

# Assignment- 3 Research Methodology and Intellectual Property

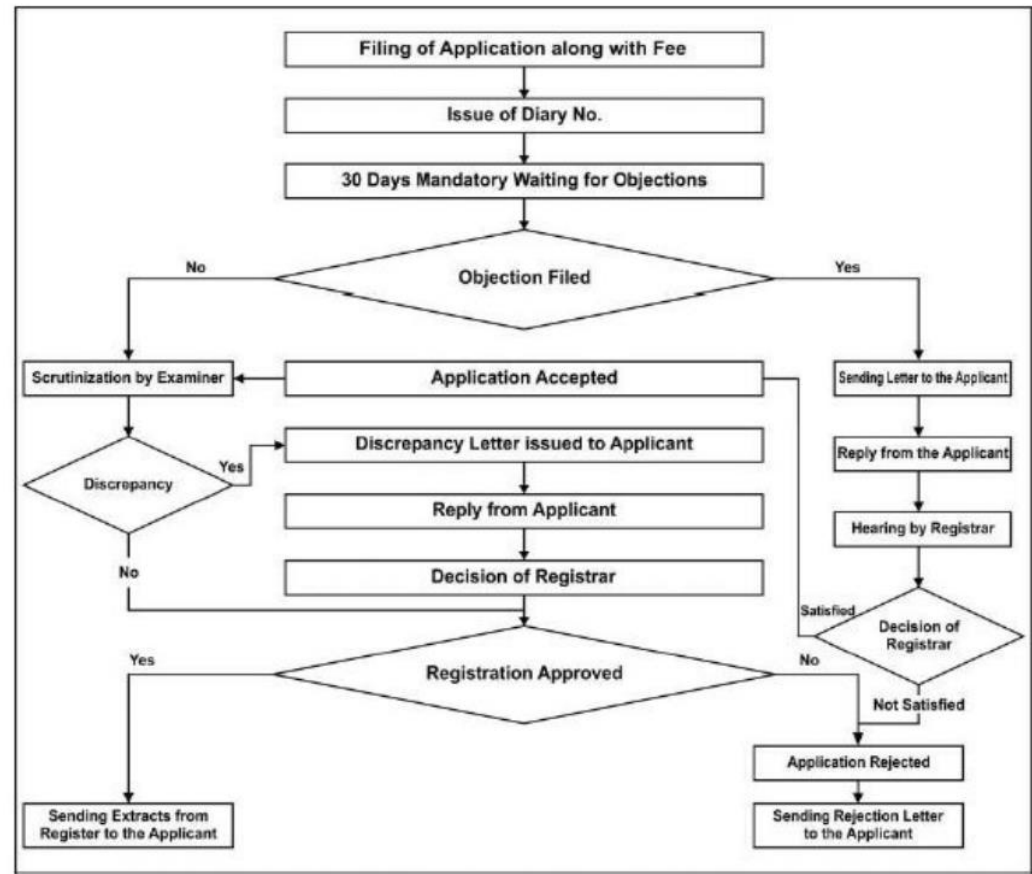
## 1. Classify the different classes of Copyrights. Discuss the criteria for COPYRIGHT.

The different classes of copyrights are:

- Literature: Books, Essays, Research articles, Oral speeches, Lectures, Compilations, Computer programs, Software, Databases.
- Dramatics: Screenplays, Dramas.
- Sound Recordings: Recording of sounds regardless of the medium on which such recording is made e.g. a Phonogram and a CD-ROM.
- Artistic: Drawing, Painting, Logo, Map, Chart, Photographs, Work of Architecture, Engravings, and Craftsmanship.
- Musical: Musical notations, excluding any words or any action intended to be sung, spoken or performed with the music. A musical work need not be written down to enjoy Copyright protection.
- Cinematograph Film: It is a visual recording performed by any medium, formed through a process and includes a sound recording. For example, Motion Pictures, TV Programs, Visual Recording, Sound Recording, etc.

