

CBCS SCHEME

USN 1CR20MC059

20MCA15

First Semester MCA Degree Examination, Jan./Feb. 2021 Research Methodology and IPR

Time: 3 hrs.

Max. Marks: 100

Note: Answer any FIVE full questions, choosing ONE full question from each module.

Module-1

- 1 a. What is Research? Discuss the objectives and motivations in research. (10 Marks)
b. Explain how significance of research is different for different people. (10 Marks)

OR

- 2 a. Differentiate between research method and research methodology. (10 Marks)
b. What are the problems that are encountered by researchers in India? (10 Marks)

Module-2

- 3 a. When can a problem become a research problem? (10 Marks)
b. Why is it needed to define research problem? (04 Marks)
c. What are the techniques involved in defining a research problem. (06 Marks)

OR

- 4 a. What is literature review? How can it help in research? (10 Marks)
b. How do you think researcher should collect literature for review? (10 Marks)

Module-3

- 5 a. What is research design? What are the components of research design? (10 Marks)
b. List and explain few important experimental designs. (10 Marks)

OR

- 6 a. What are the characteristics of a good sample design? (04 Marks)
b. Under what circumstances would you recommend (i) a probability sample (ii) a non-probability sample (iii) a stratified sample and (iv) a cluster sample. (16 Marks)

Module-4

- 7 a. Discuss how can a researcher collect data through (i) Interview (ii) Questionnaire. (10 Marks)
b. What are the techniques of interpretation? (04 Marks)
c. Explain the different steps involved in report writing. (06 Marks)

OR

- 8 a. What are the types of report that you know of? (10 Marks)
b. What are the precautions that should be taken while writing research report? (10 Marks)

Module-5

- 9 a. What is intellectual property? What are the different types of it? (10 Marks)
b. Why do you think IPR is important in recent times? (10 Marks)

OR

10 Write short notes on [Any Two]:

- a. Indian Patent Act 1970
b. Copyright Act 1957
c. Industrial Design Act 2000 (20 Marks)

1. a. What is research? Discuss the objectives and motivations in research

The term 'research' refers to the systematic method consisting of enunciating the problem, formulating a hypothesis, collecting the facts or data, analyzing the facts and reaching certain conclusions either in the form of solutions(s) towards the concerned problem or in certain generalizations for some theoretical formulation.

Objectives:

1. To gain familiarity with a phenomenon or to achieve new insights into it (exploratory or formulative research studies);
2. To portray accurately the characteristics of a particular individual, situation or a group (descriptive research studies);
3. To determine the frequency with which something occurs or with which it is associated with something else (diagnostic research studies);
4. To test a hypothesis of a causal relationship between variables (hypothesis-testing research studies).

Motivations:

1. Desire to get a research degree along with its consequential benefits;
2. Desire to face the challenge in solving the unsolved problems, i.e., concern over practical problems initiates research;
3. Desire to get intellectual joy of doing some creative work;
4. Desire to be of service to society;
5. Desire to get respectability.

1.b. Explain how significance of research is different for different people.

Significance:

- Research inculcates scientific and inductive thinking and it promotes the development of logical habits of thinking and organization.
- The role of research in several fields of applied economics, whether related to business or to the economy as a whole, has greatly increased in modern times.
- Research provides the basis for nearly all government policies in our economic system.
- Research has its special significance in solving various operational and planning problems of business and industry.
- Research is equally important for social scientists in studying social relationships and in seeking answers to various social problems.

Different people different significance:

(a) To those students who are to write a master's or Ph.D. thesis, research may mean a careerism or a way to attain a high position in the social structure;

- (b) To professionals in research methodology, research may mean a source of livelihood;
- (c) To philosophers and thinkers, research may mean the outlet for new ideas and insights;
- (d) To literary men and women, research may mean the development of new styles and creative work;
- (e) To analysts and intellectuals, research may mean the generalizations of new theories.

2.a. Differentiate between research method and research methodology

Research Method

Research method seeks to answer: what did the researcher use to complete his research. Research methods are the techniques and tools by which you research a subject or a topic.

Research methods involve the tasks of conducting experiments, tests, surveys, and the like utilizing the knowledge and skills learned through research methodology.

The research method aims at finding solutions to research problems.

Research methods are the end of any scientific or non-scientific research.

Research Methodology

Research methodology seeks to answer: how did the researcher complete his study.

Methodology explains and justifies the techniques and tools by which you may proceed with your research.

Research methodology involves the learning of various techniques to conduct research and acquiring knowledge to perform tests, experiments, surveys, and critical analysis.

Research methodology ensures the employment of the correct procedures to solve the problems.

Research methodology paves the way to choose appropriate research methods and thus is the beginning of any research.

2.b. What are the problems that are encountered by researchers in India?

1. The lack of a scientific training in the methodology of research
2. There is insufficient interaction
3. Lack of confidence that the information/data obtained from a business unit will not be misused
4. Research studies overlapping one another are undertaken quite often for want of adequate information
5. There does not exist a code of conduct for researchers
6. The difficulty of adequate and timely secretarial assistance
7. Library management and functioning is not satisfactory at many places
8. Many of our libraries are not able to get copies of old and new Acts/Rules, reports and other government publications in time
9. There is also the difficulty of timely availability of published data
10. The problem of conceptualization and also problems relating to the process of data collection and related things

3.a. When can a problem become a research problem?

- (i) There must be an individual or a group which has some difficulty or the problem.
- (ii) There must be some objective(s) to be attained at. If one wants nothing, one cannot have a problem.
- (iii) There must be alternative means (or the courses of action) for obtaining the objective(s) one wishes to attain. This means that there must be at least two means available to a researcher for if he has no choice of means, he cannot have a problem.
- (iv) There must remain some doubt in the mind of a researcher with regard to the selection of alternatives. This means that research must answer the question concerning the relative efficiency of the possible alternatives.
- (v) There must be some environment(s) to which the difficulty pertains.

3.b. Why is it needed to define research problem?

Quite often we all hear that a problem clearly stated is a problem half solved. This statement signifies the need for defining a research problem. The problem to be investigated must be defined unambiguously for that will help to discriminate relevant data from the irrelevant ones. A proper definition of research problem will enable the researcher to be on the track whereas an ill-defined problem may create hurdles. Questions like: What data are to be collected? What characteristics of data are relevant and need to be studied? What relations are to be explored. What techniques are to be used for the purpose? and similar other questions crop up in the mind of the researcher who can well plan his strategy and find answers to all such questions only when the research problem has been well defined. Thus, defining a research problem properly is a prerequisite for any study and is a step of the highest importance. In fact, formulation of a problem is often more essential than its solution. It is only on careful detailing the research problem that we can work out the research design and can smoothly carry on all the consequential steps involved while doing research

3.c. What are the techniques involved in defining a research problem?

