

DEFENCE IPR POLICY
FOR
JOINTLY DEVELOPED SOFTWARE
PRODUCTS

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INTRODUCTION

Intellectual Property is the Property, which has been created by exercise of Intellectual Faculty. It is the result of persons Intellectual Activities. Thus, Intellectual Property refers to creation of mind such as inventions, designs for industrial articles, literary, artistic work, symbols which are ultimately used in commerce. Intellectual Property rights allow the creators or owners to have the benefits from their works when these are exploited commercially. These rights are statutory rights governed in accordance with the provisions of corresponding legislations. Intellectual Property rights reward creativity & human endeavor, which fuel the progress of humankind. The intellectual property is classified into seven categories i.e. (1) Patent (2) Industrial Design (3) Trade Marks (4) Copyright (5) Geographical Indications (6) Lay out designs of integrated circuits (7) Protection of undisclosed information/Trade Secrets according to TRIPs agreements.

This IPR Policy will be applicable to software products developed by Defence Services jointly with a Developer(s).

Any computer software or computer program, created by a Developer, could be delivered either as an integral part of a hardware, or bundled with a hardware, or delivered independently in a computer readable medium (CD). As such, the ownership of intellectual property rights or copyright over the computer programs or computer software, jointly developed by the Developer and Government has to be viewed in a holistic manner and treated accordingly. Further, it should be also clearly understood that copyright is an automatic right which does not require any procedural formality and one can start claiming ownership over the computer programs or the computer software right from the date of creation without requiring any certificate from Copyright Office as long as the developed computer programs or computer software is original (not copied from third parties) and there is some expenditure of labour and selection in its creation.

It is important that the Government should have at least joint ownership of intellectual property rights over the developed computer programs or computer software with all rights including a worldwide, perpetual, unlimited, nonexclusive, irrevocable and royalty-free license to use, modify, make derivative work, translate, adapt, improve, merge with other computer programs or software, reproduce, disseminate, reverse engineer, release or disclose computer programs or computer software in whole or in part, in any manner, and for any purposes whatsoever, and to have or authorize others to do so.

The above shall ensure that Government is able to exercise its ownership rights to develop and produce such technologies including computer programs and computer software, generated during the Project, to the fullest extent for the Government purposes including defence applications, free of any charge as well as free from any legal or other encumbrances/ hurdles.

Another important aspect is the issue of legal ownership over the original computer software/ computer programs platform over which the Developer might have developed the

computer software/ computer programs as the deliverables. The original computer software/ computer programs platform may be a proprietary item of the Developer or any third party. Government should have full access rights over any such computer software/ computer programs platform without which the actual use/running of the developed computer software/ computer programs may not be possible. Further, the legal IPR ownership of Government over the developed computer software/ computer programs must be supplemented by the actual physical possession of the source code along with associated use/training/instruction manuals and other documentations.

However, it should be appreciated that the Developer may like to have rights to commercially exploit such technologies including computer programs and computer software for civilian markets in India.

GUIDING PRINCIPLES FOR OWNERSHIP ON IPR PERTAINING TO SOFTWARE PRODUCTS

1. The provisions on protection and disposition of intellectual property rights for the computer program & computer software should balance the commercial interests of Developer as well as the Government in a fair manner.
2. The provisions should be crafted with an understanding that computer software or computer program, developed by the Developer, could be delivered either as an integral part of a hardware, or bundled with a hardware, or independently in a computer readable medium (CD). As such, the provisions should be unified for the deliverables, whether the deliverable is a software or hardware or both tied up together.
3. The ownership of Foreground Information including computer programs & computer software and Foreground Intellectual Property Rights must rest with the Government, in case the Project is wholly funded by the Government. For other cases, the ownership of Foreground Information including computer programs & computer software and Foreground Intellectual Property Rights may rest jointly with both the Parties, except in certain exceptional cases.
4. The Developer may be given non-exclusive license on case-to case basis depending upon sensitivity of the Project to commercially exploit such technologies including computer programs & computer software, created during the Project, for civilian markets in India. The Government shall exercise its ownership rights so as to ensure that it can develop and produce such technologies including computer programs & computer software, generated during the Project, to the fullest extent for the Government purposes including defence applications free of any charge as well as free from any legal or other encumbrance/ hurdles
5. The Government should be able to claim the sole ownership of any foreground information including computer programs & computer software as well as foreground intellectual property rights, created during the Project, in the interest of national security in exceptional cases. However, the Government should exercise this option only in case of sensitive technologies, as determined by the Government.
6. The ownership of any background information including computer programs & computer software as well as background intellectual property rights, created by either the Developer or Government, prior to the Contract, should rest with the respective owning Parties. However, the Developer as well as the Government, should be free to use and reproduce each other's such background information including computer programs & computer software as well as background intellectual property rights for the purposes of the development and production work performed under the Project.
7. All documentation considered, as background information including computer programs & computer software as well as background intellectual property rights should be marked accordingly by the Developer. Similarly, all documentation considered, as foreground

information as well as foreground intellectual property rights shall be marked accordingly by the Developer.

8. Developer may have non-exclusive license for the commercial development of jointly held foreground information including computer programs & computer software as well as foreground intellectual property rights, generated during the Project for other than Government applications on case-to-case basis depending upon the sensitivity of the Project with prior written approval from the Government. Any royalty accrued to the Developer for such commercial development should be shared with the Government in proportion to ownership ratio.

9. Developer must not license any foreground Information including computer programs & computer software as well as foreground intellectual property rights, generated during the Project, to any third party without written prior agreement with the Government.

10. Government should have all rights including an irrevocable and royalty-free license for the commercial development, series production, continuing engineering support, product improvement of any background information including computer programs & computer software and background intellectual property rights as well as any foreground information and foreground intellectual property rights of the Developer, for the purposes of Government applications either by itself or by its licensees.

11. Whenever Government informs Developer that the interest of national security requires Development Agency to refrain from commercially supplying product or process including computer programs & computer software based upon any foreground information and foreground intellectual property Rights, created during the Project, to any particular third parties, or stipulate conditions in such commercial sale, Development Agency should abide by Government requirements.

12. The Developer is required to have a timely and efficient disclosure system in place for reporting of generation of any information including computer programs & computer software as well as intellectual property rights during the Contract. Further, the Developer shall be required to submit periodic reports about commercialization and manufacturing activities undertaken for processes or products embodying the foreground information as well as foreground intellectual property rights, generated during the Project.

13. The Government rights over the foreground information including computer programs & computer software as well as foreground intellectual property rights should flow down from the Developer to its all the sub-licensees or subcontractors.

14. Developer should not publish any foreground information including computer programs & computer software as well as foreground intellectual property rights, generated during the Project, so as to ensure that any proprietary or confidential information of the Government is not released and that any intellectual property rights is not jeopardized.