## 2. Explain with the help of Flow chart the process of Copyright registration.

- The Registrar of Copyrights has the powers of a civil court when trying a suit under the Code of Civil Procedure
- Usually, it takes around 2-3 months to get the work registered by the Copyright Office. After applying, there is a mandatory waiting period of 30 days.
- If any person has any objection to the claim/s made in the application, he can contact the office of the Registrar of Copyrights.
  - After giving an opportunity of hearing to both the parties, the Registrar may decide the case in favor or against the author of the work. Once the objections (if any) are cleared, the application is evaluated by the examiners.
- If any doubts/queries are raised, the applicant is given ample time (around 45 days) to clear these objections



3. Discuss the OWNERSHIP involved in filing for copyright. And also explain on different copyrights of the author.

### The Copyright laws clearly state the ownership of Copyright:

- The person who created the work is considered as the first (original) holder (owner) of the Copyright.
- In case the author is an employee and has been contracted to do the work by a proprietor (of the company/firm/society /organization, etc.), the owner of the Copyright shall be the proprietor.
- The government will be the primary owner of the government work in the absence of any kind of arrangement.
- The person delivering a speech is the first owner of the Copyright.
- The request must mention the following :
  - Title, author and/or editor, and edition.
  - Precise material to be used.
  - The number of copies.
  - The purpose of the material e.g. educational, research, etc.
  - Form of distribution e.g. hard copy to classroom, posted on the internet.
  - Whether the material is to be sold e.g. as part of a course pack.

### COPYRIGHTS OF THE AUTHOR:

- The Copyrights of the creator/author are legally protected under Section 14 of the Copyright Act, 1957.

- The content (i.e. work) created by the author cannot be used or published by anyone without the author's consent.
- Copyrights provide exclusive rights to the author in the areas of publication, distribution, and usage.
- A Copyright owner enjoys two types of rights i.e. Economic Rights (or Proprietary Rights) and Moral Rights (or Personal Rights).
- Economic Rights are associated with financial benefits accruing from the sale of copyrights.
- Moral Rights include Right of Paternity and Right of Integrity.
- The Right of Paternity - even if the Copyright has been licensed to another party, the original author of the work retains the right to claim authorship i.e. the name of the author/s will remain even though Copyrights have been transferred to another party e.g. a book publisher.
- The Right of Integrity - the original author has the right to prevent misuse of the work e.g. alterations/additions/ deletions in work resulting in misrepresentation of the said work or harming the honor and reputation of the author.
- It is pertinent to mention that for a work, there can be more than one rights holders, for instance, a musical sound recording has many rights holders, such as the lyricist, music composer, singer, musicians and sound recorders.

#### 4. Write a short note on i)FAIR USE DOCTRINE ii) copyright infringements iii) NON-COPY RIGHT WORK

##### **FAIR USE DOCTRINE:**

- As per the rule of law, Copyrighted materials cannot be used by anybody without the proper consent of the legal owners (of the Copyright).
- However, limited use of Copyrighted materials for teaching and research purposes is legally permitted, under the "Fair Use Doctrine", which comprises of the four-part test:
  - The character of the use - use of the work is purely educational, non-profit and personal.
  - Nature of the work - The use of work is factual in nature and not imaginative .
  - Amount of the portion to be used - permission is not needed if only a small portion of Copyright protected material is to be used. However, this parameter is debatable now.
  - Impact of use on the value of the Copyrighted material - If a small portion of the work is copied and is not affecting the author's economic and moral rights, it will be excused from the infringement.

##### **COPYRIGHT INFRINGEMENTS:**

- As per the Copyrights Acts, 1957, the following acts are regarded as an infringement of Copyrights:
  - Making copies for sale or hire or selling or letting them for hire without permission.
  - Permitting any place for the performance of owned work (in public) where such performance constitutes an infringement of Copyright.
  - Distributing infringing copies for trade or to such an extent to affect the interest of the owner of the Copyright prejudicially.
  - Public exhibition of infringing copies for trade purposes.
  - Importation of infringing copies.
  - Translating a work without the permission of the owner

## **COPYRIGHT INFRINGEMENT IS A CRIMINAL OFFENCE**

- According to Section 63 of the Copyright Act, 1957, if any person knowingly infringes the Copyright, he qualifies for the criminal offence.
- The punishment awarded for the infringement (of Copyright) is imprisonment for six months with the minimum fine of ₹ 50,000/-.
- In case of a second and subsequent conviction, the minimum punishment is imprisonment for one year and a fine of ₹ 1,00,000.
- There is a dedicated IP division to deal with Copyright cases. Also, there is a Copyright Board constituted by the Central Government in 1958 to adjudicate certain claims about Copyright.

