

Module 2 – Patents and Copyrights

Overview of patent

What is patent?

A patent is a government-granted right that allows an inventor to exclude others from making, using, or selling their invention for a limited period (usually 20 years from the filing date).

Purpose of a Patent

- Protects innovations by giving inventors exclusive rights.
- Encourages research and development by rewarding inventors.
- Promotes knowledge sharing since inventors must disclose their invention details

Examples

Technology & Software

1. Apple's Slide-to-Unlock Patent – Protected the gesture-based unlocking feature on smartphones.
2. Amazon's One-Click Ordering Patent – Allowed users to buy items with a single click without re-entering payment details.

Medical & Pharmaceutical

3. COVID-19 Vaccines (Pfizer, Moderna) – Patents on mRNA vaccine technology.

What Can Be Patented in India?

In India, patents can be granted for novel, useful, and non-obvious inventions across various domains:

1. Products: Physical items such as machines, devices, chemicals, pharmaceuticals, and manufactured goods.
2. Processes or Methods: Novel techniques in manufacturing, industrial processes, or specialized field applications.
3. Machines: New and useful mechanical inventions with innovative components or mechanisms.

4. Manufactured Articles: Items with unique features or created through innovative processes.
5. Chemical Compounds: New chemical formulations, including pharmaceutical drugs.
6. Biotechnological Inventions: Innovations in genetic engineering, gene sequencing, and advanced biotechnological methods.
7. Software and Computer-Implemented Inventions: Patentable if they demonstrate a technical contribution beyond mere algorithms or business methods.

Origin of patent

The concept of patents dates back centuries and has evolved to promote innovation and protect inventors' rights.

- The earliest known patent-like protections date to 500 BCE in Greece, where Sybaris granted exclusive rights to culinary innovations for a year.
- **The first recorded patent law was enacted in Venice, Italy, in 1474, granting exclusive rights to inventors for 10 years.**
- England (1624): The Statute of Monopolies laid the foundation for modern patent law by granting patents for "new manufactures" for 14 years.
- France (1791): Introduced a patent system emphasizing public disclosure of inventions.
- United States (1790): The U.S. Patent Act granted exclusive rights to inventors, fostering industrial growth.
- The **Paris Convention (1883)** established international patent protection principles.
- The **Patent Cooperation Treaty (PCT) (1970)** streamlined international patent filings.
- The Indian Patents Act of 1856 was the first formal patent law.
- The Patents Act of 1970 (amended in 2005) aligned India's system with global standards, particularly regarding pharmaceutical patents.

There are three types of patents:

1. Utility patents may be granted to anyone who invents or discovers any new and useful process, machine, article of manufacture, or composition of matter, or any new and useful improvement thereof;

Examples: Utility patents include computer software, brooms, candleholders, engines, medicines, light bulbs, the computer etc.

2. Design patents may be granted to anyone who invents a new, original, and ornamental design for an article of manufacture;

Examples: Smartphone case with a unique and original design or a new type of chair with a distinctive shape and appearance could both be eligible for design patents.

3. Plant patents may be granted to anyone who invents or discovers and asexually reproduces any distinct and new variety of plant.

Examples: plant patents include new varieties of flowers, fruits, vegetables, and ornamental plants.

Inventions not patentable in India

- Abstract ideas, scientific principles, and discoveries of natural things.
- New forms or uses of known substances without enhanced efficacy or new reactants.
- Mere mixtures or arrangements of existing devices.
- Methods of agriculture or horticulture.
- Methods of treating humans or animals (though related products may be patentable).
- Plants and animals (except microorganisms).
- Mathematical or business methods and computer programs *per se*.
- Literary, dramatic, musical, or artistic works (protected by copyright).
- Traditional knowledge.
- Inventions related to atomic energy.

To obtain a patent, an invention must meet the following key criteria:

1. Novelty (Newness)

- The invention must be new and should not be disclosed in any prior art (existing patents, publications, or publicly available information).
- It should not have been used or sold publicly before filing the patent application.

2. Inventive Step (Non-Obviousness)

- The invention should not be an obvious improvement or modification of an existing invention.
 - It must involve a significant technical advancement over existing knowledge.
3. Industrial Applicability (Usefulness)
- The invention must be capable of being used in an industry (e.g., manufacturing, healthcare, IT, etc.).
 - It should have practical utility and must function as described.