**Draft Template to be Incorporated In any Agreement for
Creation of a Software Product by any Developer**

PROTECTION & DISPOSITION OF INTELLECTUAL PROPERTY RIGHTS

1. **Definitions:**

For the purposes of this part of the Contract, the following terms shall have the indicated meanings:

1.1 **“Parties”** means Government (Ministry of Defence) and Developer

1.2 **“Information”** means any information, knowledge or data, regardless of its form and characteristics, including but not limited to that of a scientific or technical nature, experimental and test data, designs, improvements, photographs, computer software (including source code), reports, manuals, specifications, processes, techniques, inventions (whether patented or not), technical writings, sound recordings, semiconductor topography, electrical designs, layouts, schematics, wafers, wafer fabrication process, mask works, production photo masks and other design tooling for integrated circuits or other semiconductor devices that performs electrical functions, including associated substrates, circuit elements, embedded passive elements, packaging, housing and other means of function and support, model parameters, reliability test procedures, pictorial reproductions, drawings and other graphical representations, whether on magnetic tape, in computer memory, or in whatever form presented, and whether or not subject to copyright, semiconductor integrated circuit layout designs, or other legal protection, know-how, developed products, their parts, units and components, their samples and mock-ups including their modifications, computer program, including a set of instructions expressed in words, codes, schemes or in any other form, including a machine readable medium, capable of causing a computer to perform a particular task or achieve a particular result, computer software documentation, flow charts, source code, tables and compilations including computer databases,

1.3 **“Intellectual Property Rights”** means legal rights in Information including computer programs & computer software and other intangible property protected by law, including but not limited to, patents, registered and unregistered designs, copyrights, semiconductor integrated circuit layout designs, and trademarks and all categories of intellectual property that are subject to Sections 1 through 7 of Part II of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

1.4 **“Background Information”** means any existing Information including computer programs & computer software generated, possessed or owned by the Parties prior to the Contract signature or out of the course of the Contract Performance, but which is necessary or useful to attain the objectives of the Contract.

1.5 **“Background Intellectual Property Rights”** means legal rights in Background Information including computer programs & computer software and other intangible property protected by law, including but not limited to, patents, registered and unregistered designs, copyrights, semiconductor integrated circuit layout designs and trademarks.

1.6 **“Foreground Information”** means any Information including computer programs & computer software conceived, generated or developed by either Party in the course of the Contract Performance.

1.7 **“Foreground Intellectual Property Rights”** means legal rights in Foreground Information including computer programs & computer software and other intangible property protected by law, including but not limited to, patents, registered and unregistered designs, copyrights, semiconductor integrated circuit layout designs, and trademarks.

1.8(i) **“Proprietary / Confidential Information”** means scientific, technical, commercial or financial information that is designated ‘proprietary’ or ‘confidential’ by either Party provided that such information does not include:

- (a) Information that is publicly known or available from other sources who are not under a confidentiality obligation to the source of the information; or information that has come into public domain after being obtained from other party due to reasons not attributable to the receiving Party.
- (b) Information which has been made available by its owners to others without any confidentiality obligations;
- (c) Information which is already known or available to the receiving Party without any confidentiality obligations; or
- (d) Information, which relates to potential hazards or cautionary warnings associated with the production, handling or use of the subject matter of the Agreement.
- (e) Information the disclosure of which is obligatory under the laws of the court orders.

1.8(ii) Such Proprietary/Confidential Information will be subject to the following conditions:

- (a) The information resulting from the activities from implementation of the Agreement/MoU, will be published or divulged to third Parties, only with prior written consent by the other Party.
- (b) All Confidential Information shall remain the exclusive property of the disclosing Party. The Parties agree that this agreement and the disclosure of the Confidential Information do not grant or imply any license, interest or right to the Recipient in respect to any intellectual property right of the other Party.

1.9 **“Government Purposes”** means unlimited rights for the purposes of organisations that are owned/controlled/funded by Government of India such as Autonomous Bodies/Institutions under the various Ministries/Departments and Public Sector Undertakings.

2.1 The ownership of Background Information including computer programs & computer software and Background Intellectual Property Rights, created by the Parties prior to the Contract, shall rest with the owning Party. The Parties shall be deemed to have royalty-free, nonexclusive and all paid-up license to use each other’s such Background Information and Background Intellectual Property Rights for the purposes of the development and production work performed under the Contract. However, rights to use Background Information including computer programs & computer software including and Background Intellectual Property Rights, shall not imply the requirement of sharing the source code and object code of computer programs/ software of any such Background Intellectual Property. Developer shall not publish or share with third party any Background Information including computer programs and computer software as well as Background Intellectual Property Rights of the Government without written approval of the Government.

2.2 The ownership of Foreground Information including computer programs & computer software and Foreground Intellectual Property Rights shall rest with the Government, in case the Project is wholly funded by the Government. For other cases, the ownership of Foreground Information including computer programs & computer software and Foreground Intellectual Property Rights shall rest jointly with both the Parties, except in certain special cases. The actual apportionment of rights shall be decided through mutual agreement on case-to-case basis. However, Parties shall be deemed to have nonexclusive, royalty-free and all paid-up license to use such Foreground Information and Foreground Intellectual Property Rights for the purposes of the development and production work performed under the Contract.

2.3 The Government can take the ownership of any Foreground Information including computer programs & computer software as well as Foreground Intellectual Property Rights created during the Project, in the interest of national security in exceptional cases. However, the Government shall exercise this option only in case of sensitive technologies, as determined by the Government.

2.4 Parties to this Contract agree that both the Parties shall have equal rights over any modifications/improvements affected in the Foreground Information including computer programs & computer software and Foreground Intellectual Property Rights during the Term of this Contract.

2.5 All documentation considered, as Background Information including computer programs & computer software as well as Background Intellectual Property Rights shall be marked accordingly. However, lack of marking as required above shall in no event derogate from the owner’s right in the applicable Background Information including computer programs & computer software as well as Background Intellectual Property Rights under the Contract.

2.6 All documentation considered, as Foreground Information including computer programs & computer software as well as Foreground Intellectual Property Rights shall be marked accordingly. However, lack of marking as required above shall in no event derogate from the Party's rights in the applicable Foreground Information including computer programs & computer software as well as Foreground Intellectual Property Rights under the Contract.

2.7 Developer may have nonexclusive license for the commercial development of any Foreground Information including computer programs & computer software and Foreground Intellectual Property Rights of the Parties, whether or not legally protected for other than Government Purposes on case-to-case basis depending upon sensitivity of the project with prior written approval from the Government. However, any royalty accrued to the Development Agency, arising out of such commercial development, shall be shared, in proportion to the ownership ratio, with the Government.

