Basic Concept of Intellectual Property (IPR)

Property means the association between the owner of the property and each member of the society in relation to a tangible or intangible possession. Law gives a package of privileges to the owner of the property. This bundle of rights includes the right to possess the thing which he/she owns, the right to use and enjoy the thing owned and the right to consume, destroy or alienate the thing.

Intellectual property is the nation's new wealth. Property jurisprudence's main focus has shifted from material to intangible. Intellectual property has arisen as the nation's new wealth. Intellectual property rights are people's rights for their minds' creations. Typically, they grant the author an exclusive privilege over a certain period to use his / her work.

According to the definition of 'Intellectual Property' by the WIPO (World Intellectual Property Organization),

"Intellectual property means the legal rights which result from intellectual activity in the industrial, scientific, literary and artistic fields."

I. Characteristics of Intellectual Property Rights (IPR) Laws:

1. Intangible Property: Intellectual property does not cover the physical object, which was made, but it preserves the conceptual development behind the physical object.

2. Creation of Statute: In fact, intellectual property is derived from common law, and it is covered under specific laws.

3. Bundle of Legal Rights: Law recognizes and preserves separate and independent rights.

There are two main reasons why countries have intellectual property laws. One is to give legislative recognition to the creators' moral and economic rights in their works and to the public's rights in accessing them. The second is to promote creativity and the dissemination and use of the results as a deliberate act of government policy and to promote fair trade that would contribute to economic and social growth.

The purpose of intellectual property law is to protect creators and other producers of intellectual goods and services by granting them certain time-limited rights to control the use of such goods and services. Such privileges do not apply to the physical object in which the creation can be manifested, but to the creation of the mind as such. Traditionally, intellectual property is divided into "industrial property" and "copyright" branches.

Inventions and industrial designs are protected by the word "industrial property." Inventions are simply described as new solutions to technical problems, and aesthetic innovations are designed to decide the appearance of industrial products. The industrial property also includes trademarks, service marks, trade names and designations, including source and appellation of origin signs, and protection from unfair competition.

Here it is a less prominent aspect of intellectual creation, although it is there, it is important here that the object of the industrial property consists typically of signs conveyed information to consumer products and services, in particular products

and services on the market. Protection is directed against unauthorized use by consumers and in general misleading practices of such signs.

The Convention establishing the **World Intellectual Property Organization (WIPO)** concluded in **Stockholm** on 14 July 1967 (Article 2(viii)) provides that 'intellectual property shall include rights relating to literary, artistic and scientific works; performances of performing artists; phonograms and broadcasts; inventions in all fields of human endeavour; scientific discoveries; industry designs; trademarks, service marks and commercial names and designations; protection against unfair competition, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

The areas listed as works of literature, art and science belong to the intellectual property copyright branch. Areas referred to as performing artists, phonograms and broadcasts are usually referred to as' related rights,' i.e. copyright-related rights.

The fields referred to as inventions, product designs, trademarks, service marks and trade names and designations constitute the division of intellectual property of industrial property.

The area referred to as protection against unfair competition may also be considered to belong to that branch, the more so as Article 1(2) of the Paris Convention for the Protection of Industrial Property (the Stockholm Act of 1967) and (the 'Paris Convention') includes 'repression of unfair competition' among the areas of ' protection of industrial property.

II. Difference between Real Property & Intellectual Property (IPR)

Real property is protected by the property's possession. It is not possible to protect intellectual property by mere possession. Mind creations, such as an idea for an invention or a piece of music, cannot be protected by mere possession of the object as physical objects, against the use of them by others.

Once the intellectual creation is made available to the public, it is no longer possible for its creator to exercise control over it.

III. Intellectual Property Rights

The rights of intellectual property are like any other right of property. These allow authors or owners to profit from their own work or investments in the creation of patents, trademarks or copyrighted content. These rights are outlined in Article 27 of the United Nations Declaration on Human Rights which sets out the right of the authorship of scientific, literary or artistic works to benefit from the protection of moral and material interests.

In the **Paris Convention on the Protection of Industrial Property (1883)** and the **Berne Convention on the Protection of Literary and Artistic Works (1886)** the importance of intellectual property was initially recognized. The **World Intellectual Property Organization (WIPO)** administered both these treaties.

These rights include rights of Patents, Copyright and its related rights, Trademarks, Industrial Designs, Geographical indication.

A. Patents

A patent is an exclusive right granted to an invention – a product or process that provides a new way of doing something or offers a new technical solution to a problem. A patent provides protection for the inventions of patent owners. For a

limited period of time, usually 20 years, immunity is provided. A patent owner is entitled to decide who may or may not use the patented invention for the time during which it is licensed.

Patent owners may give other parties permission or license to use their inventions on terms agreed upon by each other. Owners can also sell their rights of the invention to someone else, who then becomes the patent's new owner.

After expiry of a patent, protection is terminated, and the invention enters the public domain. This is also referred to as being off-patent, meaning that the creator no longer holds exclusive rights to the technology, and it becomes available to others for commercial exploitation.

In general, an invention must meet the following conditions for a patent to be protected. It must be of practical use; it must show an element of "novelty", meaning some new characteristic that in its technical field is not part of the body of existing knowledge. That existing body of knowledge is called "prior art."

The invention must demonstrate an "inventive step" that a person with average technical knowledge could not deduce. Under the law, it must accept its subject matter as "patentable". Scientific theories, mathematical methods, plant or animal varieties, natural substance discoveries, commercial methods or medical treatment methods (as opposed to medical products) are generally not patentable in many countries. In India, the rights of the patent holders are protected under the **Patents Act, 1970**.

B. Copyrights and related rights

Copyright laws provide protection for authors, artists and other creators of their literary and artistic creations, commonly referred to as “works.” A closely related field is “related rights” or copyright rights which include rights similar to or identical to those of copyright, although sometimes more limited and of shorter duration.

The recipients of such freedoms are artists (such as actors and musicians) in their performances; phonogram manufacturers (such as compact disks) in their sound recordings; and journalists in their radio and television programming.

Works protected by copyright include, but are not limited to books, poetry, plays, reference works, magazines, advertisements, computer programs, libraries, animations, musical compositions, choreography, sculptures, sketches, photos, sculpture, design, maps and technical drawings.

The creators of copyrighted works and their heirs and successors (usually referred to as “right holders”) have certain fundamental rights under copyright law. They are solely entitled to use or authorize others to use the work under agreed terms. In India, the rights of the copyright owners are protected under the Copyrights Act, 1957.

C. Trademarks

A trademark is a distinctive sign identifying certain goods or services that an individual or a company produces or provides. The history dates to ancient times when craftsmen copied their signatures or “marks” on actual or useful works or

items. These marks have evolved over the years into today's trademark registration and protection system.

Trademark protection ensures that trademark owners have the exclusive right to use them to identify goods or services or to authorize others to use them for payment purposes. The protection period varies, but a trademark may be indefinitely renewed upon payment of the fees.

Trademark protection is enforced by courts that have the authority in most systems to stop the infringement of trademarks. In a broader sense, by rewarding their owners with recognition and financial profit, trademarks promote initiative and enterprise worldwide.

Trademark protection also hinders unfair competitors, such as counterfeiters, in their efforts to use similar distinguishing signs to market inferior products or services. The system allows people with skills and business to produce and market goods and services in the fairest conditions possible, thus facilitating international trade. In India, the rights of the trademark proprietors are protected under the Trademarks Act, 1999.

D. Industrial Design

An industrial design refers to the ornamental or aesthetic elements of an object. A design can consist of three-dimensional objects such as the outline or surface of an article or two-dimensional features such as shapes, lines or colours.

Industrial designs are extended to a wide range of manufacturing and handcrafted products: from bags and containers to furniture and household goods, from lighting equipment to clothing, and from electrical and wearable devices. Graphic icons,

graphical user interfaces (GUI) and logos may also be applicable to industrial designs.

The owner of a licensed industrial design or design patent has the power, in practice, to prohibit third parties from making, distributing or importing products containing or embodying a design that is a duplicate, or substantially a copy, of the covered design when such actions are carried out for commercial purposes. An industrial design must be licensed in most countries in order to be protected as a "registered product" under industrial design legislation. In some countries, industrial designs are covered under patent law as Design patents.

Industrial design laws, in some countries, grant limited protection to so-called unregistered industrial designs without registration. Industrial designs may also be protected as works of art under copyright law, depending on the specific national law and the type of design. In India, the industrial designs are protected under the Designs Act, 2000.

E. Geographical Indications (GI)

A geographical indication is a sign used on goods that have a specific geographical origin and possess qualities or a reputation due to that place of origin. Most commonly, a geographical indication consists of the name of the place of origin of the goods. Typically, agricultural products have qualities derived from their place of production and are influenced by specific local geographic factors such as climate and soil.

It is a matter of national legislation and public understanding of whether a sign acts as a geographical indication. Geographical labels can be used for a wide range of agricultural products, such as "Tuscany" for olive oil produced in a particular area

of Italy, or “Roquefort” for cheese made in that region of France. It is not limited to agricultural products to use geographical indications.

It may also emphasize the specific qualities of a product, such as specific production techniques and customs, due to human influences present in the place of origin of the product. Consumers consider geographical indications to indicate the origin and quality of products. Many have gained desirable reputations that may be misrepresented by commercial operators if not adequately protected.

The abuse by unauthorized parties of geographical labels, such as “Darjeeling” for tea not produced in Darjeeling’s tea gardens, is harmful to customers and legal producers.

IV. Intellectual Property Laws in India (IPR)

1. The Patents Act,1970
2. The Copyright Act,1957
3. The Trademarks Acts,1999
4. The Designs Act,2000
5. The Geographical Indications of Goods (Registration and Protection) Act,1999
6. The Semiconductor Integrated Circuits Layout-Designs Act, 2000
7. The Protection of Plant Varieties and Farmers’ Rights Act, 2001
8. Trade Secret (undisclosed or confidential information) -No codified law yet but covered by the contract and Common Law.
9. The Biological Diversity Act, 2002 (Take into consideration certain aspects of Traditional Knowledge)

Copyright, patents, trademarks and industrial designs are the most common types of intellectual property rights. Intellectual property (IP) is a form of proprietorship that encompasses the intangible development of human intellect.

New types of property emerged as a result of the industrial revolution and the rapid development of science, technology and culture. Because of their unique features, new rights and properties such as trademarks, copyrights and industrial designs, came to be known as intellectual property rights (IPRs).

In societies such as Ancient Rome, early precursors existed for certain types of intellectual property but in England, in the 17th and 18th centuries, a modern concept of intellectual property was developed. It was not until the late 20th century that intellectual property was prevalent in most of the world, and the word "intellectual property" started to be used in the 19th century.

In order to do so, legislation grants people and businesses rights to information and intellectual goods that they produce, usually for a short time. The main purpose of intellectual property legislation is for the creation of many intellectual goods. These economic incentives are intended to stimulate innovation and contribute to the technological progress of countries that depend on the level of protection granted to innovative industries. This provides an important contribution to the development of innovation by enabling people to profit on their information and intellectual goods.

In contrast, with traditional property, intellectual property is "indivisible" as an unlimited number of people can "consume" an intellectual good without being

depleted. The intangible nature of intellectual property poses problems compared to traditional property such as land or goods.

Furthermore, investment in intellectual goods has problems with ownership- landowners may fence their land and hire army guards to protect it, but an information manufacturer or a documentary provider usually can do very little to stop their first buyer from replicating it and selling it at a lesser price. Balancing the rights to promote creation so that they are strong enough.

According to the definition of 'Intellectual Property' by the WIPO (World Intellectual Property Organization), "*Intellectual property means the legal rights which result from intellectual activity in the industrial, scientific, literary and artistic fields.*"

There are two main reasons why countries have IP laws. One is to respect the moral and economic interests of the authors of their works and the rights of the public to access them. The second is to encourage innovation as a deliberate act of government policy, disseminating and using the effects, and to promote fair trade that would lead to economic and social development.

Nature & Characteristics of Intellectual Property Rights

(1) Intangible property

IP does not cover the created physical object but retains the conceptual development behind the physical object. Intellectual property law does not deal with the material object in which the works of the mind have represented. The main feature which distinguishes IP from other types of property is its intangibility.

IP is about a person's ability to produce a new idea and put it before the public. Intellectual property: The product does not have any property as such but the strength, judgment and initiative of the mind that is included in the product. This generates more theoretical value intangible properties. IPR is awarded in a specific authorship work, mark, design, etc. for the integration of ideas.

Abstract theories are not entitled to the protection of intellectual property. IPRs are separate and distinct from tangible goods' property rights. Therefore, in the definition of intangible property, the intellectual property of any species is included. It is difficult to see this type of property; however, senses can be sensed.

(2) Rights & Duties

IP not only gives rise to rights of ownership but also to duties. In relation to his work/product, the IP owner has the right to conduct such actions. He is entitled exclusively to produce, copy the work, market the work, etc. He has a negative right also to rule out the exercise of his statutory rights for third parties. In this way, IPR law grants the proprietor's exclusive right to exclusion.

The reciprocal requirement must not be infringed on the right by all others. The privilege resulting from the application of IP law gives the owner of the right to use the job. Such right does not extend to others except the IP holders.

(3) Creation of Statute

Intellectual property is derived from common law, and it is covered under specific laws.

In accordance with relevant legislation, IPRs are statutory rights. Intellectual property, to put it differently, is statute formation. The right holder is protected by

proposals, technical solutions or any other knowledge conveyed in a legally acceptable manner and subject in some instances to registration procedures.

Some other formalities must be met to obtain such IP privileges. For example, a microorganism deposit is a requirement for a microorganism patent. Similarly, it is a must for the divulgation of an invention to secure a patent. IPR award is exclusively conditional on all statutory requirements.

As the State confers the IPR, even if it has been approved, sold or advertised or promoted in the meantime, it can be withdrawn by the state under very special conditions. In this context, an IPR shall not be guaranteed if granted; it shall, for several purposes, including national security, or in accordance with applicable procedural laws of the country, be challenged or revoked at any time.

(4) Territoriality

Intellectual property laws are mainly territorial and apply only within the relevant competence. Although the TRIPS agreement sets the minimum standard in its respective municipal laws for all nations, the IP laws around the world are not harmoniously united. Full IPRs legislation is not in effect.

To order to secure and implement their IPR, developers and inventors of different kinds of IPs have to comply with their national laws and jurisdictions. The extent of security depends on the national legislation in question.

The procedure for registration, protection, duration and application of various IPRs are governed mainly by respective national legislation. Different international IP agreements such as the Paris Convention, Bern Convention and the TRIPS

guarantee that inventors and producers in foreign countries can be protected by national law.

(5) Assignable

They should obviously be granted (licensed), because they are privileges. A dichotomy between rights to intellectual property and the actual form in which the work is embedded is conceivable. IP may be bought, sold or licensed, employed or affiliated.

(6) Dynamism

The IPR is constantly changing. The IP sector is also developing accordingly, as technology in all areas of human activities is changing exponentially. In accordance with the demand for scientific and technological advancement, the scope of its defence is being extended and new items are being added to the IPRs sector.

Copyright and protection of plant variety are to mention a few of the current developments in the field of IPR. Technological progress and social developments require a steady reassessment of the IPR system. In the technological era, developments, particularly in the field of IT and biotechnology, require the regular review of IPRs.

The IP system is versatile and features a capacity to develop and adapt to time requirements. The significance, including legislative, administrative and judicial, of intellectual property and its operation are well known and expressed in all aspects.

(7) Subject to public policy

They are exposed to the profound incarnation of public policy. IP seeks to maintain and find a suitable reconciliation between two competing interests. On one hand, customers try to take up works without much trouble, and on the other hand, the owners of intellectual rights need to be adequately compensated.

(8) Subject matter of IPR Protection

Intellectual property rights eligibility depends solely on the protection issue. Also, products specifically identified and acknowledged in the law as the subject of protection are entitled to intellectual property rights. While the minimum requirements laid down in law may be included, protection may still be denied if it is expressly omitted from the subject matter entitled to protection.

An item's entry into the IPR program does not count for technical advancement on its own. The law will recognize this as an IPR-eligible subject. For example, only after their formal recognition and inclusion in relevant statutes have software and biotechnology innovations become eligible for IPR's protection.

(9) Different rights' co-existence

In relation to a particular job, different types of IPR will coexist. An invention can, for example, be patented and an innovation drawing may be copyrighted. Under the Design Law, a design can be covered and the design also incorporated into a logo. There are many similarities and differences between different IP rights. Patents and product designs, copyright and related rights, trademarks and GI, etc. have, for example, common grounds. Some rights of intellectual property are positive and others are negative.

(10) Exhaustion of rights

The definition of exhaustion is usually regulated by intellectual property rights. Exhaustion essentially means that his right is terminated after the first selling by the right holder or his exhalation authorisation and he can't stop moving goods further

As a result, the subsequent resale of this product can't be prohibited once the IP right holder has sold a physical product to which its IPRs are attached.

The first inclusive advertisement complements the second. The principle of the freedom of movement of goods exchanged through the approval or authority of the owner of the right is based on this theory. With relation to the same goods, the exclusive right to sell products can't be exercised twice.

The right to limit further transactions is lost since by placing the products on the market for the first time, the right holder had acquired his share already.

(11) Exclusive Rights of the Owner

It ensures that it is illegal for others who are not owners to use the privilege. The claimant can't implement in effect most intellectual property rights until exclusive rights are given to them. Most of them have to be checked under certain public regulations. The developer or author of intellectual property has rights to the exclusion of anyone else that is inherent in his work.

Justifications for the Protection of IP Rights

Over time, many classical justifications were developed, often used together to argue for the rights of intellectual property. One feature of these privileges is that monopolies are given for a certain period of time for the economic exploitation of a work or invention. Nevertheless, surprisingly, even for the biggest supporter of such monopolies it seems obvious that certain limits must be placed on the protection of intellectual property rights.

These explanations are explored in part for the purpose of this work to highlight, not to mention in the variations in which the justifications are often used, the challenges facing each one even in its pure form.

Some of the modern and classical justification theories that apply, including labour theories, incentive theory, the theory of motivation, the theory of nature law, theoretical moral theories, the theory of personality and economic theory and the theory of the natural monopoly, to decide to what degree intellectual property rights will enjoy protection.

I. Natural Rights Theory

The philosophy of natural rights assumes that everybody has a natural right to his ideas to explain intellectual property. The production comes from its author's efforts and imagination. This theory's meaning derives primarily from the principle of John Lock that an author has natural rights over his work.

In other words, this principle makes no difference between intellectual property, including the right to use, the right to rule out use and the right to pass it. Anyone who violates an author, creator or inventor's intellectual right is therefore considered to commit a theft. Nevertheless, this theory lacks consistency because

intellectual rights are based on things which are not, of course, appropriate and non-rival.

Locke's natural law argument for the exploitation of worldly wealth starts with the most common and most important justification. Locke begins with his essential self-owning argument, where he argues that not only a person has his own personality, but also the results of his work, if he leaves for others enough and good.

Some utilitarian theorists (e.g. Cohen 1995) criticize the principle of self-own and the just exploitation of natural resources, and it is contested in libertarian philosophy whether the concept of self-own can be interpreted as consistent with the belief that natural resources must be distributed equitably.

The case of natural law for an intellectual property then argues that a creative work is the result of the work of the creator and that therefore he is the only owner and the only one that deserves it.

II. Utilitarian Justification

The utilitarian or substantive case for intellectual property rights is noteworthy for their essential rationale. Although the argument of natural law can be called into question, it is still the case that rational agents would not create creative works in equal numbers without the monetary incentives that contain the monopoly rights of intellectual property. The better for every group, the more innovative works are made. Therefore, they are justified if monopolies will increase the number of creative works.

This hypothesis, by definition, is based on the fact that industrial development and cultural goods have a positive impact on society. Thus, the holder needs to ensure that the effects are equivalent to the costs of his work to promote inventions and creations.

Intellectual rights are indeed an artificial incentive to development by the State Briefly, the principle of benefits supports intellectual rights by benefiting society as a whole.

III. Ethics and Reward theory

This argument defends the exclusive and moral rights to intellectual property. Ethically, the creator's initiative in favour of social good must make a fair and equal contribution.

Exclusive rights "reflect an author's thankfulness for doing more than society expects or feels obligated to do". However, when incentives are offered to people who have done something bad and grievous for the benefit of society as a whole, we may doubt whether creators and inventors really deserve it. They definitely do not deserve it twice, as they understand this.

Others believe the inventor has already been compensated because the time between the creation of his invention and first copies is enough to reward him if the invention only takes place in advance. In this case, the exclusive right is clearly much more extreme.

IV. Justification by personality rights/ the Personhood theory

Copyright law in Europe includes more than just economic aspects, such as the exclusive right to exploit the work. The author in France and the individual in Germany are at the core of these rights, not just the 'copy' of the work.

Such rights referred to in international copyright law as 'moral rights,' are aimed at protecting the personal rather than just an author's economic interests. They include the right to assign, the right to integrity, the right to disclose, and the right to withdraw.

It is said that such rights are justified because artistic works are almost universally understood as an extension of the personality of the author'. Hence the words 'justification by personality rights' are used.

According to this theory, everybody's personality is made up of work and development. Personality growth is inherent in the property right that we have. **Hegel**, who is the main source of this theory, argues that intellectual rights allow and protect personality development that extends to material things. Similarly, the copier is regarded as a thief who offers somebody else's spirit to the public.

Such an argument, however, is flawed in the sense that the personality is not associated or affected by the outcome of the development as it is not constitutive of the human person by itself. The research is independent of its author when the production is completed, but dependent on the public. The job, in truth, only gets substance because the others have decided to give it importance.

An effective and equitable system of intellectual property can help all countries realize the potential of intellectual property as a catalyst for economic development and social and cultural well-being. The system of intellectual property helps strike

a balance between innovators ‘ interests and the public interest, creating an environment in which creativity and invention can flourish for the benefit of all.

For the economy and for further growth in areas such as research, innovation and employment, protection of intellectual property rights (IPR) is important. Health and safety also depend on efficient IPR enforcement. In addition, IPR creates and supports high-paying employment, stimulates economic growth and competitive performance, protects consumers and families, contributes to the development of breakthrough solutions, encourages innovation and awards entrepreneurs. For these reasons, both domestically and internationally, IP rights are worth protecting.

IPR rewards creativity and the human effort that fuel human progress.

By recognizing their creativity and offering a material reward for their marketable inventions, patents provide incentives for individuals. These incentives promote innovation, which in turn improves the quality of life for people.

Industrial designs make an article appealing and attractive; they thus increase the commercial value and marketability of a product. Where an industrial design is protected, an exclusive right to and safeguards against unauthorized copying or emulation of the design by a third party is guaranteed to the owner–the person or entity which has registered it. This contributes to a fair return on investment.

The consumer understands geographical indications to indicate the origin and quality of the products. Many of them have gained valuable reputations, which can be misrepresented by commercial operators unless adequately protected. Unauthorized parties are deceived by misusing the geographic information, for example,’ Darjeeling’ for tea not grown in the tea gardens of Darjeeling, that the

consumers and legitimate farmers are deprived of valuable businesses, and the latter is deprived of property and damaged by the establishment.

Protection of copyright and related rights is essential to the promotion of human innovation and creativity. Increasing their activity and output and can increase their results by giving authors, artists and creators incentives through recognition and fair economic rewards.

By ensuring the existence and enforcement of rights, individuals and businesses can invest more easily in creating, developing and distributing their work globally. This, in turn, helps to enhance access to culture, knowledge and entertainment throughout the world and also encourages economic and social development.

THE BIOLOGICAL DIVERSITY ACT, 2002

ARRANGEMENT OF SECTIONS

CHAPTER I

PRELIMINARY

SECTIONS

1. Short title, extent and commencement.
2. Definitions.

CHAPTER II

REGULATION OF ACCESS TO BIOLOGICAL DIVERSITY

3. Certain persons not to undertake Biodiversity related activities without approval of National Biodiversity Authority.
4. Results of research not to be transferred to certain persons without approval of National Biodiversity Authority.
5. Sections 3 and 4 not to apply to certain collaborative research projects.
6. Application for intellectual property rights not to be made without approval of National Biodiversity Authority.
7. Prior intimation to State Biodiversity Board for obtaining biological resource for certain purposes.

CHAPTER III

NATIONAL BIODIVERSITY AUTHORITY

8. Establishment of National Biodiversity Authority.
9. Conditions of service of Chairperson and members.
10. Chairperson to be Chief Executive of National Biodiversity Authority.
11. Removal of members.
12. Meetings of National Biodiversity Authority.
13. Committees of National Biodiversity Authority.
14. Officers and employees of National Biodiversity Authority.
15. Authentication of orders and decisions of National Biodiversity Authority.
16. Delegation of powers.
17. Expenses of National Biodiversity Authority to be defrayed out of the Consolidated Fund of India.

CHAPTER IV

FUNCTIONS AND POWERS OF THE NATIONAL BIODIVERSITY AUTHORITY

18. Functions and powers of National Biodiversity Authority.

CHAPTER V

APPROVAL BY THE NATIONAL BIODIVERSITY AUTHORITY

19. Approval by National Biodiversity Authority for undertaking certain activities.
20. Transfer of biological resource or knowledge.
21. Determination of equitable benefit sharing by National Biodiversity Authority.

CHAPTER VI

STATE BIODIVERSITY BOARD

SECTIONS

22. Establishment of State Biodiversity Board.
23. Functions of State Biodiversity Board.
24. Power of State Biodiversity Board to restrict certain activities violating the objectives of conservation, etc.
25. Provisions of sections 9 to 17 to apply with modifications to State Biodiversity Board.

CHAPTER VII

FINANCE, ACCONTS AND AUDIT OF NATIONAL BIODIVERSITY AUTHORITY

26. Grants or loans by the Central Government.
27. Constitution of National Biodiversity Fund.
28. Annual report of National Biodiversity Authority.
29. Budget, accounts and audit.
30. Annual report to be laid before Parliament.

CHAPTER VIII

FINANCE, ACCOUNTS AND AUDIT OF STATE BIODIVERSITY BOARD

31. Grants of money by State Government to State Biodiversity Board.
32. Constitution of State Biodiversity Fund.
33. Annual report of State Biodiversity Board.
34. Audit of accounts of State Biodiversity Board.
35. Annual report of State Biodiversity Board to be laid before State Legislature.

CHAPTER IX

DUTIES OF THE CENTRAL AND THE STATE GOVERNMENTS

36. Central Government to develop National strategies, plans, etc., for conservation, etc., of biological diversity.
37. Biodiversity heritage sites.
38. Power of Central Government to notify threatened species.
39. Power of Central Government to designate repositories.
40. Power of Central Government to exempt certain biological resources.

CHAPTER X

BIODIVERSITY MANAGEMENT COMMITTEES

41. Constitutions of Biodiversity Management Committees.

CHAPTER XI

LOCAL BIODIVERSITY FUND

42. Grants to Local Biodiversity Fund.
43. Constitution of Local Biodiversity Fund.
44. Application of Local Biodiversity Fund.
45. Annual report of Biodiversity Management Committees.
46. Audit of accounts of Biodiversity Management Committees.

SECTIONS

47. Annual report, etc., of Biodiversity Management Committee to be submitted to District Magistrate.

CHAPTER XII

MISCELLANEOUS

48. National Biodiversity Authority to be bound by the directions given by Central Government.
49. Power of State Government to give directions.
50. Settlement of disputes between State Biodiversity Boards.
51. Members, officers, etc., of National Biodiversity Authority and State Biodiversity Board deemed to be public servants.
52. Appeal.
52A. Appeal to National Green Tribunal.
53. Execution of determination or order.
54. Protection of action taken in good faith.
55. Penalties.
56. Penalty for contravention for directions or orders of Central Government, State Government, National Biodiversity Authority and State Biodiversity Boards.
57. Offences by companies.
58. Offences to be cognizable and non-bailable.
59. Act to have effect in addition to other Acts.
60. Power of Central Government to give directions to State Government.
61. Cognizance of offences.
62. Power of Central Government to make rules.
63. Power of State Government to make rules.
64. Power to make regulations.
65. Power to remove difficulties.

THE BIOLOGICAL DIVERSITY ACT, 2002

ACT NO. 18 OF 2003

[5*th February,* 2003.]

An Act to provide for conservation of biological diversity, sustainable use of its components and fair and equitable sharing of the benefits arising out of the use of biological resources, knowledge and for matters connected therewith or incidental thereto.

WHEREAS India is rich in biological diversity and associated traditional and contemporary knowledge system relating thereto.

AND WHEREAS India is a party to the United Nations Convention on Biological Diversity signed at Rio de Janeiro on the 5th day of June, 1992;

AND WHEREAS the said Convention came into force on the 29th December, 1993;

AND WHEREAS the said Convention reaffirms the sovereign rights of the States over their biological resources;

AND WHEREAS the said Convention has the main objective of conservation of biological diversity, sustainable use of its components and fair and equitable sharing of the benefits arising out of utilisation of genetic resources;

AND WHEREAS it is considered necessary to provide for conservation, sustainable utilisation and equitable sharing of the benefits arising out of utilisation of genetic resources and also to give effect to the said Convention.

BE it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(*1*) This Act may be called the Biological Diversity Act, 2002.

(*2*) It extends to the whole of India.

(*3*) It shall come into force on such date[1] as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. Definitions.—In this Act, unless the context otherwise requires,—

(*a*) "benefit claimers" means the conservers of biological resources, their by-products, creators and holders of knowledge and information relating to the use of such biological resources, innovations and practices associated with such use and application;

(*b*) "biological diversity" means the variability among living organisms from all sources and the ecological complexes of which they are part and includes diversity within species or between species and of eco-systems;

(*c*) "biological resources" means plants, animals and micro-organisms or parts thereof, their genetic material and by-products (excluding value added products) with actual or potential use or value, but does not include human genetic material;

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1. 1st October, 2003 (ss. 1, 2, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 48, 54, 59, 62, 63, 64, 65), *vide* notification No. S.O. 1146(E), dated 1st October, 2003, *see* Gazette of India, Extraordinary, Part II, sec. 3(*ii*).

1st July, 2004 (ss. 3, 4, 5, 6, 7, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 49, 50, 51, 52, 53, 55, 56, 57, 58, 60, 61), *vide* notification No. S.O. 753(E), dated 1st July, 2004, *see* Gazette of India, Extraordinary, Part II, sec. 3(*ii*).

(*d*) "bio-survey and bio-utilisation" means survey or collection of species, subspecies, genes, components and extracts of biological resource for any purpose and includes characterisation, inventorisation and bioassay;

(*e*) "Chairperson" means the Chairperson of the National Biodiversity Authority or, as the case may be, of the State Biodiversity Board;

(*f*) "commercial utilisation" means end uses of biological resources for commercial utilisation such as drugs, industrial enzymes, food flavours, fragrance, cosmetics, emulsifiers, oleoresins, colours, extracts and genes used for improving crops and livestock through genetic intervention, but does not include conventional breeding or traditional practices in use in any agriculture, horticulture, poultry, dairy farming, animal husbandry or bee keeping;

(*g*) "fair and equitable benefit sharing" means sharing of benefits as determined by the National Biodiversity Authority under section 21;

(*h*) "local bodies" means Panchayats and Municipalities, by what ever name called, within the meaning of clause (1) of article 243B and clause (1) of article 243Q of the Constitution and in the absence of any Panchayats or Municipalities, institutions of self-government constituted under any other provision of the Constitution or any Central Act or State Act;

(*i*) "member" means a member of the National Biodiversity Authority or a State Biodiversity Board and includes the Chairperson;

(*j*) "National Biodiversity Authority" means the National Biodiversity Authority established under section 8;

(*k*) "prescribed" means prescribed by rules made under this Act;

(*l*) "regulations" means regulations made under this Act;

(*m*) "research" means study or systematic investigation of any biological resource or technological application, that uses biological systems, living organisms or derivatives thereof to make or modify products or processes for any use;

(*n*) "State Biodiversity Board" means the State Biodiversity Board established under section 22;

(*o*) "sustainable use" means the use of components of biological diversity in such manner and at such rate that does not lead to the long-term decline of the biological diversity thereby maintaining its potential to meet the needs and aspirations of present and future generations;

(*p*) "value added products" means products which may contain portions or extracts of plants and animals in unrecognizable and physically inseparable form.

CHAPTER II

REGULATION OF ACCESS TO BIOLOGICAL DIVERSITY

3. Certain persons not to undertake Biodiversity related activities without approval of National Biodiversity Authority.—(*1*) No person referred to in sub-section (*2*) shall, without previous approval of the National Biodiversity Authority, obtain any biological resource occurring in India or knowledge associated thereto for research or for commercial utilisation or for bio-survey and bio-utilisation.

(*2*) The persons who shall be required to take the approval of the National Biodiversity Authority under sub-section (*1*) are the following, namely:—

(*a*) a person who is not a citizen of India;

(*b*) a citizen of India, who is a non-resident as defined in clause (*30*) of section 2 of the Income-tax Act, 1961 (43 of 1961);

(*c*) a body corporate, association or organisation—

(*i*) not incorporated or registered in India; or

(*ii*) incorporated or registered in India under any law for the time being in force which has any non-Indian participation in its share capital or management.

4. Results of research not to be transferred to certain persons without approval of National Biodiversity Authority.—No person shall, without the previous approval of the National Biodiversity Authority, transfer the results of any research relating to any biological resources occurring in, or obtained from, India for monetary consideration or otherwise to any person who is not a citizen of India or citizen of India who is non-resident as defined in clause (30) of section 2 of the Income-tax Act, 1961 (43 of 1961) or a body corporate or organisation which is not registered or incorporated in India or which has any non-Indian participation in its share capital or management.

Explanation.—For the purposes of this section, "transfer" does not include publication of research papers or dissemination of knowledge in any seminar or workshop, if such publication is as per the guidelines issued by the Central Government.

5. Sections 3 and 4 not to apply to certain collaborative research projects.—(*1*) The provisions of sections 3 and 4 shall not apply to collaborative search projects involving transfer or exchange of biological resources or information relating thereto between institutions, including Government sponsored institutions of India, and such institutions in other countries, if such collaborative research projects satisfy the conditions specified in sub-section (*3*).

(*2*) All collaborative research projects, other than those referred to in sub-section (*1*) which are based on agreements concluded before the commencement of this Act and in force shall, to the extent the provisions of agreement are inconsistent with the provisions of this Act or any guidelines issued under clause (*a*) of sub-section (*3*), be void.

(*3*) For the purposes of sub-section (*1*), collaborative research projects shall—

(*a*) conform to the policy guidelines issued by the Central Government in this behalf;

(*b*) be approved by the Central Government.

6. Application for intellectual property rights not to be made without approval of National Biodiversity Authority.—(*1*) No person shall apply for any intellectual property right, by whatever name called, in or outside India for any invention based on any research or information on a biological resource obtained from India without obtaining the previous approval of the National Biodiversity Authority before making such application:

Provided that if a person applies for a patent, permission of the National Biodiversity Authority may be obtained after the acceptance of the patent but before the sealing of the patent by the patent authority concerned:

Provided further that the National Biodiversity Authority shall dispose of the application for permission made to it within a period of ninety days from the date of receipt thereof.

(*2*) The National Biodiversity Authority may, while granting the approval under this section, impose benefit sharing fee or royalty or both or impose conditions including the sharing of financial benefits arising out of the commercial utilisation of such rights.

(*3*) The provisions of this section shall not apply to any person making an application for any right under any law relating to protection of plant varieties enacted by Parliament.

(*4*) Where any right is granted under law referred to in sub-section (*3*), the concerned authority granting such right shall endorse a copy of such document granting the right to the National Biodiversity Authority.

7. Prior intimation to State Biodiversity Board for obtaining biological resource for certain purposes.—No person, who is a citizen of India or a body corporate, association or organisation which is registered in India, shall obtain any biological resource for commercial utilisation, or bio-survey and bio-utilisation for commercial utilisation except after giving prior intimation to the State Biodiversity Board concerned:

Provided that the provisions of this section shall not apply to the local people and communities of the area, including growers and cultivators of biodiversity, and *vaids* and *hakims*, who have been practicing indigenous medicine.

CHAPTER III

NATIONAL BIODIVERSITY AUTHORITY

8. Establishment of National Biodiversity Authority.—(*1*) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be established by the Central Government for the purposes of this Act, a body to be called the National Biodiversity Authority.

(*2*) The National Biodiversity Authority shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall by the said name sue and be sued.

(*3*) The head office of the National Biodiversity Authority shall be at Chennai and the National Biodiversity Authority may, with the previous approval of the Central Government, establish offices at other places in India.

(*4*) The National Biodiversity Authority shall consist of the following members, namely:—

(*a*) a Chairperson, who shall be an eminent person having adequate knowledge and experience in the conservation and sustainable use of biological diversity and in matters relating to equitable sharing of benefits, to be appointed by the Central Government;

(*b*) three *ex officio* members to be appointed by the Central Government, one representing the Ministry dealing with Tribal Affairs and two representing the Ministry dealing with Environment and Forests of whom one shall be the Additional Director General of Forests or the Director General of Forests;

(*c*) seven *ex officio* members to be appointed by the Central Government to represent respectively the Ministries of the Central Government dealing with—

(*i*) Agricultural Research and Education;

(*ii*) Biotechnology;

(*iii*) Ocean Development;

(*iv*) Agriculture and Cooperation;

(*v*) Indian Systems of Medicine and Homoeopathy;

(*vi*) Science and Technology;

(*vii*) Scientific and Industrial Research;

(*d*) five non-official members to be appointed from amongst specialists and scientists having special knowledge of, or experience in, matters relating to conservation of biological diversity, sustainable use of biological resources and equitable sharing of benefits arising out of the use of biological resources, representatives of industry, conservers, creators and knowledge-holders of biological resources.

9. Conditions of service of Chairperson and members.—The term of office and conditions of service of the Chairperson and the other members other than *ex officio* members of the National Biodiversity Authority shall be such as may be prescribed by the Central Government.

10. Chairperson to be Chief Executive of National Biodiversity Authority.—The Chairperson shall be the Chief Executive of the National Biodiversity Authority and shall exercise such powers and perform such duties, as may be prescribed.

11. Removal of members.—The Central Government may remove from the National Biodiversity Authority any member who, in its opinion, has—

(*a*) been adjudged as an insolvent; or

(*b*) been convicted of an offence which involves moral turpitude; or

(*c*) become physically or mentally incapable of acting as a member; or

(*d*) so abused his position as to render his continuance in office detrimental to the public interest; or

(*e*) acquired such financial or other interest as is likely to affect prejudicially his functions as a member.

12. Meetings of National Biodiversity Authority.—(*1*) The National Biodiversity Authority shall meet at such time and place and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at its meetings) as may be prescribed.

(*2*) The Chairperson of the National Biodiversity Authority shall preside at the meetings of the National Biodiversity Authority.

(*3*) If for any reason the Chairperson is unable to attend any meeting of the National Biodiversity Authority, any member of the National Biodiversity Authority chosen by the members present at the meeting shall preside at the meeting.

(*4*) All questions which come before any meeting of the National Biodiversity Authority shall be decided by a majority of votes of the members present and voting and in the event of equality of votes, the Chairperson or, in his absence, the person presiding, shall have and exercise a second or casting vote.

(*5*) Every member who is in any way, whether directly, indirectly or personally, concerned or interested in a matter to be decided at the meeting shall disclose the nature of his concern or interest and after such disclosure, the member concerned or interested shall not attend that meeting.

(6) No act or proceeding of the National Biodiversity Authority shall be invalidated merely by reason of—

(*a*) any vacancy in, or any defect in the constitution of, the National Biodiversity Authority; or

(*b*) any defect in the appointment of a person acting as a member; or

(*c*) any irregularity in the procedure of the National Biodiversity Authority not affecting the merits of the case.

13. Committees of National Biodiversity Authority.—(*1*) The National Biodiversity Authority may constitute a committee to deal with agro-biodiversity.

Explanation.—For the purposes of this sub-section, "agro-biodiversity" means biological diversity of agriculture related species and their wild relatives.

(*2*) Without prejudice to the provisions of sub-section (*1*), the National Biodiversity Authority may constitute such number of committees as it deems fit for the efficient discharge of its duties and performance of its functions under this Act.

(*3*) A committee constituted under this section shall co-opt such number of persons, who are not the members of the National Biodiversity Authority, as it may think fit and the persons so co-opted shall have the right to attend the meetings of the committee and take part in its proceedings but shall not have the right to vote.

(*4*) The persons appointed as members of the committee under sub-section (*2*) shall be entitled to receive such allowances or fees for attending the meetings of the committee as may be fixed by the Central Government.

14. Officers and employees of National Biodiversity Authority.—(*1*) The National Biodiversity Authority may appoint such officers and other employees as it considers necessary for the efficient discharge of its functions under this Act.

(*2*) The terms and conditions of service of such officers and other employees of the National Biodiversity Authority shall be such as may be specified by regulations.

15. Authentication of orders and decisions of National Biodiversity Authority.—All orders and decisions of the National Biodiversity Authority shall be authenticated by the signature of the Chairperson or any other member authorised by the National Biodiversity Authority in this behalf and all other

instruments executed by the National Biodiversity Authority shall be authenticated by the signature of an officer of the National Biodiversity Authority authorised by it in this behalf.

16. Delegation of powers.—The National Biodiversity Authority may, by general or special order in writing, delegate to any member, officer of the National Biodiversity Authority or any other person subject to such conditions, if any, as may be specified in the order, such of the powers and functions under this Act (except the power to prefer an appeal under section 50 and the power to make regulations under section 64) as it may deem necessary.

17. **Expenses of National Biodiversity Authority to be defrayed out of the Consolidated Fund of India.**—The salaries and allowances payable to the members and the administrative expenses of the National Biodiversity Authority including salaries, allowances and pension payable to, or in respect of, the officers and other employees of the National Biodiversity Authority shall be defrayed out of the Consolidated Fund of India.

CHAPTER IV

FUNCTIONS AND POWERS OF THE NATIONAL BIODIVERSITY AUTHORITY

18. Functions and powers of National Biodiversity Authority—(*1*) It shall be the duty of the National Biodiversity Authority to regulate activities referred to in sections 3, 4 and 6 and by regulations issue guidelines for access to biological resources and for fair and equitable benefit sharing.

(*2*) The National Biodiversity Authority may grant approval for undertaking any activity referred to in sections 3, 4 and 6.

(*3*) The National Biodiversity Authority may—

(*a*) advise the Central Government on matters relating to the conservation of biodiversity, sustainable use of its components and equitable sharing of benefits arising out of the utilisation of biological resources;

(*b*) advise the State Governments in the selection of areas of biodiversity importance to be notified under sub-section (*1*) of section 37 as heritage sites and measures for the management of such heritage sites;

(*c*) perform such other functions as may be necessary to carry out the provisions of this Act.

(*4*) The National Biodiversity Authority may, on behalf of the Central Government, take any measures necessary to oppose the grant of intellectual property rights in any country outside India on any biological resource obtained from India or knowledge associated with such biological resource which is derived from India.

CHAPTER V

APPROVAL BY THE NATIONAL BIODIVERSITY AUTHORITY

19. Approval by National Biodiversity Authority for undertaking certain activities.—(*1*) Any person referred to in sub-section (*2*) of section 3 who intends to obtain any biological resource occurring in India or knowledge associated thereto for research or for commercial utilisation or for bio-survey and bio-utilisation or transfer the results of any research relating to biological resources occurring in, or obtained from, India, shall make application in such form and payment of such fees as may be prescribed, to the National Biodiversity Authority.

(*2*) Any person who intends to apply for a patent or any other form of intellectual property protection whether in India or outside India referred to in sub-section (*1*) of section 6, may make an application in such form and in such manner as may be prescribed to the National Biodiversity Authority.

(*3*) On receipt of an application under sub-section (*1*) or sub-section (*2*), the National Biodiversity Authority may, after making such enquiries as it may deem fit and if necessary after consulting an expert committee constituted for this purpose, by order, grant approval subject to any regulations made in this behalf and subject to such terms and conditions as it may deem fit, including the imposition of charges by way of royalty or for reasons to be recorded in writing, reject the application:

Provided that no such order for rejection shall be made without giving an opportunity of being heard to the person affected.

(*4*) The National Biodiversity Authority shall give public notice of every approval granted by it under this section.

20. Transfer of biological resource or knowledge.—(*1*) No person who has been granted approval under section 19 shall transfer any biological resource or knowledge associated thereto which is the subject matter of the said approval except with the permission of the National Biodiversity Authority.

(*2*) Any person who intends to transfer any biological resource or knowledge associated thereto referred to in sub-section (*1*) shall make an application in such form and in such manner as may be prescribed to the National Biodiversity Authority.

(*3*) On receipt of an application under sub-section (*2*), the National Biodiversity Authority may, after making such enquiries as it may deem fit and if necessary after consulting an expert committee constituted for this purpose, by order, grant approval subject to such terms and conditions as it may deem fit, including the imposition of charges by way of royalty or for reasons to be recorded in writing, reject the application:

Provided that no such order for rejection shall be made without giving an opportunity of being heard to the person affected.

(*4*) The National Biodiversity Authority shall give public notice of every approval granted by it under this section.

21. Determination of equitable benefit sharing by National Biodiversity Authority.—(*1*) The National Biodiversity Authority shall while granting approvals under section 19 or section 20 ensure that the terms and conditions subject to which approval is granted secures equitable sharing of benefits arising out of the use of accessed biological resources, their by-products, innovations and practices associated with their use and applications and knowledge relating thereto in accordance with mutually agreed terms and conditions between the person applying for such approval, local bodies concerned and the benefit claimers.

(*2*) The National Biodiversity Authority shall, subject to any regulations made in this behalf, determine the benefit sharing which shall be given effect in all or any of the following manner, namely:—

(*a*) grant of joint ownership of intellectual property rights to the National Biodiversity Authority, or where benefit claimers are identified, to such benefit claimers;

(*b*) transfer of technology;

(*c*) location of production, research and development units in such areas which will facilitate better living standards to the benefit claimers;

(*d*) association of Indian scientists, benefit claimers and the local people with research and development in biological resources and bio-survey and bio-utilisation;

(*e*) setting up of venture capital fund for aiding the cause of benefit claimers;

(*f*) payment of monetary compensation and other non-monetary benefits to the benefit claimers as the National Biodiversity Authority may deem fit.

(*3*) Where any amount of money is ordered by way of benefit sharing, the National Biodiversity Authority may direct the amount to be deposited in the National Biodiversity Fund:

Provided that where biological resource or knowledge was a result of access from specific individual or group of individuals or organisations, the National Biodiversity Authority may direct that the amount shall be paid directly to such individual or group of individuals or organisations in accordance with the terms of any agreement and in such manner as it deems fit.

(*4*) For the purposes of this section, the National Biodiversity Authority shall, in consultation with the Central Government, by regulations, frame guidelines.

CHAPTER VI

STATE BIODIVERSITY BOARD

22. Establishment of State Biodiversity Board.—(*1*) With effect from such date as the State Government may, by notification in the Official Gazette, appoint in this behalf, there shall be established by that Government for the purposes of this Act, a Board for the State to be known as the_____ (name of the State) Biodiversity Board.

(*2*) Notwithstanding anything contained in this section, no State Biodiversity Board shall be constituted for a Union territory and in relation to a Union territory, the National Biodiversity Authority shall exercise the powers and perform the functions of a State Biodiversity Board for that Union territory:

Provided that in relation to any Union territory, the National Biodiversity Authority may delegate all or any of its powers or functions under this sub-section to such person or group of persons as the Central Government may specify.

(*3*) The Board shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall by the said name sue and be sued.

(*4*) The Board shall consist of the following members, namely:—

(*a*) a Chairperson who shall be an eminent person having adequate knowledge and experience in the conservation and sustainable use of biological diversity and in matters relating to equitable sharing of benefits, to be appointed by the State Government;

(*b*) not more than five *ex officio* members to be appointed by the State Government to represent the concerned Departments of the State Government;

(*c*) not more than five members to be appointed from amongst experts in matters relating to conservation of biological diversity, sustainable use of biological resources and equitable sharing of benefits arising out of the use of biological resources.

(*5*) The head office of the State Biodiversity Board shall be at such place as the State Government may, by notification in the Official Gazette, specify.

23. Functions of State Biodiversity Board.—The functions of the State Biodiversity Board shall be to—

(*a*) advise the State Government, subject to any guidelines issued by the Central Government, on matters relating to the conservation of biodiversity, sustainable use of its components and equitable sharing of the benefits arising out of the utilisation of biological resources;

(*b*) regulate by granting of approvals or otherwise requests for commercial utilisation or bio-survey and bio-utilisation of any biological resource by Indians;

(*c*) perform such other functions as may be necessary to carry out the provisions of this Act or as may be prescribed by the State Government.

24. Power of State Biodiversity Board to restrict certain activities violating the objectives of conservation, etc.—(*1*) Any citizen of India or a body corporate, organisation or association registered in India intending to undertake any activity referred to in section 7 shall give prior intimation in such form as may be prescribed by the State Government to the State Biodiversity Board.

(*2*) On receipt of an intimation under sub-section (*1*), the State Biodiversity Board may, in consultation with the local bodies concerned and after making such enquires as it conservation, may deem fit, by order, prohibit or restrict any such activity if it is of opinion that such activity is detrimental or contrary to the objectives of conservation and sustainable use of biodiversity or equitable sharing of benefits arising out of such activity:

Provided that no such order shall be made without giving an opportunity of being heard to the person affected.

(*3*) Any information given in the form referred to in sub-section (*1*) for prior intimation shall be kept confidential and shall not be disclosed, either intentionally or unintentionally, to any person not concerned thereto.

25. Provisions of sections 9 to 17 to apply with modifications to State Biodiversity Board.—The provisions of sections 9 to 17 shall apply to a State Biodiversity Board and shall have effect subject to the following modifications, namely:—

(*a*) references to the Central Government shall be construed as references to the State Government;

(*b*) references to the National Biodiversity Authority shall be construed as references to the State Biodiversity Board;

(*c*) reference to the Consolidated Fund of India shall be construed as reference to the Consolidated Fund of the State.

CHAPER VII

FINANACE, ACCOUNTS AND AUDIT OF NATIONAL BIODIVERSITY AUTHORITY

26. Grants or loans by the Central Government.—The Central Government may, after due appropriation made by Parliament by law in this behalf, pay to the National Biodiversity Authority by way of grants or loans such sums of money as the Central Government may think fit for being utilised for the purposes of this Act.

27. Constitution of National Biodiversity Fund—(*1*) There shall be constituted a Fund to be called the National Biodiversity Fund and there shall be credited thereto—

(*a*) any grants and loans made to the National Biodiversity Authority under section 26;

(*b*) all charges and royalties received by the National Biodiversity Authority under this Act; and

(*c*) all sums received by the National Biodiversity Authority from such other sources as may be decided upon by the Central Government.

(*2*) The Fund shall be applied for—

(*a*) channeling benefits to the benefit claimers;

(*b*) conservation and promotion of biological resources and development of areas from where such biological resources or knowledge associated thereto has been accessed;

(*c*) socio-economic development of areas referred to in clause (*b*) in consultation with the local bodies concerned.

28. Annual report of National Biodiversity Authority.—The National Biodiversity Authority shall prepare, in such form and at such time each financial year as may be prescribed, its annual report, giving a full account of its activities during the previous financial year and furnish, to the Central Government, before such date as may be prescribed, its audited copy of accounts together with auditors report thereon.

29. Budget, accounts and audit.—(*1*) The National Biodiversity Authority shall prepare a budget, maintain proper accounts and other relevant records (including the accounts and other relevant records of the National Biodiversity Fund) and prepare an annual statement of account in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(*2*) The accounts of the National Biodiversity Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the National Biodiversity Authority to the Comptroller and Auditor-General of India.

(*3*) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the National Biodiversity Authority shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of the Government accounts and, in particular, shall have the

right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the National Biodiversity Authority.

(*4*) The accounts of the National Biodiversity Authority as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report there on shall be forwarded annually to the Central Government.

30. Annual report to be laid before parliament.—The Central Government shall cause the annual report and auditor's report to be laid, as soon as may be after they are received, before each House of Parliament.

CHAPTER VIII

FINANCE, ACCOUNTS AND AUDIT OF STATE BIODIVERSITY BOARD

31. Grants of money by State Government to State Biodiversity Board.—The State Government may, after due appropriation made by the State Legislature by law in this behalf, pay to the State Biodiversity Board by way of grants or loans such sums of money as the State Government may think fit for being utilised for the purposes of this Act.

32. Constitution of State Biodiversity Fund.—(*1*) There shall be constituted a Fund to be called the State Biodiversity Fund and there shall be credited thereto—

(*a*) any grants and loans made to the State Biodiversity Board under section 31;

(*b*) any grants or loans made by the National Biodiversity Authority;

(*c*) all sums received by the State Biodiversity Board from such other sources as may be decided upon by the State Government.

(*2*) The State Biodiversity Fund shall be applied for—

(*a*) the management and conservation of heritage sites;

(*b*) compensating or rehabilitating any section of the people economically affected by notification under sub-section (*1*) of section 37;

(*c*) conservation and promotion of biological resources;

(*d*) socio-economic development of areas from where such biological resources or knowledge associated thereto has been accessed subject to any order made under section 24, in consultation with the local bodies concerned;

(*e*) meeting the expenses incurred for the purposes authorised by this Act.

33. Annual report of State Biodiversity Board.—The State Biodiversity Board shall prepare, in such form and at such time in each financial year as may be prescribed, its annual report, giving a full account of its activities during the previous financial year, and submit a copy thereof to the State Government.

34. Audit of accounts of State Biodiversity Board.—The accounts of the State Biodiversity Board shall be maintained and audited in such manner as may, in consultation with the Accountant-General of the State, be prescribed and the State Biodiversity Board shall furnish, to the State Government, before such date as may be prescribed, its audited copy of accounts together with auditor’s report thereon.

35. Annual report of State Biodiversity Board to be laid before State Legislature.—The State Government shall cause the annual report and auditor's report to be laid, as soon as may be after they are received, before the House of State Legislature.

CHAPTER IX

DUTIES OF THE CENTRAL AND THE STATE GOVERNMENTS

36. Central Government to develop National strategies plans, etc., for conservation, etc., of biological diversity.—(*1*) The Central Government shall develop national strategies, plans, programmes for the conservation and promotion and sustainable use of biological diversity including measures for identification and monitoring of areas rich in biological resources, promotion of *in situ*, and *ex situ*,

conservation of biological resources, incentives for research, training and public education to increase awareness with respect to biodiversity.

(*2*) Where the Central Government has reason to believe that any area rich in biological diversity, biological resources and their habitats is being threatened by overuse, abuse or neglect, it shall issue directives to the concerned State Government to take immediate ameliorative measures, offering such State Government any technical and other assistance that is possible to be provided or needed.

(*3*) The Central Government shall, as far as practicable wherever it deems appropriate, integrate the conservation, promotion and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes and policies.

(*4*) The Central Government shall undertake measures,—

(*i*) wherever necessary, for assessment of environmental impact of that project which is likely to have adverse effect on biological diversity, with a view to avoid or minimise such effects and where appropriate provide for public participation in such assessment;

(*ii*) to regulate, manage or control the risks associated with the use and release of living modified organisms resulting from biotechnology likely to have adverse impact on the conservation and sustainable use of biological diversity and human health.

(*5*) The Central Government shall endeavour to respect and protect the knowledge of local people relating to biological diversity, as recommended by the National Biodiversity Authority through such measures, which may include registration of such knowledge at the local, State or national levels, and other measures for protection, including *sui generis* system.

Explanation.—For the purposes of this section,—

(*a*) "*ex situ* conservation" means the conservation of components of biological diversity outside their natural habitats;

(*b*) "*in situ* conservation" means the conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties.

37. Biodiversity heritage sites.—(*1*) Without prejudice to any other law for the time being in force, the State Government may, from time to time in consultation with the local bodies, notify in the Official Gazette, areas of biodiversity importance as biodiversity heritage sites under this Act.

(*2*) The State Government, in consultation with the Central Government, may frame rules for the management and conservation of all the heritage sites.

(*3*) The State Government shall frame schemes for compensating or rehabilitating any person or section of people economically affected by such notification.

38. Power of Central Government to notify threatened species.—Without prejudice to the provisions of any other law for the time being in force, the Central Government, in consultation with the concerned State Government, may from time to time notify any species which is on the verge of extinction or likely to become extinct in the near future as a threatened species and prohibit or regulate collection thereof for any purpose and take appropriate steps to rehabilitate and preserve those species.

39. Power of Central Government to designate repositories.—(*1*) The Central Government may, in consultation with the National Biodiversity Authority, designate institutions as repositories under this Act for different categories of biological resources.

(*2*) The repositories shall keep in safe custody the biological material including voucher specimens deposited with them.

(*3*) Any new tax on discovered by any person shall be notified to the repositories or any institution designated for this purpose and he shall deposit the voucher specimens with such repository or institution.

40. Power of Central Government to exempt certain biological resources.—Notwithstanding anything contained in this Act, the Central Government may, in consultation with the National

Biodiversity Authority, by notification in the Official Gazette, declare that the provisions of this Act shall not apply to any items, including biological resources normally traded as commodities.

CHAPTER X

BIODIVERSITY MANAGEMENT COMMITTEES

41. Constitution of Biodiversity Management Committee.—(*1*) Every local body shall constitute a Biodiversity Management Committee within its area for the purpose of promoting conservation, sustainable use and documentation of biological diversity including preservation of habitats, conservation of land races, folk varieties and cultivars, domesticated stocks and breeds of animals and microorganisms and chronicling of knowledge relating to biological diversity.

Explanation.—For the purposes of this sub-section,—

(*a*) "cultivar" means a variety of plant that has originated and persisted under cultivation or was specifically bred for the purpose of cultivation;

(*b*) "folk variety" means a cultivated variety of plant that was developed, grown and exchanged informally among farmers;

(*c*) "landrace" means primitive cultivar that was grown by ancient farmers and their successors.

(*2*) The National Biodiversity Authority and the State Biodiversity Boards shall consult the Biodiversity Management Committees while taking any decision relating to the use of biological resources and knowledge associated with such resources occurring within the territorial jurisdiction of the Biodiversity Management Committee.

(*3*) The Biodiversity Management Committees may levy charges by way of collection fees from any person for accessing or collecting any biological resource for commercial purposes from areas falling within its territorial jurisdiction.

CHAPTER XI

LOCAL BIODIVERSITY FUND

42. Grants to Local Biodiversity Fund.—The State Government may, after due appropriation made by State Legislature by law in this behalf, pay to the Local Biodiversity Funds by way of grants or loans such sums of money as the State Government may think fit for being utilised for the purposes of this Act.

43. Constitution of Local Biodiversity Fund.—(*1*) There shall be constituted a Fund to be called the Local Biodiversity Fund at every area notified by the State Government where any institution of self-government is functioning and there shall be credited thereto—

(*a*) any grants and loans made under section 42;

(*b*) any grants or loans made by the National Biodiversity Authority;

(*c*) any grants or loans made by the State Biodiversity Boards;

(*d*) fees referred to in sub-section (*3*) of section 41 received by the Biodiversity Management Committees;

(*e*) all sums received by the Local Biodiversity Fund from such other sources as may be decided upon by the State Government.

44. Application of Local Biodiversity Fund.—(*1*) Subject to the provisions of sub-section (*2*), the management and the custody of the Local Biodiversity Fund and the purposes for which such Fund shall be applied, be in the manner as may be prescribed by the State Government.

(*2*) The Fund shall be used for conservation and promotion of biodiversity in the areas falling within the jurisdiction of the concerned local body and for the benefit of the community in so far such use is consistent with conservation of biodiversity.

45. Annual report of Biodiversity Management Committees.—The person holding the custody of the Local Biodiversity Fund shall prepare, in such form and during each financial year at such time as

may be prescribed, its annual report, giving a full account of its activities during the previous financial year, and submit a copy thereof to the concerned local body.

46. Audit of accounts of Biodiversity Management Committees.—The accounts of the Local Biodiversity Fund shall be maintained and audited in such manner as may, in consultation with the Accountant-General of the State, be prescribed and the person holding the custody of the Local Biodiversity Fund shall furnish, to the concerned local body, before such date as may be prescribed, its audited copy of accounts together with auditor's report thereon.

47. Annual report, etc., of the Biodiversity Management Committee to be submitted to District Magistrate.—Every local body constituting a Biodiversity Management Committee under sub-section (*1*) of section 41, shall cause, the annual report and audited copy of accounts together with auditor's report thereon referred to in sections 45 and 46, respectively and relating to such Committee to be submitted to the District Magistrate having jurisdiction over the area of the local body.

CHAPTER XII

MISCELLANEOUS

48. National Biodiversity Authority to be bound by the directions given by Central Government.—(*1*) Without prejudice to the foregoing provisions of this Act, the National Biodiversity Authority shall, in the discharge of its functions and duties under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time:

Provided that the National Biodiversity Authority shall, as far as practicable, be given opportunity to express its views before any direction is given under this sub-section.

(*2*) The decision of the Central Government whether a question is one of policy or not shall be final.

49. Power of State Government to give directions.—(*1*) Without prejudice to the foregoing provisions of this Act, the State Biodiversity Board shall, in the discharge of its functions and duties under this Act, be bound by such directions on questions of policy as the State Government may give in writing to it from time to time:

Provided that the State Biodiversity Board shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(*2*) The decision of the State Government whether a question is one of policy or not shall be final.

50. Settlement of disputes between State Biodiversity Boards.—(*1*) If a dispute arises between the National Biodiversity Authority and a State Biodiversity Board, the said Authority or the Board, as the case may be, may prefer an appeal to the Central Government within such time as may be prescribed.

(*2*) Every appeal made under sub-section (*1*) shall be in such form as may be prescribed by the Central Government.

(*3*) The procedure for disposing of an appeal shall be such as may be prescribed by the Central Government:

Provided that before disposing of an appeal, the parties shall be given a reasonable opportunity of being heard.

(*4*) If a dispute arises between the State Biodiversity Boards, the Central Government shall refer the same to the National Biodiversity Authority.

(*5*) While adjudicating any dispute under sub-section (*4*), the National Biodiversity Authority shall be guided by the principles of natural justice and shall follow such procedure as may be prescribed by the Central Government.

(*6*) The National Biodiversity Authority shall have, for the purposes of discharging its functions under this section, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely:—

(*a*) summoning and enforcing the attendance of any person and examining him on oath;

(*b*) requiring the discovery and production of documents;

(*c*) receiving evidence on affidavits;

(*d*) issuing commissions for the examination of witnesses or documents;

(*e*) reviewing its decisions;

(*f*) dismissing an application for default or deciding it *ex parte*;

(*g*) setting aside any order of dismissal of any application for default or any order passed by it *ex parte*;

(*h*) any other matter which may be prescribed.

(*7*) Every proceeding before the National Biodiversity Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860) and the National Biodiversity Authority shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXV1 of the Code of Criminal Procedure, 1973 (2 of 1974).

51. Members, officers, etc., of National Biodiversity Authority and State Biodiversity Board deemed to be public servants.—All members, officers and other employees of the National Biodiversity Authority or the State Biodiversity Board shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

52. Appeal.—Any person, aggrieved by any determination of benefit sharing or order of the National Biodiversity Authority or a State Biodiversity Board under this Act, may file an appeal to the High Court within thirty days from the date of communication to him, of the determination or order of the National Biodiversity Authority or the State Biodiversity Board, as the case may be:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

[1][Provided further that nothing contained in this section shall apply on and from the commencement of the National Green Tribunal Act, 2010 (19 of 2010):

Provided also that any appeal pending before the High Court, before the commencement of the National Green Tribunal Act, 2010 (19 of 2010), shall continue to be heard and disposed of by the High Court as if the National Green Tribunal had not been established under section 3 of the National Green Tribunal Act, 2010.]

[1][**52A. Appeal to National Green Tribunal.—**Any person aggrieved by any determination of benefit sharing or order of the National Biodiversity Authority or a State Biodiversity Board under this Act, on or after the commencement of the National Green Tribunal Act, 2010 (19 of 2010), may file an appeal to the National Green Tribunal establishment under section 3 of the National Green Tribunal Act, 2010, in accordance with the provisions of that Act.]

53. Execution of determination or order.—Every determination of benefit sharing or order made by the National Biodiversity Authority or a State Biodiversity Board under this Act or the order made by the High Court in any appeal against any determination or order of the National Biodiversity Authority or a State Biodiversity Board shall, on a certificate issued by any officer of the National Biodiversity Authority or a State Biodiversity Board or the Registrar of the High Court, as the case may be, be deemed to be decree of the civil court and shall be executable in the same manner as a decree of that court.