Techniques involved in defining a problem:

- (i) Statement of the problem in a general way: First of all the problem should be stated in a broad general way, keeping in view either some practical concern or some scientific or intellectual interest. For this purpose, the researcher must immerse himself thoroughly in the subject matter concerning which he wishes to pose a problem. In case of social research, it is considered advisable to do some field observation and as such the researcher may undertake some sort of preliminary survey or what is often called pilot survey. Then the researcher can himself state the problem or he can seek the guidance of the guide or the subject expert in accomplishing this task. Often, the guide puts forth the problem in general terms, and it is then up to the researcher to narrow it down and phrase the problem in operational terms. In case there is some directive from an organisational authority, the problem then can be stated accordingly. The problem stated in a broad general way may contain various ambiguities which must be resolved by cool thinking and rethinking over the problem. At the same time the feasibility of a particular solution has to be considered and the same should be kept in view while stating the problem
- (ii) Understanding the nature of the problem: The next step in defining the problem is to understand its origin and nature clearly. The best way of understanding the problem is to

discuss it with those who first raised it in order to find out how the problem originally came about and with what objectives in view. If the researcher has stated the problem himself, he should consider once again all those points that induced him to make a general statement concerning the problem. For a better understanding of the nature of the problem involved, he can enter into discussion with those who have a good knowledge of the problem concerned or similar other problems. The researcher should also keep in view the environment within which the problem is to be studied and understood.

(iii) Surveying the available literature: All available literature concerning the problem at hand must necessarily be surveyed and examined before a definition of the research problem is given. This means that the researcher must be well-conversant with relevant theories in the field, reports and records as also all other relevant literature. He must devote sufficient time in reviewing of research already undertaken on related problems. This is done to find out what data and other materials, if any, are available for operational purposes. "Knowing what data are available often serves to narrow the problem itself as well as the technique that might be used.". This would also help a researcher to know if there are certain gaps in the theories, or whether the existing theories applicable to the problem under study are inconsistent with each other, or whether the findings of the different studies do not follow a pattern consistent with the theoretical expectations and so on. All this will enable a researcher to take new strides in the field for furtherance of knowledge i.e., he can move up starting from the existing premise. Studies on related problems are useful for indicating the type of difficulties that may be encountered in the present study as also the possible analytical shortcomings. At times such studies may also suggest useful and even new lines of approach to the present problem

(iv) Developing the ideas through discussions: Discussion concerning a problem often produces useful information. Various new ideas can be developed through such an exercise. Hence, a researcher must discuss his problem with his colleagues and others who have enough experience in the same area or in working on similar problems. This is quite often known as an experience survey. People with rich experience are in a position to enlighten the researcher on different aspects of his proposed study and their advice and comments are usually invaluable to the researcher. They help him sharpen his focus of attention on specific aspects within the field. Discussions with such persons should not only be confined to the formulation of the specific problem at hand, but should also be concerned with the general approach to the given problem, techniques that might be used, possible solutions, etc.

(v) Rephrasing the research problem: Finally, the researcher must sit to rephrase the research problem into a working proposition. Once the nature of the problem has been clearly understood, the environment (within which the problem has got to be studied) has been defined, discussions over the problem have taken place and the available literature has been surveyed and examined, rephrasing the problem into analytical or operational terms is not a difficult task. Through rephrasing, the researcher puts the research problem in as specific terms as possible so that it may become operationally viable and may help in the development of working hypotheses.

4.a. What is literature review? How can it help in research?

One of the essential preliminary tasks when you undertake a research study is to go through the existing literature in order to acquaint yourself with the available body of knowledge in your area of interest. Literature review has the following functions:

- It provides a theoretical background to your study.
- It helps you establish the links between what you are proposing to examine and what has already been studied.
- It enables you to show how your findings have contributed to the existing body of knowledge in your profession. It helps you to integrate your research findings into the existing body of knowledge.

4.b. How do you think researcher should collect literature for review?

Places to collect literature for review:

- Books - Though books are a central part of any bibliography, they have their disadvantages as well as advantages. The main advantage is that the material published in books is usually important and of good quality, and the findings are 'integrated with other research to form a coherent body of knowledge'. The main disadvantage is that the material is not completely up to date, as it can take a few years between the completion of a work and its publication in the form of a book.
- Journals - How to search a journal / an article in a journal:
 - locate the hard copies of the journals that are appropriate to your study;
 - look at citation or abstract indices to identify and/or read the abstracts of such articles;
 - search electronic databases.
- The Internet – Google scholar, Science Direct, ACM, other online databases

5.a. What is research design? What are the components of research design?

A research design is the arrangement of conditions for collection and analysis of data in a manner that aims to combine relevance to the research purpose with economy in procedure

Research design contains:

- (a) the sampling design which deals with the method of selecting items to be observed for the given study;
- (b) the observational design which relates to the conditions under which the observations are to be made;
- (c) the statistical design which concerns with the question of how many items are to be observed and how the information and data gathered are to be analyzed; and
- (d) the operational design which deals with the techniques by which the procedures specified in the sampling, statistical and observational designs can be carried out.

Research Design should have:

- (a) a clear statement of the research problem;

- (b) procedures and techniques to be used for gathering information;
- (c) the population to be studied; and
- (d) methods to be used in processing and analysing data.

5.b. List and explain few important experimental designs

- (a) Informal experimental designs:
 - (i) Before-and-after without control design.
 - (ii) After-only with control design.
 - (iii) Before-and-after with control design.
- (b) Formal experimental designs:
 - (i) Completely randomized design (C.R. Design).
 - (ii) Randomized block design (R.B. Design).
 - (iii) Latin square design (L.S. Design).
 - (iv) Factorial designs.

6.a. What are the characteristics of a good sample design?

- (a) Sample design must result in a truly representative sample.
- (b) Sample design must be such which results in a small sampling error.
- (c) Sample design must be viable in the context of funds available for the research study.
- (d) Sample design must be such so that systematic bias can be controlled in a better way.
- (e) Sample should be such that the results of the sample study can be applied, in general, for the universe with a reasonable level of confidence.

6.b. Under what circumstances would you recommend i. A probability sample ii. A non-probability sample iii. A stratified sample iv. A cluster sample

One should resort to simple random sampling because under it bias is generally eliminated and the sampling error can be estimated. But purposive sampling is considered more appropriate when the universe happens to be small and a known characteristic of it is to be studied intensively. There are situations in real life under which sample designs other than simple random samples may be considered better (say easier to obtain, cheaper or more informative) and as such the same may be used. In a situation when random sampling is not possible, then we have to use necessarily a sampling design other than random sampling. At times, several methods of sampling may well be used in the same study

7.a. Discuss how can a researcher collect data through i. interview ii. Questionnaire

- i. The interview method of collecting data involves presentation of oral-verbal stimuli and reply in terms of oral-verbal responses.

(a) Personal interviews: Personal interview method requires a person known as the interviewer asking questions generally in a face-to-face contact to the other person or persons.

Structured interviews: Such interviews involve the use of a set of predetermined questions and of highly standardized techniques of recording.

Unstructured interviews: It do not follow a system of pre-determined questions and standardized techniques of recording information.

Focused interview: It is meant to focus attention on the given experience of the respondent and its effects. (unstructured)

Clinical interview: It is concerned with broad underlying feelings or motivations or with the course of individual's life experience.

Non-directive interview: The interviewer's function is simply to encourage the respondent to talk about the given topic with a bare minimum of direct questioning.

(b) Telephonic interviews: This method of collecting information consists in contacting respondents on telephone itself. It is not a very widely used method, but plays important part in industrial surveys, particularly in developed regions.

ii. This method of data collection is quite popular, particularly in case of big enquiries. It is being adopted by private individuals, research workers, private and public organizations and even by governments. In this method a questionnaire is sent (usually by post) to the persons concerned with a request to answer the questions and return the questionnaire. A questionnaire consists of a number of questions printed or typed in a definite order on a form or set of forms. The questionnaire is mailed to respondents who are expected to read and understand the questions and write down the reply in the space meant for the purpose in the questionnaire itself. The respondents have to answer the questions on their own.