2.8 Notwithstanding any provisions mentioned above or any future licensing agreements, Government shall be deemed to have all rights including a worldwide, perpetual, unlimited, nonexclusive, irrevocable and royalty-free license for the commercial development, series production, continuing engineering support, product improvement, or have developed, any Background Information including computer programs & computer software and Background Intellectual Property Rights as well as Foreground Information including computer programs & computer software and Foreground Intellectual Property Rights, whether or not legally protected, for the purposes of Government applications or to seek a licensee and to negotiate, execute, series production, continuing engineering support, product improvement, or have developed, any Background Information including computer programs & computer software and Background Intellectual Property Rights as well as any Foreground Information including computer programs & computer software and Foreground Intellectual Property Rights, whether or not legally protected, for Government Purposes in India and abroad.

2.9 Notwithstanding any provisions mentioned above or any future licensing agreements, in case of Foreground Information being a computer programs or computer software, Government shall be deemed to have all rights including a worldwide, perpetual, unlimited, nonexclusive, irrevocable and royalty-free license to use, modify, make derivative work, translate, adapt, improve, merge with other computer programs or software, reproduce, disseminate, reverse engineer, release or disclose computer programs or computer software in whole or in part, in any manner, and for any purposes whatsoever, and to have or authorize others to do so.

2.10 In the event of Developer wishing to carry, use or deploy any Foreground Information including computer programs & computer software and Foreground Intellectual Property Right to any third party, Developer will have to seek the prior written approval from the Government

2.11 Notwithstanding any provisions mentioned above, the payment made to the Developer for the execution of the present Contract, shall be deemed to include all amounts payable to Developer by Government for the use of any and all of its Background Information including computer programs & computer software and Background Intellectual Property Rights, as well as Foreground Information including computer programs & computer software and Foreground

Intellectual Property Rights, whether legally protected or not, including but not limited to patents, copyrights, semiconductor integrated circuit layout designs, registered and unregistered designs, trademarks etc. for the purposes of the Contract including for the purposes as provided in Article 2.8 & Article 2.9 above.

2.12 Whenever Government informs Development Agency that the interest of national security requires Development Agency to refrain from commercially supplying product/ process based upon any Foreground Information including computer programs & computer software and Foreground Intellectual Property Rights, whether or not legally protected, to any particular third parties, or stipulate conditions in such commercial sale, Developer shall abide by Government requirements.

2.13 The Developer is required to have a timely and efficient disclosure system in place for reporting of generation of any Foreground Information including computer programs & computer software as well as Foreground Intellectual Property Rights during the Contract. Further, the Developer shall be required to submit periodic reports about commercialization and manufacturing activities undertaken for processes or products embodying the Foreground Information including computer programs & computer software as well as Foreground Intellectual Property Rights, generated during the Project.

2.14 The Government rights over the Foreground Information including computer programs & computer software as well as Foreground Intellectual Property Rights shall flow down from the Developer to its all the sub-licensees or subcontractors

2.15 Developer shall not publish any Foreground Information including computer programs & computer software as well as Foreground Intellectual Property Rights, generated during the Project, without consulting with Government so as to ensure that any Proprietary or Confidential Information of the Government is not released and that any Foreground Intellectual Property Right is not jeopardized.

2.16 Developer warrants and assures Government that to the best of their knowledge there is no infringement of any Intellectual Property Rights including but not limited to patent, copyright, semiconductor integrated circuit layout designs, design, trademark or any other legal rights occasioned by supply, transfer, manufacturing, use of any Deliverables including Background Information including computer programs & computer software, technology, equipment, documentation of Development Agency.

2.17 Developer undertakes to indemnify Government against all costs, expenses and claims for damages made by any Third Party at any time arising from infringement of any Intellectual Property Rights including but not limited to patent, copyright, semiconductor integrated circuit layout designs, design, trademark or any other legal rights occasioned by supply, transfer, manufacturing, use of any Deliverables including Background Information including computer programs & computer software, technology, equipment, documentation of

Developer. In the event of any such claim or suit or any other proceedings by any Third Party, Development Agency at their own cost agrees to:

- (a) Negotiate an agreement with such Third Party so that Deliverables including equipment, documents, Background Information including computer programs & computer software, technology under the Contract are no longer infringed upon under any Intellectual Property Rights including but not limited to patent, copyright, semiconductor integrated circuit layout designs, design, trademark or any other legal rights of such Third Party.
- (b) Modify at his own cost the Deliverables including equipment, documents, Background Information including computer programs & computer software, technology under the Contract suitably or to substitute suitably the same thereafter subject to the full satisfaction and requirement of Government.
- (c) Defend any claim, suit or proceeding at their own cost and expenses and satisfy the decree/order in any such claim, suit or proceedings at their own expenses and cost.

2.18 The above provisions shall continue to be governed by and be subject to the Export Policy, Export Guidelines and all applicable laws, rules, regulations, orders and instructions of the Government of India.

2.19 Provisions of this part of the Contract (Article 1 to Article 2.18) shall survive the expiry of termination of the present Contract.

PATENT***1. What is a Patent?**

A *Patent* is a statutory right for an invention granted for a limited period of time to the patentee by the Government, in exchange of full disclosure of his invention for excluding others, from making, using, selling, importing the patented product or process for producing that product for those purposes without his consent.

2. Does Indian Patent give protection worldwide?

Patent protection is territorial right and therefore it is effective only within the territory of India. However, filing an application in India enables the applicant to file a corresponding application for same invention in convention countries, within or before expiry of twelve months from the filing date in India. Therefore, separate patents should be obtained in each country where the applicant requires protection of his invention in those countries. There is no patent valid worldwide.

3. Is it possible to file international application under Patent Cooperation Treaty (PCT) in India?

It is possible to file an international application known as PCT application in India in the Patent Offices located at Kolkata, Chennai, Mumbai and Delhi. All these offices act as Receiving Office (RO) for International application. The addresses of these offices are available on the website of CGPDTM i.e. www.ipindia.nic.in.

4. What can be patented?

An invention relating either to a product or process that is new, involving inventive step and capable of industrial application can be patented. However, it must not fall into the categories of inventions that are non- patentable under Section 3 and 4 of the Act.

5. Who can apply for a patent?

A patent application can be filed either by true and first inventor or his assignee, either alone or jointly with any other person. However, legal representative of any deceased person can also make an application for patent.

6. How can I apply for a patent?

A patent application can be filed with Indian Patent Office either with complete specification or with provisional specification along with fee as prescribed in schedule I. In case the application is filed with provisional specification, then one has to file complete specification within 12 months from the date of filing of the application. There is no extension of time to file complete specification after expiry of said period.

7. Is there provision for filing patent application electronically by online system?

From 20th July, 2007 the Indian Patent Office has put in place an online filing system for patent application. More information for filing online application is available on the website of Patent Office i.e. www.ipindia.nic.in. This facility is also available for filing trademarks application.

8. What are the criteria of patentability?

An invention to become patentable subject matter must meet the following criteria -

- i) It should be novel.
- ii) It should have inventive step or it must be non-obvious
- iii) It should be capable of Industrial application.
- iv) It should not fall within the provisions of section 3 and 4 of the Patents Act 1970.

