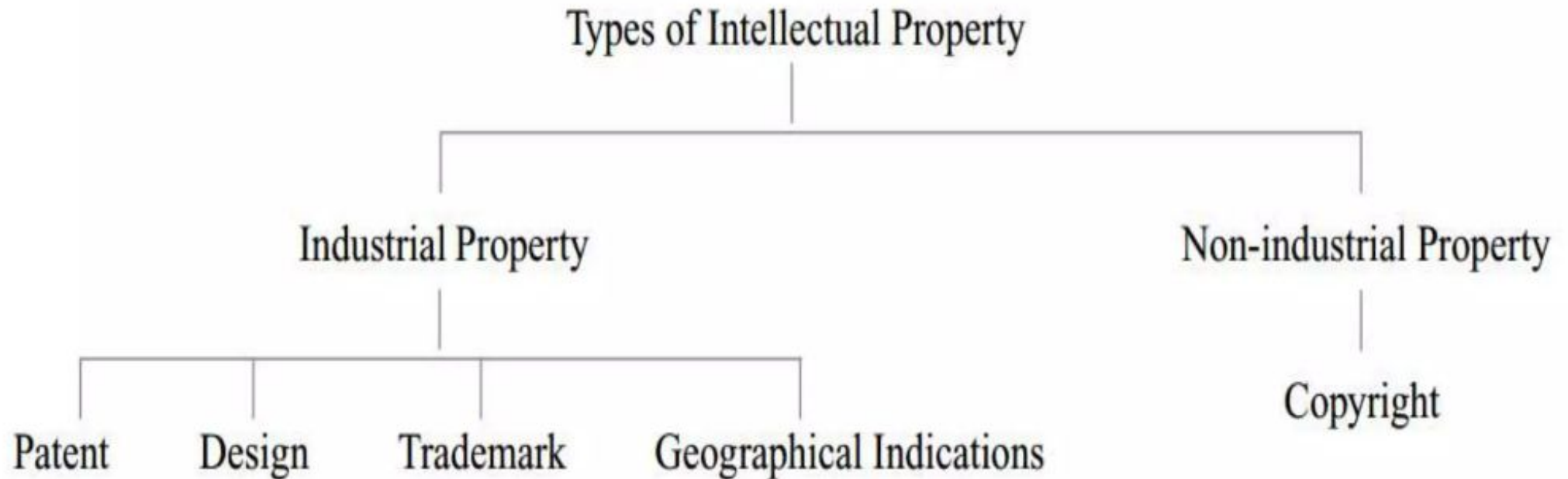


Intellectual Property Rights

Intellectual Property Rights (IPR)

- **Intellectual property:** According to the World Intellectual Property Organization (WIPO), Intellectual property refers to creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce. The term intellectual property is used for the intangible asset that doesn't exist in a physical object but has a economic values.
- **Intellectual property rights (IPR)** refers to the legal ownership of intellectual property by a person or business of an invention, discovery related to the particular product or processes for the protection of the owner against unauthorized copying or imitations. However, IPR is limited in terms of duration, scope and geographical extent.
- The importance of intellectual property was first recognized in the **Paris Convention for the Protection of Industrial Property (1883)** and the **Berne Convention for the Protection of Literary and Artistic Works (1886)**. Both treaties are administered by the **World Intellectual Property Organization (WIPO)**.

Types of Intellectual Properties



- **Patent:** A Patent is the exclusive right granted by a government authority to an inventor to manufacture, use, or sell an invention and prohibit others from making, using, or selling an invention for a limited period of time.
- **Designs:** It is the art or practice of designing object for manufacturing consisting aesthetic aspects and three-dimensional features like shape, surface, patterns, lines, colors or two-dimensional features of objects.
- **Trademarks:** It is a symbol, word, or words registered legally or established by use as to represent a company or product.
- **Geographical indications:** It is a name or sign used on products which corresponds to a specific geographical location or origin having specific qualities, reputation or characteristics (WIPO).
- **Copyright:** It is a legal rights provided to creators to perform, print, publish, record literary, artistic, or musical materials for its uses and distributions (Wikipedia).



What is the need of IPR?

The progress and well-being of humanity rest on its capacity to create and invent new works in the areas of technology and culture.

- **Encourages innovation:** The legal protection of new creations encourages the commitment of additional resources for further innovation.
- **Economic growth:** The promotion and protection of intellectual property spurs economic growth, creates new jobs and industries, and enhances the quality and enjoyment of life.
- **Safeguard the rights of creators:** IPR is required to safeguard creators and other producers of their intellectual commodity, goods and services by granting them certain time-limited rights to control the use made of the manufactured goods.
- It promotes innovation and creativity and **ensures ease of doing business.**
- It **facilitates the transfer of technology** in the form of foreign direct investment, joint ventures and licensing.

