

- Finding relevant patents for acquisition or licensing;
- Finding activities of competitors in the patent space.

2.4.15 Patent Renewal

A patent is valid for 20 years from the date of filing of the application. A patent must be renewed every year to keep it alive. This is a mandatory requirement and if the patentee does not comply with this requirement, the patent ceases to exist and the same passes on to the public domain. In India, the patentee can file renewal of patent by paying the prescribed fee consequent upon which the patent gets renewed for one year. When a patent has ceased to have effect due to non-payment of renewal fees within the prescribed time, the patent may be restored by filing an application for restoration, in Form-15, within eighteen months from the date on which the patent ceased to have effect.

2.5 Geographical Indications

2.5.1 Registration of Geographical Indications

In December 1999, the Parliament had passed the Geographical Indications of Goods (Registration and Protection) Act, 1999. This Act seeks to provide for the registration and better protection of geographical indications relating to goods in India. The Act would be administered by the Controller General of Patents, Designs and Trade Marks- who is the Registrar of Geographical Indications. The Geographical Indications Registry would be located at Chennai. The Act has come into force with effect from 15th September 2003.

Registration is not compulsory. Registration affords better legal protection to facilitate an action for infringement. The registered proprietor and authorised users can initiate infringement actions.

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The authorised users can exercise the exclusive right to use the geographical indication. The registration of a geographical indication is valid for a period of 10 years. It can be renewed from time to time for further period of 10 years each. If a registered geographical indication is not renewed it is liable to be removed from the register. The Appellate Board or the Registrar of Geographical Indications has the power to remove the geographical indication or an authorised user from the register. Further, on application by an aggrieved person action can be taken.

An authorised user has the exclusive rights to the use of geographical indication in relation to goods in respect of which it is registered. The registered proprietor or authorised users of a registered geographical indication can initiate an infringement action. When an unauthorised user uses a geographical indication that indicates or suggests that such goods originate in a geographical area other than the true place of origin of such goods in a manner which mislead the public as to the geographical origin of such goods. When the use of geographical indication result in an unfair competition including passing off in respect of registered geographical indication. When the use of another geographical indication results in false representation to the public that goods originate in a territory in respect of which a registered geographical indication relates.

A geographical indication is a public property belonging to the producers of the concerned goods. It shall not be the subject matter of assignment, transmission, licensing, pledge, mortgage or such other agreement. However, when an authorised user dies, his right devolves on his successor in title.

2.5.2 Benefits of Registration of Geographical Indications

- It confers legal protection to Geographical Indications in India.
- Prevents unauthorised use of a Registered Geographical Indication by others.
- It provides legal protection to Indian Geographical Indications which in turn boost exports.
- It promotes economic prosperity of producers of goods produced in a geographical territory.

2.5.3 Indications which 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

- 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 goods originate in another territory, region or locality as the case may be.

Explanation 1 to section 9 says that for the purposes of this section, "Generic names of indications" in relation to goods which although relates to the place of the region where the goods was originally produced or manufactured, has lost its original meaning and has become the common name of such goods and serves as a designation for an indication of the kind, nature, type of other property or characteristic of the goods.

Explanation 2 further says a that "In determining whether the name has become generic, account shall be taken of all factors including the existing situation in the region or place in which the name originates and the area of consumption of the goods."

2.5.4 Applicants for the Registration of a Geographical Indication

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

2.5.5 Registered Proprietors of GI

- Any association of persons, producers, organisation or authority established by or under the law can be a registered proprietor.
- Their name should be entered in the Register of Geographical Indication as registered proprietor for the Geographical Indication applied for.

2.5.6 An Authorised Users of GI

- A producer of goods can apply for registration as an authorised user.
- It must be in respect of a registered geographical indication.
- He should apply in writing in the prescribed form alongwith prescribed fee.

