

Intellectual Property Rights (IPR)

Introduction

- **Intellectual Property (IP)** is a special category of property created by human intellect (mind) in the fields of arts, literature, science, trade, etc.
- **Intellectual Property Rights (IPR)** are the privileges accorded to the creator/inventor (of IP) in conformance with the laws.
 - protect applications of ideas and information that are of commercial value
 - IPR in legal sense facilitates the inventor to **own, sell, lease or license a property** which is generated from one's intellect

- IP comprises of two branches
 - **Copyrights and Related Rights** refer to the creative expressions in the fields of literature and art, such as books, publications, architecture, music, wood/stone carvings, pictures, portrays, sculptures, films and computer-based softwares/databases.
 - **Industrial Property Rights** refer to the Patents, Trademarks, Trade Services, Industrial Designs and Geographical Indications.

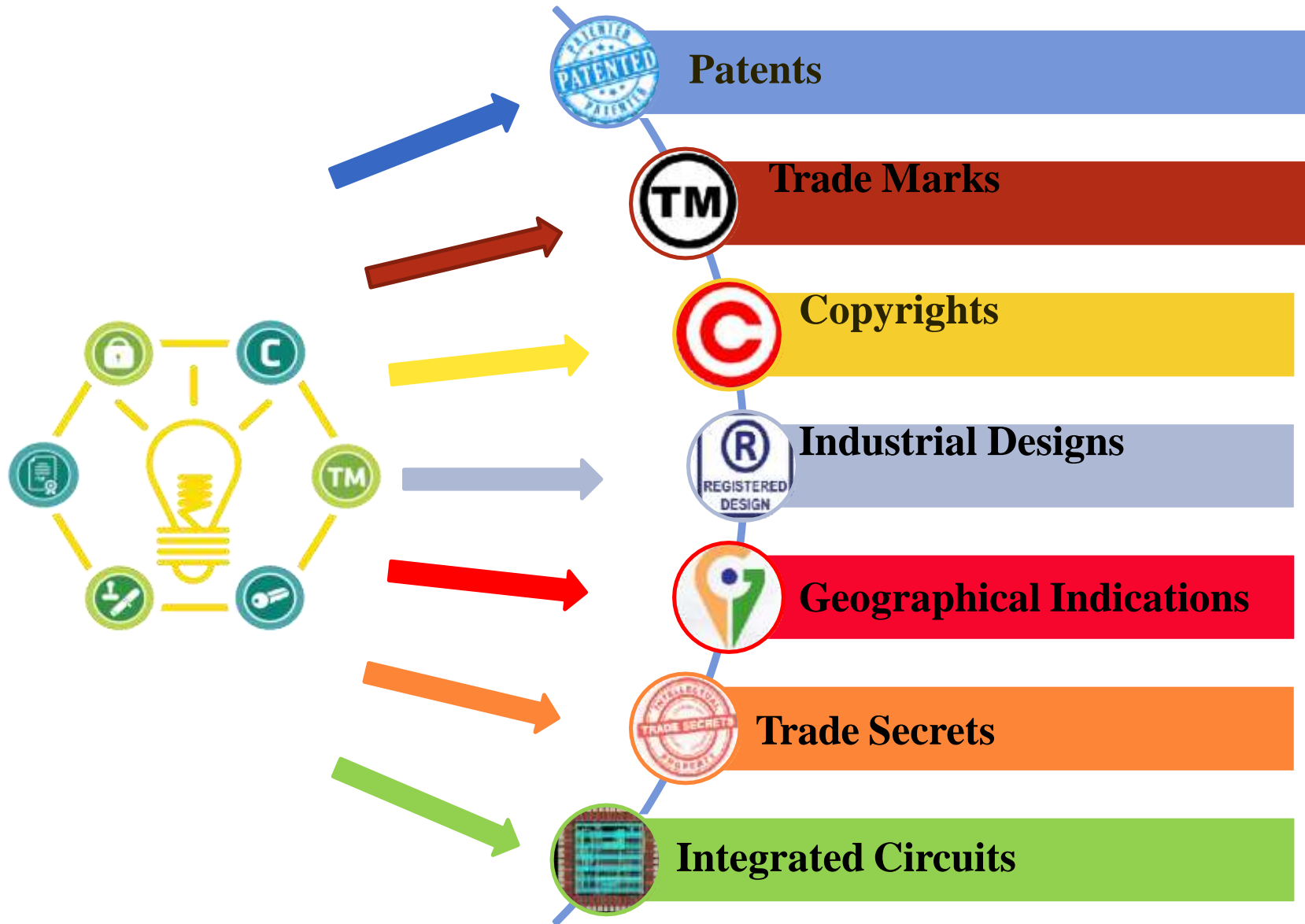
NEED FOR INTELLECTUAL PROPERTY RIGHTS:

- Role of IP in the Economic and Cultural Development of the Society

Make in India, Atmanirbhar Bharat

- Global Indicator of Innovation, Improves the Innovation index of a country
- Prevents infringement by competitors
- Gives complete rights to the inventor legally
- Minimizes needless investment in R&D
- Helps the inventor to provide licensing agreement to others
- Gives monetary benefits to the inventor

TYPES OF INTELLECTUAL PROPERTY RIGHTS:



Types of IPRs

Intellectual Property



Industrial Property

Copyrights and related rights

Industrial
Designs

Patents

Trademarks
Service marks

Trade Secrets

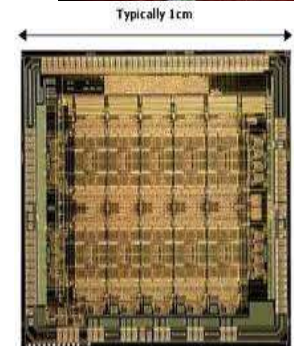
Geographical
Indications

Layout Designs of
Semi Conductor ICs

Plant varieties &
Farmer's rights



Coca-Cola



Containing up to 1 million components



• Patents:

- Is a monopoly right granted to a person, who invented a new product or process of making an article, for 20 years under the Indian Patents Act, 1970, and can be renewed after expiration of period.
- The inventor has to file for patent first, and then make his/her invention to public. A patent has to be applied in each country by the inventor, to claim his rights in that country.
- Eg: A group of scientists working on new drug development in Himalaya Drugs for some salary. The patent of the drug developed is given to Himalaya Drugs, but not to the scientists. The drug may have many patents like composition, process, and product etc.



- **Trademarks:**

- Trademark can be a word, name, brand, symbol, label etc., used by a company to create a unique identity for their product.
- Trademark can be registered, and then use TM ®. The registration validity is for 7 years and renewable after expiry.
- In India, it is governed by the Trade and Merchandise Marks Act, 1958, which came into force on 25th Nov., 1959.

- **Industrial Designs:**

- Design deals with features, shapes, patterns, etc., applied to an article by an industrial process, manual or mechanical.
- Eg., chair is a utility item. However, chair itself does not qualify for IPR, but its special carvings, embossing etc., is done which increases the value of chair though it's utility remains same, it becomes eligible for IPR under Designs Act.
- Designs can be registered based on its originality, henceforth they can use ® or registered, with registration number.