9. Should application for patent be filed before or after, publication of the details of the invention?

The application for patent should be filed before the publication of the invention and till then it should not be disclosed or published. Disclosure of invention by publication before filing of the patent application may be detrimental to novelty of the invention as it may no longer be considered novel due to such publication. However, under certain conditions, there is grace period of 12 months for filing application even after publication.

10. Can any invention be patented after publication or display in the public exhibition?

Generally, a patent application for the invention which has been either published or publicly displayed cannot be filed. However the Patents Act provides a grace period of 12 months for filing of patent application from the date of its publication in a journal or its public display in a exhibition organised by the Government or disclosure before any learned society or published by applicant. The details conditions are provided under Chapter VI of the Act (Section 29-34).

11. How a Patent Specification is prepared?

A patent specification can be prepared by the applicant himself or his registered and authorized agent. The patent specification generally comprises of the title of the invention indicating its technical field, prior art, draw backs in the prior art, the solution provided by the inventor to obviate the drawbacks of the prior art, a concise but sufficient description of the invention and its usefulness, drawings (if Any) and details of best method of its working. The complete specification must contain at least one claim or statement of claims defining the scope of the invention for which protection is sought for.

12. What is a provisional specification?

Indian Patent Law follows first to file system. Provisional specification describes the nature of the invention to have the priority date of filing of the application in which the inventive idea has been disclosed. It must be followed by a complete specification describing the details of the invention along with a statement of claims within 12 months after filing of the provisional application. If the complete specification is not filed within the prescribed period, the application is treated as deemed to have been abandoned

13. Is it necessary to file a provisional application?

Generally, an application filed with provisional specification is known as provisional application which is useful in establishing a priority date for your invention. Moreover, filing of a provisional application is useful as it gives sufficient time to the applicant to assess and evaluate the market potential of his invention before filing complete specification. However, it is not necessary to file an application with provisional specification and one can file application directly with complete specification.

14. Does the Patent Office Keep information of the invention Secret?

Yes. All the patent applications are kept secret upto 18 months from the date of filing or priority date whichever is earlier and thereafter they are published in the Official Journal of the Patent Office which is published every week and also available on the IPO website. After its publication, public can inspect the documents and also may take the photocopy thereof on payment of the fee as prescribed.

15. When an application for patent is published?

Every application for patent is published after 18 months from the date of its filing or priority date whichever is earlier. However, following applications are not published.

- (a) Application in which secrecy direction is imposed
- (b) Application which has been abandoned u/s 9(1) and
- (c) Application which has been withdrawn 3 months prior to 18 months

16. Is there any provision in the law for early publication?

Yes, the applicant can make a request for early publication in Form 9 along with the prescribed fee. After receiving such request the Patent Office publishes such application within a period of one month provided the invention contained thereon does not relate to atomic energy or defence purpose.

17. Is patent application once filed is examined automatically?

The patent application is not examined automatically after its filing. The examination is done only after receipt of the request of examination either from the applicant or from third party.

18. When the request for examination can be filed?

The request for examination can be filed within a period of 48 months from the date of priority or date of filing of the application whichever is earlier. For more details kindly refer to rule 24B of the Patents Rules 2003 as amended upto 2006.

19. Is there any provision for early examination?

There is no provision for filing a request for early examination. The applications are examined in the order in which requests for examination are filed. However, an express request for examination before expiry of 31 months can be made in respect of the applications filed under Patent Cooperation Treaty known as National Phase applications by payment of the prescribed fee.

20. What happens to a patent application once it is examined?

After examination, the Patent office issues an examination report to the applicant which is generally known as First Examination Report (FER). Thereafter the applicant is required to comply with the requirements within a period of twelve months from the date of FER. In case, the application is found to be in order for grant, the patent is granted, provided there is no pre-grant opposition is filed or pending. A letter patent is issued to the applicant. However, in case a pre-grant opposition is pending, the further action is taken after disposition of the pre-grant opposition.

21. What happens when applicant is not able to meet the requirement within the prescribed time?

If the applicant is not able to comply with or meet the requirement within 12 months, or does not submit the documents which were sent to him for compliance within the said period, the application is deemed to have been abandoned.

22. Is there provision for extension beyond time limit of 12 months?

There is no provision for extension of time beyond the period of 12 months.

23. Does applicant get an opportunity of being heard before his application is refused?

If applicant has not complied with the requirements within the prescribed time, and no request for hearing has been made by the applicant, the controller may not provide the opportunity of being heard. However, the Controller shall provide an opportunity of being heard to the applicant before refusing his application if a request for such hearing has been made by the applicant at least 10 days in advance before expiry of the statutory period.

24. What are the various stages involved in the grant of patent?

After filing the application for the grant of patent, a request for examination is required to be made by the applicant or by third party and thereafter it is taken up for examination by the Patent office. Usually, the First Examination Report is issued and the applicant is given an opportunity to correct the deficiencies in order to meet the objections raised in the said report. The applicant must comply with the requirements within the prescribed time otherwise his application would be treated as deemed to have been abandoned. When all the requirements are met, the patent is granted and notified in the Patent office Journal. However before the grant of patent and after the publication of application, any person can make a representation for pre-grant opposition.

25. What is time limit for filing the representation for pre-grant opposition?

A representation for pre-grant opposition can be filed within six months from the date of publication of the application u/s 11A or before the grant of patent. The grounds on which the representation can be filed are provided u/s 25(1) of the Patents Act 1970.

26. Is there any fee for filing such representation for pre-grant opposition?

There is no fee for filing representation for pre-grant opposition? This can be filed by any person.

27. What are the grounds for filing representation for pre-grant opposition?

The grounds for filing post-grant opposition are contained in section 25(1) of the Patents Act 1970.

28. Is it possible to file pre-grant opposition even though there is no request for examination filed?

Yes, it is possible to file representation for pre-grant opposition even though there is no request for examination has been filed. However, the representation will be considered only when a request for examination is received within the prescribed period.

29. What is the time limit for filing post-grant opposition in the patent office?

The time for filing post-grant opposition is 12 months from the date of publication of the grant of patent in the official journal of the patent office.

30. Is there any fee for filing post-grant opposition?

The post grant opposition has to be filed in the prescribed Form 7 along with prescribed fees of Rs.1500 for natural person and Rs.6000 for person other than natural person. The post grant opposition has to be filed by the person interested and not by any other person.

31. What are the grounds for filing the post grant opposition?

The grounds for filing post-grant opposition are contained in section 25(2) of the Patents Act 1970.

32. Is it necessary to go to the Indian Patent Office to transact any business relating to patent application?

No, normally all the communications with the office are done through written correspondence. However, interviews relating to patent application can be had with examiners with prior appointment on any working day during prosecution stage.