Registration process for filling the patent

1. Check Patentability

Before filing, ensure your invention is:

- New (not publicly known)
- Involves an inventive step (not obvious)
- Capable of industrial application

You can search existing patents on the Indian Patent Office website to confirm this.

2. Draft the Patent Application

Choose between:

- Provisional Specification – If the invention is still in development
- Complete Specification – If the invention is finalized

The specification should include:

- Title
- Technical field
- Background
- Description of invention
- Claims
- Drawings (if needed)

3. File the Application

File your application online at the Indian Patent Office website or submit it physically at one of the patent offices (Delhi, Mumbai, Kolkata, or Chennai).

You will receive an application number as confirmation.

4. Publication of the Application

The application is automatically published after 18 months from the filing date.

You can also request early publication.

5. Request for Examination

File a Request for Examination (Form 18) within 48 months from the filing date.

You can also file Form 18A for expedited examination if eligible.

6. Respond to Examination Report

The Patent Office will issue a First Examination Report (FER) with objections, if any.

You must respond and clear objections within 6 months (extendable by 3 more months).

7. Grant of Patent

If the Patent Office is satisfied, your patent will be granted and published in the official journal.

The patent is valid for 20 years from the filing date.

8. Maintain the Patent

Renewal fees must be paid every year starting from the third year to keep the patent active.

Rights and Duties of a Patentee under the Indian Patents Act, 1970

1. Exclusive Right

Section 48 of the Patents Act, 1970 grants exclusive rights to the patentee. These rights differ based on the nature of the patent:

- For a product patent: No third party can manufacture, use, sell, import, or offer for sale the patented product without the patentee's permission.

- For a process patent: No third party can use, sell, or import the product obtained directly from the patented process without authorization.

2. Right to Exploit the Patent

The patentee holds the exclusive right to produce, use, market, and distribute the patented invention within India. In the case of a process, this includes the right to authorize another person or agent to use the process with the patentee's consent.

3. Right to Assign and License

Under Section 69(5), the patentee may assign or license the patent to any third party. If there are multiple patentees, all co-owners must agree to the license. The assignment or license must be in writing and registered with the Patent Authority to be valid.

4. Right to Surrender the Patent

A patentee may voluntarily surrender the patent by applying to the Controller. The Controller advertises the surrender, allowing interested parties to oppose. After evaluating any objections, the Controller may accept the surrender.

5. Right Before Selling

According to Section 24, provisional rights arise after the notification of acceptance is published. These rights exist from the date of publication until the patent is officially granted.

6. Right to Sue for Infringement

In case of infringement, the patentee can initiate legal proceedings in a District Court or High Court. The court may award damages and issue a permanent injunction to prevent further violation.

7. Right to Apply for Patent of Addition

Sections 54 to 56 permit the patentee to apply for a patent of addition for improvements or modifications to the original invention. Once granted, it enjoys the same protection as the main patent and does not require a separate renewal fee.

Duties of patentee

1. **Disclose the Invention:** The patentee must tell the Patent Office everything about the invention, including if it was filed in other countries. This must be done when applying or within 6 months.
2. **Request for Examination:** The patent will not be examined automatically. The patentee must ask the Patent Office to examine the application.
3. **Reply to Objections:** If the examiner finds issues in the application (sent in a report called FER), the patentee must reply within 1 year, or the application will be rejected.
4. **Solve All Objections :** The patentee must give proper answers to all objections or oppositions. If needed, they must attend meetings with the Patent Office.
5. **Pay the Fees:** All government fees must be paid on time. If not paid, the patent will not be granted.

Assignments of Patents

Meaning:

- Assignment means the transfer of patent rights (fully or partly) from the patentee (owner) to an assignee.
- The assignee gains the right to make, use, sell, or prevent others from using the invention.

Types of Assignments

- **Legal Assignment:**
 - Done through a formal written deed. The assignee becomes the legal owner and is registered as the proprietor of the patent in the official records.
 - **Example:** Company A sells its complete patent rights for a new solar panel technology to Company B through a registered deed. Company B is now the legal owner.
- **Equitable Assignment:**
 - Based on a written agreement or contract.
 - The assignee gains the right to ownership but is not yet legally registered as the owner with the patent office.

