any deficiencies.
- The applicant should within one month of the communication in this regard, remedy the same.
- The content of statement of case is assessed by a consultative group of experts versed on the subject.
- The will ascertain the correctness of particulars furnished.
- Thereafter an Examination Report would be issued.

STEP 4: Show cause notice

- If the Registrar has any objection to the application, he will communicate such objection.
- The applicant must respond within two months or apply for a hearing.
- The decision will be duly communicated. If the applicant wishes to appeal, he may within one month make a request.
- The Registrar is also empowered to withdraw an application if it

STEP 5: Publication in the geographical indications Journal

- Every application, within three months of acceptance shall be published in the Geographical Indications Journal.

STEP 6: Opposition to Registration

- Any person can file a notice of opposition within three months (extendable by another month on request which has to be filed before three months) opposing the GI application published in the Journal.
- The registrar shall serve a copy of the notice on the applicant.
- Within two months the applicant shall send a copy of the counter statement.
- If he does not do this he shall be deemed to have abandoned his application. Where the counter-statement has been filed, the registrar shall serve a copy on the person giving the notice of opposition.
- Thereafter, both sides will lead their respective evidences by way of affidavit and supporting documents.

STEP 7: Registration

- Where an application for a GI has been accepted, the registrar shall register the geographical indication. If registered the date of filing of the application shall be deemed to be the date of registration.
- The registrar shall issue to the applicant a certificate with the seal of the Geographical indications registry.

STEP 8: Renewal

- A registered GI shall be valid for 10 years and can be renewed on payment of renewal fee.

STEP 9: Additional protection to notified goods

- Additional protection for notified goods is provided in the Act.

STEP 10: Appeal

- Any person aggrieved by an order or decision may prefer an appeal to the intellectual property appellate board (IPAB) within three months. The address of the IPAB is as follows:
- Intellectual Property Appellate Board
Annexe 1, 2nd Floor, Guna
Complex, 443, Anna Salai, Chennai
– 600 018
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What Indications are not registrable ?

- For registrability, the indications must fall within the scope of section 2(1)e of GI Act, 1999. Being so, it has to also satisfy the provisions of section 9, which prohibits registration of a Geographical Indication
- the use of which would be likely to deceive or cause confusion; or
- the use of which would be contrary to any law for the time being in force; or
- which comprises or contains scandalous or obscene matter; or
- which comprises or contains any matter likely to hurt the time being in force; religious susceptibilities of any class or section of the citizens of India; or
- which would otherwise be dismantled to protection in a court; or
- which are determined to be generic names or indications of goods and are, therefore, not or ceased to be protected in their country of origin or which have fallen into disuse in that country; or
- which although literally true as to the territory region or locality in which the goods originate, but falsely represent to the persons that the

How long does geographical indication protection last?

- In many sui generis legislations, registrations for geographical indications are not subject to a specific period of validity.
- This means that the protection for a registered geographical indication will remain valid unless the registration is cancelled.
- Geographical indications registered as collective and certification marks are generally protected for renewable ten-year periods.

Punishment for falsifying GI

- A sentence of imprisonment for a term between 6months - 3years and a fine amount 50,000 -3lakh rupees.

https://www.wipo.int/geo_indications/en/faq_geographicalin

Trade Secret

- Trade secrets are intellectual property (IP) rights on confidential information which may be sold or licensed.
- In general, to qualify as a trade secret, the information must be:
 - ✓ commercially valuable because it is secret,
 - ✓ be known only to a limited group of persons, and
 - ✓ be subject to reasonable steps taken by the rightful holder of the information to keep it secret, including the use of confidentiality agreements for business partners and employees.
- The unauthorized acquisition, use or disclosure of such secret information in a manner contrary to honest commercial practices by others is regarded as an unfair practice and a violation of the trade secret protection

- The Black's Law Dictionary defines trade secrets as "A formula, process, device, or other business information that is kept confidential to maintain an advantage over competitors; information — including a formula, pattern, compilation, program, device, method, technique, or process".
- Thus, any confidential business information which provides an enterprise a competitive edge may be considered a trade secret.
- certain "inventions" which are valuable can still be protected as trade secrets.
- It may be argued that strictly speaking, a trade secret is not an intellectual property right (IPR).
- However, in practice it has the same legal and commercial relevance as other IPRs and so it is dealt with in the same manner as other IPRs.