33. Where the information relating to patent application is notified?

The information relating to the patent application is published in the Patent office Journal issued on every Friday. This is also available in electronic form on the website of the Patent Office

34. What are the contents of the Patent office Journal?

The Patent office Journal contains information relating to patent applications which are published u/s 11A, post grant publication, restoration of patent, notifications , indexes, list of non-working patents and notices Issued by the Patent Office relating to Patents, etc..

35. Can one subscribe a copy of the Patent office Journal?

The Patent office Journal can be subscribed by making payment of Rs 400/- in cash or by DD/cheque in favour of **the Controller of Patents**. This is also available in CD form. However, the journal can be downloaded from the website free of charge.

36. Where could one find a copy of the Patent office Journal without purchasing the publication?

The Patent office Journal is freely available on patent office site i.e. www.ipindia.nic.in. This is also available in the technical libraries maintained by the Patent Offices. The library facilities are available to the public free of charge from Monday to Friday on working days except holidays.

37. Can one use the words "Patent Pending" or "Patent Applied For"?

These words are normally used by the patent applicant to their products after filing his application for patent so that the public is made aware that a patent application has been filed in respect of that invention. Use of these words where no application has been made is prohibited under the Patent law. However, use of such words by the patent applicant does not prohibit the third party to plead as innocent unless the patent number is indicated.

38. How useful is the marking of a product with "patent pending" or "patent applied for" before the grant?

Marking of a product with the words "patent pending" or "Patent applied for" after filing of the application for patent serve as a notice to the public that an application for patent is pending with the Patent Office but there is no legal significance of these words. The infringement action can be initiated only after the patent is granted.

39. Does patent office help in finding users for patent?

The Patent Office has no role in the commercialization of patent. However, the information relating to patent is published in the Patent Office journal and also published on the Patent Office website which is accessible to the public worldwide. This certainly helps the applicant to attract potential user or licensee. The patent office also compiles a list of patents which are not commercially worked in India.

40. How can one find out that an invention is already patented?

The person concerned can perform a preliminary search on Patent Office website in the Indian patent data base of granted patent or Patent Office journal published every week or by making search in the documents kept in the Patent Office Search and Reference Room, which contains Indian patents arranged according to international patent classification system as well in serial number. It is open to the general public from Monday to Friday, except Gazetted holidays. The public can also conduct search free of charge on the website of Patent Office. The person concerned can also make a request for such information under section 153 of the Act.

41. What is the term of patent?

Term of every patent in India is 20 years from the date of filing of patent application, irrespective of whether it is filed with provisional or complete specification. However, in case of applications filed under PCT the term of 20 years begins from International filing date.

42. Is there any difference in the amount of fees to be paid by an individual or a legal entity for filing a patent application?

Yes, the application filing fees for an individual person (natural person) is Rs.1,000/- and for a legal entity other than individual is Rs.4,000/- upto 10 claims and 30 pages. However, in case, the number of pages exceed beyond 30, then natural person has to pay Rs.100/- each extra page and person other than natural person has to pay Rs.400/- per page. Similarly if the number of claims exceed beyond 10, then natural person has to pay Rs.200/- for each additional claim and person other than natural person has to pay Rs.800/- for each additional claim.

43. What are obligations of the patentee after the grant of patent?

After the grant of patent, every patentee has to maintain the patent by paying renewal fee every year as prescribed in the schedule I. For first two years, there is no renewal fee. The renewal fee is payable from 3rd year onwards. In case the renewal fee is not paid the patent will be ceased.

44. Can the patentee pay renewal fee at a time or has to pay every year?

The patentee has choice to pay the renewal fees every year or he can pay in lump sum as well.

45. When a patent can be restored after its cessation ?

A request for restoration of patent can be filed within 18 months from the date of cessation of patent along with the prescribed fee. After receipt of the request the matter is notified in the official journal for further processing of the request.

46. What is meant by patent agent and what are the eligibility criteria of becoming a patent agent?

A Patent agent is a registered person with Indian Patent Office whose name is entered in the patent agent register after being declared qualified the patent agent examination conducted by the patent office and who is entitled—

- (a) to practice before the Controller; and
- (b) to prepare all documents, transact all business and discharge such other functions as may be prescribed in connection with any proceeding before the Controller under this Act.

Eligibility conditions for registration as patent agents are below.-

A person shall be qualified to have his name entered in the register of patent agents if he fulfills the following conditions, namely—

- (a) he is a citizen of India;
- (b) he has completed the age of 21 years;
- (c) he has obtained a degree in science, engineering or technology from any university established under law for the time being in force in the territory of India or possesses such other equivalent qualifications as the Central Government may specify in this behalf, and, in addition,—
 - (i) has passed the qualifying examination prescribed for the purpose; or

(ii) has, for a total period of not less than ten years, functioned either as an examiner or discharged the functions of the Controller under section 73 or both, but ceased to hold any such capacity.

47. Is it necessary to engage a registered patent agent for filing an application for patent?

No, it is not necessary under the patent law to engage a registered patent agent for filing an application for patent. The applicant is free to file an application by himself or through the patent agent. However, an applicant who is not a resident of India is required to file either through the registered patent agent or must give an address for service in India

48. Does the Patent Office help to select a patent attorney or agent to make patent search or to prepare and prosecute patent application?

No, Patent Office does not make any recommendations regarding selection of a patent agent. However, the applicant is free to appoint any patent agent from a list of patent agents maintained by the office. This list can also be viewed at Patent Office website.

49. Does the patent office ascertain fees charged by the patent agents for their services?

No. This is a matter between the applicant and the patent agent. The Patent Office has no role in ascertaining or assisting the fee charged by a patent agent.

50. Is it mandatory to obtain prior permission from the Patent Office to file application for patent outside India or abroad!

Generally speaking, it is not necessary to obtain prior permission from the Patent Office to file patent application abroad under following circumstances.

- (a) Applicant is not Indian resident and invention is originated abroad about.
- (b) If the applicant is Indian resident, a patent application has been filed in India and six weeks period is over from that date.
- (c) The invention does not belong to Atomic Energy or defence purpose.

In other circumstances, the prior permission is required. For further details kindly refer to section 39 of the Patents Act, 1970.

51. Under what circumstances, it is necessary to obtain a prior permission from the Patent Office?

The person is required to take prior permission from the Patent Office under following circumstances.

- (a) The applicant is Indian resident and invention is originated in India,
- (b) Applicant does not wish to file patent application in India prior to filing abroad.

- (c) If the applicant is Indian resident, a patent application has been filed in India and six weeks period is not yet over from that date
- (d) The invention relates to atomic energy or defence purpose.

