

# Origin

- Contract – promises; confidence – secrets
- Moral precept: Legal liability
  - Contractual
  - Tort
  - Criminal
- No distinction on type of information
  - Technological secrets, mechanical techniques
  - Consumer records, marketing procedures

# Origin

- No distinction on type of information
  - Political information, personal relationships
- Alternative for protection of privacy
  - Not recognized as a tort
- Breach of confidence

# Confidence and other IPRs

- Patents: Operates before the patent is filed
  - Non-disclosure Agreements
- Sufficiently describe the invention-alternative
- Patent law excludes “secret use” for determining challenges to novelty and inventive step

# Confidence and other IPRs

- Call for new law: unclear, nature of liability
  - Bind non-contractual relationships
  - Law of unjust enrichment (Contract)
- TRIPS, Art. 39
  - “secret... generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question”

# Confidence and other IPRs

- Paris Convention, Art 10bis, “Unfair competition”
  - Abuses of trade secrets between competitors
- “know-how” agreements in addition to patents
- Poaching employers – take “know-how”

# Confidence and other IPRs

- Copyright – restricted by who can enforce, acts pertaining to infringement
  - Use of information not protected
- Confidence not restricted to particular ways of using the material
  - Protect info. in substance, not in form
  - Relationship is critical
  - Privity of contract

# Confidence and other IPRs

- Copyright: Medium (memorised info)
- Rules of a secret society
  - Direct and indirect recipients
- Breach of trust – injunction
- Contract, tort or property?
  - Restitution (good faith)
  - New tort of breach of confidence
  - Equitable property

## Requirements of liability

- **Subject matter** capable of protection
  - Types of information and role of public
- **Confidential Obligation**
  - relationship
- **Unauthorized use** causing detriment
  - Wrongful acts

# Subject Matter

- Types of information
  - Technical, Commercial, personal, artistic
  - Trivial, scandalous matter (not protected)
- Requirements of copyright not needed
  - Expression of idea (yet to be elaborated idea)
- Requirements of patents not needed
  - Novel, inventiveness, exceptions to patentability

# Subject Matter

- Requirements of patents not needed
  - Mathematical formula
- Publicly available – not protected
- Public interest – no confidence for inequity
- Government secrets – burden of proof on Govt.

# Confidential Obligation

- Obligation of the recipient (employment)
  - Patent Infringement (reverse engineering)
  - Unsolicited letter marked “Confidential”
  - Subscribers passing info to non-subscribers
  - “Know-how” licence restrict info imparted to others
- Fiduciary Duties
  - Principal-agent; director-company; partner-firm

# Confidential Obligation

- Employer & Employee
  - In service (duty of fidelity: wider, competitor)
  - Ex Employee (favour of employee)
    - Protect: trade secrets and goodwill
    - Cannot be in restraint of trade (against public policy)
    - Psychological effect
  - Trade secrets: beyond employment
    - Nature of employment; nature of info; degree of secrecy; distinction from unprotectable info; in public domain; likely damage from use or disclosure

# Confidential Obligation

- Chemical formula; technical process; prices etc – trade secrets
- Trade secrets through express contracts
- Waymo (Google) v. Uber
  - “top Google engineer, Anthony Levandowski, downloaded thousands of secret Waymo documents and then joined Uber which used those secret designs in its own driverless cars”
  - The agreement reached that Uber cannot incorporate Waymo’s confidential information into its hardware and software. Uber agreed to pay a financial settlement of about \$245 million.

# Confidential Obligation

- Govt. Departments
  - National security (secrecy directions on patents)
  - Right to Information (RTI)
- Indirect recipient
  - Can confidential info be treated as property?
- No relationship
  - Eavesdropping, phone tapping, snooping, spy cams
  - Criminal, tort

# Unauthorized Use

- Wrongful acts
    - Unlike patent and copyright infringement, loosely defined
    - May cover any disclosure or use
  - Defendant's intention
    - State of mind
  - Detriment caused to plaintiff
    - unclear
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## Remedies

- Injunction
    - Reasonable prospect of success
    - Interim
      - No injunction in defamation cases where the defendant has a defence (truth/fair comment)
    - Permanent
    - Discretionary relief
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# Remedies

- Damages
    - Granted for breach of confidence
    - Cost of getting the work from a competent consultant: measure of damages
    - Information inventive: price paid by willing buyer
    - To restore ex ante position of plaintiff
    - Injury to feeling: defamation and copyright infringement
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# Meaning

- 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.
  - Examples: Roquefort Cheese, Darjeeling Tea, Banaras saree, etc.
- Not limited to Agro products, extends to others—wine, spirits, handicrafts, etc.