- **Example:** Mr. X agrees in writing to assign his patent to a startup once the startup secures a certain round of funding. Until registration, this is an equitable assignment.
- **Mortgage:**
 - Patent rights are transferred to a lender (mortgagee) as security for a loan.
 - The patentee retains certain rights to use the patent unless there is a default.
 - Rights are restored to the patentee (mortgagor) once the loan is fully repaid.
 - **Example:** An inventor mortgages their patent to a bank to secure a business loan. The bank holds the patent rights as security until the loan is repaid.

Exclusive vs Non-exclusive Assignments

- **Exclusive Assignment:** Only the assignee has the right to use the patent. This exclusivity can be limited by:
 - **Specific Region:** Only the assignee can use the patent in a particular country or territory.
 - **Specific Product Type:** Only the assignee can use the patent for a particular application or product.
 - **Example:** A pharmaceutical company grants an exclusive assignment for its new drug to another company for sale and distribution only in Europe.
- **Non-exclusive Assignment:**
 - The patentee retains the right to use the patent and can also assign the same rights to multiple other parties.
 - **Example:** A university assigns non-exclusive rights to several companies to use its patented software in their respective products.

Key Legal Provisions – Patents Act, 1970

- **Section 70:** Patentee has the general power to assign, license, or otherwise deal with the patent and to grant interests in it.
- **Section 68:** Assignment must adhere to specific requirements:

1. Must be in writing.
 2. Must include all the terms and conditions agreed upon by the parties.
 3. Must be registered with the Controller of Patents within six months from the date of the assignment (though the Controller may extend this period).
- **Section 69:** The assignee of a patent must apply in writing to the Controller of Patents to have the assignment registered in the official records.
 - **Section 2(1)(b):** The term "assignee" includes the legal representative of a deceased assignee, ensuring continuity of rights.

Patent Infringement

Patent infringement" occurs when someone makes, uses, sells, offers to sell, or imports a patented invention without the permission of the patent holder. This is a violation of the exclusive rights granted by a patent, and the patent owner can take legal action to enforce their rights.

- **Direct Infringement:** This happens when a product or process literally falls within the scope of a patent's claims.
- **Indirect Infringement:** This includes contributing to or inducing someone else to infringe a patent.
- **Willful Infringement:** When someone knowingly infringes a patent, the court may award enhanced damages.

Examples:

- A company selling a product that uses patented technology without a license.
- A manufacturer importing goods into a country where a patent is in force without authorization.

Remedies for Violation

1. **Civil Remedies: Injunction:** Court order to stop further infringement.
2. **Damages or account of profits:** Monetary compensation.
3. **Seizure and destruction:** Confiscation of infringing goods.

4. Criminal Remedies: Not typically provided for infringement (unlike copyright law), but false representation of a patent may attract fines and imprisonment.

Copyrights

Definition

Copyright is a right of use given by the law to the creator of literary, dramatic, musical, artistic work, software and son on for a limited period of time. In India all the law related to copyright is regulated by the copyright Act 1957. Its latest amendment was brought in 2012. A copyright is an exclusionary right. It conveys to its owner the right to prevent others from copying, selling, performing, displaying, or making derivative versions of a work of authorship.

Types of Copyrights in India

According to Indian copyright law, the following six broad categories of works are protected:

1. Literary Works

Includes:

- Books, essays, research articles
- Oral speeches and lectures
- Compilations
- Computer programs, software, and databases

This category also includes digital content and written code.

2. Dramatic Works

Includes:

- Screenplays
- Dramas or plays

These works must involve dramatic composition or performance elements.

3. Sound Recordings

- Covers recordings of sounds regardless of the medium (e.g., phonograms, CD-ROMs, digital files).

- This is distinct from the musical composition—it protects the actual recorded audio.

4. Artistic Works

Includes:

- Drawings, paintings, photographs, logos, maps, charts
- Works of architecture, engravings, and traditional craftsmanship

Both two-dimensional and three-dimensional art forms are protected.

5. Musical Works

- Covers musical notations, tunes, and compositions
- Excludes lyrics, spoken words, or performances intended to accompany the music

The work need not be written down; it just needs to be original and expressed.