52. Is it essential to deposit biological material in the international depository authority!

If the invention uses a biological material which is new, it is essential to deposit the same in the International Depository Authority (IDA) prior to the filing of the application in India in order to supplement the description. The description in the specification should contain the name and address of the International Depository Authority and, date and number of deposition of Biological material. If such biological material is already known, in such case it is not essential to deposit the same. For more details log on to **www.ipindia.nic.in**

53. Is there any International Depository Authority in India!

Yes, there is an International Depository Authority in India located at Chandigarh which is known as Institute of Microbial Technology (IMTECH). The more details about this depository authority can be had on its website <http://imtech.res.in/> .

* Please refer Source – <http://www.ipindia.nic.in> for latest information

DESIGN

Q.1. What is meant by 'Design' under the Designs Act, 2000?

Ans. 'Design' means only the features of shape, configuration, pattern or ornament or composition of lines or colour or combination thereof applied to any article whether two dimensional or three dimensional or in both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye, but does not include any mode or principle or construction or anything which is in substance a mere mechanical device, and does not include any trade mark, as define in clause (v) of sub-section of Section 2 of the Trade and Merchandise Marks Act, 1958, property mark or artistic works as defined under Section 2(c) of the Copyright Act, 1957.

Q. 2. What is meant by an article under the Designs Act, 2000?

Ans. Under the Designs Act, 2000 the "article" means any article of manufacture and any substance, artificial, or partly artificial and partly natural; and includes any part of an article capable of being made and sold separately;

Q.3. What is the object of registration of Designs?

Ans. Object of the Designs Act to protect new or original designs so created to be applied or applicable to particular article to be manufactured by Industrial Process or means. Sometimes purchase of articles for use is influenced not only by their practical efficiency but also by their appearance. The important purpose of design Registration is to see that the artisan, creator, originator of a design having aesthetic look is not deprived of his bonafide reward by others applying it to their g

Q.4. What are the essential requirements for the registration of 'design' under the Designs Act, 2000?

Ans. (1) The design should be new or original, not previously published or used in any country before the date of application for registration. The novelty may reside in the application of a known shape or pattern to new subject matter. Practical example:

The known shape of "Kutub Minar" when applied to a cigarette holder the same is registrable. However, if the design for which application is made does not involve any real mental activity for conception, then registration may not be considered.

(2) The design should relate to features of shape, configuration, pattern or ornamentation applied or applicable to an article. Thus, designs of industrial plans, layouts and installations

are not registrable under the Act. (3) The design should be applied or applicable to any article by any industrial process. Normally, designs of artistic nature like painting, sculptures and the like which are not produced in bulk by any industrial process are excluded from registration under the Act. (4) The features of the design in the finished article should appeal to and are judged solely by the eye. This implies that the design must appear and should be visible on the finished article, for which it is meant. Thus, any design in the inside arrangement of a box, money purse or almirah may not be considered for showing such articles in the open state, as those articles are generally put in the market in the closed state. (5) Any mode or principle of construction or operation or any thing which is in substance a mere mechanical device, would not be registrable design. For instance a key having its novelty only in the shape of its corrugation or bend at the portion intended to engage with levers inside the lock associated with, cannot be registered as a design under the Act. However, when any design suggests any mode or principle of construction or mechanical or other action of a mechanism, a suitable disclaimer in respect there of is required to be inserted on its representation, provided there are other registrable features in the design. (6) The design should not include any Trade Mark or property mark or artistic works as define under the Copyright Act, 1957.

Q.5. Can stamps, Labels, tokens, cards, be considered an article for the purpose of registration of Design?

Ans: No. Because once the alleged Design i.e., ornamentation is removed only a piece of paper, metal or like material remains and the article referred ceases to exist. Article must have its existence independent of the Designs applied to it. [Design with respect to label was held not registrable, by an Order on civil original case No. 9-D of 1963, Punjab, High Court]. So, the Design as applied to an article should be integral with the article itself.

Q.6. When does the Applicant for Registration of Design get the registration certificate?

Ans: When an application for registration of a Design is in order, it is accepted and registered and then a certificate of registration is issued to the applicant.

However, a separate request should be made to the Controller for obtaining a certified copy of the certificate for legal proceeding with requisite fee.

Q.7. What is a Register of Designs?

Ans: The Register of Designs is a document maintained by The Patent Office, Kolkata as a statutory requirement. It contains the design number, class number, date of filing (in this country) and reciprocity date (if any), name and address of Proprietor and such other matters as would affect the validity of proprietorship of the design and it is open for public inspection on payment of prescribed fee & extract from register may also be obtained on request with the prescribed fee.

Q.8. What is the effect of registration of design?

Ans. The registration of a design confers upon the registered proprietor 'Copyright' in the design for the period of registration. 'Copyright' means the exclusive right to apply a design to the article belonging to the class in which it is registered.

Q.9. What is the duration of the registration of a design? Can it be extended?

Ans. The duration of the registration of a design is initially ten years from the date of registration, but in cases where claim to priority has been allowed the duration is ten years from the priority date.

This initial period of registration may be extended by further period of 5 years on an application made in Form-3 accompanied by a fee of Rs. 2,000/- to the Controller before the expiry of the said initial period of Copyright.

The proprietor of a design may make application for such extension even as soon as the design is registered.

Q.10. What is the date of registration?

Ans. The date of registration except in case of priority is the actual date of filing of the application. In case of registration of design with priority, the date of registration is the date of making an application in the reciprocal country.

Q.11. Is it possible to re-register a design in respect of which Copyright has expired?

Ans. No. A registered design, the copyright of which has expired cannot be re-registered.

Q.12. How one can ascertain whether registration subsists in respect of any design?

Ans. For ascertaining whether registration subsists in respect of a design, a request should be made to the Patent Office, Kolkata. If the serial number of the registered design is known, the request should be made on Form 6, otherwise on Form 7, together with fee of Rs. 500/- or Rs. 1,000/- respectively. Each such request should be confined to information in respect of a single design.

Q.13. What is piracy of a Design?

Ans: Piracy of a design means the application of a design or its imitation to any article belonging to class of articles in which the design has been registered for the purpose of sale or importation of such articles without the written consent of the registered proprietor. Publishing such articles or exposing terms for sale with knowledge of the unauthorized application of the design to them also involves piracy of the design.

Q.14. What is the penalty for the piracy of a registered Design?

Ans: If anyone contravenes the copyright in a design he is liable for every offence to pay a sum not exceeding Rs. 25,000/- to the registered proprietor subject to a maximum of Rs. 50,000/- recoverable as contract debt in respect of any one design. The registered proprietor may bring a suit for the recovery of the damages for any such contravention and for injunction against repetition of the same. Total sum recoverable shall not exceed Rs. 50,000/- as contract debt as stated in Section 22(2)(a). The suit for infringement, recovery of damage etc should not be filed in any court below the court of District Judge.

Q.15. Is marking of an article compulsory in the cases of article to which a registered design has been applied?