7.b. What are the techniques of interpretation?

(i) Researcher must give reasonable explanations of the relations which he has found, and he must interpret the lines of relationship in terms of the underlying processes and must try to find out the thread of uniformity that lies under the surface layer of his diversified research findings. In fact, this is the technique of how generalization should be done, and concepts be formulated.

(ii) Extraneous information, if collected during the study, must be considered while interpreting the final results of research study, for it may prove to be a key factor in understanding the problem under consideration.

(iii) It is advisable, before embarking upon final interpretation, to consult someone having insight into the study and who is frank and honest and will not hesitate to point out omissions and errors in logical argumentation.

(iv) Researcher must accomplish the task of interpretation only after considering all relevant factors affecting the problem to avoid false generalization. Quite often the conclusions, which appear to be all right at the beginning, may not at all be accurate.

7.c. Explain the different steps involved in report writing

- Logical analysis of the subject matter
- Preparation of the final outline
- Preparation of the rough draft
- Rewriting and polishing of the rough draft
- Preparation of the final bibliography
- Writing the final draft

8.a. What are the types of report that you know of?

1. Technical Report:

main emphasis is on

- (i) the methods employed,
- (ii) assumptions made in the course of the study,
- (iii) the detailed presentation of the findings including their limitations and supporting data.

2. Popular Report

The popular report is one which gives emphasis on simplicity and attractiveness. The simplification should be sought through clear writing, minimization of technical, particularly mathematical, details and liberal use of charts and diagrams. Attractive layout along with large print, many subheadings, even an occasional cartoon now and then is another characteristic feature of the popular report. Besides, in such a report emphasis is given on practical aspects and policy implications.

8.b. What are the precautions that should be taken while writing research report?

1. While determining the length of the report (since research reports vary greatly in length), one should keep in view the fact that it should be long enough to cover the subject but short enough to maintain interest.
2. A research report should not, if this can be avoided, be dull; it should be such as to sustain reader's interest.
3. Abstract terminology and technical jargon should be avoided in a research report.
4. Readers are often interested in acquiring a quick knowledge of the main findings and as such the report must provide a ready availability of the findings. For this purpose, charts, graphs and the statistical tables may be used for the various results in the main report in addition to the summary of important findings.
5. The layout of the report should be well thought out and must be appropriate and in accordance with the objective of the research problem.
6. The reports should be free from grammatical mistakes and must be prepared strictly in accordance with the techniques of composition of report-writing such as the use of

quotations, footnotes, documentation, proper punctuation and use of abbreviations in footnotes and the like.

7. The report must present the logical analysis of the subject matter. It must reflect a structure wherein the different pieces of analysis relating to the research problem fit well.

8. A research report should show originality and should necessarily be an attempt to solve some intellectual problem. It must contribute to the solution of a problem and must add to the store of knowledge.

9. Towards the end, the report must also state the policy implications relating to the problem under consideration. It is usually considered desirable if the report makes a forecast of the probable future of the subject concerned and indicates the kinds of research still needs to be done in that particular field.

10. Appendices should be enlisted in respect of all the technical data in the report.

11. Bibliography of sources consulted is a must for a good report and must necessarily be given.

12. Index is also considered an essential part of a good report and as such must be prepared and appended at the end.

13. Report must be attractive in appearance, neat and clean, whether typed or printed.

14. Calculated confidence limits must be mentioned and the various constraints experienced in conducting the research study may also be stated in the report.

15. Objective of the study, the nature of the problem, the methods employed and the analysis techniques adopted must all be clearly stated in the beginning of the report in the form of introduction.

9.a. What is intellectual property? What are the different types of it

Intellectual property refers to the fruits or product of human creativity, including literature, advertising slogans, songs, or new inventions. Thus, property that is the result of thought, namely, intellectual activity, is called intellectual property (IP). In some foreign countries, intellectual property (especially patents and trademarks) is referred to as industrial property.

The term intellectual property is usually thought of as comprising four separate, but often overlapping, legal fields: **trademarks, copyrights, patents, and trade secrets.**

9.b. Why do you think IPR is important in recent times?

Although people have always realized the importance of protecting intellectual property rights, the rapidly developing pace of technology has led to increased awareness of the importance of intellectual property assets. Some individuals and companies offer only knowledge. Thus, computer consultants, advertising agencies, Internet companies, and software implementers sell only brainpower. Similarly, some forms of intellectual property, such as domain names and moving images shown on a company's Web page, did not even exist until relatively recently.

In many cases, the most valuable assets a company owns are its intellectual property assets. For example, the value of the trademarks and service marks owned by the Coca-Cola Company has been estimated at more than \$70 billion, making it the world's most valuable brand. Thus, companies must

act aggressively to protect these valuable assets from infringement or misuse by others. The field of intellectual property law aims to protect the value of such investments.

10.a. Indian Patent Act 1970: **Patent**

A patent is an exclusive right granted by the Government to the inventor to exclude others to use, make and sell an invention in a specific period of time. A patent is also available for improvement in their previous Invention. The main motto to enact patent law is to encourage inventors to contribute more in their field by awarding them exclusive rights for their inventions. In modern terms, the patent is usually referred to as the right granted to an inventor for his Invention of any new, useful, non-obvious process, machine, article of manufacture, or composition of matter. The word "patent" is referred from a Latin term "patere" which means "to lay open," i.e. to make available for public inspection. There are three basic tests for any invention to be patentable:

- Firstly, the invention must be novel, meaning thereby that the Invention must not be in existence.
- Secondly, the Invention must be non- obvious, i.e. the Invention must be a significant improvement to the previous one; mere change in technology will not give the right of the patent to the inventor.
- Thirdly, the invention must be useful in a bonafide manner, meaning thereby that the Invention must not be solely used in any illegal work and is useful to the world in a bonafide manner.

An invention considered as new if, on the date of filing the application, any such invention is not known to the public in any form, i.e. oral, writing, or any other form. Anything shall not be termed as inventive if such a thing is already known to the public domain. The patent has a limited term of 20 years, which is counted from the date of filing of the patent application. A patent is a territorial right. Thus it can only be applied in the country where it has been granted. A patent is a territorial right. Thus it can only be applied in the country where it has been granted. Therefore, any legal action against infringement or infringement of patent rights can only be taken in that country. To obtain patent protection in different countries, each country must apply for a patent. The Patent Cooperation Treaty (PCT) provides a way to file an international patent application in which a patent can be filed through a single patent

application in a large number of countries. However, the PCT of a patent remains discretionary of the individual patent office only after the application is filed.

Under the Indian patent law, a patent can be obtained only for an invention which is new and useful. The invention must relate to the machine, article or substance produced by a manufacturer, or the process of manufacture of an article. A patent may also be obtained for innovation of an article or of a process of manufacture. In respect to medicine or drug and certain classes of chemicals, no patent is granted for the substance itself even if it is new, but the process of manufacturing and substance is patentable. The application for a patent must be true and the first inventor or the person who has derived title from him, the right to apply for a patent being assignable.