Explanation.—For the purposes of this section and section 52, the expression "State Biodiversity Board" includes the person or group of persons to whom the powers or functions under sub-section (*2*) of section 22 have been delegated under the proviso to that sub-section and the certificate relating to such person or group of persons under this section shall be issued by such person or group of persons, as the case may be.

54. Protection of action taken in good faith.—No suit, prosecution or other legal proceedings shall lie against the Central Government or the State Government or any officer of the Central Government or State Government or any member, officer or employee of the National Biodiversity Authority or the

1. Ins. by Act of 19 of 2010, s. 36 and Schedule III (w. e. f. 18-10-2010).

State Biodiversity Board for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

55. Penalties.—(*1*) Whoever contravenes or attempts to contravene or abets the contravention of the provisions of section 3 or section 4 or section 6 shall be punishable with imprisonment for a term which may extend to five years, or with fine which may extend to ten lakh rupees and where the damage caused exceeds ten lakh rupees such fine may commensurate with the damage caused, or with both.

(*2*) Whoever contravenes or attempts to contravene or abets the contravention of the provisions of section 7 or any order made under sub-section (*2*) of section 24 shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five lakh rupees, or with both.

56. Penalty for contravention of directions or orders of Central Government, State Government, National Biodiversity Authority and State Biodiversity Boards.—If any person contravenes any direction given or order made by the Central Government, the State Government, the National Biodiversity Authority or the State Biodiversity Board for which no punishment has been separately provided under this Act, he shall be punished with a fine which may extend to one lakh rupees and in case of a second or subsequent offence, with fine which may extend to two lakh rupees and in the case of continuous contravention with additional fine which may extend to two lakh rupees every day during which the default continues.

57. Offences by companies—(*1*) Where an offence or contravention under this Act has been committed by a company, every person who at the time the offence or contravention was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence or contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence or contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence or contravention.

(*2*) Notwithstanding anything contained in sub-section (*1*), where an offence or contravention under this Act has been committed by a company and it is proved that the offence or contravention has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence or contravention and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(*a*) "company" means any body corporate and includes a firm or other association of individuals; and

(*b*) "director", in relation to a firm, means a partner in the firm.

58. Offences to be cognizable and non-bailable.—The offences under this Act shall be cognizable and non-bailable.

59. Act to have effect in addition to other Acts.—The provisions of this Act shall be in addition to, and not in derogation of, the provisions in any other law, for the time being in force, relating to forests or wildlife.

60. Power of Central Government to give directions to State Government.—The Central Government may give directions to any State Government as to the carrying into execution in the State of any of the provisions of this Act or of any rule or regulation or order made thereunder.

61. Cognizance of offences.—No Court shall take cognizance of any offence under this Act except on a complaint made by—

(*a*) the Central Government or any authority or officer authorised in this behalf by that Government; or

(*b*) any benefit claimer who has given notice of not less than thirty days in the prescribed manner, of such offence and of his intention to make a complaint, to the Central Government or the authority or officer authorised as aforesaid.

62. Power of Central Government to make rules.—(*1*) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(*a*) terms and conditions of service of the Chairperson and members under section 9;

(*b*) powers and duties of the Chairperson under section 10;

(*c*) procedure under sub-section (*1*) of section 12 in regard to transaction of business at meetings;

(*d*) form of application and payment of fees for undertaking certain activities under sub-section (*1*) of section 19;

(*e*) the form and manner of making an application under sub-section (*2*) of section 19;

(*f*) form of application and the manner for transfer of biological resource or knowledge under sub-section (*2*) of section 20;

(*g*) form in which, and the time of each financial year at which, the annual report of the National Biodiversity Authority shall be prepared and the date before which its audited copy of accounts together with auditor's report thereon shall be furnished under section 28;

(*h*) form in which the annual statement of account shall be prepared under sub-section (*1*) of section 29;

(*i*) the time within which and the form in which, an appeal may be preferred, the procedure for disposing of an appeal and the procedure for adjudication, under section 50;

(*j*) the additional matter in which the National Biodiversity Authority may exercise powers of the civil court under clause (*h*) of sub-section (*6*) of section 50;

(*k*) the manner of giving notice under clause (*b*) of section 61;

(*1*) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

(*3*) Every rule made under this section and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session or a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

63. **Power of State Government to make rules.**—(*1*) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(*a*) the other functions to be performed by the State Biodiversity Board under clause (*c*) of section 23;

(*b*) the form in which the prior intimation shall be given under sub-section (*1*) of section 24;

(*c*) the form in which, and the time of each financial year at which, the annual report shall be prepared under section 33;

(*d*) the manner of maintaining and auditing the accounts of the State Biodiversity Board and the date before which its audited copy of the accounts together with auditor's report thereon shall be furnished under section 34;

(*e*) management and conservation of national heritage sites under section 37;

(*f*) the manner of management and custody of the Local Biodiversity Fund and the purposes for which such Fund shall be applied under sub-section (*1*) of section 44;

(*g*) the form of annual report and the time at which such report shall be prepared during each financial year under section 45;

(*h*) the manner of maintaining and auditing the accounts of the Local Biodiversity Fund and the date before which its audited copy of the accounts together with auditor's report thereon shall be furnished under section 46;

(*i*) any other matter which is to be, or may be, specified.

(*3*) Every rule made by the State Government under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.

64. Power to make regulations.—The National Biodiversity Authority shall, with the previous approval of the Central Government, by notification in the Official Gazette, make regulations for carrying out the purposes of this Act.

65. Power to remove difficulties.—(*1*) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the commencement of this Act.

(*2*) Every order made under this section shall be laid, as soon as may be, after it is made, before each House of Parliament.





THE COPYRIGHT RULES, 2013

THE COPYRIGHT RULES, 2013[1]

In exercise of power conferred by section 78 of the Copyright Act, 1957, and in supersession of the Copyright Rules, 1958, except as respect things done or omitted to be done before such supersession, the Central Government hereby makes the following Rules, namely:—

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(1) These rules may be called the Copyright Rules, 2013.

(2) They shall come into force on the date[2] of their publication in the Official Gazette.

2. Interpretations.—In these rules, unless the context otherwise requires,—

(a) "Act" means the Copyright Act, 1957 (14 of 1957);

(b) "Board" means a Copyright Board as defined in sub-section (1) of section 11;

(c) "copyright business" means the business of issuing or granting licence in respect of a right or set of rights in specific act in respect of a work or any substantial part thereof referred to in section 14 and includes the functions referred to in sub-section (3) of section 34;

(d) "Form" means a form set out in the First Schedule;

(e) "Schedule" means Schedule to these rules; and

(f) "Section" means a section of the Act.

(2) Words and expression used herein but not defined and defined in the Copyright Act, 1957, shall have the meanings respectively assigned to them in that Act.

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[1] G.S.R 172(E), dated 14th March, 2013, published in the Gazette of India: Extraordinary, Part II, Sec3(i).

[2] Came into force on 14-3-2013

CHAPTER II

THE COPYRIGHT BOARD

3. Terms and conditions of the office of the Chairman or members of the Board.— The Chairman and other members of the Board shall be appointed for such period not exceeding five years as the Central Government may in each case deems fit:

Provided that the Chairman and [1][the other member shall hold office as such after he has attained,—

(a) in the case of Chairman, the age of sixty-five years; and

(b) in the case of any other Member, the age of sixty-two years.

(2) (i) A person shall not be qualified for appointment as Chairman unless he –

(a) is or has been a Judge of a High Court; or

(b) is qualified for appointment as a Judge of a High Court;

(ii) A person shall not be qualified for appointment as member unless he-

(a) is or has been a member of the Indian Legal Service and has held a post in Grade I of that Service for at least three years; or

(b) has, for at least ten years, held a judicial office; or

(c) is or has been a Member of a Tribunal or Civil Service not below the rank of a Joint Secretary to Government of India with three years' experience in the field of Copyright; or

(d) has, for at least ten years, been an advocate of a proven specialized experience in Copyright Law;

(iii) The Chairman and other Members shall be appointed by the Central Government; and

(iv) No person shall be appointed as Chairman except after consultation with the Chief Justice of India.

(3) The Chairman and other members of the Board shall, on the expiry of the period of their appointment, be eligible for re-appointment.

(4) The Chairman or any other member of the Board may resign his office by giving three months' notice in writing to the Central Government:

Provided that the Chairman or any other member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry.

(5) The Chairman or any other member shall not be removed from his office except by an order made by the Central Government on the ground of proved misbehavior or incapacity after an inquiry made by a Judge of the Supreme Court in which the Chairman

[1] Subs. by G.S.R. 788(E), dated 10th August, 2016, for "other member shall hold office" (w.e.f. 12-8-2016).

or the other member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

CHAPTER III

RELINQUISHMENT OF COPYRIGHT

4. The author of a work desiring to relinquish under section 21 all or any of the rights comprised in the copyright in the work shall give notice to the Registrar of Copyrights in Form I or give public notice under sub-rule (2) of rule 5.

5. (1) The Registrar of Copyrights shall, within fourteen days from the date of the publication of the notification in the Official Gazette, post the notice on the website of the Copyright Office so as to remain the same in public domain for a period of not less than three years.

(2) The author relinquishing the rights under rule 5 by giving public notice shall include in the notice the details as given below:-

(a) Class of the works (given in sub-section (1) of section 13);

(b) Title of the work;

(c) Full name, address and nationality of the author;

(d) Language of the work;

(e) Name, address and nationality of the publisher, if published, with year of publication and country of first publication;

(f) If copyright in the work is registered under section 45, the Registration number;

(g) The right or rights to be relinquished; and

(h) The date of relinquishment of the rights.

(3) The author may forward a copy of the public notice, along with proof of his identity, to the Registrar and on receiving such notice, the Registrar shall post the same on the website of the Copyright Office.

Explanation.- For the purpose of this Chapter, the term " public notice" means-

(i) mentioning of notice on the work or cover of the work; or

(ii) publication in one issue of a daily newspaper in the English language having circulation in the major part of the country and also in one issue of any daily news paper in the same language of the work; or

(iii) Posting the notice on the web site of the Copyright Office at the request of the author by giving the details as required under sub-rule (2).

CHAPTER IV

COMPULSORY LICENCES IN WORKS WITHHELD FROM PUBLIC

6. Application for licence.— (1) An application for a licence under section 31 to re-publish the work or perform the work in public or communicate the work to the public by broadcast shall be made in Form II and shall be accompanied by the fee specified in the Second Schedule.

(2) Every such application shall be made in respect of one work only.

(3) Every application to re-publish the work or perform the work in public shall be accompanied with adequate evidence to show that the owner of copyright has refused to re-publish or has allowed the re-publication of the work or has refused to allow the performance of the work in public, and the reasons for such refusal.

(4) Every application for communication of the work to the public by broadcast shall be accompanied with adequate evidence along with reasons or grounds to show that the owner of copyright has refused to allow—

(a) the communication of work by broadcast to the public; or

(b) in the case of sound recording, the reasons for the applicant to consider the terms unreasonable

7. Notice for application.— (1) A copy of application under rule 6 along with the documents relied upon shall be served on the owner of the copyright by registered post.

(2) The Board shall give an opportunity of being heard to the owner of the copyright and the applicant and also, wherever practicable, to any person claiming any interest in the copyright of the work, and shall take such evidence in respect of the application, as it deems fit.

(3) The Board may, if satisfied, direct the Registrar of Copyright to grant licence applied for to the applicant or, if there are more than one, to such of the applicants as, in the opinion of the Board, would best serve the interest of the general public.

(4) Every such licence shall be subject to the conditions provided in section 31 including the payment of compensation or royalties and shall specify—

(a) the period for which the licence has been granted;

(b) the quantum of compensation or the rate at which royalties are to be paid to the owner of the copyright in the work; and

(c) such other terms and conditions as the Board may deems fit.

(5) The grant of every such licence shall, as soon as possible, be notified in the Official Gazette and on the website of the Copyright Office and the Board and a copy of the licence shall be sent to the other parties concerned.

8. Manner of determining compensation or royalties.— The Board shall determine the quantum of compensation or royalties payable to the owner of the copyright under section 31. The Board may while determining quantum of compensation or royalty shall take into consideration—

(i) in case of re-publishing the work or performing the work in public—

(a) the proposed retail price of a copy of the work or rate on which the work is performed in public;

(b) the prevailing standards of royalties with regard to publication of works or performance of the work in public; and

(c) such other matters as may be considered relevant by the Board.

(ii) in case of communication of any work to the public by broadcast—

(a) time slot in which the broadcast takes place and different rates for different time slot including the repeat broadcast;

(b) different rates for different classes of works;

(c) the prevailing standards of royalties payable in this regard for such works; and

(d) such other matters as may be considered relevant by the Board.

9. Extension of the period of licence.— The Board may, on the application of the licensee and after notice to the owner of copyright, wherever practicable, if it is satisfied that the licensee was for sufficient reasons unable to re-publish the work or perform the work in public or communication of the work to public by broadcast within the period specified in the licence, extend such period.

10. Cancellation of licence.- The Board may, after giving an opportunity of being heard to the licensee, cancel the licence on any of the following grounds, namely:-

(a) that the licensee has failed to re-publish the work or perform the work in public or communication of the work to public by broadcast within the time specified in the licence or within the time extended on the application of the licensee;

(b) that the licence was obtained by fraud or misrepresentation as to any essential fact; and

(c) that the licensee has contravened any of the terms and conditions of the licence.

CHAPTER V

COMPULSORY LICENCE TO PUBLISH OR COMMUNICATE TO THE PUBLIC THE WORK OR TRANSLATION THEREOF

11. Application and grant of licence — (1) An application for a licence under Section 31A to publish or communicate to the public the work or translation thereof, in any language, any unpublished work or any work published or communicated to the public and the work is withheld from the public in India, the author is dead or unknown or cannot be traced, or the owner of the copyright in such work cannot be found, shall be made by any person in Form III and shall be accompanied by the fee specified in the Second Schedule:

Provided that in case the desired author is dead such application for publication of the work can be made only if there is failure to publish the work within the time specified by the central government as provided in sub-section (6) of section 31A.

(2) Every such application shall be made in respect of one work only and in respect of translation of a work into one language only.

(3) The application other than an application under sub-section (7) of section 31A shall be accompanied by a newspaper containing the publication issued under sub-section (2) of section 31A and published in one issue of a daily newspaper in the English language having circulation in the major part of the country and where the application is for the publication of a translation in any language, in one issue of any daily newspaper in that language.

(4) If the Board is satisfied that the licence for publication or communication to the public or translation in any language of the work, applied for may be granted to the applicant, or if there are more applicants than one, to such applicants, as, in the opinion of the Board, would best serve the interest of the general public, it shall direct the Register of Copyrights to grant the licence accordingly.

(5) Every such licence shall be subject to the conditions provided in sub-section (7) of section 31A, and shall specify —

(a) the period within which such work shall be published, translated or communicated to the public;

(b) the price at which the copies of such work are to be sold or charges to be collected for communicating the work to the public;

(c) the amount of royalty to be deposited and the account in which it has to be deposited;

(d) in case of translation of the work, the language in which the translation shall be produced and published; and

(e) in case of communication to the public of the work the medium in which it is to be communicated to the public.

(6) The grant of every such licence shall, as soon as possible, be notified in the Official Gazette and on the website of the Copyright Office and the Board and a copy of the licence shall be sent to the other parties concerned.

12. Manner of determining royalties.— The Board shall determine the amount of royalty to be deposited by the applicant. The Board may while determining the royalty shall take into consideration the following-

(a) the prevailing standards of royalties with regard to such works; and

(b) such other matters as may be considered relevant by the Board.

13. Extension of the period of licence.— The Board may, on the application of the licensee, if it is satisfied that the licensee was for sufficient reasons unable to produce and publish the translation or reproduce the work or communicate the work to the public within the period specified in the licence, extend such period.

14. Cancellation of licence. —The Board may, after giving an opportunity to the licensee of being heard, cancel the licence on any of the following grounds, namely:—

(a) that the licensee has failed to produce and publish such work or communicate to the public the work within the time specified in the licence or within the time extended on the application of the licensee;

(b) that the licence was obtained by fraud or misrepresentation as to any essential fact;

(c) that the licensee has contravened any of the terms and conditions of the licence.

15. Notice for termination of licence. —Notice for termination of licence under proviso to sub-section (1) or sub-section (2) of section 32B shall be served on the person holding the licence by the owner of copyright in Form IV.

16. Notice for publication of a work in case of death of original owner.- The Central Government, if decides to make a request under sub-section (6) of section 31A, shall specify a minimum period of six months and a maximum of one year for publication of work by the heirs, executors or legal representatives of the author of work.

CHAPTER VI

COMPULSORY LICENCE FOR BENEFIT OF DISABLED

17. Application for licence. — (1) An application for a licence under section 31B to publish any work in any format useful for person with disability shall be made in Form V and shall be accompanied by the fee specified in the Second Schedule.

(2) Every such application shall be made in respect of one work only.

18. Notice of application.— (1) A copy of application under rule 17 shall be served by registered post on the owner of copyright and if the owner of such copyright is not known or is not traceable, a copy of the application shall be served by registered post on the publisher whose name appears on the work.

(2) The Board shall give an opportunity of being heard to the owner of the copyright and the applicant and also, wherever practicable, to any person claiming any interest in the copyright of the work, and shall take such evidence in respect of the application, as it deem fit.

(3) If the Board is satisfied that the licence for publication of the work in the format applied for may be granted to the applicant, or if there are more applicants than one, to such of the applicants, as, in the opinion of the Board, would best serve the interest of the disabled persons, it shall direct the Registrar of Copyrights to grant licence accordingly.

(4) Every such licence shall specify:

(a) the period within which such work shall be published;

(b) the medium and format in which the work shall be produced and published;

(c) the number of copies that shall be produced;

(d) the rate at which royalties in respect of the copies of such work sold to the disabled persons shall be paid to the owner of the copyright in the work; and

(e) the person to whom such royalties shall be payable.

(5) The grant of every such licence shall, as soon as possible, be notified in the Official Gazette and the website of the Copyright Office and the Board and a copy of the licence shall be sent to the other parties concerned.

19. Manner of determining royalties.— The Board shall determine the royalties payable to the owner of the copyright under sub-section (4) of section 31B. The Copyright Board may while determining royalty shall take into consideration the following:**—**

(a) the proposed price at which a copy of such work shall be made available to disabled persons;

(b) the prevailing standards of royalties in regard to such works taking into consideration;

(c) the cost involved in making the accessible formats for the disabled person; and

(d) such other matters as may be considered relevant by the Copyright Board.

20. Extension of the period of licence.— The Board may, on the application of the licensee and after notice to the owner of the copyright, wherever practicable, if it is satisfied that the licensee was for sufficient reasons unable to produce and publish the work within the period specified in the licence, extend such period.

21. Cancellation of licence. — The Board may, after giving an opportunity of being heard to the licensee, cancel the licence on any of the following grounds, namely:—

(a) that the licensee has failed to produce and publish such work within the time specified in the licence or within the time extended on the application of the licensee;

(b) that the licence was obtained by fraud or misrepresentation as to any essential fact;

(c) that the licensee has contravened any of the terms and conditions of the licence;

(d) the owner of the copyright has satisfied the requirement of the disabled person by publishing in the same format with same or lower price for which compulsory licence was granted.

22. Notice for termination of licence.— Notice for termination of licence granted under sub-section (3) of section 31B shall be served on the person holding the licence by the owner of copyright in Form IV.

CHAPTER VII

STATUTORY LICENCE FOR COVER VERSIONS

23. Notice for making Cover Version.— (1) Any person intending to make a cover version, being a sound recording in respect of any literary, dramatic or musical work under sub-section (1) of section 31C shall give a notice of such intention to the owner of the copyright in such works and to the Registrar of Copyrights at least fifteen days in advance of making of the cover version and shall pay to the owner of the copyright in the original literary, dramatic and musical works, along with the notice, the amount of royalties due in respect of a minimum of fifty thousand copies and if the number is more, for all the copies of cover version to be made, at the rate determined by the Board in this regard under rule 27 and provide copies of all covers and labels with which the cover version is to be sold:

Provided that in respect of works in a particular language or dialect for which the Board by general order has fixed a lower minimum as per proviso to sub-section (4) of section 31C, the applicant shall pay the royalty for the lower minimum fixed by the Board and if the number is more, for all the copies of the cover version:

Provided further that any person intending to make a cover version shall give a notice under this Chapter only after the royalty to be paid is determined by the Board under rule 27 and published in the Official Gazette and in the website of the Copyright Office and the Board.

Explanation: For the purpose of this rule "cover version" means a sound recording made in accordance with Section 31C and this rule.

(2) Such notice shall contain the following information, namely:—

(a) the particulars of the work in respect of which cover version is to be made;

(b) alterations, if any, which are proposed to be made for the adaptation of the work to the cover version and the evidence of consent of the author of work, if required, for making such alteration;

(c) the name, address and nationality of the owner of the copyright in the work;

(d) particulars of the sound recording made previously of the work;

(e) the total number of copies of the cover version and the calendar year in which it is proposed to be made;

(f) the medium in which the sound recording was last made and the cover version is proposed to be made;

(g) the price at which the cover version is proposed to be sold; and

(h) the details of the advance payment of royalties paid as determined by the Board in this regard under rule 27.

24. Conditions to be followed while making cover version:- (1) While making the cover version the producer shall maintain the integrity of the original literary, dramatic or musical works, except to the extent as may be technically necessary for the purpose of making the cover version.

(2)The cover version shall not be issued in any form of packaging or with any cover or label including any label or carton or inlay card or website having design or colour scheme or layout or getup similar to that of the original sound recording which is likely to mislead or confuse the public as to the identity of the original sound recording.

(3) The cover version shall not use the label of the original sound recording and shall state in bold letters on the cover that it is a cover version made under section 31C.

(4) The cover version shall prominently display the names of performers and shall not contain the name or depict in any way any performer of an earlier sound recording of the same work or any cinematograph film in which such sound recording was incorporated.

25. Notice for making additional copies of Cover version.- A person who made cover version under a licence granted under section 31C after giving notice and intends to make additional copies during the period for which he gave notice for making cover version under section 31C or desiring to continue with the making of cover version shall give fresh advance notice under rule 23 and comply with all the conditions including the payment of advance royalties determined by the Board in this regard under rule 27.

26. Maintaining of records.—(1) The person making cover version shall maintain at its principal place of business a register containing the details of total number of copies made, sold and number of copies remaining in stock, except in the case of sale by on-line downloads.

(2) The person making such cover version shall maintain separate books of accounts containing particulars about the total expenditure in making cover version under different heads of expenditure along with total income derived from the sale of number of copies of such cover version.

(3) The records, registers and books of account kept at the principal place or business of the person making cover version shall be open for inspection to the owner of rights or his duly authorized agent or representative on his behalf during the business hours with prior permission of the person making such cover version and, if needed, they may obtain copies of relevant extracts at their own cost.

27. Manner of determining royalties.—(1) The Board shall immediately after its constitution either *suo motu* or on receipt of a request from any interested person give public notice of its intention to fix royalties for making cover version under section 31C and may invite suggestions for determining the same.

(2) The notice under sub-section (1) shall be published by the Board in the Official Gazette and the same to be re-published in two daily news papers having circulation in the major part of the country and shall post the same on the website of the Copyright Office and the Board.

(3) Any owner of copyright or any person involved in the business of making cover version or any other interested person may within thirty days from the date of publication of public notice under sub-rule (1) may give suggestions with adequate evidence as to the rate of royalties to be fixed including different rates for different works, languages, media and formats.

(4) The Board shall, after giving an opportunity of being heard to the persons who made relevant suggestions under sub-rule (3), consider such suggestions, as it deems fit.

(5) The Board shall within a period of two months from the last date of receipt of the suggestions, determine the royalties payable to the owner of the copyright under sub-section (2) of section 31C. The Board while determining the royalty shall take into consideration the following factors, namely:-

(a) the retail price of the earlier sound recording;

(b) the prevailing standards of royalties in regard to literary, dramatic or musical work for making such recordings;

(c) the nature and class of the work, language, format and medium in which it is to be sold; and

(d) such other matters as may be considered relevant by the Board.

(6) The Board may revise the rates of royalties periodically, at least once in a year, keeping in view of the provisions of this rule.

28. Complaint is respect of non-payment of royalties.—(1) The owner of Copyright in the literary, dramatic or musical works included in original sound recording may make a complaint to the Board in case of non-payment of royalty in full, as determined by the Board in respect of the cover version purported to be made.

(2) If the Board is *prima facie* satisfied as to the genuineness of the complaint, it may pass an interim order directing the person making the cover version to cease from making further copies.

(3) The Board may, after holding such enquiry as it considers necessary and after giving an opportunity of being heard to the owner of rights in any literary, dramatic or musical works included in original sound recording, make such further order, as it deem fit, including an order for payment of royalty.

CHAPTER VIII

STATUTORY LICENCE FOR BROADCASTING OF LITERARY AND MUSICAL WORKS AND SOUND RECORDINGS

29. Notice for Communication to the Public of literary and musical works and sound recordings.—(1) Any broadcasting organization desirous of communicating to the public by way of broadcast or by way of performance of a published literary or musical work and sound recording under sub-section (1) of section 31D shall give a notice of its intention to the owner of the copyright and to the Registrar of Copyrights before a period of five days in advance of such communication to the public and shall pay to the owner of the copyright, in the literary or musical work or sound recording or any combination thereof, the amount of royalties due at the rate fixed by the Board in this regard:

Provided that in case of communication to the public by way of broadcast or by way of performance of a newly published literary or musical work or sound recording or any combination thereof, which has been published within the said period of five days of such communication and which do not form part of the scheduled programmes, the notice shall, be given before such communication to the public:

Provided further that in case of communication to the public by way of broadcast or by way of performance of any published literary or musical work and sound recording or any combination thereof, in unforeseen circumstances, the notice shall, be given within twenty-four hours of such communication to the public:

Provided also that any broadcasting organization shall give a notice under this Chapter only after the royalty to be paid is determined by the Board under rule 31 and published in the Official Gazette and in the website of the Copyright Office and the Board.

(2) Every such notice shall be in respect of works belonging to one owner only.

(3) Separate notices shall be given for communication to the public by way of radio broadcast or television broadcast or by way of performance of a literary or musical work and sound recording which has already been published.

(4) The notice under sub-rule (1) shall contain the following particulars, namely:—

(a) Name of the channel;

(b) Territorial coverage where communication to public by way of radio broadcast, television broadcast or performance under sub-rule (3) is to be made;

(c) Details necessary to identify the work which is proposed to be communicated to the public by way of radio broadcast, television broadcast or performance under sub-rule (3);

(d) Year of publication of such work, if any;

(e) Name, address and nationality of the owner of the copyright in such works;

(f) Names of authors and principal performers of such works;

(g) alterations, if any, which are proposed to be made for the communication to the public by way of radio broadcast, television broadcast or performance of the works, reasons thereof, and the evidence of consent of the owners of rights, if required, for making such alteration;

(h) Mode of the proposed communication to the public, i.e. radio, television or performance;

(i) Name, if any, of the programme in which the works are to be included;

(j) Details of time slots, duration and period of the programme in which the works are to be included;

(k) Details of the payment of royalties at the rates fixed by the Board; and

(l) Address of the place where the records and books of account are to be maintained for inspection by the owner of rights.

30. Maintaining of records.—(1) Records containing the details of the owners in respect of total number of works broadcast, the details of such works and the time slot, duration and period of the broadcast shall be maintained by the broadcasting organisation at its principal place of business and shall be open to inspection on prior notice by the owner of rights or his duly authorized agent or representative in the works during business hours and may obtain copies of relevant extracts from such records at their cost. The broadcasting organization shall maintain separate records for radio broadcasting and television broadcasting.

(2) The broadcasting organisation shall maintain separate books of accounts for communication to public by way of broadcast containing such details as may be determined by the Board at the time of fixing the rate of royalty and render to the owners of rights such reports and accounts.

31. Manner of determining royalties.—(1) The Board shall immediately after its constitution either *suo motu* or on receipt of a request from any interested person, give public notice of its intention to fix royalties for communication to the public of literary or musical works and sound recordings under section 31D and may invite suggestions for determining the same. Such notice shall be given separately for radio and television broadcasting.

(2) The notice under sub-rule (1) shall be published by the Board in the Official Gazette and shall be re-published in two daily news papers having circulation in the major part of the country and shall be posted on the website of the Copyright Office and the Board.

(3) Any owner of copyright or any broadcasting organisation or any other interested person may within thirty days from the date of publication of public notice under sub-rule (1) shall give suggestions with adequate evidence as to the rate of royalties to be fixed including different rates for different works and different formats.

(4) The Board shall after giving an opportunity being heard to the persons who made relevant suggestions under sub-rule (3), consider such suggestions, as it deems fit.

(5) The Board shall within a period of two months from the last date of receipt of suggestions, determine separate rates of royalty to be paid to the owners of literary or musical work and sound recordings for radio and television broadcasting respectively.

(6) The Board shall determine the royalties payable to the owner of the copyright under sub-section (2) of section 31D for radio and television broadcast separately.

(7) The Board while determining royalty shall take into consideration the following factors, namely:-

(a) time slot in which the broadcast takes place and different rates for different time slot including repeat broadcast;

(b) different rates for different class of works;

(c) different rates for different nature of use of work;

(d) the prevailing standards of royalties with regard to such works;

(e) the terms and conditions included in the Grant of Permission Agreement (GOPA) between Ministry of Information and Broadcasting and the broadcaster for Operating Frequency Modulation (FM) Radio Broadcasting Service; and

(f) such other matters as may be considered relevant by the Board.

(8) The Board while determining the payment of royalties under sub-rule (5) shall take into consideration, the following factors, namely:-

(a) works included in the scheduled programmes;

(b) works newly published and not included in the scheduled programme;

(c) works communicated to the public on unexpected circumstances; and

(d) use of works in excess of the duration, different time slot or territorial coverage than mentioned in the notice.

(9) The Board may revise the rates of royalties periodically, at least once in a year keeping in view the provisions of these rules.

CHAPTER IX

LICENCES FOR TRANSLATIONS

32. Application for licence.—(1) An application for a licence under section 32 to produce and publish a translation of a literary or dramatic work in any language shall be made in Form VI and shall be accompanied by the fee specified in Second Schedule.

(2) Every such application shall be in a respect of one work only and for translation of that work into one language only.

33. Notice of application.—(1) when any such application has been made, the Board shall, as soon as possible, give notice of the application in the Official Gazette and also, if the Board thinks fit, in one or two newspapers and shall send a copy of the notice to the owner of the Copyright, wherever practicable.

(2) Every such notice shall contain the following particulars, namely:

(a) the date of the application;

(b) the name, address and nationality of the applicant;

(c) particulars of the work which is to be translated;

(d) the date and country of the first publication of the work;

(e) the name, address and nationality of the owner of the copyright as stated in the application;

(f) the language in which the work is to be translated; and

(g) the registration number of the work in the Registrar of Copyrights, if any.

34. Consideration of the application.—(1) The Board shall consider the application after the expiry of not less than one hundred and twenty days from the date of the publication of the notice in the Official Gazette.

(2) The Board shall give an opportunity to the applicant and also, wherever practicable to any person claiming any interest in the Copyright of the work, to be heard and may take such evidence in respect of the application, as it thinks fit.

(3) If more than one application for translation of the work in the same language is pending before the Board at the expiry of one hundred and twenty days after the publication in the Official Gazette of the notice of the application first received, all such applications shall be considered together.

(4) If the Board is satisfied that the licence for a translation of the work in the language applied for may be granted to the applicant, or, if there are more applicants than one to such one of the applicants as, in the opinion of the Board, would best serve the interests of the general public, it shall grant a licence accordingly.

(5) Every such licence shall be subject to the condition provided in sub-section (4) of Section 32 relating to the payment of royalties and shall specify-

(a) the period within which the translation shall be produced and published;

(b) the language in which the translation shall be produced and published;

(c) the rate at which royalties in respect of the copies of the translation of the work sold to the public shall be paid to the owner of the copyright in the work; and

(d) the person or persons to whom such royalties shall be payable.

(6) The grant of every such licence shall, as soon as possible, be notified in the Official Gazette and in the newspapers, if any, in which the notice under rule 33 was published and a copy of the licence shall be sent to the other parties concerned and posted on the official website of copyright office and the Board.

35. Manner of determining royalties.—The Board shall determine the royalties payable to the owner of the copyright under sub-section (4) of section 32. The Board while determining the royalty shall take into consideration the following, namely:-

(a) The proposed retail price of a copy of the translation of the work;

(b) The prevailing standards of royalties with regard to translation of works; and

(c) Such other matters as may be considered relevant by the Board.

36. Extension of the period of licence.—The Board may, on the application of the licensee and after notice to the owner of the copyright, wherever practicable, if it is satisfied that the licensee was for sufficient reasons unable to produce and publish the translation within the period specified in the licence, extend such period.

37. Cancellation of licence.—The Board may, after giving the licensee an opportunity of being heard, cancel the licence on any of the following grounds, namely:-

(a) that the licensee has failed to produce and publish the translation within the time specified in the licence or within the time extended on the application of the licensee;

(b) that the licence was obtained by fraud or misrepresentation as to any essential fact; and

(c) that the licensee has contravened any of the terms and conditions of the licence.

CHAPTER X

LICENCE FOR PUBLICATION, TRANSLATION AND RE-PRODUCTION OF WORK

38. Application for license.—(1) An application for a licence under sub-section (1A) of section 32 and section 32A to publish or to translate any work in any language or to reproduce any published work shall be made in Form VII and shall be accompanied by the fee specified in the Second Schedule.

(2) Every such application shall be in respect on one work only and in respect of translation of a work into one language only.

39. Notice of application.—(1) A copy of such application shall be served by registered post on the owner of copyright.

(2) The Board shall give an opportunity of being to the applicant and also, wherever practicable, to any person claiming any interest in the copyright of the work, and may take such evidence in respect of the application, as it may deem fit.

(3) If the Board is satisfied that the licence for a translation of the work in the language or for publication or for reproduction of the work, applied for may be granted to the applicant, or if there are more applicants than one, to such of the applicants, as in the opinion of the Board, would best serve the interest of the general public, it shall grant a licence within a period of two months.

(4) Every such licence shall be subject to the conditions provided in clause (i) of sub-section (4) of section 32 and clause (i) of the sub-section (4) of section 32A of the Act relating to payment of royalties and shall specify:

(a) the period within which such work shall be published;

(b) the rate at which royalties in respect of the copies of such work sold to the public shall be paid to the owner of the copyright in the work;

(c) in the case of translation of the work, the language in which the translation shall be produced and published; and

(d) the person or persons to whom such royalties shall be payable.

(5) The grant of every such licence shall, as soon as possible, be notified in the Official Gazette and shall be posted on the website of the copyright office and the Board and a copy of the licence shall be sent to the other parties concerned.

40. Manner of determining royalties.—The Board shall determine the royalties payable to the owner of the copyright under clause (i) of sub-section (4) of section 32 and clause (i) of sub section (4) of section 32A of the Act. The Board may while determining the royalty shall take into consideration the following, namely: -

(a) the proposed retail price of a copy of such work;

(b) the prevailing standards of royalties with regard to such works; and

(c) such other matters as may be considered relevant by the Board.

41. Extension of the period of licence.—The Board may, on the application of the licensee and after notice to the owner of the copyright, wherever practicable, if it is satisfied that the licensee was for sufficient reasons unable to produce and publish the translation or for publish or reproduce the work within the period specified in the licence, extend such period.

42. Cancellation of licence.—The Board may, after giving the licensee an opportunity of being heard, cancel the licence on any of the following grounds, namely: –

(a) that the licensee has failed to produce and publish such work within the time specified in the licence or within the time extended on the application of the licensee;

(b) that the licence was obtained by fraud or misrepresentation as to any essential fact; and

(c) that the licensee has contravened any of the terms and conditions of the licence.

43. Notice for termination of licence.—Notice for termination of licence under proviso to sub-section (1) or sub-section (2) of section 32-B shall be served on the person holding the licence by the owner of copyright in Form IV of the First Schedule annexed to these rules.

CHAPTER XI

COPYRIGHT SOCIETIES

44. Conditions for submission of application for registration of copyright society.—(1) Any association of persons, having an independent legal personality, comprising seven or more authors and other owners of rights (hereinafter referred to as "the applicant") formed for the purpose of carrying on the business of issuing or granting licences in respect of a right or set of rights in specific categories of works may file with the Registrar of Copyrights an application in Form VIII for submission to the Central Government for grant of permission to carry on such business and for its registration as a copyright society. The Central Government may grant registration of the society for a period of five years under sub-section (3A) of section 33.

(2) An application under sub-rule (1) of rule 44 shall be signed by the Chairman, all other members of the Governing Council (by whatever name called) with such number of persons elected from among the members of the society consisting of equal number of authors and other owners of right, if any, for the purpose of the administration of the society and the Chief Executive Officer of the applicant (who need not be a member).

(3) The business of issuing or granting licence in respect of literary, dramatic, musical and artistic works incorporated in a cinematograph film or sound recording shall be carried out only through a copyright society duly registered under section 33 of the Act.

45. Membership of Copyright Society.—Membership of every copyright society shall be open to all the authors and other owners of a right or set of rights in specific categories of works for which it is registered.

46. Conditions for grant of permission to carry on copyright business.— (1) An applicant referred to in rule 44 for registration of it as a copyright society shall not be eligible to be considered for such registration unless—

(i) the instrument by which the applicant is established or incorporated creates a commitment on it to deal with only the business of issuing or granting licences in respect of a right or set of rights in specific categories of works and other activities ancillary thereto; and

(ii) the applicant is willing to comply with the provisions of the Act and the rules made thereunder.

(2) The applicant shall not carry out the business by way of sub-licensing or transferring the rights of collection and distribution of royalties in respect of a right or set of rights in specific categories of works to any other person or copyright society:

Provided that applicant may enter into agreement with any foreign society or organisation administering rights corresponding to the right or set of rights administered by the applicant to entrust to such foreign society or organisation the administration in any foreign country of the right or set of rights administered by the applicant, or for administering in India the rights administered in a foreign country by such foreign society or organisation under sub-section (2) of section 34 of the Act.

Explanation: For the purpose of this chapter "instrument" means the memorandum and articles of association.

47. Application and conditions for re-registration or renewal of existing copyright societies.—(1) A Copyright society registered section 33 and desirous of carrying on the business as a copyright society shall submit an application for re-registration in Form-IX to the Registrar of Copyrights within a period two months from the date of Coming into force of these rules.

(2) A Copyright society registered under this chapter may apply for renewal of its registration within a period of three months before the expiry of its registration. The application for such renewal shall be made to the Registrar of Copyrights in Form-IX for submission to Central Government for grant of permission to continue with its business and the Central Government may renew the registration of the society for a further period of five years after considering the report of the Registrar of Copyrights on the working of the copyright society.

(3) In case of renewal of registration the applicant shall submit a copy of resolution passed by the General Body declaring that all the royalties collected till the previous accounting year have been distributed to all accessible members and no complaint in this regard is pending.

(4) The applicant in case of re-registration or renewal of registration shall submit necessary documents indicating re-election to the Governing Council including its Chairman.

48. Documents accompanying applications.—Every application made under rules 44 and 47 shall be accompanied by—

(a) a true copy of the instrument by which the applicant is established or incorporated;

(b) the consent in writing of the individuals named in the application to act as members of the Governing Council of the applicant;

(c) a declaration containing the objectives of the applicant, the bodies through which it will function and arrangements for accounting and auditing;

(d) an undertaking to the effect that the instrument by which the applicant is established or incorporated provides for conforming the same to the provisions of the Act and these rules;

(e) a copy of the Register of authors and owners containing the list of the authors and other owners of rights, their names and addresses;

(f) a statement as to the changes, if any, made in the instrument since the last General Body in case of application made under rule 47; and

(g) copies of various schemes as mentioned in this chapter as approved by the General Body in case of application made under rule 47.

49. Conditions for registration of a copyright society.—(1) When an application for registration is submitted to the Central Government through the Registrar of Copyrights, that Government may, within a period of sixty days from the date of its receipt by the Registrar of Copyrights either register the applicant as a copyright society or, if—

(i) the applicant has no professional competence to carry on its business or has no sufficient funds to manage its affairs; or

(ii) there exists another copyright society registered under the Act for administering the same right or set of rights in the specific categories of works and it is well functioning; or

(iii) the Central Government has reason to believe that the members of the applicant are not *bona fide* copyright authors or other owners or they have not voluntarily signed the instrument setting up the applicant or the application for registration; or

(iv) the application is found to be incomplete in any respect, reject the application;

(v) Provided that no such application shall be rejected without giving an opportunity of being heard to the applicants.

(2) Upon the registration of a copyright society by the Central Government, the Registrar of Copyrights shall issue a certificate of registration in Form-X under his hand and seal.

(3) On and from the date of its registration as specified in the certificate of registration, the copyright society shall be entitled to commence and carry on the permitted copyright business in the name by which it has been so registered and the applicant shall-

(a) maintain its own website giving all information pertaining to its activities; and

(b) have proper infrastructure such as office building and necessary officials for management such as Chief Executive Officer, licensing officers, legal officers

and accountants and other required staff appointed at the time of applying for registration.

(4) The Copyright Society shall carry on business of issuing or granting licences only in respect of the right or the set of rights in the specific categories of works for which it is registered and shall not issue or grant licence in respect of any other right or set of rights in those or other categories of works for which it is not registered.

50. Order of inquiry, suspension of registration and appointment of administrator.—(1) If the Central Government, on a complaint of the Registrar of Copyrights or a member of the copyright society, has reason to believe that the copyright society is being managed in a manner detrimental to the interests of its members concerned or for non-compliance of requirements under sections 33A, sub-section (3) of section 35 and section 36 of the Act or any change carried out in the instrument by which the copyright society is established or incorporated and registered by the Central Government, without prior notice to it shall, provide a copy of the complaint to the society and require the society to submit a written statement within fifteen working days.

(2) If, after considering the written statement furnished by the society, the Central Government is *prima facie* satisfied:-

(a) it shall order an inquiry under sub-section (4) of section 33, into the allegations and appoint an inquiry officer not below the rank of a Deputy Secretary to the Government of India for holding an inquiry. During inquiry, if the Central Government is of the opinion that in the interests of the members concerned, it is necessary so to do, it may, by order, suspend the registration of the society for a period not exceeding one year, and shall appoint an administrator to discharge the functions of the copyright society; or

(b) it may, in the interests of the members concerned, suspend the registration of the society for a period not exceeding one year and appoint an administrator to discharge the functions of the copyright society and further order an inquiry as per clause (a).

(3) The person appointed as administrator shall be a person with sufficient experience in administration or accounting of copyright matters.

51. Procedure for holding Inquiry.—(1) The inquiry officer appointed under Rule 50 shall conduct the inquiry having regard to the principles of natural justice.

(2) The inquiry officer may, if he considers necessary, engage a chartered accountant or an audit officer in the office of the Comptroller and Auditor-General of India or any legal, financial, copyright consultant to assist him in the inquiry.

(3) The copyright society concerned shall render all assistance and shall make available all such documents as may be called for by the inquiry officer to enable him to complete the inquiry within a period of three months or such further time as may be allowed by the Central Government.

52. Powers and Functions of the Administrator.—(1) On appointment of the administrator under rule 50 read with sub-section (5) of section 33 of the Act, all powers of the copyright society shall vest in him and all other representative bodies or committees of the copyright society other than the general body shall stand dissolved.

(2) The administrator shall arrange for the reconstitution of the dissolved bodies before the expiry of the period of suspension failing which, the bodies so superseded shall stand revived at the end of the period of suspension for their remaining term, excluding the period of suspension.

53. Cancellation of registration of a copyright society.—The registration of a copyright society as such may be cancelled by the Central Government after giving the copyright society a reasonable opportunity of being heard, if —

(a) any of the particulars furnished in the application for registration is, at any time, found to be untrue or incorrect and misleading in any manner; or

(b) after holding an inquiry by an officer duly appointed by the Central Government, the Central Government is satisfied that-

  (i) the copyright society failed to cooperate with the inquiry officer; or

  (ii) the complaints against the copyright society are found to be true; or

  (iii) the copyright society is being managed in a manner detrimental to the interests of the members concerned; or

  (iv) the copyright society persistently fails to manage its affairs properly; or

  (v) the copyright society failed to distribute the royalties as per the scheme; or

  (vi) the copyright society persistently fails to properly maintain its accounts and get them audited; or

  (vii) the copyright society utilises its funds for purposes other than those mentioned in the instrument; or

(c) the society has not complied with-

  (i) section 33A of the Act regarding the publication of Tariff scheme by the copyright society; or

(ii) sub-section 3 of section 35 of the Act regarding equal representation of authors and other owners of rights in the Governing Council of copyright society as specified in rule 44; or

(iii) section 36 of the Act regarding submission of returns and reports to the Registrar of Copyrights by copyright society; or

(iv) the procedure for obtaining approval of authors and other owners of right for collection and distribution of royalty; or

(d) the society is issuing or granting licence in respect of the right or set of rights in the specific category of works for which it is not registered.

54. Conditions subject to which a copyright society may accept authorisation and an author or other owner of rights may withdraw such authorisation.- (1) A copyright society may accept from an author or other owner of rights or his duly authorized agent, exclusive authorisation to administer the right or the set of rights in the specific categories of works for which the copyright society is registered, if such author or other owner or such agent enters into an agreement, in writing, with the copyright society specifying the rights to be administered, the duration for which such rights are authorised to be administered, the quantum of royalty agreed to and the frequency at which such royalty shall be paid by the copyright society in accordance with its Schemes of Tariff and Distribution:

Provided that in case of literary or musical works included, in a cinematograph film or sound recording the share of royalty other than for communication of the work along with the cinematograph film in a cinema hall shall be on equal basis between the author of the work and the owner of film or sound recording, as the case may be.

(2) The copyright society shall not impose any condition for distribution of royalties collected to author or other owner of rights.

(3) The author or other owner of rights shall without prejudice to the rights under the agreement and subject to the condition of a prior notice of sixty days, be free to withdraw such authorization in case the copyright society fails to fulfil its commitments as laid down in the agreement.

(4) The right to receive royalty, for any literary or musical work included in the cinematograph film, shared on equal basis with the assignee of copyright for the utilisation of such work in any form other than for the communication to the public of the work along with the cinematograph film in a cinema hall shall not be assigned to any other copyright society other than to the society for which it is intended to be registered.

(5) The right to receive royalty, for any literary or musical work included in the sound recording which does not form part of any cinematograph film, shared on equal basis for

any utilization of such works with the assignee of copyright shall not be assigned to any other copyright society other than to the society for which it is intended to be registered.

55. Conditions subject to which a copyright society may issue licences, collect royalties and distribute such royalties.— (1) A copyright society may issue licences and collect royalties in accordance with Tariff Scheme in relation to the right or the set of rights in the specific categories of works for which the copyright society is registered as it has been authorised to administer in writing by the members for the period for which it has been so authorised.

(2) The royalty so collected shall be distributed in accordance with the Distribution Scheme subject to a deduction not exceeding fifteen per cent. of the annual total collection on account of administrative expenses incurred by the copyright society and a further deduction not exceeding five per cent. for the Welfare Scheme under rule 71:

Provided that a copyright society may during the initial period of two years of its registration deduct up to twenty percent of the annual total collection on account of administrative expenses incurred by the society.

56. Tariff Scheme.— (1) As soon as may be, but in no case later than three months from the date on which a copyright society has become entitled to commence its copyright business, it shall frame a scheme of tariff to be called the "Tariff Scheme" under section 33A of the Act setting out the nature and quantum of royalties which it proposes to collect in respect of the right or the set of rights in the specific categories of works administered by it.

(2) Every copyright society shall display its Tariff Scheme by posting it on its website.

(3) The Tariff Scheme shall indicate the separate rates for-

(a) different categories of users;

(b) different media of exploitation, such as telephone, broadcast or internet;

(c) different types of exploitation whether by an individual or by groups or whether single or multiple use or for advertising;

(d) different durations of use and territory; and

(e) any other differentiation factor indicated by the society, as it may deem fit.

(4) While fixing the tariff the copyright society shall follow the guidelines issued by any Court or the Board, if any, and may consult the user groups.

(5) The copyright society shall collect the royalties from a licensee in advance where the Tariff Scheme provides for lump sum payment of royalties. In cases where the Tariff Scheme provides for payments in installments, each installment shall be collected in advance. However, in cases where the Tariff Scheme provides for the payment of royalties based on actual use, the copyright society may collect an advance at the time

of issue of licence and settle the final payment based on actual use at the end of the period for which the licence is issued or granted.

Provided that the copyright society shall not receive any payment in the nature of minimum guarantee from a licensee whose royalty payments are based on actual use which are to be settled with the society at the end of the licence period except where, any exceptional circumstances are specifically included in the Tariff Scheme and the individual case has been approved by the Governing Council.

(6) The copyright society may revise the Tariff Scheme periodically but not earlier than a period of twelve months by following the rules. It shall publish the date of coming into of the revised Tariff Scheme at least before two months in advance and the same shall be posted on its website.

57. Appeal to the Board on Tariff Scheme.—(1) Any person aggrieved by the Tariff Scheme may appeal to the Board under section 33A along with the fee specified in the Second Schedule.

(2) The Board, if satisfied with the ground of the appeal, shall-

(a) serve a copy the appeal to the copyright society; and

(b) give an opportunity to the appellant and also, to the copyright society, to be heard and may take such evidence in respect of the appeal, as it may deem fit.

(3) The appellant shall pay to the copyright society any interim tariff fixed by the Board that has fallen due before filing an appeal to the Board.

(4) The Board may after hearing the parties fix an interim tariff and direct the appellant to make the payment accordingly pending disposal of the appeal.

(5) The Board shall determine the Tariff Scheme of the copyright society under section 33A, after taking into consideration:

(a) the prevailing standards of royalties in regard to such commercial exploitation of works; and

(b) such other matters as may be considered relevant by the Board.

(6) The Board shall dispose of the appeal within a period of three months from the date of its filing.

58. Distribution Scheme.—(1) A copyright society shall frame a scheme to be called the “distribution Scheme” setting out the procedure for distribution of royalties specified in the Tariff Scheme among the members whose names are entered in the Register of Authors and Owners maintained under clause (i) of rule 59 for the approval of the General Body of the society, as soon as may be, but in no case later than three months

from the date on which a copyright society has become entitled to commence its copyright business.

(2) The distribution shall, reasonably, be in proportion to the royalty income of the copyright society derived from the grant of licences for right or the set of rights in the specific categories of works for which it is administering each author and other owners of right.

(3) There shall be no discrimination between authors and other owners of rights in the distribution of royalties by the copyright society.

(4) While distributing the royalties the copyright society shall inform all members about the basis on which such amount of royalties are being distributed.

(5) The Distribution Scheme shall aim to ensure that all royalty distributions are fair, accurate, cost effective and without any unknown or hidden cross-subsidies.

(6) The society shall fix parameters in a transparent manner for determining the share of distribution of its members and reveal the details of the same in a manner that is easily understandable to its members.

(7) The distribution of royalties shall be based on actual use or reliable statistical data that fairly represent the commercial exploitation of the licensed rights.

(8) The Distribution Scheme shall ensure that the royalties to all members are distributed at least once in a quarter.

(9) The copyright society shall not make any payment in the nature of minimum guarantee to its members against the share of royalties due to its members.

(10) The royalties collected based on the Tariff Scheme for the licensing of the rights in the literary or musical works included in a cinematograph film or sound recording shall be shared on an equal basis with the authors of literary or musical works and the owners of rights in cinematograph film or sound recording under sub-section (1) of section 18.

59. Management of Copyright Society.—(1) Every copyright society shall have-

(a) a General Body consisting of all the authors and other owners of a right or set of rights in the specific categories of works for which the copyright society has been authorized to issue or grant licences;

(b) a Governing Council with a Chairman and a minimum of six other members; and

(c) a Chief Executive Officer (who may or may not be a member of the society).

(2) The General Body shall be the decision making body of the society. All the powers necessary for the purpose of effective management of the society shall be with the General Body and the Governing Council may act as per the directions of the Governing Body.

(3) The Chairman shall be elected by two-third of the majority of all the members present and voting in the General Body meeting of the Copyright Society.

(4) The Chairman of the Governing Council shall chair the General Body.

(5) The Chairman shall have the right to vote in the General Body and the Governing Council.

(6) The members other than the Chairman of the Governing Council shall represent equally from authors and other owners, elected from the General Body by the majority of members present and voting in the General Body meeting of the Copyright Society.

(7) The Chairman and other members of the Governing Council shall be elected for a period of two years and the members shall not be eligible for re-election for a period of two years from the date of completion of their term as members.

(8) The General Body may create sub-committees for preparing Tariff Scheme, Distribution Scheme, Welfare Scheme and such other matters relating thereto, under the supervision of the Governing Council.

(9) The General Body shall approve the instrument of the society including any subsequent changes made to it.

60. Approval of Schemes.— (1) The copyright society shall call a General Body meeting to approve any Scheme, as soon as it has been prepared by the Governing Council in these rules.

(2) A notice of not less than twenty-one days for the meeting shall be given to every member and a copy of the proposed Scheme together with a note explaining the guiding principles followed in the making of the said Scheme shall be annexed to the notice and the same shall be posted on the website of the society.

(3) The notice under sub-rule (2) shall specify that any member who objects to the Scheme shall be entitled to withdraw the authorisation given to the copyright society to administer any right in his work from the date of commencement of the said Scheme.

(4) The copyright society shall keep a record of the members who have given their approval and those who have objected thereto.

(5) Approval of the Schemes shall be by a majority of members present in person and voting.

(6) The copyright society shall not amend any approved Scheme except with the prior approval of the General Body.

61. Meetings of the Society.— (1) Every copyright society shall hold a General Body meeting of all its members as its annual General Body meeting before the 31st day of March every year.

(2) A special meeting of the General Body called extra ordinary General Body meeting of all its members may also be held, if considered necessary by twothirds majority of the Governing Council.

(3) The meetings of General Body and Governing Council shall be held in the town or city in which its registered office is situated or such other convenient place as decided by the Chairman of the society.

(4) The notice for General Body meeting shall be issued before twenty-one days of the meeting and it shall and specify the agenda, time, date and address of the venue of the meeting and the same shall be posted on the website of the society.

(5) Every member of the society shall have equal voting rights in General Body meetings.

(6) There shall be no discrimination between members who are authors and other owners of right.

(7) Quorum for meetings of the General Body shall be one third of the total members and in the case of lack of quorum the meeting may be adjourned for thirty minutes and then members present shall constitute quorum.

(8) Quorum for the meetings of Governing Council shall be one third of its total members other than the Chairman with equal number of authors and other owners.

(9) The Registrar of Copyrights shall be invited as an observer to all General Body meetings. The Registrar or his authorized representative may attend the said meeting.

62. Documents to be presented in the annual General Body meeting.— Every copyright society shall place before its annual General Body meeting the following documents, namely:—

(i) an up-to-date list of the authors and other owners of right or the set of rights in the specific categories of works for which the copyright society has been authorised to issue or grant licences, their names and addresses as recorded in the Register of Authors and Owners maintained by the copyright society, as provided in sub-rule (i) of rule 64;

(ii) audited accounts of the society for the previous year;

(iii) the Tariff Scheme and the Distribution Scheme or any other scheme including the decision of the Copyright Board on the said Schemes, if any;

(iv) annual report as approved by the Governing Council, giving a full and detailed account of all its activities during the previous years;

(v) Budget estimates along with programme of action as approved by the Governing Council for the succeeding year;

(vi) the agreements, if any entered with foreign copyright societies under sub-section (2) section 34 of the Act;

(vii) any changes made in the instrument of registration of the society; and

(viii) any other document relating to the society that require approval of the General Body.

63. Accounts and audit.— (1) Every copyright society shall maintain proper accounts of the royalties collected in a financial year, payments made out of such collections to the members and other recurring and nonrecurring expenditure incurred for meeting administrative and related matters, including the cost of litigations.

(2) The books of account shall be kept in the registered office of the society and shall be open for inspection of the members from time to time as per the conditions laid down by the General Body.

(3) Every copyright society shall get its accounts audited by a chartered accountant annually.

64. Records to be maintained by copyright societies.— Every copyright society shall maintain the following registers at its registered or administrative office-

(i) A register of authors and other owners to be called the “Register of Authors and Other Owners” in respect of the right or the set of rights in the specific categories of works for which the copyright society has been authorised to issue or grant licences. The register shall contain the names of the authors and other owners, their addresses, the nature of rights authorised to be administered by the copyright society, year of publication of the work, the date on which the copyright society becomes entitled to issue or grant licences and the duration of such entitlement, the territory for which the authorisation has been given and the rights that have been so authorised;

(ii) A register to be called the “Register of Agreements” containing a copy of every agreement entered into by the copyright society with the authors and other owners for the purpose;

(iii) A register to be called the “Register of Royalties” containing particulars of royalties and mentioning the names of persons or organizations and copy of the licence agreements from whom the royalties have been realised, and the amount so realised including the date of realization;

(iv) A register to be called the “Disbursement Register” containing details of disbursement of royalties made to each author or other owner of the right or set of rights in the specific categories of works, category-wise, mentioning the name of the author or other owner, nature of his right and the date and amount of disbursement of royalty made to him.

65. Returns to be filed by the copyright societies with the Registrar of Copyrights.— Every copyright society shall file a return called the annual return with the Registrar of Copyrights within one month from the date of conclusion of each annual General Body meeting setting out the following details, namely:—

(i) the date of the annual General Body meeting held immediately preceding the filing of the annual return, the number of members who attended the meeting, agenda and the minutes of such meeting;

(ii) the up-to-date list of the members, their names and addresses as recorded in the Register of Authors and Owners maintained by the copyright society, as provided in rule 64;

(iii) audited accounts of the copyright society;

(iv) the Tariff Scheme, Distribution Scheme and other Schemes, if any;

(v) annual report approved by the General Body giving full and detailed account of all its activities during the year; and

(vi) the list of the members to whom royalties are not distributed and the reasons for the same; and

(vii) the list of the members to whom royalties have been distributed together with the amounts so distributed.

66. Code of Conduct for copyright societies.—Every copyright society shall conform to the following Code of Conduct as follows:-

(1) Every Society shall make available on its website-

(a) certificate of registration as a Copyright Society;

(b) basic documents of governance such as memorandum of association, articles of association, constitution or charter;

(c) list of all members of General Body;

(d) names and address of Chairman, other members of the Governing Council and other officers of the society;

(e) right or the set of rights in the specific categories of works for which the copyright society has been authorised to issue or grant licences;

(f) all schemes of the society;

(g) annual report and audited accounts as approved by the General Body;

(h) licence agreement formats;

(i) details of all existing licences other than those clauses in the licence having commercial sensitivity;

(j) foreign societies with whom there are agreements to collect royalties and the details of the agreement other than those clauses having commercial sensitivity;

(k) details of the complaint/Grievances Cell; and

(l) the code of conduct.

(2) The members shall be-

(a) treated fairly, honestly, impartially, courteously, and ensure that its dealings with them are more transparent;

(b) provided with a copy of its basic documents of governance such as memorandum of association, articles of association, constitution, charter, Tariff Scheme and Distribution Scheme at the time of joining and or at any time on request;

(c) provided with a copy of the document enumerating the powers and responsibilities of each member including Chairman and members of the Governing Council; and

(d) provided with-

(i) the basis for calculating royalties to be paid to the members;

(ii) the manner and frequency of payments to members; and

(iii) the general nature of deduction out of total income before distribution.

(3) Every society shall distribute payments to its members in accordance with its Distribution Scheme.

(4) Every society shall treat licensees fairly, honestly, impartially and courteously and ensure that its dealings with licensees are more transparent.

(5) Every society shall observe the following while fixing the Tariff Scheme, namely:-

(a) licence fee to be fair and reasonable;

(b) take note of the value of the rights of the works;

(c) the purpose and manner in which the rights are to be exploited;

(d) any relevant decisions of the Board;

(e) in case the Tariff Scheme is for the use by an industry the important role played by that industry in promoting, dissemination of works and their contribution to the national economy and as far as possible in consultation with licensees.

(6) Every society shall provide for the facility for on-line application, payment of royalties and for issue of licence on-line, as far as it is practicable.

(7) Every society shall ensure-

(a) that the Governing Council members are accountable to the General Body;

(b) maintenance of proper and complete financial records, including the collection and distribution of royalties and expenses; and

(c) annual auditing of its accounts by a qualified Chartered Accountant.

(8) Every society shall comply with procedure for dealing with complaints and grievances as follows:-

(a) constitute a complaint or grievances cell and shall post the same in its website;

(b) information regarding how to make the complaint and reasonable assistance in the formulation and lodging of a complaint;

(c) acknowledgement of the receipt of the complaint immediately upon receipt of the complaint;

(d) verify the nature of the complaint and the details of the complainant;

(e) examine the complaint and, if necessary give an opportunity of hearing to the complainant;

(f) dispose of the complaint, with a period of two months and provide a written response to the complainant;

(g) make available adequate resources for handling and resolving complaints; and

(h) periodical review of complaints handling and resolving procedures and mechanism.

67. Welfare fund of copyright society.—Every Copyright society may frame a scheme for the welfare of its members as determined by its General Body and keep not more than five per cent. of its total royalties collected for implementing the scheme effectively and the amount that could not be distributed on account of non-accessibility of the members concerned.

CHAPTER XII

PERFORMERS' SOCIETY

68. Registration and management of Performers' society.—(1) For the purpose of carrying on the business of issuing or granting licences in respect of performers' rights under sub-section (1) and proviso to sub-section (2) of section 38A and section 39A, there shall be a separate performers' society for each class of performers such as actors, singers, musicians, dancers, acrobats, jugglers, conjurers, snake charmers, persons delivering lectures or any other group of persons who can make a performance;

Provided that the Central Government may allow registration of a society for performers' of different classes of performers' in cases where the performances are inter-connected or closely related to each other.

(2) Such society shall be called as Performers' Society of that specific category.

(3) In accordance with the provisions of section 39A, any Performers' Society as mentioned in sub-rule (1), having an independent legal personality comprising seven or more performers (hereinafter referred to as "the applicant") may file with the Registrar of Copyrights an application in Form-XI, for submission to the Central Government for grant of permission to carry on such business and for its registration as a Performers' Society.

(4) Chapter XI of these rules relating to Copyright Societies except sub-rule (1) of rule 44 shall with necessary adaptations and modifications shall apply to a Performer's Society also.

Explanation 1.— The royalty collected from enjoyment of the performer's right in clause (i) to (v) of clause (a) of sub-section (1) and proviso to sub-section (2) of section 38A, shall be shared equally between the performer and other owner of copyright.

Explanation 2.— Commercial use as mentioned in proviso to sub-section (2) of section 38A, means the exploitation of performers right by way of reproduction, issue of copies or distribution, communication to public including broadcasting and commercial rental of the cinematograph film.

Explanation 3.— For the purpose of this chapter performance includes recording of visual or acoustic presentation of a performer in the sound and visual records in the studio or otherwise.

CHAPTER XIII

REGISTRATION OF COPYRIGHT

69. Form of Register of Copyrights.—(1) The Register of Copyrights shall be kept in physical and electronic form in six parts, namely :—

Part I - Literary works other than computer programmes, tables and compilations including computer data bases and dramatic works.

Part II - Musical works

Part III - Artistic works

Part IV - Cinematograph films

Part V - Sound recordings

Part VI - Computer programmes, tables and compilations including computer data bases.

(2) The Register of Copyrights shall contain the particulars specified in Form-XIII.

70. Application for Registration of Copyright.— (1) Every application for registration of copyright shall be made in Form-XIV and every application for registration of changes in the particulars of copyright entered in the Register of Copyright shall be made in Form-XV.

(2) Every such application shall be in respect of one work only, and shall be accompanied by the fee specified in the Second Schedule in this behalf.

(3) Every application should be signed only by the applicant, who may be an author or owner of right. If the application is submitted by the owner of copyright, it shall be enclosed with an original copy of no objection certificate issued by the author in his favour.

(4) Every application for registration of an unpublished work shall be accompanied by two copies of the work.

(5) Every application for registration of a computer programme shall be accompanied by the source and object code.

(6) Every application for registration in respect of an artistic work which is used or is capable of being used [1][in relation to any goods or services], such application shall include a statement to that effect and shall be accompanied by a certificate from the Registrar of Trade Marks referred to in section 3 of the Trade Marks Act, 1999, to the effect that no trade mark identical with or deceptively similar to such artistic work has been registered under that Act in the name of, or that no application has been made under that Act for such registration by, any person other than the applicant.