Ans: Yes, it would be always advantageous to the registered proprietors to mark the article so as to indicate the number of the registered design except in the case of Textile designs. Otherwise, the registered proprietor would not be entitled to claim damages from any infringer unless the registered proprietor establishes that the registered proprietor took all proper steps to ensure the marking of the article, or unless the registered proprietor show that the infringement took place after the person guilty thereof knew or had received notice of the existence of the copyright in the design.

Q. 16. Can the Registration of a Design be cancelled ?

Ans.: The registration of a design may be cancelled at any time after the registration of design on a petition for cancellation in form 8 with a fee of Rs. 1,500/- to the Controller of Designs on the following grounds:

1. That the design has been previously registered in India or
2. That it has been published in India or elsewhere prior to date of registration or
3. The design is not new or original or
4. Design is not registrable or
5. It is not a design under Clause (d) of Section 2.

Q. 17. Is it mandatory to make the article by industrial process or means before making an application for registration of design ?

Ans.: No, design means a conception or suggestion or idea of a shape or pattern which can be applied to an article or intended to be applied by industrial process or means. Example- a new shape which can be applied to a pen thus capable of producing a new appearance of a pen on the visual appearance. It is not mandatory to produce the pen first and then make an application.

Q. 18. Why is it important for filing the application for registration of design at the earliest possible ?

Ans.: First-to-file rule is applicable for registrability of design. If two or more applications relating to an identical or a similar design are filed on different dates only first application will be considered for registration of design.

Q. 19. Can the same applicant make an application for the same design again, if the prior application has been abandoned?

Ans.: Yes, the same applicant can apply again since no publication of the abandoned application is made by the Patent Office, provided the applicant does not publish the said design in the meanwhile.

Q. 20. How to get information on registration of design ?

Ans.: After registration of designs the most relevant view(s) of the article alongwith other bibliographic data will be available in the official gazette, which is being published on every Saturday. However, such provision cannot be implemented at this stage due to insufficient infrastructure.

Q. 21. Whether it is possible to transfer the right of ownership ?

Ans.: Yes, it is possible to transfer the right through assignment, agreement, transmission with terms and condition in writing or by operation of law. However, certain restrictive conditions not being the subject matter of protection relating to registration of design should not be included in the terms and condition of the contract/agreement etc. An application in form-10, with a fee of Rs. 500/- in respect of one design and Rs. 200/- for each additional design, for registration of the transfer documents is required to be made by the beneficiary to the Controller within six months from the date of execution of the instruments or within further period not exceeding six months in aggregate. An original/notarized copy of the instrument to be registered is required to be enclosed with the application.

Q. 22. What is meant by priority claim ?

Ans. India is one of the countries party to the Paris Convention so the provisions for the right of priority are applicable. On the basis of a regular first application filed in one of the contracting state, the applicant may within the six months apply for protection in other contracting states, latter application will be regarded as if it had been filed on the same day as the first application.

Q. 23. How it is possible to restore the lapse design due to non-payment of extension fee within prescribed time ?

Ans.: a registration of design will cease to be effective on non-payment of extension fee for further term of five years if the same is not paid before the expiry of original period of 10 years. However, new provision has been incorporated in the Act so that lapsed designs may be restored provided the following conditions are satisfied:

- (a) Application for restoration in Form-4 with fee of Rs. 1,000/- is filed within one year from the date of lapsed stating the ground for such non-payment of extension fee with sufficient reasons.
- (b) If the application for restoration is allowed the proprietor is required to pay the extension fee of Rs. 2,000/- and an additional fee of Rs. 1,000/- and finally the lapsed registration is restored.

Q. 24. Can the name, address of proprietor or address for service be altered in the register of design ?

Ans.: Name of the registered proprietor, address or address for service can be altered in the register of designs provided this alteration is not made by way of change of ownership through conveyance i.e. deed of assignment, transmission, licence agreement or by any operation of law, for which reference may be made to the answer against Q. 21. Application in form-22 with a fee of Rs. 200/- should be filed to the Controller of Designs with all necessary documents in support of the application as required.

Q. 25. Are the registered designs open for public inspection ?

Ans.: Yes, registered designs are open for public inspection only after publication in the official gazette on payment of prescribed fee of Rs. 500/- on a request in Form-5.

Q. 26. Can the application for registration of design be filed by the applicant himself only or through a professional person ?

Ans.: The application for registration of design can be filed by the applicant himself or through a professional person (i.e. patent agent, legal practitioner). However, for the applicants not resident of India an agent residing in India has to be employed.

Q. 27. How does a registration of design stop other people from exploiting?

Ans.: Once a design is registered, it gives the legal right to bring an action against those persons (natural/legal entity) who infringe the design right, in the Court not lower than District Court in order to stop such exploitation and to claim any damage to which the registered proprietor is legally entitled. However, it may please be noted that if the design is not registered under the

Designs Act, 2000 there will be no legal right to take any action against the infringer under the provisions of the Designs Act, 2000. The Patent Office does not become involved with any issue relating to enforcement of right accrued by registration, similarly The Patent Office does not involve itself with any issue relating to exploitation or commercialization of the registered design.

Q. 28. What are the important criteria for determining a "set of article"?

Ans.: If a group of articles meets the following requirements then that group of articles may be regarded as a set of articles under the Designs Act, 2000:

- (a) Ordinarily on sale or intended to be used together.
- (b) All having common design even though articles are different (same class).
- (c) Same general character.

Generally, an article having the same design and sold in different sizes is not considered as a set of articles. Practical example: "Tea set", "Pen set", "Knife set" etc.

Q.29. What is an artistic work which are not subject matter of registration?

Ans.: An artistic work as defined under Section 2(c) of the Copyright Act, 1957 is not a subject matter for registration which reads as follows:-

"Artistic works" means: -

- i. A painting, a sculpture, a drawing (including a diagram, map, chart or plan) on engraving or a photograph, whether or not such work possesses artistic quality.
- ii. An work of architecture and
- iii. Any other work of artistic craftsmanship.

Q. 30. What is meant by classification of goods mentioned in the Third Schedule?

Ans.: In the third Schedule of Design Rules, 2001 the classification of goods has been mentioned. The classification is based on Locarno Agreement. Only one class number is to be mentioned in one particular application. It is mandatory under the Rules. This classification has been made on the basis of Articles on which the design is applied.

Practical Example: If the design is applied to a toothbrush it will be classified under class 04-02. Similarly, if the design is applied to a calculator, it will be classified in class 18-01. Subsequent application by the same proprietor for registration of same or similar design applied to any article of the same class is possible, but period of registration will be valid only upto period of previous registration of same design.

Q. 31. What is meant by Property mark as per the Indian Penal Code (Sec. 479)?

Ans.: A mark used for denoting that movable property belongs to a particular person is called a property mark. It means that marking any movable property or goods, or any case, package or receptacle containing goods; or using any case, package or receptacle, with any mark thereon.