## **NON-COPY RIGHT WORK:**

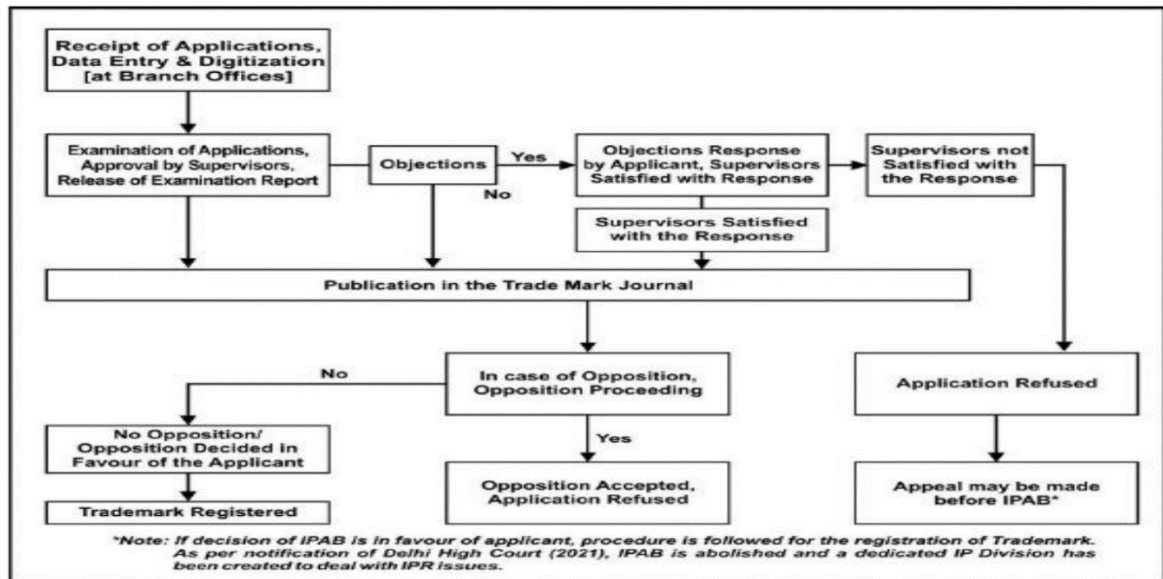
- The ideas, concepts, and principles themselves cannot be protected under Copyright; only the form in which they are expressed can be copyrighted.
- Facts, such as scientific or historical discoveries, are not copyright protected. Any fact a person discovers in the course of research cannot be Copyright protected.
- Copyright does not protect titles, names, slogans, short phrases, short word combinations, methods, or factual information.
- Certificates are not considered as Copyrightable subject matter as there is not much scope for creativity.
- Digitally created works and Copyrighted works transformed into a digital format and placed on the internet are Copyright protected.
- The Copyright registration for a website, as a whole, is not possible. However, different components/rudiments of a website can be granted Copyright registration.
  - If someone swipes your picture/song/video from the internet and uses it for their purposes, it is a Copyright infringement.

## **5. Discuss the eligibility criteria for applying for TRADEMARK and also explain the process for trademarks registration.**

### **ELIGIBILITY CRITERIA FOR TRADEMARK**

- Distinctiveness - The goods and services for which the protection is sought should possess enough uniqueness to identify it as a Trademark. It must be capable of identifying the source of goods or services in the target market.
- Descriptiveness - The Trademark should not be describing the description of the concerned goods or service. The brand name Apple is used by a USA based multinational company that manufactures electronic gadgets.
- Similarity to the prior marks - The mark should be unique and should not be having similarity to the existing marks.

### **PROCESS FOR TRADEMARKS REGISTRATION**



## 6. Discuss on the registration and validity of Trademark.

### VALIDITY OF TRADEMARK

- In India, a registered Trademark is valid for 10 years.
- The period can be extended every 10 years, perpetually.
- As per the Indian Trademarks Act, the renewal request is to be filed in the form 'TM-R' within one year before the expiry of the last registration of the mark.

### Registration of Trademark:

- Legal Protection – prevents the exploitation of the Registering Trademark by other companies/organizations/individuals, without proper authorization by the legal owner/s of the Trademark. In case of legal suits, a registered Trademark can serve as a potent evidence of the lawful proprietorship of the Trademark.
- Exclusive Right - grants the Trademark owner full rights to use it in any lawful manner to promote his business.
- Brand Recognition - products/ services are identified by their logo, which helps create brand value over time. A strong brand is a huge pull for new customers and an anchor for existing customers. Registering a Trademark early and using it will create goodwill and generate more business for the brand owner.
- Asset Creation - registered Trademark is an intangible property of the organization. It can be used for enhancing the business of the company as well as drawing new clients and retaining old one by the account of brand identification.