Some inventions cannot be patented. In the European Patent Convention (EPC) law there is the list of non-patentable subject-matter which includes methods of medical treatment or diagnosis, and new plant or animal varieties. Further information on such fields can be obtained from a patent attorney. Nor many patents be granted for inventions whose exploitation would be contrary to public order or morality (obvious examples being land-mines or letter-bombs). The following are not regarded as inventions, discoveries, innovations, scientific theories and mathematical methods, aesthetic creations, such as art or literature works or art of writing, schemes, rules and methods for performing mental acts, playing games or doing business, presentations of information, computer software.

History of Patent

The first step of the patent in India was Act VI of 1856. The main objective of the legislation was to encourage the respective inventions of new and useful manufactures and to induce inventors to reveal their inventions and make available for public. The Act was repealed by Act IX of 1857 as it had been enacted without the approval of the British Crown. Fresh legislation was enacted for granting 'exclusive privileges' was introduced in 1859 as Act XV of 1859. This legislation undergoes specific modifications of the previous

legislation, namely, grant of exclusive privileges to useful inventions only, an extension of priority period from 6 months to 12 months. The Act excluded importers from the definition of an inventor. The Act was then amended in 1872, 1883 and 1888.

The Indian Patent and Design Act, 1911 repealed all previous acts. The Patents Act 1970, along with the Patent Rules 1972, came into force on 20 April 1972, replacing the Indian Patent and Design Act 1911. The Patent Act is basically based on the recommendations of the report Justice Ann. The Ayyangar Committee headed by Rajagopala Iyengar. One of the recommendations was the allowance of process patents in relation to inventions related to drugs, drugs, food and chemicals. Again The Patents Act, 1970 was amended by the Patents (Amendment) Act, 2005 regarding extending product patents in all areas of technology including food, medicine, chemicals and microorganisms. Following the amendment, provisions relating to exclusive marketing rights (EMR) have been repealed, and a provision has been introduced to enable the grant of compulsory licenses. Provisions related to pre-grant and anti-post protests have also been introduced.

What can be patented?

[Sections 3 and 4 of the Indian Patents Act, 1970](#) clearly mentioned the exclusions regarding what can be patented in India. There are certain criteria which have to be fulfilled to obtain a patent in India. They are:

- Patent subject:

The most important consideration is to determine whether the Invention relates to a patent subject matter. Sections 3 and 4 of the Patents Act list non-patentable subject matter. Unless the Invention comes under any provision of Section 3 or 4, it means that it consists of a subject for a patent.

- Novelty:

Innovation is an important criterion in determining the patent potential of an invention. Under [Section 2\(l\) of the Patent Act](#), a novelty or new Invention is defined as “no invention or technology published in any document before the date of filing of a patent application, anywhere in the country or the world”. The complete specification, that is, the subject matter has not fallen into the public domain or is not part of state of the art”.

Simply, the novelty requirement basically states that an invention that should never have been published in the public domain. It must be the newest which have no same or similar prior arts.

- Inventive steps or non-clarity:

Under [Section 2\(ja\) of the Patents Act](#), an inventive step is defined as “the characteristic of an invention that involves technological advancement or is of economic importance or both, as compared to existing knowledge, and invention not obvious to a person skilled in the art.” This means that the invention should not be obvious to a person skilled in the same field where the invention is concerned. It should not be inventive and obvious for a person skilled in the same field.

- Capable of industrial application:

Industrial applicability is defined in [Section 2 \(ac\) of the Patents Act](#) as “the invention is capable of being made or used in an industry”. This basically means that the Invention cannot exist in the abstract. It must be capable of being applied in any industry, which means that it must have practical utility in respect of patent.

These are statutory criteria for the patent of an invention. In addition, other important criteria for obtaining a patent is the disclosure of a competent patent. A competent patent disclosure means a patent draft specification must adequately disclose the Invention, so as to enable a person skilled in the same field related to carrying out the Invention with undue efforts.

Rights and obligations of the patentee

Rights of Patentee

- **Right to exploit patent:** A patentee has the exclusive right to make use, exercise, sell or distribute the patented article or substance in India, or to use or exercise the method or process if the patent is for a person. This right can be exercised either by the patentee himself or by his agent or licensees. The patentee's rights are exercisable only during the term of the patent.
- **Right to grant license:** The patentee has the discretion to transfer rights or grant licenses or enter into some other arrangement for a consideration. A license or an assignment must be in writing and registered with the Controller of Patents, for it to be legitimate and valid. The document assigning a patent is not admitted as evidence of title of any person to a patent unless registered and this is applicable to assignee not to the assignor.
- **Right to Surrender:** A patentee has the right to surrender his patent, but before accepting the offer of surrender, a notice of surrender is given to persons whose name is entered in the register as having an interest in the patent and their objections, if any, considered. The application for surrender is also published in the Official Gazette to enable interested persons to oppose.
- **Right to sue for infringement:** The patentee has a right to institute proceedings for infringement of the patent in a District Court having jurisdiction to try the suit.

Obligations of patentee

- **Government use of patents:** A patented invention may be used or even acquired by the Government, for its use only; it is to be understood that the Government may also restrict or prohibit the usage of the patent under specific circumstances. In case of a patent in respect of any medicine or drug, it may be imported by the

Government for its own use or for distribution in any dispensary, hospital or other medical institution run by or on behalf of the Government. The aforesaid use can be made without the consent of the patentee or payment of any royalties. Apart from this, the Government may also sell the article manufactured by patented process on royalties or may also require a patent on paying suitable compensation.

- **Compulsory licenses:** If the patent is not worked satisfactorily to meet the reasonable requirements of the public, at a reasonable price, the Controller may grant compulsory licenses to any applicant to work the patent. A compulsory license is a provision under the Indian Patent Act which grants power to the Government to mandate a generic drug maker to manufacture inexpensive medicine in public interest even as a patent in the product is valid. Compulsory licenses may also be obtained in respect of related patents where one patent cannot be worked without using the related patent.
- **Revocation of patent:** A patent may be revoked in cases where there has been no work or unsatisfactory result to the demand of the public in respect of the patented invention.
- **Invention for defence purposes:** Such patents may be subject to certain secrecy provisions, i.e. publication of the Invention may be restricted or prohibited by directions of Controller. Upon continuance of such order or prohibition of publication or communication of patented Invention, the application is debarred for using it, and the Central Government might use it on payment of royalties to the applicant.
- **Restored Patents:** Once lapsed, a patent may be restored, provided that few limitations are imposed on the right of the patentee. When the infringement was made between the period of the date of infringement and the date of the advertisement of the application for reinstatement, the patent has no authority to take action for infringement.

Procedure of Patent

- Step 1: Write about inventions (idea or concept) with each and every detail.

Collect all information about your Invention such as:

1. Field of Invention
2. What does the Invention describe
3. How does it work
4. Benefits of Invention

If you worked on the Invention and during the research and development phase, you should have some call lab records which are duly signed with the date by you and the concerned authority.

- Step 2: It must involve a diagram, drawing and sketch explains the Invention

Drawings and drawings should be designed so that the visual work can be better explained with the invention work. They play an important role in patent applications.

- Step 3: To check whether the Invention is patentable subject or not.

Not all inventions can be patentable, as per the Indian Patent Act there are some inventions which have not been declared patentable (inventions are not patentable).