- **Trade Secrets:**

- Trade secret is any intellectual work or product used for a business purpose that can be classified as belonging to that business provided it is not based on information in public domain.



- **Geographical Indication:**

- This is an indication, that originates from a definite geographical area, which is used to identify natural or manufactured product.
- For eg., Gadwal/ Pochampally Sarees, Nirmal paintings, Kolhapuri Chappals, Solapur Chaddar etc., qualify for registration under this category.
- It is valid for 10 years. The application for registration can be an association of persons, organization or by producers.



- **Copyright:**

- It is a negative right which prevents the appropriation of the fruits of man's work, labour or skill by another person.
- Copyright is an exclusive legal right to reproduce an original work of authorship fixed in any tangible medium of expression, to prepare derivative works based on original work, and to perform or display the work in the case of dramatic, music, choreographic and sculptural works. Copyright prevents copying of only the expression.
- Eg: Bhagwat Geeta, Pathanjali Yoga sutras, etc.,

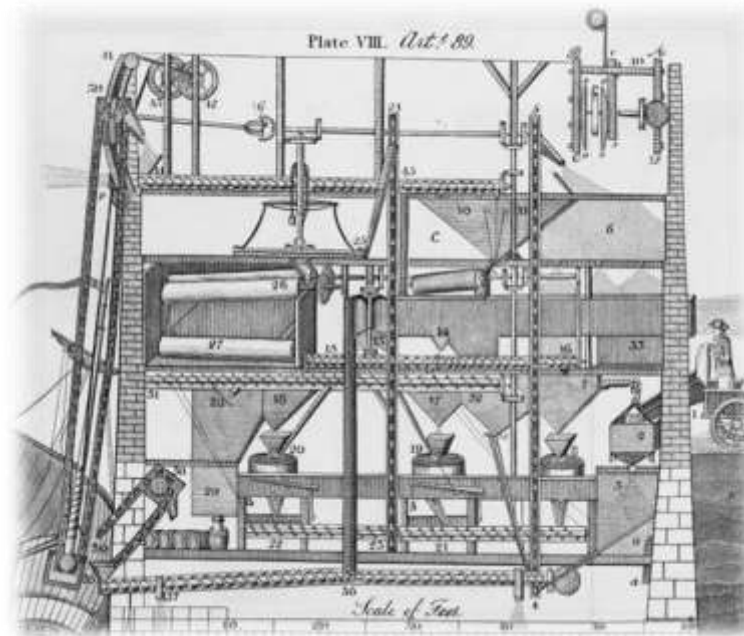
- **Integrated circuits (ICs)**
 - The three-dimensional placement of the elements and interconnections that make up the circuit are protected as an intellectual property right.
 - Protection expires 10 years after the date of commencement of protection.

PATENTS:

- Patent is a type of IPR in a ***documentary form*** that gives the Patentee, sole right to make, use or sell an invention and preventing others from infringement.
- Patents are granted to inventions which is ***either product or process***. Or a patent is a ***right granted for any product or process*** which is new, inventive, useful and applicable.

First Patent in World:

- The first recorded patent for an industrial invention was *granted in 1421 in Florence, Italy* to the architect and engineer Filippo Brunelleschi as a 3 year monopoly. *'Barge with hoisting gear used to transport marble'*.



Source: <https://www.britannica.com/topic/patent>

First Patent in India:

- On March 3, 1856, George Alfred DePenning, a civil engineer, of Calcutta petitioned for grant of exclusive privileges for his invention – *'An Efficient Punkah Pulling Machine'*.



Source:

<https://aadityapatil.wordpress.com/2015/06/23/the-first-indian-patent-an-efficint-punkah-pulling-machine/>



Source:

<https://www.wikiwand.com/en/Punkah>

PATENTS:

First Patent in India:

FACSIMILE OF THE FIRST SPECIFICATION AND DRAWING FOR
GRANT OF EXCLUSIVE PRIVILEGE IN INDIA

To all to whom this presents shall come I George Alfred Delamoy of Calcutta send greeting
Whereas the Honorable the Legislative Council of India by their Act no. of 1856 entitled an Act for granting exclusive privileges to Inventions did thereby give and grant unto the said George Alfred Delamoy their license that if the said George Alfred Delamoy my executors administrators and assigns or such others and the said George Alfred Delamoy my executors administrators and assigns should at any time agree with and no others from time to time one at all times thereafter during the term therein expressed should and lawfully might make use exercise and vend within the territories in the possession and under the Government of the Honourable East India Company and Dominion for An Efficient Punkah Pulling Machine upon the condition amongst others that if the said George Alfred Delamoy by an instrument or writing under my hand should particularly describe and explain the nature of the said Invention and in what manner the same was to be performed, and cause the same to be left with the Secretary to the Government of India in the Home Department within his respective month's term not to be made after the 1st March next the date of my order from the Right Honourable the Governor General of India in Council authorizing me the said George Alfred Delamoy to file a specification of the said Invention
Now know Ye that I the said George Alfred Delamoy do hereby declare the nature of my said Invention and in what manner the same is to be performed to be

A D. 1856. SEP 5. No 1

Fig 1

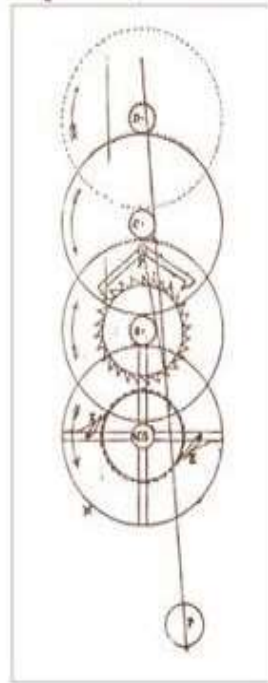


Fig 2

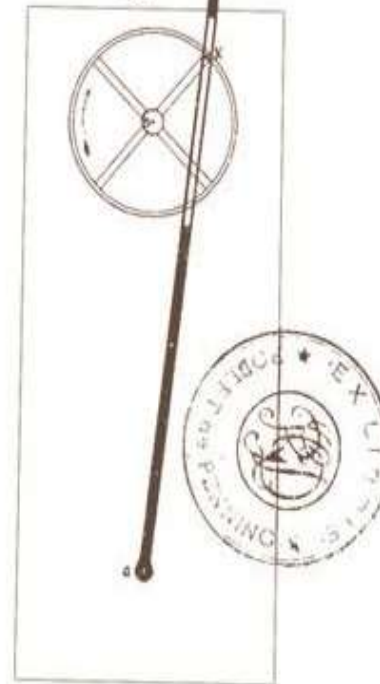
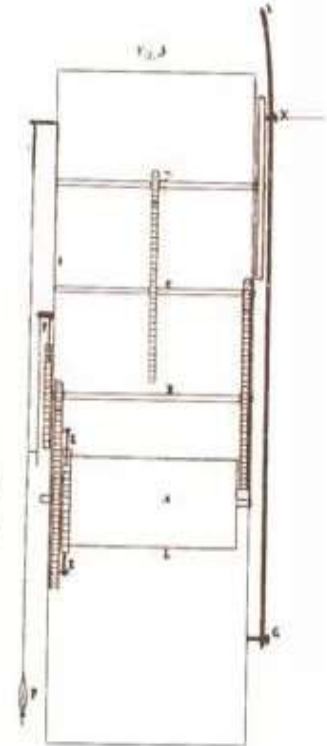