6. Cinematograph Films

- Includes visual recordings combined with sound, created by any process
- Examples: Motion pictures, TV programs, web series, videos with audio

This class automatically includes both the visual and audio elements together.

Non-Copyrightable Works

These are the types of works that do not get copyright protection:

1. Ideas, Concepts, and Principles: Copyright protects only the *expression* of ideas, not the ideas themselves.

Example: The idea of freedom cannot be copyrighted, but a poem or story expressing it can be.

2. Facts and Discoveries: Facts cannot be copyrighted, even if someone spends years researching them.

Example: An author who writes a book on Buddhism after years of research cannot stop others from using the facts, as long as others express them in their own words.

3. Titles, Names, Slogans, Short Phrases, and Methods: These are not considered original or creative enough to be protected. Example: A title like "My Life Story" or a slogan like "Stay Strong" cannot be copyrighted.

4. Certificates usually do not have enough creativity to qualify for copyright protection.

5. Digital Works: Digitally created works are protected by copyright. Example: A song, drawing, or story created on a computer is eligible for copyright protection.

6. Websites: You cannot copyright an entire website as one unit. However, different parts of the website can be protected separately:

- Text or code can be registered as literary works
- Images and designs as artistic works
- Music or sounds as musical works
- Each part needs a separate application for copyright registration.

Procedure for Copyright Registration

Step 1 – Documentation

The first step is to prepare the necessary documentation, which includes:

- **Application/Declaration Form:** This typically includes the name and address of the applicant, details of the author, and the nature of the work.
- **Statement of Particulars:** Provides information such as the title of the work, its language, category (literary, artistic, musical, cinematographic, etc.), and date of first publication (if applicable).

We provide guidance tailored to the specific type of work being registered—such as books, music compositions, films, software, or artwork.

Step 2 – Application Filing

Once the documents are in order, we file the application with the Registrar of Copyrights. The filing must include:

- Two copies of the work (format depends on the work: printed for literary works, digital files for software or music, etc.)
- Payment of the prescribed government fee (typically between ₹500 to ₹5000, based on the work category)

Step 3 – Copyright Examination

After submission:

- A 30-day waiting period begins, during which third parties can raise objections.
- The Copyright Office also reviews the application internally to check for completeness and compliance.
- An Examination Report is issued. If there are no objections or errors, the application proceeds smoothly. Otherwise, the report highlights the issues to be resolved.

Step 4 – Objection Removal (if applicable)**If objections are raised:**

- We assist in preparing a comprehensive reply and, if needed, provide personal representation during hearings.
- The goal is to resolve all issues to the Copyright Office's satisfaction.

Step 5 - Registration Certificate

Upon successful completion of all steps and resolution of any objections, the Registrar grants the Copyright Registration Certificate, officially confirming the protection of your work.

Assignment of Copyright

Assignment means giving up your rights to the work and transferring ownership to someone else. Once you assign your work:

- The new owner (the person or entity you assigned to) gets all the rights to the work. They can use it, sell it, or change it as they please.
- You no longer control the work unless you have a special agreement that says otherwise.
- Assignment must be in writing and can either be for all rights or just certain rights.

Example: An author might assign all the rights to their book to a publishing company, allowing them to publish, distribute, and sell it. The author won't have control over how the book is used after that.

License of Copyright

License is a bit different. It means giving permission for someone to use your work, but you still keep ownership. There are two main types of licenses:

- Exclusive License: The licensee (the person you give permission to) gets exclusive rights to use the work. You can't give the same rights to anyone else.
- Non-Exclusive License: You can allow several people to use the work, and the licensee doesn't have exclusive rights.

Example: A company may allow someone to use its software but still retains the rights to sell or license the software to other customers.

Terms of Copyrights

The "terms of copyright" refer to the duration for which copyright protection lasts. This duration varies significantly depending on the type of work and the jurisdiction (country). However, I can provide you with the general terms of copyright as outlined in the Indian Copyright Act, 1957, which is likely most relevant given your context.

General Terms of Copyright in India:

The term of copyright protection depends on the category of the work:

1. Literary, Dramatic, Musical, and Artistic Works:

- The copyright in these works generally lasts for the lifetime of the author plus sixty (60) years after their death.