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2.5.7 Producer in Relation to a Geographical Indication

- The persons dealing with three categories of goods are covered under the term Producer:
- Agricultural goods includes the production, processing, trading or dealing
- Natural goods includes exploiting, trading or dealing
- Handicrafts or Industrial goods includes making, manufacturing, trading or dealing.

2.5.8 The Registration Process

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 producers of the goods may be made in the application and the G.I., If registered will be indicated accordingly in the register.

Please sent your application to the following address in India

Geographical Indications Registry
Intellectual Property Office Building
Industrial Estate, G.S.T Road
Guindy, Chennai - 600 032

The applicant must have an address for service in India. Generally, application can be filed by
(1) A legal practitioner (2) A registered agent.

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 will 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 is accepted in error, after giving an opportunity of being heard.

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.
- A date for hearing of the case will be fixed thereafter.

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, 2 nd Floor, Guna Complex,
443, Anna Salai, Chennai - 600 018

Affidavits

The Affidavits required by the Act and the rules to be filed at the Geographical indications Registry or furnished to the Registrar, unless otherwise provided in the matter or matters to which they relate, paragraphs consecutively numbered, and each paragraph shall as far as practicable be

Affidavits

The Affidavits required by the Act and the rules to be filed at the Geographical indications Registry or furnished to the Registrar, unless otherwise provided in the matter or matters to which they relate, paragraphs consecutively numbered, and each paragraph shall as far as practicable be confined to one subject. Every affidavit shall state the description and the true place of abode of the person filing it and shall state on whose behalf it is filed.

Affidavits shall be taken

- In India-before any court or person having by law authority to receive evidence, or before any officer empowered by such court as aforesaid to administer oaths or to take affidavit,
- In any country or place outside India before a diplomatic or consular Officers (Oaths and Fee) Act, 1948, or such country or place, or before a notary public or before a judge or magistrate of the country or place.
- Where the deponent is illiterate blind or unacquainted with the language in which the affidavit is written a certificate by the person taking the affidavit that the affidavit has read translated or explained in his presence to the deponent made his signature or mark in his presence shall appear in the jurat.
- Every affidavit filed before the Registrar in connection with any of the proceedings under the Act or the rules shall be duly stamped under the law for the time being in force.

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Inspection of Documents by the Public

- The documents mentioned in sub-section (1) of section 78 shall be available for inspection at the Head Office of the Geographical indications registry.
- A copy of the register and such of the other documents mentioned in section 78, as the Central Government may by inspection at each branch office of the Geographical Indications Registry as and when established.
- The inspection shall be on payment of the prescribed fee and at such times on all the days on which the offices of the Geographical Indications Registry are not closed to the public as may be fixed by the registrar.
- Distribution of copies of journal and other documents. The Central Government may direct the Registrar to distribute the necessary to such places as may be fixed by the Central Government in consultation with the State Government and notified from time to time in the Official Gazette.

2.6 Trade Secrets**2.6.1 Introduction**

Before understanding what trade secrets are, we must first understand the role of innovation in a modern capitalist system. The benchmark/reputation/success of a company hinges on their unique product and service offering, as it differentiates it from the rest to occupy a unique niche in the marketplace. Naturally, no company would like competitors to find out how it does things and dilute its competitive edge; these are its 'trade secrets.' Trade secrets can protect a company's confidential business information. This information usually distinguishes a company and sets it apart from rivals.

A trade secret is a type of intellectual property in the form of a formula, practice, process, design, instrument, pattern, commercial method, or compilation of information that is not generally known or reasonably ascertainable by others, and by which a person or company can obtain an economic advantage over competitors. In some jurisdictions, such secrets are referred to as confidential information. The precise language by which a trade secret is defined varies by jurisdiction, as do the particular types of information that are subject to trade secret protection. Three factors are common to all such definitions :

A trade secret is information that

- Is not generally known to the public;
- Confers economic benefit on its holder because the information is not publicly known; and
- Where the holder makes efforts to maintain its secrecy.

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In international law, these three factors define a trade secret under article 39 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, commonly referred to as the TRIPS Agreement.