# Characteristics

- A sign must identify a product as originating in a given place
- The qualities, characteristics or reputation of the product should be essentially due to the place of origin
- Clear link between the product and its original place of production

# Why GI?

- Protection of knowledge and community rights
- Fair competition
- Market recognition, premium price
- Key source of niche marketing
- Rural development

# GI in India

- Geographical Indications of Goods (Registration and Protection) Act, 1999
- Registration
  - 10 years, can be renewed from time to time
  - GI Registry, Chennai

## Registered GI

- Darjeeling Tea (Agricultural, WB)
- Aranmula Kannadi (Handicraft, Kerala)
- Mysore Agarbathi (Manufactured, Karnataka)
- Coimbatore Wet Grinder (Manufactured, TN)
- Muga silk of Assam (Handicraft, Assam)
- Orissa Pattachitra (Textile, Odisha)
- Nirmal Toys and Crafts
- Banglar Rasogolla (Foodstuff, WB)

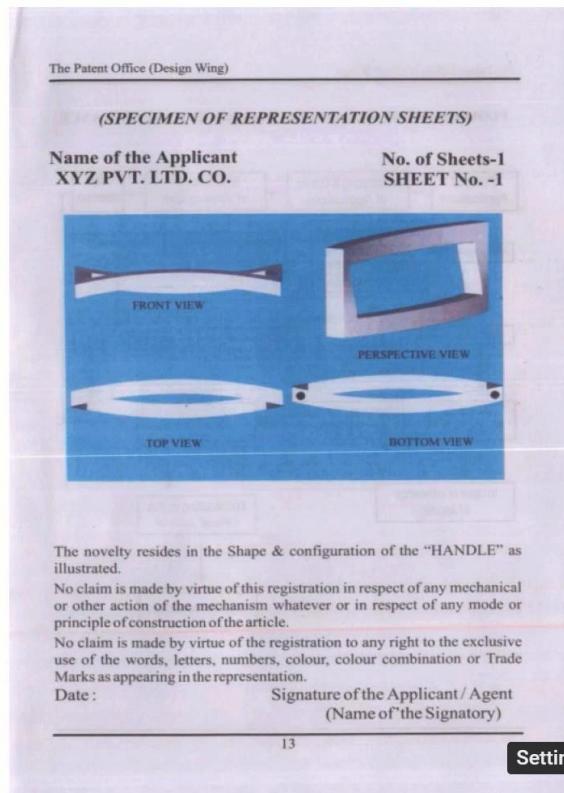
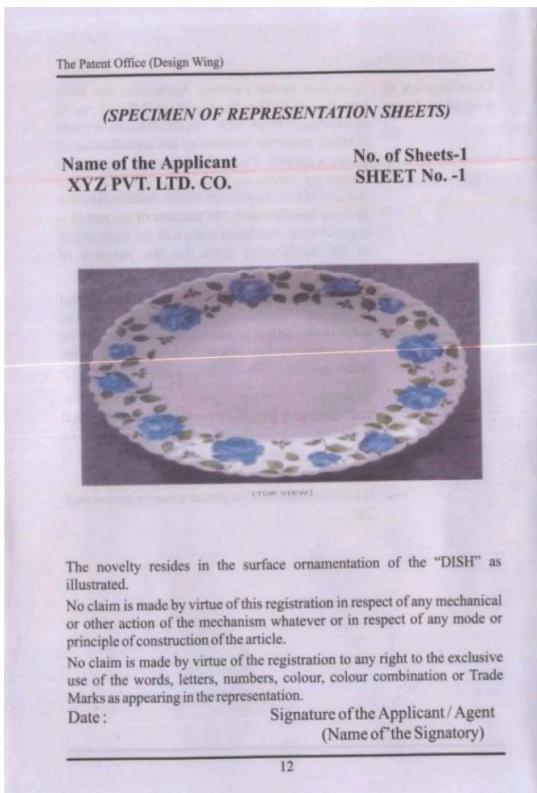
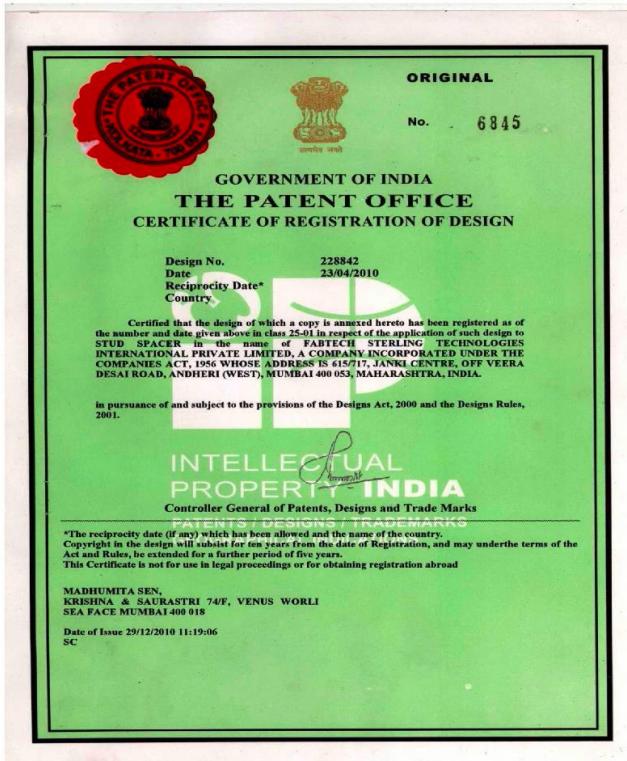
# What is a Design?