India and IPR

- India is a member of the **World Trade Organization** and committed to the Agreement on **Trade Related Aspects of Intellectual Property (TRIPs Agreement)**.
- India is also a member of **World Intellectual Property Organization (WIPO)**, a body responsible for the promotion of the protection of intellectual property rights throughout the world.
- In India, currently, the **Patents Act 1970** and the corresponding rules govern the grant of patents. Indian Parliament has made several comprehensive amendments to the Patents Act 1970 in 1999, 2002, 2005 and 2018.
- **CGPDT: Controller General of Patents, Designs & Trade Marks (CGPDT)**, (under the Dept. of Industrial Policy and Promotion of Ministry of Commerce and Industry)

Patents

What is a patent ?

- A patent is a grant from the government which confers on the guarantee for a limited period of time the exclusive privilege of making, selling and using the invention for which a patent has been granted

Purpose of getting a patent.....

- To enjoy the exclusive rights over the invention.
- The patent is to ensure commercial returns to the inventor for the time and money spend in generating a new product.

History of Patents Acts in India

Year	Event
1856	Act for protection of inventions on the basis of British law of 1852
1859	Patent monopolies called exclusive privileges
1872	Patents and Designs Act
1883	Protection for Inventions Act 1888
1888	Inventions and Designs Act
1911-1947	Modern patent era by Patents and Designs Act. First time an authority call Controller General of Patents appointed
1959	Justice Ayyangar's report
1967	Patent Act Bill introduced in the Parliament
1970	The Patent Act passed by the Parliament
1972	The Patents Act -1970 came into force on April 20, 1972
1994	Amendments by ordinance to include Exclusive Marketing Rights (EMR's)
1999	Amendments passed by the parliament. New patent amendment bill referred to select committee
2003	Patent Act 1970 with second amendments came into force
2005	Patent Act 1970 (2005 Amendments) comes in to force from 1-1-2005.

Indian Patent Act 1970

The Indian Patent Act 1970 grants the following rights to the patentee:

- ☐ Right to exploit the patent
- ☐ Right to license and assign the patent
- ☐ Right to surrender the patent
- ☐ Right to sue for the infringement of patent.

Prerequisites for a patent

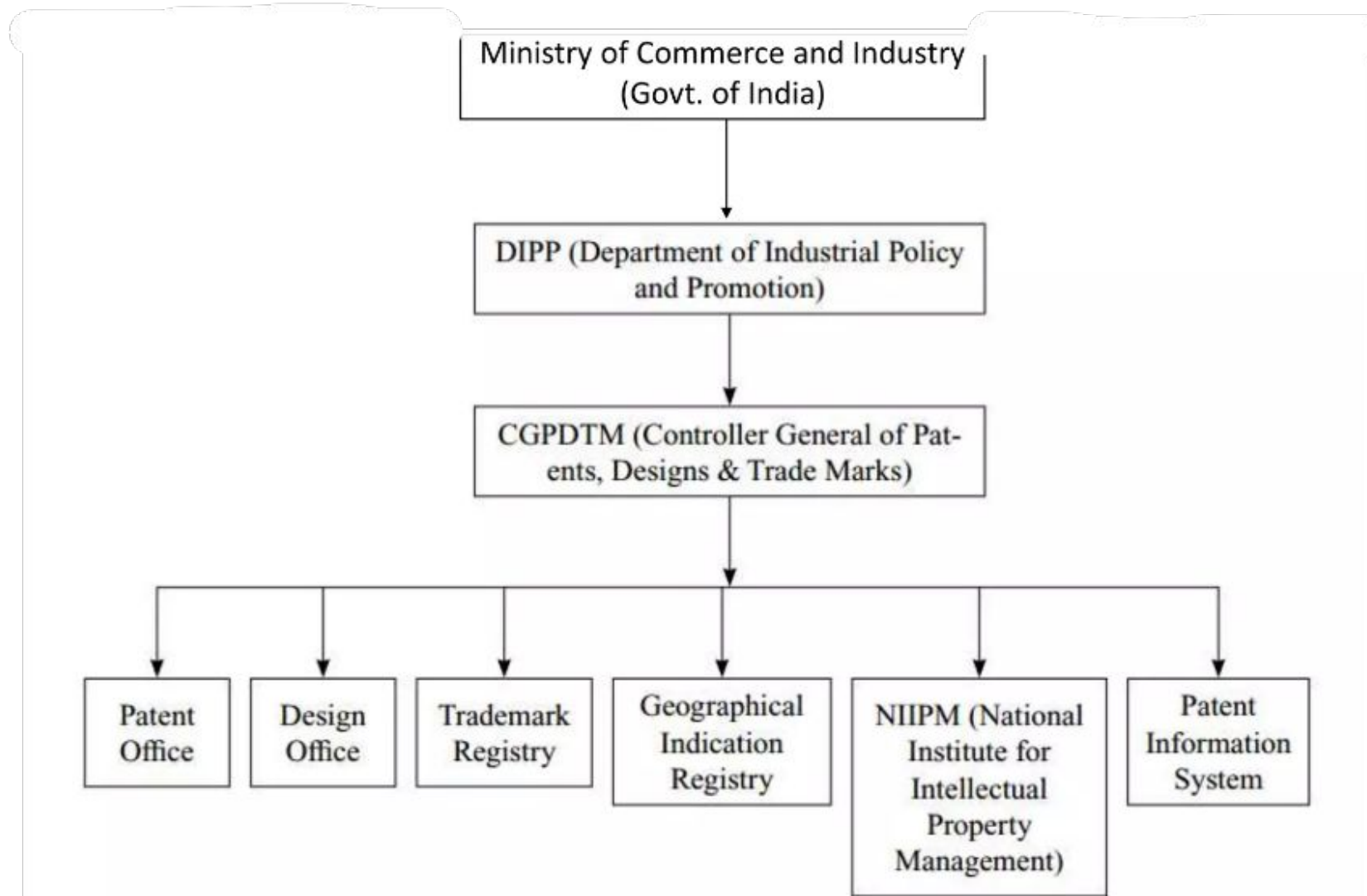
- For patentability, there are only three prerequisites according to the Section 2 (1) of the [Indian Patent Act 1970](#), which are as follows:
 1. An invention must be *novel*.
 2. An invention should have an *inventive step*.
 3. An invention should be capable of *industrial application*.
- According to the [US patent law](#), Section 101 of the US Patent Act, inventions are patentable when they fulfil the criteria of
 - ☐ novelty,
 - ☐ usefulness and
 - ☐ non-obviousness