2. Cinematographic Films:

- The copyright in a cinematographic film lasts for sixty (60) years from the end of the year in which the film was first published.

3. Sound Recordings:

- The copyright in a sound recording lasts for sixty (60) years from the end of the year in which the sound recording was first published.

4. Photographs:

- The copyright in a photograph lasts for sixty (60) years from the end of the year in which the photograph is first published.

Copyright Infringement

Using someone else's digital content (photo, video, song, etc.) without permission is copyright infringement. It is also a violation if someone else uses your original work without your consent.

Criteria for Copyright Protection

To qualify for copyright in India (and internationally), a work must fulfill the following three essential criteria:

1. Fixation in a Tangible Medium

- The work must exist in some physical or tangible form, even if temporarily.
- Examples: A written speech (even scribbled notes), a recorded song, or a digital file.
- Note: The form can be visual, audio, or digital—anything that can be seen or heard.

2. Originality and Original Work of Authorship (OWA)

- The work must be independently created by the author.
- It must reflect the author's own thoughts or intellectual effort, even if similar to existing works.
- Originality doesn't require novelty or artistic value.
- Even low-quality or aesthetically simple works can be copyrighted if they are original.

3. Minimal Creative Effort

- The work must show at least a minimal degree of creativity.
- There is no strict standard—evaluation is subjective and judged by the Registrar of Copyrights.

Not Eligible for Copyright:

- A basic alphabetical list (e.g., phone directory).
- Mere changes in dimensions or formatting (e.g., resizing a book).

Piracy in Copyright

Unauthorized reproduction, distribution, or use of copyrighted works, often on a large scale.

Examples:

- Bootlegging: Unauthorized recording and distribution.
- Illegal Streaming: Distributing copyrighted content online without authorization.
- Counterfeit Products: Manufacturing and selling unauthorized copies.

Copyright Infringement

1. What Counts as Copyright Infringement?

Under the Copyright Act, 1957, the following activities are considered violations if done without the creator's permission:

- Making or selling unauthorized copies of a work
- Renting out such copies
- Allowing public performance (like a play or song) without consent
- Distributing pirated versions in a way that harms the original creator
- Exhibiting pirated material publicly for trade
- Importing such infringing materials into India
- Translating someone else's work without getting their approval

2. What if an Auditorium Owner Allows a Pirated Performance?

If the owner of a hall or auditorium knowingly lets someone perform or play illegal copyrighted material (like music, drama, or movies), they can be held responsible—especially if they earned money from it. However, if they genuinely didn't know it was illegal, they may not be punished.

3. Infringement is a Criminal Offense

Yes—copyright violation is a crime in India.

- **At least 6 months of imprisonment**

- **A minimum fine of ₹50,000**

For repeat offenses:

- **At least 1 year of jail**
- **A fine of ₹1,00,000 or more**

There's a **special copyright board** and **IP division** to handle such cases.

4. It's a Cognizable Offense – No Warrant Needed!

- A **Sub-Inspector or higher** can **seize pirated material** *without a warrant*.
- They are allowed to act immediately and present the materials to the court.

Remedies for Copyright Infringement

- Legal actions available to copyright owners, can be civil or criminal.

Civil Remedies

1. **Injunction:** A court order to stop the infringing activity. Example: Taking down an infringing website.
2. **Damages:** Monetary compensation for the harm caused.
3. **Actual Damages:** Losses incurred by the copyright owner.
4. **Statutory Damages:** Predetermined amount by law.
5. Example: Compensation for lost sales due to piracy.
6. **Account of Profits:** Infringer pays profits made from the infringement to the copyright holder. Example: Paying profits from selling goods with an unauthorized logo.
7. **Destruction of Infringing Copies:** Court order to destroy pirated or counterfeit items. Example: Destruction of pirated DVDs or books.

Criminal Remedies:

- **Imprisonment:** Jail time for serious infringement cases (e.g., large-scale piracy). Example: Imprisonment for large-scale software piracy.
- **Fines:** Monetary penalties depending on the extent of infringement. Example: Fines for illegally copying and distributing software.
- **Seizure of Infringing Goods:** Law enforcement can confiscate and destroy pirated items. Example: Seizure of counterfeit goods or production equipment.