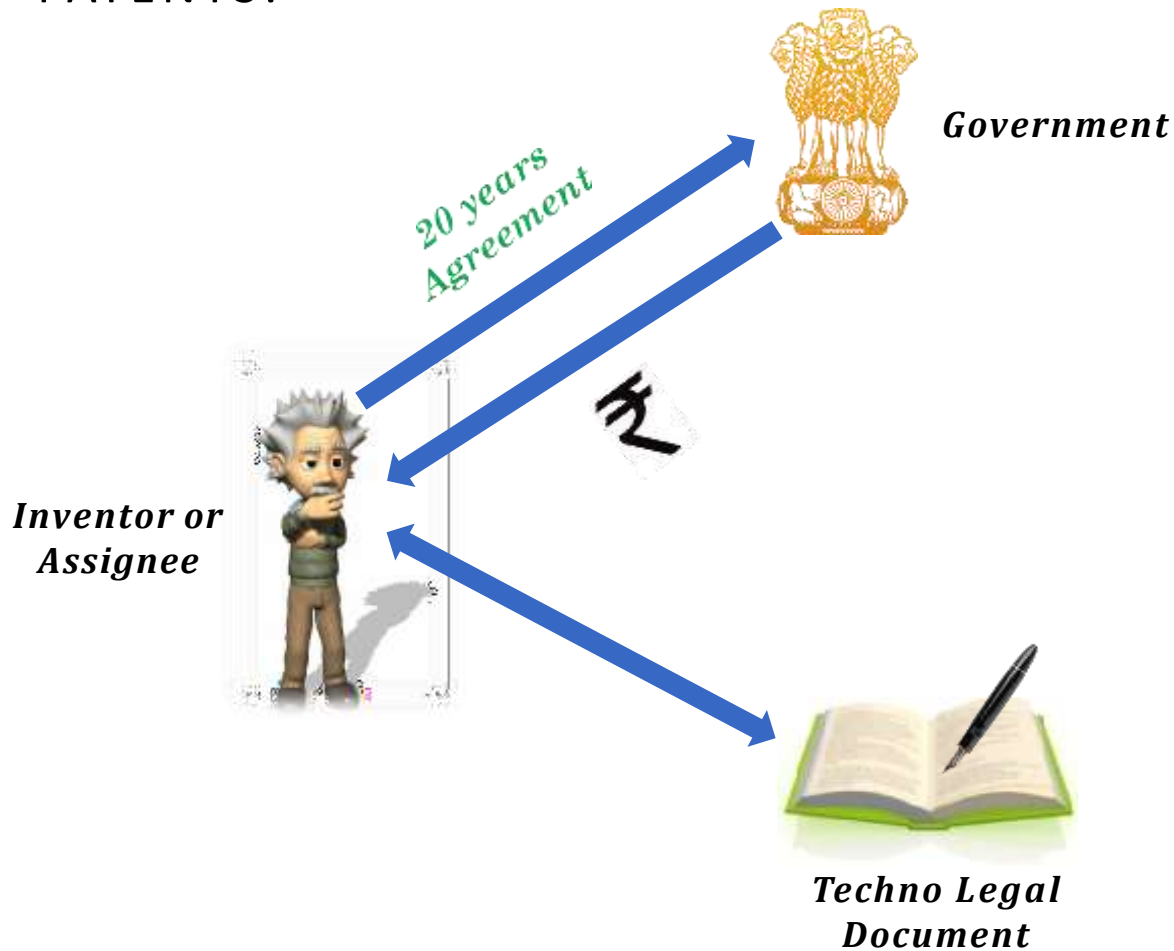
Fig 3



Source:

<https://aadityapatil.wordpress.com/2015/06/23/the-first-indian-patent-an-efficient-punkah-pulling-machine/>

PATENTS:



Source:

<https://giphy.com/stickers/montblancworld-montblanc-meisterstuck-meisterstck-3s8YxDF2gfwrLnKP4j>

<https://ulleseit.com/2018/03/21/novel-madness-2018-semifinal-round/>

<https://www.matsuk12.us/Page/22445>

- Designed by Thomas Jefferson in 1790 to provide a brief legal monopoly to give the inventor an opportunity to get the invention into the market and recoup development costs before competitors entered the market.
- Patent is a monopoly right granted by law for the exclusive use of an intellectual property to one or more individuals.
- The patent to whom a patent is granted is called the ‘Patentee’.

- Section 2(m) of the Indian Patents Act, 1970 defines Patent as –

“Patent” means ‘a new product or process involving an inventive step and capable of industrial application’

Act lays down:

- Grant of revocation of patents,
 - Items not patentable,
 - Product patent,
 - Patent period,
 - Rights and obligations of patentee,
 - Working of the patent,
 - Compulsory licensing and
 - Exceptions (inclu. Rights of Govt.)
- After the expiry of the period for which exclusive right is granted to the inventor (20 years in India from the date of application), the invention can be put to use by any person other than the one to whom a patent has been granted.

PATENTS:

Criteria for Patent Grant:

- For an invention to be patented, it has to satisfy three conditions:



PATENTS:

Criteria for Patent Grant:

1. Novelty:

- The invention must not exist or it must be new and unknown to the public
- Modified uses of existing processes, machines and composition of matters or materials are also patentable.
- The invention must involve any innovation or technology which has not been anticipated by publication in any document or used in the country or elsewhere in the world before the date of filing of patent application. The subject matter must not have fallen in the public domain.



Gem Clip

Source:

[https://commons.wikimedia.org/wiki/](https://commons.wikimedia.org/wiki/File:Clip.jpg)

File:Clip.jpg



Binder Clip

Source:

[https://www.ontimesupplies.com/nsn285](https://www.ontimesupplies.com/nsn2855995-nsn2855995-binder-clip-large-black-silver-dozen.html)

5995-nsn2855995-binder-clip-large-black-silver-dozen.html

PATENTS:

Criteria for Patent Grant:

2. Inventive Step:

- Non – obvious /inventive step means there *should not be a mere improvement from prior state of art.*



Source:

<https://es.wikipedia.org/wiki/Clip#/media/Archivo:Wanzijia.jpg>

PATENTS:

Criteria for Patent Grant:

3. Industrial Applicability:

- The invention, besides being novel and inventive, must also be useful. If the invention can not be put to any beneficial use of the mankind, it can not be patented.
- Ability to manufacture.