- Article 39 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) provides for the protection of trade secrets.
 - The TRIPS is an international legal agreement binding on all member nations of the World Trade Organisation (WTO).
 - It sets out the minimum standards for the regulation by national governments of IPRs.
- The factors that qualify confidential information as trade secrets are highlighted by TRIPS are as follows:
 - ✓ It is a secret not generally known to the public;
 - ✓ Due to the fact that the information is not publicly disclosed, it must have commercial value:
 - ✓ It is the subject of reasonable efforts by the holder to maintain its secrecy.

- Trade secrets can be broadly classified into two:

1. trade secrets that protect inventions or manufacturing processes that do not meet the patentability criteria and therefore can only be protected as trade secrets.

- Eg: a manufacturing process or customers list that cannot be protected as a patent but is considered valuable

2. trade secrets for inventions that fulfil the patentability criteria and could therefore be protected by patents.

- A unique trait of trade secrets is that they are protected without registration or any procedural formalities.
- Thus, unlike patents and trademarks that are registered for a period of time, a trade secret can be protected for an indefinite period, provided it is not disclosed to the public.

Popular trade secrets

Eg: Kentucky Fried Chicken, Coca-Cola, The Google Search Algorithm

- secret recipe of 11 herbs and spices. The founder, Colonel Sanders, memorized the recipe and never disclosed it to anyone when he first started out.
- Formulation of coke
- Page ranking algorithm

Protection of trade secrets

- Due to the fact that trade secrets cannot be subject to public disclosure, owners of trade secrets protect them with legal and technological procedures.
- If the owner of a trade secret intends to disclose a trade secret to a third party, it is advisable that he executes a confidentiality agreement or a non-disclosure agreement (NDA) with the third parties as this may be the only way he may be able to protect his trade secret and prevent the third parties from using his invention or idea.
- An NDA is an agreement that creates a confidential relationship between the parties whereby they agree to protect confidential and proprietary information or a trade secret.
- An NDA can protect any type of information that is not generally known.
- However, NDAs can also contain clauses that will protect the person receiving the information so that if they lawfully obtained the information through other sources they would not be

Some common issues covered under an NDA include:

- outlining the parties to the agreement;
- the definition of what is confidential, i.e. the information to be held confidential.
- the disclosure period – information not disclosed during the disclosure period (e.g., one year after the date of the NDA) is not deemed confidential;
- the exclusions from what must be kept confidential.
- the term and conditions (in years) of the confidentiality, i.e. the time period of confidentiality;
- the term (in years) the agreement is binding;
- permission to obtain ex-parte injunctive relief;
- description of the actions needed to be done with the confidential materials upon agreement ending;
- the obligations of the recipient regarding the confidential information:
- types of permissible disclosure
- the law and jurisdiction governing the parties.

- Some additional ways owners of trade secrets can protect them include the following:
- Executing non-compete agreements with the employees. This agreement will place an obligation on the employees and prevent them from using trade secret even after they have stopped working for the employer.
- Keeping the trade secret in a safe location and granting access to a few individuals.
- Ensuring that the employees are loyal and will not sell the trade secret to competitors.

Differences that exist among trade secrets, trademarks and patents:

- Trade secret has the advantage of not being limited in time. Patents last for 20 years and trademarks last for 7 years although they are subject to renewal. A trade secret may therefore last indefinitely as long as it is not revealed to the public.
- Trade secrets do not need to be registered and they take immediate effect. Generally, trademarks and patents must be registered before they can enjoy protection.
- Trademarks and patents are territorial rights and so must be registered in each country where they will be used. A trade secret is not limited by territories and guarantees protection anywhere it is used.
- A trade secret is more difficult to enforce than a patent or trademark.
- The moment a trade secret is made public, anyone may have access to it and use it at will. Patents and trademarks do not face the same disadvantage as they ought to be disclosed to the public.
- A trade secret may be registered as a patent by someone else who has access to similar information.
- Trademarks protects the mark that is used to identify a product. Patents protect the invention. Trade secrets protect the confidential