Indian Patent Act Vs United States Patent Act

S.No.	Indian Patent Act	United States Patent Act
1.	Indian patent laws are strict.	US patent laws are liberal.
2.	The Indian Patent Act quite elaborately describes the non-patentable inventions under Sections 3 and 4.	US patent laws allows the grant of patent to anyone who invents or discovers any new and useful improvement in the existing invention.
3.	Inventions related to atomic energy are not patentable in India.	Inventions related to atomic energy are widely accepted in US.
4.	Inventions that are contrary to the public order or morality are not granted patent (e.g. patent or novel design of guns etc.)	Inventions that are patentable and novel in design are allowed (e.g. patent or novel design of guns etc.)
5.	Indian patent laws grant patent on 'first-to-file' basis.	US patent laws grant patent on 'first-to-invent' basis.
6.	Plants are not patentable in India	Plants are patentable in the United States
7.	Software is not patentable in India; they are copyrightable.	Software is patentable in the United States.
8.	Patent agent should be Indian.	Patent agent from other countries can also practice in United States.

Types of Patents awarded in India

S.No.	Types of Patent	Examples
1.	Product Patent a) Substance b) Composition of matter c) Devices	<ul style="list-style-type: none">• Chemical compound, Chemical compounds, enzymes, cell lines, plasmids, recombinant DNA, vector-host, microorganisms.• Mixture of substances; pharmaceutical composition, food stuffs, composition of fertilizers, lubricant composition• Mouse trap, ball-point pen, x-ray tube, fermenter, coffee machine
2.	Process Patent a) Manufacturing process b) Method of execution c) Usefulness	<ul style="list-style-type: none">• Method of preparing a substance; preparation of a hybrid plasmid, gene cloning techniques, semi-synthetic penicillin or new azo dyes, downstream process of extraction of plant or animal product• Analytical or diagnostic methods of examination; freeze-drying• Use of a substance or composition for a particular purpose; utilization of herbicides for combating weeds.
3.	Design Patent	<ul style="list-style-type: none">• Design and shape of articles like machine, bottles, vehicles etc.



Patent Procedure in India

Each application for a patent which is filed with the **Indian patent office** needs to be accompanied by the forms provided below:

Form 1 – Application for grant of a patent

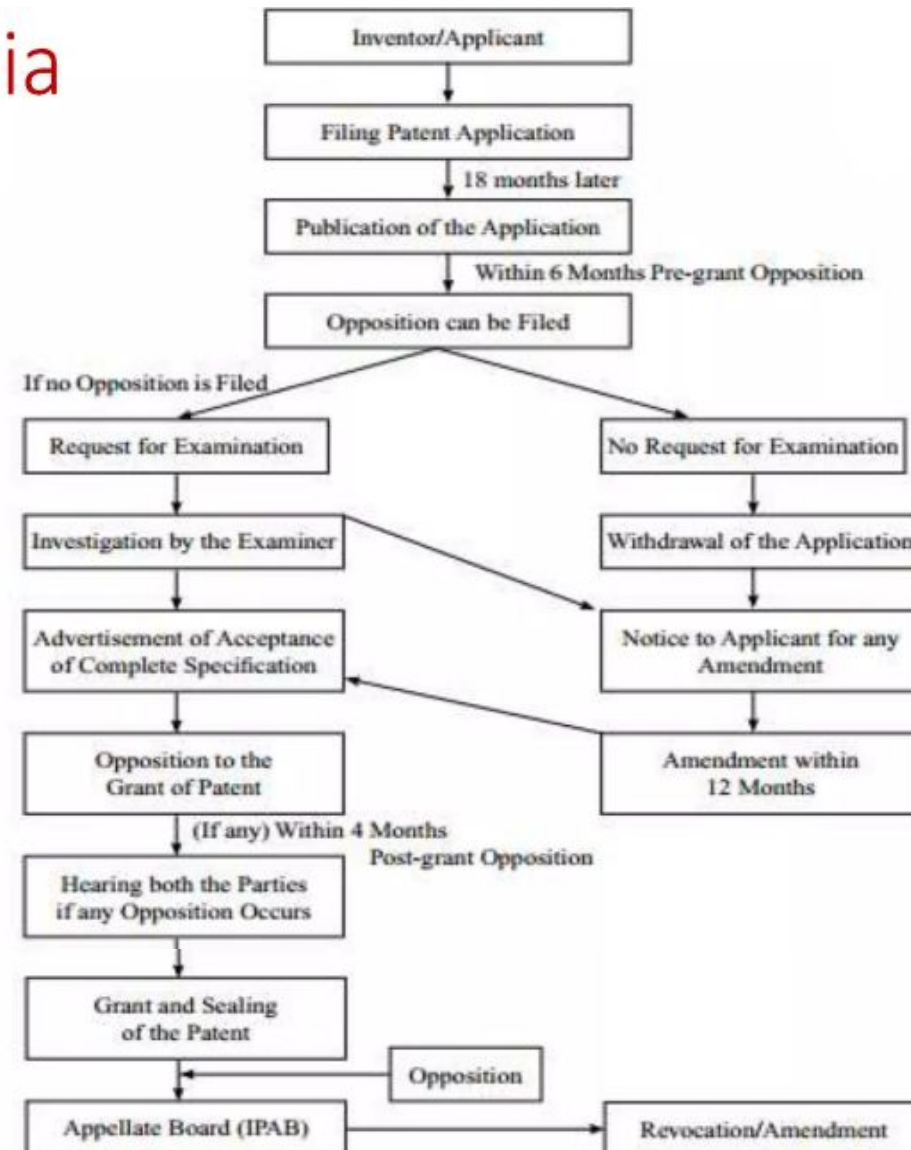
Form 2 – Provisional/Complete specification)

Form 3 – Statement and undertaking regarding foreign application under section 8 (only required if a corresponding patent application is filed in another country)

Form 5 – Declaration as to inventorship (only to be filed along with the complete application)

Form 26 – Form for authorization of a patent agent (only required if you are using a patent agent to help you file the application)

Form 28 – To be submitted by startup or small entity (only required if you are claiming startup or small entity status)



Special Patents

1. **Textile invention:** The inventions in textile technology can be related to areas like textile manufacturing, chemical processing, fiber science and technology, textile machines and dyes.
2. **Electrical Invention:** Semiconductor products are not patentable but the process of making the semiconductor product is patentable under the provisions of the Indian Patent Act 1970. The term of such patent is 14 years.
3. **Software Patent:** The Indian Patent Act 1970 does not recognize software programs. Computer software is generally protected under the copyright law but software as essential part of the hardware, when connected to hardware can be protected by patents, for example, UV spectrophotometer, automatic fermenters, etc.
4. **Patents in Food Industry:** Foods that are produced by combining traditional ingredients and using standard cooking or preparation techniques are unlikely to meet the patent requirements. Some new food products are innovative chemical compounds, such as artificial sweeteners and fat substitutes.
5. **Pharmaceutical Patents:** The Act of 1970 excluded pharmaceuticals and agrochemical products from the grants of patents. TRIPs agreement has placed an obligation on India to grant product patents to drugs by 2005. On the grant of patent protection, the firms that have patented their drugs may either export their drugs to India or may produce them in India through license to firms.
6. **Patent for microorganisms:** These include traditional or conventional fermentation methods like preparation of curd, idli, dosa or vada pastes, cheese etc. Bio-transformation processes for production of non-living matter like fermentation process of product such as beer, wine, vinegar. Living entity of artificial origin, such as micro-organism, vaccines, transgenic animals and plants etc. Biological materials such as DNA, plasmids, genes, vector, tissues, cells, replicons etc. Process relating to living entities, such as isolation, purification, multiplication, etc. Process relating to biological material.
7. **Plant Patent:** Plants are not patentable in India.