PATENTS:



Source

<https://www.desertcart.in/products/57384186-jtgs-sun-shelters-beach-clamp-chair-umbrella-baby-carriage-umbrella-and-all-position-umbrella-with-universal-clamp-chairbrella-umbrella-shade-for-folding-chairs-blue>

PATENTS:



Source

<https://powersponsorship.com/five-reasons-sponsors-should-consider-an-umbrella-portfolio/>



Source

<https://www.my-deco-shop.com/en/armchairs/2074-armchair-about-chair-ref-aac153-soft.html>

- Clears Industrial Applicability
- Clears Novelty
- ~~Doesn't clear Inventive Step~~

PATENTS:



Source

<https://www.amazon.com/XXHDEE-Outdoor-Leisure-Umbrella-Portable/dp/B07ZWDF9G9>

PATENTS:

Types – Product patent and process patent

Examples of Patent:

Examples



***Manufactured
article***

[Source](https://blogs.solidworks.com/tech/2016/09/solidworks-part-reviewer-nail-clippers-tutorial.html)

<https://blogs.solidworks.com/tech/2016/09/solidworks-part-reviewer-nail-clippers-tutorial.html>



Machine

[Source](https://tenor.com/view/old-television-1salve-tv-gif-12646887)

<https://tenor.com/view/old-television-1salve-tv-gif-12646887>

PATENT IS NOT A BIG DEAL:

Note: 90% of the patents are for improvements to existing patented inventions.

E.g.: Cricket helmet (*Stem Guard* by Masuri Group Ltd., England)



Source
<https://www.express.co.uk/sport/cricket/540629/Phil-Hughes-death-cricket>



Source
<https://imgur.com/gallery/7tBr4Mh>

PATENT IS NOT A BIG DEAL:

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Source

<https://www.lawinsport.com/topics/item/protecting-a-new-protective-cricket-helmet-an-ip-case-study>

Not eligible for patent

- **Invention contrary to public morality** - a method for human cloning, a method for gambling.
- **Mere discovery** - finding a new micro-organism occurring freely in nature, laws of gravity.
- **Mere discovery of a new form of a known substance** - use of aspirin for heart treatment. Aspirin was patented for reducing fever and mild pains.
- **Frivolous invention** - dough supplemented with herbs, merely changing the taste of the dough, 100 years calendar, bus timetable.
- **Arrangement or rearrangement** - an umbrella fitted with a fan, a torch attached to a bucket.

- **Inventions falling within Section 20(1) of the Atomic Energy Act, 1962** - inventions relating to compounds of Uranium, Beryllium, Thorium, Plutonium, Radium, Graphite, Lithium and more as notified by the Central Government from time to time.
- **Literary, dramatic, musical, artistic work** - books, sculptures, drawings, paintings, computer programmes, mathematical calculations, online chatting method, method of teaching, method of learning a language as they are the subject matter of Copyright Act. 1957
- **Topography of integrated circuits** - protection of layout designs of integrated circuits is provided separately under the Semiconductor Integrated Circuit Layout Designs Act, 2000.

- **Plants and animals** - plants and animals in whole or any part including seeds, varieties and species and essentially biological processes for the production or propagation of plants and animals are excluded from the scope of protection under patents.
- **Traditional knowledge** - an invention which in effect is traditional knowledge or which is an aggregation or duplication of known properties of traditionally known components are also excluded.

PATENTS:

A Quick questionnaire – Eligible for patent?

A method for treatment of cancer?

No

Polyurethane foam coated with silver nano particles?

Yes

A micro-organism existing in nature?

No

Automated transmission system for an automobile?

Yes

Mobile Phone with a Stethoscope?

Yes

An improved cricket ball throwing machine?