## 7. Explain on the types of trademark registered in india.

- Trademark can be a word that must be able to speak, spell and remember.
- It is highly recommended that one should choose the Trademark like invented word, created words, and unique geographical name.

- One should refrain from Trademarks like common geographical name, common personal name and the praising words which describe the quality of goods, such as best, perfect, super, etc.

- To ensure all these characteristics in a Trademark, it is suggested to conduct a market survey to ensure if a similar mark is used in the market. Following are some examples of the registerable Trademarks:

- Any name including personal or surname of the applicant or predecessor in business or the signature of the person e.g. the Trademark 'BAJAJ' is named after industrialist Mr. Jamnalal Bajaj.
- A word having no relevance to the product/services e.g. Trademark 'INDIA GATE' is being used for food grains and allied products.
- Letters or numerals or any combination thereof e.g. 'YAHOO' is the abbreviation of the phrase 'Yet Another Hierarchical Official Oracle'. It has now become a worldwide famous Trademark.

## 8. Discuss on procedure for registration of industrial designs.

### Prior Art Search

- Before filing an application for registration of Industrial Designs, it is prudent to ensure that the same or similar Design has not been registered earlier.

- This search can be carried out using various search engines, such as: Design Search Utility (CGPDTM), Global Design Database (WIPO), etc.

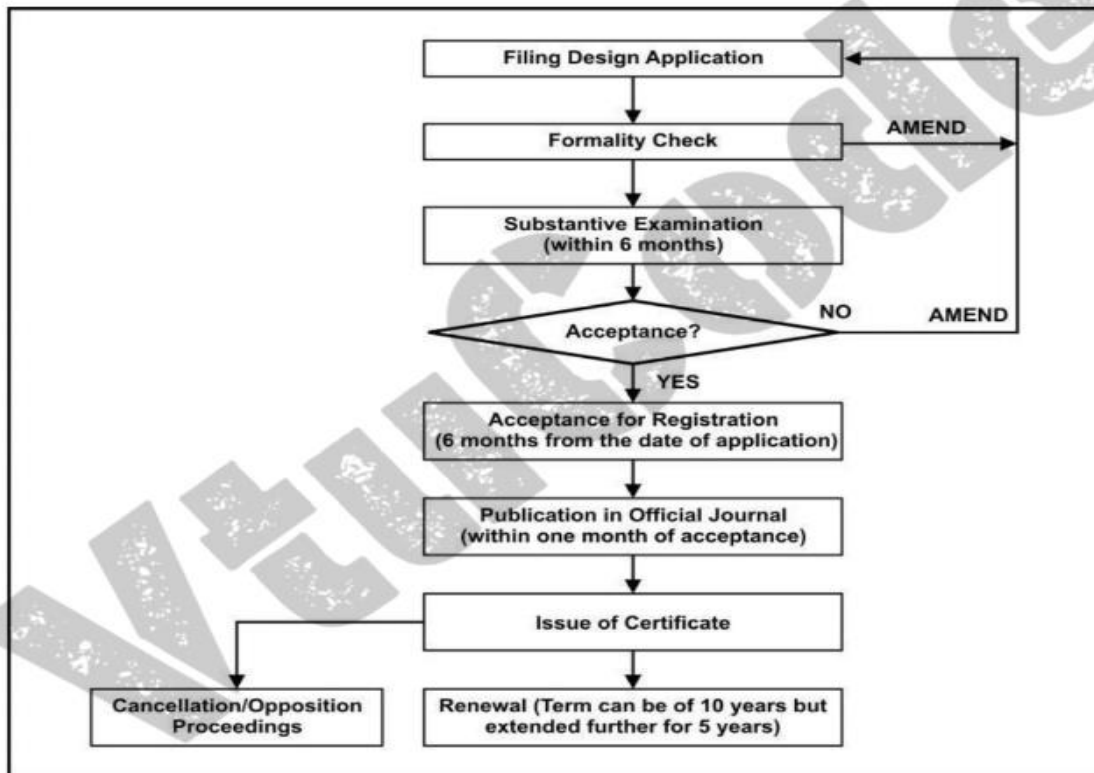
### Application for Registration:

- Once the applicant is satisfied that his Design is novel and significantly distinguishable from other Designs, he can proceed with filing an application for Design registration.

- The application for registration of Design can be filed by an individual, small entity, institution, organization and industry. The application may be filed through a professional patent agent or legal practitioner.