(7) Every application for registration in respect of an artistic work which is capable of being registered as a design under the Designs Act, 2000, such application shall be

[1] Subs. by G.S.R. 788(E), dated 10th August, 2016, for "in relation to any goods" (w.e.f. 12-8-2016).

accompanied by a statement in the form of an affidavit containing the following, namely:-

(a) it has not been registered under the Designs Act, 2000; and

(b) it has not been applied to an article through industrial process and reproduced more than fifty times.

(8) Every such application can be filed in the Copyright Office by person or by post or by online filing facility as provided on the website of the Copyright Office.

(9) The person applying for registration shall give notice of his application to every person who claims or has any interest in the subject-matter of the copyright or disputes the rights of the applicant to it.

(10) If no objection to such registration is received by the Registrar of Copyrights within thirty days of the receipt of the application, the Registrar of Copyrights shall, if satisfied about the correctness of the particulars given in the application, enter such particulars in the Register of Copyrights.

(11) If the Registrar of Copyrights receives any objections for such registration within the time specified in [1][sub-rule (10)], or, if he or she is not satisfied about the correctness of the particulars given in the application, he or she may, after holding such inquiry as he or she deems fit, enter such particulars of the work in the Register of Copyrights as he or she considers necessary.

(12) The Registrar of Copyrights shall give an opportunity of hearing before rejecting the any application filed for registration of any work.

(13) The process of registration is deemed to be completed only when a copy of the entries made in the Register of Copyrights is signed and issued by Registrar of Copyrights or by Deputy Registrar of Copyrights, to whom such authority is delegated.

(14) The Registrar of Copyrights shall, as soon as may be, send, wherever practicable, a copy of the entries made in the Register of Copyrights to the parties concerned.

71. Correction and rectification of entries in the Register of Copyrights. — (1) The Registrar of Copyrights may, either *suo motu* or on application of any interested person, amend, or alter the Register of Copyrights for the entries specified in section 49, after giving, wherever practicable, to the person affected by such amendment or alteration, an opportunity to show cause against such amendment or alteration, and communicate to such person the amendment or alteration so made.

(2) The Registrar of Copyrights shall rectify the entries made in the Register of Copyrights after an order is being passed by the Board on an application made by the Registrar of Copyrights in this behalf under section 50.

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[1] Subs. by G.S.R. 788(E), dated 10th August, 2016, for "sub-rule (7)" (w.e.f. 12-8-2016).

72. Indexes. —(1) There shall be kept at the Copyright Office the following indexes both in physical and electronic form for each part of the Register of Copyrights, namely:—

(i) a general Author Index;

(ii) a general Title Index;

(iii) an Author Index of works in each language; and

(iv) a Title Index of works in each language.

(2) Every Index shall be arranged alphabetically in the form of cards.

73. Inspection of the Register of Copyrights and Indexes.—The Register of Copyrights and Indexes thereof shall at all reasonable time be open to inspection by any person in such manner and subject to such conditions as the Registrar of Copyrights may specify. The online search or inspection of the Register of Copyrights and Indexes can be utilized by making online payment of fee as specified in the Second Schedule.

74. Copies and extracts of the Register of Copyrights and Indexes. — (1) Any person shall be entitled to take copies of, or make extracts from, the Register of Copyrights or Indexes on payment of the fee as specified in the Second Schedule subject to such supervision as the Registrar of Copyrights may arrange.

(2) The Registrar of Copyrights shall, on an application made in that behalf and on payment of the fee specified in the Second Schedule, furnish a certified copy of entries made in the Register of Copyrights and Indexes thereof.

CHAPTER XIV

STORAGE OF TRANSIENT OR INCIDENTAL COPIES OF WORKS

75. (1) Any owner of copyright may give a complaint in writing under clause (c) of sub-section (1) of section 52, to a person who has facilitated transient or incidental storage of work for providing electronic links, access or integration to restrain from such storage of work.

(2) The written complaint shall contain the following particulars, namely:-

(a) the description of the work with adequate information to identify the work;

(b) details establishing that the complainant is the owner or exclusive licensee of copyright in the work;

(c) details establishing that the copy of the work which is the subject matter of transient or incidental storage is an infringing copy of the matter of transient or incidental storage is an infringing copy of the work owned by the complainant and that the allegedly infringing act is not covered under section 52 or any other act that is permitted by the Act;

(d) details of the location where transient or incidental storage of the work is taking place;

(e) details of the person, if known, who is responsible for uploading the work infringing the copyright of the complainant; and

(f) Undertaking that the complainant shall file an infringement suit in the competent court against the person responsible for uploading the infringing copy and produce the orders of the competent court having jurisdiction, within a period of twenty-one days from the receipt of the notice.

(3) On receipt of the written complaint, the person responsible for the storage of the copy, if satisfied from the details provided in the complaint that the copy of the work is an infringed copy, within thirty-six hours, take measures to refrain from facilitating such access for a period of twenty-one days from the date of receipt of the complaint or till he receives an order from the competent court restraining him from facilitating access whichever is earlier.

(4) The person responsible for storage shall display a notice giving reasons for restraining such access to persons requesting for access to the alleged infringing copy.

(5) The person responsible for storage may restore the storage of the work in case the complainant failed to produce the orders of the competent court having jurisdiction, restraining him from facilitating access.

(6) In case the complainant fails to produce the orders of the competent court having jurisdiction within the stipulated period, the person responsible for storage shall not be

obliged to respond to any further notice sent by the same complainant on the same work in the same location.

CHAPTER XV

MAKING OR ADAPTING THE WORK BY ORGANIZATIONS WORKING FOR THE BENEFIT OF PERSONS WITH DISABILITIES

76. Maintenance of records. — The organization working for the benefit of the persons with disabilities and intending to adapt, reproduce, issue of copies or communication to public of any work in any accessible format shall maintain at its principal place of business a register containing the following details, namely:-

(a) the name of the work, author or owner or publisher along with year of publication;

(b) the details of the accessible format in which the work is produced;

(c) the nature of activity such as adaptation, reproduction, issue of copies or communication to the public;

(d) total number of copies made, list of persons with disabilities to whom copies have been distributed; and

(e) price, if any, charged on the copies.

77. Notice to be included in copies made in accessible formats.- The organization working for the benefit of the persons with disabilities shall insert appropriate notices in the copies of works in accessible formats created by the organisations that-

(a) the accessible format is created pursuant to the exception under clause (zb) of sub-section(1) of section 52;

(b) the accessible format is intended solely for the use of persons with disabilities who cannot enjoy the normal format of the work; and

(c) any distribution of the accessible format to any person who can enjoy the normal format of the work will lead to stopping the supply of further works in accessible formats and such other legal consequences as are applicable.

Explanation.- For the purposes of this Chapter, the term "accessible format" shall include Braille, Daisy, large print, talking books, digital formats and all other formats that can be used by persons with disabilities.

78. Contracts with third parties engaged by organizations working for persons with disabilities. — An organisation working for persons with disabilities may engage any third party as its agent to undertake any of the activities permitted under clause (zb) of sub-section (1) of section 52, on its behalf and shall enter into appropriate contracts with such third party to ensure that such third party undertakes such activities only on behalf of the organisation and not otherwise.

CHAPTER XVI

IMPORTATION OF INFRINGING COPIES

79. Importation of infringing copies.— (1) Every notice, under sub-section (1) of section 53, shall be made to the Commissioner of Customs, or to any other officer authorized in this behalf, by the Central Board of Excise and Customs in accordance in Form-XVI and shall be accompanied by fee as specified in the Second Schedule.

(2) The person who gives notice under in sub-rule (1) shall deposit, within the time specified by the Commissioner, such amount as the Commissioner may deem fit as security having regard to the likely expenses on demurrage, cost of storage and compensation to the importer in case it is found that the works are not infringing copies.

(3) The Commissioner or the officer duly authorized in this behalf, on arrival of such works, if satisfied, shall suspend the clearance of such works for a period of fourteen days and shall inform the arrival and detention of work to the person who has given the notice.

(4) At the request of the importer or his duly authorized agent, Commissioner or the officer duly authorized in this behalf, shall inform the name and address of the person who gave the notice.

(5) The Commissioner or the officer duly authorized in this behalf shall release the consignment on expiry of a period of fourteen days, in case the person who gave notice failed to produce an order from the competent court having jurisdiction restraining him from releasing the suspended consignment of works.

CHAPTER XVII

TECHNOLOGICAL PROTECTION MEASURES

80. Maintaining of records.-

(1) Any person who is permitted to circumvent technological protection measures under clause (a) of subsection (2) of section 65A of the Act may approach any person, who can assist him to circumvent the technological protection measures.

(2) Any such person facilitating circumvention of technological protection measures for another person shall maintain a record containing details of the person who requested for assistance, containing the following details, namely:-

(a) the name, complete postal address, photograph, e-mail address and telephone number or other contact details of the person;

(b) the professional details of the person, if any, including the address of the place where he is working at present;

(c) the reasons and purpose for circumvention of the technological protection measures; and

(d) an undertaking in writing from the person requesting assistance that he is entitled for circumvention of the technological protection measures and will be solely responsible for copyright infringement, if any, of the protected work.

(3) The record may be maintained on-line or in any other format for a minimum period of three years, in the place from where he is facilitating circumvention.

(4) Any such person maintaining records under sub-rule (2) shall disclose the details in the record only upon an Order of the court or to a police officer, not below the rank of a Sub-Inspector of Police, investigating a complaint under section 65A.

CHAPTER XVIII

MISCELLANEOUS

81. Mode of making applications, etc. — Every application, notice, statement or any other document to be made, given, filed or sent under the Act or under these Rules may, unless otherwise directed by the authority concerned, be sent by hand or registered post or by online filing procedure made available on the website of the Copyright Office or Copyright Board.

82. Mode of Communication by the Copyright Board, etc.—Even written intimation from the Copyright Board, the Copyright Office or the Registrar of Copyrights shall be deemed to have been duly communicated to any person if such intimation is sent to the known address of such person by registered post.

83. Fees. — (1) The fees payable under the Act in respect of any matter shall be as specified in the Second Schedule.

(2) The fees may be paid to the Registrar of Copyrights, New Delhi, by a postal order or a bank draft issued by a Scheduled Bank as defined in the Reserve bank of India Act, 1934, or by deposit into a Government Treasury or a branch of the Reserve Bank of India or the State Bank of India under the head of account: Major Head—0070; 60 Other Services; Minor Head—113; Copyright Registration Fees or by payment gateway provided in online-filing facility of the Copyright Office website copyright.gov.in.

(3) Postal orders and bank drafts shall be crossed and drawn in New Delhi.

(4) Payment by bank drafts shall not be valid unless the amount of bank commission is included therein.

(5) Where payment is made by deposit in a Government Treasury or a branch of the Reserve Bank of India or the State Bank of India, the challan evidencing the payment shall be sent to the authority concerned by pre-paid registered post.

(6) No fee is required to be paid for taking extracts from Register of Copyrights or indexes for official purposes by the Central Government or the State Government.

84. Right of audience. — In any proceedings before the Board or the Registrar of Copyrights any party may appear and be heard either in person or by a pleader or other person duly authorised by such party.

85. Costs. —The cost incidental to the proceedings before the Board or the Registrar of Copyrights shall be in the discretion of the Board or the Registrar of Copyrights, as the case may be.

86. Repeal.- The Copyright Rules, 1958, are hereby repealed without prejudice to anything done under such rules before the coming into force of these rules.

FORM-I
Notice of Relinquishment of Copyright
[*See* rule 4]

To,

The Registrar of Copyrights,
Copyright Office,
Boudhik Sampada Bhawan, Plot No. 32,
Sector 14, Dwarka, New Delhi-110075
Phone: 011-25301202

Sir,

In accordance with section 21 of the Copyright Act, 1957 (14 of 1957), I hereby give notice that, with effect from the date of this notice, I do relinquish, to the extent specified in the enclosed affidavit, my rights in the work described in the said affidavit.

Yours faithfully,

Place.....
Date.....

(*Signature*)

Form of Affidavit referred to above

I,.....of
(full name in block letters)
.....do hereby or
(address)

Solemnly affirmation state that—

(1) I am the author of the work described in the statement below;

(2) I am the owner of the copyright in the said work to the extent specified in the said statement; and

(3) I do hereby relinquish my rights in the said work to the extent specified in the said statement:

STATEMENT

Description of the work:

(*a*) Class of the work (Literary, Dramatic, Musical, Artistic, Cinematograph Film, Sound Recording).

(*b*) Title of the work, if any;

(*c*) Full name, address and nationality of the author; (*d*) Language of the work, if any;

(*e*) Name, address and nationality of the publisher, if any; (*f*) Year of first publication, if any;

(*g*) Country of first publication, if any;

(*h*) If the copyright in the work is registered under section 45, the Registration number, if known.

2. Rights owned by the deponent on the date of the affidavit.

(If the rights are owned jointly with others, state names, addresses and nationalities of the joint owners.)

3. Extent to which rights are relinquished.
4. Remarks, if any.

Place.....
Date..... .....
(*Signature*)

Solemnly affirmed before me by

.....
.....
Who is known to me personally/
(Name of deponent in block letters) who is identified to me
By...../
(name of identifier in block letters) who is known to me personally.

Place.....
Date..... .....
(*Signature and seal of the Magistrate)*

FORM II

APPLICATION FOR COMPULSORY LICENCES FOR WORKS WITHHELD FROM PUBLIC

(See rule 6)

To,

The Registrar of Copyrights/Secretary,
Intellectual Property Appellate Board,
Copyright Office,
New Delhi.

Sir,

1. In accordance with section 31 of the Copyright Act, 1957 (14 of 1957), I hereby apply to the Copyright Board for a licence to reproduce /republish/issue copies/perform in public/communicate to the public by broadcast……work, in accordance with the particulars given in the enclosed Statement.
2. I hereby undertake to abide strictly by the terms and conditions of the compulsory licence, if granted to me.
3. I hereby verify that the particulars given in this from are true to the best of my knowledge, belief and information and nothing has been concealed therefrom.

Place…….
Date……

Yours faithfully,

……..
(Signature)

STATEMENT

1. Full name of the applicant: ……..
   (In Block Letters)
2. Full address and nationality of the applicant: ……..
3. Telephone/ Fax/E-mail: ……..
4. Description of the work:
   (a) Class of the work (Literary ,Dramatic, Musical, Artistic, Cinematograph Film, Sound Recording);
   (b) Title of the work;
   (c) Full name, address and nationality of the author/ owner;
   (d) Language of the work;
   (e) Name, address and nationality of the publisher;
   (f) Year of first and last publication;
   (g) Country of first and last publication;
   (h) Price of a copy of the work;
   (i) If the copyright in the work is registered under section 45, the registration Number.

5. If the licence is applied for reproduction, republishing/issue of copies, state:
   (a) Number of copies of work proposed to be reproduced/republished and issued under the licence applied for;
   (b) Estimated cost of the work to be published ;
   (c) Proposed retail price per copy of the work;
   (d) Rate of royalty , which the applicant considers reasonable, to be paid to the copyright owner;

(e) Means of the applicant for payment of the royalty.

6. If the licence is applied for performance in public, state:
   (a) Number of performances of work proposed to be made under the licence applied for;
   (b) Estimated cost of each performance;
   (c) Proposed rate at which the work is to be performed;
   (d) Rate of royalty, which the applicant considers reasonable, to be paid to the copyright owner;
   (e) Means of the applicant for payment of the royalty.

7. If the licence is applied for communication to public by broadcast, state:
   (a) Duration of broadcast and the number of times it is proposed to be broadcast;
   (b) The name of the channels and territorial coverage of the broadcast;
   (c) Prevailing standards of royalties in regard to such works;
   (d) Rate of royalty, which the applicant considers reasonable, to be paid to the copyright owner;
   (e) Means of the applicant for payment of the royalty.

8. Whether the prescribed fee has been paid and, if so , particulars of payment (give Postal Order/Bank Draft/Treasury Challan number).
9. Full name, address and nationality of the person competent or issue a licence.
10. Evidence to show the following:
    (a) That the applicant has requested and had been refused authorization by the said person to publish/performance in public/ communication to public by broadcast the work;
    (b) The work has been withheld from the public by reason of not publishing the work or performing it in public;
    (c) That in case of communication to the public by broadcast the terms and conditions proposed by the owner of work are unreasonable.
11. Remarks, if any.
12. List of enclosures.

Place: .....
Date .....

.....
(Signature)

FORM III

APPLICATION FOR COMPULSORY LICENCE FOR PUBLICATION / COMMUNICATION TO THE PUBLIC / TRANSLATION

(See rule 11)

To,

The Registrar of Copyrights/Secretary,
Intellectual Property Appellate Board,
Copyright Office,
New Delhi.

Sir,

1. In accordance with section 31 of the Copyright Act, 1957 (14 of 1957), I hereby apply to the Copyright Board for a licence to publish/communicate to public/translate the ……work, in accordance with the particulars given in the enclosed Statement.
2. I hereby undertake to abide strictly by the terms and conditions of the compulsory licence, if granted to me.
3. I hereby verify that the particulars given in this form are true to the best of my knowledge, belief and information and nothing has been concealed therefrom.

Place…….
Date……

Yours faithfully,

……..
(Signature)

STATEMENT

1. Full name of the applicant: ……..
   (In Block Letters)
2. Full address and nationality of the applicant: ……..
3. Telephone/ Fax/E-mail: ……..
4. Description of the work:
   (a) Class of the work (Literary ,Dramatic, Musical, Artistic, Cinematograph Film, Sound Recording);
   (b) Title of the work;
   (c) Full name, address and nationality of the author and if the author is deceased, the date of his decease;
   (d) Language of the work;
   (e) Name, address and nationality of the publisher;
   (f) Year of first and last publication;
   (g) Country of first and last publication;
   (h) Price of a copy of the work;
   (i) If the copyright in the work is registered under section 45, the Registration Number, if known.
5. If the licence is applied for translation, state:
   (a) Language into which the work is proposed to be translated;
   (b) Full name, qualifications and address of the translator;
   (c) Means of the applicant to produce and publish the translation;
6. Indicate the purpose for which the licence is required.
7. Number of copies of work proposed to be published under the licence applied for,
8. Estimated cost of the work to be published.

9. Proposed retails price per copy of the work.
10. Rate of royalty, which the applicant considers reasonable, to be paid to the copyright owner.
11. Means of the applicant for payment of the royalty.
12. If the licence is applied for communication to public:
    (a) Number of public performances of work proposed to be performed under the licence applied for;
    (b) Estimated cost of public performance;
    (c) Duration of communication to the public and the number of times it is proposed;
    (d) The name of the channel and territorial coverage of the communication to the public;
    (e) Prevailing standards of royalties in regard to such works.

13. Whether the prescribed fee has been paid and, if so, particulars of payment (give Postal Order/Bank Draft/Treasury Challan number).
14. (a) Full name, address and nationality of the person competent to issue a licence;
    (b) Whether the applicant after due diligence on his part was unable to find the owner and the copy of the public notice as per rule 11(3);
    (c) If the applicant was unable to find the owner, whether he had sent a copy of the request by registered post to the publisher whose name appears on the work. If so, the date on which the copy was sent with evidence.
15. In case of application for translation furnish following additional information:-
    (a) Whether a translation in the same language has been published before;
    (b) Whether the earlier translation is out of print;
    (c) Full name, address and nationality of the earlier translator and if the said translator is deceased, the date of his decease;
    (d) Title of the earlier translation;
    (e)Full name, address and nationality of the publisher of the earlier translation;
    (f) Year of publication;
    (g) Price per copy of the earlier translation;
    (h) If the earlier translation is registered under section 45, the Registration Number if known;
    (i)Rate and amount of royalty paid to the copyright owner in respect of the earlier translation, if known.
16. (a) whether translation has been made into any language other than the language stated in 5 above, if known.
    (b) Full name, address and nationality of the translator and if the said translator is deceased, the date of his decease.
    (c) Title of the translation.
    (d) Language of the translation.
    (e)Full name, address and nationality of the publisher of the translation.
    (f)Year of publication.
    (g) Price per copy of the translation.
    (h) If the translation is registered under section 45, the Registration Number if known.
    (i) Rate and amount of royalty paid to the copyright owner, if known.
17. Remarks, if any.
18. List of enclosures.

Place……..
Date……..

……
Signature

FORM IV

NOTICE FOR TERMINATION OF LICENCE

(See rules 15, 22 And 43)

To,

……..
……
……

Sir,

In accordance with first proviso to sub-section (1) or the first proviso to sub-section (2)of section 32 B of the Copyright Act, 1957 (14 of 1957), I hereby give notice, that copies of translation/reproduction of the work given below (mention language)have been published by /me/under my authorization.

Yours faithfully,

……..
(Signature)

Place…….
Date……

STATEMENT

1. Title of the work.
2. Name and address of the owner of copyright.
3. Year and country of first publication and name, address and nationality of the publisher.
4. Name and address of the author who has translated the work.
5. Name and address of the publisher and year in which the translation has been published in India.
6. Name and address of the publisher and year in which the reproduction of the work has been published in India.
7. Retail price of the published work.

FORM V

APPLICATION FOR A COMPULSORY LICENCE FOR DISABLED PERSONS

(See rule 17)

To

The Registrar of Copyrights/Secretary,
Intellectual Property Appellate Board,
Copyright Office,
New Delhi.

Sir,

1. In accordance with section 31 B of the Copyright ct, 1957 (14 of 1957), I hereby apply to the Copyright Board for a licence to publish a published work for the benefit of disabled persons in accordance with the particulars given in the enclosed Statement.
2. I hereby undertake to abide strictly by the terms and conditions of the licence, if granted to me.
3. I hereby verify that the particulars given in this form are true to the best of my knowledge, belief and information and nothing has been concealed therefrom.
   Place…….
   Date……

Yours faithfully,

……..
(Signature)

STATEMENT

1. Full name of the applicant: ……..
   (In Block Letters)
2. Full address and nationality of the applicant: ……..
3. Telephone/ Fax/E-mail: ……..
4. Description of the work:
   (a) Class of the work (Literary ,Dramatic, Musical, Artistic, Cinematograph Film, Sound Recording);
   (b) Title of the work;
   (c) Full name, address and nationality of the author and if the author is deceased, the date of his decease;
   (d) Language of the work;
   (e) Name, address and nationality of the publisher;
   (f) Year of first and last publication;
   (g) Country of first and last publication;
   (h) Price of a copy of the work;
   (i) If the copyright in the work is registered under section 45, the Registration Number, if known.
5. Indicate the purpose for which the licence is required.
6. Specify the format in which the work is to be converted.
7. Specify the nature of disability for which the format is required.
8. Number of copies of work proposed to be published under the licence applied for
9. Estimated cost of the work to be published
10. Proposed retails price per copy of the work.
11. Rate of royalty, which the applicant considers reasonable, to be paid to the copyright owner.
12. Means of the applicant for payment of the royalty.

13. Whether the prescribed fee has been paid and, if so, particulars of payment (give postal order/Bank Draft/Treasury Challan number).
14. (a) Full name, address and nationality of the person competent to issue a licence;
    (b) Whether the applicant has requested and has been denied authorization by the said person to publish the work for the benefit of disabled person.
    (c) If the applicant was unable to find the owner, whether he had sent a copy of the request by registered post to the publisher whose name appears on the work. If so, the date on which the copy was sent.
    (d) Whether the author of the works has published the work for the benefit of disabled person and if yes the price of the copies.
15. Remarks, if any.
16. List of enclosures.

Place……..

Date……..

.....

Signature

FORM VI

APPLICATION FOR LICENCE FOR TRANSLATION

(*See rule 32*)

To

The Registrar of Copyrights/Secretary,
Intellectual Property Appellate Board,
Copyright Office,
New Delhi.

Sir,

In accordance with section 32 of the Copyright Act, 1957 (14 of 1957), I hereby apply to the Copyright Board for a licence to produce and publish a translation of the work, in accordance with the particulars given in the enclosed Statement.

2. I hereby undertake to abide strictly by the terms and conditions of the licence, if granted to me.

Place…….
Date……

Yours faithfully,

……..
(Signature)

STATEMENT

1. Full name of the applicant: ……..
   (In Block Letters)
2. Full address and nationality of the applicant: ……..
3. Telephone/ Fax/E-mail: ……..
4. Description of the work:
   (a) Class of the work (Literary ,Dramatic, Musical, Artistic, Cinematograph Film, Sound Recording);
   (b) Title of the work;
   (c) Full name, address and nationality of the author and if the author is deceased, the date of his decease;
   (d) Language of the work;
   (e) Name, address and nationality of the publisher;
   (f) Year of first and last publication;
   (g) Country of first and last publication;
   (h) Price of a copy of the work;
   (i) If the copyright in the work is registered under section 45, the Registration Number, if known.
5. Language into which the work is proposed to be translated.
6. Full name, qualifications and address of the translator.
7. Qualification of the applicant to produce and publish the translation.
8. Number of copies of the translation proposed to be published.
9. Estimated cost of production and publication of the translation.
10. Proposed retail price per copy of the translation.

11. Rate of royalty, which the applicant considers reasonable, to be paid to the copyright owner.
12. Means of the applicant for payment of the royalty.
13. Whether the prescribed fee has been paid and, if so, particulars of payment (give Postal Order/Bank Draft/Treasury Challan number.)
14. (a) Full name, address and nationality of the person competent to issue a licence for translation;

    (b) Whether the applicant was able to find the said person.

    (c)whether the applicant had requested and has been denied authorization by the said person to produce and publish the translation.

    (d) IF the applicant was unable to find the owner, whether he had sent a copy of the request for authorization to the publisher. If so, the date on which the copy was sent and evidence thereof.

15. Whether the author of the work has withdrawn from circulation copies of the work.

16 (a) whether a translation in the same language has been published before:

(b) whether the earlier translation is out-of-print.

(c) Full name, address and nationality of the earlier translator and, if the said translator is deceased, the date to his decease.

(d) Title of the earlier translation.

(e) Full name, address and nationality of the publisher of the earlier translation.

(f) Year of publication.

(g) Price per copy of the earlier translation.

(h) If the earlier translation is registered under section 45, the Registration number.

(i) Rate and amount of royalty paid to the copyright owner in respect of the earlier translation, if known.

17. (a) Whether translation has been made into any language other than the language stated in 5 above.

    (b)Full name, address and nationality of the translator and, if the said translator is deceased, the date of his decease.

    (c) Title of the translation.

    (d) Language of the translation.

    (e) Full name, address and nationality of the publisher of the translation.

    (f) Year of publication.

    (g) Price per copy of the translation.

    (h) IF the translation is registered under section 45, the Registration number if known.

    (j) Rate and amount of royalty paid to the copyright owner, if known.

18. Remarks, if any.
19. List of enclosures.

Place……..

Date…….

……

Signature

FORM VII

LICENCE FOR PUBLICATION, TRANSLATION AND REPRODUCTION OF WORK

(*See rule 38*)

To

The Registrar of Copyrights/Secretary,
Intellectual Property Appellate Board,
Copyright Office,
New Delhi.

Sir,

1. In accordance with section 32 (1A)/32A of the Copyright Act, 1957 (14 of 1957), I hereby apply to the Copyright Board for a licence to publish an unpublished work, or reproduce a published work or to translate a work in accordance with the particulars given in the enclosed Statement.
2. I hereby undertake to abide strictly by the terms and conditions of the licence, if granted to me.
3. I hereby verify that the particulars given in this form are true to the best of my knowledge, belief and information and nothing has been concealed therefrom.

Place……
Date……

Yours faithfully,

……..
(Signature)

STATEMENT

1. Full name of the applicant: ……..
   (In Block Letters)
2. Full address and nationality of the applicant: ……..
3. Telephone/ Fax/E-mail: ……..
4. Description of the work:
   (a) Class of the work (Literary ,Dramatic, Musical, Artistic, Cinematograph Film, Sound Recording);
   (b) Title of the work;
   (c) Full name, address and nationality of the author and if the author is deceased, the date of his decease;
   (d) Language of the work;
   (e) Name, address and nationality of the publisher;
   (f) Year of first and last publication;
   (g) Country of first and last publication;
   (h) Price of a copy of the work;
   (i) If the copyright in the work is registered under section 45, the Registration Number, if known.
5. If the licence is applied for translation, state:
   (a) Language into which the work is proposed to be translated;
   (b) Full name, qualifications and address of the translator;
   (c) Qualifications of the applicant to produce and publish the translation.
6. Indicate the purpose for which the licence is required.

7. Number of copies of work proposed to be published under the licence applied for.
8. Estimated cost of the work to be published.
9. Proposed retail price per copy of the work.
10. Rate of royalty, which the applicant considers reasonable, to be paid to the copyright owner.
11. Means of the applicant for payment of the royalty.
12. Whether the prescribed fee has been paid and, if so, particulars of payment (give postal order/Bank Draft/Treasury Challan number).
13. (a) Full name, address and nationality of the person competent to issue a licence;
(b) Whether the applicant after due diligence on his part was unable to find the owner;
(c) Whether the applicant has requested and had been denied authorization by the said person to to produce and publish the translation or reproduce the work of publish the unpublished work;
(d)IF the applicant was unable to find the owner, whether he had sent a copy of the request by registered post to the publisher whose name appears on the work. If so, the date on which the copy was sent.
14. Whether the author of the works has withdrawn from circulation copies of the work.
15. In case of application for translation furnish following additional information:-
(a) Whether a translation in the same language has been published before;
(b) Whether the earlier translation is out of print;
(c) Full name, address and nationality of the earlier translator and if the said translator is deceased, the date of his decease;
(d) Title of the earlier translation;
(e) Full name, address and nationality of the publisher of the earlier translation;
(f) Year of publication;
(g) Price per copy of the earlier translation;
(h) If the earlier t5ranslation is registered under section 45, the Registration Number if known;
(i) Rate and amount of royalty paid to the copyright owner in respect of the earlier translation, if known.
16. (a) Whether translation has been made into any language other than the language stated in 5 above.
(b)Full name, address and nationality of the translator and if the said translator is deceased, the date of his decease.
(c) Title of the translation.
(d) Language of the translation.
(e) Full name, address and nationality of the publisher of the translation.
(f) Year of publication.
(g) Price per copy of the translation.
(h) If the translation is registered under section 45, the Registration Number, if known.
(i) Rate and amount of royalty paid to the copyright owner. If known.

17. Remarks, if any.
18. List of enclosures.

Place.....
Date.....

.....
(Signature)

FORMVIII

(See Rule 44)

APPLICATION FORM FOR PERMISSION TO CARRY ON COPYRIGHT BUSINESS AND FOR TEGISTRATION AS A COPYRIGHT SOCIETY

1. Name and address of the association of persons making the application (in capital letters) (hereinafter referred to as “applicant”.
2. The right or set of rights in specific categories of works in respect of which the applicant proposes to carry on the copyright business.
3. The certificate to show that the applicant has a separate legal personality.
4. Name, address and profession or occupation of the persons who comprise the applicant.
5. Details of works in which copyright of such individuals subsist.
6. The territory or territories to which the business of the applicant shall extend.
7. The names, addresses and profession/occupation of individuals comprising the Governing Body (by whatever name called) of the applicant in whom the ultimate management, control and direction of the applicant is vested.
8. The capacity (author or other owner of the rights)in which such individual has become a member of Governing Body.
9. Address of the registered or administrative office of the applicant at which its records will be maintained and kept and the designation of the chief executive officer of the applicant with address on whom communications may be served.
10. Financial position of the applicant on the date making the application i.e., last audited balance sheet and income and expenditure account/bank balance.
11. Documents mentioned in rule 48.
12. Signature along with the name of the members of the governing body.
13. Name and signature of the chief executive officer.

Place.....

Date.....

FORM IX

(See rule 47)

APPLICATION FORM FOR RE-REGISTRATION OR RENEWAL OF REGISTRATION OF A COPYRIGHT SOCIETY

1. Name and address of the association of persons making the application (in capital letters) (hereinafter referred to as "applicant").
2. The right or set of rights in specific categories of works in respect of which the applicant proposes to carry on the copyright business.
3. The certificate to show that the applicant has a separate legal personality.
4. The territory or territories to which the business of the applicant shall extend.
5. The year of incorporation of the applicant and the date from which the applicant has been carrying on the copyright business of granting licenses.
6. The names, addresses and profession/occupation of individuals comprising the Governing Body (by whatever name called) of the applicant in whom the ultimate management, control and direction of the applicant is vested.
7. The capacity (author or other owner of the rights) in which such individual has become a member of Governing Body.
8. Address of the registered or administrative office of the applicant at which its records will be maintained and kept and the designation of the chief executive officer of the applicant with address on whom communications may be served.
9. Financial position of the applicant on the date of making the application *i.e.*, last audited balance sheet and income and expenditure account/bank balance.
10. Documents and mentioned in rule 47(3) and 48.
11. Signature along with the name of the members of the governing body.
12. Name and signature of the chief executive officer.

Place.....

Date.....

FORM X

(See rule 49)

CERTIFICATE OF REGISTRATION UNDER SECTION 33(3) OF THE COPYRIGHT ACT, 1957

It is certified that……..(name of the society and address) has been registered by the central Government, *vide* Registration No……as a copyright society under sub-section (3) of section 33 of the Copyright Act, 1957 (14 of 1957) and permitted to commence and carry on the copyright business in……(here indicate the name of the particular class of works).

The registration and the permission hereby granted are subject to the following conditions and liable to be cancelled on non-compliance with, or contravention of, any of them, namely:—

(i)That the particulars furnished in the application are true and correct and not misleading in any manner; and
(ii)that the copyright society shall duly comply with all he obligations imposed on it by or under the copyright Act, 1957 (14 of 1957) and the copyright Rules, 1958.

New Delhi
Date: …….

……..
Registrar of Copyrights

Form XI

(See rule 68)

APPLICATION FORM FOR PERMISSION TO CARRY ON BUSINESS AND FOR REGISTRATION AS A PERFORMER'S SOCIETY

1. Name and address of the association of performers making the application (in capital letters) (hereinafter referred to as "applicant").
2. The class or classes of performers for whose rights the applicant is to carry on the business of issuing licences.
3. The certificate to show that the applicant has a separate legal personality.
4. Names, addresses and profession or occupation of the persons who comprise the applicant.
5. The territory or territories to which the business shall extend.
6. The names, addresses and profession/occupation of individuals comprising the Governing Body (by whatever name called) of the applicant in whom the ultimate management, control and direction of the applicant is vested.
7. The capacity (performer or other owner of the rights) in which such individual has become a member of Governing Body.
8. Address of the registered or administrative office of the applicant at which its records will be maintained and kept and the designation of the chief executive officer of the applicant with address on whom communications may be served.
9. Financial position of the applicant on the date of making the application *i.e.*, last audited balance sheet and income and expenditure account/bank balance.
10. Documents mentioned in rule 48.
11. Signature along with the name of the members of the governing body.
12. Name and signature of the chief executive officer.

Place……

Date…….

Form XII

(See rule 68)

APPLICATION FORM FOR RE-REGISTRATION OR RENEWAL OF REGISTRATION AS A PERFORMER'S SOCIETY

1. Name and address of the association of performers making the application (in capital letters) (hereinafter referred to as "applicant").
2. The class or classes of performers for whose rights the applicant is to carry on the business of issuing licence.
3. Names, addresses and profession or occupation of the persons who comprise the applicant.
4. The territory or territories to which the business shall extend.
5. The names, addresses and profession/occupation of individuals comprising the Governing Body (by whatever name called) of the applicant in whom the ultimate management, control and direction of the applicant is vested.
6. The capacity (performer or other owner of the rights) in which such individual has become a member of Governing Body.
7. Address of the registered or administrative office of the applicant at which is records will be maintained and kept and the designation of the chief executive officer of the applicant with address on whom communications may be served.
8. Financial position of the applicant on the date of making the application *i.e.*, last audited balance sheet and income and expenditure account/bank balance.
9. Documents mentioned in rules 47(3) and 48.
10. Signature along with the name of the members of the governing body.
11. Name and signature of the chief executive officer.

Place……..

Date……

FORM XIII

FORM OF REGISTER OF COPYRIGHTS

(See rule 69)

1. Registration number.
2. Name, address and nationality of the applicant.
3. Nature of the applicant's interest in the copyright of the work.
4. Class and description of the work.
5. Title of the work.
6. Language of the work.
7. Name, address and nationality of the author and, if the author is deceased, the date of his decease.
8. Whether work is published or unpublished.
9. Year and country of first publication and name, address and nationality of the publisher.
10. Years and countries of subsequent publications, if any, and names, addresses and nationalities of the publishers.
11. Names, addresses and nationalities of the owners of the various rights comprising the copyright in the work and the extent of rights held by each, together with particulars of assignments and licences, if any.
12. Names, addresses and nationalities of other persons, if any, authorised to assign or license the rights comprising the copyrights. If the work is an artistic work the location of the original work.
13. Architectural work (the year of completion of the work should also be shown).
14. In case of artistic work whether it is used or capable of being used in relation to any goods or services.
15. Remarks, if any.

FORM XIV

Application for Registration of Copyright
[See rule 70]

To,

The Registrar of Copyrights,
Copyright Office,
Boudhik Sampada Bhawan, Plot No. 32,
Sector 14, Dwarka, New Delhi-110075
Phone: 011-25301202

Sir,

In accordance with section 45 of the Copyright Act, 1957 (14 of 1957), I hereby apply for registration of copyright and request that entries may be made in the Register of Copyrights as in the enclosed statement of Particulars' sent herewith in triplicate.

1. I also send herewith duly completed the statement of further particulars relating to the work.
2. In accordance with rule 70 of the Copyright Rules, 2012, I have sent by pre-paid registered post copies of this letter and of the enclosed statement(s) to the other parties concerned, as shown below:

Names and addresses of the parties	Date of Dispatch
1	2

3. The prescribed fee has been paid, as per details below:
4. Communications on this subject may be addressed to:
5. I hereby declare that to the best of my knowledge and belief, no person, other than to whom a notice has been sent as per paragraph 2 above has any claim or interest or dispute to my copyright of this work or to its use by me.
6. I hereby verify that the particulars given in this Form and the Statement of Particulars and Statement of Further Particulars are true to the best of my knowledge, belief and information and nothing has been concealed therefrom.
7. List of enclosures:

Yours faithfully

(Signature of the Applicant)

Place: ……

Date: ……

STATEMENT OF PARTICULARS

1.	Registration number (*To be filled in the Copyright Office*)	
2.	Name, Address and Nationality of the Applicant	
3.	Nature of the applicant's interest in the copyright of the work	
4.	Class and description of the work	
5.	Title of the work	
6.	Language of the work	
7.	Name, address and nationality of the author and, if the author is deceased, the date of his decease	
8.	Whether work is Published or Unpublished	
9.	Year and country of first publication and name, address and nationality of the publishers	
10.	Years and countries of subsequent publications, if any, and names, addresses and nationalities of the publisher	
11.	Names, address and nationalities of the owners of the various rights comprising the copyright in the work and the extent of rights held by each, together with particulars of assignment and licenses, if any	
12.	Names, addresses and nationalities of other persons, if any, authorized to assign or license the rights comprising the copyright	
13.	If the work is an "artistic work", the location of the original work, including name, address and nationality of the person in possession of the work. (In the case of an architectural work, the year of completion of the work should also be shown)	
14.	If the work is an 'artistic work' which is used or is capable of being used in relation to any goods or services, the application shall include a certificate from the Registrar of Trade Marks in terms of the proviso to sub-section (1) of section 45 of the Copyright Act, 1957.]	
15.	If the work is an "artistic work" whether it is registered under the Designs Act 2000. If yes give details.	
16.	If the work is an "artistic work" capable of being registered as a design under the Designs Act 2000, whether it has been applied to an article though an industrial process and , if yes, the number of times it is reproduced.	
17.	Remarks, if any	

(Signature of the Applicant)

Place:
Date:

STATEMENT OF FURTHER PARTICULARS

(For Literary, including Software, Dramatic, Musical and Artistic Works only)

1.	Is the work to be registered	
(a)	An original work?	
(b)	Translation of a work in the public domain?	
(c)	A translation of a work in which copyright subsists?	
(d)	An adaptation of a work in the public domain?	
(e)	An adaptation of a work in which copyright subsists?	
2.	If the work is a translation or adaptation of a work in which copyright subsists:	
(a)	Title of the original work.	
(b)	Language of the original work.	
(c)	Name, address and nationality of the author of the original work and, if the author is deceased, the date of his decease.	
(d)	Name, address and nationality of the publisher, if any, of the original work.	
(e)	Particulars of the authorization for a translation or adaptation including the name, address and nationality of the party authorizing.	
3.	Remarks, if any.	

(Signature of the Applicant)

Place:
Date:

GENERAL INSTRUCTIONS

1. Rule 70 (3) of the copyright Rules 2013 provides that application has to be signed by applicant (author/owner) only it **does not provide for an attorney to sign an application** (Form XIV) including the Statement of Particulars **(SoP)** and the Statement of Further Particulars **(SoFP)** on behalf of the applicant, which are to be signed by none other than the applicant himself.

2. **Form XIV, SoP & SoFP** submitted only in the format prescribed by the Copyright Office. Only one copy of **Form XIV, SoP & SoFP** is required.

3. Name/address/nationality of the person whose photograph appears on the work may please be intimated in the remarks column. If that person is other than the applicant, a No Objection Certificate, in original may be obtained from that person [from heir(s) if the person is deceased/from the guardian in the case of minor] and enclose with the application.

4. Work should be identical with the Search Certificate in respect of size/colour/design.

5. As per the Rule 70 (5) for registration of Computer Programme or Software, the applicant should provide source code and object code.

6. In case of Sound Recording & Cinematograph category enclose the copy of agreement. If no agreement is made please obtain NOC from various copyright holders and enclosed the same with the application.

7. Power of Attorney should be on stamp paper duly accepted by attorney/signed by the applicant. Incomplete POA is not acceptable.

INSTRUCTIONS FOR FILLING UP THE COPYRIGHT REGISTRATION FORM:

FORM XIV

2. Indicate Names and addresses of the other parties concerned and date of dispatch.

Under Rule 70 (9) of the Copyright Rules, 2013, the applicant is required to send notice by registered post copies of Form XIV, SoP & SoFP to **other parties concerned** that you are submitting application for the registration of copyright in the Copyright Office. (Please see Cols. 7, 11, 12, 13).

3. The prescribed fee has been paid, as per details below: Please give the details of fee as shown below:

S. No.	DD/IPO No.	Date	Amount	Name of the Bank

4. Communications on this subject may be addressed to: Please provide name and complete communication address with pin code. Pin code should be complete.

STATEMENT OF PARTICULARS

1. **Registration number:** (*To be filled in the Copyright Office*)

2. **Name, Address and Nationality of the Applicant:** Applicant may be individual/firm/ company/government/university/institution. Also give the complete address and nationality.

3. **Nature of the applicant's interest in the copyright of the work:** Applicant may be Author/Owner/Publisher/Composer/Producer/Artist.

4. **Class and description of the work:** Please indicate the appropriate **class of work** from the following categories:

Literary / Artistic / Cinematograph Film / Sound Recording / Music / Computer Software

5. **Title of the work:** Please mention the title of the work. The work to be registered for copyright must have a title which should be short and identical with the work.

6. **Language of the work:** Mention all the languages used in the work. In the absence of any script in the work, indicate 'nil'. In case of Computer Software please mention software language instead of 'English'.

7. **Name, address and nationality of the author and, if the author is deceased, the date of his decease:** Please furnish Name/Address/Nationality of the author. Here 'Author' means person(s) who has/have actually created the work. Authors may be more than one.

The Firm itself cannot be the author of a work except in case of Cinematograph Film and Sound Recording category.

If the author of the work is other than the applicant, **a No Objection Certificate**, in original from the author(s) (clearly indicating that he has no objection if the copyright in the work is registered in the name of the applicant) should be submitted. In case the author is partner/proprietor/employee of the applicant firm, the same may be indicated in the application.

If the author is deceased, please mention the date of decease and also submit a notarized affidavit regarding inheritance of right(s) /NOC from all the legal heirs of the deceased author in favour of the applicant

8. **Whether work is Published or Unpublished:** Mention whether the work is published or unpublished.

9. **Year and country of first publication and name, address and nationality of the publishers:** If the work is published, indicated the **year/country** of **first publication/ name/ address/ nationality of the publisher(s).**

If the work is **published** by a person/firm other than the applicant, a **No Objection Certificate,** in original, may be obtained from that person/firm and enclose with application.

10. **Years and countries of subsequent publications, if any, and names, addresses and nationalities of the publisher:** If the work has an any subsequent publications, indicated the **year/country** of **first publication/name/address/nationality of the publisher(s).**

11. **Names, address and nationalities of the owners of the various rights comprising the**

Copyright in the work and the extent of rights held by each, together with particulars of assignment and licenses, if any: The name, address & nationality of the person(s) who hold(s) the **various rights** comprising the copyright in the work are required to be mentioned. In case the applicant himself intends to hold all the rights in the work, his particulars as already given against Col.2 may be mentioned. In case the applicant is a partnership firm, the names of all the partners and their respective shares in the copyright may be indicated.

12. Names, addresses and nationalities of other persons, if any, authorized to assign or license the rights comprising the copyright: If the author intends to authorize other person(s) to **assign or license** the copyright on his behalf, the name, address and nationality of such person may be indicated. If not, please indicate 'nil' against this column.

13. If the work is an "artistic work", the location of the original work, including name, address and nationality of the person in possession of the work. (In the case of an architectural work, the year of completion of the work should also be shown):

14. If the work is an 'artistic work' which is used or is capable of being used in relation to any goods or services, the application shall include a certificate from the Registrar of Trade Marks in terms of the proviso to sub-section (1) of section 45 of the Copyright Act, 1957.]: As per Rule 70 (6) a Search Certificate from The Trade Marks Registry is mandatory if the artistic work is to be used or capable of being used in relation to any goods, irrespective of whether trade mark is registered or not. Otherwise, clearly state that the work is neither used nor capable of being used in relation to any goods.

15. If the work is an "artistic work" whether it is registered under the Designs Act 2000. If yes give details:

16. If the work is an "artistic work" capable of being registered as a design under the Designs Act 2000, whether it has been applied to an article though an industrial process and , if yes, the number of times it is reproduced:

17. Remarks, if any: If any other information related to work to be registered, may be indicated in this column.

STATEMENT OF FURTHER PARTICULARS

If the work is original, answer to **Col.1 (a)** would be **"yes"**, and all other columns may be indicated as "Nil". If the work is not original please furnish necessary details as required.

FORM-XV

Application for registration of changes in the particulars of copyright entered in the Register of Copyrights

[*See* rule 71]

To,

The Registrar of Copyrights,
Copyright Office,
Boudhik Sampada Bhawan, Plot No. 32,
Sector 14, Dwarka, New Delhi-110075
Phone: 011-25301202

Sir,

In accordance with rule 71 of the Copyright Rules, 2013, I hereby apply for registration of changes in the particulars of copyright entered in the Register of Copyrights and request that changes in the existing entries may be made as specified in the enclosed statement of particulars.

2. I have sent by registered post copies of this letter and of the statement of particulars to the other parties concerned* as shown below:

Names and addresses of parties	*Date of dispatch*

*See columns 7, 11, 12 and 13 of Register of Copyrights

3. The prescribed fee has been paid, as per details below:

.....

4. Commissioner on subject may be addressed to:

.....

5. I hereby declare that, to the best of my knowledge and belief, no person other than to whom a notice has been sent as per paragraph 2, has any claim, interest or dispute to my copyright of this work, or to its use by me.

6. I hereby verify that the particulars given in this Form and the Statement of particulars are true to the best of my knowledge, belief and information and nothing has been concealed therefrom.

Yours faithfully

Place.....

Date..... .....

(Signature of Applicant)

STATEMENT OF PARTICULARS

1. Registration number in the Register of Copyrights.
2. Changes sought in the particulars of copyright as entered in the Register of Copyrights.

Reference to column number of the *Register of Copyrights*	Existing entry in the Register of *Copyrights of Copyrights*	Proposed entry in *place of the existing entry in the Register*	Reasons for *the changes proposed*
1	*2*	*3*	*4*

Note. — Where the changes proposed are consequent on assignment or licenses of copyright, attested copies of the deeds of assignments or licenses should be enclosed.

3. List of enclosures.

Place.....

Date.....

(*Signature*)

Form XVI

NOTICE UNDER SECTION 53 OF THE ACT

(See rule 79)

To

The Commissioner of Customs,
Central Board of Excise and Customs,
New Delhi.

Sir,

In accordance with section 53 of the Copyright Act, 1957 (14 of 1957), I hereby state that I am the owner of the copyright /right in…….(work) …… or I am the duly authorized agent of ……..(full name)…….who is the owner of copyright/right in …….(work)…….. as per the attached statement. …… (no. of copies) ……..infringing copies of the said work are expected to arrive in India at ……(time) ……..at……(place) ……(evidence attached) which if brought to India would be infringing copies of the work (evidence attached). I hereby request you to kindly treat these infringing copies as prohibited goods for a period of ……

I undertake to deposit such amount as may be required as security having regard to the likely expense on demurrage, cost of storage and compensation to the importer in case it is found that the work are not infringing copies. I further undertake to produce an order from a court of competent jurisdiction as to temporary or permanent disposal of such goods within fourteen days from the date of their detention. The particulars in the statement below are true to the best of my knowledge and belief.

Place……
Yours faithfully

Date…….

……..

(Signatures)

Form of Affidavit

I, ……,
of

(full name in block letters)

……..do

Hereby (full address) on solemn affirmation state that –

(1) The particulars in the statement below are true to the best of my knowledge and belief;
(2) The works which are being imported in accordance with the particulars in the said statement are infringing copies of the work described in the said statement; and
(3) I am interested in the prevention of importation of the said infringing copies.

STATEMENT

1. Particulars of the Work and Rights held:
   (i) Full name, address and nationality of the person giving notice

(ii) If the applicant is not the owner of the copyright, full name, address and nationality of the owner of the copyright.

(iii) Description of the work:

a. Class of the work (Literary, Dramatic, Musical, Artistic, Cinematograph Film, Sound Recording);
b. Title of the wok;
c. Full name, address and nationality of the author and, if the author is deceased, the date of his decease;
d. Language of the work;
e. Name and address of the publisher;
f. Year of first publication;
g. Country of first publication;
h. If the copyright in the work is registered under section 45, the registration number.

2. Details of import of infringing copies:

(i) Country of origin of the infringing copies;
(ii) Name, address and nationality of the improper in India;
(iii) Name, address and nationality of the maker of the infringing copies;
(iv) Expected time and place of import of the infringing copies into India;
(v) In case a consignment of the infringing copies is detected and detained, will the applicant be prepared to go himself or depute an authorized agent to identify the said copies to the satisfaction of the Commissioner of Customs?

3. Whether the prescribed fee has been paid and, if so, particulars of payment (give Postal Order/Bank Draft/Treasury Challan number).
4. Any other relevant information not covered above.
5. Enclosures:

(i) Copy of the work the copyright/other right in which is being infringed;
(ii) Evidence of ownership and authorship of copyright in the work;
(iii) Evidence of infringement of copyright;
(iv) Evidence of infringing copies being brought to India;
(v) Evidence of payment of fee (copy of Postal Order/Bank Draft/Treasury Challan).

Place……..

Date……..

……..

(Signatures)

SECOND SCHEDULE

(See rule 83)

S.No.	Item	Fee
1.	For a license to republish a Literary, Dramatic, Musical or Artistic Work (sections 31, 31A, 31B* and 32A).	Rs. 5,000 per work
2.	For a license to communicate an any work to the public by Broadcast [section 31(1)(b)].	Rs. 40,000 per applicant/per station
3.	For a license to republish a Cinematograph Film (section 31).	Rs. 15,000 per work
4.	For a license to republish a Sound Recording (section 31).	Rs. 10,000 per work
5.	For a license to perform any work in public (section 31).	Rs. 5,000 per work
6.	For a license to publish or communicate to the public the work or translation (section 31A).	Rs. 5,000 per work
7.	For a license to publish any work in any format useful for person with disability (section 31B).	Rs. 2,000 per work
8.	For an application for a license to produce and publish a translation of a Literary or Dramatic work in any language (sections 32 and 32A).	Rs. 5,000 per work
9.	For an application for registration of copyright in a- (a)Literary, Dramatic, Musical or Artistic Work (b)Provided that in respect of Literary or Artistic work which is used or is capable of being used in relation to any goods (section 45).	 Rs. 500 per work Rs. 2000 per work
10.	For an application for change in particulars of copyright entered in the Register of Copyrights in respect of a : (a) Literary, Dramatic, Musical or Artistic Work (b) Provided that in respect of Literary or Artistic work which is used or is capable of being used in relation to any goods (section 45).	 Rs. 200 per work Rs. 1000 per work
11.	For an application for registration of copyright in a Cinematograph Film (section 45).	Rs. 5,000 per work
12.	For an application for registration of changes in particulars of copyright entered in the Register of Cinematograph Film (Section 45).	Rs. 2,000 per work
13.	For an application for registration of copyright in a Sound Recording (section 45).	Rs. 2000 per work
14.	For an application for registration of changes in particulars of copyright entered in the Register of Copyrights in respect of a Sound Recording (section 45)	Rs. 1000 per work
15.	For taking extracts from the Register of Copyrights (section 47).	Rs. 500 per work

16.	For taking extracts from the indexes (section 47).	Rs. 500 per work
17.	For a certified copy of an extract from the Register of Copyrights or the Indexes (section 47).	Rs. 500 per copy
18.	For a certified copy of any other public document in the custody of the Registrar of Copyrights or Secretary of the Copyright Board.	Rs. 500 per copy
19.	For an application for prevention of importation of infringing copies (section 53)	Rs. 1200 per work per place of entry





THE COPYRIGHT ACT, 1957
(14 OF 1957)

THE COPYRIGHT ACT, 1957

ACT NO. 14 OF 1957[1]

[*4th June*, 1957]

An Act to amend and consolidate the law relating to copyright.

BE it enacted by Parliament in the Eighth Year of the Republic of India as follows:-

CHAPTER I
PRELIMINARY

1. Short title, extent and commencement.— (*1*) This Act may be called the Copyright Act, 1957.

(2) It extends to the whole of India.

(3) It shall come into force on such date[2] as the Central Government may, by notification in the Official Gazette, appoint.

2. Interpretation.— In this Act, unless the context otherwise requires,—

(a) "adaptation" means,-

(i) in relation to a dramatic work, the conversion of the work into a non-dramatic work;

(ii) in relation to a literary work or an artistic work, the conversion of the work into a dramatic work by way of performance in public or otherwise;

(iii) in relation to a literary or dramatic work, any abridgement of the work or any version of the work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book, or in a newspaper, magazine or similar periodical;[3][***]

(iv) in relation to a musical work, any arrangement or transcription of the work; [4][and]

[4][(v) in relation to any work, any use of such work involving its rearrangement or alteration;]

[5][(aa) "Appellate Board" means the Appellate Board referred to in section 11;]

(b) [5]["work of architecture"] means any building or structure having an artistic character or

---

[1] The Act has been extended to Goa, Daman and Diu by Reg. 12 of 1962, sec. 3 and Schedule; to Dadra and Nagar Haveli by Reg. 6 of 1963, sec. 2 and the First Schedule; to Pondicherry by Reg. 7 of 1963, sec. 3 and the First Schedule; and brought into force in the State of Sikkim (w.e.f. 27-4-1979) : *vide* notification No. S.O. 226(E), dated 27-4-1979, *see* Gazette of India, Extraordinary, Part II, sec. 3(*ii*), p.430.

[2] Came into force on 21st January, 1958, *vide* S.R.O No. 269, dated 21st January 1958, *see* Gazette of India, Extraordinary, Part II, sec. 3, p.167.

[3] The word "and" omitted by Act 38 of 1994, s. 2 (w.e.f. 10-5-1995).

[4] Ins. by s. 2, *ibid*. (w.e.f. 10-5-1995).

[5] Subs. by s.2, *ibid*. for "architectural work of art" (w.e.f. 10-5-1995).

design, or any model for such building or structure;

(c) "artistic work" means,—

(i) a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality;

(ii) a [1][work of architecture]; and

(iii) any other work of artistic craftsmanship;

(d) "author" means, —

(i) in relation to a literary or dramatic work, the author of the work;

(ii) in relation to a musical work, the composer;

(iii) in relation to an artistic work other than a photograph, the artist;

(iv) in relation to a photograph, the person taking the photograph;

[2][(v) in relation to a cinematograph film or sound recording, the producer; and

(vi) in relation to any literary, dramatic, musical or artistic work which is computer-generated, the person who causes the work to be created;]

[3][(dd) "broadcast" means communication to the public—

(i) by any means of wireless diffusion, whether in any one or more of the forms of signs, sounds or visual images; or

(ii) by wire,

and includes a re-broadcast;]

(e) "calendar year" means the year commencing on the 1st day of January;

[4][(f) "cinematograph film" means any work of visual recording [5][***] and includes a sound recording accompanying such visual recording and "cinematograph" shall be construed as including any work produced by any process analogous to cinematography including video films;]

[6][(fa) "commercial rental" does not include the rental, lease or lending of a lawfully acquired copy of a computer programme, sound recording, visual recording or cinematograph film for non-profit purposes by a non-profit library or non-profit educational institution;

Explanation.— For the purposes of this clause, a "non-profit library or non-profit educational institution" means a library or educational institution which receives grants from the Government or exempted from payment of tax under the Income-tax Act, 1961(43 of 1961).]

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[1] Subs. by Act 38 of 1994, s. 2, for "architectural work of art" (w.e.f. 10-5-1995).
[2] Subs. by Act 38 of 1994, s. 2, for sub-clauses (*v*) and (*vi*) (w.e.f. 10-5-1995).
[3] Ins. by Act 23 of 1983, s. 3 (w.e.f. 9-8-1984).
[4] Subs. by Act 38 of 1994, s. 2, for clause (f) (w.e.f. 10-5-1995).
[5] The words "on any medium produced through a process from which a moving image may be produced by any means" omitted by Act 27 of 2012, s. 2(i) (w.e.f. 21-6-2012).
[6] Ins. by s. 2(ii), ibid. (w.e.f. 21-6-2012).

[1][(ff) "communication to the public" means making any work or performance available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than by issuing physical copies of it, whether simultaneously or at places and times chosen individually, regardless of whether any member of the public actually sees, hears or otherwise enjoys the work or performance so made available.

Explanation.— For the purposes of this clause, communication through satellite or cable or any other means of simultaneous communication to more than one household or place of residence including residential rooms of any hotel or hostel shall be deemed to be communication to the public;]

(ffa) "composer", in relation to a musical work, means the person who composes the music regardless of whether he records it in any form of graphical notation;

(ffb) "computer" includes any electronic or similar device having information processing capabilities;

(ffc) "computer programme" means 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;

(ffd) "copyright society" means a society registered under sub-section (3) of section 33;]

(g) "delivery", in relation to a lecture, includes delivery by means of any mechanical instrument or by [2][broadcast];

(h) "dramatic work" includes any piece for recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting, form of which is fixed in writing or otherwise but does not include a cinematograph film;

[3][(hh) "duplicating equipment" means any mechanical contrivance or device used or intended to be used for making copies of any work;]

(i) "engravings" include etchings, lithographs, wood-cuts, prints and other similar works, not being photographs;

(j) "exclusive licence" means a licence which confers on the licensee or on the licensee and persons authorised by him, to the exclusion of all other persons (including the owner of the copyright) any right comprised in the copyright in a work, and "exclusive licensee" shall be construed accordingly;

(k) "Government work" means a work which is made or published by or under the direction or control of—

(i) the Government or any department of the Government;

(ii) any Legislature in India;

(iii) any court, tribunal or other judicial authority in India;

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[1] Subs. by Act 27 of 2012, s. 2(iii), , for clause (ff) (w.e.f. 21-6-2012).
[2] Subs. by Act 23 of 1983, s. 2, for "radio-diffusion" (w.e.f. 9-8-1984).
[3] Ins. by Act 65 of 1984, s. 2 (w.e.f. 8-10-1984).

[1][(l) "Indian work" means a literary, dramatic or musical work,—

(i) the author of which is a citizen of India; or

(ii) which is first published in India; or

(iii) the author of which, in the case of an unpublished work, is, at the time of the making of the work, a citizen of India;]

[2][(m) "infringing copy" means—

(i) in relation to a literary, dramatic, musical or artistic work, a reproduction thereof otherwise than in the form of a cinematographic film;

(ii) in relation to a cinematographic film, a copy of the film made on any medium by any means;

(iii) in relation to a sound recording, any other recording embodying the same sound recording, made by any means;

(iv) in relation to a programme or performance in which such a broadcast reproduction right or a performer's right subsists under the provisions of this Act, the sound recording or a cinematographic film of such programme or performance,

if such reproduction, copy or sound recording is made or imported in contravention of the provisions of this Act;]

(n) "lecture" includes address, speech and sermon;

[3][(o) "literary work" includes computer programmes, tables and compilations including computer [4][databases];]

[3][(p) "musical work" means a work consisting of music and includes any graphical notation of such work but does not include any words or any action intended to be sung, spoken or performed with the music;]

[3][(q) "performance", in relation to performer's right, means any visual or acoustic presentation made live by one or more performers;]

[3][(qq) "performer" includes an actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, a person delivering a lecture or any other person who makes a performance;]

[5][Provided that in a cinematograph film a person whose performance is casual or incidental in nature and, in the normal course of the practice of the industry, is not acknowledged anywhere including in the credits of the film shall not be treated as a performer except for the purpose of clause (b) of Section 38B;]

[6][***]

(s) "photograph" includes photo-lithograph and any work produced by any process analogous to photography

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[1] Subs. by Act 23 of 1983, s. 3, for clause (l) (w.e.f. 9-8-1984).
[2] Subs. by Act 38 of 1994, s. 2, for clause (m) (w.e.f. 10-5-1995).
[3] Subs. by s. 2, ibid. (w.e.f. 10-5-1995).
[4] Subs. by Act 49 of 1999, s. 2, for "data basis" (w.e.f. 15-1-2000).
[5] Ins. By Act 27 of 2012, sec. 2(iv) (w.e.f. 21-6-2012, vide S.O. 1393(E), dated 20th June, 2012)
[6] Omitted clause (r) by Act 38 of 1994, s. 2, ibid. (w.e.f. 10-5-1995).

but does not include any part of a cinematograph film;

(t) "plate" includes any stereotype or other plate, stone, block, mould, matrix, transfer, negative, [1][duplicating equipment] or other device used or intended to be used for printing or reproducing copies of any work, and any matrix or other appliance by which [2][sound recording] for the acoustic presentation of the work are or are intended to be made;

(u) "prescribed" means prescribed by rules made under this Act;

[3][(uu) "producer", in relation to a cinematograph film or sound recording, means a person who takes the initiative and responsibility for making the work;]

[4][***]

[5][***]

[6][(x) "reprography" means the making of copies of a work, by photocopying or similar means;

[7][(xa) "Right Management Information" means,—

(a) the title or other information identifying the work or performance;

(b) the name of the author or performer;

(c) the name and address of the owner of rights;

(d) terms and conditions regarding the use of the rights; and

(e) any number or code that represents the information referred to in sub-clauses (a) to (d),

but does not include any device or procedure intended to identify the user.]

(xx) "sound recording" means a recording of sounds from which such sounds may be produced regardless of the medium on which such recording is made or the method by which the sounds are produced;]

[8][(xxa) "visual recording" means the recording in any medium, by any method including the storing of it by any electronic means, of moving images or of the representations thereof, from which they can be perceived, reproduced or communicated by any method.]

(y) "work" means any of the following works, namely:—

(i) a literary, dramatic, musical or artistic work;

(ii) a cinematograph film;

(iii) a [2][sound recording];

(z) "work of joint authorship" means a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors;

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[1] Ins. by Act 65 of 1984, s. 2 (w.e.f. 8-10-1984).
[2] Subs. by Act 38 of 1994, s. 2, for "record" (w.e.f. 10-5-1995).
[3] Ins. by s. 2, ibid. (10-5-1995).
[4] Omitted clause (v) by Act 23 of 1983, s. 2 (w.e.f. 9-8-1984).
[5] Omitted clause (w) by Act 38 of 1994, s. 2 (w.e.f. 10-5-1995).
[6] Subs. by s. 2, ibid., for clause (x) (w.e.f. 10-5-1995).
[7] Ins. by Act 27 of 2012, s. 2(v) (w.e.f. 21-6-2012).
[8] Ins. by s. 2(vi), ibid (w.e.f. 21-6-2012).