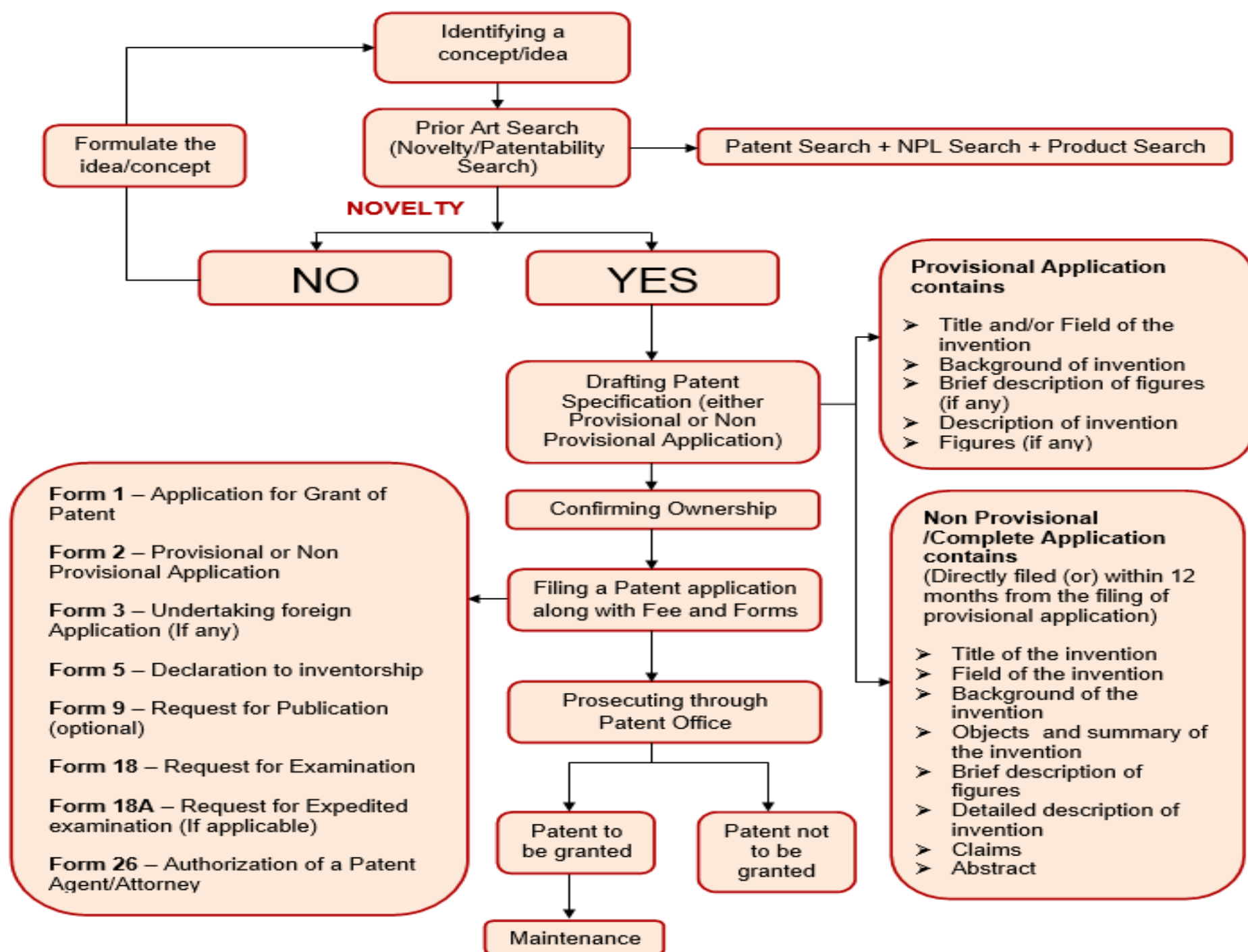
Yes

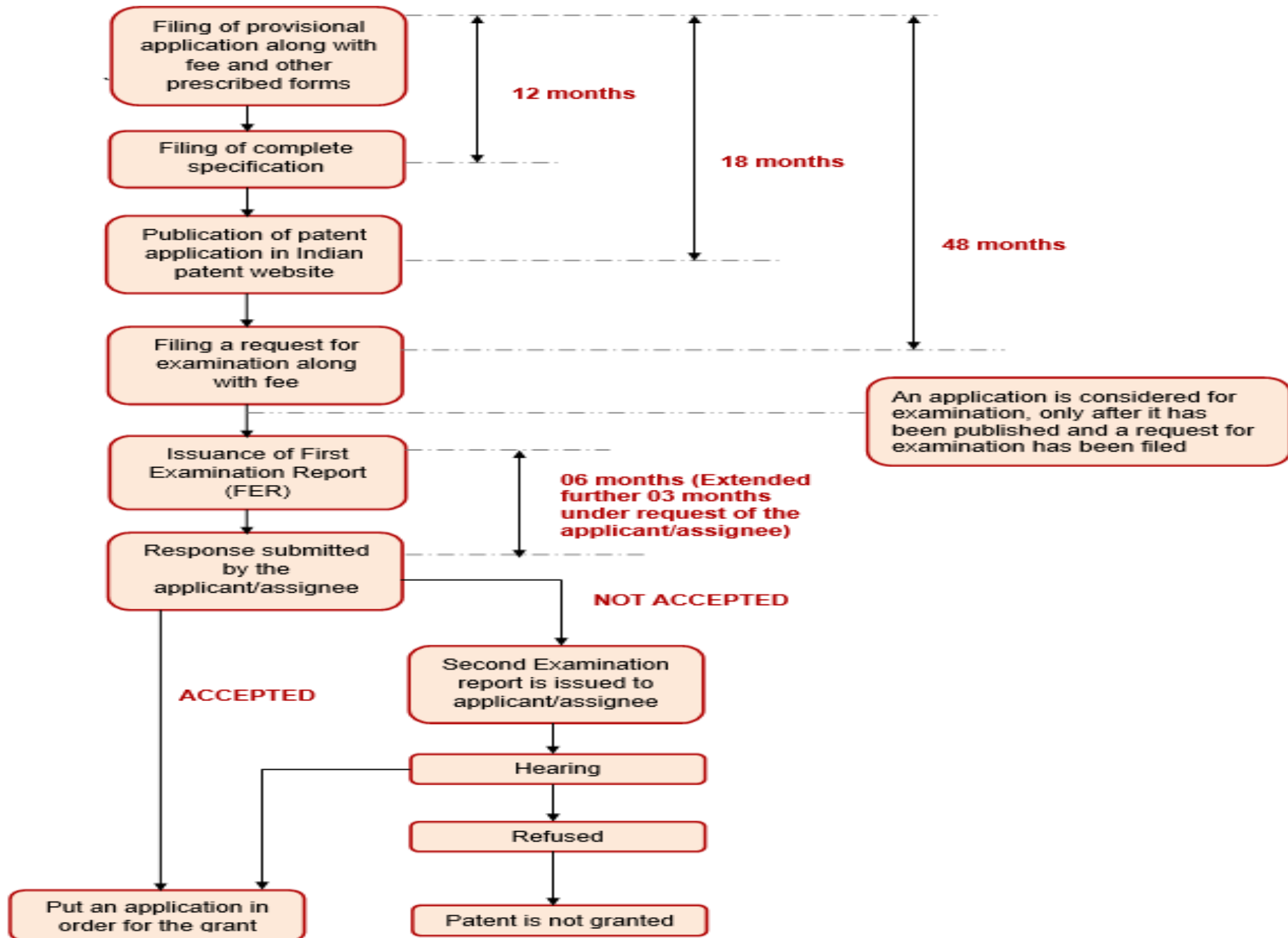
Law of gravity

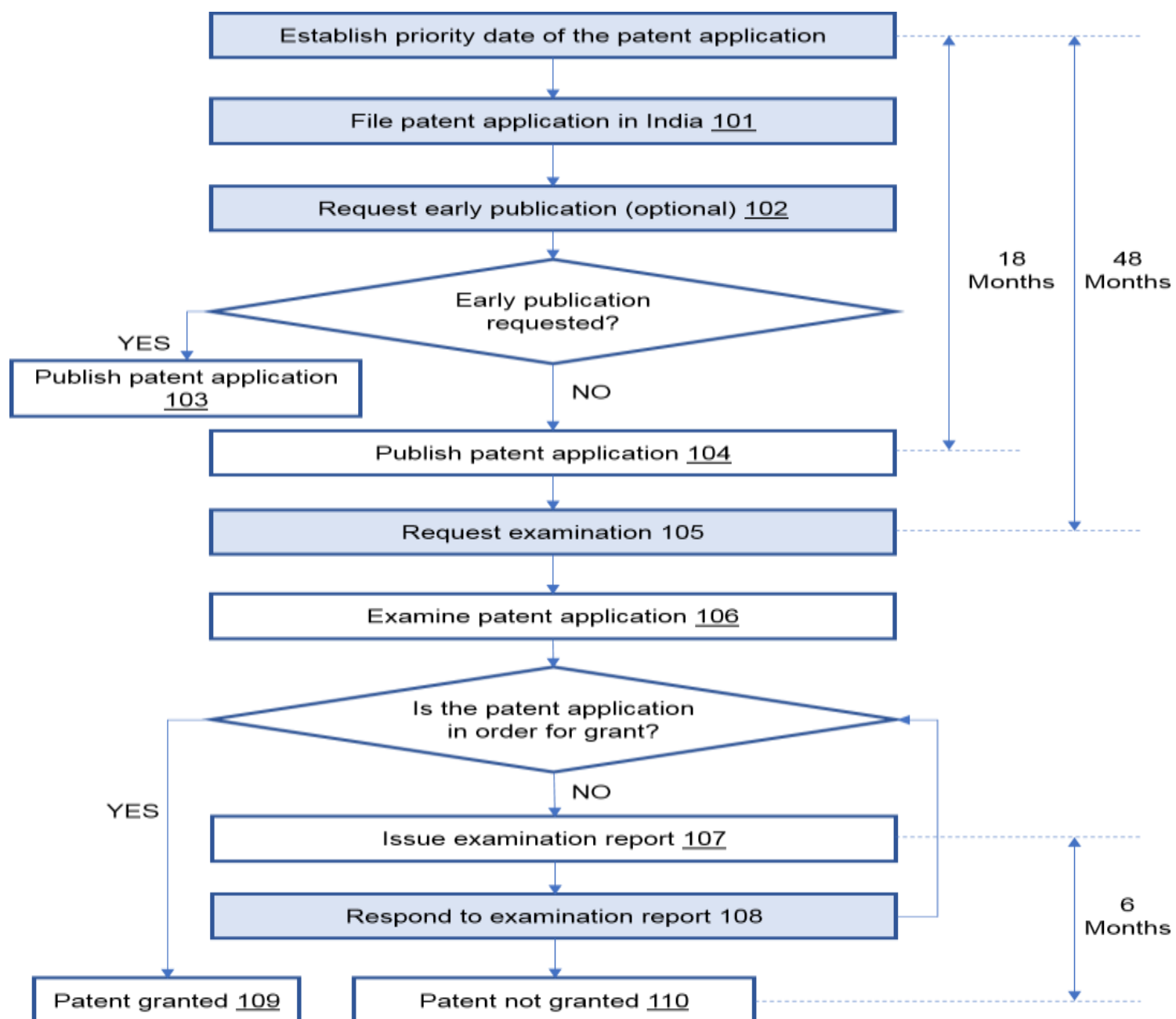
No

TERRITORIAL JURISDICTION OF PATENT OFFICES

Patent Office	Territorial Jurisdiction
Mumbai	The States of Gujarat, Maharashtra, Madhya Pradesh, Goa, Chhattisgarh, the Union Territories of Daman & Diu and Dadra & Nagar Haveli.
Delhi	The States of Haryana, Himachal Pradesh, Jammu and Kashmir, Punjab, Rajasthan, Uttar Pradesh, Uttaranchal, National Capital Territory of Delhi and the Union Territory of Chandigarh.
Chennai	The States of Andhra Pradesh, Karnataka, Kerala, Tamil Nadu and the Union Territories of Pondicherry and Lakshdweep.
Kolkata	Rest of India.







Patents' Databases

- Indian Patent Advanced Search System
(InPASS- <http://ipindiaservices.gov.in/publicsearch/>)
- Patentscope(WIPO- <https://www.wipo.int/patentscope/en/>)
- Espacenet(EU- <https://worldwide.espacenet.com/patent/>)
- USPTO(USA- <https://www.uspto.gov/>)
- Google Patents Advanced Search
(<https://patents.google.com/advanced>)
- Orbit Intelligence (<https://www.questel.com/business-intelligence-software/orbit-intelligence/>)
- Derwent Innovation
(<https://clarivate.com/derwent/solutions/derwent-innovation/>).
- PROQUEST
(<https://about.proquest.com/search/?searchKeyword=patent+>

COPYRIGHTS:

- ✓ Copyright is a bundle of *exclusive rights granted by law to the creators* to do or authorize the doing of certain acts with regard to their creations.
- ✓ In simple words copyrights enables a creator to protect his/her creative works of written word, art, music, TV/film, software code, etc.
- ✓ Copyright is a kind of *protection against unauthorized use of one's work.*



COPYRIGHTS:

Examples of copyrights:

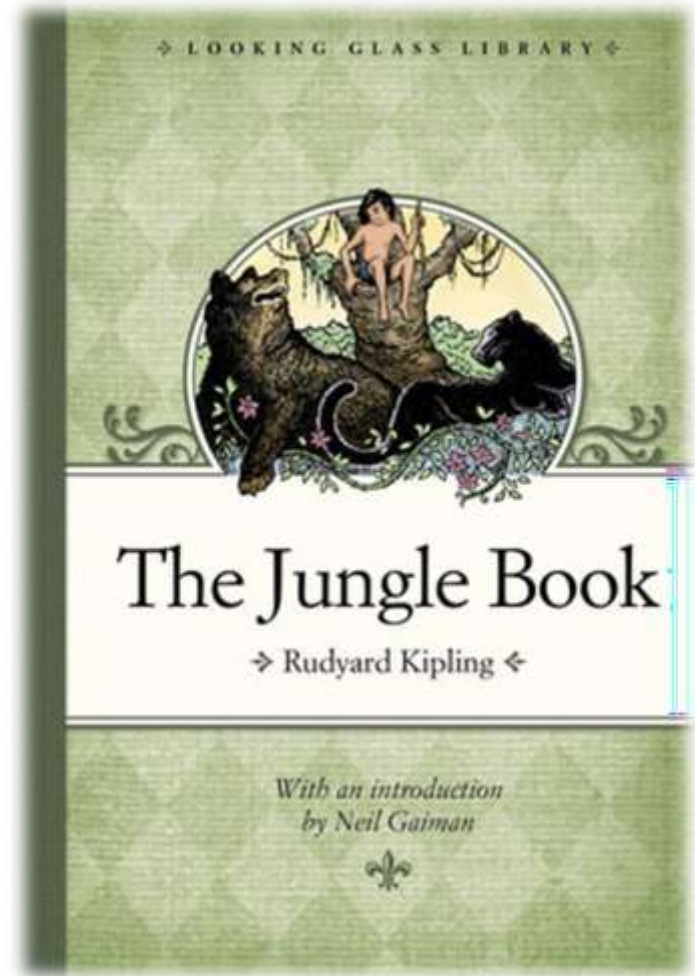


COPYRIGHTS:

Various forms of copyrights



Source: <http://www.disney.in/>



Source:
<https://www.penguinrandomhouse.com/books/211465/the-jungle-book-by-rudyard-kipling-introduction-by-neil-gaiman/>