Practical example: The mark used by the Indian Railway on their goods may be termed as a Property Mark for the purpose of easy identification of the owner.

*** Please refer Source – <http://www.ipindia.nic.in> and <http://www.sicldr.nic.in> for latest information**

COPYRIGHT**Questions:****Ques: What is copyright?**

Ans: Copyright is a right given by the law to creators of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings. In fact, it is a bundle of rights including, inter alia, rights of reproduction, communication to the public, adaptation and translation of the work. There could be slight variations in the composition of the rights depending on the work.

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 requirement of encouraging the same. Economic and social development of a society is dependent on creativity. The protection provided by copyright to the efforts of writers, artists, designers, dramatists, musicians, architects and producers of sound recordings, cinematograph films and computer software, creates an atmosphere conducive to creativity, which induces them to create more and motivates others to create.

Ques: What is the scope of protection in the Copyright Act, 1957?

Ans: The Copyright Act, 1957 protects original literary, dramatic, musical and artistic works and cinematograph films and sound recordings from unauthorized uses. Unlike the case with patents, copyright protects the expressions and not the ideas. There is no copyright protection for ideas, procedures, methods of operation or mathematical concepts as such (Please see Article 9.2. of TRIPS).

Ques: Does copyright apply to titles and names?

Ans: Copyright does not ordinarily protect titles by themselves or names, short word combinations, slogans, short phrases, methods, plots or factual information. Copyright does not protect ideas or concepts. To get the protection of copyright a work must be original.

Ques: Is it necessary to register a work to claim copyright?

Ans: No. Acquisition of copyright is automatic and it does not require any formality. Copyright comes into existence as soon as a work is created and no formality is required to be completed for acquiring copyright. However, certificate of registration of copyright and the entries made therein serve as prima facie evidence in a court of law with reference to dispute relating to ownership of copyright.

Ques: Where I can file application for registration of copyright for a work?

Ans: The Copyright Office has been set up to provide registration facilities to all types of works and is headed by a Registrar of Copyrights and is located at 4th Floor Jeevan Deep Building ,

New Delhi- 110 001. The applications for registration of works can be filled at the counter provided at the Copyright Office from 2.30 P.M. to 4.30. P.M. from Monday to Friday. The applications are also accepted by post. On-line registration through "E-filing facility " has been provided from 14th February 2014, which facilitates the applicants to file applications at the time and place chosen by them.

Ques: What is the procedure for registration of a work under the Copyright Act, 1957?

Ans: The procedure for registration is as follows:

- a) Application for registration is to be made on Form IV (Including Statement of Particulars and Statement of Further Particulars) as prescribed in the first schedule to the Rules;
 - b) Separate applications should be made for registration of each work;
 - c) Each application should be accompanied by the requisite fee prescribed in the second schedule to the Rules ; and
 - d) The applications should be signed by the applicant or the advocate in whose favor a Vakalatnama or Power of Attorney has been executed. The Power of Attorney signed by the party and accepted by the advocate should also be enclosed.
 - e) The fee is either in the form of Demand Draft, Indian Postal Order favoring "Registrar Of Copyright Payable At New Delhi" or through E payment
- Each and every column of the Statement of Particulars and Statement of Further Particulars should be replied specifically.

Ques: What is the fee for registration of a work under the Copyright Act, 1957?

Ans: Please go to the link fee details on the Home Page for details. One can pay fee in favor of 'Registrar of Copyrights' payable at 'new Delhi'. The fee is not reimbursable in case of rejection of the application.

Ques: Can I myself file an application for registration of copyright of a work directly?

Ans: Yes. Any individual who is an author or rights owner or assignee or legal heir can file application for copyright of a work either at the copyright office or by post or by e-filing facility from the copyright Office web-site "www.copyright.gov.in"

Ques: What are the guidelines regarding registration of a work under the Copyright Act?

Ans: Chapter XIII of the Copyright Rules, 2013, as amended, sets out the procedure for the registration of a work. Copies of the Act and Rules can be obtained from the Manager of Publications, Publication Branch, Civil Lines, Delhi or his authorized dealers on payment or download from the Copyright Office web-site www.copyright.gov.in

Ques: Whether unpublished works are registered?

Ans: Yes. Both published and unpublished works can be registered. Copyright in works published before 21st January, 1958, i.e., before the Copyright Act, 1957 came in force, can also be registered, provided the works still enjoy copyright. Three copies of published work may be sent along with the application. If the work to be registered is unpublished, a copy of the

manuscript has to be sent along with the application for affixing the stamp of the Copyright Office in proof of the work having been registered. In case two copies of the manuscript are sent, one copy of the same duly stamped will be returned, while the other will be retained, as far as possible, in the Copyright Office for record and will be kept confidential. It would also be open to the applicant to send only extracts from the unpublished work instead of the whole manuscript and ask for the return of the extracts after being stamped with the seal of the Copyright Office.

When a work has been registered as unpublished and subsequently it is published, the applicant may apply for changes in particulars entered in the Register of Copyright in Form V with prescribed fee. The process of registration and fee for registration of copyright is same.

Ques: Whether computer Software or Computer Programs can be registered?

Ans: Yes. Computer Software or programs can be registered as a 'literary work'. As per Section 2 (o) of the Copyright Act, 1957 "literary work" includes computer programs, tables and compilations, including computer databases. 'Source Code' has also to be supplied along with the application for registration of copyright for software products.

Ques: How can I get copyright registration for my Web-site?

Ans: A web-site contains several works such as literary works, artistic works (photographs etc.), sound recordings, video clips, cinematograph films and broadcastings and computer software too. Therefore, a separate application has to be filed for registration of all these works.

Ques: How long I have to wait to get my work to get registered by the Copyright office?

Ans: After you file your application and receive diary number you have to wait for a mandatory period of 30 days so that no objection is filed in the Copyright office against your claim that particular work is created by you. If such objection is filed it may take another one month time to decide as to whether the work could be registered by the Registrar of Copyrights after giving an opportunity of hearing the matter from both the parties. If no objection is filed the application goes for scrutiny from the examiners. If any discrepancy is found the applicant is given 30 days time to remove the same. Therefore, it may take 2 to 3 months time for registration of any work in the normal course. The cooperation of the applicant in providing necessary information is the key for speedy disposal the matter.

Ques: Is an opportunity for hearing given in all the cases pertain to rejection of registration?

Ans: Yes. As per the Principles of Natural Justice' (i.e audi altram paltram) no one can be punished without being heard. As per the rule 27 of the Copyright Rules, 1958 no application is rejected without giving an opportunity to be heard. The applicant himself or his/her pleader may appear in the hearing.

As per section 72 of the Copyright Act, 1957 any person aggrieved by the final decision or order of the Registrar of Copyrights may, within three months from the date of the order or decision, appeal to the Copyright Board.

***Please refer Source – <http://www.copyright.gov.in> for latest information.**