- Only the features of shape, configuration, pattern or ornamentation or composition of lines or colours
- Applied to a finished article which is capable of being made and sold separately by an industrial process
- Visual Appeal and judged solely by eye
- Non – Functional

# Who grants it & where to file?

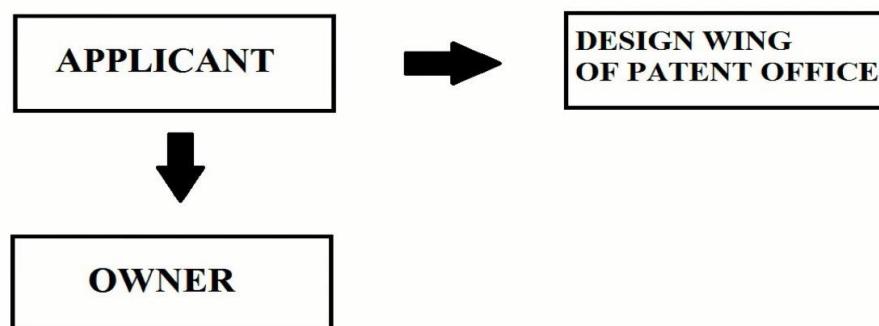
- Design wing in the patent offices
- Kolkata (HQ)
- Branches: Chennai, Mumbai and New Delhi

# How does it look?



# Who owns it & Who creates it?

- Any person or the legal representative or the assignee



# What is required to file a design?

- New or Original
- Not to be disclosed to public
- Distinguishable
- Be applied to an article &
- Visual appeal

# What are the exceptions?

- Contrary to public order or morality
- Articles not capable of being made and sold separately Ex: Greeting cards and postcards etc.
- Copyright works, layout designs of integrated circuits and cartoons
- flags, emblems, national symbols.

# How long does a design last?

VISUAL APPEAL

10 YEARS

RENEWAL

+

5 YEARS

# What does a registered design mean to world?

- Exclusive right
- Copyright in Design
- Can sell, offer for sale, assign and license

# Where to look for registered Designs?

- Design Search  
<http://164.100.176.37/designsearch/>

## **International Classification:** Locarno Agreement

- Class 1 – 31 & Class 99
- Ex: Class 2 – Articles of Clothing  
Class 28 – Pharmaceutical, cosmetic etc.

# How is a design enforced?

- Infringement Suit – District Court/ High Court
- Remedies: Injunction and Recovery of Damages [25,000 – 50,000]

# Can a Design be challenged? How?

- After Registration
- Cancellation of Registration
- Grounds: Failure to satisfy requirements under Act.