- It is a right to prevent others from copying or reproducing the work.
- The object of copyright is to encourage authors, composers and artists to create original works by rewarding them the exclusive right for a specific period to reproduce the works for publishing and selling them to the public.
- Copyright is not a single right. It is a bundle of rights in the same work. For e.g. in the case of a literary work,
 - copyright consists of reproduction in print media,
 - the right of dramatic and cinematographic versions,
 - the right of translation, adaptation, abridgement and
 - the right of public performance.
 - broadcasting right

- To qualify for copyright in India, the work should satisfy the following conditions:-
 - ✓ the work is first published in India
 - ✓ where the work is first published outside India, the author at the date of publication must be a citizen of India. If the publication was made after the author's death, the author must have, at the time of death, been a citizen of India.
 - ✓ In the case of unpublished work the author, on the date of making of the work, is a citizen of India or domiciled in India.

COPYRIGHT CONTD.....

Copyright is a bundle of rights consisting of

- 1) economic rights
- 2) moral rights.

ECONOMIC RIGHTS:

- Reproduction of the work in any form, including printed publications or sound recordings.
- Distribution of copies of the work.
- Public performance of the work.
- Broadcasting/communicating the work to the public.
- Translating the work into other languages.
- Adaptation of the work, such as converting a novel into a screenplay.

COPYRIGHT CONTD.....

MORAL RIGHTS:

- 1) the right to decide whether to publish or not to publish the work;
- 2) the right to claim authorship of a published or exhibited work;
- 3) the right to prevent alteration and other actions that may damage the author's honour or reputation – the right of integrity;
- 4) to restrain or claim damages.