- Step 4: Patent Discovery

The next step will be to find out if your Invention meets all patent criteria as per the Indian Patent Act-

1. The invention must be novel.
2. The Invention must be non- obvious.

3. The Invention must have industrial applications.

- Step 5: File Patent Application

If you are at a very early stage in research and development for your Invention, then you can go for a provisional application. It offers the following benefits:

1. Filing date.
2. 12 months time for filing full specification.
3. Lesser cost.

After filing a provisional application, you secure the filing date, which is very important in the patent world. You get 12 months to come up with the complete specification; your patent application will be removed at the end of 12 months.

When you have completed the required documents and your research work is at a level where you can have prototypes and experimental results to prove your inventive move; you can file the complete specification with the patent application.

Filing the provisional specification is an optional step if you are in the stage where you have complete knowledge about your Invention you can go straight to the full specification.

- Step 6: Publication of the application

Upon filing the complete specification along with the application for the patent, the application is published 18 months after the first filing.

If you do not wish to wait until the expiration of 18 months from the filing date to publish your patent application, an initial publication request may be made with the prescribed fee. The patent application is usually published early as a one-month form request.

- Step 7: Request for Examination

The patent application is scrutinized only after receiving a request for an RFE examination. After receiving this request, the Controller gives your patent application to a patent examiner who examines the patent application such as the various patent eligibility criteria:

1. Patent subject
2. Newness
3. Lack of clarity
4. Inventory steps
5. Industrial application
6. By enabling

The examiner makes the first examination report of the patent application upon a review for the above conditions. This is called patent prosecution. Everything that happens for a patent application before the grant of a patent is usually called patent prosecution.

The first examination report submitted to the Controller by the examiner usually includes prior art (existing documents prior to the filing date) that are similar to the claimed invention and is also reported to the patent applicant.

- Step 8: Answer the objections

Most patent applicants will receive some type of objections based on the examination report. The best thing is to analyze the examination report with the patent professional (patent agent) and react to the objections in the examination report.

This is an opportunity for an inventor to communicate his novelty over the prior art in examination reports. Inventors and patent agents create and send a test response that tries to prove that their Invention is indeed patentable and meets all patent criteria.

- Step 9: clearance of objections

The Controller and the patent applicant is connected for ensuring that all objections raised regarding the invention or application is resolved and the inventor has a fair chance to prove his point and establish novelty and inventive steps on other existing arts.

Upon receiving a patent application in order for grant, it is the first grant for a patent applicant.

- Step 10:

Once all patent requirements are met, the application will be placed for the grant. The grant of a patent is notified in the Patent Journal, which is published periodically.

Grounds for opposition

An application for a patent may be opposed by either a prior grant or a subsequent grant by any person on the grounds specified in s 25 (1) and 25 (2) of the former Act. No other grounds stated in the Act can be taken to oppose the patent. Some major opposition grounds, common to both pre-grant and post-grant opposition, are mentioned below:

1. The Invention was published previously in India or elsewhere or was claimed previously in India.
2. The Invention is the formation of a part of the prior public knowledge or prior public use or traditional knowledge of any community.
3. The Invention is obvious and lacks an inventive step.
4. The Invention does not constitute an invention within the meaning of the Act, or the Invention is not patentable under the Act.
5. Failure to disclose information or furnishing false information relating to foreign by the applicant.

Pre-Grant Protest: [Section 25 \(1\) of the Patent Act](#) and [Rule 55 of the Patent Rules, 2003](#) provide the procedure to be followed for pre-grant opposition. Pre-grant opposition can be initiated by anyone after the application is published

and before the patent is granted. If a request for examination is filed to oppose the application, the Controller considers representation only. If a request for examination has not been made by the applicant, it is possible for the opponent as an interested person to first file a request for examination under Section 11B, and then file a pre-grant opposition.

Post-grant opposition: The procedure is followed to oppose the grant under [Section 25 \(2\) of the Patents Act, 1970](#) and [Rule 55A to 70 of the Patent Rules, 2003](#). A Post-grant opposition can be filed by any person interested in any of the specific grounds before a period of one year from the date of publication of the grant of the patent. Unlike a pre-grant protest, a pre-grant protest must be filed by an individual and not by a person. The expression (people interested) is defined under section [2\(t\) of the Patents Act, 1970](#) wherein a person/party is engaged, or is conducting research in the same field with which the Invention (which is to be opposed) is concerned.

What are the Authorities concerning patent

The Controller of Patents is considered as the principal officer responsible for administering the patent system in India. The Controller is regarded as the overall supervisor of the four Patent Offices in Chennai, Delhi, Mumbai and Kolkata. Since the Controller also acts as the Registrar of Trademarks with the Head Office of the Trade Office in Mumbai, the Controller acts as a patent from his office in Mumbai. Officially, the patent has its head office in Kolkata (Calcutta). Patents granted under the Patents Act and other officers of the Patent Office discharge their functions under the direction or regulation of the Controller.

Patent Infringement

Patent infringement is a violation which involves the unauthorized use, production, sale, or offer of sale of the subject matter or Invention of another's patent. There are many different types of patents, such as utility patents, design patents, and plant patents. The basic idea behind patent infringement

is that unauthorized parties are not allowed to use patents without the owner's permission.

When there is infringement of patent, the court generally compares the subject matter covered under the patent with the used subject matter by the "infringer", infringement occurs when the infringer Uses patent material from in the exact form. Patent infringement is an act of any unauthorized manufacture, sale, or use of a patented invention. Patent infringement occurs directly or indirectly.

Direct patent infringement: The most common form of infringement is direct infringement, where the Invention that infringes patent claims is actually described, or the Invention performs substantially the same function.

Indirect patent infringement: Another form of patent infringement is indirect infringement, which is divided into two types:

- Infringement by inducement is any activity by any third party that causes another person to infringe the patent directly. This may include selling parts that can only be used realistically for a patented invention, selling an invention with instructions to use in a certain method that infringes on a method patent or licenses an invention that is covered by the patent of another. The inducer must assist intentional infringement, but does not require intent to infringe on the patent.
- Contributory infringement is the sale of components of material that are made for use in a patented invention and have no other commercial use. There is a significant overlap with indications, but contributor violations require a high level of delay. Violations of the seller must have direct infringement intent. To be an obligation for indirect violations, a direct violation must also be an indirect act.

Doctrine of Equivalents And Doctrine of Colourable Variation

Patent infringement generally categorized into two, i.e. literal infringement and infringement in the doctrine of equivalents. The term "literal infringement" means that each element heard in a claim has the same correspondence in the alleged infringement device or process. However, even if there are no literal violations, a claim can be infringed under the doctrine of equivalents if the accused device or some other element of the process performs the same function, in substantially the same way to obtain substantially the same result. The principle of equivalence is a legal rule in most patent systems in the world that allows a court to hold a party liable for patent infringement, even though the infringing instrument or process does not fall within the literal scope of the patent claim, but Still equal to the claimed Invention.

This is not an expansion of coverage of a claim permitted by the principle of equivalence. Rather, the scope of coverage given to the patent owner is limited by

(i) the "prosecution history estoppel" and

(ii) the principle of the prior art.

The analysis of infringement determines whether a claim claimed in a patent "literally reads on the accused infringer's instrument or process", or covers the allegedly infringing device in the doctrine of equivalents.

The steps in the analysis are:

- Oppose the scope of the "literal" language of claims.
- Comparing claims with the accused device or process to determine if there is a literal violation.
- If there is no literal violation, reduce the scope of claims under the principle of equality.