(za) "work of sculpture" includes casts and models.

[1][**3. Meaning of publication.—** For the purposes of this Act, "publication" means making a work available to the public by issue of copies or by communicating the work to the public.]

4. When work not deemed to be published or performed in public.— Except in relation to infringement of copyright, a work shall not be deemed to be published or performed in public, if published, or performed in public, without the licence of the owner of the copyright.

5. When work deemed to be first published in India.— For the purposes of this Act, a work published in India shall be deemed to be first published in India, notwithstanding that it has been published simultaneously in some other country, unless such other country provides a shorter term of copyright for such work; and a work shall be deemed to be published simultaneously in India and in another country if the time between the publication in India and the publication in such other country does not exceed thirty days or such other period as the Central Government may, in relation to any specified country, determine.

[2][**6. Certain disputes to be decided by [3][Appellate Board].—** If any question arises—

(a) whether a work has been published or as to the date on which a work was published for the purposes of Chapter V, or

(b) whether the term of copyright for any work is shorter in any other country than that provided in respect of that work under this Act,

it shall be referred to the [4][Appellate Board] constituted under section 11 whose decision thereon shall be final:

Provided that if in the opinion of the [4][Appellate Board], the issue of copies or communication to the public referred to in section 3 was of an insignificant nature, it shall not be deemed to be publication for the purposes of that section.]

7. Nationality of author where the making of unpublished work is extended over considerable period.— Where, in the case of an unpublished work, the making of the work is extended over a considerable period, the author of the work shall, for the purposes of this Act, be deemed to be a citizen of, or domiciled in, that country of which he was a citizen or wherein he was domiciled during any substantial part of that period.

8. Domicile of corporations.— For the purposes of this Act, a body corporate shall be deemed to be domiciled in India if it is incorporated under any law in force in India.

CHAPTER II
COPYRIGHT OFFICE AND [3][APPELLATE BOARD]

9. Copyright Office.—(1) There shall be established for the purposes of this Act an office to be called the Copyright Office.

(2) The Copyright Office shall be under the immediate control of the Registrar of Copyrights who shall act

[1] Subs. by Act 38 of 1994, s. 3, for section 3 (w.e.f. 10-5-1995).
[2] Subs. by Act 38 of 1994, s. 4, for section 6 (w.e.f. 10-5-1995).
[3] Subs. by Act 7 of 2017, s.160 (a), for "Copyright Board" (w.e.f. 26-5-2017).

under the superintendence and direction of the Central Government.

(3) There shall be a seal for the Copyright Office.

10. Registrar and Deputy Registrar of Copyrights.—(1) The Central Government shall appoint a Registrar of Copyrights and may appoint one or more Deputy Registrars of Copyrights.

(2) A Deputy Registrar of Copyrights shall discharge under the superintendence and direction of the Registrar of Copyrights such functions of the Registrar under this Act as the Registrar may, from time to time, assign to him; and any reference in this Act to the Registrar of Copyrights shall include a reference to a Deputy Registrar of Copyrights when so discharging any such functions.

[1][11. Appellate Board.—(1) The Appellate Board established under section 83 of the Trade Marks Act, 1999 (47 of 1999) shall, on and from the commencement of Part XIV of Chapter VI of the Finance Act, 2017 (7 of 2017), be the Appellate Board for the purposes of this Act and the said Appellate Board shall exercise the jurisdiction, powers and authority conferred on it by or under this Act.]

12. Powers and procedure of [2][Appellate Board].— (1) The [1][Appellate Board] shall, subject to any rules that may be made under this Act, have power to regulate its own procedure, including the fixing of places and times of its sittings:

Provided that the [1][Appellate Board] shall ordinarily hear any proceeding instituted before it under this Act within the zone in which, at the time of the institution of the proceeding, the person instituting the proceeding actually and voluntarily resides or carries on business or personally works for gain.

Explanation.— In this sub-section "zone" means a zone specified in section 15 of the States Reorganisation Act, 1956 (37 of 1956).

(2) The [1][Appellate Board] may exercise and discharge its powers and functions through Benches constituted by the Chairman of the [1][Appellate Board] from amongst its [3][members]:

[4][Provided that, if the Chairman is of opinion that any matter of importance is required to be heard by a larger bench, he may refer the matter to a special bench consisting of five members.]

[5][***]

(5) No member of the [2][Appellate Board] shall take part in any proceedings before the Board in respect of any matter in which he has a personal interest.

(6) No act done or proceeding taken by the [2][Appellate Board] under this Act shall be questioned on the ground merely of the existence of any vacancy in, or defect in the constitution of, the Board.

(7) The [2][Appellate Board] shall be deemed to be a civil court for the purposes of [6][sections 345 and 346 of the Code of Criminal Procedure, 1973] and all proceedings before the Board shall be deemed to be judicial

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[1] Subs. by Act 7 of 2017, s.160 (c), for s. 11(w.e.f. 26-5-2017)
[2] Subs. by Act 7 of 2017, s.160 (a), for "Copyright Board" (w.e.f. 26-5-2017).
[3] Subs. by Act 27 of 2012, s. 4, for "members, each Bench consisting of not less than three members" (w.e.f. 21-6-2012).
[4] Ins. by Act 38 of 1994, s. 6 (w.e.f. 10-5-1995).
[5] Sub-section (3) and (4) omitted by Act 7 of 2017, s.160 (d) (w.e.f. 26-5-2017).
[6] Subs. by Act 23 of 1983, s. 6, for "sections 480 and 482 of the Code of Criminal Procedure, 1898 (5 of 1898)" (w.e.f. 9-8-1984).

proceedings within the meaning of sections 193 and 228 of the Indian Penal Code.

CHAPTER III
COPYRIGHT

13. Works in which copyright subsists.— (1) Subject to the provisions of this section and the other provisions of this Act, copyright shall subsist throughout India in the following classes of works, that is to say,—

(a) original literary, dramatic, musical and artistic works;

(b) cinematograph films; and

(c) [1][sound recording].

(2) Copyright shall not subsist in any work specified in sub-section (1), other than a work to which the provisions of section 40 or section 41 apply, unless,—

(i) in the case of a published work, the work is first published in India, or where the work is first published outside India, the author is at the date of such publication, or in a case where the author was dead at that date, was at the time of his death, a citizen of India;

(ii) in the case of an unpublished work other than a [2][work of architecture], the author is at the date of the making of the work a citizen of India or domiciled in India; and

(iii) in the case of [2][work of architecture], the work is located in India.

Explanation.— In the case of a work of joint authorship, the conditions conferring copyright specified in this sub-section shall be satisfied by all the authors of the work.

(3) Copyright shall not subsist—

(a) in any cinematograph film if a substantial part of the film is an infringement of the copyright in any other work;

(b) in any [1][sound recording] made in respect of a literary, dramatic or musical work, if in making the [1][sound recording], copyright in such work has been infringed.

(4) The copyright in a cinematograph film or a [1][sound recording] shall not affect the separate copyright in any work in respect of which or a substantial part of which, the film, or, as the case may be, the [1][sound recording] is made.

(5) In the case of [2][work of architecture], copyright shall subsist only in the artistic character and design and shall not extend to processes or methods of construction.

[3]**[14. Meaning of Copyright.—** For the purposes of this Act, "copyright" means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:—

(a) in the case of a literary, dramatic or musical work, not being a computer programme,—

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[1] Subs. by Act 38 of 1994, s. 2, for "record" (w.e.f. 10-5-1995).
[2] Subs. by s. 2, ibid., for "architectural work of art" (w.e.f. 10-5-1995).
[3] Subs. by s. 7, *ibid*., for section 14 (w.e.f. 10-5-1995).

(i) to reproduce the work in any material form including the storing of it in any medium by electronic means;

(ii) to issue copies of the work to the public not being copies already in circulation;

(iii) to perform the work in public, or communicate it to the public;

(iv) to make any cinematograph film or sound recording in respect of the work;

(v) to make any translation of the work;

(vi) to make any adaptation of the work;

(vii) to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi);

(b) in the case of a computer programme,—

(i) to do any of the acts specified in clause (a);

[1][(ii) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme:

Provided that such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental.]

(c) in the case of an artistic work,—

[2][(i) to reproduce the work in any material form including—

(A) the storing of it in any medium by electronic or other means; or

(B) depiction in three-dimensions of a two-dimensional work; or

(C) depiction in two-dimensions of a three-dimensional work;]

(ii) to communicate the work to the public;

(iii) to issue copies of the work to the public not being copies already in circulation;

(iv) to include the work in any cinematograph film;

(v) to make any adaptation of the work;

(vi) to do in relation to adaptation of the work any of the acts specified in relation to the work in sub-clauses (i) to (iv);

(d) in the case of a cinematograph film,—

[3][(i) to make a copy of the film, including—

(A) a photograph of any image forming part thereof; or

(B) storing of it in any medium by electronic or other means;]

[4][(ii) to sell or give on commercial rental or offer for sale or for such rental, any copy of the film;]

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[1] Subs. by Act 49 of 1999, s. 3, for sub-clause (ii) (w.e.f. 15-1-2000).
[2] Subs. by Act 27 of 2012, s. 5(i), for sub-clause (i) (w.e.f. 21-6-2012).
[3] Subs. by Act 27 of 2012,s. 5(ii)(a), for sub-clause (i) (w.e.f. 21-6-2012)
[4] Subs. by Act 27 of 2012,s. 5(ii)(b), for sub-clause (ii) (w.e.f. 21-6-2012)

(iii) to communicate the film to the public;

(e) in the case of a sound recording,—

(i) to make any other sound recording embodying it [1][including storing of it in any medium by electronic or other means];

[2] [(ii) to sell or give on commercial rental or offer for sale or for such rental, any copy of the sound recording;]

(iii) to communicate the sound recording to the public.

15. Special provision regarding Copyright in designs registered or capable of being registered under the [3][***] [4][Designs Act, 2000 (16 of 2000)].— (1) Copyright shall not subsist under this Act in any design which is registered under the [3][***] [4][Designs Act, 2000 (16 of 2000)].

(2) Copyright in any design, which is capable of being registered under the [3][***] [4][Designs Act, 2000 (16 of 2000)] but which has not been so registered, shall cease as soon as any article to which the design has been applied has been reproduced more than fifty times by an industrial process by the owner of the copyright or, with his licence, by any other person.

16. No copyright except as provided in this Act.— No person shall be entitled to copyright or any similar right in any work, whether published or unpublished, otherwise than under and in accordance with the provisions of this Act or of any other law for the time being in force, but nothing in this section shall be construed as abrogating any right or jurisdiction to restrain a breach of trust or confidence.

CHAPTER IV
OWNERSHIP OF COPYRIGHT AND RIGHTS OF THE OWNER

17. First owner of copyright.— Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein:

Provided that—

(a) in the case of a literary, dramatic or artistic work made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship, for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall, in the absence of any agreement to the contrary, be the first owner of the copyright in the work in so far as the copyright relates to the publication of the work in any newspaper, magazine or similar periodical, or to the reproduction of the work for the purpose of its being so published, but in all other respects the author shall be the first owner of the copyright in the work;

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[1] Ins. by Act 27 of 2012, s. 5(iii)(a), (w.e.f. 21-6-2012)
[2] Subs. by Act 27 of 2012, s. 5(iii)(b), for sub-clause (2) (w.e.f. 21-6-2012)
[3] The words "Indian Patents and" omitted by Act 23 of 1983, s. 7 (w.e.f. 9-8-1984)
[4] Subs. by Act 27 of 2012, s. 6, for "Designs Act, 1911 (2 of 1911)" (w.e.f. 21-6-2012)

(b) subject to the provisions of clause (a), in the case of a photograph taken, or a painting or portrait drawn, or an engraving or a cinematograph film made, for valuable consideration at the instance of any person, such person shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

(c) in the case of a work made in the course of the author's employment under a contract of service or apprenticeship, to which clause (a) or clause (b) does not apply, the employer shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

[1][(cc) in the case of any address or speech delivered in public, the person who has delivered such address or speech or if such person has delivered such address or speech on behalf of any other person, such other person shall be the first owner of the copyright therein notwithstanding that the person who delivers such address or speech, or, as the case may be, the person on whose behalf such address or speech is delivered, is employed by any other person who arranges such address or speech or on whose behalf or premises such address or speech is delivered;]

(d) in the case of a Government work, Government shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

[2][(dd) in the case of a work made or first published by or under the direction or control of any public undertaking, such public undertaking shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein.

Explanation.— For the purposes of this clause and section 28A, "public undertaking" means—

(i) an undertaking owned or controlled by Government; or

(ii) a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);or

(iii) a body corporate established by or under any Central, Provincial or State Act;]

(e) in the case of a work to which the provisions of section 41 apply, the international organization concerned shall be the first owner of the copyright therein.

[3][Provided that in case of any work incorporated in a cinematograph work, nothing contained in clauses (b) and (c) shall affect the right of the author in the work referred to in clause (a) of sub-section (1) of section 13.]

18. Assignment of copyright.— (1) The owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or partially and either generally or subject to limitations and either for the whole term of the copyright or any part thereof:

Provided that in the case of the assignment of copyright in any future work, the assignment shall take effect only when the work comes into existence.

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[1] Ins. by Act 23 of 1983, s. 8(a) (w.e.f. 9-8-1984).
[2] Ins. by Act 23 of 1983, s. 8(b) (w.e.f. 9-8-1984).
[3] Ins. by Act 27 of 2012, s. 7 (w.e.f. 21-6-2012).

[1][Provided further that no such assignment shall be applied to any medium or mode of exploitation of the work which did not exist or was not in commercial use at the time when the assignment was made, unless the assignment specifically referred to such medium or mode of exploitation of the work:

Provided also that the author of the literary or musical work included in a cinematograph film shall not assign or waive the right to receive royalties to be shared on an equal basis with the assignee of copyright for the utilization of such work in any form other than for the communication to the public of the work along with the cinematograph film in a cinema hall, except to the legal heirs of the authors or to a copyright society for collection and distribution and any agreement to contrary shall be void:

Provided also that the author of the literary or musical work included in the sound recording but not forming part of any cinematograph film shall not assign or waive the right to receive royalties to be shared on an equal basis with the assignee of copyright for any utilization of such work except to the legal heirs of the authors or to a collecting society for collection and distribution and any assignment to the contrary shall be void.]

(2) Where the assignee of a copyright becomes entitled to any right comprised in the copyright, the assignee as respects the rights so assigned, and the assignor as respects the rights not assigned, shall be treated for the purposes of this Act as the owner of copyright and the provisions of this Act shall have effect accordingly.

(3) In this section, the expression "assignee" as respects the assignment of the copyright in any future work includes the legal representatives of the assignee, if the assignee dies before the work comes into existence.

19. Mode of assignment.— [2][(1)] No assignment of the copyright in any work shall be valid unless it is in writing signed by the assignor or by his duly authorised agent.

[3][(2) The assignment of copyright in any work shall identify such work, and shall specify the rights assigned and the duration and territorial extent of such assignment.

(3) The assignment of copyright in any work shall also specify the amount of [4][royalty and any other consideration payable], to the author or his legal heirs during the currency of the assignment and the assignment shall be subject to revision, extension or termination on terms mutually agreed upon by the parties.

(4) Where the assignee does not exercise the rights assigned to him under any of the other sub-sections of this section within a period of one year from the date of assignment, the assignment in respect of such rights shall be deemed to have lapsed after the expiry of the said period unless otherwise specified in the assignment.

(5) If the period of assignment is not stated, it shall be deemed to be five years from the date of assignment.

(6) If the territorial extent of assignment of the rights is not specified, it shall be presumed to extend within India.

(7) Nothing in sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) or sub-section (6) shall

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[1] Ins. by Act 27 of 2012, s. 8 (w.e.f. 21-6-2012)
[2] Section 19 re-numbered as sub-section (*1*) thereof by Act 23 of 1983, s. 9 (w.e.f. 9-8-1984).
[3] Subs. by Act 38 of 1994, s. 8, for sub-section (*2*) (w.e.f. 10-5-1995).
[4] Subs. by Act 27 of 2012, s. 9(i), for "royalty payable, if any" (w.e.f. 21-6-2012).

be applicable to assignments made before the coming into force of the Copyright (Amendment) Act, 1994 (38 of 1994)].

[1][(8) The assignment of copyright in any work contrary to the terms and conditions of the rights already assigned to a copyright society in which the author of the work is a member shall be void.]

[1][(9) No assignment of copyright in any work to make a cinematograph film shall affect the right of the author of the work to claim an equal share of royalties and consideration payable in case of utilisation of the work in any form other than for the communication to the public of the work, along with the cinematograph film in a cinema hall.]

[1][(10) No assignment of the copyright in any work to make a sound recording which does not form part of any cinematograph film shall affect the right of the author of the work to claim an equal share of royalties and consideration payable for any utilization of such work in any form.]

[2][19A. Disputes with respect to assignment of copyright.— (1) If an assignee fails to make sufficient exercise of the rights assigned to him, and such failure is not attributable to any act or omission of the assignor, then, the [3][Appellate Board] may, on receipt of a complaint from the assignor and after holding such inquiry as it may deem necessary, revoke such assignment.

(2) If any dispute arises with respect to the assignment of any copyright, the [3][Appellate Board] may, on receipt of a complaint from the aggrieved party and after holding such inquiry as it considers necessary, pass such order as it may deem fit including an order for the recovery of any royalty payable:

Provided that the [3][Appellate Board] shall not pass any order under this sub-section to revoke the assignment unless it is satisfied that the terms of assignment are harsh to the assignor in case the assignor is also the author:

[4][Provided further that, pending the disposal of an application for revocation of assignment under this sub-section, the [3][Appellate Board] may pass such order, as it deems fit regarding implementation of the terms and conditions of assignment including any consideration to be paid for the enjoyment of the rights assigned:

Provided also that] no order of revocation of assignment under this sub-section, shall be made within a period of five years from the date of such assignment.]

[5][(3) Every complaint received under sub-section (2) shall be dealt with by the [3][Appellate Board] as far as possible and efforts shall be made to pass the final order in the matter within a period of six months from the date of receipt of the complaint and any delay in compliance of the same, the [3][Appellate Board] shall record the reasons thereof.]

20. Transmission of copyright in manuscript by testamentary disposition.— Where under a bequest a person is entitled to the manuscript of a literary, dramatic or musical work, or to an artistic work, and the work

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[1] Ins. by Act 27 of 2012, s. 9(ii), (w.e.f. 21-6-2012).
[2] Subs. by Act 38 of 1994, s. 9, for section 19A (w.e.f. 10-5-1995).
[3] Subs. by Act 7 of 2017, s.160 (a), for "Copyright Board" (w.e.f. 26-5-2017).
[4] Subs. by Act 27 of 2012, s. 10(i), for "Provided further that" (w.e.f. 21-6-2012).
[5] Ins. by Act 27 of 2012, s. 10(ii) (w.e.f. 21-6-2012).

was not published before the death of the testator, the bequest shall, unless the contrary intention is indicated in the testator's Will or any codicil thereto, be construed as including the copyright in the work in so far as the testator was the owner of the copyright immediately before his death.

Explanation.— In this section, the expression "manuscript" means the original document embodying the work, whether written by hand or not.

21. Right of author to relinquish copyright.— (1) The author of a work may relinquish all or any of the rights comprised in the copyright in the work by giving notice in the prescribed form to [1][the Registrar of Copyrights or by way of public notice] and thereupon such rights shall, subject to the provisions of sub-section (3), cease to exist from the date of the notice.

(2) On receipt of a notice under sub-section (1), the Registrar of Copyrights shall cause it to be published in the Official Gazette and in such other manner as he may deem fit.

[2][(2A) The Registrar of Copyright shall, within fourteen days from the publication of the notice in the Official Gazette, post the notice on the official website of the Copyright Office so as to remain in the public domain for a period of not less than three years.]

(3) The relinquishment of all or any of the rights comprised in the copyright in a work shall not affect any rights subsisting in favour of any person on the date of the notice referred to in sub-section (1).

CHAPTER V
TERM OF COPYRIGHT

22. Term of copyright in published literary, dramatic, musical and artistic works.— Except as otherwise hereinafter provided, copyright shall subsist in any literary, dramatic, musical or artistic work [3][***] published within the lifetime of the author until [4][sixty years] from the beginning of the calendar year next following the year in which the author dies.

Explanation.— In this section the reference to the author shall, in the case of a work of joint authorship, be construed as a reference to the author who dies last.

23. Term of copyright in anonymous and pseudonymous works.— (1) In the case of literary, dramatic, musical or artistic work (other than a photograph), which is published anonymously or pseudonymously, copyright shall subsist until [5][sixty years] from the beginning of the calendar year next following the year in which the work is first published:

Provided that where the identity of the author is disclosed before the expiry of the said period, copyright shall

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[1] Subs. by Act 27 of 2012, s. 11(i), for "the Registrar of Copyright" (w.e.f. 21-6-2012).
[2] Ins. by s. 11(ii), *ibid*. (w.e.f. 21-6-2012).
[3] The words "(other than a photograph)" omitted by Act 27 of 2012 s. 12, (w.e.f. 21-6-2012).
[4] Subs. by Act 13 of 1992, s. 2, for "fifty years" (w.e.f. 28-10-1991).
[5] Subs. by Act 13 of 1992, s. 2, for "fifty years" (w.e.f. 28-10-1991).

subsist until [1][sixty years] from the beginning of the calendar year next following the year in which the author dies.

(2) In sub-section (1), references to the author shall, in the case of an anonymous work of joint authorship, be construed,—

(a) where the identity of one of the authors is disclosed, as references to that author;

(b) where the identity of more authors than one is disclosed, as references to the author who dies last from amongst such authors.

(3) In sub-section (1), references to the author shall, in the case of a pseudonyms work of joint authorship, be construed,—

(a) where the names of one or more (but not all) of the authors are pseudonyms and his or their identity is not disclosed, as references to the author whose name is not a pseudonym, or, if the names of two or more of the authors are not pseudonyms, as references to such of those authors who dies last;

(b) where the names of one or more (but not all) of the authors are pseudonyms and the identity of one or more of them is disclosed, as references to the author who dies last from amongst the authors whose names are not pseudonyms and the authors whose names are pseudonyms and are disclosed; and

(c) where the names of all the authors are pseudonyms and the identity of one of them is disclosed, as references to the author whose identity is disclosed or if the identity of two or more of such authors is disclosed, as references to such of those authors who dies last.

Explanation.— For the purposes of this section, the identity of an author shall be deemed to have been disclosed, if either the identity of the author is disclosed publicly by both the author and the publisher or is otherwise established to the satisfaction of the [2][Appellate Board] by that author.

24. Term of copyright in posthumous work.— (1) In the case of a literary, dramatic or musical work or an engraving, in which copyright subsists at the date of the death of the author or, in the case of any such work of joint authorship, at or immediately before the date of the death of the author who dies last, but which, or any adaptation of which, has not been published before that date, copyright shall subsist until [1][sixty years] from the beginning of the calendar year next following the year in which the work is first published or, where an adaptation of the work is published in any earlier year, from the beginning of the calendar year next following that year.

(2) For the purposes of this section a literary, dramatic or musical work or an adaptation of any such work shall be deemed to have been published, if it has been performed in public or if any [3][sound recording] made in respect of the work have been sold to the public or have been offered for sale to the public.

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[1] Subs. by Act 13 of 1992, s. 2, for "fifty years" (w.e.f. 28-10-1991).
[2] Subs. by Act 7 of 2017, s.160 (a), for "Copyright Board" (w.e.f. 26-5-2017).
[3] Subs. by Act 38 of 1994, s. 2, for "record" (w.e.f. 10-5-1995).

[1][**25. Term of copyright in photographs. —** *Omitted by the Copyright (Amendment) Act, 2012 (27 of 2012), s. 13 (w.e.f. 21-6-2012).*

26. Term of copyright in cinematograph films.— In the case of a cinematograph film, copyright shall subsist until [2][sixty years] from the beginning of the calendar year next following the year in which the film is published.

27. Term of copyright in sound recording.— In the case of a [3][sound recording] copyright shall subsist until [2][sixty years] from the beginning of the calendar year next following the year in which the [3][sound recording] is published.

28. Term of copyright in Government works.— In the case of a Government work, where Government is the first owner of the copyright therein, copyright shall subsist until [2][sixty years] from the beginning of the calendar year next following the year in which the work is first published.

[4][**28A. Term of copyright in works of public undertakings.—** In the case of a work, where a public undertaking is the first owner of the copyright therein, copyright shall subsist until [2][sixty years] from the beginning of the calendar year next following the year in which the work is first published.]

29. Term of copyright in works of international organisations.— In the case of a work of an international organisation to which the provisions of section 41 apply, copyright shall subsist until [2][sixty years] from the beginning of the calendar year next following the year in which the work is first published.

CHAPTER VI
LICENCES

30. Licences by owners of copyright.— The owner of the copyright in any existing work or the prospective owner of the copyright in any future work may grant any interest in the right by licence in [5][writing by him] or by his duly authorised agent:

Provided that in the case of a licence relating to copyright in any future work, the licence shall take effect only when the work comes into existence.

Explanation.— Where a person to whom a licence relating to copyright in any future work is granted under this section dies before the work comes into existence, his legal representatives shall, in the absence of any provision to the contrary in the licence, be entitled to the benefit of the licence.

[6][**30A. Application of [7][section 19].—** The provisions of [7][sections 19] shall, with any necessary adaptations and modifications, apply in relation to a licence under section 30 as they apply in relation to assignment of

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[1] Omitted by Act 27 of 2012 (w.e.f. 21-6-2012).
[2] Subs. by Act 13 of 1992, s. 2, for "fifty years" (w.e.f. 28-10-1991).
[3] Subs. by Act 38 of 1994, s. 2, for "record" (w.e.f. 10-5-1995).
[4] Ins. by Act 23 of 1983, s. 11 (w.e.f. 9-8-1984).
[5] Subs. by Act 27 of 2012, s. 14, for "writing signed by him" (w.e.f. 21-6-2012).
[6] Ins. by Act 38 of 1994, s. 10 (w.e.f. 10-5-1995).
[7] Subs. by Act 27 of 2012, s. 15, for "section 19 and 19A" (w.e.f. 21-6-2012).

copyright in a work.]

31. Compulsory licence in works withheld from public.— (1) If at any time during the term of copyright in [1][any work] which has been published or performed in public, a complaint is made to the [2][Appellate Board] that the owner of copyright in the work—

(a) has refused to republish or allow the republication 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

(b) has refused to allow communication to the public by [3][broadcast] of such work or in the case of a [4][sound recording] the work recorded in such [4][sound recording], on terms which the complainant considers reasonable;

the [2][Appellate 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 Copyrights to grant to the complainant a licence to republish the work, perform the work in public or communicate the work to the public by [3][broadcast], as the case may be, subject to payment to the owner of the copyright of such compensation and subject to such other terms and conditions as the [2][Appellate Board] may determine; and thereupon the Registrar of Copyrights shall grant the [5][licence to such person or persons who, in the opinion of the [2][Appellate Board], is or are qualified to do so] in accordance with the directions of the [2][Appellate Board], on payment of such fee as may be prescribed.

[6][***]

[7][***]

[8][**31A. Compulsory licence in unpublished [9][or published works].—** [10][(1) Where, in the case of any unpublished work or any work published or communicated to the public and the work is withheld from the public in India, the author is dead or unknown or cannot be traced, or the owner of the copyright in such work cannot be found, any person may apply to the [2][Appellate Board] for a licence to publish or communicate to the public such work or a translation thereof in any language.]

(2) Before making an application under sub-section (1), the applicant shall publish his proposal in one issue of a daily newspaper in the English language having circulation in the major part of the country and where the application is for the publication of a translation in any language, also in one issue of any daily newspaper in that language.

(3) Every such application shall be made in such form as may be prescribed and shall be accompanied with a copy of the advertisement issued under sub-section (2) and such fee as may be prescribed.

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[1] Subs. by Act 27 of 2012, s. 16(i)(a), for "any Indian work" (w.e.f. 21-6-2012).
[2] Subs. by Act 7 of 2017, s.160 (a), for "Copyright Board" (w.e.f. 26-5-2017)
[3] Subs. by Act 23 of 1983, s. 2, for "radio-diffusion" (w.e.f. 9-8-1984).
[4] Subs. by Act 38 of 1994, s. 2, for "record" (w.e.f. 10-5-1995).
[5] Subs. by Act 27 of 2012, s. 16(i)(b), for "licence to the complainant" (w.e.f. 21-6-2012).
[6] The Explanation omitted by s. 16(i)(c), *ibid*. (w.e.f. 21-6-2012).
[7] Sub-section (2) omitted by Act 27 of 2012, s. 16(ii) (w.e.f. 21-6-2012).
[8] Ins. by Act 23 of 1983, s. 12 (w.e.f. 9-8-1984).
[9] Subs. by Act 27 of 2012, s. 17(i), for "Indian works" (w.e.f. 21-6-2012).
[10] Subs. by s. 17(ii), ibid., for sub-section (1) (w.e.f. 21-6-2012).

(4) Where an application is made to the [1][Appellate Board] under this section, it may, after holding such inquiry as may be prescribed, direct the Registrar of Copyrights to grant to the applicant a licence to publish the work or a translation thereof in the language mentioned in the application subject to the payment of such royalty and subject to such other terms and conditions as the [1][Appellate Board] may determine, and thereupon the Registrar of Copyrights shall grant the licence to the applicant in accordance with the direction of the [1][Appellate Board].

(5) Where a licence is granted under this section, the Registrar of Copyrights may, by order, direct the applicant to deposit the amount of the royalty determined by the [1][Appellate Board] in the public account of India or in any other account specified by the [1][Appellate Board] so as to enable the owner of the copyright or, as the case may be, his heirs, executors or the legal representatives to claim such royalty at any time.

(6) Without prejudice to the foregoing provisions of this section, in the case of a work referred to in sub-section (1), if the original author is dead, the Central Government may, if it considers that the publication of the work is desirable in the national interest, require the heirs, executors or legal representatives of the author to publish such work within such period as may be specified by it.

(7) Where any work is not published within the period specified by the Central Government under sub-section (6), the [1][Appellate Board] may, on an application made by any person for permission to publish the work and after hearing the parties concerned, permit such publication on payment of such royalty as the [1][Appellate Board] may, in the circumstances of such case, determine in the prescribed manner.]

[2][**31B. Compulsory licence for benefit of disabled.—** (1) Any person working for the benefit of persons with disability on a profit basis or for business may apply to the [1][Appellate Board], in such form and manner and accompanied by such fee as may be prescribed, for a compulsory licence to publish any work in which copyright subsists for the benefit of such persons, in a case to which clause (zb) of sub-section (1) of section 52 does not apply and the [1][Appellate Board] shall dispose of such application as expeditiously as possible and endeavour shall be made to dispose of such application within a period of two months from the date of receipt of the application.

(2) The [1][Appellate Board] may, on receipt of an application under sub-section (1), inquire, or direct such inquiry as it considers necessary to establish the credentials of the applicant and satisfy itself that the application has been made in good faith.

(3) If the [1][Appellate Board] is satisfied, after giving to the owners of rights in the work a reasonable opportunity of being heard and after holding such inquiry as it may deem necessary, that a compulsory licence needs to be issued to make the work available to the disabled, it may direct the Registrar of Copyrights to grant to the applicant such a licence to publish the work.

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[1] Subs. by Act 7 of 2017, s.160(a), for "Copyright Board" (w.e.f. 26-5-2017).
[2] Ins. by Act 27 of 2012, s. 18 (w.e.f. 21-6-2012).

(4) Every compulsory licence issued under this section shall specify the means and format of publication, the period during which the compulsory licence may be exercised and, in the case of issue of copies, the number of copies that may be issued including the rate or royalty:

Provided that where the [1][Appellate Board] has issued such a compulsory licence it may, on a further application and after giving reasonable opportunity to the owners of rights, extend the period of such compulsory licence and allow the issue of more copies as it may deem fit.]

[2][**31C. Statutory licence for cover versions.**— (*1*) Any person desirous of making a cover version, being a sound recording in respect of any literary, dramatic or musical work, where sound recordings of that work have been made by or with the licence or consent of the owner of the right in the work, may do so subject to the provisions of this section:

Provided that such sound recordings shall be in the same medium as the last recording, unless the medium of the last recording is no longer in current commercial use.

(2) The person making the sound recordings shall give prior notice of his intention to make the sound recordings in the manner as may be prescribed, and provide in advance copies of all covers or labels with which the sound recordings are to be sold, and pay in advance, to the owner of rights in each work royalties in respect of all copies to be made by him, at the rate fixed by the [1][Appellate Board] in this behalf:

Provided that such sound recordings shall not be sold or issued in any form of packaging or with any cover or label which is likely to mislead or confuse the public as to their identity, and in particular shall not contain the name or depict in any way any performer of an earlier sound recording of the same work or any cinematograph film in which such sound recording was incorporated and, further, shall state on the cover that it is a cover version made under this section.

(3) The person making such sound recordings shall not make any alteration in the literary or musical work which has not been made previously by or with the consent of the owner of rights, or which is not technically necessary for the purpose of making the sound recordings:

Provided that such sound recordings shall not be made until the expiration of five calendar years after the end of the year in which the first sound recordings of the work was made.

(4) One royalty in respect of such sound recordings shall be paid for a minimum of fifty thousand copies of each work during each calendar year in which copies of it are made:

Provided that the [1][Appellate Board] may, by general order, fix a lower minimum in respect of works in a

[1] Subs. by Act 7 of 2017, s.160 (a), for "Copyright Board" (w.e.f. 26-5-2017).
[2] Ins. by Act 27 of 2012, s. 18 (w.e.f. 21-06-2012)

particular language or dialect having regard to the potential circulation of such works.

(5) The person making such sound recordings shall maintain such registers and books of account in respect thereof, including full details of existing stock as may be prescribed and shall allow the owner of rights or his duly authorised agent or representative to inspect all records and books of account relating to such sound recording:

Provided that if on a complaint brought before the [1][Appellate Board] to the effect that the owner of rights has not been paid in full for any sound recordings purporting to be made in pursuance of this section, the [1][Appellate Board] is, *prima facie*, satisfied that the complaint is genuine, it may pass an order *ex parte* directing the person making the sound recording to cease from making further copies and, after holding such inquiry as it considers necessary, make such further order as it may deem fit, including an order for payment of royalty.

Explanation.— For the purposes of this section "cover version" means a sound recording made in accordance with this section.]

[2][31D. Statutory licence for broadcasting of literary and musical works and sound recording.— (1) Any broadcasting organisation 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 provisions of this section.

(2) The broadcasting organisation shall give prior notice, in such manner as may be prescribed, of its intention to broadcast the work stating the duration and territorial coverage of the broadcast, and shall pay to the owner of rights in each work royalties in the manner and at the rate fixed by the [1][Appellate Board].

(3) The rates of royalties for radio broadcasting shall be different from television broadcasting and the [1][Appellate Board] shall fix separate rates for radio broadcasting and television broadcasting.

(4) In fixing the manner and the rate of royalty under sub-section (2), the [1][Appellate Board] may require the broadcasting organisation to pay an advance to the owners of rights.

(5) The names of the authors and the principal performers of the work shall, except in case of the broadcasting organisation communicating such work by way of performance, be announced with the broadcast.

(6) No fresh alteration to any literary or musical work, which is not technically necessary for the purpose of broadcasting, other than shortening the work for convenience of broadcast, shall be made without the consent of the owners of rights.

(7) The broadcasting organisation shall—

(a) maintain such records and books of account, and render to the owners of rights such reports and accounts; and

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[1] Subs. by Act 7 of 2017, s.160 (a), for "Copyright Board" (w.e.f. 26-5-2017).
[2] Ins. by Act 27 of 2012, s. 18 (w.e.f. 21-06-2012)

(b) allow the owner of rights or his duly authorised agent or representative to inspect all records and books of account relating to such broadcast,

in such manner as may be prescribed.

(8) Nothing in this section shall affect the operation of any licence issued or any agreement entered into before the commencement of the Copyright (Amendment) Act, 2012.]

32. Licence to produce and publish translations.— (1) Any person may apply to the [1][Appellate Board] for a licence to produce and publish a translation of a literary or dramatic work in any language [2][after a period of seven years from the first publication of the work].

[3][(1A) Notwithstanding anything contained in sub-section (1), any person may apply to the [1][Appellate Board] for a licence to produce and publish a translation, in printed or analogous forms of reproduction, of a literary or dramatic work, other than an Indian work, in any language in general use in India after a period of three years from the first publication of such work, if such translation is required for the purposes of teaching, scholarship or research:

Provided that where such translation is in a language not in general use in any developed country, such application may be made after a period of one year from such publication.]

(2) Every [4][application under this section] shall be made in such form as may be prescribed and shall state the proposed retail price of a copy of the translation of the work.

(3) Every applicant for a licence under this section shall, along with his application, deposit with the Registrar of Copyrights such fee as may be prescribed.

(4) Where an application is made to the [1][Appellate Board] under this section, it may, after holding such inquiry as may be prescribed, grant to the applicant a licence, not being an exclusive licence, to produce and publish a translation of the work in the language mentioned in [5][the application—

(i) subject to the condition that the applicant shall pay to the owner of the copyright in the work royalties in respect of copies of the translation of the work sold to the public, calculated at such rate as the [1][Appellate Board] may, in the circumstances of each case, determine in the prescribed manner; and

(ii) where such licence is granted on an application under sub-section (1A), subject also to the condition that the licence shall not extend to the export of copies of the translation of the work outside India and every copy of such translation shall contain a notice in the language of such translation that the copy is available for distribution only in India:

Provided that nothing in clause (ii) shall apply to the export by Government or any authority under the

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[1] Subs. by Act 7 of 2017, s.160 (a), for "Copyright Board" (w.e.f. 26-5-2017).
[2] Ins. by Act 27 of 2012, s. 18 (w.e.f 21-6-2012)
[3] Ins. by Act 23 of 1983, s. 13 (w.e.f. 9-8-1984).
[4] Subs. by s. 13, ibid., for "such application" (w.e.f. 9-8-1984).
[5] Subs. by s. 13, ibid., for certain words (w.e.f. 9-8-1984).

Government of copies of such translation in a language other than English, French or Spanish to any country if—

1) such copies are sent to citizens of India residing outside India or to any association of such citizens outside India; or

2) such copies are meant to be used for purposes of teaching, scholarship or research and not for any commercial purpose; and

3) in either case, the permission for such export has been given by the Government of that country:]

[1][Provided further that no licence under this section] shall be granted, unless—

(a) a translation of the work in the language mentioned in the application has not been published by the owner of the copyright in the work or any person authorised by him, [2][within seven years or three years or one year, as the case may be, of the first publication of the work], or if a translation has been so published, it has been out of print;

(b) the applicant has proved to the satisfaction of the [3][Appellate Board] that he had requested and had been denied authorisation by the owner of the copyright to produce and publish such translation, or that [4][he was, after due diligence on his part, unable to find] the owner of the copyright;

(c) where the applicant was unable to find the owner of the copyright, he had sent a copy of his request for [5][such authorisation by registered air mail post to the publisher whose name appears from the work, and in the case of an application for a licence under sub-section (1)], not less than two months before [6][such application];

[7][(cc) a period of six months in the case of an application under sub-section (1A) (not being an application under the proviso thereto), or nine months in the case of an application under the proviso to that sub-section, has elapsed from the date of making the request under clause (b) of this proviso or where a copy of the request has been sent under clause (c) of this proviso, from the date of sending of such copy, and the translation of the work in the language mentioned in the application has not been published by the owner of the copyright in the work or any person authorised by him within the said period of six months or nine months, as the case may be;

[8][(ccc) in the case of any application made under sub-section (1A),—

(i) the name of the author and the title of the particular edition of the work proposed to be translated are printed on all the copies of the translation;

(ii) if the work is composed mainly of illustrations, the provisions of section 32A are also complied

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[1] Subs. by Act 23 of 1983, s. 13, for "Provided that no such licence" (w.e.f. 9-8-1984).
[2] Subs. by s. 13, ibid., for "within seven years of the first publication of the work" (w.e.f. 9-8-1984).
[3] Subs. by Act 7 of 2017, s.160 (a), for "Copyright Board" (w.e.f. 26-5-2017).
[4] Subs. by Act 23 of 1983, s. 13,., for "he was unable to find" (w.e.f. 9-8-1984).
[5] Subs. by s. 13, ibid., for "such authorisation to the publisher whose name appears from the work" (w.e.f. 9-8-1984).
[6] Subs. by s. 13, ibid., for "the application for the licence" (w.e.f. 9-8-1984).
[7] Ins. by s. 13, ibid. (w.e.f. 9-8-1984).
[8] Ins. by s. 13, ibid. (w.e.f. 9-8-1984).

with;]

(d) the [1][Appellate Board] is satisfied that the applicant is competent to produce and publish a correct translation of the work and possesses the means to pay to the owner of the copyright the royalties payable to him under this section;

(e) the author has not withdrawn from circulation copies of the work; and

(f) an opportunity of being heard is given, wherever practicable, to the owner of the copyright in the work.

[2][(*5*) Any broadcasting authority may apply to the [1][Appellate Board] for a licence to produce and publish the translation of—

(a) a work referred to in sub-section (*1A*) and published in printed or analogous forms of reproduction; or

(b) any text incorporated in audio-visual fixations prepared and published solely for the purpose of systematic instructional activities,

for broadcasting such translation for the purposes of teaching or for the dissemination of the results of specialized, technical or scientific research to the experts in any particular field.

[3][(6) The provisions of sub-sections (*2*) to (*4*) in so far as they are relatable to an application under sub-section (*1A*), shall, with the necessary modifications, apply to the grant of a licence under sub-section (*5*) and such licence shall not also be granted unless—

(a) the translation is made from a work lawfully acquired;

(b) the broadcast is made through the medium of sound and visual recordings;

(c) such recording has been lawfully and exclusively made for the purpose of broadcasting in India by the applicant or by other broadcasting agency; and

(d) the translation and the broadcasting of such translation are not used for any commercial purposes.

Explanation.— For the purposes of this section,—

(a) "developed country" means a country which is not a developing country;

(b) "developing country" means a country which is for the time being regarded as such in conformity with the practice of the General Assembly of the United Nations;

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[1] Subs. by Act 7 of 2017, s.160, for "Copyright Board" (w.e.f. 26-5-2017).
[2] Ins. by Act 23 of 1983, s. 13, (w.e.f. 9-8-1984).
[3] Ins. by Act 23 of 1983, s.13(e) (w.e.f 9-8-1984)

(c) "purposes of research" does not include purposes of industrial research, or purposes of research by bodies corporate (not being bodies corporate owned or controlled by Government) or other associations or body of persons for commercial purposes;

(d) "purposes of teaching, research or scholarship" includes—

(i) purposes of instructional activity at all levels in educational, institutions, including Schools, Colleges, Universities and tutorial institutions; and

(ii) purposes of all other types of organised educational activity.]

[1][**32A. Licence to reproduce and publish works for certain purposes.**— (*1*) Where, after the expiration of the relevant period from the date of the first publication of an edition of a literary, scientific or artistic work,—

(a) the copies of such edition are not made available in India; or

(b) such copies have not been put on sale in India for a period of six months,

to the general public, or in connection with systematic instructional activities at a price reasonably related to that normally charged in India for comparable works by the owner of the right of reproduction or by any person authorised by him in this behalf, any person may apply to the [2][Appellate Board] for a licence to reproduce and publish such work in printed or analogous forms of reproduction at the price at which such edition is sold or at a lower price for the purposes of systematic instructional activities.

(2) Every such application shall be made in such form as may be prescribed and shall state the proposed retail price of a copy of the work to be reproduced.

(3) Every applicant for a licence under this section shall, along with his application, deposit with the Registrar of Copyrights such fee as may be prescribed.

(4) Where an application is made to the [2][Appellate Board] under this section, it may, after holding such inquiry as may be prescribed, grant to the applicant a licence, not being an exclusive licence, to produce and publish a reproduction of the work mentioned in the application subject to the conditions that,—

(i) the applicant shall pay to the owner of the copyright in the work royalties in respect of copies of the reproduction of the work sold to the public, calculated at such rate as the [2][Appellate Board] may, in the circumstances of each case, determine in the prescribed manner;

(ii) a licence granted under this section shall not extend to the export of copies of the reproduction of the work outside India and every copy of such reproduction shall contain a notice that the copy is available for distribution only in India:

Provided that no such licence shall be granted unless—

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[1] Ins. by Act 23 of 1983, s.14 (w.e.f 9-8-1984)

[2] Subs. by Act 7 of 2017, s.160 (a), for "Copyright Board" (w.e.f. 26-5-2017).

(a) the applicant has proved to the satisfaction of the [1][Appellate Board] that he had requested and had been denied authorisation by the owner of the copyright in the work to reproduce and publish such work or that he was, after due diligence on his part, unable to find such owner;

(b) where the applicant was unable to find the owner of the copyright, he had sent a copy of his request for such authorisation by registered air-mail post to the publisher whose name appears from the work not less than three months before the application for the licence;

(c) the [1][Appellate Board] is satisfied that the applicant is competent to reproduce and publish an accurate reproduction of the work and possesses the means to pay to the owner of the copyright the royalties payable to him under this section;

(d) the applicant undertakes to reproduce and publish the work at such price as may be fixed by the [1][Appellate Board], being a price reasonably related to the price normally charged in India for works of the same standard on the same or similar subjects;

(e) a period of six months in the case of an application for the reproduction and publication of any work of natural science, physical science, mathematics or technology, or a period of three months in the case of an application for the reproduction and publication of any other work, has elapsed from the date of making the request under clause (*a*), or where a copy of the request has been sent under clause (*b*), from the date of sending of a copy, and a reproduction of the work has not been published by the owner of the copyright in the work or any person authorised by him within the said period of six months or, three months, as the case may be;

(f) the name of the author and the title of the particular edition of the work proposed to be reproduced are printed on all the copies of the reproduction;

(g) the author has not withdrawn from circulation copies of the work; and

(h) an opportunity of being heard is given, wherever practicable, to the owner of the copyright in the work.

(5) No licence to reproduce and publish the translation of a work shall be granted under this section unless such translation has been published by the owner of the right of translation or any person authorised by him and the translation is not in a language in general use in India.

(6) The provisions of this section shall also apply to the reproduction and publication, or translation into a language in general use in India, of any text incorporated in audio-visual fixations prepared and published solely for the purpose of systematic instructional activities.

Explanation.— For the purposes of this section, "relevant period", in relation to any work, means a period of—

(a) seven years from the date of the first publication of that work, where the application is for

[1] Subs. by Act 7 of 2017, s.160 (a), for "Copyright Board" (w.e.f. 26-5-2017).

the reproduction and publication of any work of, or relating to, fiction, poetry, drama, music or art;

(b) three years from the date of the first publication of that work, where the application is for the reproduction and publication of any work of, or relating to, natural science, physical science, mathematics or technology; and

(c) five years from the date of the first publication of that work, in any other case.]

[1][**32B. Termination of licences issued under this Chapter.**— (*1*) If, at any time after the granting of a licence to produce and publish the translation of a work in any language under sub-section (*1A*) of section 32 (hereafter in this sub-section referred to as the licensed work), the owner of the copyright in the work or any person authorised 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 licence so granted shall be terminated:

Provided that no such termination shall take effect until after the expiry of a period of three months from the date of service of a notice in the prescribed manner on the person holding such licence by the owner of the right of translation intimating the publication of the translation as aforesaid:

Provided further that copies of the licensed work produced and published by the person holding such licence before the termination of the licence takes effect may continue to be sold or distributed until the copies already produced and published are exhausted.

(*2*) If, at any time after the granting of a licence to produce and publish the reproduction or translation of any work under section 32A, the owner of the right of reproduction or any person authorised by him sells or distributes copies of such work or a translation thereof, as the case may be, 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 works of the same standard on the same or similar subject, the licence so granted shall be terminated:

Provided that no such termination shall take effect until after the expiry of a period of three months from the date of service of a notice in the prescribed manner on the person holding the licence by the owner of the right of reproduction intimating the sale or distribution of the copies of the editions of work as aforesaid:

Provided further that any copies already reproduced by the licensee before such termination takes effect may continue to be sold or distributed until the copies already produced are exhausted.]

[1] Ins. by Act 23 of 1983, s.14 (w.e.f 9-8-1984)

[1][CHAPTER VII

COPYRIGHT SOCIETIES

33. Registration of Copyright society.— (*1*) No person or association of persons shall, after coming into force of the Copyright (Amendment) Act, 1994 (38 of 1994) commence or, carry on the business of issuing or granting licences in respect of any work in which copyright subsists or in respect of any other rights conferred by this Act except under or in accordance with the registration granted under sub-section (*3*):

Provided that an owner of copyright shall, in his individual capacity, continue to have the right to grant licences in respect of his own works consistent with his obligations as a member of the registered copyright society:

[2][Provided further that the business of issuing or granting licence in respect of literary, dramatic, musical and artistic works incorporated in a cinematograph films or sound recordings shall be carried out only through a copyright society duly registered under this Act:

Provided also] that a performing rights society functioning in accordance with the provisions of section 33 on the date immediately before the coming into force of the Copyright (Amendment) Act, 1994 (38 of 1994) shall be deemed to be a copyright society for the purposes of this Chapter and every such society shall get itself registered within a period of one year from the date of commencement of the Copyright (Amendment) Act, 1994.

(2) Any association of persons who fulfils such conditions as may be prescribed may apply for permission to do the business specified in sub-section (*1*) to the Registrar of Copyrights who shall submit the application to the Central Government.

(3) The Central Government may, having regard to the interests of the authors and other owners of rights under this Act, the interest and convenience of the public and in particular of the groups of persons who are most likely to seek licences in respect of the relevant rights and the ability and professional competence of the applicants, register such association of persons as a copyright society subject to such conditions as may be prescribed:

Provided that the Central Government shall not ordinarily register more than one copyright society to do business in respect of the same class of works.

[3][(*3A*) The registration granted to a copyright society under sub-section (*3*) shall be for a period of five years and may be renewed from time to time before the end of every five years on a request in the prescribed form and the Central Government may renew the registration after considering the report of Registrar of Copyrights on the working of the copyright society under section 36:

Provided that the renewal of the registration of a copyright society shall be subject to the continued

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[1] Chapter VII subs. by Act 38 of 1994, s. 11, (w.e.f. 10-5-1995).
[2] Subs. by Act 27 of 2012, s. 19 (i), for "Provided further" (w.e.f. 21-6-2012)
[3] Ins. by Act 27 of 2012, s. 19 (ii) (w.e.f. 21-6-2012).

collective control of the copyright society being shared with the authors of works in their capacity as owners of copyright or of the right to receive royalty:

Provided further that every copyright society already registered before the coming into force of the Copyright (Amendment) Act, 2012 (27 of 2012) shall get itself registered under this Chapter within a period of one year from the date of commencement of the Copyright (Amendment) Act, 2012.]

(4) The Central Government may, if it is satisfied that a copyright society is being managed in a manner detrimental to the interests of the [1][authors and other owners of right] concerned, cancel the registration of such society after such inquiry as may be prescribed.

(5) If the Central Government is of the opinion that in the interest of the [1][authors and other owners of right] concerned [2][or for non-compliance of sections 33A, sub-section (*3*) of section 35 and section 36 or any change carried out in the instrument by which the copyright society is established or incorporated and registered by the Central Government without prior notice to it], it is necessary so to do, it may, by order, suspend the registration of such society pending inquiry for such period not exceeding one year as may be specified in such order under sub-section (*4*) and that Government shall appoint an administrator to discharge the functions of the copyright society.

[3][**33A. Tariff Scheme by copyright societies**.— (*1*) Every copyright society shall publish its tariff scheme in such manner as may be prescribed.

(*2*) Any person who is aggrieved by the tariff scheme may appeal to the [4][Appellate Board] and the Board may, if satisfied after holding such inquiry as it may consider necessary, make such orders as may be required to remove any unreasonable element, anomaly or inconsistency therein:

Provided that the aggrieved person shall pay to the copyright society any fee as may be prescribed that has fallen due before making an appeal to the [4][Appellate Board] and shall continue to pay such fee until the appeal is decided, and the Board shall not issue any order staying the collection of such fee pending disposal of the appeal:

Provided further that the [4][Appellate Board] may after hearing the parties fix an interim tariff and direct the aggrieved parties to make the payment accordingly pending disposal of the appeal.]

34. Administration of rights of owner by copyright society.— (*1*) Subject to such conditions as may be prescribed,—

(a) a copyright society may accept from an [1][author and other owners of right] exclusive authorisation to administer any right in any work by issue of licences or collection of licence fees or both; and

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[1] Subs. by Act 27 of 2012, s. 19 (iii), for "owners of rights" (w.e.f. 21-6-2012).
[2] Ins. By Act 27 of 2012, sec. 19(iv), (w.e.f. 21-6-2012).
[3] Ins. By Act 27 of 2012, sec. 20, (w.e.f. 21-6-2012).
[4] Subs. by Act 7 of 2017, s.160 (a), for "Copyright Board" (w.e.f. 26-5-2017).

(b) an [1][author and other owners of right] shall have the right to withdraw such authorisation without prejudice to the rights of the copyright society under any contract.

(2) It shall be competent for a copyright society to enter into agreement with any foreign society or organisation administering rights corresponding to rights under this Act, to entrust to such foreign society or organisation the administration in any foreign country of rights administered by the said copyright society in India, or for administering in India the rights administered in a foreign country by such foreign society or organisation:

Provided that no such society or organisation shall permit any discrimination in regard to the terms of licence or the distribution of fees collected between rights in Indian and other works.

(3) Subject to such conditions as may be prescribed, a copyright society may—

(i) issue licences under section 30 in respect of any rights under this Act;

(ii) collect fees in pursuance of such licences;

(iii) distribute such fees among [1][author and other owners of right] after making deductions for its own expenses;

(iv) perform any other functions consistent with the provisions of section 35.

34A. [*Payment of remunerations by copyright society*.] *Rep. by the Copyright* (*Amendment*) *Act*, 2012 (27 *of* 2012), *s*. 22 (*w.e.f.* 21-6-2012).

35. Control over the copyright society by the [2][author and other owners of right].— (*1*) Every copyright society shall be subject to the collective control of the [2][author and other owners of right] under this Act whose rights it administers (not being [2] [author and other owners of right] under this Act administered by a foreign society or organisation referred to in sub-section (*2*) of section 34) and shall, in such manner as may be prescribed,—

(a) obtain the approval of such [2][author and other owners of right] for its procedures of collection and distribution of fees;

(b) obtain their approval for the utilisation of any amounts collected as fees for any purpose other than distribution to the [2][author and other owners of right]; and

(c) provide to such owners regular, full and detailed information concerning all its activities, in relation to the administration of their rights.

(*2*) All fees distributed among the [2][author and other owners of right] shall, as far as may be, be

[1] Subs. by Act 27 of 2012, s. 21, for "owner of rights" (w.e.f. 21-6-2012).
[2] Subs. by Act 27 of 2012, s. 23(a), for "owner of rights" (w.e.f. 21-6-2012).

distributed in proportion to the actual use of their works.

[1][(*3*) Every copyright society shall have a governing body with such number of persons elected from among the members of the society consisting of equal number of authors and owners of work for the purpose of the administration of the society as may be specified.]

[1][(*4*) All members of copyrights society shall enjoy equal membership rights and there shall be no discrimination between authors and owners of right in the distribution of royalties.]

36. Submission of returns and reports.— (*1*) Every copyright society shall submit to the Registrar of Copyrights such returns as may be prescribed.

(*2*) Any officer duly authorised by the Central Government in this behalf may call for any report and also call for any records of any copyright society for the purpose of satisfying himself that the fees collected by the society in respect of rights administered by it are being utilised or distributed in accordance with the provisions of this Act.

36A. Rights and liabilities of performing rights societies.— Nothing in this Chapter shall affect any rights or liabilities in any work in connection with a [2][copyright society] which had accrued or were incurred on or before the day prior to the commencement of [3][the Copyright (Amendment) Act, 2012 (27 of 2012], or any legal proceedings in respect of any such rights or liabilities pending on that day.]

CHAPTER VIII

[4][RIGHTS OF BROADCASTING ORGANISATION AND OF PERFORMERS]

[5][**37. Broadcast reproduction right.**— (*1*) Every broadcasting organisation shall have a special right to be known as "broadcast reproduction right" in respect of its broadcasts.

(2) The broadcast reproduction right shall subsist until twenty-five years from the beginning of the calendar year next following the year in which the broadcast is made.

(3) During the continuance of a broadcast reproduction right in relation to any broadcast, any person who, without the licence of the owner of the right does any of the following acts of the broadcast or any substantial part thereof,—

(a) re-broadcast the broadcast; or

(b) causes the broadcast to be heard or seen by the public on payment of any charges; or

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[1] Subs. by Act 27 of 2012, s. 23(b), for "owner of rights" (w.e.f. 21-6-2012).
[2] Subs. by Act 27 of 2012, s. 24(a), for "performing rights society" (w.e.f. 21-6-2012).
[3] Subs. by s. 24(b), *ibid.*, for "the Copyright (Amendment) Act, 1994 (38 of 1994)" (w.e.f. 21-6-2012).
[4] Subs. by Act 38 of 1994, s. 12, for "RIGHTS OF BROADCASTING AUTHORITIES" (w.e.f. 10-5-1995).
[5] Subs. by Act 38 of 1994, s. 13, for section 37 (w.e.f. 10-5-1995).

(c) makes any sound recording or visual recording of the broadcast; or

(d) makes any reproduction of such sound recording or visual recording where such initial recording was done without licence or, where it was licensed, for any purpose not envisaged by such licence; or

[1][(*e*) sells or gives on commercial rental or offer for sale or for such rental, any such sound recording or visual recording referred to in clause (*c*) or clause (*d*)].]

shall, subject to the provision of section 39, be deemed to have infringed the broadcast reproduction right.

[2]**[38. Performer's right.**— (*1*) Where any performer appears or engages in any performance, he shall have a special right to be known as the "performer's right" in relation to such performance.

(2) The performer's right shall subsist until [3][fifty years] from the beginning of the calendar year next following the year in which the performance is made.

[4][***]

[5][**38A. Exclusive right of performers**.— (*1*) Without prejudice to the rights conferred on authors, the performer's right which is an exclusive right subject to the provisions of this Act to do or authorise for doing any of the following acts in respect of the performance or any substantial part thereof, namely:—

(a) to make a sound recording or a visual recording of the performance, including—

(i) reproduction of it in any material form including the storing of it in any medium by electronic or any other means;

(ii) issuance of copies of it to the public not being copies already in circulation;

(iii) communication of it to the public;

(iv) selling or giving it on commercial rental or offer for sale or for commercial rental any copy of the recording;

(b) to broadcast or communicate the performance to the public except where the performance is already broadcast.

(2) Once a performer has, by written agreement, consented to the incorporation of his performance in a cinematograph film he shall not, in the absence of any contract to the contrary, object to the enjoyment by the producer of the film of the performer's right in the same film:

Provided that, notwithstanding anything contained in this sub-section, the performer shall be entitled for

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[1] Subs. by Act 27 of 2012, s. 25, for clause (*e*) (w.e.f. 21-6-2012).
[2] Subs. by Act 38 of 1994, s. 14, for section 38 (w.e.f. 10-5-1995).
[3] Subs. by 49 of 1999, s. 4, for "twenty-five years" (w.e.f. 15-1-2000).
[4] Omitted by Act 27 of 2012, sub-section (3) and sub-section (4) of section 26. (w.e.f. 21-6-2012)
[5] Ins. by Act 27 of 2012, s. 27, (w.e.f. 21-6-2012).

royalties in case of making of the performances for commercial use.]

[1][**38B. Moral rights of the performer.**— The performer of a performance shall, independently of his right after assignment, either wholly or partially of his right, have the right,—

(a) to claim to be identified as the performer of his performance except where omission is dictated by the manner of the use of the performance; and

(b) to restrain or claim damage in respect of any distortion, mutilation or other modification of his performance that would be prejudicial to his reputation.

Explanation.—For the purposes of this clause, it is hereby clarified that mere removal of any portion of a performance for the purpose of editing, or to fit the recording within a limited duration, or any other modification required for purely technical reasons shall not be deemed to be prejudicial to the performer's reputation.]

[2][**39. Acts not infringing broadcast reproduction right or performer's right.**— No broadcast reproduction right or performer's right shall be deemed to be infringed by—

(a) the making of any sound recording or visual recording for the private use of the person making such recording, or solely for purposes of *bona fide* teaching or research; or

(b) the use, consistent with fair dealing, of excerpts of a performance or of a broadcast in the reporting of current events or for *bona fide* review, teaching or research; or

(c) such other acts, with any necessary adaptations and modifications, which do not constitute infringement of copyright under section 52.]

[3][**39A. Certain provisions to apply in case of broadcast reproduction right and performer's rights. (1)**Sections 18, 19, 30, 30A, 33, 33A, 34, 35, 36, 53, 55, 58, 63, 64, 65, 65A, 65B and 66 shall, with necessary adaptations and modifications, apply in relation to the broadcast reproduction right in any broadcast and the performer's right in any performance as they apply in relation to copyright in a work:

Provided that where copyright or performer's right subsists in respect of any work or performance that has been broadcast, no licence to reproduce such broadcast, shall be given without the consent of the owner of right or performer, as the case may be, or both of them:

Provided further that the broadcast reproduction right or performer's right shall not subsist in any broadcast or performance if that broadcast or performance is an infringement of the copyright in any work.

(*2*) The broadcast reproduction right or the performer's right shall not affect the separate copyright in any

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[1] Ins. by s. 27, Act 27 of 2012. (w.e.f. 21-6-2012).
[2] Subs. by Act 38 of 1994, s.15, for s. 39 (w.e.f 10-5-1995).
[3] Subs. by Act 27 of 2012, s. 28, for section 39A (w.e.f. 21-6-2012).

work in respect of which, the broadcast or the performance, as the case may be, is made.]

CHAPTER IX

INTERNATIONAL COPYRIGHT

40. Power to extend copyright to foreign works.— The Central Government may, by order[1] published in the Official Gazette, direct that all or any provisions of this Act shall apply—

(a) to works first published in any territory outside India to which the order relates in like manner as if they were first published within India;

(b) to unpublished works, or any class thereof, the authors whereof were at the time of the making of the work, subjects or citizens of a foreign country to which the order relates, in like manner as if the authors were citizens of India;

(c) in respect of domicile in any territory outside India to which the order relates in like manner as if such domicile were in India;

(d) to any work of which the author was at the date of the first publication thereof, or, in a case where the author was dead at that date, was at the time of his death, a subject or citizen of a foreign country to which the order relates in like manner as if the author was a citizen of India at that date or time;

and thereupon, subject to the provisions of this Chapter and of the order, this Act shall apply accordingly:

Provided that—

(i) before making an order under this section in respect of any foreign country (other than a country with which India has entered into a treaty or which is a party to a convention relating to copyright to which India is also a party), the Central Government shall be satisfied that the foreign country has made, or has undertaken to make, such provisions, if any, as it appears to the Central Government expedient to require for the protection in that country of works entitled to copyright under the provisions of this Act;

(ii) the order may provide that the provisions of this Act shall apply either generally or in relation to such classes of works or such classes of cases as may be specified in the order;

(iii) the order may provide that the term of copyright in India shall not exceed that conferred by the law of the country to which the order relates [2][but such a term or copyright shall not exceed the term of copyright provided under this Act];

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[1] International Copyright order, 1999 (w.e.f. 6-4-1999)

[2] Ins. by Act 27 of 2012, s. 29 (w.e.f. 21-6-2012).

(iv) the order may provide that the enjoyment of the rights conferred by this Act shall be subject to the accomplishment of such conditions and formalities, if any, as may be prescribed by the order;

(v) in applying the provisions of this Act as to ownership of copyright, the order may make such exceptions and modifications as appear necessary, having regard to the law of the foreign country;

(vi) the order may provide that this Act or any part thereof shall not apply to works made before the commencement of the order or that this Act or any part thereof shall not apply to works first published before the commencement of the order.