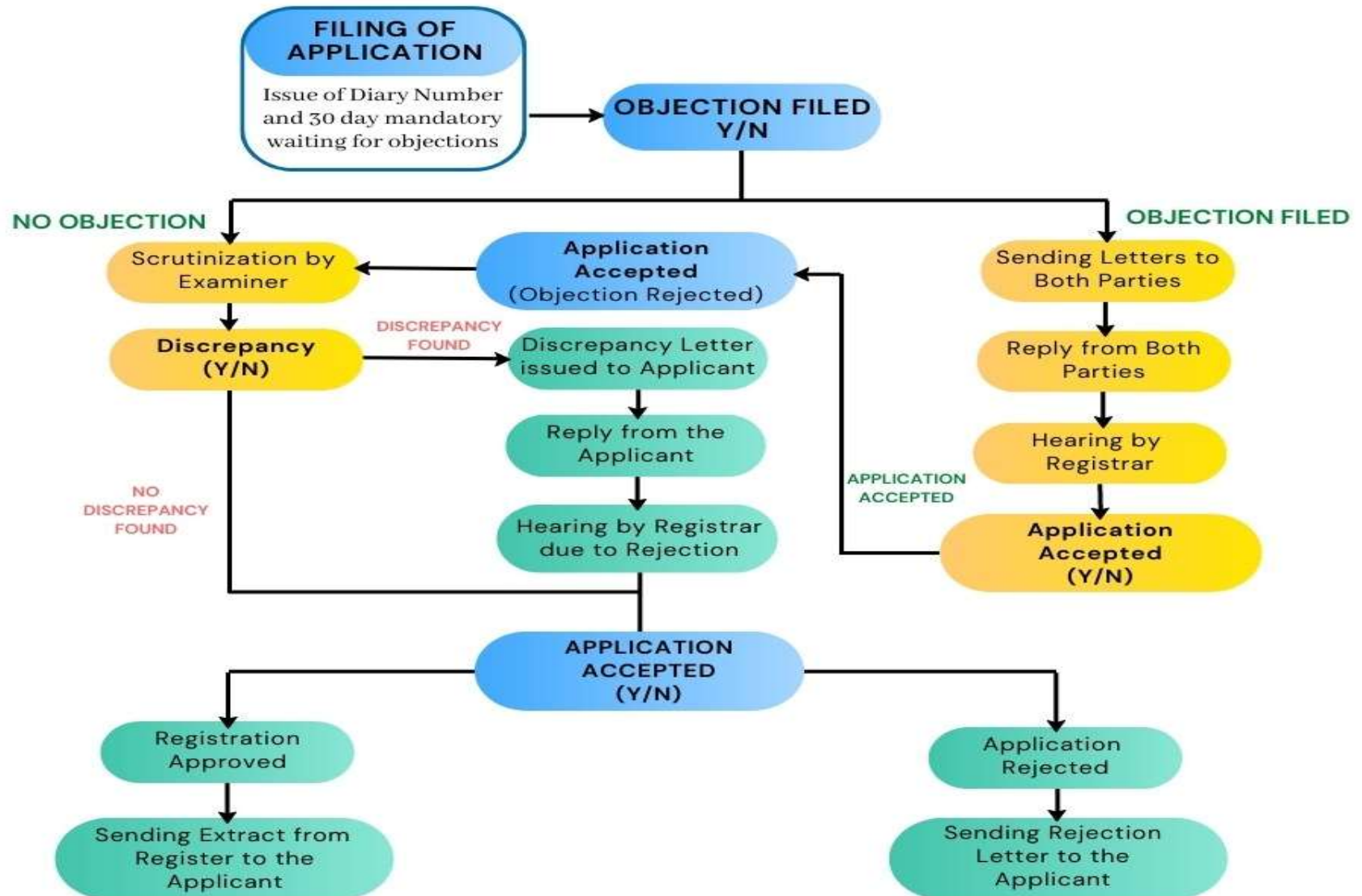
TERM (Period) OF COPYRIGHT

- In the case of any literary, dramatic, musical or a artistic work (other than a photograph), life time of the author + 60 years.
- In the case of photograph, cine films, sound recording and Govt. Work, 60 years from the beginning of the calendar year next following the year in which the work is first published.
- In the case of broadcasters/performers, reproduction right shall subsist until 25 years from the calendar year next following the year in which the broadcast/performance is made.

COPYRIGHT – OWNERSHIP : EXCEPTIONS

- Where a work is made by the author in the course of his employment by the proprietor of a newspaper/magazine/periodical for publication therein, then such proprietor will be first owner.
- When a work is made in the course of the author's employment under a contract of service/apprenticeship, the employer will be the first owner.
- Where any person has delivered any address or speech in public, that person will be first owner of the copyright.
- In the case of Government work, government is the first owner.

COPYRIGHT REGISTRATION WORKFLOW



INFRINGEMENT OF COPYRIGHT

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**

TRADE MARK:

- A trademark is a sign capable of *distinguishing the goods or services* of one enterprise from those of other enterprises.
- Trademark is registered for *10 years* and can be perpetually renewed.

- | | | | |
|----------------|---|------------------------------------|---|
| ➤ Smell, Sound |  | ➤ Words |  |
| ➤ Brand |  | ➤ Letter |  |
| ➤ Signature |  | ➤ Slogans |  |
| ➤ Label |  | ➤ Combination of Letter and Design |  |
| ➤ Name |  | ➤ Logo |  |

Source

<https://www.googleimages.com>

TRADE MARK:

Difference between TM & ®:

Example for TM



Source

<https://www.medianews4u.com/delhi-offices-low-e-lintas-linteractive-bag-new-biz-mandate-india-gate-basmati-rice/>

Example for ®



Source

<https://www.earnieland.com/en-BE/shop/nike>

- Trade Marks Act, 1999 defines TM as a mark capable of being *represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours.*
- **Mark** includes “*Device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging, combination of colours, and any combination thereof.*”
- **Brand** refers to a name, term, sign, symbol, or design, or a combination of them, intended to identify the goods or services of one seller or group of sellers and to differentiate them from those of competitors. E.g. McDonald for restaurants, Cycle brand agarbattis, etc.
- **Brand Name** is that part of a brand which can be vocalized-the utterable.
- **Brand Mark** is that part of a brand which can be recognised but is not a utterable, such as symbol, design or distinctive colouring or lettering.
- **Device** refers to pictorial representations – e.g. animals, birds, landscape buildings, etc.
- **Letter** as a mark is the identity created out of letterforms and has its inbuilt strength of distinctiveness and individuality – e.g. IBM, GM, ELBEE, 3M etc.