The doctrine of equivalents is considered as an equitable doctrine which effectively expands the scope of the claims beyond their literal language to the true scope of the inventor's contribution to the art. However, there are limitations in the scope of equivalents to which the patent owner is entitled.

Remedies for Patent Infringement

Patent infringement lawsuits can result in significantly higher losses than other types of lawsuits. Some laws, such as the Patent Act, allow plaintiffs to recover damages. Patent infringement is the illegal manufacture or usage of an invention or improvement of someone else's invention or subject matter who owns a patent issued by the Government, without taking the owner's consent either by consent, license or waiver. Several remedies are available to patent owners in the event of an infringement. Measures available in patent infringement litigation may include monetary relief, equal relief and costs, and attorneys' fees.

Monetary Relief: Monetary relief in the form of compensatory damages is available to prevent patent infringement:

1. Indemnity compensation – A patent owner may have lost profits for infringement when they established the value of the patent.
2. Increased damage – Up to three times, compensation charges can be charged in cases of will or violation of will.
3. The time period for damages – The right to damages can be claimed only after the date when the patent was issued and only 6 years before the infringement claim is filed.

Equitable relief: Orders are issued by the court to prevent a person from doing anything or Act. Injunctions are available in two forms:

1. Preliminary injunction – Orders made in the initial stage of lawsuits or lawsuits that prevent parties from doing an act that is in dispute (such as making a patent product)

2. Permanent injunction – A final order of a court which permanently ceases certain activities or takes various other actions.

Conclusion

Patents can provide great value and increased returns to individuals and companies on the investment made in developing new technology. Patenting should be done with an intelligent strategy that aligns business interests to implement the technology with a wide range of options in the search for how, where and when to patent. As an example, with a focus on international considerations and regulations in specific countries, it is possible for a company to achieve significant savings and improve the rights gained using patents.

10.b. Copyright Act 1957: The **Copyright Act, 1957** protects original literary, dramatic, musical and artistic works and cinematograph films and sound recordings from unauthorized uses. There is no copyright protection for ideas, procedures, methods of operation or mathematical concepts as such.

Why Copyright??

Copyright ensures certain minimum safeguards of the rights of authors over their creations, thereby protecting and rewarding creativity. Creativity being the keystone of progress, no civilized society can afford to ignore the basic requirements of encouraging the same.

Meaning of Copyright:

Section 14 of the act defines copyright as:

1. In case of literary, dramatic or musical work:

- a) Reproducing the work in any material form which includes storing of it in any medium by electronic means,
- b) Issuing copies of the work to the public which are not already in circulation,
- c) Performing the work in public or communicating it to the public,
- d) Making any cinematograph film or sound recording in the respect of work,
- e) Making any translation or adaptation of the work.

2. In case of a computer programme:

- a) To do any of the acts specified in respect of a literary, dramatic or musical works,
- b) To sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme.

3. In the case of artistic works:

- a) To reproduce the work in any material from including storing of it in any medium by electronic or other means, depiction in three dimensions of a two dimensional work and depiction in two dimensions of a three dimensional work,
- b) Communicating the work to the public,
- c) Issuing copies of work to the public which are not already in existence,
- d) Including work in any cinematograph films,
- e) Making adaptation of the work, and to do any of the above acts in relation to an adaptation of the work.

4. In the case of cinematograph film:

- a) To make a copy of the film, including photograph of any image forming part thereof or storing of it in any medium by electronic means or otherwise.
- b) To sell or give on commercial rental or offer for sale or for such rental, any copy of the film,
- c) To communicate the film to the public.

5. In the case of sound recording:

- a) To make any other sound recording embodying it “including storing of it in any medium by electronic or other means,
- b) To sell or give on commercial rental or offer for sale or for such rental, any copy of the sound recording,
- c) To communicate the sound recording to the public.

Who is a Author:

Works	Author
Literary or dramatic work	Creator of work
Musical Work	Composer
Cinematograph Film	Producer
Sound Recording	Producer
Photograph	Photographer
Computer Generated Work	Person who causes the work to be created

Term of Copyright:

Literary, dramatic, musical or artistic works enjoy protection for the life time of the author plus 60 years beyond i.e. 60 years after his death. In case of joint authorship which implies collaboration of

two or more authors in the production of work, the term of copyright is to be construed as a reference to the author who dies at last.

In case of copyright of posthumous, anonymous and pseudonymous works, cinematograph films, sound recordings, works of Government, public undertakings and international organization, the term of protection is 60 years from the beginning of the calendar year next following the year in the work has been first published.

The act has given broadcasting reproduction right to every broadcaster which is valid for 25 years from the beginning of the calendar year next following the year in the broadcast has been done.

Copyright Board:

Section 11 of the act provides for the establishment of the Copyright Board and empowers Central Government to constitute the same consisting of Chairman and 2 other members. It has many important functions, such as:

Settlement of disputes, Granting of licenses, etc

Copyright Licenses:

Chapter VI containing Sections 30-32B deals with Licenses.

I. Licenses by Owners of Copyright: Section 30 of the act empowers the owner of the copyright in any existing work or the prospective owner of the copyright in any future work to grant any interest in the right by license in writing by him or by his duly authorized agent. However, in the case of a license relating to copyright in any future work, the license shall take effect only when the work comes into existence.

II. Compulsory License withheld from public: Section 31 provides that if at any time during the term of copyright in any Indian work which has been published or performed in public, a complaint is made to the Copyright Board that the owner of copyright in the work has refused to republish or allow the reproduction of the work or has refused to allow the performance in public of the work and by reason of such refusal the work is withheld from the public or has refused to allow communication to the public by broadcast of such work or recording, on terms which the complainant considers reasonable, the Copyright Board, after giving to the owner of the copyright in the work a reasonable opportunity of being heard and after holding such inquiry as it may deem necessary, may, if it is satisfied that the grounds for such refusal are not reasonable, direct the Registrar of Copyright to grant to the complainant the license to republish the work.

III. Statutory License for broadcasting of literary and musical work and sound recording: Section 31D provides that any broadcasting organization desirous of communicating to the public by way of a broadcast or by way of performance of a literary or musical work and sound recording which has already been published may do so subject to the fulfillment of prescribed conditions.

IV. Termination of License: Section 32B of the act deals with termination of licenses and provides that if any time after the granting of a license, the owner of the copyright in the work or any person authorized by him publishes a translation of such work in the same language and which is substantially the same in content at a price reasonably related to the price normally charged in India for the translation of works of the same standard on the same or similar subject, the license so granted shall be terminated.

V. Other Licenses can be by way of License in unpublished or published works, benefit of disabled, etc

10.c. Industrial Design Act 2000: Earlier this Act was governed by the [Design Act, 1911](#). In order to bring the Design Act at par with the International law the enactment of the Design Act, 2000 took place. So, presently the design laws are regulated by the [Design Act of 2000](#). It is an Act to consolidate and amend the law relating to the protection of designs. It was published in the Gazette of India and came into force on 12.05.2000. This Act is a complete code in itself and is statutory in nature. It extends to the whole of India.

Design act 2000 definition

“Design” means features of shape, pattern, configuration, ornament or composition of colors or lines which is applied in three dimensional or two dimensional or in both the forms using any of the process whether manual, chemical, mechanical, separate or combined which in the finished article appeal to or judged wholly by the eye.