[1][**40A. Power of Central Government to apply Chapter VIII to broadcasting organisations and performers in certain other countries**.— (*1*) If the Central Government is satisfied that a foreign country (other than a country with which India has entered into a treaty or which is a party to a convention relating to rights of broadcasting organisations and performers to which India is also a party) has made or has undertaken to make such provisions, if any, as it appears to the Central Government expedient to require, for the protection in that foreign country, of the rights of broadcasting organizations and performers as is available under this Act, it may, by order published in the Official Gazette, direct that the provisions of Chapter VIII shall apply—

(a) to broadcasting organisation whose headquarters is situated in a country to which the order relates or, the broadcast was transmitted from a transmitter situated in a country to which the order relates as if the headquarters of such organisation were situated in India or such broadcast were made from India;

(b) to performances that took place outside India to which the order relates in like manner as if they took place in India;

(c) to performances that are incorporated in a sound recording published in a country to which the order relates as if it were published in India;

(d) to performances not fixed on a sound recording broadcast by a broadcasting organisation the headquarters of which is located in a country to which the order relates or where the broadcast is transmitted from a transmitter which is situated in a country to which the order relates as if the headquarters of such organisation were situated in India or such broadcast were made from India.

(2) Every order made under sub-section (*1*) may provide that—

(i) the provisions of Chapter VIII, shall apply either generally or in relation to such class or classes of broadcasts or performances or such other class or classes of cases as may be specified in the order;

[1] Ins. by Act 49 of 1999, s. 5 (w.e.f. 15-1-2000).

(ii) the term of the rights of broadcasting organisations and performers in India shall not exceed such term as is conferred by the law of the country to which the order relates

[1][Provided that it does not exceed the period provided under this Act;]

(iii) the enjoyment of the rights conferred by Chapter VIII shall be subject to the accomplishment of such conditions and formalities, if any, as may be specified in that order;

(iv) Chapter VIII or any part thereof shall not apply to broadcast and performances made before the commencement of the order or that Chapter VIII or any part thereof shall not apply to broadcasts and performances broadcast or performed before the commencement of the order;

(v) in case of ownership of rights of broadcasting organisations and performers, the provisions of Chapter VIII shall apply with such exceptions and modifications as the Central Government may, having regard to the law of the foreign country, consider necessary.]

41. Provisions as to works of certain international organisations.— (*1*) Where—

(a) any work is made or first published by or under the direction or control of any organisation to which this section applies, and

(b) there would, apart from this section, be no copyright in the work in India at the time of the making or, as the case may be, of the first publication thereof, and

(c) either—

(i) the work is published as aforesaid in pursuance of an agreement in that behalf with the author, being an agreement which does not reserve to the author the copyright, if any, in the work, or

(ii) under section 17 any copyright in the work would belong to the organisation;

there shall, by virtue of this section, be copyright in the work throughout India.

(2) Any organisation to which this section applies which at the material time had not the legal capacity of a body corporate shall have and be deemed at all material times to have had the legal capacity of a body corporate for the purpose of holding, dealing with, and enforcing copyright and in connection with all legal proceedings relating to copyright.

(3) The organisations to which this section applies are such organisations as the Central Government may, by order[2] published in the Official Gazette, declare to be organisations of which one or more sovereign powers or the Government or Governments thereof are members to which it is expedient that this section shall apply.

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[1] Ins. by Act 27 of 2012, s. 30 (w.e.f. 21-6-2012).
[2] International Copyright order, 1999 (w.e.f. 6-4-1999)

42. Power to restrict rights in works of foreign authors first published in India.— If it appears to the Central Government that a foreign country does not give or has not undertaken to give adequate protection to the works of Indian authors, the Central Government may, by order published in the Official Gazette, direct that such of the provisions of this Act as confer copyright on works first published in India shall not apply to works, published after the date specified in the order, the authors whereof are subjects or citizens of such foreign country and are not domiciled in India, and thereupon those provisions shall not apply to such works.

[1][**42A. Power to restrict rights of foreign broadcasting organisations and performers.**— If it appears to the Central Government that a foreign country does not give or has not undertaken to give adequate protection to rights of broadcasting organisations or performers, the Central Government may, by order published in the Official Gazette, direct that such of the provisions of this Act as confer right to broadcasting organisations or performers, as the case may be, shall not apply to broadcasting organisations or performers whereof are based or incorporated in such foreign country or are subjects or citizens of such foreign country and are not incorporated or domiciled in India, and thereupon those provisions shall not apply to such broadcasting organisations or performers:]

43. **Orders under this Chapter to be laid before Parliament.—** Every order made by the Central Government under this Chapter shall, as soon as may be after it is made, be laid before both Houses of Parliament and shall be subject to such modifications as Parliament may make during the session in which it is so laid or the session immediately following.

CHAPTER X

REGISTRATION OF COPYRIGHT

44. Register of Copyrights.— There shall be kept at the Copyright Office a register in the prescribed form to be called the Register of Copyrights in which may be entered the names or titles of works and the names and addresses of authors, publishers and owners of copyright and such other particulars as may be prescribed.

45. Entries in Register of Copyrights.— (1) The author or publisher of, or the owner of or other person interested in the copyright in, any work may make an application in the prescribed form accompanied by the prescribed fee to the Registrar of Copyrights for entering particulars of the work in the Register of Copyrights:

[2][Provided that in respect of an artistic work which is used or is capable of being used in [3][relation to any goods or services], the application shall include a statement to that effect and shall be accompanied by a certificate from the Registrar of Trade Marks referred to in [4][section 3 of the Trade Marks Act, 1999 (47 of

[1] Ins. by Act 49 of 1999, s. 6 (w.e.f. 15-1-2000).
[2] The proviso added by Act 23 of 1983, s. 16 (w.e.f. 9-8-1984).
[3] Subs. by Act 27 of 2012, s. 31, for "relation to any goods" (w.e.f. 21-6-2012).
[4] Subs. by s. 31, *ibid*., for "section 4 of the Trade and Merchandise Marks Act, 1958 (43 of 1958)" (w.e.f. 21-6-2012).

1999)], to the effect that no trade mark identical with or deceptively similar to such artistic work has been registered under that Act in the name of, or that no application has been made under that Act for such registration by, any person other than the applicant.]

(*2*) On receipt of an application in respect of any work under sub-section (*1*), the Registrar of Copyrights may, after holding such inquiry as he may deem fit, enter the particulars of the work in the Register of Copyrights.

46. Indexes.— There shall be also kept at the Copyright Office such indexes of the Register of Copyrights as may be prescribed.

47. Form and inspection of register.— The Register of Copyrights and indexes thereof kept under this Act shall at all reasonable times be open to inspection, and any person shall be entitled to take copies of, or make extracts from, such register or indexes on payment of such fee and subject to such conditions as may be prescribed.

48. Register of Copyrights to be *prima facie* evidence of particulars entered therein.— The Register of Copyrights shall be *prima facie* evidence of the particulars entered therein and documents purporting to be copies of any entries therein, or extracts therefrom, certified by the Registrar of Copyrights and sealed with the seal of the Copyright Office shall be admissible in evidence in all courts without further proof or production of the original.

49. Correction of entries in the Register of Copyrights.— The Registrar of Copyrights may, in the prescribed cases and subject to the prescribed conditions, amend or alter the Register of Copyrights by—

(a) correcting any error in any name, address or particulars; or

(b) correcting any other error which may have arisen therein by accidental slip or omission.

50. Rectification of Register by [1][Appellate Board].— The [Appellate Board], on application of the Registrar of Copyrights or of any person aggrieved, shall order the rectification of the Register of Copyrights by—

(a) the making of any entry wrongly omitted to be made in the register, or

(b) the expunging of any entry wrongly made in, or remaining on, the register, or

(c) the correction of any error or defect in the register.

[2][**50A. Entries in the Register of Copyrights, etc., to be published.**— Every entry made in the Register of Copyrights or the particulars of any work entered under section 45, the correction of every entry made in such register under section 49, and every rectification ordered under section 50, shall be published by the Registrar of Copyrights in the Official Gazette or in such other manner as he may deem fit.]

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[1] Subs. by Act 7 of 2017, s. 160 (a), for "Copyright Board" (w.e.f. 26-5-2017).
[2] Ins. by Act 23 of 1983, s. 17 (w.e.f. 9-8-1984).

CHAPTER XI

INFRINGEMENT OF COPYRIGHT

51. When copyright infringed.— Copyright in a work shall be deemed to be infringed—

(a) when any person, without a licence granted by the owner of the copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority under this Act—

(i) does anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright, or

[1][(*ii*) permits for profit any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication to the public would be an infringement of copyright; or]

(b) when any person—

(i) makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, or

(ii) distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, or

(iii) by way of trade exhibits in public, or

(iv) imports [2]*** into India,

any infringing copies of the work:

[3][Provided that nothing in sub-clause (*iv*) shall apply to the import of one copy of any work for the private and domestic use of the importer.]

Explanation.— For the purposes of this section, the reproduction of a literary, dramatic, musical or artistic work in the form of a cinematograph film shall be deemed to be an "infringing copy".

52. Certain acts not to be infringement of copyright.— (*1*) The following acts shall not constitute an infringement of copyright, namely,—

[4][(*a*) a fair dealing with any work, not being a computer programme, for the purposes of—

(i) private or personal use, including research;

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[1] Subs. by Act 38 of 1994, s. 16, for sub-clause (*ii*) (w.e.f. 10-5-1995).
[2] The brackets and words "(except for the private and domestic use of the importer)" omitted by Act 65 of 1984, s. 3 (w.e.f. 8-10-1985).
[3] Subs. by Act 38 of 1994, s. 16, for the proviso (w.e.f. 10-5-1995).
[4] Subs. by Act 27 of 2012, s. 32(i), for clause (*a*) (w.e.f. 21-6-2012).

(ii) criticism or review, whether of that work or of any other work;

(iii) the reporting of current events and current affairs, including the reporting of a lecture delivered in public.

Explanation.— The storing of any work in any electronic medium for the purposes mentioned in this clause, including the incidental storage of any computer programme which is not itself an infringing copy for the said purposes, shall not constitute infringement of copyright.]

[1][(*aa*) the making of copies or adaptation of a computer programme by the lawful possessor of a copy of such computer programme, from such copy—

(i) in order to utilise the computer programme for the purpose for which it was supplied; or

(ii) to make back-up copies purely as a temporary protection against loss, destruction or damage in order only to utilise the computer programme for the purpose for which it was supplied;]

[2][(*ab*) the doing of any act necessary to obtain information essential for operating inter-operability of an independently created computer programme with other programmes by a lawful possessor of a computer programme provided that such information is not otherwise readily available;

(*ac*) the observation, study or test of functioning of the computer programme in order to determine the ideas and principles which underline any elements of the programme while performing such acts necessary for the functions for which the computer programme was supplied;

(*ad*) the making of copies or adaptation of the computer programme from a personally legally obtained copy for non-commercial personal use;]

[3][(*b*) the transient or incidental storage of a work or performance purely in the technical process of electronic transmission or communication to the public;

(c)transient or incidental storage of a work or performance for the purpose of providing electronic links, access or integration, where such links, access or integration has not been expressly prohibited by the right holder, unless the person responsible is aware or has reasonable grounds for believing that such storage is of an infringing copy:

Provided that if the person responsible for the storage of the copy has received a written complaint from the owner of copyright in the work, complaining that such transient or incidental storage is an infringement, such person responsible for the storage shall refrain from facilitating such access for a

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[1] Ins. by Act 38 of 1994, s. 17 (w.e.f. 10-5-1995).
[2] Ins. by Act 49 of 1999, s. 7 (w.e.f. 15-1-2000).
[3] Subs. by Act 27 of 2012, s. 32(ii), for clauses (*b*), (*c*), (*d*), (*e*), (*f*), (*g*), (*h*), (*i*) and (*j*) (w.e.f. 21-6-2012).

period of twenty-one days or till he receives an order from the competent court refraining from facilitation access and in case no such order is received before the expiry of such period of twenty-one days, he may continue to provide the facility of such access;

(d) the reproduction of any work for the purpose of a judicial proceeding or for the purpose of a report of a judicial proceeding;

(e) the reproduction or publication of any work prepared by the Secretariat of a Legislature or, where the legislature consists of two Houses, by the Secretariat of either House of the Legislature, exclusively for the use of the members of that Legislature;

(f) the reproduction of any work in a certified copy made or supplied in accordance with any law for the time being in force;

(g) the reading or recitation in public of reasonable extracts from a published literacy or dramatic work;

(h) the publication in a collection, mainly composed of non-copyright matter, *bona fide* intended for instructional use, and so described in the title and in any advertisement issued by or on behalf of the publisher, of short passages from published literary or dramatic works, not themselves published for such use in which copyright subsists:

Provided that not more than two such passages from works by the same author are published by the same publisher during any period of five years.

Explanation.— In the case of a work of joint authorship, references in this clause to passages from works shall include references to passages from works by any one or more of the authors of those passages or by any one or more of those authors in collaboration with any other person;

(i) the reproduction of any work—

(i) by a teacher or a pupil in the course of instruction; or

(ii) as part of the question to be answered in an examination; or

(iii) in answers to such questions;

(j) the performance, in the course of the activities of an educational institution, of a literary, dramatic or musical work by the staff and students of the institution, or of a cinematograph film or a sound recording if the audience is limited to such staff and students, the parents and guadians of the students and persons connected with the activities of the institution or the communication to such an audience of a cinematograph film or sound recording;

(k) the causing of a recording to be heard in public by utilising it,—

(i) in an enclosed room or hall meant for the common use of residents in any residential premises (not being a hotel or similar commercial establishment) as part of the amenities provided

exclusively or mainly for residents therein; or

(ii) as part of the activities of a club or similar organisation which is not established or conducted for profit;]

(l) the performance of a literary, dramatic or musical work by an amateur club or society, if the performance is given to a non-paying audience, or for the benefit of a religious institution;

(m) the reproduction in a newspaper, magazine or other periodical of an article on current economic, political, social or religious topics, unless the author of such article has expressly reserved to himself the right of such reproduction;

[1][(*n*) the storing of a work in any medium by electronic means by a non-commercial public library, for preservation if the library already possesses a non-digital copy of the work;]

(o) the making of not more than three copies of a book (including a pamphlet, sheet of music, map, chart or plan) by or under the direction of the person in charge of a [2][non-commercial public library] for the use of the library if such book is not available for sale in India;

(p) the reproduction, for the purpose of research or private study or with a view to publication, of an unpublished literary, dramatic or musical work kept in a library, museum or other institution to which the public has access:

Provided that where the identity of the author of any such work or, in the case of a work of joint authorship, of any of the authors is known to the library, museum or other institution, as the case may be, the provisions of this clause shall apply only if such reproduction is made at a time more than [3][sixty years] from the date of the death of the author or, in the case of a work of joint authorship, from the death of the author whose identity is known or, if the identity of more authors than one is known from the death of such of those authors who dies last;

(q) the reproduction or publication of—

(i) any matter which has been published in any Official Gazette except an Act of a Legislature;

(ii) any Act of a Legislature subject to the condition that such Act is reproduced or published together with any commentary thereon or any other original matter;

(iii) the report of any committee, commission, council, board or other like body appointed by the Government if such report has been laid on the Table of the Legislature, unless the reproduction or publication of such report is prohibited by the Government;

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[1] Subs. by Act 27 of 2012, s. 32(iii), for clause (*n*) (w.e.f. 21-6-2012).
[2] Subs. by Act 27 of 2012, s. 32(iv), for "public library" (w.e.f. 21-6-2012).
[3] Subs. by Act 49 of 1999, s. 7, for "fifty years" (w.e.f. 15-1-2000).

(iv) any judgment or order of a court, tribunal or other judicial authority, unless the reproduction or publication of such judgment or order is prohibited by the court, the tribunal or other judicial authority, as the case may be;

(r) the production or publication of a translation in any Indian language of an Act of a Legislature and of any rules or orders made thereunder—

(v) if no translation of such Act or rules or orders in that language has been previously been produced or published by the Government; or

(vi) where a translation of such Act or rules or orders in that language has been produced or published by the Government, if the translation is not available for sale to the public:

Provided that such translation contains a statement at a prominent place to the effect that the translation has not been authorised or accepted as authentic by the Government;

[1][(*s*) the making or publishing of a painting, drawing, engraving or photograph of a work of architecture or the display of a work of architecture;]

(t) the making or publishing of a painting, drawing, engraving or photograph of a sculpture, or other artistic work falling under sub-clause (*iii*) of clause (*c*) of section 2, if such work is permanently situate in a public place or any premises to which the public has access;

(u) the inclusion in a cinematograph film of—

(i) any artistic work permanently situate in a public place or any premises to which the public has access; or

(ii) any other artistic work, if such inclusion is only by way of background or is otherwise incidental to the principal matters represented in the film;

(v) the use by the author of an artistic work, where the author of such work is not the owner of the copyright therein, of any mould, cast, sketch, plan, model or study made by him for the purpose of the work:

Provided that he does not thereby repeat or imitate the main design of the work;

[2][(*w*) the making of a three-dimensional object from a two-dimensional artistic work, such as a technical drawing, for the purposes of industrial application of any purely functional part of a useful device;]

(x) the reconstruction of a building or structure in accordance with the architectural drawings or plans by reference to which the building or structure was originally constructed:

Provided that the original construction was made with the consent or licence of the owner of the

[1] Subs. by Act 38 of 1994, s. 17, for clause (*s*) (w.e.f. 9-8-1995).
[2] Subs. by Act 27 of 2012, s. 32, for clause (*w*) (w.e.f. 21-6-2012).

copyright in such drawings and plans;

(y) in relation to a literary, [1][dramatic, artistic or] musical work recorded or reproduced in any cinematograph film, the exhibition of such film after the expiration of the term of copyright therein:

Provided that the provisions of sub-clause (*ii*) of clause (*a*), sub-clause (*i*) of clause (*b*) and clauses (*d*), (*f*), (*g*), (*m*) and (*p*) shall not apply as respects any act unless that act is accompanied by an acknowledgment—

(i) identifying the work by its title or other description; and

(ii) unless the work is anonymous or the author of the work has previously agreed or required that no acknowledgment of his name should be made, also identifying the author;

[2][(*z*) the making of an ephemeral recording, by a broadcasting organisation using its own facilities for its own broadcast by a broadcasting organisation of a work which it has the right to broadcast; and the retention of such recording for archival purposes on the ground of its exceptional documentary character;

(*za*) the performance of a literary, dramatic or musical work or the communication to the public of such work or of a sound recording in the course of any *bona fide* religious ceremony or an official ceremony held by the Central Government or the State Government or any local authority.

Explanation.— For the purpose of this clause, religious ceremony including a marriage procession and other social festivities associated with a marriage;]

[3][(*zb*) the adaptation, reproduction, issue of copies or communication to the public of any work in any accessible format, by—

(i) any person to facilitate persons with disability to access to works including sharing with any person with disability of such accessible format for private or personal use, educational purpose or research; or

(ii) any organisation working for the benefit of the persons with disabilities in case the normal format prevents the enjoyment of such works by such persons:

Provided that the copies of the works in such accessible format are made available to the persons with disabilities on a non-profit basis but to recover only the cost of production:

Provided further that the organisation shall ensure that the copies of works in such accessible format are used only by persons with disabilities and takes reasonable steps to prevent its entry into ordinary channels of business.

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[1] Subs. by Act 27 of 2012, s. 32, for "dramatic or" (w.e.f. 21-6-2012).
[2] Ins. by Act 38 of 1994, s. 17 (w.e.f. 9-8-1995).
[3] Ins. by Act 27 of 2012, s. 32 (w.e.f. 21-6-2012).

Explanation.— For the purposes of this sub-clause, "any organisation" includes an organisation registered under section 12A of the Income-tax Act, 1961 (43 of 1961) and working for the benefit of persons with disability or recognised under Chapter X of the Persons with Disabilities (Equal Opportunities, Protection of Rights and full Participation) Act, 1995 (1 of 1996) or receiving grants from the Government for facilitating access to persons with disabilities or an educational institution or library or archives recognised by the Government;

[1][(*zc*) the importation of copies of any literary or artistic work, such as labels, company logos or promotional or explanatory material, that is purely incidental to other goods or products being imported lawfully.]

(2) The provisions of sub-section (*1*) shall apply to the doing of any act in relation to the translation of a literary, dramatic or musical work or the adaptation of a literary, dramatic, musical or artistic work as they apply in relation to the work itself.

[2]**[52A. Particulars to be included in** [3]**[sound recording] and video films.**— (*1*) No person shall publish a [3][sound recording] in respect of any work unless the following particulars are displayed on the [3][sound recording] and on any container thereof, namely:—

(a) the name and address of the person who has made the sound recording;

(b) the name and address of the owner of the copyright in such work; and

(c) the year of its first publication.

(2) No person shall publish a video film in respect of any work unless the following particulars are displayed in the video film, when exhibited, and on the video cassette or other container thereof, namely:—

(a) if such work is a cinematograph film required to be certified for exhibition under the provisions of the Cinematograph Act, 1952 (37 of 1952), a copy of the certificate granted by the Board of Film Certification under section 5A of that Act in respect of such work;

(b) the name and address of the person who has made the video film and a declaration by him that he has obtained the necessary licence or consent from the owner of the copyright in such work for making such video film; and

(c) the name and address of the owner for the copyright in such work.]

52B. [*Accounts and audit***.**] *Omitted by the Copyright Act,* 2012 (27 *of* 2012), *s.* 33 (*w.e.f.* 21-6-2012).

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[1] Ins. by Act 27 of 2012, s. 32 (w.e.f. 21-6-2012).
[2] Ins. by Act 65 of 1984, s. 4 (w.e.f. 8-10-1984).
[3] Subs. by Act 38 of 1994, s. 2, for "record" (w.e.f. 10-5-1995).

[1][**53. Importation of infringing copies.**— (*1*) The owner of any right conferred by this Act in respect of any work or any performance embodied in such work, or his duly authorised agent, may give notice in writing to the Commissioner of Customs, or to any other officer authorised in this behalf by the Central Board of Excise and Customs,—

(a) that he is the owner of the said right, with proof thereof; and

(b) that he requests the Commissioner for a period specified in the notice, which shall not exceed one year, to treat infringing copies of the work as prohibited goods, and that infringing copies of the work are expected to arrive in India at a time and a place specified in the notice.

(2) The Commissioner, after scrutiny of the evidence furnished by the owner of the right and on being satisfied may, subject to the provisions of sub-section (*3*), treat infringing copies of the work as prohibited goods that have been imported into India, excluding goods in transit:

Provided that the owner of the work deposits such amount as the Commissioner may require as security having regard to the likely expenses on demurrage, cost of storage and compensation to the importer in case it is found that the works are not infringing copies.

(3) When any goods treated as prohibited under sub-section (*2*) have been detained, the Customs Officer detaining them shall inform the importer as well as the person who gave notice under sub-section (*1*) of the detention of such goods within forty-eight hours of their detention.

(4) The Customs Officer shall release the goods, and they shall no longer be treated as prohibited goods, if the person who gave notice under sub-section (*1*) does not produce any order from a court having jurisdiction as to the temporary or permanent disposal of such goods within fourteen days from the date of their detention.]

[2][**53A. Resale share right in original copies.**— (*1*) In the case of resale for a price exceeding ten thousand rupees, of the original copy of a painting, sculpture or drawing, or of the original manuscript of a literary or dramatic work or musical work, the author of such work if he was the first owner of rights under section 17 or his legal heirs shall, notwithstanding any assignment of copyright in such work, have a right to share in the resale price of such original copy or manuscript in accordance with the provisions of this section:

Provided that such right shall cease to exist on the expiration of the term of copyright in the work.

(2) The share referred to in sub-section (*1*) shall be such as the [3][Appellate Board] may fix and the decision of the [2][Appellate Board] in this behalf shall be final:

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[1] Subs. by Act 27 of 2012, s. 34, for section 53 (w.e.f. 21-6-2012).
[2] Ins. by Act 38 of 1994, s. 19 (w.e.f. 10-5-1995).
[3] Subs. by Act 7 of 2017, s.160, for "Copyright Board" (w.e.f. 26-5-2017).

Provided that the [2][Appellate Board] may fix different shares for different classes of work:

Provided further that in no case shall the share exceed ten percent of the resale price.

(3) If any dispute arises regarding the right conferred by this section, it shall be referred to the [1][Appellate Board] whose decision shall be final.]

CHAPTER XII CIVIL REMEDIES

54. Definition.— For the purposes of this Chapter, unless the context otherwise requires, the expression "owner of copyright" shall include—

(a) an exclusive licensee;

(b) in the case of an anonymous or pseudonymous literary, dramatic, musical or artistic work, the publisher of the work, until the identity of the author or, in the case of an anonymous work of joint authorship, or a work of joint authorship published under names all of which are pseudonyms, the identity of any of the authors, is disclosed publicly by the author and the publisher or is otherwise established to the satisfaction of the [1][Appellate Board] by that author or his legal representatives.

55. Civil remedies for infringement of copyright.— (*1*) Where copyright in any work has been infringed, the owner of the copyright shall, except as otherwise provided by this Act, be entitled to all such remedies by way of injunction, damages, accounts and otherwise as are or may be conferred by law for the infringement of a right:

Provided that if the defendant proves that at the date of the infringement he was not aware and had no reasonable ground for believing that copyright subsisted in the work, the plaintiff shall not be entitled to any remedy other than an injunction in respect of the infringement and a decree for the whole or part of the profits made by the defendant by the sale of the infringing copies as the court may in the circumstances deem reasonable.

(2) Where, in the case of a literary, dramatic, musical or artistic work, [2][or, subject to the provisions of sub-section (*3*) of section 13, a cinematograph film or sound recording, a name purporting to be that of the author, or the publisher, as the case may be, of that work, appears] on copies of the work as published, or, in the case of an artistic work, appeared on the work when it was made, the person whose name so appears or appeared shall, in any proceeding in respect of infringement of copyright in such work, be presumed, unless the contrary is proved, to be the author or the publisher of the work, as the case may be.

(3) The costs of all parties in any proceedings in respect of the infringement of copyright shall be in the

[1] Subs. by Act 7 of 2017, s.160(a), for "Copyright Board" (w.e.f. 26-5-2017).
[2] Subs. by Act 27 of 2012, s. 35, for "a name purporting to be, that of the author or the publisher, as the case may be, appear" (w.e.f. 21-6-2012).

discretion of the court.

56. Protection of separate rights.— Subject to the provisions of this Act, where the several rights comprising the copyright in any work are owned by different persons, the owner of any such right shall, to the extent of that right, be entitled to the remedies provided by this Act and may individually enforce such right by means of any suit, action or other proceeding without making the owner of any other right a party to such suit, action or proceeding.

57. Author's special rights.— [1][(*1*) Independently of the author's copyright and even after the assignment either wholly or partially of the said copyright, the author of a work shall have the right—

(a) to claim authorship of the work; and

(b) to restrain or claim damages in respect of any distortion, mutilation, modification or other act in relation to the said work [2][***] if such distortion, mutilation, modification or other act would be prejudicial to his honour or reputation:

Provided that the author shall not have any right to restrain or claim damages in respect of any adaptation of a computer programme to which clause (*aa*) of sub-section (*1*) of section 52 applies.

Explanation.— Failure to display a work or to display it to the satisfaction of the author shall not be deemed to be an infringement of the rights conferred by this section.]

(*2*) The right conferred upon an author of a work by sub-section (*1*), [3][***], may be exercised by the legal representatives of the author.

58. Rights of owner against persons possessing or dealing with infringing copies.— All infringing copies of any work in which copyright subsists, and all plates used or intended to be used for the production of such infringing copies, shall be deemed to be the property of the owner of the copyright, who accordingly may take proceedings for the recovery of possession thereof or in respect of the conversion thereof:

Provided that the owner of the copyright shall not be entitled to any remedy in respect of the conversion of any infringing copies, if the opponent proves—

(a) that he was not aware and had no reasonable ground to believe that copyright subsisted in the work of which such copies are alleged to be infringing copies; or

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[1] Subs. by Act 38 of 1994, s. 20, for sub-section (*1*) (w.e.f. 10-5-1995).
[2] The words "which is done before the expiration of the term of copyright" omitted by Act 27 of 2012, s. 36 (w.e.f. 21-6-2012).
[3] The words "other than the right to claim authorship of the work" omitted by Act 27 of 2012, s. 36, (w.e.f. 21-6-2012).

(b) that he had reasonable grounds for believing that such copies or plates do not involve infringement of the copyright in any work.

59. Restriction on remedies in the case of works of architecture.— (*1*) Notwithstanding anything contained in [1][the Specific Relief Act, 1963 (47 of 1963)], where the construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work has been commenced, the owner of the copyright shall not be entitled to obtain an injunction to restrain the construction of such building or structure or to order its demolition.

(*2*) Nothing in Section 58 shall apply in respect of the construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work.

60. Remedy in the case of groundless threat of legal proceedings.— Where any person claiming to be the owner of copyright in any work, by circulars, advertisements or otherwise, threatens any other person with any legal proceedings or liability in respect of an alleged infringement of the copyright, any person aggrieved thereby may, notwithstanding anything contained [2][in section 34 of the Specific Relief Act, 1963 (47 of 1963)], institute a declaratory suit that the alleged infringement to which the threats related was not in fact an infringement of any legal rights of the person making such threats and may in any such suit—

(a) obtain an injunction against the continuance of such threats; and

(b) recover such damages, if any, as he has sustained by reason of such threats:

Provided that this section shall not apply if the person making such threats, with due diligence, commences and prosecutes an action for infringement of the copyright claimed by him.

61. Owner of copyright to be party to the proceeding.— (*1*) In every civil suit or other proceeding regarding infringement of copyright instituted by an exclusive licensee, the owner of the copyright shall, unless the court otherwise directs, be made a defendant and where such owner is made a defendant, he shall have the right to dispute the claim of the exclusive licensee.

(*2*) Where any civil suit or other proceeding regarding infringement of copyright instituted by an exclusive licensee is successful, no fresh suit or other proceeding in respect of the same cause of action shall lie at the instance of the owner of the copyright.

62. Jurisdiction of court over matters arising under this Chapter.— (*1*) Every suit or other civil proceeding arising under this Chapter in respect of the infringement of copyright in any work or the infringement of any other right conferred by this Act shall be instituted in the district court having jurisdiction.

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[1] Subs. by Act 23 of 1983, s. 20, for "the Specific Relief Act, 1877 (1 of 1877)" (w.e.f. 9-8-1984).
[2] Subs. by s. 21, *ibid*., for "in section 42 the Specific Relief Act, 1877 (1 of 1877)" (w.e.f. 9-8-1984).

(*2*) For the purpose of sub-section (*1*), a "district court having jurisdiction" shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, include a district court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or other proceeding or, where there are more than one such persons, any of them actually and voluntarily resides or carries on business or personally works for gain.

CHAPTER XIII

OFFENCES

63. Offence of infringement of copyright or other rights conferred by this Act.— Any person who knowingly infringes or abets the infringement of—

(a) the copyright in a work, or

(b) any other right conferred by this Act [1][except the right conferred by section 53A],

[2][shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees]:

Provided that [1][where the infringement has not been made for gain in the course of trade or business] the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.]

Explanation.— Construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work shall not be an offence under this section.

[3][63A. Enhanced penalty on second and subsequent convictions.— Whoever having already been convicted of an offence under section 63 is again convicted of any such offence shall be punishable for the second and for every subsequent offence, with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that [4][where the infringement has not been made for gain in the course of trade or business] the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than one year or a fine of less than one lakh rupees:

Provided further that for the purposes of this section, no cognizance shall be taken of any conviction

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[1] Ins. by Act 38 of 1994, s. 21 (w.e.f 10-05-1995).
[2] Subs. by Act 65 of 1984, s. 5, for certain words (w.e.f. 08-10-1984)
[3] Ins. by Act 65 of 1994, s.6 (w.e.f 8-10-1984)
[4] Ins. by Act 38 of 1994, s. 22 (w.e.f 10-05-1995)

made before the commencement of the Copyright (Amendment) Act, 1984 (65 of 1984).]

[1][**63B. Knowing use of infringing copy of computer programme to be an offence.**— Any person who knowingly makes use on a computer of an infringing copy of a computer programme shall be punishable with imprisonment for a term which shall not be less than seven days but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:

Provided that where the computer programme has not been used for gain or in the course of trade or business, the Court may, for adequate and special reasons to be mentioned in the judgment, not impose any sentence of imprisonment and may impose a fine which may extend to fifty thousand rupees.]

64. Power of police to seize infringing copies.— [2][(*1*) Any police officer, not below the rank of a sub-inspector, may, if he is satisfied that an offence under section 63 in respect of the infringement of copyright in any work has been, is being, or is likely to be, committed, seize without warrant, all copies of the work, and all plates used for the purposes of making infringing copies of the work, wherever found, and all copies and plates so seized shall, as soon as practicable be produced before a Magistrate.]

(2) Any person having an interest in any copies of a work [3][, or plates] seized under sub-section (1) may, within fifteen days of such seizure, make an application to the Magistrate for such copies [2][, or plates] being restored to him and the Magistrate, after hearing the applicant and the complainant and making such further inquiry as may be necessary, shall make such order on the application as he may deem fit.

65. Possession of plates for purpose of making infringing copies.— Any person who knowingly makes, or has in his possession, any plate for the purpose of making infringing copies of any work in which copyright subsists shall be punishable with imprisonment which may extend to [4][two years and shall also be liable to fine.]

[5][**65A. Protection of technological measures**.— (*1*) Any person who circumvents an effective technological measure applied for the purpose of protecting any of the rights conferred by this Act, with the intention of infringing such rights, shall be punishable with imprisonment which may extend to two years and shall also be liable to fine.

(2) Nothing in sub-section (*1*) shall prevent any person from,—

(a) doing anything referred to therein for a purpose not expressly prohibited by this Act:

Provided that any person facilitating circumvention by another person of a technological measure for such a purpose shall maintain a complete record of such other person including his name, address and all

[1] Ins. by Act 38 of 1994, s. 23 (w.e.f 10-05-1995)
[2] Subs. by Act 65 of 1984, s. 7, for sub-section (1) (w.e.f. 08-10-1984)
[3] Ins. by s.7, *Ibid*, (w.e.f. 08-10-1984)
[4] Subs. by s.8, for " one year, or with fine or with both", *Ibid* (w.e.f. 08-10-1984)
[5] Ins. by Act 27 of 2012, s. 37 (w.e.f. 21-06-2012)

relevant particulars necessary to identify him and the purpose for which he has been facilitated; or

(b) doing anything necessary to conduct encryption research using a lawfully obtained encrypted copy; or

(c) conducting any lawful investigation; or

(d) doing anything necessary for the purpose of testing the security of a computer system or a computer network with the authorisation of its owner; or

(e) operator; or

(f) doing anything necessary to circumvent technological measures intended for identification or surveillance of a user; or

(g) taking measures necessary in the interest of national security.

65B. Protection of Rights Management Information.— Any person, who knowingly, —

(i) removes or alters any rights management information without authority, or

(ii) distributes, imports for distribution, broadcasts or communicates to the public, without authority, copies of any work, or performance knowing that electronic rights management information has been removed or altered without authority,

shall be punishable with imprisonment which may extend to two years and shall also be liable to fine:

Provided that if the rights management information has been tampered with in any work, the owner of copyright in such work may also avail of civil remedies provided under Chapter XII against the persons indulging in such acts.]

66. Disposal of infringing copies or plates for purpose of making infringing copies.— The Court trying any offence under this Act may, whether the alleged offender is convicted or not, order that all copies of the work or all plates in the possession of the alleged offender, which appear to it to be infringing copies, or plates for the purpose of making infringing copies, be delivered up to the owner of the copyright [1][or may make such order as it may deem fit regarding the disposal of such copies or plates].

67. Penalty for making false entries in register, etc., for producing or tendering false entries.— Any person who,—

(a) makes or causes to be made a false entry in the Register of Copyrights kept under this Act, or

(b) makes or causes to be made a writing falsely purporting to be a copy of any entry in such register, or

(c) produces or tenders or causes to be produced or tendered as evidence any such entry or writing, knowing the same to be false,

shall be punishable with imprisonment which may extend to one year, or with fine, or with both.

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[1] Ins. by Act 27 of 2012, s. 38 (w.e.f. 21-06-2012)

68. Penalty for making false statements for the purpose of deceiving or influencing any authority or officer.— Any person who,—

(a) with a view to deceiving any authority or officer in the execution of the provisions of this Act, or

(b) with a view to procuring or influencing the doing or omission of anything in relation to this Act or any matter thereunder,

makes a false statement or representation knowing the same to be false, shall be punishable with imprisonment which may extend to one year, or with fine, or with both.

[1]**[68A. Penalty for contravention of section 52A.**— Any person who publishes a 2[sound recording] or a video film in contravention of the provisions of section 52A shall be punishable with imprisonment which may extend to three years and shall also be liable to fine.]

69. Offences by companies.— (*1*) Where any offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for, the conduct of the business of the company, as well as the company shall be deemed to be guilty of such offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company, and it is proved that the offence was committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.— For the purposes of this section—

(a) "company" means any body corporate and includes a firm or other association of persons; and

(b) "director", in relation to a firm means a partner in the firm.

70. Cognizance of offences.— No Court inferior to that of [3][a Metropolitan Magistrate or a Judicial Magistrate of the first class] shall try any offence under this Act.

CHAPTER XIV

APPEALS

71. Appeals against certain orders of Magistrate.— Any person aggrieved by an order made under sub-section (*2*) of section 64 or section 66 may, within thirty days of the date of such order, appeal to the Court to

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[1] Ins. by Act 65 of 1984, s. 9, (w.e.f. 08-10-1984)

[2] Subs. by Act 38 of 1994, s. 2, for "record" (w.e.f. 10-5-1995).

[3] Subs. by Act 23 of 1983, s.22, for "a Presidency Magistrate or a Magistrate of the first class" (w.e.f. 9-8-1984)

which appeals from the court making the order ordinarily lie, and such appellate court may direct that execution of the order be stayed pending disposal of the appeal.

72. Appeals against orders of Registrar of Copyrights and [1][Appellate Board].— (*1*) Any person aggrieved by any final decision or order of the Registrar of Copyrights may, within three months from the date of the order or decision, appeal to the [1][Appellate Board].

(2) Any person aggrieved by any final decision or order of the [1][Appellate Board], not being a decision or order made in an appeal under sub-section (*1*), may, within three months from the date of such decision or order, appeal to the High Court within whose jurisdiction the appellant actually and voluntarily resides or carries on business or personally works for gain:

Provided that no such appeal shall lie against a decision of the [1][Appellate Board] under section 6.

(3) In calculating the period of three months provided for an appeal under this section, the time taken in granting a certified copy of the order or record of the decision appealed against shall be excluded.

73. Procedure for appeals.— The High Court may make rules consistent with this Act as to the procedure to be followed in respect of appeals made to it under section 72.

CHAPTER XV

MISCELLANEOUS

74. Registrar of Copyrights and [1][Appellate Board] to possess certain powers of civil courts.— The Registrar of Copyrights and the [1][Appellate Board] shall have the powers of a civil court when trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely, —

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses or documents;

(e) requisitioning any public record or copy thereof from any court or office;

(f) any other matter which may be prescribed.

Explanation.— For the purpose of enforcing the attendance of witnesses, the local limits of the jurisdiction of the Registrar of Copyrights or the [1][Appellate Board], as the case may be, shall be the limits of the territory of India.

75. Orders for payment of money passed by Registrar of Copyrights and [1][Appellate Board] to be executable as a decree.— Every order made by the Registrar of Copyrights or the [1][Appellate Board] under this Act for the payment of any money or by the High Court in any appeal against any such order of the [1][Appellate Board] shall, on a certificate issued by the Registrar of Copyrights, the [1][Appellate Board] or the Registrar of the

[1] Subs. by Act 7 of 2017, s.160, for "Copyright Board" (w.e.f. 26-5-2017).

High Court, as the case may be, be deemed to be a decree of a civil court and shall be executable in the same manner as a decree of such court.

76. Protection of action taken in good faith.— No suit or other legal proceeding shall lie against any person in respect of anything which is in good faith done or intended to be done in pursuance of this Act.

77. Certain persons to be public servants.— Every officer appointed under this Act and every member of the [1][Appellate Board] shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

78. Power to make rules.— (1) The Central Government may, by notification in the Official Gazette, make [2]rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, the Central Government may make rules to provide for all or any of the following matters, namely:—

[3][***]

(b) the form of complaints and applications to be made, and the licences to be granted, under this Act;

(c) the procedure to be followed in connection with any proceeding before the Registrar of Copyrights;

[4][(cA) the form and manner in which an organisation may apply to the 1[Appellate Board] for compulsory licence for disabled and the fee which may accompany such application under sub-section (1) of 31B;

(cB) the manner in which a person making sound recording may give prior notice of his intention to make sound recording under sub-section (2) of section 31C;

(cC) the register and books of account and the details of existing stock which a person making sound recording may maintain under sub-section (5) of section 31C;

(cD) the manner in which prior notice may be given by a broadcasting organisation under sub-section (2) of section 31D;

(cE) the reports and accounts which may be maintained under clause (a), and the inspection of records and books of account which may be made under clause (b) or sub-section (7) of section 31D];

[5][(ca) the conditions for submission of application under sub-section (2) of section 33;

(cb) the conditions subject to which a copyright society may be registered under sub-section (3) of section 33;

(cc) the inquiry for cancellation of registration under sub-section (4) of section 33;]

[6][(ccA) the manner in which a copyright society may publish its Tariff Scheme under sub-section (1) of

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[1] Subs. by Act 7 of 2017, s.160, for "Copyright Board"(w.e.f. 26-5-2017).
[2] For the Copyright Rules, 1958, *see* Gazette of India, Extra., Pt. II, s.3, p.167.
[3] Clause (a) omitted by Finance Act, 2017, s. 160(e).
[4] Ins. by Act 27 of 2012, s. 39(ii) (w.e.f. 21-06-2012)
[5] Ins. by Act 38 of 1994, s. 24 (w.e.f. 10-5-1995)
[6] Ins. by Act 27 of 2012, s. 39(iii) (w.e.f. 21-06-2012)

section 33A;

(ccB) the fee which is to be paid before filing an appeal to the [1][Appellate Board] under sub-section (2) of section 33A;

(ccC) the form of application for renewal of registration of a copyright society and the fee which may accompany such application under sub-section (3A) of section 33;]

[2][(cd) the conditions subject to which the copyright society may accept authorisation under clause (a) of sub-section (1) of section 34 and the conditions subject to which owners or rights have right to withdraw such authorisation under clause (d) of that sub-section;

(ce) the conditions subject to which a copyright society may issue licences, collect fees and distribute such fees amongst owners of rights under sub-section (3) of section 34;]

(cf) the manner in which the approval of the owners of rights regarding collection and distribution of fees, approval for utilisation of any amount collected as fees and to provide to such owners information concerning activities in relation to the administration of their rights under sub-section (1) of section 35;

(cg) the returns to be filed by copyright societies to the Registrar of Copyrights under sub-section (1) of section 36;]

(d) the manner of determining any royalties payable under this Act, and the security to be taken for the payment of such royalties;

[3][(da) the manner of payment of royalty under clause (j) of sub-section (1) of section 52;]

[4][***]

(e) the form of Register of Copyrights to be kept under this Act and the particulars to be entered therein;

(f) the matters in respect of which the Registrar of Copyrights and the [1][Appellate Board] shall have powers of a civil court;

(g) the fees which may be payable under this Act;

(h) the regulation of business of the Copyright Office and of all things by this Act placed under the direction or control of the Registrar of Copyrights.

[5][(3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity

[1] Subs. by Act 7 of 2017, s.160, for "Copyright Board"(w.e.f. 26-5-2017).
[2] Ins. by Act 38 of 1994, s.24 (w.e.f. 10-5-1995)
[3] Ins. by Act 38 of 1994, s.24 (w.e.f. 10-5-1995)
[4] Clause (db) omitted by Act 27 of 2012, s.39 (iv) (w.e.f. 21-6-2012)
[5] Subs. by Act 23 of 1983, s. 23, for sub-section (3) (w.e.f. 9-8-1984)

of anything previously done under that rule.]

79. Repeals, savings and transitional provisions.— (*1*) The Indian Copyright Act, 1914 (3 of 1914), and the Copyright Act of 1911 passed by the Parliament of the United Kingdom as modified in its application to India by the Indian Copyright Act, 1914 are hereby repealed.

(2) Where any person has, before the commencement of this Act, taken any action whereby he has incurred any expenditure or liabilities in connection with the reproduction or performance of any work in a manner which at the time was lawful or for the purpose of or with a view to the reproduction or performance of a work at a time when such reproduction or performance would, but for the coming into force of this Act, have been lawful, nothing in this section shall diminish or prejudice any rights or interests arising from or in connection with such action which are subsisting and valuable at the said date, unless the person who, by virtue of this Act, becomes entitled to restrain such reproduction or performance agrees to pay such compensation as, failing agreement, may be determined by the [1][Appellate Board].

(3) Copyright shall not subsist by virtue of this Act in any work in which copyright did not subsist immediately before the commencement of this Act under any Act repealed by sub-section (*1*).

(4) Where copyright subsisted in any work immediately before the commencement of this Act, the rights comprising such copyright shall, as from the date of such commencement, be the rights specified in section 14 in relation to the class of works to which such work belongs, and where any new rights are conferred by that section, the owner of such rights shall be—

(a) in any case where copyright in the work was wholly assigned before the commencement of this Act, the assignee or his successor-in-interest;

(b) in any other case, the person who was the first owner of the copyright in the work under any Act repealed by sub-section (*1*) or his legal representatives.

(5) Except as otherwise provided in this Act, where any person is entitled immediately before the commencement of this Act to copyright in any work or any right in such copyright or to an interest in any such right, he shall continue to be entitled to such right or interest for the period for which he would have been entitled thereto if this Act had not come into force.

(6) Nothing contained in this Act shall be deemed to render any act done before its commencement an infringement of copyright if that act would not otherwise have constituted such an infringement.

(7) Save as otherwise provided in this section, nothing in this section shall be deemed to affect the application of the General Clauses Act, 1897 (10 of 1897), with respect to the effect of repeals.

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[1] Subs. by Act 7 of 2017, s.160, for "Copyright Board" (w.e.f. 26-5-2017).

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THE DESIGNS ACT, 2000

No. 16 of 2000

[25th May, 2000]

An Act to consolidate and amend the law relating to protection of designs.

BE it enacted by Parliament in the Fifty first Year of the Republic of India as follows:-

CHAPTER 1

PRELIMINARY

Short title, extent and Commencement

1. (1) This Act may be called the Design Act, 2000.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification, appoint and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Definition

2. In this Act, unless there is anything repugnant in the subject or context.

(a) "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;

(b) "Controller" means the Controller-General of Patents, Designs and Trade Marks referred to in Section 3;

(c) "copyright" means the exclusive right to apply a design to any article in any class in which the design is registered;

d) "design" means only the features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article whether in 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 of construction or anything which is in substance a mere mechanical device, and does not include any trade mark as defined in clause (v) of sub-section (1) of section 2 of the Trade and Merchandise Marks Act, 1958 or 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

43 of 1958
45 of 1860
14 of 1957

39 of 1970

(e) "High Court" shall have the same meaning as assigned to it in clause (i) of sub-section (I) of section 2 of the Patents Act, 1970;

(f) "legal representative" means a person who in law represents the estate of a deceased person;

(g) "original", in relation to a design, means originating from the author of such design and includes the cases which though old in themselves yet are new in their application**;**

39 of 1970

(h) "Patent Office" means the patent office referred to in section 74 of the Patents Act, 1970.

(i) "prescribed" means prescribed by rules under this Act; and

(j) “proprietor of a new or original design”,-

(i) where the author of the design, for good consideration, executes the work for some other person, means the person for whom the design is so executed;

(ii) where any person acquires the design or the right to apply the design to any article, either exclusively of any other person or otherwise, means, in the respect and to the extent in and to which the design or right has been so acquired, the person by whom the design or right is so acquired; and

(iii) in any other case, means the author of the design; and where the property in or the right to apply, the design has devolved from the original proprietor upon any other person, includes that other person.

CHAPTER II

REGISTRATION OF DESIGNS

Controller and other officers

3. (1) The Controller General of Patents, Designs and Trade Marks appointed under sub-section (1) of section 4 of the Trade and Merchandise Marks Act, 1958 shall be the Controller of Designs for the purposes of this Act.

43 of 1958

(2) For the purposes of this Act, the Central Government may appoint as many examiners and other officers and with such designations, as it thinks fit.

(3) Subject to the provisions of this Act, the officers appointed under sub-section *(2)* shall discharge under the superintendence and directions of the Controller such functions of the Controller under this Act as he may, from time to time by general or special order in writing, authorise them to discharge.

(4) Without prejudice to the generality of the provisions of sub-section (3), the Controller may by order in writing and for reasons to be recorded therein, withdraw any matter pending before an officer appointed under sub-section *(2)* and deal with such mater himself either *de novo* or from the stage it was so withdrawn or transfer the same to another officer appointed under sub-section *(2)* who may, subject to special directions in the order of transfer, proceed with the matter either *de novo* or from the stage it was so transferred.

Prohibition of registration of certain designs.

4. A design which

(a) is not new or original; or

b) has been disclosed to the public anywhere in India or in any other country by publication in tangible form or by use or in any other way prior to the filing date, or where applicable, the priority date of the application for registration; or

(c) is not significantly distinguishable from known designs or combination of known designs; or

(d) comprises or contains scandalous or obscene matter shall not be registered.

Application registration of designs

5. (1) The Controller may, on the application of any person claiming to be the proprietor of any new or original design not previously published in any country and which is not contrary to public order or morality, register the design under this Act.

Provided that the Controller shall before such registration refer the application for examination, by an examiner appointed under sub-section (2) of section 3, as to whether such design is capable of being registered under this Act and the rules made thereunder and consider the report of the examiner on such reference.

(2) Every application under Sub-Section (1) shall be in the prescribed form and shall be filed in the Patent Office in the prescribed manner and shall be accompanied by the prescribed fee.

(3) A design may be registered in not more than one class, and, in case of doubt as to the class in which a design ought to be registered, the Controller may decide the question.

(4) The Controller may, if he thinks fit, refuse to register any design presented to him for registration; but any person, person aggrieved by any such refusal may appeal to the High Court.

(5) An application which, owing to any default or neglect on the part of the applicant, has not been completed so as to enable registration to be effected within the prescribed time shall be deemed to be abandoned.

(6) A design when registered shall be registered as of the date of the application for registration.

Registration on to be in respect of particular article.

6. (1) A design may be registered in respect of any or all of the articles comprised in a prescribed class of articles.

(2) Any question arising as to the class within which any article falls shall be determined by the Controller whose decision in the matter shall be final.

(3) Where a design has been registered in respect of any article comprised in a class of article, the application of the proprietor of the design to register it in respect of some one or more other articles comprised in that class of articles shall not be refused, nor shall the registration thereof invalidated.

(a) on the ground of the design not being a new or original design, by reason only that it was so previously registered; or

(b) on the ground of the design having been previously published in India or in any other country, by reason only that it has been applied to article in respect of which it was previously registered:

Provided that such subsequent registration shall not extend the period of copyright in the design beyond that arising from previous registration.

4) Where any person makes an application for the registration of a design in respect of any article and either-

(a) that design has been previously registered by another person in respect of some other article; or

(b) the design to which the application relates consists of a design previously registered by another person in respect of the same or some other article with modifications or variations not sufficient to alter the character or substantially to affect the identity thereof,

then, if at any time while the application is pending the applicant becomes the registered proprietor of the design previously registered, the foregoing provisions of the section shall apply as if at the time of making the application the applicant had been the registered proprietor of that design.

Publication of particulars of registered Design

7. The Controller shall, as soon as may be after the registration of a design, cause publication of the prescribed particulars of the design to be published in such manner as may be prescribed and thereafter the design shall be open to public inspection

Power of Controller to make orders regarding substitution of application etc.

8. (1) If the Controller is satisfied on a claim made in the prescribed manner at any time before a design has been registered that by virtue of any assignment or agreement in writing made by the applicant or one of the applicants for registration of the design or by operation of law, the claimant would, if the design were then registered, be entitled thereto or to the interest of the

applicant therein,or to an undivided share of the design or of that interest, the Controller may, subject to the provisions of this section, direct that the application shall proceed in the name of the claimant or in the names of the claimants and the applicant or the other joint applicant or applicants, accordingly

as the case may require.

(2) No such direction as aforesaid shall be given by virtue of any assignment or agreement made by one two or more joint applicants for registration of a design except with the consent of the other joint applicant or applicants.

3) No such direction as aforesaid shall be given by virtue of any assignment or agreement for the assignment of the benefit of a design unless-

(a) the design is identified therein by reference to the number of the application for the registration; or

(b) there is produced to the Controller an acknowledgement by the person by whom the assignment or agreement was made that the assignment or agreement relates to the design in respect of which that application is made; or

(c) the rights of the claimant in respect of the design have been finally established by the decision of a court; or

(d) the Controller gives directions for enabling the application to proceed or for regulating the manner in which it should be proceeded with under sub-section *(5*).

(4) Where one of two or more joint applicants for registration of a design dies at any time before the design has been registered, the Controller may, upon a request in that behalf made by the survivor or survivors, and with the consent of the legal representative of the deceased, direct that the application shall proceed in the name of the survivor or survivors alone.

(5) If any dispute arises between joint applicants for registration of a design whether or in what manner the application should be proceeded with, the Controller may, upon application made to him in the prescribed manner by any of the parties, and after giving to all parties concerned an opportunity to be heard, give such directions as he thinks fit for enabling the application to proceed in the name of one or more of the parties alone or for regulating the manner in which it should be proceeded with, or for both those purposes, as the case may require.

Certificate of registration

9. (1) The Controller shall grant a certificate of registration to the proprietor of the design when registered

(2) The Controller may, in case of loss of the original certificate, or in any other case in which he deems it expedient, furnish one or more copies of the certificate.

Register of designs

10. (1) There shall be kept at the Patent Office a book called the register of designs, wherein shall be entered the names and addresses of proprietors of registered designs, notifications of assignments and of transmissions of registered designs, and such other matter as may be prescribed and such register may be maintained wholly or partly on computer, floppies or diskettes, subject to such safeguards as may be prescribed.

(2) Where the register is maintained wholly or partly on computer floppies and diskettes under sub-section (1), any reference in this Act to any entry in the register shall be construed as the reference to entry so maintained on computer, floppies or diskettes.

(3) The register of designs existing at the commencement of this Act shall be incorporated with and form part of the register of designs

under this Act.

(4) The register of designs shall be *prima facie* evidence of any matter by this Act directed or authorized to be entered therein.

CHAPTER III

COPYRIGHT IN REGISTERED DESIGNS

Copyright on registration

11. (1) When a design is registered, the registered proprietor of the design shall, subject to the provisions of this Act, have copyright in the design during ten years from the date of registration.

(2) If, before the expiration of the said ten years, application for the extension of the period of copyright is made to the Controller in the prescribed manner, the Controller shall, on payment of the prescribed fee, extend the period of copy-right for a second period of five years from the expiration of the original period of ten years.

Restoration of lapsed designs.

12. (1) Where a design has ceased to have effect by reason of failure to pay the fee for the extension of copyright under sub-section *(2)* of section 11, the proprietor of such design or his legal representative and where the design was held by two or more persons jointly, then, with the leave of the Controller one or more of them without jointing the others, may, within one year from the date on which the design ceased to have effect, make an application for the restoration of the design in the prescribed manner on payment of such fee as may be prescribed.

(2) An application under this section shall contain a statement, verified in the prescribed manner, fully setting out the circumstances which led to the failure to pay the prescribed fee, and the Controller may require from the applicant such further evidence as he may think necessary.

Procedure for disposal of applications for restoration of lapsed designs.

13. (1) If, after hearing the applicant in cases where the applicant so desires or the Controller thinks fit, the Controller is satisfied that the failure to pay the fee for extension of the period of copyright was unintentional and that there has been no undue delay in the making of the application, the Controller shall upon payment of any unpaid fee for extension of the period of copyright together with prescribed additional fee restore the registration of design.

(2) The Controller may, if he thinks fit as a condition of restoring the design, require that any entry shall be made in the register of any document or matter which under the provision of this Act, has to be entered in the register but which has not been so entered.

Rights of proprietor of lapsed design which have been restored.

14. (1) Where the registration of a design is restored, the rights of the registered proprietor shall be subject to such provisions as may be prescribed and to such other provisions as the Controller thinks fit to impose for the protection or compensation of persons who may have begun to avail themselves of, or have taken definite steps by contract or otherwise to avail themselves of, the benefit of applying the design between the date when the registration of the design ceased to have effect and the date of restoration of the

registration of the design.

(2) No suit or other proceeding shall be commenced in respect of piracy of a registered design or infringement of the copyright in such design committed between the date on which the registration of the design ceased to have effect and the date of the restoration of the design.

Requirements before delivery on sales.

15. (1) Before delivery on sale of any articles to which a registered design has been applied, the proprietor shall-

(a) (if exact representations or specimens were not finished on the application for registration) furnish to the Controller the prescribed number of exact representations or specimens of the design; and, if he fails to do so, the Controller may, after giving notice thereof to the proprietor, erase his name from the register and thereupon the copyright in the design shall cease; and

(b) causes each such article to be marked with the prescribed mark, or with the prescribed words or figures denoting that the design is registered; and, if he fails to do so, the proprietor shall not be entitled to recover any penalty or damages in respect of any infringement of his copyright in the design unless he shows that he took all proper steps to ensure the marking of the article, or unless he shows that the infringement took place after the person guilty thereof knew or had received notice of the existence of the copyright in the design.

(2) Where a representation is made to the Central Government by or on behalf of any trade or industry that in the interest of the trade or industry it is expedient to dispense with or modify as regards any class or description of articles any of the requirements of this section as to marking, the Central Government may, if it thinks fit, by rule under this Act, dispense with or modify such requirements as regards any such class or description of articles to such extent and subject to such conditions as it thinks fit.

Effect of disclosure on copyright.

16. The disclosure of a design by the proprietor to any other person, in such circumstances as would make it contrary to good faith for that other person to use or publish the design, and the disclosure of a design in breach of good faith by any person, other than the proprietor of the design, and the acceptance of a first and confidential order for articles bearing a new or original textile design intended for registration, shall not be deemed to be a publication of the design sufficient to invalidate the copyright thereof if registration thereof is obtained subsequently to the disclosure or acceptance.

Inspection of registered designs

17. (1) During the existence of copyright in a design, any person on furnishing such information as may enable the Controller to identify the design and on payment of the prescribed fee may inspect the design in the prescribed manner.

(2) Any person may, on application to the Controller and on payment of such fee as may be prescribed, obtain a certified copy of any registered design.

Information as to

18. On the request of any person furnishing such information

as may enable the Controller to identify the design, and on payment of the prescribed fee, the Controller shall inform such person whether the registration still exists in respect of the design, and, if so, in respect of what classes of articles, and shall state the date of registration, and the name and address of the registered proprietor.

existence of copyright.

19. (1) Any person interested may present a petition for the cancellation of the registration of a design at any time after the registration of the design, to the Controller on any of the following grounds, namely:-

Cancellation of registration.

(a) that the design has been previously registered in India; or

(b) that it has been published in India or in any other country prior to the date of registration; or

(c) that the design is not a new or original design; or

(d) that the design is not registrable under this Act; or

(e) it is not a design as defined under clause (d) of section 2.

(2) An appeal shall lie from any order of the Controller under this section to the High Court, and the Controller may at any time refer any such petition to the High Court, and the High Court shall decide any petition so referred.

20. A registered design shall have to all intents the like effect as against the Government as it has against any person and the provisions of Chapter XVII of the Patents Act, 1970 shall apply to registered designs as they apply to patents.

Designs to bind Government. 30 of 1970.

CHAPTER IV

INDUSTRIAL AND INTERNATIONAL EXHIBITIONS

21. The exhibition of a design, or of any article to which a design is applied, at an industrial or other exhibition to which the provisions of this section have been extended by the Central Government by notification in the Official Gazette, or the publication of a description of the design, during or after the period of the holding of the exhibition, or the exhibition of the design or the article or the publication of a description of the design by any person else-where during or after the period of the holding of the exhibition, without the privity or consent of the proprietor, shall not prevent the design from being registered or invalidate the registration thereof:

Provisions as to exhibitions.

Provided that-

(a) the exhibitor exhibiting the design or article, or publishing a description of the design, gives to the Controller previous notice in

the prescribed form; and

(b) the application for registration is made within six months from the date of first exhibiting the design or article or publishing a description of the design.

CHAPTER V

LEGAL PROCEEDINGS

Piracy of registered design.

22. (I) During the existence of copyright in any design it shall not be lawful for any person-

(a) for the purpose of sale to apply or cause to be applied to any article in any class of articles in which the design is registered, the design or any fraudulent or obvious imitation thereof, except with the license or written consent of the registered proprietor, or to do anything with a view to enable the design to be so applied; or
(b) to import for the purposes of sale, without the consent of the registered proprietor, any article belonging to the class in which the design has been registered, and having applied to it the design or any fraudulent or obvious imitation thereof, or
(c) knowing that the design or any fraudulent or obvious imitation thereof has been applied to any article in any class of articles in which the design is registered without the consent of the registered proprietor, to publish or expose or cause to be published or exposed for sale that article.
2. (1) If any person acts in contravention of this section, he shall be liable for every contravention-

(a) to pay to the registered proprietor of the design a sum not exceeding twenty-five thousand rupees recoverable as a contract debt, or

(b) if the proprietor elects to bring a suit for the recovery of damages for any such contravention, and for an injunction against the repetition thereof, to pay such damages as may be awarded and to be restrained by injunction accordingly:

Provided that the total sum recoverable in respect of any one design under clause (a) shall not exceed fifty thousand rupees:

Provided further that no suit or any other proceeding for relief under this subsection shall be instituted in any court below the court of District Judge.

(3) In any suit or any other proceeding for relief under sub-section (*2*), ever ground on which the registration of a design may be cancelled under section 19 shall be available as a ground of defence.

(4) Notwithstanding anything contained in the second proviso to sub-Section (2), where any ground or which the registration of a design may be cancelled under section 19 has been availed of as a ground of defence and sub-section (3) in any suit or other proceeding for relief under sub-section (2), the suit or such other proceedings shall be transferred by the Court in which the suit or such other proceeding is pending, to the High Court for decision.

(5) When the court makes a decree in a suit under sub-section (*2*), it shall send a copy of the decree to the Controller, who shall cause an entry thereof to be made in the register of designs.

Application of certain of the provisions the Act as to the patents to designs.

23. The provisions of the Patents Act, 1970 with regard to certificates of the validity of a patent, and to the remedy in case of groundless threats of legal proceedings by a patentee shall apply in the case of registered designs in like manner as they apply in the case of patents, with the substitution of references to the copyright in a design for reference to a patent, and of references to the proprietor of a design for references to patentee, and of references to the design for references to the invention.

CHAPTER VI

GENERAL

Fees

Fees

24. (1) There shall be paid in respect of the registration of designs and applications therefor and in respect of other matters relating to designs under this Act such fees may be prescribed.
(2) A proceeding in respect of which a fee is payable under this Act or the rules made thereunder shall be of no effect unless the fee has been paid.

Provisions as to Registers and other Documents in the Patent Office.

Notice of trust not to be entered in registers.

25. There shall not be entered in any register kept under this Act, or be receivable by the Controller, any notice of any trust expressed, implied or constructive.

Inspection of and extracts from registers.

26. Every register kept under this Act shall at all convenient times be open to the inspection of the public, subject to the provisions of this Act; and certified copies, sealed with the seal of the Patent Office, of any entry in any such register shall be given to any person requiring the same on payment of the prescribed fee:

Provided that where such register is maintained wholly or partly on computer, the inspection of such register under this section shall be made by inspecting the computer print out of the relevant entry in the register so maintained on computer.

Privilege of reports of Controller

27. Reports of or to the Controller made under this Act other than the report referred to in section 45 shall not in any case be published

or be open to public inspection.

Prohibition and publication of specification, drawings, etc where application abandoned, etc.

28. Where an application for a design has been abandoned or refused, the application and any drawings, photographs, tracings, representations or specimens left in connection with the application shall not at any time be open to public inspection or be published by the Controller.

Power for Controller to Correct Clerical errors.

29. The Controller may, on request in writing accompanied by the prescribed fee correct any clerical error in the representation of a design or in the name or address of the proprietor of any design, or in any other matter, which is entered upon the register of designs.

Entry of assignment and transmitions in registers.

30. (1) Where a person becomes entitled by assignments, transmission or other operation of law to the copyright in a registered design, he may make application in the prescribed form to the Controller to register his title, and the Controller shall, on receipt of such application and on proof of title to his satisfaction, register him as the proprietor of such design, and shall cause an entry to be made in the prescribed manner in the register of the assignment, transmission or other instrument affecting the title.