- If the applicant is not a resident of India, an agent residing in India has to be employed for this purpose.
- The applicant submits the registration application at the Design Office Deputy Controller of Patents & Designs, Patent Office, Intellectual Property Office Building, CP-2 Sector V, Salt Lake City, Kolkata- 700091.
- After the application has been filed, an officer (examiner) analyses the application for qualifying the minimum standards laid down for eligibility criteria for registration.
- In case of any query, the same is sent to the applicant and he is supposed to respond within 6 months from the objection raised.
- Once the objections are removed, the application is accepted for registration





## 9. What are the enforcement of design rights? Explain on non-protectable industrial designs in India.

### ENFORCEMENT OF DESIGN RIGHTS

- Once the applicant has been conferred with the rights over a specific Design, he has the right to sue the person (natural/entity) if the pirated products of his registered design are being used.
- He can file the infringement case in the court (not lower than District Court) in order to stop such exploitation and for claiming any damage to which the registered proprietor is legally entitled.
- The court will ensure first that the Design of the said product is registered under the Designs Act, 2000.
- If the Design is found not registered under the Act, there will not be legal action against the infringer.
- If the infringer is found guilty of piracy or infringement, the court can ask him to pay the damage (₹ 50,000/-) in respect of infringement of one registered Design.

### NON-PROTECTABLE INDUSTRIAL DESIGNS INDIA

- Any Industrial Design which is against public moral values.
- Industrial Designs including flags, emblems or signs of any country.
- Industrial Designs of integrated circuits.
- Any Design describing the process of making of an article.
- Industrial Designs of – books, calendars, certificates, forms and other documents, dressmaking patterns, greeting cards, leaflets, maps and plan cards, postcards, stamps, medals.

□ The artistic work defined under Section 2(c) of the Copyright Act, 1957 is not a subject matter for registration for Industrial Designs, such as:

- Paintings, sculptures, drawings including a diagram, map, chart or plan.
- Photographs and work of architecture.
- oAny other work related to artistic craftsmanship.

□ Industrial Designs does not include any Trademark (The Designs Act, 2000).

## 10. What are geographical indications(GI)? explain the acts, laws and rules, ownership pertaining to GI.

- A GI is defined as a sign which can be used on products belonging to a particular geographical location/region and possesses qualities or a reputation associated with that region.
- In GI, there is a strong link between the product and its original place of production.
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### **ACTS, LAWS AND RULES PERTAINING TO GI**

□ In India, GI was introduced in 2003 and is governed under the Geographical Indications of Goods (Registration & Protection) Act, 1999 and the Geographical Indications of Goods (Registration & Protection) Rules, 2002.

### **OWNERSHIP OF GI**

□ The ownership/holders of GI (registered) can be of the producers, as a group/association/cooperative society or association or in certain cases, government.

### **RIGHTS GRANTED TO THE HOLDERS**

□ Right to grant the license to others - The holder has the right to gift, sell, transfer/grant a license, mortgage or enter into any other arrangement for consideration regarding their product. A license or assignment must be given in written and registered with the Registrar of GI, for it to be valid and legitimate.

□ Right to sue - The holder of GI has the right to use and take legal action against a person who uses the product without his consent.

□ Right to exploit - The holder of GI can authorize users with exclusive right to use goods for which the GI is registered.

□ Right to get reliefs - Registered proprietors and authorized users have the right to obtain relief concerning the violation of such GI products.

## 11. Discuss on registered and non-registerable GI in India.

### **REGISTERED GI IN INDIA**

□ GI products registered in India belong to the domains of handicrafts, agricultural, food stuffs, alcoholic beverages, etc.

□ The first GI tag was granted in 2004 to Darjeeling Tea and the latest being Kashmir Saffron and Manipur Black rice (Chakhao) in May 2020. A total of 370 GI have been registered in India till May 2020.



- ☐ Nearly 58% of these belong to handicrafts, followed by agriculture (30%).
- ☐ Other categories belong to food stuff, manufacturing, and natural goods.
- ☐ In the Handicraft category, Tamilnadu holds the maximum number (21) of GI followed by Uttar Pradesh (20) and Karnataka (19).

### **NON-REGISTERABLE GI**

For GI registration, 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 GI mentioned below:

- ☐ The use of which would be likely to deceive or cause confusion.
- ☐ The use of which would be contrary to any law.
- ☐ Which comprises or contains scandalous or obscene matter
- ☐ Which comprises or contains any matter likely to hurt the sentiments of society
- ☐ Religious susceptibilities of any class or section of the citizens of India
- ☐ 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.