What it does not include?

- It does not include any mode of construction or any trademark as defined under clause (v) of sub-section (1) of Section 2 of the [Trade and Merchandise Marks Act, 1958](#).
- It does not include 'property mark' as defined in section 479 of the [Indian Penal Code, 1860](#).
- It does not include any artistic work as defined in clause (c) of section 2 of the [Copyright Act, 1957](#).

Origin and development of design act in India

- The origin of the Design Act in India traces back to the British period.
- The first Act that gave privileges and protection to designs was the Patent and Designs Act, 1872. This Act supplemented the Act of 1859 which was passed by the Governor-General of India to protect industrial designs and grant privileges to inventors.

- The Inventions and Designs Act of 1888 repealed this Act of 1872.
- The Act of 1888 was a reflection of the Designs Act of the United Kingdom.
- In the year 1911, the British government enacted a new law in the form of the Patent and Designs Act repealing all the prior legislations.
- In 1930, this Act was amended and the government came up with some changes in the process of registration of designs in which the concept of new and original design changed to the new or original design.
- This legislation used to govern the matters related to both patents as well as designs.
- In 1970, the Patent Act was enacted to deal with the matters of patent specifically. All the provisions regarding patents from this Act were repealed and it continued to deal with Industrial designs till 2000.
- India became a member state of the WTO in the year 1995. Consequently, the Patents and Designs Act of 1911 was repealed and a new act called the Designs Act, 2000 was enacted in compliance with **TRIPS** (Trade-Related aspects of Intellectual Property Rights) to make design laws for the country.
- This new Act was enforced on 11th May 2001.

Salient features of design act 2000

- India is a member of the World Trade Organization's Paris Convention. It has signed the Patent Cooperation Treaty which allows all the signatories of the convention to claim priority rights.
- Under the Act of 2000, Locarno classification has been adopted in which the classification is based only on the subject matter of design. Under the previous provisions, the classification was made on the basis of the material which has been used to make that material.
- The introduction of "Absolute Novelty" makes it possible to judge a novelty on the basis of prior publication of any article. This is applicable in other countries also.

- As per the new law, a design can be restored which was absent in the previous enactment. Now, the registration of a design can be restored.
- The Act allows the district courts to transfer cases to the high courts where the jurisdiction is present. It is possible only in cases where a person is challenging the validity of any registration.
- Laws regarding the delegation of powers of the controllers to other controllers and the duty of examiner are also mentioned in the new Act.
- The quantum of punishment is also enhanced under the Act in case of any infringement.
- The secrecy of two years of a registered design is also revoked.
- Provisions regarding the avoidance of certain restrictive conditions are also there so as to regulate anti-competitive practices in contractual licenses.
- Whenever a license is brought within the domain of public records and that too publicly, the registration is likely to be taken into consideration. Anyone can get a certified copy of it in order to inspect the same.
- The laws regarding the substitution of the application before registering a design are also mentioned in the new enactment.
- Under new provisions, power has been given to district court to transfer cases to the high court where the court is having jurisdiction. This is only possible if the person is challenging the validity of the design registration.
- Incorporates the provisions regarding delegation of powers of the controller to other controllers and duty of examiner.
- Under the new provision, the quantum of punishment is also enhanced in case of infringement.
- It revokes the secrecy of two years of a registered design.
- It contains provisions for the avoidance of certain restrictive conditions so as to regulate anti-competitive practices within contractual licenses.

- The registration is taken into consideration when it is brought within the domain of public records that too physically. Anyone can inspect the records and get a certified copy of it.
- It contains provisions for substitution of the application before registering the design.

Objectives of design act 2000

- The primary objective of the Design Act is to protect the designs.
- The Design Act Of 2000 is an Act to consolidate and amend the law relating to the protection of designs.
- Its main objective is to protect new or original designs from getting copied which causes loss to the proprietor.
- The important purpose of design registration is to see that the creator, originator or artisan of any design is not deprived of his reward for creating that design by others copying it to their goods or products.
- An industrial design helps in drawing a customer's attention and helps in increasing the commercial value of an article. Therefore, helps in expanding its market.
- There are many competitors who adopt evil ways to reduce the competition in the rival groups by exploiting the designs to their advantage. Thus, it is necessary to have laws to safeguard the interests of the owners of these designs. In order to fulfill this objective, the Design Act of 2002 came into existence.

What is design all about?

The term 'Design' under Design Act is defined as :

"Features of shape, any configuration, pattern, ornament or composition of lines or colours which is applied to Two dimensional or three dimensional or in both the forms using any process including manual, chemical or mechanical,

separate or combined which in the finished article appeal to or judged solely by the eye."

It neither includes any mode of construction nor any trademark as defined under clause (v) of sub-section (1) of section 2 of Trade and Merchandise Marks Act, 1958. It even does not includes property mark as defined in section 479 of the Indian Penal Code or any artistic work as defined in clause (c) of section 2 of the Copyright Act, 1957.[\[1\]](#)

With reference to the Design Act, 2000 what are articles?

Under the provisions of Design Act, 2000, any manufactured object is known to be "article". The object can be of any substance irrespective of artificial or natural. The article must be capable of being made and sold separately.

Essential Requirements for registration

Novelty and originality

A design can be considered for registration only if they are unique. A combination of previously registered design can also be considered only if the combination produces new visuals. In a case ***Hello Mineral Water PVT. LTD. v. Thermoking California Pure***, a design of water dispenser having a cylindrical shape was not considered as new on the grounds that mere shape and form is not sufficient to prove novelty.

Design must be unique, a Prior publication is not acceptable

The design must not be a published one. If the design is already published than the design is not eligible for the publication. There should not be any tangible copy available already in the market if you are seeking registration of the design that is in digital format. Displaying of the design in any fashion show by the creator is the publication of that design. Secret and private use of

the design does not amount to the publication and can be used for the experimental purpose.

It was held in ***Kemp and company v. Prima Plastics LTD.*** that disclosure of design by the proprietor to any third person cannot be claimed as publication provided that the disclosure must be in good faith.

Making application of design to an Article

The applicability of the design should be to the article itself. It can be informed of a three-dimensional figure. There are two-dimensional figures also included in this act i.e any painting or any graffiti on the walls or print on the bedsheets.

The design must not be contrary to the order and morality

The design must be registrable under the Design Act, 2000. It must not be prohibited by the Government of India or any institution so authorized. The design must be capable of registering under Section 5 of this act. The design which can cause a breach of peace and may hurt the sentiments of the people may not be allowed to get register.

What is to be considered to register under this Act?

Looking forward to registering a design under Design Act, 2000, one must ensure following features in your design which are:

- The work must be capable of selling and made separately.
- It must be original and new to the market. The plagiarised design will not be considered under this act.
- It should be purely distinguishable from other designs.
- It must not relate to obscenity or any material which is inappropriate.

Rights of the proprietor of the design

When a proprietor applies for the registration of the design he shall automatically get 'copyrights in design' for the period of 10 years from the date of registration. This period can be extended if the proprietor wants to continue with the design. The Design Act should not be confused with the Copyrights act because there are many products which can be registered under both the acts but their remedies cannot be sought in both the acts individually.

Who is entitled to seek Registration?