(2) Where any person becomes entitled as mortgage, licensee or otherwise to any interest in a registered design, he may make application to the Controller to register his title, and the Controller shall, on receipt of such application and on proof of title to his satisfaction, cause notice of the interest to be entered in the prescribed manner in the register of designs, with particulars of the instrument, if any, creating such interest.

(3) For the purposes of sub-section (*1*) or sub-section (*2*) an assignment of a design or of a share in a design, a mortgage, licence or the creation of any other interest in a design shall not be valid unless the same were in writing and the agreement between the parties concerned is reduced to the form of an instrument embodying all the terms and conditions governing their rights and obligation and the application for registration of title under such instrument is filed in the prescribed manner with the Controller within six months from the execution of the instrument or within such further period not exceeding six months in the aggregate as the Controller on application made in the prescribed manner allows:

Provided that the instrument shall, on entry of its particulars in the register under sub-section (*1*) or sub-section (*2*), have the effect from the date of its execution.

(4) The person registered as the proprietor of a design shall, subject to the provisions of this Act and to any rights appearing from the register to be vested in any other person, have power absolutely to assign, grant licenses as to, or otherwise deal with, the design and to give effectual receipts for any consideration for any such assignment,

licence or dealing:

Provided that any equities in respect of the design may be enforced in like manner as in respect of any other moveable property.

(5) Except in the case of an application made under section 31, a document or instrument in respect of which no entry has been made in the register in accordance with the provisions of sub-sections (*1*) and (*2*) shall not be admitted in evidence in any court in proof of the title to copyright in a design or to any interest therein, unless the court, for reasons to be recorded in writing, otherwise directs.

Rectification of Register

31. (1) The Controller may, on the application in the prescribed manner of any person aggrieved by the non-insertion in or omission from the register of designs of any entry, or by any entry made in such register without sufficient cause, or by any entry wrongly remaining on such register, or by an error or defect in any entry in such register, make such order for making, expunging or varying such entry as he thinks fit and rectify the register accordingly.

(2) The Controller may in any proceeding under this section, decide any question that may be necessary or expedient to decide in connection with the rectification of a register.

(3) An appeal shall lie to the High Court from any order of the Controller under this section; and the Controller may refer any application under this section to the High Court for decision, and the High Court shall dispose of any application so referred.

(4) Any order of the Court rectifying a register shall direct that notice of the rectification be served on the Controller in the prescribed manner who shall upon the receipt of such notice rectify the register accordingly.

(5) Nothing in this section, shall be deemed to empower the Controller to make any such order canceling the registration of a design as is provided for in section 19.

CHAPTER VII

POWER AND DUTIES OF CONTROLLER

Powers of Controller in Proceedings under Act.

32. Subject to any rules in this behalf, the Controller in any proceedings before him under this Act s hall have the powers of a civil court for the purpose of receiving evidence, administering oaths, enforcing the attendance of witnesses, compelling the discovery and production of under documents, issuing commissions for the examining of witnesses and awarding costs and such award shall be executable in any court having jurisdiction as if it were a decree of that court.

Exercise of the discretionary power by

33. Where any discretionary power is by or under this Act given to Controller, he shall not exercise that power adversely to the

applicant for registration of a design without (if so required within the prescribed time by the applicant) giving the applicant an opportunity of being heard. Controller.

34. The Controller may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Act, apply to the Central Government for directions in the matter. Power of Controller to take directions of the Central Government.

35. (1) The Controller may refuse to register a design of which the use would, in his opinion, be contrary to public order or morality. Refusal to register a design in certain cases.

(2) An appeal shall lie to the High Court from an order of the Controller under this section.

36. (1) Where an appeal is declared by this Act to lie from the Controller to the High Court, the appeal shall be made within three months of the date of the order passed by the Controller. Appeals to the High Court

(2) In calculating the said period of three months, the time (if any) occupied in granting a copy of the order appealed against shall be excluded.

(3) The High Court may, if it thinks fit, obtain the assistance of an expert in deciding such appeals, and the decision of the High Court shall be final.

(4) The High Court my make rules consistent with this Act as to the conduct and procedure of all proceedings under this Act before it.

CHAPTER VIII

EVIDENCE, ETC.

37. Subject to any rules made under section 44, in any proceeding under this before the Controller, the evidence shall be given by affidavit in the absence of directions by the Controller to the before the contrary; but in any case in which the Controller thinks it right so to do he may to take evidence viva voce in lieu of or in addition to evidence by affidavit or may allow any party to be cross examined on the contents of his affidavit. Evidence before the Controller.

38. A certificate purporting to be under the hand of the Controller as to entry, matter or thing which he is authorised by this Act, or any rules made thereunder to make or do, shall be prima-facie evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or left undone. Certificate of Controller to be evidence.

39. Printed or written copies or extracts, purporting to be certified by Controller and sealed with the seal of the Patent Office , of documents in the Patent Office , and of or from registers and other books kept there, shall be admitted in evidence in al courts in India, and in all proceedings, Office without further proof for production of the originals: Evidence of documents in patent office.

Provided that a court may, if it has reason to doubt the accuracy or authenticity of the copies tendered in evidence, require the production of the originals or such further proof as it considers necessary.

40. Any application, notice or other document authorized or Application & notices by

required to be left, made or given at the Patent Office or to the Controller, or to any other person under this Act, may be sent by post.

post.

Declaration by infant, lunatic, etc.

41. (1) If any person , is by reason of infancy , Lunacy or other disability, incapable of making any statement or doing anything required or permitted by or under this Act, the lawful guardian, committee or manager (if any) of the person subject to the disability, or , if there be none , any person appointed by any court possessing jurisdiction in respect of his property , may make such statement or a statement as nearly corresponding thereto as circumstances permit, and do such thing in the name and on behalf of the person subject to the disability.

(2) An appointment may be made by the court for the purposes of this section upon the petition of any person acting on behalf of the person subject to the disability or of any person interested in the making of the statement or the doing of the thing.

Avoidance of certain restrictive conditions.

42. (1) It shall not be lawful to insert-

(i) in any contract for or in relation to the sale or lease of an article in respect of which a design is registered; or

(ii) in a licence to manufacture or use an article in respect of which a design is registered; or

(iii) in a licence to package the article in respect of which a design is registered, a condition the effect of which may be-

(a) to require the purchaser, lessee, or licensee to acquire from the vendor, lessor, or licensor or his nominees , or to prohibit him from acquiring or to restrict I in any manner or to any extent his right to acquire from any person or to prohibit him from acquiring except from the vendor, lessor, or licensor or his nominees any article other than the article in respect of which a design is registered; or

(b) to prohibit the purchaser, lessee or licensee from using or to restrict in any manner or to any extent the right of the purchaser, lessee or licensee, to use an article other than the article in respect of which a design is registered which is not supplied by the vendor, lessor or licensor or his nominee,

and any such condition shall be void.

(2) A condition of the nature referred to in clause (*a*) or clause (*b*) of sub-section (*1*) shall not cease to be a condition failing within that sub-section merely by reason of the fact that the agreement containing it has been entered into separately, whether before or after the contract relating to the sale, lease or licence of the article in respect of which a design is registered.

(3) In proceeding against any person for any act in contravention of section 22, it shall be a defence to prove that at the time of such contravention there was in force a contract relating to the registered design and containing a condition declared unlawful by this section:

Provided that this sub-section shall not apply if the plaintiff is not a party to the contract and proves to the satisfaction of the court that the restrictive condition was inserted in the contract without his knowledge and consent, express or implied.

(4) Nothing in this section shall-

(a) affect a condition in a contract by which a person is prohibited from selling goods other than those of particular person;

(b) validate a contract which, but for this section, would be invalid;

(c) affect a condition in a contract for the lease of, or licence to use, an article in respect of which a design is registered, by which the lessor or licensor reserves to himself or his nominee the right to supply such new parts of the article, in respect of which a design is registered, as may be required or to put or keep it in repair;

(5) The provisions of this section shall also apply to contracts made before the commencement of this Act if, and in so far as, any restrictive conditions declared unlawful by this section continue in force after the expiration of one year from such commencement

CHAPTER IX

AGENCY

43. (1) All applications and communications to the Controller under this Act may be signed by , and all attendances upon the Controller may be made by or through a legal practitioner or by or through an agent whose name and address has been entered in the register of patent agents maintained under section 125 of the Patents Act, 1970.

39 of 1970

(2) The Controller may, if he sees fit, require -

(a) any such agent to be resident in India;

(b) any person not residing in India either to employ an argent residing in India;

(c) the personal signature or presence of any applicant or other person.

CHAPTER X

POWERS ETC. OF CENTRAL GOVERNMENT

Receiprocal arrangement with the United Kingdom and other convention countries or group of countries of intergovernmental

44. (1) Any person who has applied for protection for any design in the United Kingdom or any of other convention countries or group of countries or countries which are members of inter-governmental organisations, or his legal representative or assignee shall, either alone or jointly with any other person, be entitled to claim that the registration of the said design under this Act shall be in priority to other applicants and shall have the same date as the date of the application in the United

Kingdom or any of such other convention countries or group of countries or countries which are members of inter-governmental organisations, as the case may be: organisations.

Provided that-

(a) the application is made within six months from the application for protection in the United Kingdom or any of such other convention Countries or group of countries or countries which are members of inter-governmental organisations, as the case may be; and

(b) nothing in this section shall entitle the proprietor of the design to recover damages for piracy of design, design happening prior to the actual date on which the design is registered in India.

(2) The registration of a design shall not be invalidated by reason only of the exhibition or use of or the publication of a description or representation of the design in India during the period specified in this section as that within which the application may be made;

(3) The application for registration of a design of a design under this section must be made in the same manner as an ordinary application under this Act.

(4) Where it is made to appear to the Central Government that the legislature of the United Kingdom or any such other convention country or a country which is member of any group of countries or inter-governmental organisation as may be notified by the Central Government in this behalf has made satisfactory provision for the protection of designs registered in India, the Central Government may, by notification in the Official Gazette, direct that the provisions of this section, with such variations or additions, if any, as may be set out in such notification, shall apply for the protection of designs registered in the United Kingdom or that other convention country or such country which is member of any group of countries or inter-governmental organisation, as the case may be.

Explanation- (1) For the purposes of this section, the expression "convention countries", "group of countries" or "inter-governmental organisation" means, respectively, such countries, group of countries or inter-governmental organisation to which the Paris Convention for Protection of Industrial Property, 1883 as revised at Stockholm in 1967 and as amended in 1979 or the Final Act, embodying the results of the Uruguay Round of Multilateral Trade Negotiations, provided for the establishment of World Trade Organisation applies.

Explanation- (2) Where more than one application for protection referred to in sub-section (*1*) have been made for similar protections in the United Kingdom or one or more convention countries, group of countries or countries which are members of inter-governmental organisations, the period of six months referred to in clause (*a*) of that sub-section, shall be reckoned from the date of which the earlier or the earliest application , as the case may be, of such applications has been made.

Report of the Controller to be placed before Parliament.

45. The Central Government shall cause to be placed before both House of Parliament once a year a report respecting the execution of this Act by or under the Controller.

Protection of security of India.

46. Notwithstanding anything contained in this Act, the Controller shall-

(a) Not disclose any information relating to the registration of a design or any application relating to the registration of a design under this Act, which he considers prejudicial to the interest of the security of India; and

(b) take any action regarding the cancellation of registration of such designs registered under this Act which the Central Government may, by notification in the Official Gazette, specify in the interest of the interest of the security of India.

Explanation: - For the purposes of this section, the expression "security of India" means any action necessary for the security of Indian which relates to the application of any design registered under this Act to any article used for war or applied directly or indirectly for the purposes of military establishment or for the purposes of war or other emergency in international relations.

Power of Central Government to make rules

47. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generally of the forgoing power, such rules may provide for all or any of the following matters, namely:-

(a) the form of application, the manner of filing it at the Patent Office and the fee to be accompanied with it, under sub-section (*2*) of section 5;

(b) the time within which the registration is to be effected under sub-section (*5*) of section 5;

(c) the classification of articles for registration under sub-section (*1*) of section 6;

(d) the particulars of design to be published and the manner of their publication under section 7;

(e) the manner of making claim under sub-section (*1*) of section 8;

(f) the manner of making application to the Controller under sub-section (5) of section 8;

(g) the additional matters required to be entered in the register of design and safegurard to be made in maintaining such register in computer floppies or diskettes under sub-section (1) of section 10.

(h) the manner of making application and fee to be paid for extension of the period of copy right and the fee payable thereto, under sub-section (*2*) of section 11;

(i) the manner of making application for restoration of design and the fee to be paid with it under sub-section (*1*) of section 12;

(j) the manner of verification of statement contained in an application under sub-section (*2*) of section 12;
(k) the additional fee to be paid for restoration of the registration of design under sub-section (*1*) of section 13;

(l) the provisions subject to which the right of the registered proprietor shall be under sub-section (*1*) of section 14;

(m) the number of exact representation or specimen of the design to be furnished to the Controller under clause (*a*) of sub-section (*1*) of section 15;

(n) the mark, words or figures with which the article is to be marked denoting that the design is registered under clause (b) of sub-section (*1*) of section 15;

(o) the rules to dispense with or modify as regards any class or description of articles any of the requirements of section 15 as to marking under sub-section (*2*) of that section;

(p) the fee to be paid for and the manner of inspection under sub-section (*1*) of section 17;
(q) the fee to be paid to obtain a certified copy of any design under sub-section (*2*) of section 17;

(r) the fee on payment of which the Controller shall inform under section 18;

(s) the form for giving notice to the Controller under clause (*a*) of the proviso to section 21;

(t) the fee to be paid in respect of the registration of designs, and application therefor, and in respect of other matters relating to designs under sub-section (*1*) of section 24;
(u) the fee to be paid for giving certified copy of any entry in the register under section 26;

(v) the fee to be accompanied with request in writing for correcting any clerical error under section 29;

(w) the form in which an application for registration as proprietor shall be made and the manner in which the Controller shall cause an entry to be made in the register of the assignment, transmission or

other instruments effecting the title under sub-section (*1*) of section 30;

(x) the form in which an application for title shall be made and the manner in which the Controller shall cause notice of the interest to be entered in the register of designs with particulars of the instrument, if any, creating such interest under sub-section (*2*) of section 30;

(y) the manner of filing an application for registration and for making application for extension of time as referred to in sub-section (*3*) of section 30;

(z) the manner of making application to the Controller for rectification of register under sub-section (*1*) of section 31;

(za) the manner in which the notice of rectification shall be served on the Controller under sub-section (*4*) of section 31;

(zb) the rules regulating the proceedings before the Controller under section 32;

(zc) the time which shall be granted to the applicants for being heard by the Controller under section 33;

(zd) the fee to be accompanied with an appeal under sub-section (*1*) of section 36;

(ze) any other matter which is required to be, or may be, prescribed.

(*3*) The power to make rules under this section shall be subject to the conditions of the rules being made after previous publication.

(4) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive session aforesaid, both House agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that Act.

CHAPTER XI

REPEAL AND SAVING

Repeal and savings.

48. (1) The Designs Act, 1911 is hereby repealed. 2 of 1911

(2) Without prejudice to the provisions contained in the General 10 of 1897.

Clauses Act, 1897 with respect to repeals, any notification, rule, order, requirement, registration, certificate, notice, decision, determination, direction, approval, authorisation, consent, application , request or thing made , issued, given or done under the Designs Act, 1911, shall, in force at the commencement of this Act , continue to be in force and have effect as if made , issued , given or done under the corresponding provisions of this Act. 2 of 1911

(3) The provisions of this Act shall apply to any application for registration of design pending at the commencement of this Act and to any proceedings consequent thereon and to any registration granted in pursuance thereof.

(4) Notwithstanding anything contained in this Act, any proceeding pending in any court at the commencement of this Act may be continued in that court as if this Act has not been passed.

(5) Notwithstanding anything contained in sub-section (*2*), the date of expiration of the copyright in the design registered before the commencement of this Act shall, subject to the provisions of this Act, be the date immediately after the period of five years for which it was registered or the date immediately after the period of five years for which the extension of the period of copyright for a second period from the expiration of the original period has been made.

THE GEOGRAPHICAL INDICATIONS OF GOODS (REGISTRATION AND PROTECTION) ACT, 1999

ARRANGEMENT OF SECTIONS

CHAPTER I

PRELIMINARY

SECTIONS

1. Short title, extent and commencement.
2. Definitions and interpretation.

CHAPTER II

THE REGISTER AND CONDITIONS FOR REGISTRATION

3. Registrar of Geographical Indications.
4. Power of Registrar to withdraw or transfer cases, etc.
5. Geographical Indications Registry and offices thereof.
6. Register of Geographical Indications.
7. Part A and Part B of the register.
8. Registration to be in respect of particular goods and area.
9. Prohibition of registration of certain geographical indications.
10. Registration of homonymous geographical indications.

CHAPTER III

PROCEDURE FOR AND DURATION OF REGISTRATION

11. Application for registration.
12. Withdrawal of acceptance.
13. Advertisement of application.
14. Opposition to registration.
15. Correction and amendment.
16. Registration.
17. Application for registration as authorised user.
18. Duration, renewal, removal and restoration of registration.
19. Effect of removal from register for failure to pay fee for renewal.

CHAPTER IV

EFFECT OF REGISTRATION

20. No action for infringement of unregistered geographical indication.
21. Rights conferred by registration.
22. Infringement or registered geographical indications.
23. Registration to be *prima facie* evidence of validity.
24. Prohibition of assignment or transmission, etc.

CHAPTER V

SPECIAL, PROVISIONS RELATING TO TRADE MARK AND PRIOR USERS

SECTIONS

25. Prohibition of registration of geographical indication as trade mark.
26. Protection to certain trade marks.

CHAPTER VI

RECTIFICATION AND CORRECTION OF THE REGISTER

27. Power to cancel or vary registration and to rectify the register.
28. Correction of register.
29. Alteration of registered geographical indications.
30. Adaptation of entries in register to amend or substitute classification of goods.

CHAPTER VII

APPEALS TO THE APPELLATE BOARD

31. Appeals to the Appellate Board.
32. Bar of jurisdiction of courts, etc.
33. Procedure of the Appellate Board.
34. Procedure for application for rectification, etc., before Appellate Board.
35. Appearance of Registrar in legal proceedings.
36. Costs of Registrar in proceedings before Appellate Board.

CHAPTER VIII

OFFENCES, PENALTIES AND PROCEDURE

37. Meaning of applying geographical indications.
38. Falsifying and falsely applying geographical indications.
39. Penalty for applying false geographical indications.
40. Penalty for selling goods to which false geographical indication is applied.
41. Enhanced penalty on second or subsequent conviction.
42. Penalty for falsely representing a geographical indication as registered.
43. Penalty for improperly describing a place of business as connected with the Geographical Indications Registry.
44. Penalty for falsification of entries in the register.
45. No offence in certain cases.
46. Forfeiture of goods.
47. Exemption of certain persons employed in ordinary course of business.
48. Procedure where invalidity of registration is pleaded by the accused.
49. Offences by companies.
50. Cognizance of certain offences and the powers of police officer for search and seizure.
51. Costs of defence of prosecution.
52. Limitation of prosecution.
53. Information as to commission of offence.
54. Punishment for abetement in India of acts done out of India.

CHAPTER IX

MISCELLANEOUS

SECTIONS

55. Protection of action taken in good faith.
56. Certain persons to be public servants.
57. Stay of proceedings where the validity of registration of the geographical indication is questioned etc.
58. Application for rectification of register to be made to Appellate Board in certain cases.
59. Implied warranty on sale of indicated goods.
60. Powers of Registrar.
61. Exercise of discretionary power by Registrar.
62. Evidence before Registrar.
63. Death of party to a proceeding.
64. Extension of time.
65. Abandonment.
66. Suit for infringement, etc., to be instituted before district court.
67. Relief in suit for infringement or for passing off.
68. Authorised user to be impleaded in certain proceedings.
69. Evidence of entries in register, etc., and things done by the Registrar.
70. Registrar and other officers not compellable to produce register, etc.
71. Power to require goods to show indication of origin.
72. Certificate of validity.
73. Groundless threats of legal proceedings.
74. Address for service.
75. Trade usages, etc., to be taken into consideration.
76. Agents.
77. Indexes.
78. Documents open to public inspection.
79. Reports of Registrar to be placed before Parliament.
80. Fees and surcharge.
81. Savings in respect of certain matters in Chapter VIII.
82. Declaration as to title of geographical indication not registrable under the Registration Act, 1908.
83. Government to be bound.
84. Special provisions relating to applications for registration from citizens of convention countries.
85. Provision as to reciprocity.
86. Powers of Central Government to remove difficulties.
87. Power to make rules.

THE GEOGRAPHICAL INDICATIONS OF GOODS (REGISTRATION AND PROTECTION) ACT, 1999

ACT NO. 48 OF 1999

[30*th December*, 1999.]

An Act to provide for the registration and better protection of geographical indications relating to goods.

BE it enacted by Parliament in the Fiftieth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(*1*) This Act may be called the Geographical Indications of Goods (Registration and Protection) Act, 1999.

(*2*) It extends to the whole of India.

(*3*) It shall come into force on such date[1] as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act, and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. Definitions and interpretation.—(*1*) In this Act, unless the context otherwise requires,—

(*a*) "Appellate Board" means the Appellate Board established under section 83 of the Trade Marks Act, 1999 (47 of 1999);

(*b*) "authorised user" means the authorised user of a geographical indication registered under section 17;

(*c*) "deceptively similar" A geographical indication shall be deemed to be deceptively similar to another geographical indication if it so nearly resembles that other geographical indication as to be likely to deceive or cause confusion;

(*d*) "district court" has the meaning assigned to it in the Code of Civil Procedure, 1908 (5 of 1908);

(*e*) "geographical indication", in relation to goods, means an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be.

Explanation.—For the purposes of this clause, any name which is not the name of a country, region or locality of that country shall also be considered as the geographical indication if it relates to a specific geographical area and is used upon or in relation to particular goods originating from that country, region or locality, as the case may be;

(*f*) "goods" means any agricultural, natural or manufactured goods or any goods of handicraft or of industry and includes food stuff;

(*g*) "indication" includes any name, geographical or figurative representation or any combination of them conveying or suggesting the geographical origin of goods to which it applies;

(*h*) "name" includes any abbreviation of a name;

1. 15th September, 2003, *vide* notification No. S.O. 1051(E), dated 15th September, 2003, s*ee* Gazette of India, Extraordinary, Part II, sec. 3(*ii*).

(*i*) "package" includes any case, box, container, covering, folder, receptacle, vessel, casket, bottle, wrapper, label, band, ticket, reel, frame, capsule, cap, lid, stopper and cork;

(*j*) "prescribed" means prescribed by rules made under this Act;

(*k*) "producer", in relation to goods, means any person who,—

(*i*) if such goods are agricultural goods, produces the goods and includes the person who processes or packages such goods;

(*ii*) if such goods are natural goods, exploits the goods;

(*iii*) if such goods are handicraft or industrial goods, makes or manufactures the goods,

and includes any person who trades or deals in such production, exploitation, making or manufacturing, as the case may be, of the goods;

(*l*) "register" means the Register of Geographical Indications referred to in section 6;

(*m*) "registered" (with its grammatical variations) means registered under this Act;

(*n*) "registered proprietor", in relation to a geographical indication, means any association of persons or of producers or any organisation for the time being entered in the register as proprietor of the geographical indication;

(*o*) "Registrar" means the Registrar of Geographical Indications referred to in section 3;

(*p*) "tribunal" means the Registrar or, as the case may be, the Appellate Board before which the proceeding concerned is pending.

(*2*) Words and expressions used and not defined in this Act but defined in the Trade Marks Act, 1999 (47 of 1999) shall have the meanings respectively assigned to them in that Act.

(*3*) In this Act, unless the context otherwise requires, any reference—

(*a*) to the use of a geographical indication shall be construed as a reference to the use of a printed or other visual representation of the geographical indication;

(*b*) to the use of a geographical indication in relation to goods shall be construed as a reference to the use of the geographical indication upon, or in any physical or in any other relation whatsoever, to such goods;

(*c*) to a registered geographical indication shall be construed as including a reference to a geographical indication registered in the register;

(*d*) to the Registrar shall be construed as including a reference to any officer when discharging the functions of the Registrar in pursuance of sub-section (*2*) of section 3;

(*e*) to the Geographical Indications Registry shall be construed as including a reference to any office of the Geographical Indications Registry.

CHAPTER II

THE REGISTER AND CONDITIONS FOR REGISTRATION

3. Registrar of Geographical Indications.—(*1*) The Controller-General of Patents, Designs and Trade Marks appointed under sub-section (*1*) of section 3 of the Trade Marks Act, 1999, shall be the Registrar of Geographical Indications.

(*2*) The Central Government may appoint such officers with such designations as it thinks fit for the purpose of discharging, under the superintendence and direction of the Registrar, such functions of the Registrar under this Act, as he may from time to time authorise them to discharge.

4. Power of Registrar to withdraw or transfer cases, etc.—Without prejudice to the generality of the provisions of sub-section (*2*) of section 3, the Registrar may, by order in writing and for reasons to be recorded therein, withdraw any matter pending before an officer appointed under the said sub-section (*2*) and deal with such matter himself either *de novo* or from the stage it was so withdrawn or transfer the

same to another officer so appointed who may, subject to special directions in the order of transfer, proceed with the matter either *de novo* or from the stage it was so transferred.

5. Geographical Indications Registry and offices thereof.—(*1*) For the purpose of this Act, there shall be established a Registry which shall be known as the Geographical Indications Registry.

(*2*) The head office of the Geographical Indications Registry shall be at such place as the Central Government may, by notification in the Official Gazette, specify, and for the purpose of facilitating the registrations of geographical indications, there may be established at such places as the Central Government may think fit branch offices of the Geographical Indications Registry.

(*3*) The Central Government may, by notification in the Official Gazette, define the territorial limits within which an office of the Geographical Indications Registry may exercise its functions.

(*4*) There shall be a seal of the Geographical Indications Registry.

6. Register of Geographical Indications.—For the purposes of this Act, a record called the Register of geographical indications shall be kept at the head office of the Geographical Indications Registry, wherein shall be entered all registered geographical indications with the names, addresses and descriptions of the proprietors, the names , addresses and descriptions of authorised users and such other matters relating to registered geographical indications as may be prescribed and such registers may be maintained wholly or partly on computer.

(*2*) Notwithstanding anything contained in sub-section (*1*), it shall be lawful for the Registrar to keep the records wholly or partly in computer floppies or diskettes or in any other electronic form, subject to such safeguards as may be prescribed.

(*3*) Where such register is maintained wholly or partly in computer floppies or diskettes or in any other electronic form under sub-section (*2*), any reference in this Act to any entry in the register shall be construed as the reference to the entry as maintained on computer floppies or diskettes or in any other electronic form, as the case may be.

(*4*) No notice of any trust, express or implied or constructive, shall be entered in the register and no such notice shall be receivable by the Registrar.

(*5*) Subject to the superintendence and direction of the Central Government, the register shall be kept under the control and management of the Registrar.

(*6*) There shall be kept at each branch office of the Geographical Indications Registry a copy of the register and such other documents mentioned in section 78 as the Central Government may, by notification in the Official Gazette, direct.

7. Part A and Part B of the register.—(*1*) The register referred to in section 6 shall be divided into two Parts called respectively Part A and Part B.

(*2*) The particulars relating to the registration of the geographical indications shall be incorporated and form Part A of the register in the prescribed manner.

(*3*) The particulars relating to the registration of the authorised users shall be incorporated and form part of Part B of the register in the prescribed manner.

8. Registration to be in respect of particular goods and area.—(*1*) A geographical indication may be registered in respect of any or all of the goods, comprised in such class of goods as may be classified by the Registrar and in respect of a definite territory of a country, or a region or locality in that territory, as the case may be.

(*2*) The Registrar shall classify the goods under sub-section (*1*), as far as may be, in accordance with the International classification of goods for the purposes of registration of geographical indications.

(*3*) The Registrar may publish in the prescribed manner an alphabetical index of classification of goods referred to in sub-section (*2*).

(*4*) Any question arising as to the class within which any goods fall or the definite area as referred to in sub-section (*1*) in respect of which the geographical indication is to be registered or where any goods

are not specified in the alphabetical index of goods published under sub-section (*3*) shall be determined by the Registrar whose decision in the matter shall be final.

9. Prohibition of registration of certain geographical indications.—A geographical indication—

(*a*) the use of which would be likely to deceive or cause confusion; or

(*b*) the use of which would be contrary to any law for the time being in force; or

(*c*) which comprises or contains scandalous or obscene matter; or

(*d*) which comprises or contains any matter likely to hurt the religious susceptibilities of any class or section of the citizens of India; or

(*e*) which would otherwise be disentitled to protection in a court; or

(*f*) which are determined to be generic names or indications of goods and are, therefore, not or ceased to be protected in their country of origin, or which have fallen into disuse in that country; or

(*g*) which, although literally true as to the territory, region or locality in which the goods originate, but falsely represent to the persons that the goods originate in another territory, region or locality, as the case may be,

shall not be registered as a geographical indication.

Explanation 1.—For the purposes of this section, "generic names or indications", in relation to goods, means the name of a goods which, although relates to the place or the region where the goods was originally produced or manufactured, has lost its original meaning and has become the common name of such goods and serves as a designation for or indication of the kind, nature, type or other property or characteristic of the goods.

Explanation 2.—In determining whether the name has become generic, account shall be taken of all factors including the existing situation in the region or place in which the name originates and the area of consumption of the goods.

10. Registration of homonymous geographical indications.—Subject to the provisions of section 7, a homonymous geographical indication may be registered under this Act, if the Registrar is satisfied, after considering the practical conditions under which the homonymous indication in question shall be differentiated from other homonymous indications and the need to ensure equitable treatment of the producers of the goods concerned, that the consumers of such goods shall not be confused or misled in consequence of such registration.

CHAPTER III

PROCEDURE FOR AND DURATION OF REGISTRATION

11. Application for registration.—(*1*) Any association of persons or producers or any organisation or authority established by or under any law for the time being in force representing the interest of the producers of the concerned goods, who are desirous of registering a geographical indication in relation to such goods shall apply in writing to the Registrar in such form and in such manner and accompanied by such fees as may be prescribed for the registration of the geographical indication.

(*2*) The application under sub-section (*1*) shall contain—

(*a*) a statement as to how the geographical indication serves to designate the goods as originating from the concerned territory of the country or region or locality in the country, as the case may be, in respect of specific quality, reputation or other characteristics of which are due exclusively or essentially to the geographical environment, with its inherent natural and human factors, and the production, processing or preparation of which takes place in such territory, region or locality, as the case may be;

(*b*) the class of goods to which the geographical indication shall apply;

(*c*) the geographical map of the territory of the country or region or locality in the country in which the goods orginate or are being manufactured;

(*d*) the particulars regarding the appearance of the geographical indication as to whether it is comprised of the words or figurative elements or both;

(*e*) a statement containing such particulars of the producers of the concerned goods, if any, proposed to be initially registered with the registration of the geographical indication as may be prescribed; and

(*f*) such other particulars as may be prescribed.

(*3*) A single application may be made for registration of a geographical indication for different classes of goods and fee payable therefor shall be in respect of each such class of goods.

(*4*) Every application under sub-section (*1*) shall be filed in the office of the Geographical Indications Registry within whose territorial limits, the territory of the country or the region or locality in the country to which the geographical indication relates is situated:

Provided that where such territory, region or locality, as the case may be, is not situated in India, the application shall be filed in the office of the Geographical Indications Registry within whose territorial limits the place mentioned in the address for services in India as disclosed in the application, is situated.

(*5*) Every applications under sub-section (*1*) shall be examined by the Registrar in such manner as may be prescribed.

(*6*) Subject to the provisions of this Act, the Registrar may refuse the application or may accept it absolutely or subject to such amendments, modification, conditions or limitations, if any, as he thinks fit.

(*7*) In the case of refusal or conditional acceptance of application, the Registrar shall record in writing the grounds for such refusal or conditional acceptance and the materials used by him in arriving at his decision.

12. Withdrawal of acceptance.—Where, after the acceptance of an application for registration of a geographical indication but before its registration, the Registrar is satisfied,—

(*a*) that the application has been accepted in error, or

(*b*) that in the circumstances of the case the geographical indication should not be registered or should be registered subject to conditions or limitations or to conditions additional to or different from the conditions or limitations subject to which the application has been accepted,

the Registrar may, after hearing the applicant if he so desires, withdraw the acceptance and proceed as if the application had not been accepted.

13. Advertisement of application.—(*1*) When an application for registration of a geographical indication has been accepted, whether absolutely or subject to conditions or limitations, the Registrar shall, as soon as may be after acceptance, cause the application as accepted together with the conditions or limitations, if any, subject to which it has been accepted, to be advertised in such manner as may be prescribed.

(*2*) Where after advertisement of an application—

(*a*) an error in the application has been corrected; or

(*b*) the application has been permitted to be amended under section 15,

the Registrar may, in his discretion cause the application to be advertised again or instead of causing the application to be advertised again, notify in the prescribed manner, the correction made in the application.

14. Opposition to registration.—(*1*) Any person may, within three months from the date of advertisement or readvertisement of an application for registration or within such further period, not exceeding one month, in the aggregate, as the Registrar, on application made to him in such manner and on payment of such fee as may be prescribed allows, give notice in writing in the prescribed manner to the Registrar, of opposition to the registration.

(*2*) The Registrar shall serve a copy of the notice on the applicant for registration and, within two months from the receipt by the applicant of such copy of the notice of opposition, the applicant shall sent

to the Registrar in the prescribed manner a counter-statement of the grounds on which he relies for his application, and if he does not do so, he shall be deemed to have abandoned his application.

(*3*) If the applicant sends such counter-statement, the Registrar shall serve a copy thereof on the person giving notice of opposition.

(*4*) Any evidence upon which the opponent and the applicant may rely shall be submitted in such manner and within the such time as may be prescribed to the Registrar, and the Registrar shall give an opportunity to them to be heard, if they so desire.

(*5*) The Registrar shall, after hearing the parties, if so required, and considering the evidence, decide whether and subject to what conditions or limitations, if any, the registration is to be permitted, and may take into account a ground of objection whether relied upon by the opponent or not.

(*6*) Where a person giving notice of opposition or an applicant sending a counter-statement after receipt of a copy of such notice neither resides nor carries on business in India, the Registrar may require him to give security for the costs of proceeding before him, and in default of such security being duly given, may treat the opposition or application, as the case may be, as abandoned.

(*7*) The Registrar may, on request, permit correction of any error in, or any amendment of, a notice of opposition or a counter-statement on such terms as he thinks just.

15. Correction and amendment.—The Registrar may, on such terms, as he thinks just, at any time, whether before or after acceptance of an application for registration under section 11, permit the correction of any error or in connection with the application or permit an amendment of the application:

Provided that if an amendment is made to a single application referred to in sub-section (*3*) of section 11 involving division of such application into two or more applications, the date of making of the initial application shall be deemed to be the date of making of the divided applications so divided.

16. Registration.—(*1*) Subject to the provisions of section 12, when an application for registration of a geographical indication has been accepted and either—

(*a*) the application has not been opposed and the time for notice of opposition has expired; or

(*b*) the application has been opposed and the opposition has been decided in favour of the applicant,

the Registrar shall, unless the Central Government otherwise directs, register the said geographical indication and the authorised users, if any, mentioned in the application and the geographical indication and the authorised users when registered shall be registered as of the date of the making of the said application and that date shall, subject to the provisions of section 84, be deemed to be the date of registration.

(*2*) On the registration of a geographical indication, the Registrar shall issue each to the applicant and the authorised users, if registered with the geographical indication, a certificate in such form as may be prescribed of the registration thereof, sealed with the seal of the Geographical Indications Registry.

(*3*) Where registration of a geographical indication is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice to the applicant in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf in the notice.

(*4*) The Registrar may amend the register or a certificate of registration for the purpose of correcting a clerical error or an obvious mistake.

17. Application for registration as authorised user.—(*1*) Any person claiming to be the producer of the goods in respect of which a geographical indication has been registered under section 16 may apply in writing to the Registrar in the prescribed manner for registering him as an authorised user of such geographical indication.

(*2*) The application under sub-section (*1*) shall be accompanied by a statement and such documents of facts as may be prescribed and required by the Registrar to determine as to whether such person is the producer of the goods referred to in that sub-section and such fee as may be prescribed.

(*3*) The provisions of this Chapter relating to—

(*a*) the filing and examination of the application;

(*b*) the refusal and acceptance of registration;

(*c*) withdrawal of acceptance of application;

(*d*) advertisement of application;

(*e*) opposition to registration;

(*f*) correction or error in an amendment of the application; and

(*g*) registration,

shall apply in respect of the application and registration of authorised users referred to in sub-section (*1*) in the same manner as they apply for the application for registration and registration of the geographical indication.

18. Duration, renewal, removal and restoration of registration.—(*1*) The registration of a geographical indication shall be for a period of ten years, but may be renewed from time to time in accordance with the provisions of this section.

(*2*) The registration of an authorised user shall be for a period of ten years or for the period till the date on which the registration of the geographical indication in respect of which the authorised user is registered expires, whichever is earlier.

(*3*) The Registrar shall, on application made in the prescribed manner, by the registered proprietor or by the authorised user and within the prescribed period and subject to the payment of the prescribed fee, renew the registration of the geographical indication or authorised user, as the case may be, for a period of ten years from the date of expiration of the original registration or of the last renewal of registration, as the case may be (which date is in this section referred to as the expiration of the last registration).

(*4*) At the prescribed time before the expiration of the last registration of a geographical indication or the authorised user, as the case may be, the Registrar shall send notice in the prescribed manner to the registered proprietor or the authorised user, as the case may be, of the date of expiration and the conditions as to payment of fees and otherwise upon which a renewal of registration may be obtained, and, if at the expiration of time prescribed in that behalf those conditions have not been duly complied with, the Registrar may remove the geographical indication or the authorised user, as the case may be, from the register:

Provided that the Registrar shall not remove the geographical indication or the authorised user, as the case may be, from the register, if an application is made in the prescribed form and the prescribed fee and surcharge is paid within six months from the expiration of the last registration of the geographical indication or the authorised user, as the case may be, and shall renew the registration of geographical indication or the authorised user, as the case may be, for a period of ten years under sub-section (*3*).

(*5*) Where a geographical indication or authorised user, as the case may be, has been removed from the register for non-payment of the prescribed fee, the Registrar shall, after six months and within one year from the expiration of the last registration of the geographical indication or the authorised user, as the case may be, on receipt of an application in the prescribed form and on payment of the prescribed fee, if satisfied that it is just so to do, restore the geographical indication or the authorised user, as the case may be, to the register and renew registration of the geographical indication or authorised user, as the case may be, either generally or subject to such condition or limitation as he thinks fit to impose, for a period of ten years from the expiration of the last registration.

19. Effect of removal from register for failure to pay fee for renewal.—Where a geographical indication has been removed from the register for failure to pay the fee for renewal, it shall nevertheless, for the purpose of any application for the registration of another geographical indication during one year,

next after the date of removal, be deemed to be a geographical indication already on the register, unless the tribunal is satisfied either—

(*a*) that there has been no *bona fide* trade use of the geographical indication which has been removed within the two years immediately preceding its removal; or

(*b*) that no deception or confusion would be likely to arise from the use of the geographical indication which is the subject of the application for registration by reason of any previous use of the geographical indication which has been removed.

CHAPTER IV

EFFECT OF REGISTRATION

20. No action for infringement of unregistered geographical indication.—(*1*) No person shall be entitled to institute any proceeding to prevent, or to recover damages for, the infringement of an unregistered geographical indication.

(*2*) Nothing in this Act shall be deemed to affect rights of action against any person for passing off goods as the goods of another person or the remedies in respect thereof.

21. Rights conferred by registration.—(*1*) Subject to the other provisions of this Act, the registration of a geographical indication shall, if valid, give,—

(*a*) to the registered proprietor of the geographical indication and the authorised user or users thereof the right to obtain relief in respect of infringement of the geographical indication in the manner provided by this Act;

(*b*) to the authorised user thereof the exclusive right to the use of the geographical indication in relation to the goods in respect of which the geographical indication is registered.

(*2*) The exclusive right to the use of a geographical indication given under clause (*b*) of sub-section (*1*) shall be subject to any condition and limitation to which the registration is subject.

(*3*) Where two or more persons are authorised users of geographical indications, which are identical with or nearly resemble each other, the exclusive right to the use of any of those geographical indications shall not (except so far as their respective rights are subject to any conditions or limitations entered on the register) be deemed to have been acquired by anyone of those persons as against any other of those persons merely by registration of the geographical indications, but each of those persons has otherwise the same rights as against other persons as he would have if he were the sole authorised user.

22. Infringement or registered geographical indications.—(*1*) A registered geographical indication is infringed by a person who, not being an authorised user thereof,—

(*a*) uses such geographical indication by any means in the designations or presentation of goods that indicates or suggests that such goods originate in a geographical area other than the true place of origin of such goods in a manner which misleads the persons as to the geographical origin of such goods; or

(*b*) uses any geographical indication in such manner which constitutes an act of unfair competition including passing off in respect of registered geographical indication.

Explanation 1.—For the purposes of this clause, "act of unfair competition" means any act of competition contrary to honest practices in industrial or commercial matters.

Explanation 2.—For the removal of doubts, it is hereby clarified that the following acts shall be deemed to be acts of unfair competition, namely:—

(*i*) all acts of such a nature as to create confusion by any means whatsoever with the establishment, the goods or the industrial or commercial activities, of a competitor;

(*ii*) false allegations in the course of trade of such a nature as to discredit the establishment, the goods or the industrial or commercial activities, of a competitor;

(*iii*) geographical indications, the use of which in the course of trade is liable to mislead the persons as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods;

(*c*) uses another geographical indication to the goods which, although literally true as to the territory, region or locality in which the goods originate, falsely represents to the persons that the goods originate in the territory, region or locality in respect of which such registered geographical indication relates.

(*2*) The Central Government may, if it thinks necessary so to do for providing additional protection to certain goods or classes of goods under sub-section (*3*), by notification in the Official Gazette, specify such goods or class or classes of goods, for the purposes of such protection.

(*3*) Any person who is not an authorised user of a geographical indication registered under this Act in respect of the goods or any class or classes of goods notified under sub-section (*2*), uses any other geographical indication to such goods or class or classes of goods not originating in the place indicated by such other geographical indication or uses such other geographical indication to such goods or class or classes of goods even indicating the true origin of such goods or uses such other geographical indication to such goods or class or classes of goods in translation of the true place of origin or accompanied by expression such as "kind", "style", "imitation" or the like expression, shall infringe such registered geographical indication.

(*4*) Notwithstanding anything contained in this section, where the goods in respect of which a geographical indication has been registered are lawfully acquired by a person other than the authorised user of such geographical indication, further dealings in those goods by such person including processing or packaging, shall not constitute an infringement of such geographical indication, except where the condition of goods is impaired after they have been put in the market.

23. Registration to be *prima facie* evidence of validity.—(*1*) In all legal proceedings relating to a geographical indication, the certificate of registration granted in this regard by the Registrar under this Act, being a copy of the entry in the register under the seal of the Geographical Indications Registry, shall be *prima facie* evidence of the validity thereof and be admissible in all courts and before the Appellate Board without further proof or production of the original.

(*2*) Nothing in this section shall be deemed to be affect the right of action in respect of an unregistered geographical indication.

24. Prohibition of assignment or transmission, etc.—Notwithstanding anything contained in any law for the time being in force, any right to a registered geographical indication shall not be the subject matter of assignment, transmission, licensing, pledge, mortgage or any such other agreement:

Provided that on the death of an authorised user his right in a registered geographical indication shall devolve on his successor in title under the law for the time being in force.

CHAPTER V

SPECIAL PROVISIONS RELATING TO TRADE MARKS AND PRIOR USERS

25. Prohibition of registration of geographical indication as trade mark.—Notwithstanding anything contained in the Trade Marks Act, 1999 (47 of 1999), the Registrar of Trade Marks referred to in section 3 of that Act, shall, *suo motu* or at the request of an interested party, refuse or invalidate the registration of a trade mark which—

(*a*) contains or consists of a geographical indication with respect to the goods or class or classes of goods not originating in the territory of a country, or a region or locality in that territory which such geographical indication indicates, if use of such geographical indications in the trade mark for such goods, is of such a nature as to confuse or mislead the persons as to the true place of origin of such goods or class or classes of goods;

(*b*) contains or consists of a geographical indication identifying goods or class or classes of goods notified under sub-section (*2*) of section 22.

26. Protection to certain trade marks.—(*1*) Where a trade mark contains or consists of a geographical indication and has been applied for or registered in good faith under the law relating to trade

marks for the time being in force, or where rights to such trade mark have been acquired through use in good faith either—

(*a*) before the commencement of this Act; or

(*b*) before the date of filing the application for registration of such geographical indication under this Act,

nothing contained in this Act shall prejudice the registrability or the validity of the registration of such trade mark under the law relating to the trade marks for the time being in force, or the right to use such trade mark, on the ground that such trade mark is identical with or similar to such geographical indication.

(*2*) Nothing contained in this Act shall apply in respect of a geographical indication with respect to goods or class or classes of goods for which such geographical indication is identical with the term customary in common language as the common name of such goods in any part of India on or before the 1st day of January, 1995.

(*3*) Nothing contained in this Act shall in any way prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to confuse or mislead the people.

(*4*) Notwithstanding anything contained in the Trade Marks Act, 1999 (47 of 1999) or in this Act, no action in connection with the use or registration of a trade mark shall be taken after the expiry of five years from the date on which such use or registration infringes any geographical indication registered under this Act has become known to the registered proprietor or authorised user registered in respect of such geographical indication under this Act or after the date of registration of the trade mark under the said Trade Marks Act subject to the condition that the trade mark has been published under the provisions of the said Trade Marks Act, 1999 or the rules made thereunder by that date, if such date is earlier than the date on which such infringement became known to such proprietor or authorised user and such geographical indication is not used or registered in bad faith.

CHAPTER VI

RECTIFICATION AND CORRECTION OF THE REGISTER

27. Power to cancel or vary registration and to rectify the register.—(*1*) On application made in the prescribed manner to the Appellate Board or to the Registrar by any person aggrieved, the tribunal may make such order as it may think fit for cancelling or varying the registration of a geographical indication or authorised user on the ground of any contravention, or failure to observe the condition entered on the register in relation thereto.

(*2*) Any person aggrieved by the absence or omission from the register of any entry, or by any entry made in the register without sufficient cause, or by any entry wrongly remaining on the register, or by any error or defect in any entry in the register, may apply in the prescribed manner to the Appellate Board or to the Registrar, and the tribunal may make such order for making, expunging or varying the entry as it may think fit.

(*3*) The tribunal may in any proceeding under this section decide any question that may be necessary or expedient to decide in connection with the rectification of the register.

(*4*) The tribunal, of its own motion, may, after giving notice in the prescribed manner to the parties concerned and after giving them an opportunity of being heard, make any order referred to in sub-section (*1*) or sub-section (*2*).

(*5*) Any order of the Appellate Board rectifying the register shall direct that notice of the rectification shall be served upon the Registrar in the prescribed manner who shall upon receipt of such notice rectify the register accordingly.

28. Correction of register.—The Registrar may, on application made in the prescribed manner by the registered proprietor or the authorised user,—

(*a*) correct any error in the name, address or description of the registered proprietor or the authorised user, as the case may be, of a geographical indication, or any other entry relating to the geographical indication on the register;

(*b*) enter any change in the name, address or description of the association of persons or of producers or any ogranisation or authority, as the case may be, who is registered as proprietor of a geographical indication on the register;

(*c*) cancel the entry of a geographical indication on the register;

(*d*) strike out any goods or class or classes of goods from those in respect of which a geographical indication is registered from the register,

and may make any consequential amendment or alteration in the certificate of registration, and for that purpose, may require the certificate of registration to be produced to him.

29. Alteration of registered geographical indications.—(*1*) The registered proprietor of a geographical indication may apply in the prescribed manner to the Registrar for leave to add to or alter the geographical indication in any manner not substantially affecting the identity thereof, and the Registrar may refuse leave or may grant it on such terms and subject to such limitations as he may think fit.

(*2*) The Registrar may cause an application under this section to be advertised in the prescribed manner in any case where it appears to him that it is expedient so to do, and where he does so, if within the prescribed time from the date of the advertisement any person gives notice to the Registrar in the prescribed manner of the opposition to the application, the Registrar shall, after hearing the parties if so required, decide the matter.

(*3*) Where leave is granted under this section, the geographical indication as altered shall be advertised in the prescribed manner, unless the application has already been advertised under sub-section (*2*).

30. Adaptation of entries in register to amend or substitute classification of goods.—(*1*) The Registrar shall not make any amendment of the register which would have the effect of adding any goods or classes of goods to those in respect of which a geographical indication is registered (whether in one or more classes) immediately before the amendment is to be made or antedating the registration of a geographical indication in respect of any goods:

Provided that this sub-section, shall not apply when the Registrar is satisfied that compliance therewith would involve complexity and that the addition or antedating, as the case may be, would not affect any substantial quantity of goods and would not substantially prejudice the rights of any person.

(*2*) A proposal so to amend the register shall be brought to the notice of the registered proprietor and every authorised user of the geographical indication affected and advertised in the prescribed manner, and may be opposed before the Registrar by any person aggrieved on the ground that the proposed amendment contravenes the provisions of sub-section (*1*).

CHAPTER VII

APPEALS TO THE APPELLATE BOARD

31. Appeals to the Appellate Board.—(*1*) Any person aggrieved by an order or decision of the Registrar under this Act, or the rules made thereunder, may prefer an appeal to the Appellate Board within three months from the date on which the order or decision sought to be appealed against is communicated to such person preferring the appeal.

(*2*) No appeal shall be admitted if it is preferred after the expiry of the period specified under sub-section (*1*):

Provided that an appeal may be admitted after the expiry of the period specified therefore, if the appellant satisfies the Appellate Board that he had sufficient cause for not preferring the appeal within the specified period.

(*3*) An appeal to the Appellate Board shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by a copy of the order or decision appealed against and such fees as may be prescribed.

32. Bar of jurisdiction of courts, etc.—No court or other authority shall have or, be entitled to, exercise any jurisdiction, powers or authority in relation to the matters referred to in sub-section (*1*) of section 31.

33. Procedure of the Appellate Board.—The provisions of sub-sections (*2*), (*3*), (*4*), (*5*), (*6*) of section 84, section 87, section 92, section 95 and section 96 of the Trade Marks Act, 1999 (47 of 1999), shall apply to the Appellate Board in the discharge of its functions under this Act as they apply to it in the discharge of its functions under the Trade Marks Act, 1999.

34. Procedure for application for rectification, etc., before Appellate Board.—(*1*) An application for rectification of the register made to the Appellate Board under section 27 shall be in such form as may be prescribed.

(*2*) A certified copy of every order or judgment of the Appellate Board relating to a registered geographical indication under this Act shall be communicated to the Registrar by the Appellate Board and the Registrar shall give effect to the order of the Board and shall, when so directed, amend the entries in, or rectify, the register in accordance with such order.

35. Appearance of Registrar in legal proceedings.—(*1*) The Registrar shall have the right to appear and be heard—

(*a*) in any legal proceedings before the Appellate Board in which the relief sought includes alteration or rectification of the register or in which any question relating to the practice of the Geographical Indications Registry is raised;

(*b*) in any appeal to the Board from an order of the Registrar on an application for registration of a geographical indication or authorised user—

(*i*) which is not opposed, and the application is either refused by the Registrar or is accepted by him subject to any amendments, modifications, conditions or limitations, or

(*ii*) which has been opposed and the Registrar considers that his appearance is necessary in the public interest,

and the Registrar shall appear in any case if so directed by the Board.

(*2*) Unless the Appellate Board otherwise directs, the Registrar may, in lieu of appearing, submit a statement in writing signed by him, giving such particulars as he thinks proper of the proceedings before him relating to the matter in issue or of the grounds of any decision given by him affecting it, or of the practice of the Geographical Indications Registry in like cases, or of other matters relevant to the issues and within his knowledge as Registrar, and such statement shall be evidence in the proceeding.

36. Costs of Registrar in proceedings before Appellate Board.—In all proceedings under this Act before the Appellate Board the costs of the Registrar shall be in the discretion of the Board, but the Registrar shall not be ordered to pay the costs of any of the parties.

CHAPTER VIII

OFFENCES, PENALTIES AND PROCEDURE

37. Meaning of applying geographical indications.—(*1*) A person shall be deemed to apply a geographical indication to goods who—

(*a*) applies it to the goods themselves; or

(*b*) applies it to any package in or with which the goods are sold, or exposed for sale, or had in possession for sale or for any purpose of trade or manufacture; or

(*c*) places, encloses or annexes any goods which are sold, or exposed for sale, or had in possession for sale or for any purpose of trade or manufacture, in or with any package or other thing to which a geographical indication has been applied; or

(*d*) uses a geographical indication in any manner reasonably likely to lead to the belief that the goods in connection with which it is used are designated or described by that geographical indication; or

(*e*) in relation to the goods uses a geographical indication in any sign, advertisement, invoice, catalogue, business letter, business paper, price list or other commercial documents and goods are delivered to a person in pursuance of a request or order made by reference to the geographical indication as so used.

(*2*) A geographical indication shall be deemed to be applied to goods whether it is woven in, impressed on, or otherwise worked into, or annexed or affixed to, the goods or to any package or other thing.

38. Falsifying and falsely applying geographical indications.—(*1*) A person shall be deemed to falsify a geographical indication who, either,—

(*a*) without the assent of the authorised user of the geographical indication makes that geographical indication or deceptively similar geographical indication; or

(*b*) falsifies any genuine geographical indication, whether by alteration, addition, effacement or otherwise.

(*2*) A person shall be deemed to falsely apply to goods a geographical indication who, without the assent of the authorised user of the geographical indication,—

(*a*) applies such geographical indication or a deceptively similar geographical indication to goods or any package containing goods;

(*b*) uses any package bearing a geographical indication which is identical with or deceptively similar to the geographical indication of such authorised user, for the purpose of packing, filling or wrapping therein any goods other than the genuine goods of the authorised user of the geographical indication.

(*3*) Any geographical indication falsified as mentioned in sub-section (*1*) or falsely applied as mentioned in sub-section (*2*), is in this Act referred to as a false geographical indication.

(*4*) In any prosecution for falsifying a geographical indication or falsely applying a geographical indication to goods, the burden of proving the assent of proprietor shall lie on the accused.

39. Penalty for applying false geographical indications.—Any person who,—

(*a*) falsifies any geographical indication; or

(*b*) falsely applies to goods any geographical indication; or

(*c*) makes, disposes of, or has in his possession, any die, block, machine, plate or other instrument for the purpose of falsifying or of being used for falsifying, a geographical indication; or

(*d*) applies to any goods to which an indication of the country or place in which they were made or produced or the name and the address of the manufacturer or person for whom the goods are manufactured is required to be applied under section 71, a false indication of such country, place, name or address; or

(*e*) tampers with, alters or effaces an indication of origin which has been applied to any goods to which it is required to be applied under section 71; or

(*f*) causes any of the things above-mentioned in this section to be done,

shall, unless he proves that he acted, without intent to defraud, be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

40. Penalty for selling goods to which false geographical indication is applied.—Any person who sells, lets for hire or exposes for sale, or hires or has in his possession for sale, goods or things to which any false geographical indication is applied or which, being required under section 71 to have applied to them an indication of the country or place in which they were made or produced or the name and address of the manufacturer, or person for whom the goods are manufactured or without the indications so required, shall, unless he proves,—

(*a*) that, having taken all reasonable precautions against committing an offence against this section, he had at the time of commission of the alleged offence no reason to suspect the genuineness of the geographical indication or that any offence had been committed in respect of the goods; or

(*b*) that, on demand by or on behalf of the prosecutor, he gave all the information in his power with respect to the person from whom he obtained such goods or things; or

(*c*) that otherwise he had acted innocently,

be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

41. Enhanced penalty on second or subsequent conviction.—Whoever having already been convicted of an offence under section 39 or section 40 is again convicted of any such offence shall be punishable for the second and for every subsequent offence, with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for adequate and special reason to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than one year or a fine of less than one lakh rupees:

Provided further that for the purposes of this section, no cognizance shall be taken of any conviction made before the commencement of this Act.

42. Penalty for falsely representing a geographical indication as registered.—(*1*) No person shall make any representation—

(*a*) with respect to a geographical indication, not being a registered geographical indication, to the effect that it is a registered geographical indication; or

(*b*) to the effect that a registered geographical indication is registered in respect of any goods in respect of which it is not in fact registered; or

(*c*) to the effect that registration of a geographical indication gives an exclusive right to the use thereof in any circumstances in which having regard to limitation entered on the register, the registration does not in fact give that right.

(*2*) If any person contravenes any of the provisions of sub-section (*1*), he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

(*3*) For the purposes of this section the use in India in relation to a geographical indication of the words "registered geographical indication" or any other expression, symbol or sign like "R.G.I." referring whether expressly or impliedly to registration, shall be deemed to import a reference to registration in the register, except—

(*a*) where that word or other expression, symbol or sign is used in direct association with other words delineated in characters at least as large as those in which that word or other expression, symbol or sign is delineated and indicating that the reference to registration as a geographical indication under the law of a country outside India being a country under the law of which the registration referred to is in fact in force; or

(*b*) where that other expression, symbol or sign is of itself such as to indicate that the reference is to such registration as is mentioned in clause (*a*); or

(*c*) where that word is used in relation to a geographical indication registered under the law of a country outside India and in relation solely to goods to be exported to that country for use in that country.

43. Penalty for improperly describing a place of business as connected with the Geographical Indications Registry.—If any person uses on his place of business, or on any document issued by him, or otherwise, words which would reasonably lead to the belief that his place of business is, or is officially connected with, the Geographical Indications Registry, he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

44. Penalty for falsification of entries in the register.—If any person makes, or causes to be made, a false entry in the register, or a writing falsely purporting to be a copy of an entry in the register, or produces or tenders or causes to be produced or tendered, in evidence any such writing, knowing the entry or writing to be false, he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

45. No offence in certain cases.—The provisions of sections 39, 40 and 41 shall in relation to a registered geographical indication or authorised user of such geographical indication, be subject to the rights created or recognised by this Act and no act or omission shall be deemed to be an offence under the aforesaid sections if,—

(*a*) the alleged offence relates to a registered geographical indication and the act or omission is permitted under this Act; and

(*b*) the alleged offence relates to a registered geographical indication and the act or omission is permitted under any other law for the time being in force.

46. Forfeiture of goods.—(*1*) Where a person is convicted of an offence under section 39 or section 40 or section 41 or is acquitted of an offence under section 39 or section 40 on proof that he acted without intend or defraud, or under section 40 on proof of the matters specified in clause (*a*) or clause (*b*) or clause (*c*) of that section, the court convicting or acquitting him may direct the forfeiture to Government of all goods and things by means of, or in relation to, which the offence has been committed, or but for such proof as aforesaid would have been committed.

(*2*) When a forfeiture is directed on a conviction and an appeal lies against the conviction, an appeal shall lie against the forfeiture also.

(*3*) When, a forfeiture is directed on acquittal and the goods or things to which the direction relates are of value exceeding fifty rupees, an appeal against the forfeiture may be preferred, within thirty days from the date of the direction, to the court to which in appealable cases appeal lie from sentences of the court which directed the forfeiture.

(*4*) When a forfeiture is directed on a conviction, the court, before whom the person is convicted, may order any forfeited articles to be destroyed or otherwise disposed of as the court thinks fit.

47. Exemption of certain persons employed in ordinary course of business.—Where a person accused of an offence under section 39 proves,—

(*a*) that in the ordinary course of his business he is employed on behalf of other persons to apply geographical indications, or as the case may be, to make dies, blocks, machines, plates, or other instruments for making, or being used in making, geographical indications;

(*b*) that in the case which is the subject of the charge he was so employed, and was not interested in the goods or other thing by way of profit or commission depend on the sale of such goods;

(*c*) that, having taken all reasonable precautions against committing the offence charged, he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the geographical indication; and

(*d*) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons on whose behalf the geographical indication was applied,

he shall be acquitted.

48. Procedure where invalidity of registration is pleaded by the accused.—(*1*) Where the offence charged under section 39 or section 40 or section 41 is in relation to a registered geographical indication and the accused pleads that the registration of the geographical indication is invalid, the following procedure shall be followed:—

(*a*) if the court is satisfied that such defence is *prima facie* tenable, it shall not proceed with the charge but shall adjourn the proceeding for three months from the date on which the plea of the accused is recorded to enable the accused to file an application before the Appellate Board under this Act, for the rectification of the register on the ground that the registration is invalid;

(*b*) if the accused proves to the court that he has made such application within the time so limited or within such further time as the court may for sufficient cause allow, the further proceedings in the prosecution shall stand stayed till the disposal of such application for rectification;

(*c*) if within a period of three months or within such extended time as may be allowed by the court the accused fails to apply to the Appellate Board for rectification of the register, the court shall proceed with the case as if the registration were valid.

(*2*) Where before the institution of a complaint of an offence referred to in sub-section (*1*), any application for the rectification of the register concerning the geographical indication in question on the ground of invalidity of the registration thereof has already been properly made to and is pending before the tribunal, the court shall stay the further proceedings in the prosecution pending the disposal of the application aforesaid and shall determine the charge against the accused in conformity with the result of the application for rectification in so far as the complainant relies upon the registration of his geographical indication.

49. Offences by companies.—(*1*) If the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(*2*) Notwithstanding anything contained in sub-section (*1*), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(*a*) "company" means any body corporate and includes a firm or other association of individuals; and

(*b*) "director", in relation to a firm, means a partner in the firm.

50. Cognizance of certain offences and the powers of police officer for search and seizure.—(*1*) No court shall take cognizance of an offence under section 42 or section 43 or section 44 except on complaint in writing made by the Registrar or any officer authorised by him in writing:

Provided that in relation to clause (*b*) of sub-section (*1*) of section 42, a court shall take a cognizance of an offence on the basis of a certificate issued by the Registrar to the effect that a registered geographical indication has been represented as registered in respect of any goods in respect of which it is not in fact registered.

(*2*) No court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the first class shall try an offence under this Act.

(*3*) The offences under section 39 or section 40 or section 41 shall be cognizable.

(*4*) Any police officer not below the rank of deputy superintendent of police or equivalent, may, if he satisfied that any of the offences referred to in sub-section (*3*) has been, is being, or is likely to be, committed, search and seize without warrant the goods, die, block, machine, plate, other instruments or things involved in committing the offence, wherever found, and all the articles so seized shall, as soon as practicable, be produced before the Judicial Magistrate of the first class or Metropolitan Magistrate, as the case may be:

Provided that the police officer, before making any search and seizure, shall obtain the opinion of the Registrar on the facts involved in the offence relating to geographical indication and shall abide by the opinion so obtained.

(*5*) Any person having an interest in any article seized under sub-section (*4*), may, within fifteen days of such seizure, make an application to the Judicial Magistrate of the first class or Metropolitan Magistrate, as the case may be, for such article being restored to him and the Magistrate, after hearing the application and the prosecution, shall make such order on the application as he may deem fit.

51. Costs of defence of prosecution.—In any prosecution under this Act, the court may order such costs to be paid by the accused to the complainant, or by the complainant to the accused, as the court deemed reasonable having regard to all the circumstances of the case and the conduct of the parties and the costs so awarded shall be recoverable as if they were a fine.

52. Limitation of prosecution.—No prosecution for an offence under this Act shall be commenced after the expiration of three years next after the commission of the offence charged or two years after the discovery thereof by the prosecutor, whichever expiration first happens.

53. Information as to commission of offence.—An officer of the Government whose duty it is to take part in the enforcement of the provisions of this Chapter shall not be compelled in any court to say whence he got any information as to the commission of any offence against this Act.

54. Punishment for abetement in India of acts done out of India.—If any person, being within India, abets the commission, without India, of any act which, if committed in India, would, under this Act, be an offence, he may be tried for such abetement in any place in India in which he may be found, and be punished therefor with the punishment to which he would be liable if he had himself committed in that place the act which he abetted.

CHAPTER IX

MISCELLANEOUS

55. Protection of action taken in good faith.—No suit or other legal proceedings shall lie against any person in respect of anything which is in good faith done or intended to be done in pursuance of this Act.