TRADE MARKS TERMS EXPLANATION

- **Numerals** can be registered as trade mark upon evidence of user, e.g. 555, 501
- **Symbols** may take the shape of brand or logos. A logo is a visual depiction of a manufacturer or company and gives an identity to it. E.g. B.M.W., Maruti, Benz etc.
- **Label and ticket** mean a composite mark containing various features incl. devices, words, usually painted on paper and attached to the goods themselves.
- **Name** is the words signifying a name, surname or a personal name or an abbreviation thereof
- **Color** – a combination of colors can be considered as a trademark-e.g. color combinations used in drug capsules.
- **Sound** – sound or a sequence of sound can be registered as a trade mark – e.g. ‘the roar of the lion’ sound has been registered by MGM pictures; the ‘Tarzan Yell’ has been registered as Edgar Rice Burroughs Inc.
- **Smell** – Registration of smell as a trademark has been permitted as a trade mark. A smell reminiscent of roses applied to tyres was registered for Sumitomo tyres – smell of fresh cut grass for the tennis ball, etc.
- **Containers** fall within the definition of trade mark.

Classification of Trademarks

- Trademark classification comprises of 45 classes, out of which 34 are for goods and 11 are for services

Registration of a Trademark is Not Compulsory

- Legal Protection
- Exclusive Right
- Brand Recognition
- Asset Creation

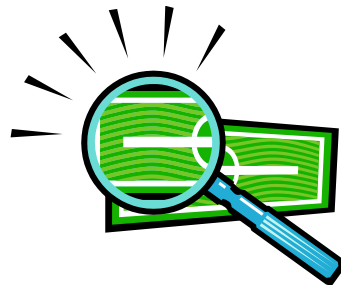
REFUSAL GROUNDS FOR REGISTRATION

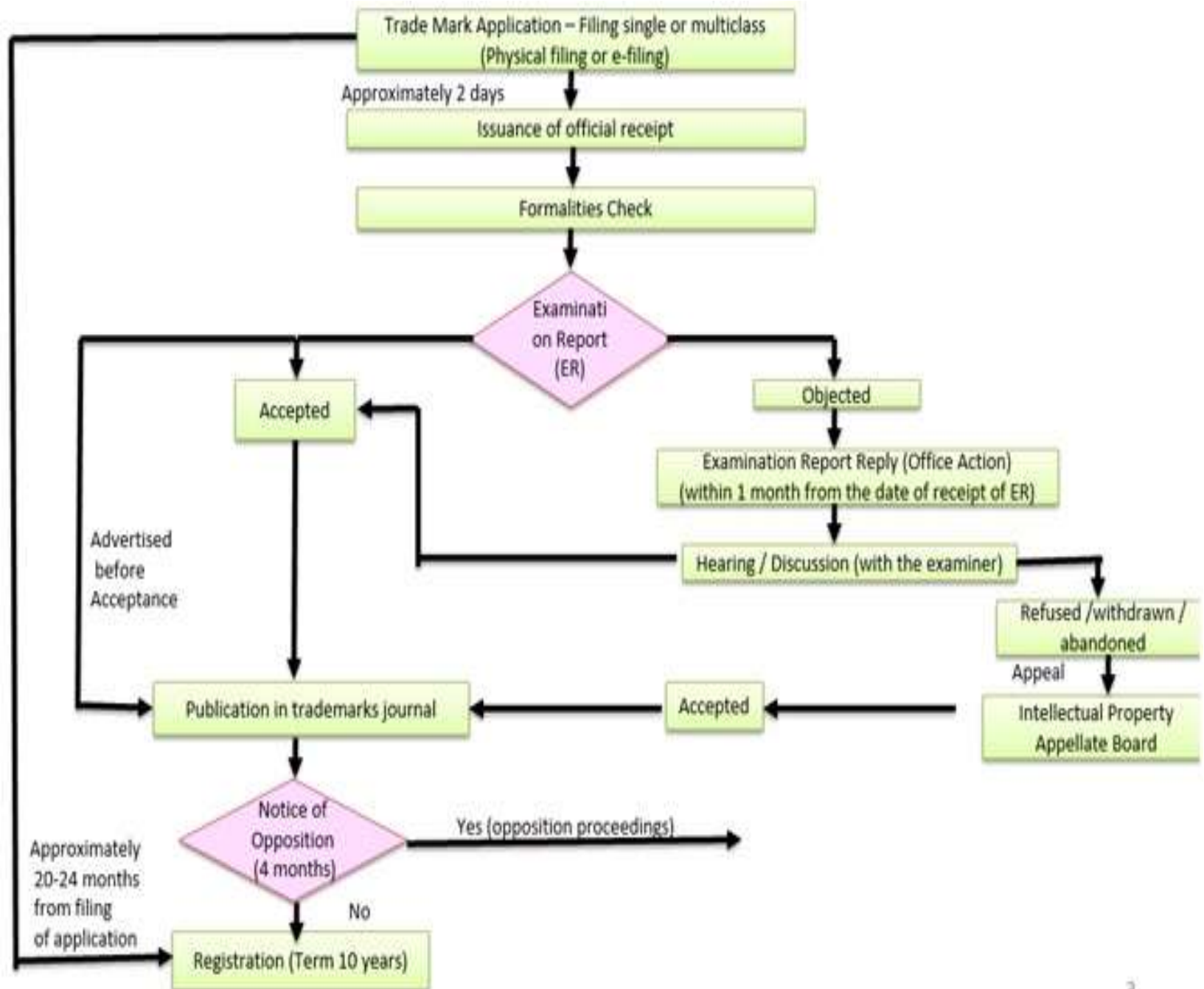
Grounds for refusal of registration

- Marks devoid of distinctive character
- Descriptive marks
- Generic marks
- Marks of such a nature as to deceive or cause confusion
- Marks containing any matter which is likely to hurt the religious susceptibilities of any class or section of the Indian citizens
- Marks containing scandalous or obscene matter
- Marks prohibited under the Emblems and Names (Prevention of Improper use) Act, 1950

Trademark Infringement, Counterfeiting and Dilution

- Infringement - A mark that is likely to cause confusion with a trademark already existing in the marketplace
- Counterfeiting - The deliberate copying of a mark
- Dilution - The value of the mark is substantially reduced through competition or through the likelihood of confusion from another mark
- **Offences** include falsifying and falsely applying trademarks, trade description are punishable by imprisonment and fine.





Territorial jurisdiction of Trademark registration offices

OFFICE	JURISDICTION
Mumbai	Maharashtra, Madhya Pradesh, Chhattisgarh and Goa
Ahmedabad	Gujarat, Rajasthan and Union Territories of Daman, Diu, Dadra and Nagar Haveli.
Kolkata	Arunachal Pradesh, Assam, Bihar, Orissa, West Bengal, Manipur, Mizoram, Meghalaya, Sikkim, Tripura, Jharkhand and Union Territories of Nagaland, Andaman & Nicobar Islands.
New Delhi	Jammu & Kashmir, Punjab, Haryana, Uttar Pradesh, Himachal Pradesh, Uttarakhand, Delhi and Union Territories of Chandigarh
Chennai	Andhra Pradesh, Telangana, Kerala, Tamil Nadu, Karnataka and Union Territories of Pondicherry and Lakshadweep Island