As per the provisions of Design Act, 2000 any proprietor who is seeking registration of a design which is original and unpublished previously in any country which does not seem to be contrary to any law and order of that country can file an application for registration. A proprietor as per Section 2(j) includes that person who

1. is the author of that design
2. acquired design for a valid consideration and
3. Any person to whom the design has been devolved from the original proprietor.

In case there is more than one author than the design must be applied by the joint authors only.

Locarno classification

Locarno agreement is an agreement as per which the designs are registered under the Act. It classifies goods for the purpose of registering them which helps in Design searches. It divides designs into different classes which are mainly function-oriented.

Procedure for registration of design in India

[Chapter 2](#) of the Design Act deals with the registration of designs and the procedure to be followed for the same. The following steps must be followed:

- An application for the registration shall be made in the patent office in the prescribed form along with the prescribed fee. The class in which the design is to be registered must be specified in the application and the article(s) to which it is to be applied. There are separate applications which need to be filed for each class of article.
- The controller will give the application for examining it so as to check whether the design is capable of being registered or not. If everything seems perfect then the controller will accept the application and proceed further.
- If there is any objection, then the applicant or his agent will be asked to make necessary amendments so as to register the design and nullify the objection.
- If the objection does not get removed within three months after the hearing, the application will be withdrawn and it must be noted that

Application for registration of designs

The application for registration of designs is given under [Section 5](#) of the Design Act, 2000.

- The controller registers a design under this Act after verifying that the design of any person, claiming to be the proprietor, is the new or original design not previously published anywhere and is not against any public policy or morality. Provided that such a design should be capable of being registered under this Act.
- The applications under the Act shall be filed in the Patent Office in the prescribed manner along with the prescribed fee for filling the form.
- The design should be registered in a specific class and not in more than one class. In case of any doubt regarding the class in which the design should be registered, the Controller will decide the matter.
- The controller may even reject any design and not register it. In such a case, the person aggrieved may file an appeal before the High Court.
- If any application is not complete within the prescribed time limit owing to the fault of the applicant then it shall be abandoned.

- A design when registered shall be registered as of the date of the application for registration.

A wide variety of items that can be registered under the Act include cutlery, dresses, etc.

Items that cannot be registered as a design under the Act

- Signs, emblems or flags of any country.
- Size of any article, if changed.
- Structures and buildings.
- Integrated circuits' layout designs.
- Trade variations.
- Any principle or mode of construction of any article such as labels, tokens, cartoons, cards, etc.
- Books, calendars, certificates, jackets, forms-and other documents, greeting cards, maps and plan cards, postcards, leaflets, stamps, medals, dressmaking patterns.
- A mechanical contrivance.
- Workshop alterations of components of an assembly.
- Parts of any article which is not manufactured and sold separately.

Duration of the registration of a design

The total time for which a design can be registered is 15 years. Initially, it was 10 years, which could be extended for another 5 years by paying a fee of Rs. 2000 to the Controller but it should be done before the expiry of that 10 years period. The proprietor of any design may even file an application as soon as the design gets registered for such an extension.

Appeal for cancellation of the registration of a design

The registration of any design can be canceled anytime after it gets registered by filing a petition for such cancellation in [Form 8](#) along with a fee of Rs. 1,500 to the Controller.

The grounds for such cancellation are as follows:

- The design has been already registered in India previously.
- It has been published in India or somewhere else before the date of registration.
- The design is not original or new.
- It is not registrable under the Act.

Entitlement of registration under design act 2000

According to the Design Act of 2000, a proprietor who wants to get his design registered and it is original and is not published previously anywhere in any country and the one which does not seem to be clashing to any law and order of that country, can file an application for getting the design registered. A proprietor includes the persons who:

- Is the author of the design;
- Has acquired the design for a valid consideration and
- Anyone to whom that design has been devolved from the original titleholder.

In case if there is more than one author of the design, then the design must be applied by the joint authors.

Copyright in registered designs

After the registration of a design, the proprietor shall have the copyright of the design for 10 years from the date of registration.

If you want to extend the copyright period for the second period of 5 years then before the expiry of the original said ten years an application must be filed in the Controller's office along with the prescribed fee.

Register of designs

A book named 'Register of Designs' shall be kept at the Patent Office which contains all the details regarding the registered designs such as names, addresses of proprietors of registered designs, notifications and transmissions of designs and other important information. Such register must be maintained wholly or partly on computer diskettes or floppies as may be prescribed.

Importance of Design

A design reflects someone's intellect and creativity which afterward becomes a product. The design of any product makes a long-lasting effect on the consumers' minds. A design helps the consumers to recognize any product. If a design is attractive then it adds value to the business of that product. Thus, in order to protect a design from infringement, it is necessary to get it registered under the Designs Act, 2000. A mechanism has been pre-determined by the government to fulfill this purpose.

It adds value to the product and helps in gaining fair returns on investment. It gives you fair competition in the market.

Infringement of design

Just like any other Intellectual Property, the designs are also prone to infringement and they can also be copied by the competitors or some other person. If a design has been copied then the owner of that design can claim damages and can also apply for an injunction so that the design cannot be used further.

If there arises any question regarding the ascertainment of infringement then the Court will directly look for the design from the point of view of an average customer. In other words, the Court will consider whether there is any confusion which is obvious or some material facts in the minds of the customers regarding the two articles.

Industrial design infringement cases

In [*Disney Enterprises Inc. v. Prime Housewares Ltd.*](#), the international registration of industrial designs became a matter of conflict in India. A Mumbai based company Prime Housewares used to manufacture characters like Mickey Mouse, Donald Duck, etc. a suit was filed by the Disney enterprises for the infringement of their international registered designs.

The court held that the plaintiff's trademark is protected but not the designs under the Indian law. An order was passed by the court for the infringement of the trademark of the enterprises. The Indian company was asked to deliver all the infringing material to the enterprises so that it could not be used further.

Piracy of registered designs

[Section 22](#) of the Designs Act, 2000 deals with the piracy of registered designs. According to this section, any obvious or fraudulent imitation of a design which is already registered without the consent of its proprietor is unlawful. It also prohibits the import of any material which closely resembles a registered design.

This section also provides that in case if a civil suit is brought against any piracy of a design, then the compensation shall not exceed Rs. 50,000 for the infringement of one registered design. The compensation is statutorily fixed so it serves a good ground for an interim injunction even before the trial commencement.

In the case of [Bharat Glass Tube Limited v. Gopal Gas Works Ltd.](#), the respondents (Gopal Glass Works) had registered their design for diamond-shaped glass sheets and had a certificate of the same. The appellants started using this design for marketing. These designs were made in collaboration with a German company.

After knowing that the appellants are using their design, they moved to the Court. The appellants contended that the respondents' designs were not new since the German company had been using it since 1992 and it was already published in the U.K. Patent Office so it lost its originality. When the matter went to the High Court on appeal then it restored the designs to the respondents. When the matter reached the Supreme Court, it upheld the decision of the Calcutta High Court.

Conclusion

Design Act, 2000 brings about many changes which are observed in the features. When a developer develop something for example If an architect develops the structure of a building there is an expectation that my structure will not be infringed. Many designs are capable of providing the author with copyrights also.

In that case infringement of both cannot be claimed separately. The owner must have to choose which is more beneficial. High intellects are involved in making a design look good and have an everlasting impact. Government come up with a great policy of protecting designs. Moreover, these designs can also have a negative impact on the value of the business if infringed. A good design is always remembered.