56. Certain persons to be public servants.—Every person appointed under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

57. Stay of proceedings where the validity of registration of the geographical indication is questioned, etc.—(*1*) Where in any suit for infringement of a geographical indication the defendant pleads that registration of the geographical indication relating to plaintiff is invalid, the court trying the suit (hereinafter referred to as the court), shall,—

(*a*) if any proceedings for rectification of the register to the geographical indication relating to plaintiff or defendant are pending before the Registrar or the Appellate Board, stay the suit pending the final disposal of such proceedings;

(*b*) if no such proceedings are pending and the court is satisfied that the plea regarding the invalidity of the registration of the geographical indication relating to plaintiff or defendant is *prima facie* tenable, raise an issue regarding the same and adjourn the case for a period of three months from

the date of the framing of the issue in order to enable the party concerned to apply to the Appellate Board for rectification of the register.

(*2*) If the party concerned proves to the court that he has made any such application as is referred to in clause (*b*) of sub-section (*1*) within the time specified therein or within such extended time as the court may for sufficient cause allow, the trial of the suit shall stand stayed until the final disposal of the rectification proceedings.

(*3*) If no such application as aforesaid has been made within the time so specified or within such extended time as the court may allow, the issue as to the validity of the registration of the geographical indication concerned shall be deemed to have been abandoned and the court shall proceed with the suit in regard to the other issues in the case.

(*4*) The final order made in any rectification proceedings referred to in sub-section (*1*) or sub-section (*2*) shall be binding upon the parties and the court shall dispose of the suit conformably to such order in so far as it relates to the issue as to the validity of the registration of the geographical indication.

(*5*) The stay of a suit for the infringement of a geographical indication under this section shall not preclude the court from making any interlocutory order (including any order granting an injunction, directing account to be kept, appointing a receiver or attaching any property), during the period of the stay of the suit.

58. Application for rectification of register to be made to Appellate Board in certain cases.—(*1*) Where in a suit for infringement of a registered geographical indication the validity of the registration of the geographical indication relating to plaintiff is questioned by the defendant or where in any such suit the plaintiff questions the validity of the registration of the geographical indication relating to defendant, the issue as to the validity of the registration of the geographical indication concerned shall be determined only on an application for the rectification of the register and, notwithstanding anything contained in section 27, such application shall be made to the Appellate Board and not to the Registrar.

(*2*) Subject to the provisions of sub-section (*1*), where an application for rectification of the register is made to the Registrar under section 27, the Registrar may, if he thinks fit, refer the application at any stage of the proceedings to the Appellate Board.

59. Implied warranty on sale of indicated goods.—Where a geographical indication has been applied to the goods on sale or in the contract for sale of any goods, the seller shall be deemed to warrant that the geographical indication is a genuine geographical indication and not falsely applied, unless the contrary is expressed in writing signed by or on behalf of the seller and delivered at the time of the sale of goods on contract to and accepted by the buyer.

60. Powers of Registrar.—In all proceedings under this Act before the Registrar,—

(*a*) the Registrar shall have all the powers of a civil court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, compelling the discovery and production of documents and issuing commissions for the examination of witnesses;

(*b*) the Registrar may, subject to any rules made in this behalf under section 87, make such orders as to costs as he considers reasonable, and any such order shall be executable as a decree of a civil court;

(*c*) the Registrar may, on an application made in the prescribed manner, review his own decision.

61. Exercise of discretionary power by Registrar.—Subject to the provisions of section 64, the Registrar shall not exercise any discretionary or other power vested in him by this Act or the rules made thereunder adversely to a person applying for the exercise of that power without (if so required by that person within the prescribed time) giving to the person an opportunity of being heard.

62. Evidence before Registrar.—In any proceeding under this Act before the Registrar, evidence shall be given by affidavit:

Provided that the Registrar may, if he thinks fit, take oral evidence in lieu of, or in addition to, such evidence by affidavit.

63. Death of party to a proceeding.—If a person who is a party to a proceeding under this Act (not being a proceeding before the Appellate Board or a court) dies pending the proceeding, the Registrar may, on request, and on proof to his satisfaction of the transmission of the interest of the deceased person, substitute in the proceeding his successor in interest in his place, or, if the Registrar is of opinion that the interest of the deceased person is sufficiently represented by the surviving parties, permit the proceeding to continue without the substitution of his successor in interest.

64. Extension of time.—(*1*) If the Registrar is satisfied, on application made to him in the prescribed manner and accompanied by the prescribed fee, that there is sufficient cause for extending the time for doing any act (not being a time expressly provided in the Act), whether the time so specified has expired or not, he may, subject to such conditions as he may think fit to impose, extend the time and inform the parties accordingly.

(*2*) Nothing in sub-section (*1*) shall be deemed to require the Registrar to hear the parties before disposing of an application for extension of time, and no appeal shall lie from any order of the Registrar under this section.

65. Abandonment.—Where, in the opinion of the Registrar, an applicant is in default in the prosecution of an application filed under this Act, the Registrar may, by notice require the applicant to remedy the default within a time specified and after giving him, if so, desired, an opportunity of being heard, treat the application as abandoned, unless the default is remedied within the time specified in the notice.

66. Suit for infringement, etc., to be instituted before district court.—(*1*) No suit,—

(*a*) for the infringement of a registered geographical indication; or

(*b*) relating to any right in a registered geographical indication; or

(*c*) for passing of arising out of the use by the defendant of any geographical indication which is indentical on with or deceptively similar to the geographical indication relating to the plaintiff, whether registered or unregistered,

shall be instituted in any court inferior to a district court having jurisdiction to try the suit.

(*2*) For the purpose of clauses (*a*) and (*b*) of sub-section (*1*), a "district court having jurisdiction" shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, include a district court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or proceeding, or, where there are more than one such persons any of them, actually and voluntarily resides or carries on business or personally works for gain.

Explanation.—For the purposes of sub-section (*2*), "person" includes the registered proprietor and the authorised user.

67. Relief in suit for infringement or for passing off.—(*1*) The relief which a court may grant in any suit for infringement or for passing off referred to in section 66 includes injunction (subject to such terms, if any, as the court thinks fit) and at the option of the plaintiff, either damages or account of profits, together with or without any order for the delivery-up of the infringing labels and indications for destruction or erasure.

(*2*) The order of injunction under sub-section (*1*) may include an *ex parte* injunction or any interlocutory order for any of the following matters, namely:—

(*a*) for discovery of documents;

(*b*) preserving of infringing goods, documents or other evidence which are related to the subject-matter of the suit;

(*c*) restraining the defendant from disposing of or dealing with his assets in a manner which may adversely affect plaintiff's ability to recover damages, costs or other pecuniary remedies which may be finally awarded to the plaintiff.

(*3*) Notwithstanding anything contained in sub-section (*1*), the court shall not grant relief by way of damages (other than nominal damages) on account of profits in any case—

(*a*) where in a suit for infringement the defendant satisfies the court—

(*i*) that at the time he commenced to use the geographical indication complained of in the suit he was unaware and had no reasonable ground for believing that the geographical indication of the plaintiff was on the register; and

(*ii*) that when he became aware of the existence and nature of the plaintiff's right in the geographical indication, he forthwith ceased to use the geographical indication in relation to good in respect of which it was registered; or

(*b*) where in a suit for passing off, the defendant satisfies the court—

(*i*) that at the time he commenced to use the geographical indication complained of in the suit he was unaware and had no reasonable ground for believing that the geographical indication relating to the plaintiff was in use; and

(*ii*) that when he became aware of the existence and nature of the geographical indication relating to the plaintiff he forthwith ceased to use the geographical indication complained of.

68. Authorised user to be impleaded in certain proceedings.—(*1*) In every proceeding under Chapter VI or under section 31, every authorised user of a geographical indication to which such proceeding relate, who is not himself an applicant in respect of any proceeding under that Chapter or section, shall be made a party to the proceeding.

(*2*) Notwithstanding anything contained in any other law, an authorised user so made a party to the proceeding shall not be liable for any costs unless he enters an appearance and takes part in the proceeding.

69. Evidence of entries in register, etc., and things done by the Registrar.—(*1*) A copy of any entry in the register or of any document referred to in sub-section (*1*) of section 78 purporting to be certified by the Registrar and sealed with the seal of the Geographical Indications Registry shall be admitted in evidence in all courts and in all proceedings without further proof or production of the original.

(*2*) A certificate purporting to be under the hand of the Registrar as to any entry, matter or thing that he is authorised by this Act or the rules to make or do shall be *prima facie* evidence of the entry having been made, and of the contents thereof, or of the matter or things having been done or not done.

70. Registrar and other officers not compellable to produce register, etc.—The Registrar or any officer of the Geographical Indications Registry shall not, in any legal proceedings to which he is not a party, be compellable to produce the register or any other document in his custody, the contents of which can be proved by the production of a certified copy issued under this Act or to appear as a witness to prove the matters therein recorded unless by order of the court made for special cause.

71. Power to require goods to show indication of origin.—(*1*) The Central Government may, by notification in the Official Gazette, require that goods of any class specified in the notification which are made or produced beyond the limits of India and imported into India, or, which are made or produced within the limits of India, shall, from such date as may be appointed by the notification not being less than three months from its issue, have applied to them an indication of the country or place in which they were made or produced, or of the name and address of the manufacturer or the person for whom the goods were manufactured.

(*2*) The notification may specify the manner in which such indication shall be applied, that is to say, whether to goods themselves or in any other manner, and the times or occasions on which the presence of the indication shall be necessary, that is to say, whether on importation only, or also at the time of sale, whether by wholesale or retail or both.

(*3*) No notification under this section shall be issued, unless application is made for its issue by persons or associations substantially representing the interests of dealers in, or manufacturers, producers,

or users of, the goods concerned, or unless the Central Government is otherwise convinced that it is necessary in the public interest to issue the notification, with or without such inquiry, as the Central Government may consider necessary.

(*4*) The provisions of section 23 of the General Clauses Act, 1897 (10 of 1897) shall apply to the issue of a notification under this section as they apply to the making of a rule or bye-law the making of which is subject to the condition of previous publication.

(*5*) A notification under this section shall not apply to goods made or produced beyond the limits of India and imported into India, if in respect of those goods, the Commissioner of Customs is satisfied at the time of importation that they are intended for exportation whether after transhipment in or transit through India or otherwise.

72. Certificate of validity.—If in any legal proceedings for rectification of the register before the Appellate Board a decision is on contest given in favour of the registered proprietor or, as the case may be, authorised user of the geographical indication on the issue as to the validity of the registration of the geographical indication or the authorised user, the Appellate Board may grant a certificate to that effect, and if such a certificate is granted, then, in any subsequent legal proceeding in which the said validity comes into question the said proprietor or the authorised user, as the case may be, on obtaining a final order or judgment in his favour affirming validity of the registration of the geographical indication or the authorised user, as the case may be, shall unless the said final order or judgment for sufficient reason directs otherwise, be entitled to his full cost charges and expenses as between legal practitioner and client.

73. Groundless threats of legal proceedings.—(*1*) Where a person, by means of circulars, advertisements or otherwise, threatens a person with an action or proceeding for infringement of a geographical indication which is registered, or alleged by the first-mentioned person to be registered, or with some other like proceeding, a person aggrieved may, whether the person making the threats is or is not the registered proprietor or the authorised user of the geographical indication, bring a suit against the first-mentioned person and may obtain a declaration to the effect that the threats are unjustifiable, and an injunction against the continuance of the threats and may recover such damages (if any) as he has sustained, unless the first-mentioned person satisfies the court that the geographical indication is registered and that the acts in respect of which the proceedings were threatened, constitute, or, if done, would constitute, an infringement of the geographical indication.

(*2*) The last preceding sub-section does not apply if the registered proprietor of the geographical indication or an authorised user thereof with due diligence commences and prosecutes an action against the person threatened for infringement of the geographical indication.

(*3*) Nothing in this section shall render a legal practitioner or a registered geographical indications agent liable to an action under this section in respect of an act done by him in his professional capacity on behalf of a client.

(*4*) A suit under sub-section (*1*) shall not be instituted in any court inferior to a district court.

74. Address for service.—An address for service stated in an application or notice of opposition shall, for the purposes of the application or notice of opposition be deemed to be the address of the applicant or opponent, as the case may be, and all documents in relation to the application or notice of opposition may be served by leaving them at or sending them by post to the address for service of the applicant or opponent, as the case may be.

75. Trade usages, etc., to be taken into consideration.—In any proceeding relating to a geographical indication, the tribunal shall admit evidence of the usages of the trade concerned and of any relevant geographical indication legitimately used by other persons.

76. Agents.—Where, by or under this Act, any act, other than the making of an affidavit, is required to be done before the Registrar by any person, the act may, subject to the rules made in this behalf, be done instead of by that person himself, by a person duly authorised in the prescribed manner, who is,—

(*a*) a legal practitioner, or

(*b*) a person registered in the prescribed manner as a geographical indications agent, or

(*c*) a person in the sole and regular employment of the principal.

77. Indexes.—There shall be kept under the directions and supervision of the Registrar,—

(*a*) an index of registered geographical indications,

(*b*) an index of geographical indications in respect of which applications for registration are pending,

(*c*) an index of the names of the proprietors of registered geographical indications, and

(*d*) an index of the names of authorised users.

78. Documents open to public inspection.—(*1*) The following documents, subject to such conditions as may be prescribed, be open to public inspection at the Geographical Indications Registry, namely:—

(*a*) the register and any document upon which any entry in the register is based;

(*b*) every notice of opposition to the registration of a geographical indication, application for rectification before the Registrar, counter-statement thereto, and any affidavit or document filed by the parties in any proceedings before the Registrar;

(*c*) the indexes mentioned in section 77; and

(*d*) such other documents as the Central Government may, by notification in the Official Gazette, specify:

Provided that where such register is maintained wholly or partly on computer, the inspection of such register under this section shall be made by inspecting the computer print out of the relevant entry in the register so maintained on computer.

(*2*) Any person may, on an application to the Registrar and on payment of such fee as may be prescribed, obtain a certified copy of any entry in the register or any document referred to in sub-section (*1*).

79. Reports of Registrar to be placed before Parliament.—The Central Government shall cause to be placed before both Houses of Parliament once a year a report respecting the execution by or under this Act.

80. Fees and surcharge.—(*1*) There shall be paid in respect of applications and registrations and other matters under this Act such fees and surcharge as may be prescribed by the Central Government.

(*2*) Where a fee is payable in respect of the doing of an act by the Registrar, the Registrar shall not do that act until the fee has been paid.

(*3*) Where a fee is payable in respect of the filing of a document at the Geographical Indications Registry, the document shall be deemed not to have been filed at the registry until the fee has been paid.

81. Savings in respect of certain matters in Chapter VIII.—Nothing in Chapter VIII shall—

(*a*) exempt any person from any suit or other proceeding which might, but for anything in that Chapter, be brought against him, or

(*b*) be construed so as to render liable to any prosecution or punishment any servant of a master resident in India who in good faith acts in obedience to the instructions of such master, and, on demand made by or on behalf of the prosecutor, has given full information as to his master and as to the instructions which he has received from his master.

82. Declarations as to title of geographical indication not registerable under the Registration Act, 1908.—Notwithstanding anything contained in the Registration Act, 1908 (16 of 1908), no document declaring or purporting to declare any title of a person to a geographical indication other than a registered geographical indication shall be registered under that Act.

83. Government to be bound.—The provisions of this Act shall be binding on the Government.

84. Special provisions relating to applications for registration from citizens of convention countries.—(*1*) With a view to the fulfilment of a treaty, convention or arrangement with any country or a country which is a member of a group of countries or union of countries or Inter-Governmental Organisations outside India which affords to citizens of India similar privileges as granted to its own citizens, the Central Government may, by notification in the Official Gazette, declare such country or group of countries or union of countries or Inter-Governmental Organisations to be a convention country or convention countries for the purposes of this Act.

(*2*) Nothing contained in this Act or the Trade Marks Act, 1999 (47 of 1999) shall prevent a continued and similar use of geographical indication relating to a country or a country which is a member of a group of countries or union of countries or any Inter-Governmental Organisations, as the case may be, notified under sub-section (*1*) identifying wines or spirits in connection with goods by any citizen or domiciliary of such country who has used that geographical indication in continuous manner with regard to such goods or any goods relating to such goods, as the case may be, in any part of the territory of that country either—

(*a*) for at least ten years preceding the 15th day of April, 1994; or

(*b*) in good faith preceding the date referred to in clause (*a*).

85. Provision as to reciprocity.—Where any country or a country which is a member of a group of countries or union of countries or any Inter-Governmental Organisation specified by the Central Government in this behalf by notification in the Official Gazette does not accord to citizens of India the same rights in respect of the registration and protection of geographical indications as it accords to its own nationals, no nationals of such country or a country which is a member of a group of countries or union or countries or Inter-Governmental Organisations, as the case may be, shall be entitled—

(*a*) to apply for the registration of, or be registered as the proprietor of geographical indication;

(*b*) to apply for registration or be registered as an authorised user of a geographical indication.

86. Powers of Central Government to remove difficulties.—(*1*) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of five years from the commencement of this Act.

(*2*) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

87. Power to make rules.—(*1*) The Central Government may, by notification in the Official Gazette and subject to the condition of previous publication, make rules to carry out the provisions of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(*a*) the matters to be included in the Register of Geographical Indications under sub-section (*1*), and the safeguards to be observed in the maintenance of such register in computer floppies or diskettes under sub-section (*2*) of section 6;

(*b*) the manner of incorporation of particulars relating to registration of geographical indications in Part A under sub-section (*2*) and the manner of incorporation of particulars relating to the registration of the authorised users under sub-section (*3*) of section 7;

(*c*) the classification of goods and the manner of publication of the alphabetical index of classification of goods and the definite territory or locality or region for the purpose of registration of geographical indications under sub-section (*1*) of section 8;

(*d*) the form in which and the manner in which an application for registration of a geographical indication may be made and the fees which may accompany the application under sub-section (*1*) and the particulars to be made in the statement of producers of goods who proposes to be initially registered with the registration under clause (*f*) of sub-section (*2*) of section 11;

(*e*) the manner of publication of advertisement of accepted application, for registration of geographical indications, etc., under sub-section (*1*), and the manner of notifying the corrections or amendments made in the application under sub-section (*2*) of section 13;

(*f*) the manner in which and the fee which may accompany an application and the manner of giving notice under sub-section (*1*) and the manner of sending counter statement under sub-section (*2*) and the manner of submission of evidence and the time therefor under sub-section (*4*) of section 14;

(*g*) the form of certificate of registration under sub-section (*2*) and the manner of giving notice to the applicant under sub-section (*3*) of section 16;

(*h*) the manner of applying for registration as an authorised user under sub-section (*1*) and the manner of submitting statements and documents along with such application and the fee which may accompany such application under sub-section (*2*) of section 17;

(*i*) the manner of making application, the time within which such application is to be made and the fee payable with each application, under sub-section (*3*) and the time within which the Registrar shall send notice and the manner of such notice under sub-section (*4*) and the form in which and the fee which may accompany an application for renewal to be made under sub-section (*5*) of section 18;

(*j*) the manner of making applications under sub-sections (*1*) and (*2*), the manner of giving notice under sub-section (*4*) and the manner of service of notice of rectification under sub-section (*5*) of section 27;

(*k*) the manner of making an application for correction, etc., under section 28;

(*l*) the manner of making an application under sub-section (*1*), the manner of advertising an application under sub-section (*1*), the time and manner of notice by which an application may be opposed under sub-sections (*2*) and (*3*) of section 29;

(*m*) the manner of advertisement under sub-section (*2*) of section 30;

(*n*) the form of making an appeal, the manner of verification and the fee payable under sub-section (*3*) of section 31;

(*o*) the form in which an application for rectification shall be made, under sub-section (*1*) of section 34;

(*p*) the manner of making an application for review under clause (*c*) of section 60;

(*q*) the time within which an application is to be made to the Registrar for exercising his discretionary power under section 61;

(*r*) the manner of making an application and the fee payable therefore under sub-section (*1*) of section 64;

(*s*) the manner of authorising any person to act and the manner of registration of a geographical indications agent under section 76;

(*t*) the fee and surcharge payable for applications and registrations and other matters under sub-section (*1*) of section 80;

(*u*) any other matter which is required to be, or may be, prescribed.

(*3*) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

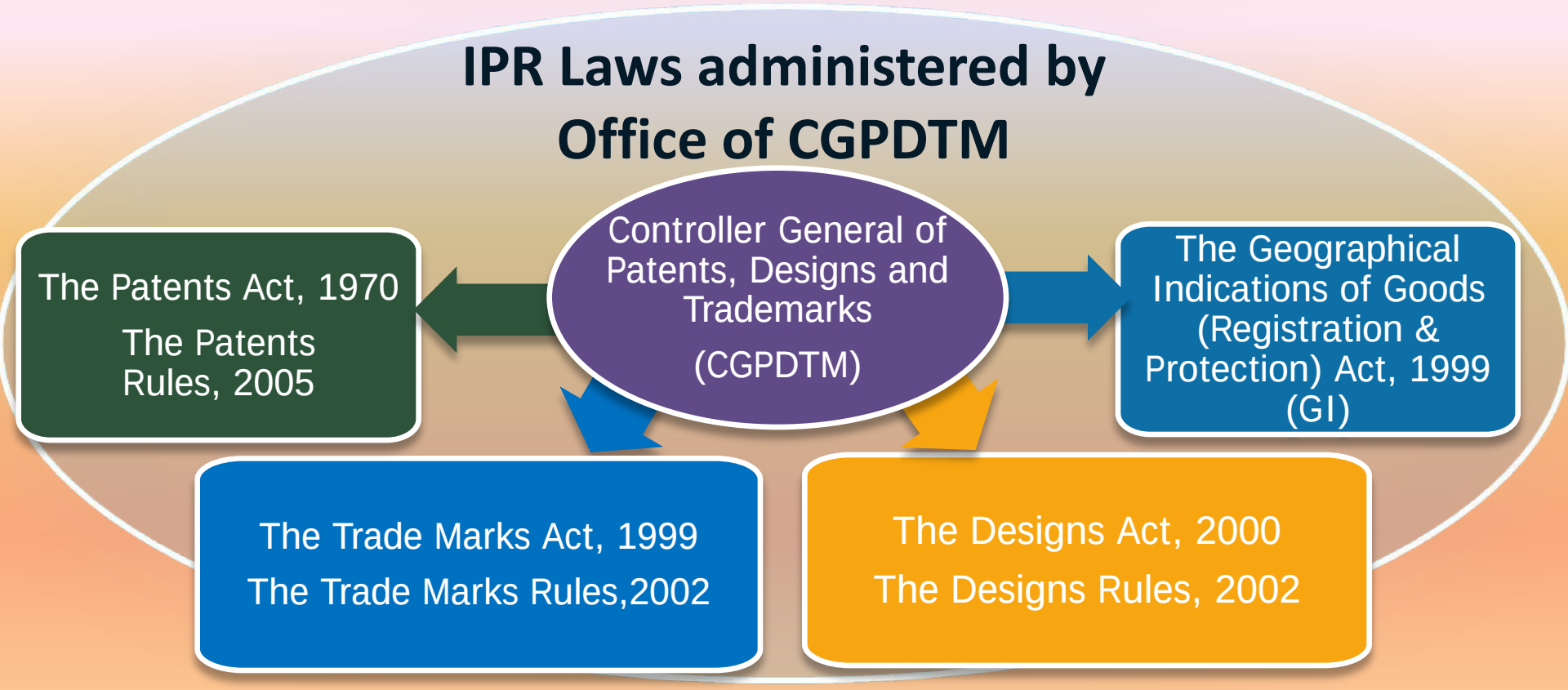
Government of India
Department of Industrial Policy and Promotion
Ministry Of Commerce and Industry



Office of the Controller General of Patents, Designs & Trademarks

INTELLECTUAL PROPERTY OFFICE, INDIA

IPR Laws administered by Office of CGPDTM



Patent Offices- Chennai, Delhi, Kolkata & Mumbai
Trademarks Offices- Ahmedabad, Chennai, Delhi, Kolkata & Mumbai
Geographical Indications Registry- Chennai
Rajiv Gandhi National Institute of Intellectual Property Management-Nagpur

Government of India
Department of Industrial Policy and Promotion
Ministry Of Commerce and Industry

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Office of the Controller General of Patents, Designs & Trademarks

The website of the Intellectual Property Office, India is http://www.ipindia.nic.in/

Government of India
Controller General of Patents Designs and Trademarks
Department of Industrial Policy and Promotion
Ministry of Commerce and Industry

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Comprehensive eFiling Services for Trade Marks NEW
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Request for correction of TM Records
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Electronic Register of Patent Agents

Resources

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IP Awareness
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NICE Classification
Guidelines for functioning under the Madrid Protocol
List of Drug Patents granted during the period from 1-4-2010 to 31-7-2013
Right to Information Act
Bilateral Cooperation | List of Scientific Advisors
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Annual Reports
Guidelines for Examination of Biotechnology Applications for Patent
Guidelines for Processing of Patent Applications relating to Traditional Knowledge and Biological Material
Revised List of Pharma Patents
Trade Marks Agents
Manual of Geographical Indications Practice and Procedure
Manual of Patent Office Practice and Procedure
Manual of Designs Practice and Procedure

All donations towards the Prime Minister's National Relief Fund (PMNRF) are notified for 100% deduction from taxable



News

- Controller General of Patents, Designs & Trade Marks launches "Guidelines for examination of patent applications in the field of Pharmaceuticals after extensive consultation with stakeholders (29 October, 2014)
- Stakeholder's meet was held on 07/10/ 2014 at IPO, Mumbaii to discuss the "Revised Draft guidelines for examination of patent applications in the field of pharmaceuticals" More... (9 October, 2014)
- Office of CGPDTM participates in "Swachh Bharat Abhiyan" (2 October, 2014)
- CGPDTM releases the new version of electronic Patent register in the IPAIRS. The new version now includes the legal status of Patents along with other details like Due Dates, Information u/s 146 (Working of Patents), Linked Applications (Parent or Divisional) etc. (30 September, 2014)
- Comments of stakeholders on the "Revised Guidelines for Examination of Patent Applications In The Field of Pharmaceuticals" (11 September, 2014)
- Shri. AMITABH KANT, Secretary, DIPP inaugurated the *International Searching Authority and International Preliminary Examining Authority (ISA/IPEA) Building* at Intellectual Property Office , Sector 14, Dwarka, New Delhi on 8th September 2014 | Press Release | PhotoGallery (8 September, 2014)
- Shri. AMITABH KANT, Secretary, DIPP unveiled "*IP Expressions*" – a Technical Magazine of Controllers General of Patents, Designs and Trade Marks on 8th September 2014 at IPO Dwarka, New Delhi (8 September, 2014)
- Shri. AMITABH KANT, Secretary, DIPP launched "*Stock and Flow*"- an innovative utility for Patents on 8th September 2014 at IPO Dwarka, New Delhi (8 September, 2014)
- Shri. AMITABH KANT, Secretary, DIPP launched the " Comprehensive Payment Gateway for Patents and Trade Marks "on 8th September 2014 at IPO Dwarka, New Delhi (8 September, 2014)
- Comprehensive e-filing services of Patents as well as Trade Marks shall not be available between 2:00 PM, 05/09/2014 and 4:30 PM, 08/09/2014 as the portal is being upgraded (5 September, 2014)
- CGPDTM extends last date for submitting comments on the "REVISED DRAFT GUIDELINES FOR EXAMINATION OF PATENT APPLICATIONS IN THE FIELD OF PHARMACEUTICALS" to 05th September 2014. There will be no further extension (1 September, 2014)
- The CGPDTM releases the html version of the Trade Marks Act, 1999 as amended till date (1 September, 2014)
- Framework of IP Awareness programme being organized by Controller General of Patents, Designs & Trade Marks in cooperation with Industry associations during 2014-15 (27 August, 2014)
- World IP Day Report-2014 (22 August, 2014)
- Independence Day Message from CGPDTM (14 August, 2014)

More News...

Forthcoming Events

Rajiv Gandhi National Institute of Intellectual Property Management Public Training Programme Schedule 2014-15

Benefits of IP protection

Economy

- GDP
- Employment
- tax revenues and strategic importance.
- promote foreign direct investment (FDI)
- technology transfers

Innovation

- Promotes innovation
- increases funding for R&D
- helps firms realize, monetize and secure more value from innovations
- grow market value, develop new markets

Benefits consumers and society

- providing consumers with innovative products and services
- drives solutions to many of society's most important needs
- helps protect consumers from inferior and dangerous counterfeits.

Companies that use IPR generally succeed better

- have a higher market value
- helps small & medium-sized enterprises
- SMEs that rely on IP of all sorts reported higher growth, income and employment than those that do not -- in some cases as much as 20% more.

Face of Intellectual Property India

- IPR framework which is stable
- well established judicial and administrative regime
- TRIPS Compliant laws.

Legislative initiatives

- Patent system in India first introduced by Act VI of 1856.
- The Patents and Designs Act, 1911 established a patent system in India, under the Controller of Patents for the first time, with a term of 14 years.
- The Patents Act, 1970 came into force on 20th April, 1972 and was amended in 1999, 2002 and 2005.
- Product Patents in all fields of technology and term of protection for product and process patents enhanced to 20 years.
- Establishment of Appellate Board as specialized IP Tribunal.
- Improved timelines to enforce transparency and ensuring time-bound disposal of applications
- Amendments in Rules to streamline processing

Administrative initiatives

Computerisation

- Comprehensive e-filing facility for Patents and Trademarks on 24x7 basis
- Comprehensive payment gateway for patents
- Complete electronic processing of Patents and Trademarks applications through specialized modules- central server at IPO Delhi.
- Search access to comprehensive online Patent and Non-Patent global database and trademark database.

Transparency and dissemination of information regarding all IP applications

- Real time status of IP applications with entire file wrappers and e-registers
- Weekly publication of online journals.
- Free Public search facility.
- QR coded office communication for authentication.
- Stock and flow of patent and trademark applications at all stages
- Dynamic utilities for patents- first examination reports, disposal, working of patents information, lapsed/ceased patents
- Dynamic utilities for trademark applications: Examinations, show cause hearing, publications, registrations and other disposals, notices and international applications designating India.

Administrative initiatives

Quality management in processing of IP applications

- Separate Manuals of Office Practice and Procedures for Patents, Designs and GI
- Specialized technology groups for examination of patent applications
- Examination Guidelines for Traditional Knowledge ,Biotechnology and Pharmaceutical related inventions issued
- Computer related inventions being finalised
- Highly trained examiners and controllers.
- Quality Management Teams constituted at all locations.

Awareness generation

- Awareness programs being conducted: industrial clusters, academic institutions, producers of traditional products (for GI)
- Public training programmes
- Efforts for incorporating an IPR chapter in school curriculum.

Amendment in the Patent Rules, 2014

- surcharge on offline filing to promote online filing -increase in online filing from around 30% to around 78%
- Initiative for SME's: new category of '**small entity**' introduced to provide fee concessions

International Cooperation- Recent Developments

International Searching and Preliminary Examining Authority (ISA/IPEA)

- Operationalised from 15th October, 2013.
- Indian Patent Office is one of 17 countries as ISA/IPEA.
- Nationals/residents of India can avail search and examination facilities for international patent applications under Patent Cooperation Treaty.
- All applications processed electronically.
- Acting as ISA/IPEA for Republic of Iran.

Madrid Protocol

International registration of trademarks brought into force from 8th July, 2013.
Application can be made in over 90 countries through a single application in one language with one set of fees filed at the Trademarks Registry.
Time-bound processing and registration of Trademarks.
All applications filed online and processed electronically through software module.

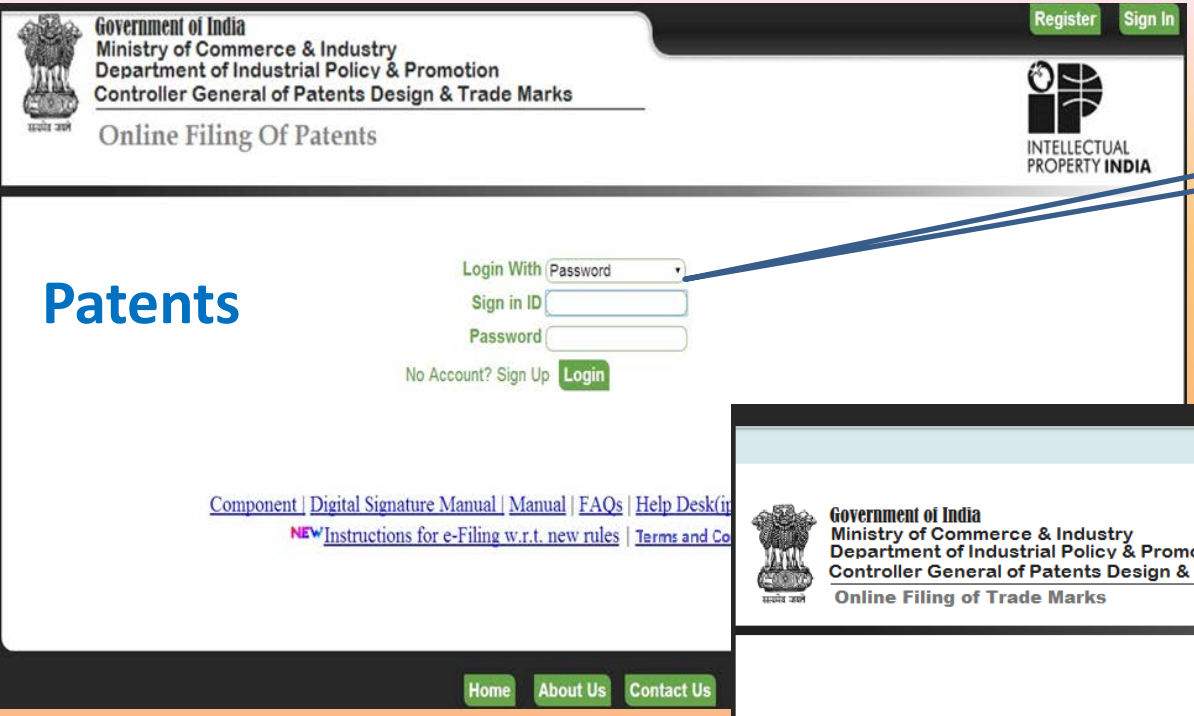
MOU between South Centre Geneva and DIPP for training of Patent Examiners
Exchange of best practices in examination

Government of India
Department of Industrial Policy and Promotion
Ministry Of Commerce and Industry

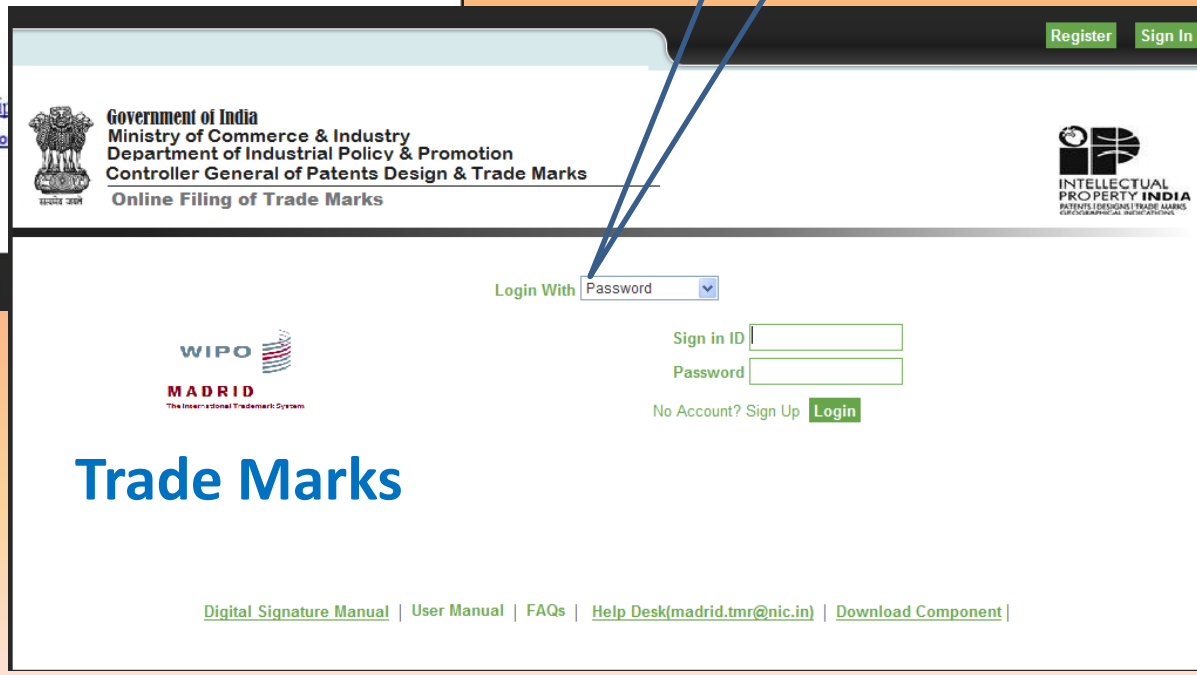
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Office of the Controller General of Patents, Designs & Trademarks

Comprehensive e-filing Portal- facility for filing of Patents and Trademarks applications on 24x7 basis
This facility is available on https://ipindiaonline.gov.in/epatentfiling/goForLogin/doLogin.



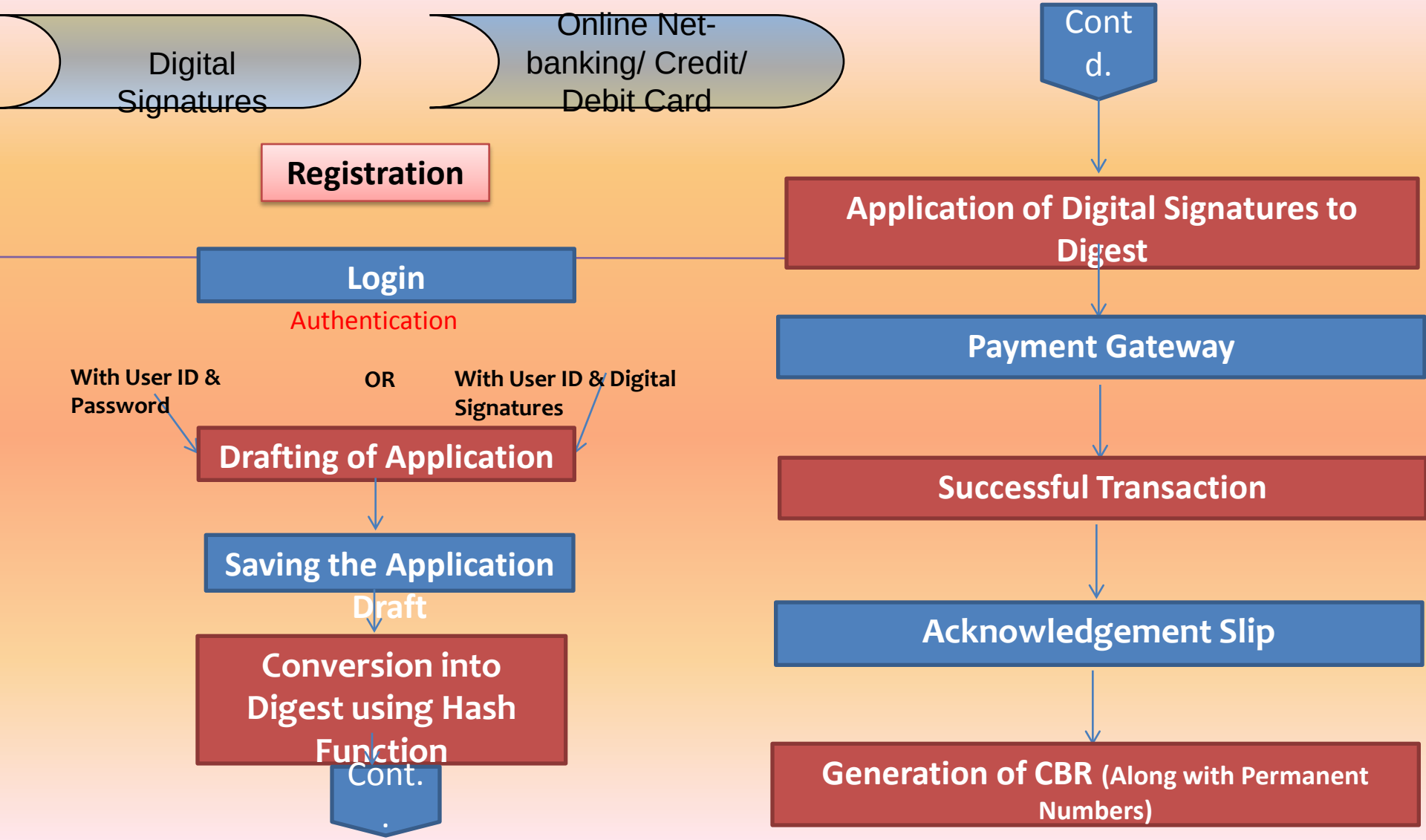
Option:
Password or Digital signature



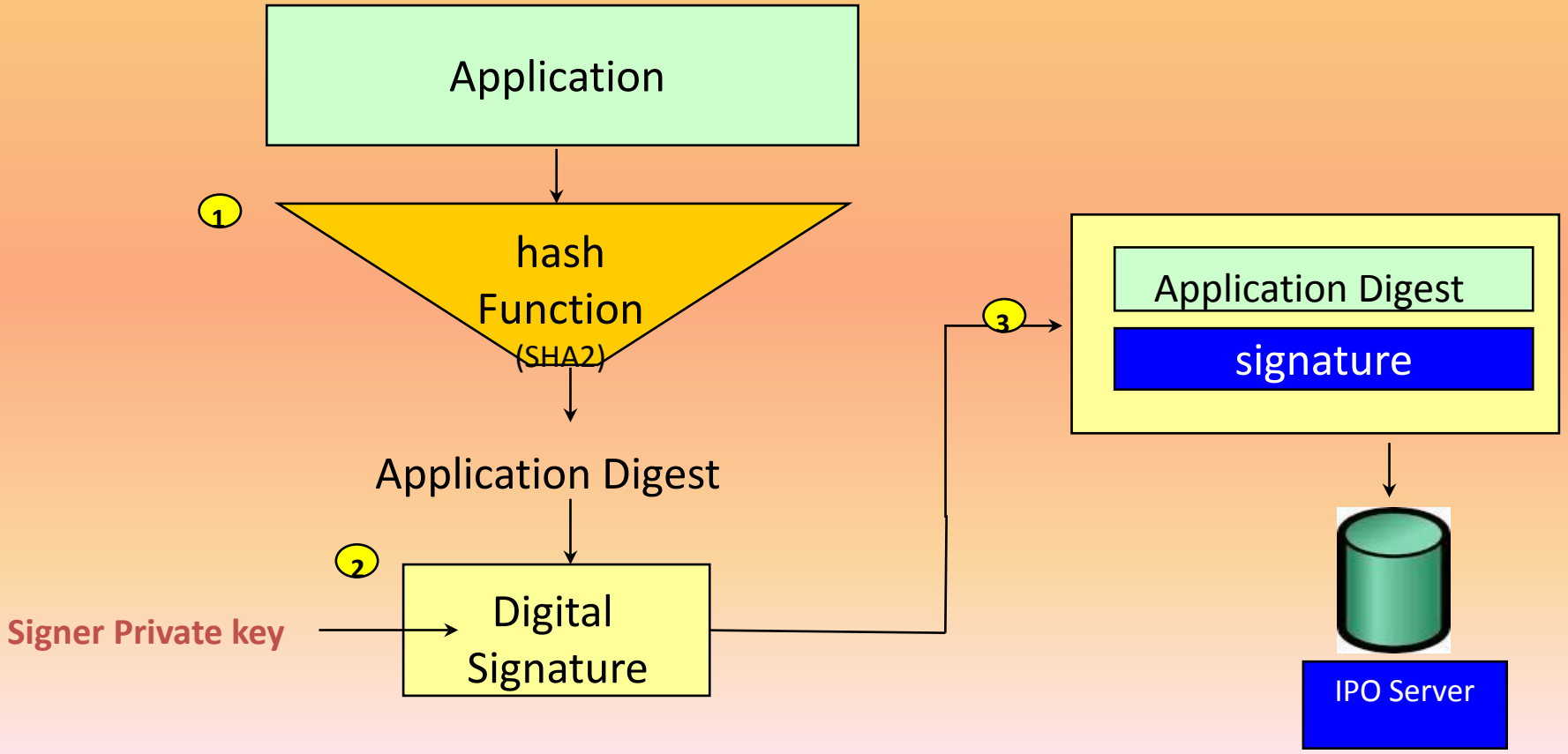
E-filing with Digital Signatures

- IPO visualizes the concept of paperless office as its objective wherein all the communication, interaction and transactions can take place online.
- IPO steps forward in this direction with the Comprehensive version of e-filing services incorporating:
  - **Authenticity- Digitally signed document are legally equivalent to signed paper documents as per Indian IT Act 2000**
  - **Identity- Users of Digital signature in e-filing of Patents & TMR applications can easily establish identity of filed documents.**
  - **Security- Allowing server and client to establish secure connection through Secured Socket Layer.**

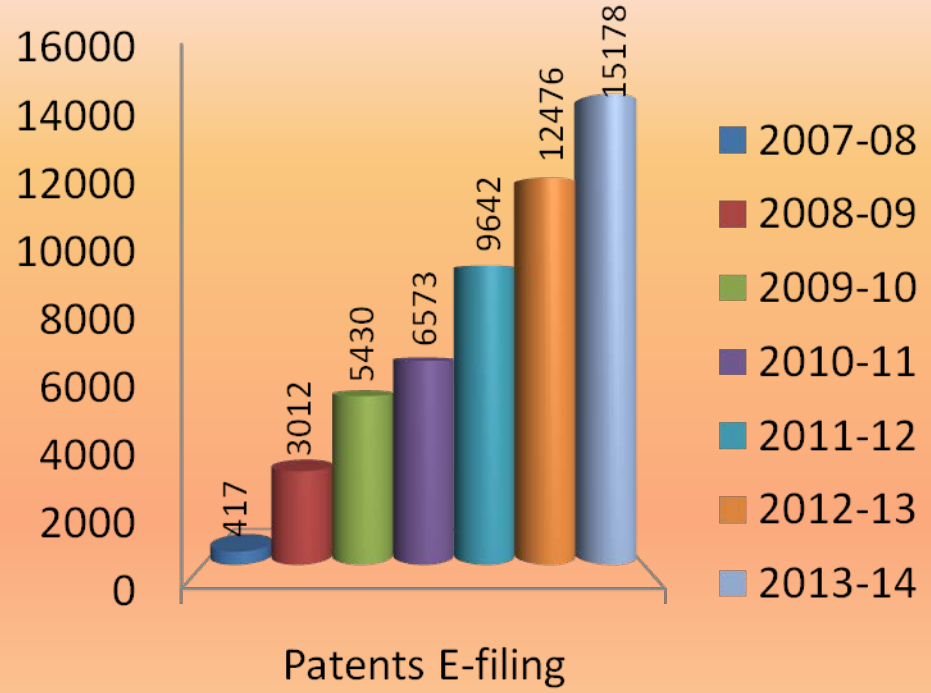
Transaction Process



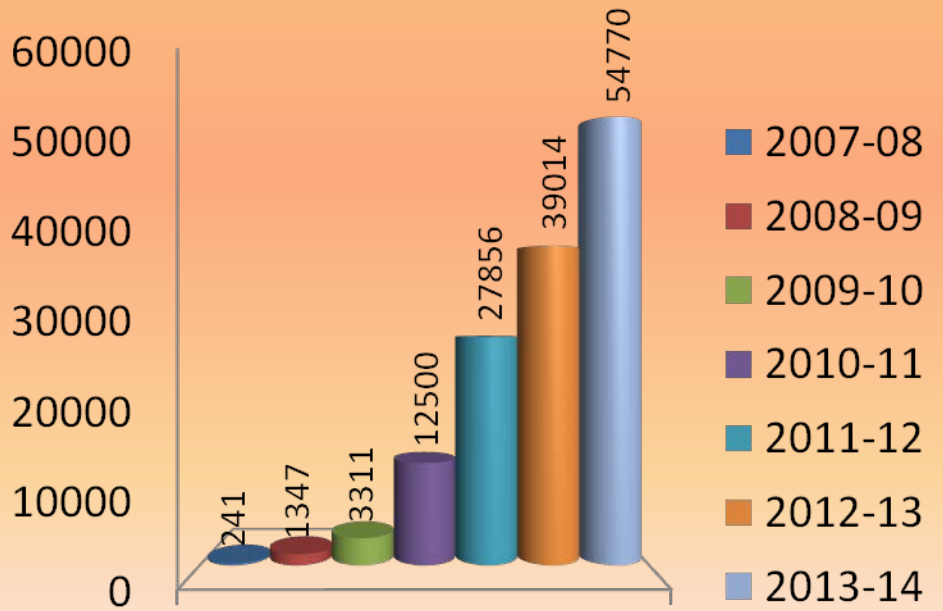
Digital signing methodology used in IPO & TMR E-filing



E-filing Trend (New Applications)



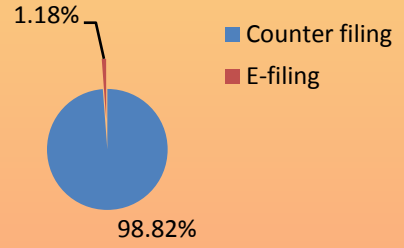
Patents E-filing



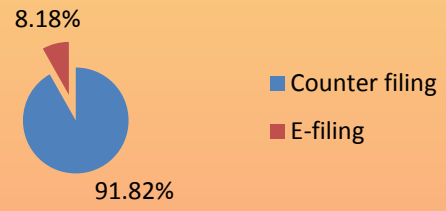
TMR E-filing

Proportion of Applications (Patents)

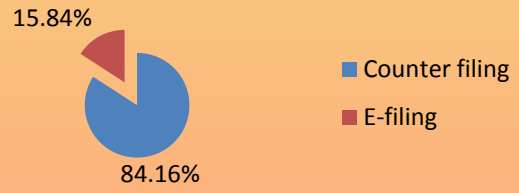
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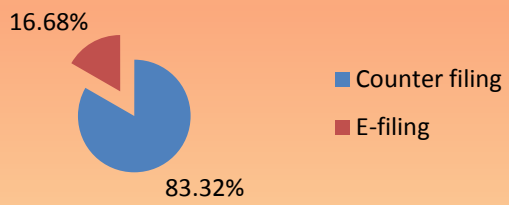
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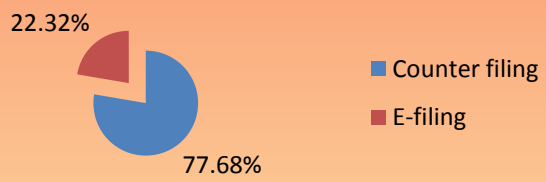
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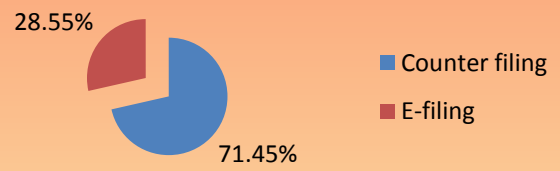
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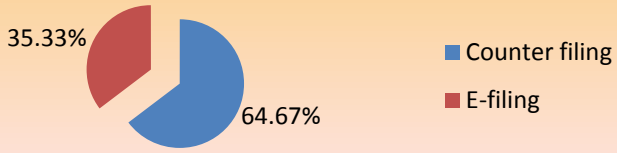
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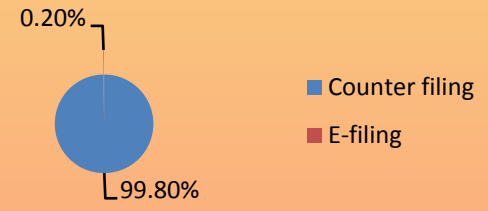


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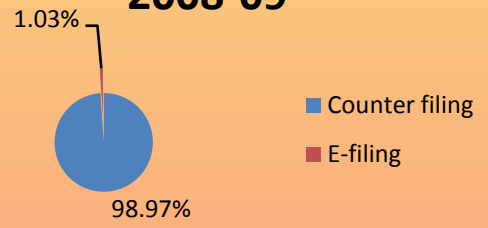


Proportion of Applications (Trade Marks)

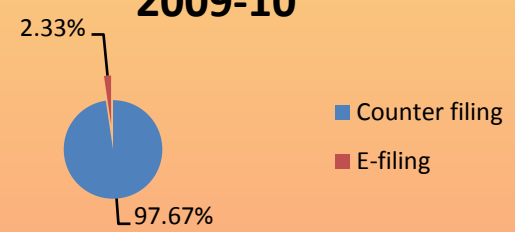
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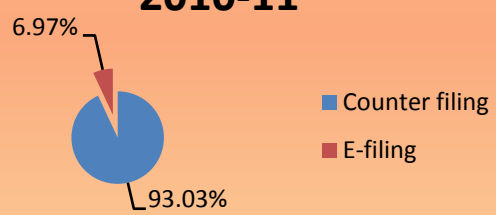
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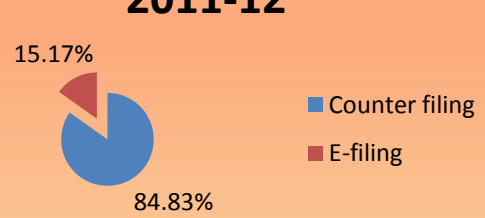
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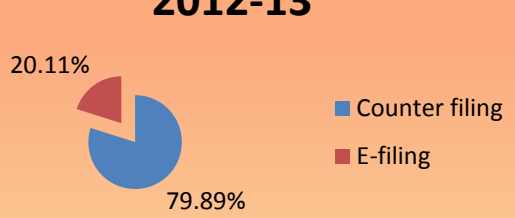
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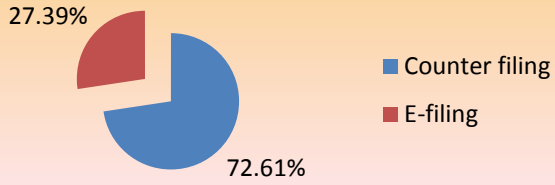
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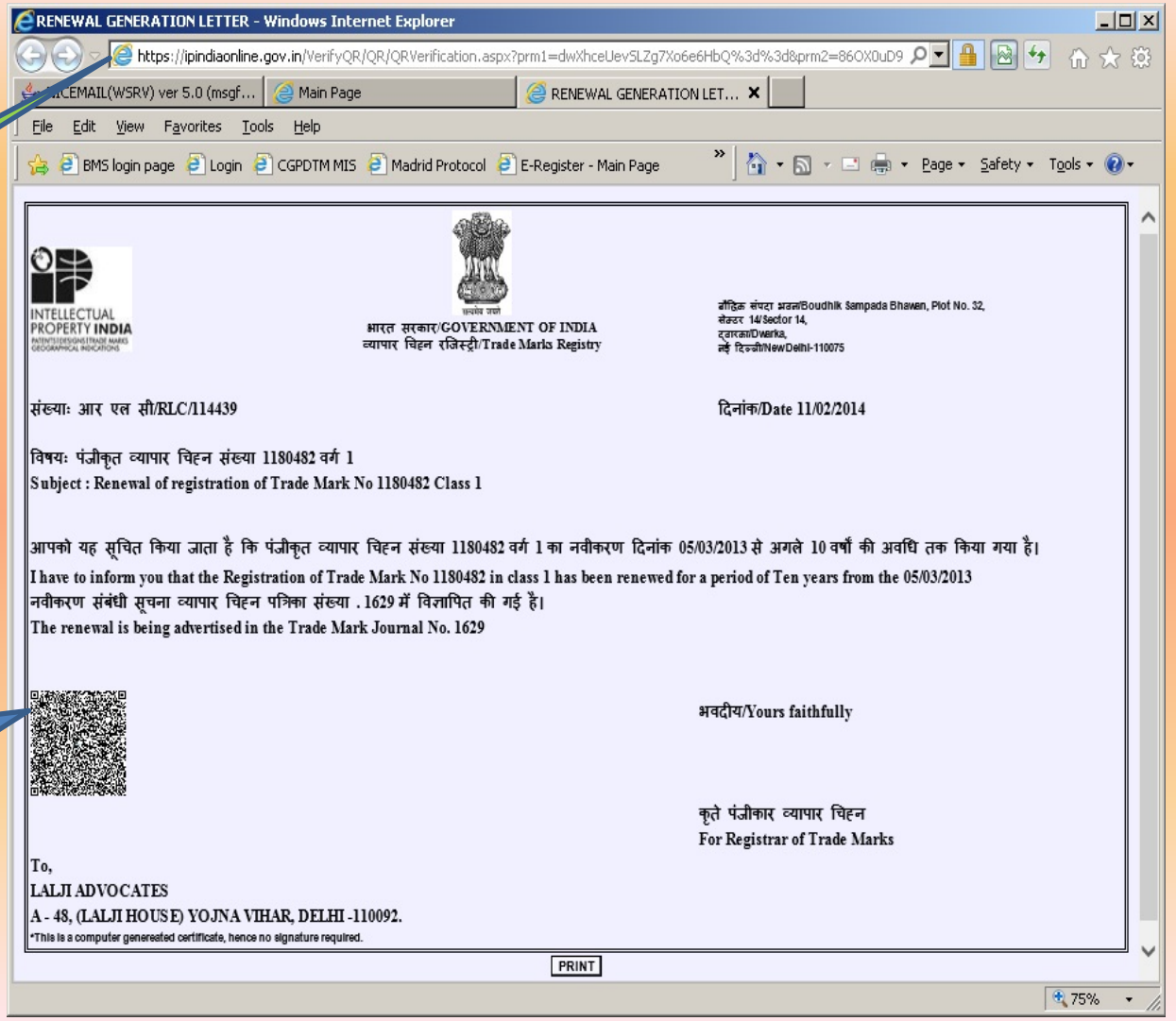


Validation of Certificates

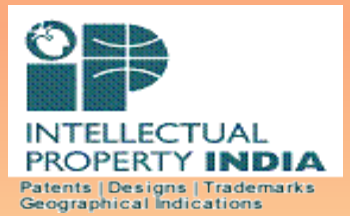
Introduction of QR Codes to securely verify and validate the originality of issued certificates

HTTPS Protocol

Encrypted QR Code



For Further information Please Contact:



www.ipindia.nic.in

Office of Controller General of Patents, Designs and Trademarks

Baudhik Sampada Bhavan,

Antop Hill, S. M. Road, Mumbai - 400 037

LO 0509 Intellectual Property Rights I :

Objectives of the Course : Intellectual Property has acquired tremendous role in the present technology driven economy throughout the world. The significant factors that contribute for the development of International Law of Intellectual Property Rights are expansion of voluminous trade; increasing interdependence of international commerce; the development of science and technology and the flow of communication. Due to the vastness of the subject it has been divided into two courses. Course-I gives a subtle back ground to the international perspective in a nutshell while the application of it in the National Regime is placed in course –II in a subtle manner. This course is designed with intend to familiarize the students with Concept, nature, characteristics and internationalization of Intellectual Property. It also

involves the study of important international instruments in the field of Intellectual Property with more emphasis on TRIPS agreement and the current issues. **Module 01**

Introduction to Intellectual Property Rights :

1. Definition, Concept and Nature of Intellectual Property, Theories of Intellectual Property, Distinction between Intellectual Property and other tangible and intangible properties, Non-rivalrous nature of Intellectual Property, Kinds of Intellectual Property
2. Need for Protecting Intellectual Property-Policy Consideration, Importance of Intellectual Property in the present era, Monopoly v. Public Interest
3. Origin and Development of Intellectual Property, Internationalization of Intellectual Property Rights
4. Pre-TRIPS Scenario, Formulation of TRIPS, Basic Principles and Objectives of TRIPS,TRIPS and WIPO-WTO Cooperation, Transfer of Technology and TRIPS, The TRIPS Agenda, Critique of TRIPS
5. The Paris Convention for the Protection of Industrial Property, History, features and General Provisions

Module 02

Law of Copyright and Neighboring Rights :

1. Meaning and definition of Copyright, Neighboring rights (Related rights) and Secondary Rights
2. The Berne Convention for the Protection of Literacy and Artistic Works -History, General Provisions, Developing Countries and the Berne Convention.

	3. TRIPS provisions related to protection of Copyright. 4. Protection of technology-based works (such as computer programs and electronic databases), Secondary rights, Broadcasting rights
Module 03	**Patent Law :** 1. Meaning, Concept and Nature of Patent 2. The Patent Cooperation Treaty (PCT), History, Objectives of the PCT, Functioning of the PCT System, Advantages of the PCT System 3. Patent law harmonisation under TRIPS Agreement – Patentable subject Matter, Patentability Crieteria, Non-Patentable inventions, Exceptions to Patent Rights, Compulsory Licences, Local working condition, Importation of patented goods, etc. 4. The Doha Ministerial Conference 2001 5. Introduction to the Budapest Treaty 6. Doctrine of Equivalents, Public dedication Rule, Patent Exhaustion, Patent Misuse, Enforceability of Patent Rights
Module 04	**Law of Trade Marks :** 1. Meaning and Nature of Trade Marks, Kinds of Marks, Well Known Marks 2. The Madrid Agreement Concerning the International Registration of Marks, Objectives, the Madrid System, Basic Features, Advantages of the System 3. Trademarks and the TRIPS Agreement
Module 05	**Protection of Industrial Designs :** **1. Meaning and definition of Industrial Designs** **2. Industrial Designs Vs. Copyright** **3. Introduction to the Hague Agreement Concerning the International Registration of Industrial Designs, Benefits of Accession to the Hague Agreement** **4. Protection of Industrial Designs under TRIPS**
Module 06	**Conventions and Treaties relating to other Intellectual Properties :** **1. Definition and Concept of Geographical Indications, Layout Designs, Trade Secret,**

	Plant Varieties, etc. **2. Lisbon Agreement for the Protection of Appellations of Origin** **3. Protection of Geographical Indications, Layout Designs and Trade Secret under the TRIPS Agreement** **4. The UPOV Convention**
Module 07	**Current IP Issues :** **1. Access to Genetic Resources and Benefit Sharing** **2. Intellectual Property and Human Rights** **3. Protection of the rights of indigenous people** **4. IP protection and its impact on right to food security and public health** **5. Environmental Protection and Intellectual Property** **6. Protection of Bio-diversity and Traditional Knowledge - Economic, Social, Cultural and Ethical Dimensions**

Recommended Readings :

1. Kamil Idris, *Intellectual Property: A Power tool for Economic Growth*, WIPO.

2. Tzen Wong and Graham Dutfeild, *Intellectual Property and Human Development – Current Trends and Future Scinarios*, Cambridge Press.

3. UNCTAD-ICTSD. (2005). *Resource Book on TRIPS and Development*. New York: Cambridge University Press.

4. William Cornish and David LLewelyn, *Intellectual Property : Patents, Copyright, Trade Marks, and Allied Rights.* London: Sweet and Maxwell.

5. Carlos Correa, Implementing *TRIPS in developing countries*. Third World Network.

6. Catherine Colston, *Principles of Intellectual Property Law.* London: Cavindish Publishing Ltd.

7. Choudhary D. N., *Evolution of patent Laws.* New Delhi: Capital Law House.

8. Epstein M A, *Epstein on Intellectual Property* (Indian Reprint). New Delhi: Wolters Kluwer Law and Business.

9. Feroz Ali Khader, *The Law of Patents - With a special focus on Pharmaceuticals in India*, LexisNexis Butterworths Wadhwa, Nagpur.

10. Ganguli Prabuddha, *Intellectual Property Rights - Unleasing the Knowledge Economy*. New Delhi: Tata McGrawh-hill Publishing Company Ltd.

11. Gopalkrishnan N S, and Agitha T G, *Principles of Intellectual property*. Luckhnow: Estern Book Company.

12. Gregory Stobbs, *Software Patents Worldwide*, Wolters Kluwer.

13. Jayshree Watal, *Intellectual Property in WTO and Developing Countries*. New Delhi: Oxford University Press.

14. Michael Blakeney, *Trade Related Aspects of Intellectual Property Rights: A concise Guide to the TRIPS Agreement*.

15. Parmeswaran Narayanan, *Intellectual Property Law*, Eastern Law House.

16. Rao M B and Guru M, *Understanding Trips Managing Knowledge in Developing Countries*. New Delhi: Response Books

17. Robert Merges andJohn Duffy, *Patent Law and Policy: Cases and Materials*, 2017.

LO 0609 Intellectual Property Rights II :

Objectives of the Course :

This course is designed with an objective to acquaint the students with the laws for the protection of various intellectual properties and how the international instruments implemented in India. It also aims at sensitizing the students with current issues in the field of Intellectual Property at National Level.

Module 01

The Copyright Act, 1957 :

1. Definition of Copyright, Objectives of Copyright Protection, Nature of Copyright

2. Copyright and Socio-Economic Development

3. Copyright Law in India – History and Evolution

4. Works in which Copyright subsists – Subject matter of Copyright, Authorship and Ownership of Copyright

5. Authorities under the Copyright Act, 1957, Registration of Copyright, Term of Copyright, Provision for Appeals.

6. Rights Conferred by Copyright, Limitations and Exceptions to Copyright Protection

7. Assignment, Transmission, Licenses and Relinquishment of Copyright

8. Copyright Societies, International Copyright

9. Piracy and Infringement of Copyright, Test of Copyright Protection, Remedies against Infringement.

10. Related Rights - Rights of Performers and Broadcasting Organizations, Economic Rights and Moral Rights of Authors.

Module 02

The Patent Act, 1970 :

1. Historical Evolution of Patent System in India, Philosophy of Patent

2. Implementation of TRIPS agreement in India, Amendments to the Patent Act, 1970

3. Definitions, Patentability Criteria, Patentable Subject Matter, Non-Patentable Inventions

4. Procedure for obtaining a Patent, Opposition to the Patent Grant (Pre-grant and Post-grant opposition), Term of Patent

5. Convention Application, PCT International Application

6. Authorities under the Patent Act, 1970: Controller of Patents, IPAB, Patent Agent

7. Rights and Obligation of Patentee, Patent of Addition, Transfer of Patent Rights

8. Revocation and surrender of Patent

9. Compulsory Licenses, Governmental Use and Acquisition of inventions

10. Infringement of Patent and Remedies for Infringement

Module 03

The Trade Marks Act, 1999 :

1. Object and Functions of Trademark, Commercial and Non-Commercial Role of Trade Marks

2. Development of Trademark law in India

3. Definition of Mark, Trademark, under the Trade Mark Act, 1999, Essential Features and functions of Trademark, Kinds of Trademark, Registered Trade Mark and Unregistered Trade Mark

4. Conditions for Registration, Procedure of Registration, Grounds of Refusal for Registration

5. Protection of Trade Mark through International Registration under Madrid Protocol

6. Duration, Renewal, Removal and Restoration of Trademark

7. Rights and liabilities of Trademark Holder, Limitations on rights, Honest and concurrent use

8. Effect of Registration of Trade Mark, Infringement and Passing off Remedies, Deceptive Similarity

9. Change of Ownership, Assignment and Transmission, Licenses

10. Contemporary Developments - Effects of Information Technology, Protection of Trade Names and Domain Names

Module 04

The Designs Act, 2000 :

1. Development of Designs Law in India

2. Definitions, Controller of designs, Registration of designs - Essential requirements, Non-registrable designs, Procedure of registration, Term of copyright in designs

3. Cancellation of registration, Restoration of lapsed designs

4. Rights of design holders, Assignment and Transmission

5. Piracy (Infringement) of registered designs and Remedies for Infringement

Module 05

The Geographical Indications of Goods (Registration and Protection) Act, 1999 :

1. Historical background of law of Geographical Indications in India

2. Meaning and Definition, Functions and Characteristics of Geographical Indication

3. Distinction between Geographical Indications and Trade Mark

4. The Register and Conditions for Registration of Geographical Indication

5. Procedure for Registration, Duration of Protection, Rights conferred by Registration, Infringement of Geographical Indications and Remedies

6. Powers of the Registrar of Geographical Indications

Module 06

Protection of other Types of Intellectual Property Rights in India :

1. Protection of Plant Varieties and Farmer‘s Rights in India

2. Layout Designs/Topographies Integrated Circuits

3. Protection of Confidential Information and Trade Secrets

4. Protection of Traditional Knowledge

5. Protection of Bio-diversity

6. Semiconductor Integrated Circuits and Layout Designs

7. Protection against Unfair Competition

Recommended Readings :

1. Tamali Sen Gupta, Intellectual Property Law in India, Wolters Kluwer, Law & Business (2011).

2. Brainbridge, Intellectual property . New Delhi: Pearson Education (Singapore) Pvt. Ltd.

3. Choudhary D. N., Evolution of Patent Laws. New Delhi: Capital Law House.

4. Epstein M A, Epstein on Intellectual property (Indian Reprint). New Delhi: Wolters Kluwer Law and Business.

5. Gopalkrishnan N S, & Agitha T G, Principles of Intellectual Property. Luckhnow: Estern Book Company.

6. Kankanala K C, Genetic Patent Law and Strategy. Noida, India: Manupatra Information Solutions Pvt. Ltd.

7. Reddy G B, Intellectual Property Rights and the Law, Gogia Law Agency, Hyderabad.

8. Rama Sarma, Commentary on Intellectual Property Laws, Vol.2. Nagpur: LexisNexis Butterworths Wadhawa.

9. Prabudh Ganguli, Gearing up for Patents - The Indian Scinario, Universal Law Publishing.

10. Parmeswaran Narayanan, Intellectual Property Law, Eastern Law House.

11. B L Wadehra, Law Relating to Intellectual Property: Patents, Trademarks, Designs and Geological Indications.

12. Robert Merges &John Duffy, Patent Law and Policy: Cases and Materials, 2017.

13. Feroz Ali Khader, The Law of Patents - With a special focus on Pharmaceuticals in India, LexisNexis Butterworths Wadhwa, Nagpur.

14. Lionel Bently & Brad Sherman, Intellectual Property Law, Oxford University Press.

15. Gregory Stobbs, Software Patents Worldwide, Wolters Kluwer.

16. Ahuja V K, Law Relating to Intellectual Property Rights, LexisNexis, New Delhi, 2017.

Government of India
Department of Industrial Policy and Promotion
Ministry Of Commerce and Industry

INTELLECTUAL PROPERTY INDIA
Patents | Designs | Trademarks
Geographical Indications

Office of the Controller General of Patents, Designs & Trademarks

Patent Office Procedures

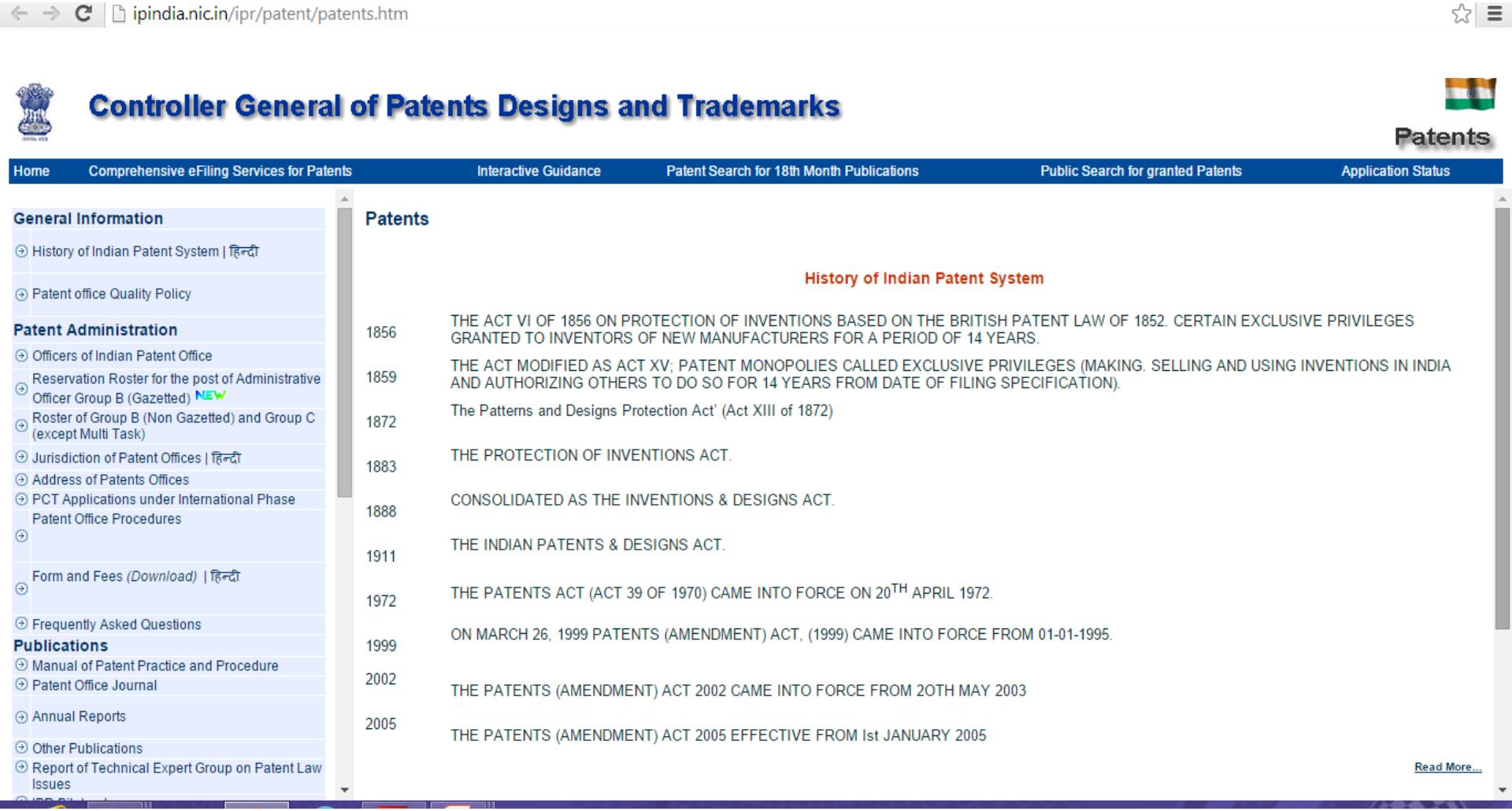
Government of India
Department of Industrial Policy and Promotion
Ministry Of Commerce and Industry

INTELLECTUAL PROPERTY INDIA
Patents | Designs | Trademarks
Geographical Indications

Office of the Controller General of Patents, Designs & Trademarks

The page on Patents on website of the Intellectual Property Office, India can be accessed at

http://ipindia.nic.in/ipr/patent/patents.htm



Importance of patents

- **Important source of scientific and technical literature**
- **A treasure-house of scientific inventions**
- **Avoids duplication**
- **Paves way for further discoveries**
- **Stop re-inventing the wheel**
- **Identifies emerging technologies, emerging areas**



What does a patent do?

- Protects intellectual property for 20 years
  - no one else can manufacture the product
  - some one can pay you royalties
  - you can block competitors



- After 20 years, technology goes to public domain

What is patent

- It is a statutory right to the inventor or the applicant by the government for his invention which is either a new process or product
- It is for the limited period of time
- It is granted in lieu of sufficient disclosure to the patent offices
- It is only territorial right
- It is a negative right

What is patent

- **However patent is not an absolute right**

This is subject to certain conditions like-

- Government Use
- Importation or manufacturing by or on behalf of the government
- Experimental purpose
- Research purpose
- Teaching purpose
- Distribution of drug or medicine by government in dispensary, hospital or other medical institutions rendering public service or on behalf of the government
- Used for Foreign vessels, aircraft, land vehicles which have temporarily or accidentally come to India

What are Patent Rights

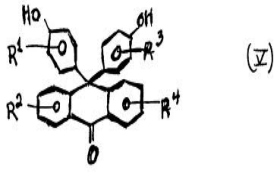
- ✓To prevent third party without authorization-
- ✓Making or manufacturing
- ✓Using,
- ✓Offering for sale
- ✓Selling,
- ✓Importing
- ✓Distributing
- ✓Licensing

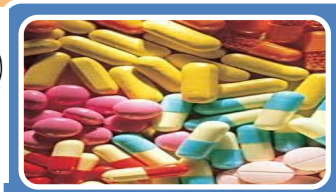
Patentable subject matter





Any article, apparatus or machinery or its component





Any ,substance whether living or non living, product , pharmaceutical product





Any composition of matter, pharmaceutical products



Any process, manner or art of manufacturing other than essential biological process

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INTELLECTUAL PROPERTY INDIA
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Scope of Patentability Under The Patents Act

What is an Invention?

Sec.2(1)(j)

"Invention" means a new product or process involving an inventive step and capable of industrial application





Basic criteria of patentability

The 3 basic criteria which any invention must meet in order to deserve a patent:

Novelty

Non-obviousness

Industrial application

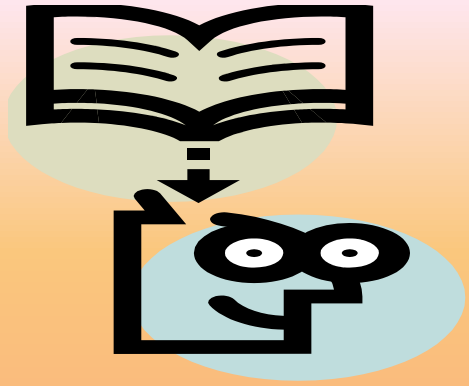
Patentable subject matter

Invention must

- relates to a **Process** or **Product** or both
- be new **(Novel)**
- involves an **inventive step**
- be Capable of **industrial application**
- not fall under **Section 3 and 4**

"NEW"

MEANS



Invention must not be

- **Published in India or elsewhere**
- **In prior public knowledge or prior public use with in India**
- **Claimed before in any specification in India**

Inventive step

A **feature of an invention** that



- **involves technical advance as compared to the existing knowledge or**
- **have economic significance or both and**
- **makes the invention not obvious to a person skilled in the art**



Industrial application means

Invention is capable of being made or used in any kind of industry



What is not Patentable

- **Inventions falling within the scope of Sec. (3) of Patents Act, 1970.**
- **Inventions falling within the scope of Sec. (1) of Sub-sec. 20 of Atomic Energy Act, 1962-**
  - **For Example : Inventions relating to Compounds of –**
  - **Uranium, Beryllium, Thorium, Plutonium, Radium, Graphite, Lithium and more as notified by Central Govt. from time to time**

Inventions Not Patentable -Sec 3

3(a): frivolous or anything obviously contrary to well established natural laws

3(b): contrary public order or morality serious prejudice to human, animal or plant life or health or to the environment

3(c): the mere discovery of a scientific principle or the formulation of an abstract theory or discovery of any living thing or non-living substances occurring in nature

3(d): the mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance

3(e): a substance obtained by a mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substances;

3(f): the mere arrangement or re-arrangement or duplication of known devices each functioning independently of one another in a known way

3(h): a method of agriculture or horticulture

Inventions Not Patentable -Sec 3

3(i):any process for the medicinal, surgical, curative, prophylactic, diagnostic, therapeutic or other treatment of animals to render them free of disease or to increase their economic value or that of their products.

3(j): plants & animals in whole or any part thereof other than microorganisms but including seeds, varieties and species and essentially biological processes for the production or propagation of plants and animals;

3(k): a mathematical or business method or a computer programme *per se* or algorithms

3(l): a literary, dramatic, musical or artistic work or any other aesthetic creation

3(m):mere scheme or rule or method of performing mental act or method of playing game

3(o):topography of integrated circuits

3(p):an invention which in effect is traditional knowledge or which is an aggregation or duplication of known properties or traditionally known component or components.

Process of Patenting



- Be curious but do not disclose your invention
- Keep a bound notebook to prove when you got the idea
- Develop the idea and produce a model
- Write why your invention is needed, what the existing products are in the market, your new product, and what is unique about your product



Filing of the Application



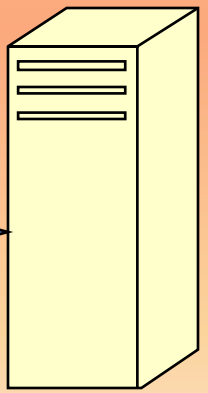
Physical filing at the Patent Office





Electronic filing

(July 20,2007)



Where to file patent application

- The appropriate office of the patent office shall be the head office of the patent office or the branch office as the case may be within whose territorial limits …

  Residence of applicant or Domicile; or

  His the place of business; or

  The place where the invention actually originated.



- If the applicant has no business or domicile in India, the address for service in India is given by such applicant

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

How to file a patent application?

- Documents can be filed in the patent office

- through online(e-filing) or
- www.ipindiaonline.gov.in/online
- through post or
- can be submitted by hand

GENERAL PROCEDURE FOR OBTAINING A PATENT

- **Filing of patent application**
- **Publication after 18 months**
- **Pre Grant Opposition /Representation by any person.**
- **Request for examination**
- **Examination: Grant or Refusal**
- **Publication of Grant of patent**
- **Post Grant Opposition to grant of patent**
- **Decision By Controller**

Part of a Patent-techno-legal document

- **Legal Information**
  - Name ,address ,
  - contact details
  - inventor,
  - assignee,

  } Form 1

  - Assignments
  - Details of foreign filing

  } Form 3

  - Request for examination- Form 18
  - Request for Early publication -Form 9
  - Power of authority(if assigned to patent agent)

  } Form 26



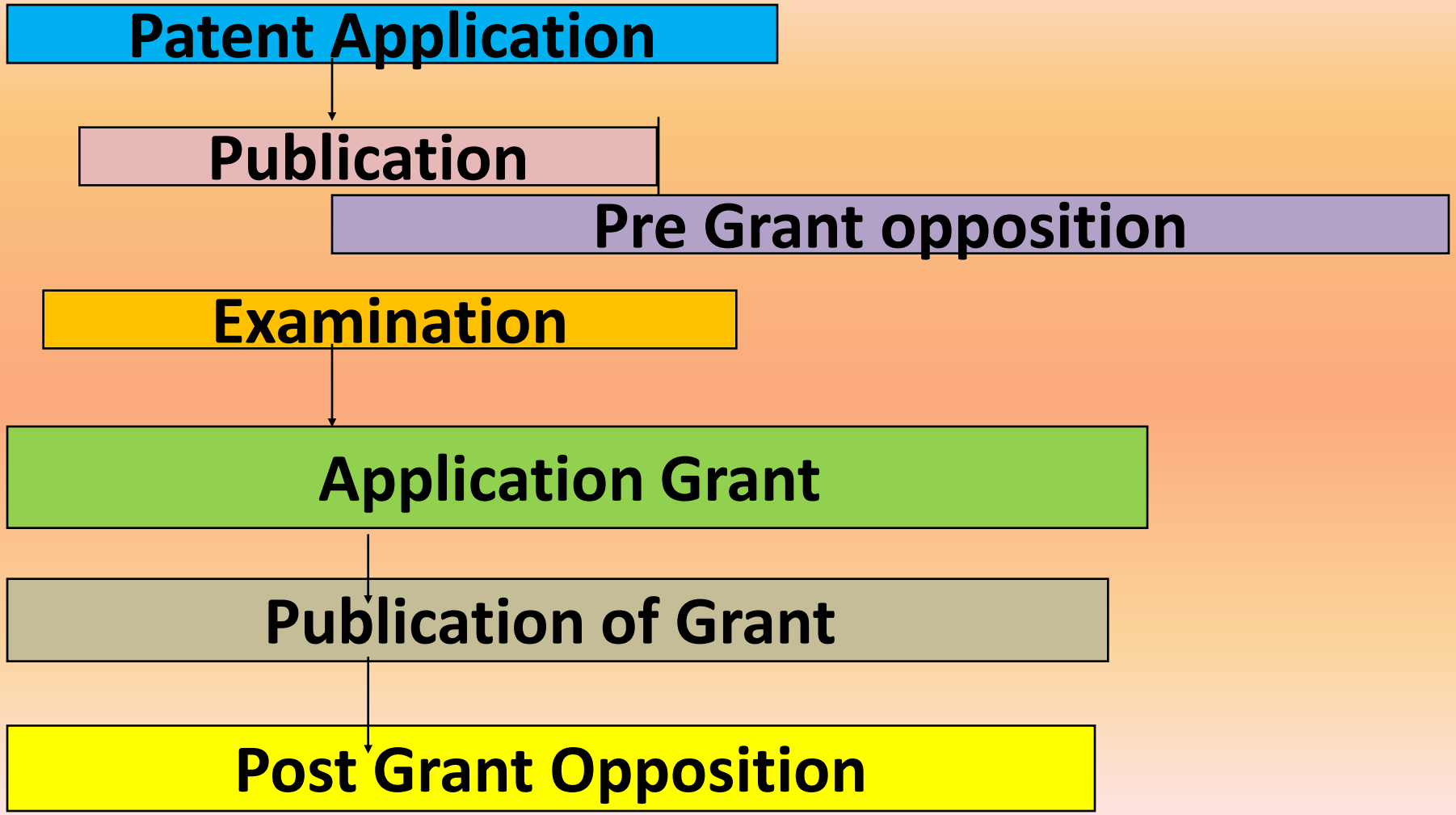
- **Technical information (Specification)**
- **Form 2**
- **Background of the invention**
  - describes the need for the invention
- **Summary of the invention**
  - describes how the invention works
  - someone should be able to duplicate your work
  - the preferred embodiment
  - examples
- **Claims**
  - most important part
  - independent claims
  - dependent claims
- **Abstract**

Government of India
Department of Industrial Policy and Promotion
Ministry Of Commerce and Industry

INTELLECTUAL PROPERTY INDIA
Patents | Designs | Trademarks
Geographical Indications

Office of the Controller General of Patents, Designs & Trademarks

Simple Graphical Representation of Patent Granting Procedure



Steps

- **To get a patent grant, the first most step is to file a patent application.**

❖**Who can file a patent application?**

❖**Where to file a patent application?**

❖**How to file a patent application?**

Documents required for filing of A Patent Application

1. Covering letter- indicating the list of documents;
2. Application for Grant of Patent in Form 1 [section 7, 54 & 135 and Rule 20(1)] in duplicate;
3. Complete/Provisional specification in Form 2 in duplicate [Section 10; Rule 13]
4. Statement and Undertaking in Form 3 [Section 8; Rule 12];
5. Power of Attorney in Form 26 (in original) (Rule 3.3 (a) (ii)); (if filed through attorney)
6. Declaration of Inventor-ship in Form 5

   (only in case of an Indian Application; (Rule 4.17);
7. Request for examination: F18
8. Requisite Statutory fees (cheque / DD).

Who can file Patent Application

In India [Section 6 and 134]

- **The application can be filed either alone or jointly:**

- **By any person claiming to be true and first inventor(s)**
- **By any person being the assignee of person claiming to be true and first inventor(s)**

  (proof of assignment has to be submitted along with the application)
- **By the legal representative of any deceased person or assignee**

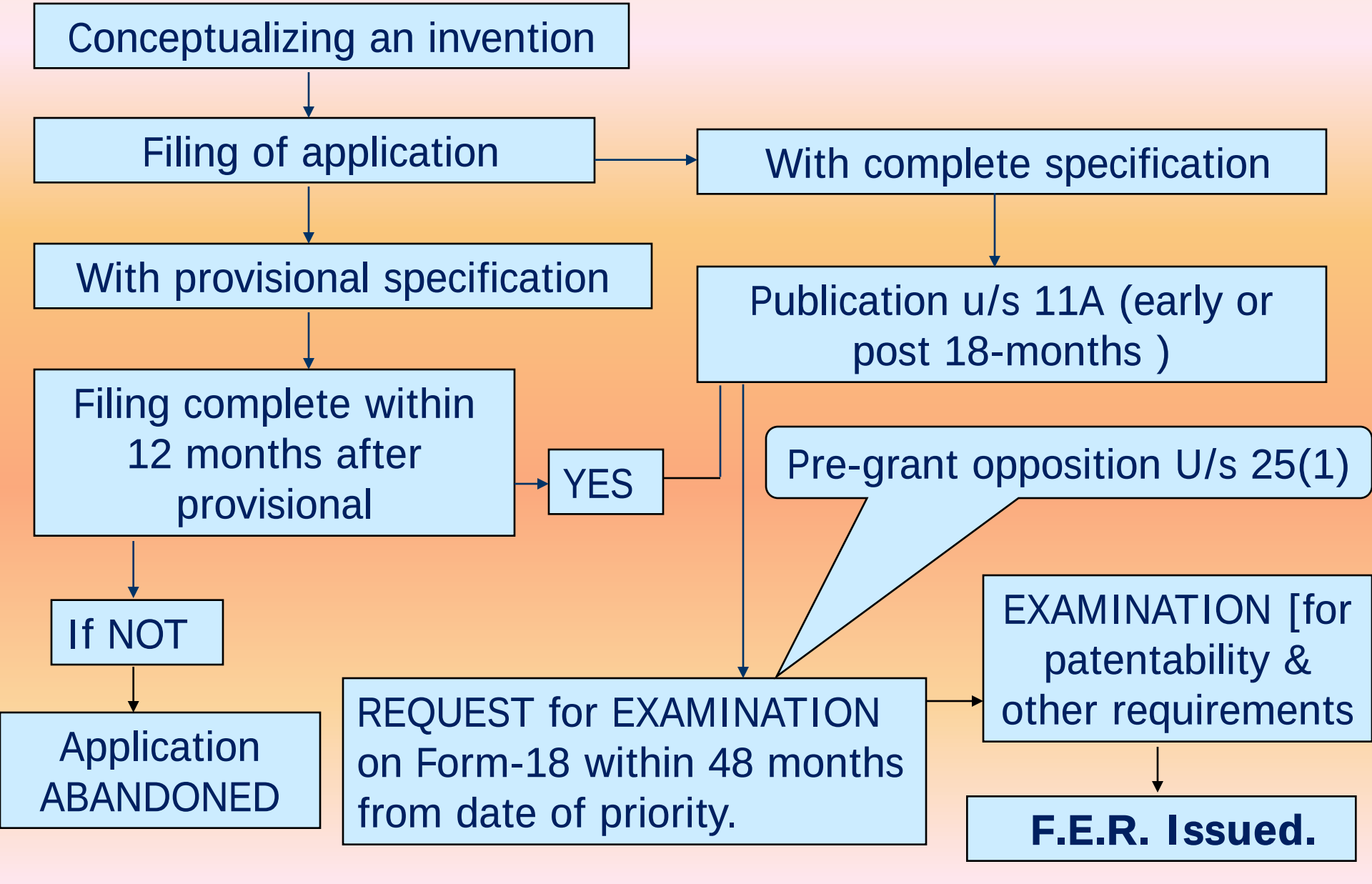
Essential ingredients of Complete Specification

- Title and Preamble
- Prior art
- Drawbacks in prior art
- Efforts or Solution to Drawbacks
- Summary Of the Invention
- Statement of invention
- Detail description of invention
- Detail description with reference to drawings
- Examples
- Claims

Main steps of Patenting Procedure

- Filing of application at the Patent Office
- Filing of request for examination
- Publication
- Examination
- Pre-grant Opposition
- Grant of Patent
- Post-grant Opposition

Patent Grant in INDIA



F.E.R. ISSUED

- Re-Examination of amended documents
- Controller offers a hearing to the applicant.
- Application is to be put in order within 12 months from issue of FER

Objections not met within 12 months

ABANDONED

Objections met within 12 months

Grant of Patent u/s 43 and publication of grant

Post grant opposition u/s 25(2)

THE FEE SCHEDULE

http://ipindia.nic.in/ipr/patent/patent_FormsFees/Fees.pdf

For any queries
www.ipindia.nic.in

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Filing international applications for patent under the Patent Cooperation Treaty

How to file a patent application simultaneously in different countries?

- **Direct** : directly file separate patent applications at the same time in all of the countries in which patent is desired (for some countries, regional patents are available)

- **Paris Convention**: having filed the first patent application in a Paris Convention country (one of the Member States of the Paris Convention for the Protection of Industrial Property), file separate patent applications in other Paris Convention countries within 12 months from the filing date of that first patent application, with the benefit of claiming the filing date of the first application in all other countries

- **Patent Cooperation Treaty** : file an application under the PCT, directly or within the 12-month period provided for by the Paris Convention from the filing date of a first application, which is valid in all Contracting States of the PCT

What is PCT?

- The **Patent Cooperation Treaty** (PCT) is an international treaty with more than 145 Contracting States. It is administered by the World Intellectual Property Organisation (WIPO)
- The PCT makes it possible to seek patent protection for an invention simultaneously in a large number of countries by filing a single “international” patent application instead of filing several separate national or regional patent applications.
- The granting of patents remains under the control of the national or regional patent Offices in what is called the “national phase”.

Advantages of PCT filing

- A single application in a single language filed in a single country called the international application
- This single application has the effect of filing simultaneously in different countries (designated countries)

Steps involved in PCT

- Filing of international application in a Receiving Office (RO)
- International Search by an International Searching Authority (ISA)
- International Preliminary Examination by an International Preliminary Examining Authority (IPEA)

Where to file (RO/IN or RO/IB)

- Nationals/Residents of India can file an international application with
  - the Indian Patent Office at Delhi, Chennai, Mumbai or Kolkata as the Receiving Office (RO/IN)

    or
  - the International Bureau of WIPO as the Receiving Office (RO/IB)

The international application

- A Request (Form PCT/RO/101) accompanied by description, claims, abstract (and drawings if required) of the invention in English or Hindi
- The international application to be filed in triplicate
- Fees payable:

  Transmittal fee, International Filing Fee and Search fee (all fee to be paid within one month from the date of receipt of the international application)

Transmittal Fee for RO/IN

Transmittal fee is payable to the Receiving Office within one month from date of filing of the international application

Transmittal fee	Natural person	Small entity	Other than small entity
For e-filing (applicable when the Office starts accepting the filing of international applications in electronic form)	3200 INR	8000 INR	16000 INR
For physical filing	3250 INR	8800 INR	17600 INR

International filing fee for Indian applicant

as on 19.8.2014

(see http://www.wipo.int/export/sites/www/pct/en/fees.pdf for fee updates)

International Filing Fee is payable to International Bureau of WIPO within one month from date of filing

International filing fee	1471 USD
Fee per sheet over 30	17 USD
Reduction in fee for PCT easy filing	111 USD

Search fee for Indian applicant choosing Indian Patent Office as ISA, payable within one month from date of filing

	Filing by individual(s)	Other than individuals
Search Fee	2500 INR	10000 INR

International Filing Date

- The Receiving Office India (RO/IN) accords as the international filing date the date of receipt of the international application, after the following checks:

- (i) the applicant is a resident/national of India
- (ii) the international application is in English or Hindi,
- (iii) the international application contains at least the following elements:
  - (a) an indication that it is intended as an international application,
  - (b) the designation of at least one Contracting State,
  - (c) the name of the applicant, as prescribed,
  - (d) a part which on the face of it appears to be a description,
  - (e) a part which on the face of it appears to be a claim or claims.

The International Filing Date is considered to be the actual filing date in each country designated in the Request

Home, Record and Search copies

- RO keeps one copy of international application for record named ‘Home Copy’
- RO sends one copy of international application to International Bureau (IB) of WIPO named ‘Record Copy’
- RO sends one copy of international application to the International Searching Authority (ISA) named the ‘Search Copy’

International Search and Preliminary Examination

- Every international application is subject to international search by an International Searching Authority (ISA)
- An applicant may opt for international preliminary examination by an International Preliminary Examining Authority (IPEA)

ISA and IPEA

- Few Patent Offices in the world have been recognized by WIPO to function as International Searching Authority and International Preliminary Examining Authority under the PCT.
- The Indian Patent Office started functioning as ISA/IPEA from 15th October 2013. Currently the Patent Office - Delhi branch functions as ISA/IPEA.

ISA and IPEA for IA filed at RO/IN

- An applicant from India can choose any one of the following ISA/IPEA for international search and preliminary examination
  - Indian Patent Office
  - Australian Patent Office
  - Austrian Patent Office
  - European Patent Office
  - State Intellectual Property Office of the People's Republic of China
  - Swedish Patent and Registration Office or
  - United States Patent and Trademark Office

International Search

- ISA establishes International Search Report (ISR) which identifies the published patent documents and technical literature (“prior art”) which may have an influence on whether the invention is patentable,
- ISA also establishes Written Opinion of Search Authority (WOSA) on the invention’s potential patentability.

Publication by WIPO

The international application along with International Search Report is published by WIPO after expiry of 18 months from the priority date of the application

International Preliminary Examination (IPE)

- After establishment of ISR/WOSA and publication by WIPO, the applicant may opt for International Preliminary Examination (IPE). IPEA establishes International Preliminary Report on Patentability (IPRP) (Chapter II of the Patent Cooperation Treaty)

- If the applicant does not opt for IPE, the International Bureau of WIPO publishes the WOSA as International Preliminary Report on Patentability (Chapter I of the Patent Cooperation Treaty)

Filing for IPE

- IPE is optional
- Residents/Nationals of India can file a Demand (Form PCT/IPEA/401) for international preliminary examination in the Delhi branch of the Indian Patent Office which acts as IPEA/IN.
- Fees payable:

  Preliminary Examination fee and Handling fee (all fee to be paid within one month from the date of receipt of the international application)

Preliminary Examination fee

Preliminary Examination fee	Filing by individual(s)	Other than individual
where the ISR was issued by ISA/IN	2500 INR	10000 INR
where the ISR was not issued by ISA/IN	3000 INR	12000 INR

Handling fee

- Handling fee for Indian applicant is 221 USD as on 19 August 2014.

- For fee updates please visit http://www.wipo.int/export/sites/www/pct/en/fees.pdf

International Preliminary Examination

- IPEA carries out an additional patentability analysis.
- IPEA sends Written Opinion(s) to Applicant
- Applicant may make amendments to international application
- IPEA establishes International Preliminary Report on Patentability (IPRP)(Chapter II of PCT)

National Phase

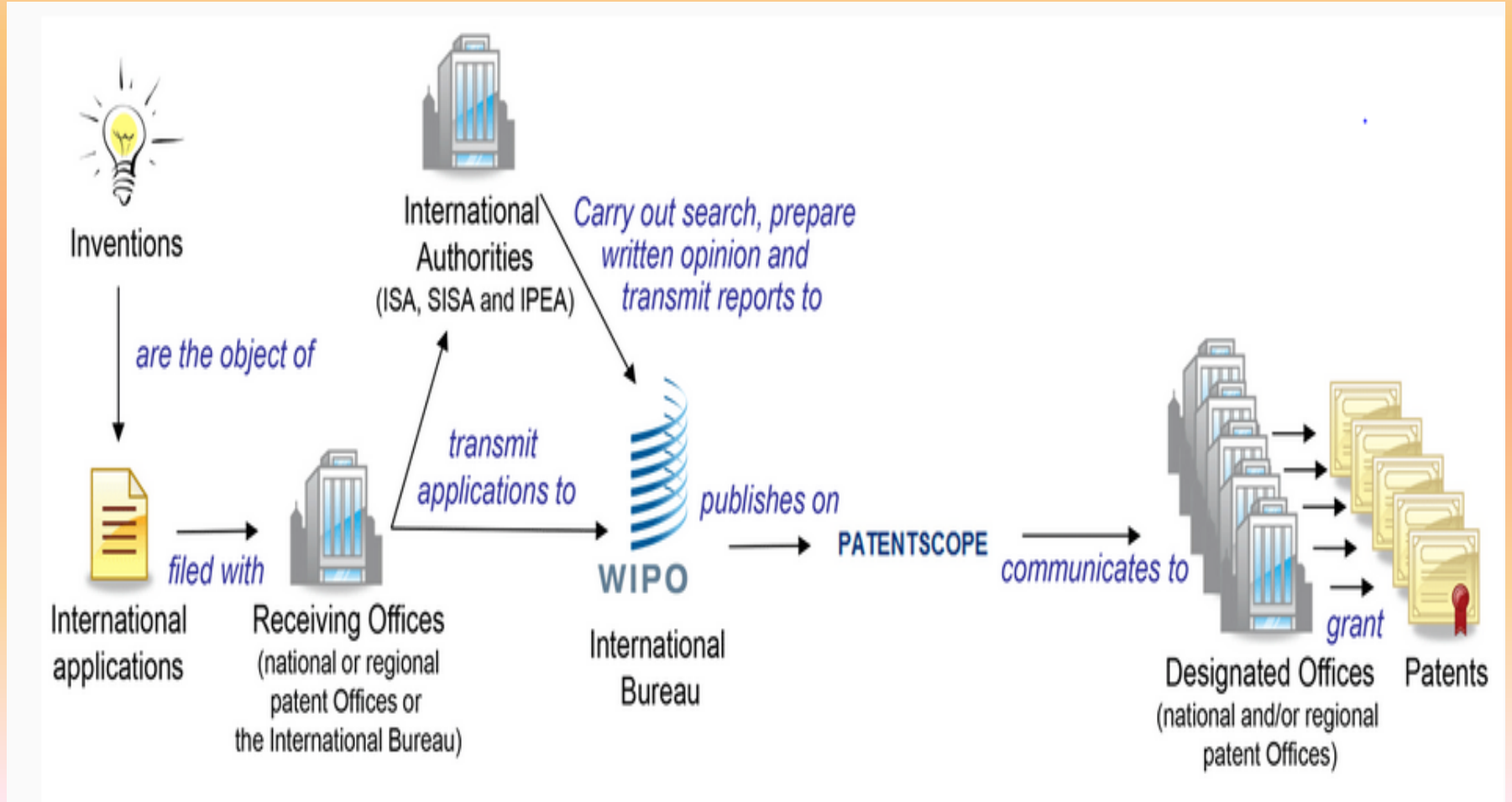
- After the end of the PCT procedure, either after international search or after international preliminary examination and before 30/31 months from the priority date, applications for the grant of patents can be filed before the national (or regional) patent offices of the countries in which patent protection is desired.
- The filing procedure, fee and processing are as per the requirements of national law relating to patents in each country.
- The filing date is the international filing date in all such countries

National phase in India

- For grant of patent in India, the applicant has to file a national phase application in India before the expiry of 31 months from the priority date of the application.
- The international application as filed under the PCT is treated as corresponding application in India.

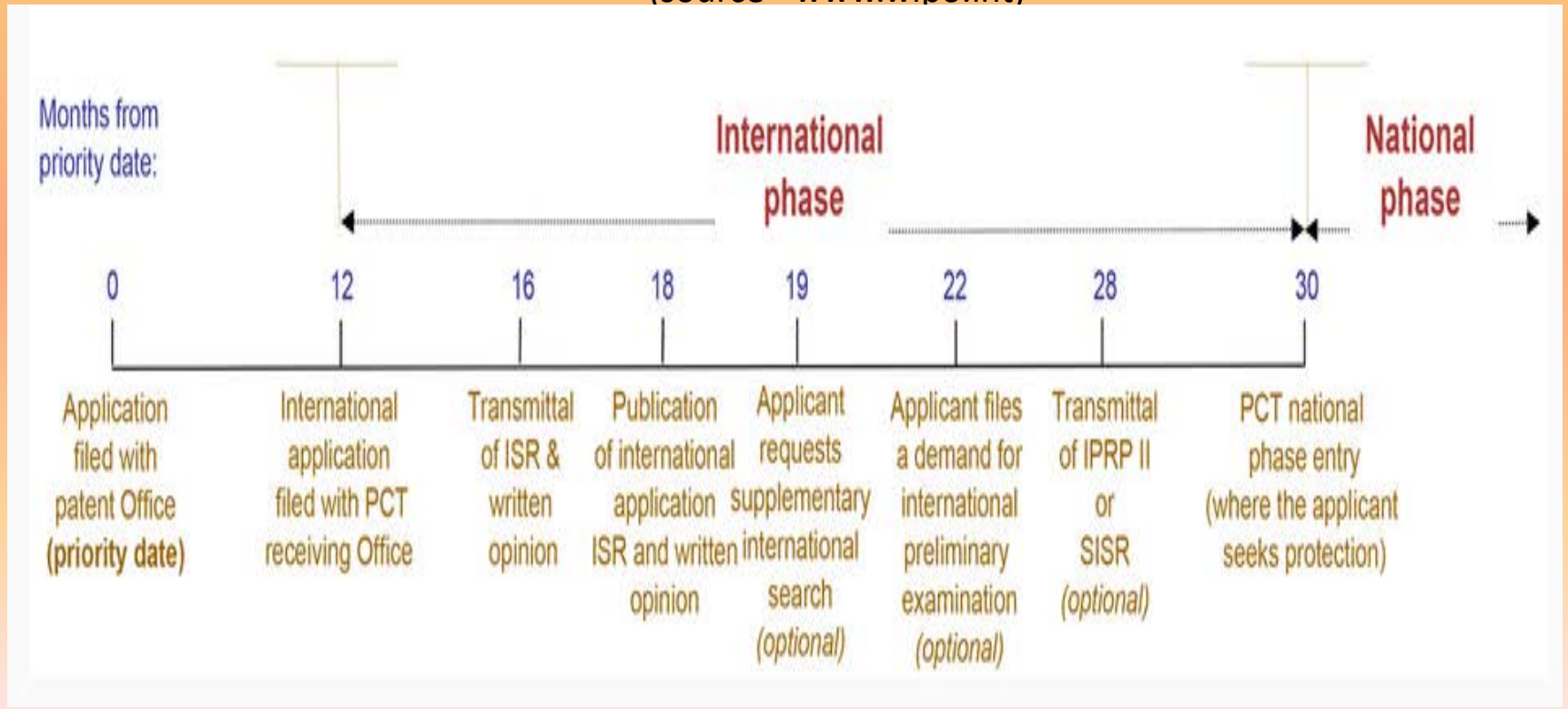
Flow under the PCT

(source - www.wipo.int)



Timelines under PCT

(source - www.wipo.int)



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For further reference please visit:

www.ipindia.nic.in

www.wipo.int/pct

MINISTRY OF COMMERCE & INDUSTRY
(DEPARTMENT OF INDUSTRIAL POLICY AND PROMOTION)

NOTIFICATION

New Delhi, Dated: The 11th May, 2001

S.O. 414 (E)…….. In exercise of the powers conferred by sub-section (3) of section 1 of the Design Act, 2000 (16 of 2000), the Central Government hereby appoints the 11th day of May, 2001 as the date on which the said Act shall come into force.

S.O.(E)..... whereas a draft of Design Rules was published as required by sub-section (3) of section 47 of the Design Act, 2000 (16 of 2000), by the notification of the Government of India, Ministry of Commerce and Industry No.S.O.1069 (E) dated 29th November, 2000 at pages 56 to 115 of the Gazette of India, Extraordinary, Part II, section 3, sub-section (ii) dated the 29th November, 2000;

And whereas, objections and suggestions were invited till the 4th January, 2001 from all persons likely to be affected thereby;

And whereas, the draft of the Design Rules was made available to the public on the 4th December, 2000 through the said Gazette dated November 29, 2000;

And whereas, the objections and suggestions received from the public with respect to the said draft Rules have been considered by the Central Government;

Now, therefore, in exercise of the powers conferred by section 47 of the Design Act, 2000 (16 of 2000), the Central Government hereby makes the following rules, namely:-

THE DESIGNS RULES, 2001

PRELIMINARY

1. **Short title and commencement:-** (1) These rules may be called the Designs Rules, 2001.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. **Definitions -** In these rules, unless there is anything repugnant in the subject or context,-

(a) "Act" means the Designs Act, 2000

(b) "Application in United Kingdom or convention country or group of countries or inter-governmental organisation" means an application made by any person in any part of United Kingdom or convention country or group of countries or inter-governmental organisation, of a design for the protection in India under the provisions of section 44 of the Act.

(c) "Office" means the Patent Office referred to in section 74 of the Patent Act, 1970 (39 of 1970)

(d) "Reciprocity Application" means an application in India under section 44 of the Act.

(e) "Set" means a number of articles of the same general character ordinarily sold together or intended to be used together, all bearing the same design, with or without modification not sufficient to alter the character or substantially to affect the identity thereof.

3. **Leaving and serving documents. -** (1)Any application, notice or other document authorised or required to be filed, left, made or given at the Office, or to the Controller or to any other person under the Act or these rules, may be sent by hand or by a prepaid letter through the post or registered post or speed post or courier service, and, if sent by a prepaid letter or registered post or speed post or courier service, shall be deemed to have been filed, left, made or given at the time when the letter containing

the same would be delivered in the ordinary course of mail ,and in proving such sending, it shall be sufficient to prove that the letter was properly addressed and mailed. If the documents sent through tele-fax/e-mail, are clear and fully legible, they shall also be accepted provided that original documents corresponding to the one sent by tele-fax/e-mail is submitted to the office within fifteen days from the date of receipt of the documents so faxed/e-mailed.

(2) Any written communication addressed to a registered proprietor of a design at his address as it appears on the Register of Designs, or at his address for service, or to any applicant or opponent in any proceedings under the Act or these rules, at the address appearing on the application or notice of opposition, or given for service, as hereinafter provided, shall be deemed to be properly addressed.

(3) Any application for registration of design, application for extension of copyright, petition for cancellation of registration of design and application for rectification of Register of Design along with the prescribed fees authorized or required may be filed, left, made or given to the branch offices also by the applicant.

(4) The branch offices shall transmit such applications or documents along with the fees to the Head Office of the Patent Office for processing and prosecuting the same.

4. **Address for Service. -** Every applicant or opponent in any proceeding under the Act or these rules, and every person who shall hereafter become a registered proprietor of a design, shall give an address for service in India and such address may be treated, for all purpose connected with the design as the actual address of such applicant, opponent, registered proprietor. Unless such an address is given, the Controller shall be under no obligation either to proceed with the application or the opposition, or to send any notice that may be required by the Act or rules framed there under:

Provided that such address for service may include e-mail or digital address of the agent/applicant.

5. Fees.- (1) The fees to be paid in respect of the registration of designs, and application therefor, and in respect of other matters, with relation to Designs Act and rules framed there under, shall be those as specified in the First Schedule of the rules.

(2) (a) Fees may be paid in cash at the office, or the same may be paid by Cheque or Demand Draft on a scheduled bank payable to the Controller at Calcutta and if sent through the post or registered post or speed post or courier service shall be deemed to have been paid at the time when properly addressed and prepaid letter containing the cheque would be delivered in the ordinary course of mail.

(b) Cheques or Demand Drafts not carrying the correct amount of commission, and cheques or demand drafts on which the full value specified therein cannot be collected in cash within the time allowed for payment of the fee, shall be accepted only at the discretion of the Controller.

(c) Stamps and Indian postal order shall not be accepted in payment of fees.

(d) Subject to the approval of the competent authority any applicant or an agent may deposit money in advance once in a financial year and request the Controller to realise any fee payable by him from the said deposit and in such case date of the receipt of the request to realise the fee or the date on which the request to realise the fee is deemed to have been received, which ever is earlier, shall be taken as date of payment of fee:

Provided that the requisite amount of money is available at the credit of the person making the request.

6. Forms. - (1) The forms set forth in the Second Schedule, with such variations, as the circumstances of each case require, shall be used for the purposes mentioned therein.

(2) When no form is so specified for any purpose, the applicant may adopt any form specified in the Second Schedule with such modification and variation as the controller may permit.

7. Size, etc., of documents. - (1) All documents and copies of documents except drawings or representation, sent to or filed, left at the Office or otherwise furnished to the Controller shall be written, typewritten, lithographed, or printed in the English/Hindi language (unless otherwise directed), in large and legible character with deep permanent ink upon one side only of strong white paper of A4 size with a margin of at least one inch and a half or four centimeters on the left hand part thereof. Signatures thereto shall be written in a large and legible hand and any signature which is not legible or which is written in a script other than English shall be accompanied by a transcription of the name in English in block letters.

(2) Additional copies of documents shall be filed at the Office, if at any time required by the Controller.

(3) Names and addresses of applicants and other persons shall be given in full together with their nationality and such other particulars, if any, as are necessary for identification.

8. Signature and verification of documents specified in sections 5, 12, 19 and 37. The documents specified in sections 5,12,19 and 37 of the Act shall be dated and signed at the foot, and shall contain a statement that the facts and matters stated therein are true to the best of the knowledge, information and belief of the person signing them.

9. Agency. -For all matters falling under the provisions of section 43 of the Act, applicant may, unless otherwise directed by the Controller, authorize under his personal signature, any person specified in section 43 to act as his agent and to receive all notices, requisitions and communications. The authority may be given in Form- 21.

10. Classification of Goods.- (1) For the purposes of the registration of designs and of these rules, article shall be classified as specified in the Third Schedule hereto.

(2) If any doubt arises as to the class to which any particular description of article belongs, it shall be determined by the Controller in consultation with the applicant wherever required.

Application for Registration

11. Application. - (1) An application under section 5 of the Act for the registration of a design shall be accompanied by four copies of the representation of the design and the application and each of copy of the representation of the design shall be dated and signed by the applicant or his agent.

(2) The application shall state the class in which the design is to be registered, and the article or articles to which the design is to be applied.

(3) If it is desired to register the same design in more than one class of article, a separate application shall be made in each class of article and the application shall contain the number or numbers of the registration or registrations already effected.

(4) If so required by the Controller, the applicant shall state purpose for which the article is used.

12. Statement of novelty. - The applicant may, and shall, if required by the Controller in any case so to do, endorse on the application and each of the representation a brief statement of the novelty he claims for his design.

13. Additional copies of representation or specimens. - If the controller in any case so requires, the applicant shall supply one or more representations or specimens of the design in addition to those supplied with the application.

14. Representation. - (1)The four copies of the design required by rule 11 shall be exactly similar drawings, photographs, tracings or other representations of the design or shall be specimens of the design.

(2) When a design is to be applied to a set, each representation accompanying the application shall show all the various arrangements in which it is proposed to apply the design to the articles included in the set.

(3) Each representation of the design whether to be applied to a single article or to a set, shall be on durable paper of A4 size (and not on cardboard) and shall appear on one side only of the paper. The figure or figures shall be placed in an upright position on the sheet. When more figures than one are shown, these shall , where possible, be on one and the same sheet, and each shall be designated (e.g. perspective view; front view, side view).

(4) When a design is to be applied to a set, any doubt whether the given articles do or do not constitute a set shall be determined by the controller.

(5) If the specimens are not, in the opinion of the Controller, suitable for record in the office they shall be replaced by representations.

(6) Where words, letters or numerals are not of the essence of the design, they shall be removed from the representations or specimens; where they are of the essence of the design, the Controller may require the insertion of a disclaimer of any right to their exclusive use.

(7) Each representation of a design, which consists of a repeating surface pattern, shall show the complete pattern and a sufficient portion of the repeat in length and width, and shall not be of less size than 5 by 4 inches or 13.00 centimeters by 10.00 centimeters.

(8) If the name or representations of living persons appear on a design the Controller shall, if he so requires, be furnished with consents from such persons before proceeding to register the design. In the case of deceased person, the Controller may call for consent from the legal representative before proceeding with registration of the design on which the names or representations appear.

15. Reciprocity application for the registration of a design. - (1) Every reciprocity application for the registration of a design shall contain a statement that an application in United Kingdom or

convention country or group of countries or inter-governmental organisation has been made for the protection of the design to which such reciprocity application relates and shall specify convention country or group of countries or inter-governmental organisation in which any such application has been made and the official date or dates thereof respectively. The application shall be made within six months from the date of the first application in United Kingdom or convention country or group of countries or inter-governmental organisation by the person by whom such application in United Kingdom or convention country or group of countries or inter-governmental organisation was made, or by the legal representative or assignee of the person either alone or jointly with any other person.

(2) In addition to the four copies of the representations of the design filed or left with every reciprocity application for the registration of a design, a copy of the design filed or deposited by the applicant or his predecessor in title as the case may be, in respect of the first application in United Kingdom or convention country or group of countries or inter-governmental organization, duly certified by the Official Chief or Head of the organization in which it was filed, or deposited or otherwise verified to the satisfaction of the Controller, shall be filed or left at the office at the same time as the reciprocity application or within such further time not exceeding three months as the Controller may allow.

(3) Save as aforesaid and as provided by rule 30 all proceedings in connection with a reciprocity application shall be taken within the time and in the manner required by the Act or prescribed by these rules for ordinary application.

16. Manner in which a claim under sub-section (1) of section 8(1) shall be made.- (1) A claim under sub-section (1) of section 8 shall be made in Form-2.

(2) The original assignment or agreement or other document affecting right,title or interest in the application or an official or notarially certified copy thereof shall also be furnished for the Controller's inspection and the Controller may call for such other proof of title or written consent as he may require.

17. Acceptance.- Upon receipt of an application for registration, the Controller may accept it,if he considers that there is no lawful objection in the report of examiner to the design being registered.

18. Objections.- (1) If on consideration of the report of the examiner on the application referred under sub-section (1) of section 5, any objection appear to the Controller is adverse to the applicant or requires any amendment of the application, a statement of such objections shall be sent to the applicant or his agent in writing, and unless within three months from the date of official communication of objection the applicant or his agent removes the objection or applies for hearing, the applicant shall be deemed to have withdrawn his application:

Provided that the period for removal of the objection shall not exceed the time period of six months from the date of filing of the application.

(2) If the applicant or his agent applies for a hearing under sub-rule (1) within a period of three month from the date of communication of the statement of objections or if the Controller considers it desirable to do so, whether or not the applicant has refiled his application, fix a date for hearing having regard to the time remaining for completion of the application as provided under rule 21.

(3) When a hearing has been fixed under sub-rule (2) the applicant shall be given at least 10 days notice of such fixation or such shorter notice as appear to the Controller to be reasonable in the circumstances of the case and applicant shall as soon as possible notify the Controller whether he shall attend the hearing.

(4) Hearing, as required under sub-rules (1), (2) and (3) may be allowed whenever possible on phone followed by detailed submission on tele-fax/e-mail.

(5) After hearing the applicant or without a hearing if the applicant has not attended or has notified that he does not desire to be heard, the Controller may register or refuse to register the design as he thinks fit.

19. Decision of Controller. - The decision of the Controller containing the grounds and materials used by him in arriving the decision at such hearing as aforesaid shall be communicated in writing to the applicant or his agent

20. Date for appeal. - The date on which the decision of the Controller is dispatched shall be deemed to be the date of the Controller's decision for the purpose of appeal.

21. Non-completion within six months. - An application which owing to any neglect or default of the applicant, has not been completed so as to enable registration to be effected within six months from the date of application, shall be deemed to be abandoned.

22. Publication of the particulars of registered design under section 7. -On acceptance of the design filed in respect of an application, the Controller shall direct the registration and publication of the particulars of the application and the representation of the article to which the design has been applied, in the Official Gazette. When publishing in the Gazette, the Controller may select one or more views of the representation of the design, which, in his opinion, would depict the design best

23. Manner of making an application under sub-section (2) of section 11. - An application under sub-section (2) of section 11 shall be made in Form -3.

24. Restoration of Designs.- (1)An application for the restoration of a design under section 12 shall be made in Form - 4.

(2) Upon consideration of the application and the evidence adduced by the proprietor of the design, if any, if the Controller is satisfied that a prime facie case for the restoration of the design has not

been made out he shall intimate the proprietor of the design accordingly, and unless within one month from the date of such intimation the proprietor requests to be heard in the matter, the Controller shall refuse the application.

(3) If the registered proprietor requests for hearing within the time allowed and the Controller after giving the register proprietor such a hearing, is prima facie satisfied that the failure to pay the fee for extension of copy right was unintentional, he shall allow the application for restoration.

25. Payment of unpaid extension fee. - (1) If the Controller decides in favour of the registered proprietor of the design, the proprietor shall pay the unpaid fees for the extension of copyright and additional fee specified in the First Schedule, within a month from the date of the order of the Controller allowing the proprietor for restoration of the deisign.

(2) The Controller shall advertise in the Official Gazette his decision on the application for restoration.

Marking of Articles

26. Marking of articles before delivery on sale. - Before delivery on sale of any article to which a registered design has been applied, the proprietor of such design shall cause each such article to be marked with the word **REGISTERED** or with the abbreviation **REGD.,** or with the abbreviation **RD,** as he may choose, and also (except in the case of articles made of soft or brittle in nature to which have been applied designs registered in different classes of articles) with the number appearing on the certificate of registration:

Provided that the requirements of this rule and clause (b) of sub-section (1) of section 15 of the Act shall be dispensed with as regards-

(i) textile goods in which the design is printed or woven, other than handkerchiefs; and

(ii) articles made of charcoal dust, which are brittle and which are not sold in single pieces.

Inspections and Searches

27. Inspection of designs. - Registered designs shall be open to public inspection after the notification of the said design in Official Gazette and the application together with representation of the design may be inspected on a request made in Form - 5.

28. Search under section 18. - (1) Request for information as specified in section 18 of the Act may be made by any person in Form 6 with the fee as specified in the Schedule of fees and shall contain the registration number of the design for which information is required.

(2) If the applicant is unable to furnish the registration number of the design, he shall lodge with the Controller, in Form 7 together with such information as is in his possession, and the Controller shall thereupon cause search to be made in the class indicated therein as much as be possible on the information supplied, and shall furnish such information as may be obtainable. Where Form 7 is accompanied by a representation or specimen of the design, such representation or specimen shall be furnished in duplicate.

Cancellation

29. Cancellation of registration of designs under section 19. - (1) A petition to the Controller for the cancellation of the registration of a design shall be made in duplicate in Form - 8 and shall be accompanied by a statement in duplicate setting out the nature of the applicant's interest and the facts upon which he bases his application.

(2) If the petition for the cancellation of the registration of a design is made by person who is not the registered proprietor, a copy of the petition along with the statement shall be transmitted by the Controller to the registered proprietor.

(3) If the registered proprietor intends to oppose the application he shall within a time to be specified by the Controller, leave at the office a counter statement setting out the grounds on which he intends to oppose the application and shall, within the same time, deliver to the applicant a copy of the counter-statement.

(4) The applicant may, after delivery to him of the copy of the registered proprietor's counter-statement, leave at the office, evidence by way of affidavits in support of his case and shall also deliver to the registered proprietor a copy thereof.

(5) The registered proprietor may, after delivery to him of the applicant's evidence, leave at the office evidence by way of affidavits in support of his case and shall also deliver to the applicant a copy thereof.

(6) The applicant may, after delivery to him of a copy of the registered proprietor's evidence, leave at the Office evidence in reply by way of affidavits and shall also deliver to the registered proprietor a copy of such evidence.

(7) No further statement of evidence shall be left by either party except by leave of or on requisition by the Controller.

(8) Where a document is in a language other than English and is referred to in any statement or evidence filed in connection with an petition under section 19 or opposition thereto, an attested translation thereof in English shall be furnished in duplicate.

9) The time allowed for filling the counter-statement or for leaving evidence shall ordinarily be one month which may be extended only by a special order of the Controller given on a petition made by party seeking extension of time:

Provided that the extension so granted shall in no case exceed three months in aggregate.

(10) On completion of the filing of the statement and the evidence referred to sub-rules (3) to (8) or at such other time as he may decide, the Controller shall appoint a hearing of the petition for cancellation and shall give the parties not less than ten days' notice of such hearing.

(11)If either party desires to be heard, he shall give to the Controller a notice in Form 20 of his intention to attend the hearing.

(12)If, at the hearing, either party intends to refer to any publication, he shall give to the Controller and to the other party not less than five days' notice of such intention, together with the details of the publication to which he intends to refer.

(13)After hearing the party or parties desirous of being heard or without a hearing, if neither party desires to be heard or attends the hearing, the Controller shall decide on the petition and the opposition, if any, and notify his decision to the parties.

GENERAL

Register of Designs

30. Registering designs.- (1)When a design is accepted, there shall be entered in the Register of Design, in addition to the particulars required by the Act, the number of the design, the class in which it is registered, the date of filling the application for registration in this country, the reciprocity date, if any, claim for the registration, and such other matters as would effect the validity or proprietorship of the design.

(2) When such Register of Design is maintained wholly or partly on computer under floppies or diskettes, such computer floppies or diskettes shall be maintained under superintendence and control of Controller and in case of any dispute or doubt with regard to information of designs, the information as contained in the backup file or master file shall be final.

(3)Where the accepted design is one in respect of which a reciprocity date has been allowed, the registration, the extension or the expiration of the copyright in the said design shall be reckoned from such reciprocity date.

31. Alteration of address.- A proprietor of a registered design may make a request in Form 22 to the Controller for alteration of his name, or address, or addresses for service, in the Register of Design. The Controller may require such proof of alteration so requested as he may think fit before acting on the request and on satisfaction, the Controller shall cause the Register to be altered accordingly.

32. Registration of documents under sub-section (3) of section 30.- An application referred to in sub-section (3) of section 30 shall be made in Form- 10.

33. Application for entry of subsequent proprietorship.- An application referred to in sub-section (1) or (2) of the section 30 shall be made to the Controller in Form 11 or 12 or 13 as the case may be.

34. Particulars in applications.- An application under rule 33 shall contain the name, address and nationality of the person claiming to be entitled, together with full particulars of the instrument, if any, under which he claims.

35. Production of documents of title and other proof.- Every assignment, and every other document containing, giving effect to or being evidence of the transmission of copyright in a registered design or affecting the proprietorship thereof or creating an interest therein as claimed in application under rule 33 shall unless the Controller otherwise directs, be presented to him either in original, or notarially certified true copy together with the application and he may call for such other proof of title or written consent as he may require for his satisfaction:

Provided that in the case of a document which is a public document, an official or certified copy thereof may be presented.

36. Form of entry.- The entry to be made in the Register on request under rule 34 shall be in the following form :-

"In pursuance of an application received on the

[……]

Registered as Proprietors
Licensees
Mortgagees
etc.

By virtue of Assignment
Licence
Mortgage deed
etc.

dated _____ and made between _____

of the one part and _____

of the other part.

37. Entry of notification of documents.- An application for entry in the Register of Design of notification of any document (not already provided for), purporting to affect the proprietorship of a registered design, shall be accompanied by an attested copy of the document, the accuracy of such copy being certified as the Controller may direct, and the original or notarially certified true copy of the document shall at the same time be produced and left at the Office if required for further verification.

38. Hours of inspection of Register.- The Register of Designs shall be open to the inspection of the public at all times on which the Office is open to the public, except at times when they are required for actual official use.

39. Rectification of Register.- If an application is made for the rectification of the Register of Design under section 31 of the Act, the Controller shall notify all persons whose names, at the time of the application are entered on the Register as claiming an interest in the design, and shall advertise the application in the Official Gazette.

40. Opposition to rectification.- (1) Notice of opposition to any rectification of the Register of Design may be given within three months of the advertisement of the application for rectification.

(2) The opponent shall, within fourteen days of giving notice of opposition, leave at the office his written statement in duplicate setting out the nature of his interest, the facts upon which he bases his opposition and the relief, which he seeks.

(3) The Controller shall furnish the applicant with a copy each of the notice of opposition and the written statement.

(4)The procedure specified in sub-rules (4) to (13) for rule 29 relating to leaving evidence and hearing shall, so far as may be, apply to the hearing of the application under section 31 as they apply to the hearing of a petition under section 19.

CERTIFICATES

41. Certified copies of documents. - Certified copies of an entry in the Register of Design or certified copies of, or extracts from disclaimers, affidavits, declarations and other public documents in the Office, or from Register and other records, shall be furnished by the Controller on payment of the prescribed fee.

42. Form etc. of affidavits. - (1) The affidavits required by the Act and these rules, or used in any proceedings thereunder, shall be headed in the matter or matters to which they relate, shall be drawn up in the first person, and shall be divided into paragraphs consecutively numbered; and each paragraph shall, as far as possible, be confined to one subject. Every affidavit shall state the description and true place of abode of the person making the same, shall bear the name and address of the person leaving it and shall state on whose behalf it is left.

(2) Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted, provided that the grounds thereof are stated.

(3) Affidavits shall be sworn to as follows :-

(a) In India, before any court or person having by law authority to receive evidence, or before any officer empowered by such court or person as aforesaid to administer oaths or to take affidavits;

(b) In any country or place outside India, – before a diplomatic or consular office, within the meaning of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (41 of 1948) in such country of place or before a notary of the country or place, recognized by the Central Government under section 14 of the Notaries Act, 1952 (53 of 1952), or before a judge or magistrate of the country of place.

(4) The person before whom an affidavit is sworn shall state the date on which and the place where the same is sworn to and shall affix thereto his seal, if any, or the seal of the court if the affidavit is sworn to before the court or an officer empowered by

that court and signed his name and state his designation and address at the end thereof.

(5) Any affidavit purporting to have affixed, impressed or subscribed thereto or thereon the seal or signature of any person authorized under sub-rule (3), in testimony of the affidavit having been sworn to before him, may be admitted by the Controller without proof the genuineness of the seal or signature, or of the official position of that person**.**

(6) Alterations and interlineations shall, before an affidavit is sworn to or affirmed be authenticated by the initials of the person before whom the affidavit is sworn to.

(7) Where the deponent is illiterate, blind or unacquainted with the language in which the affidavit is written, a certificate by the person before whom the affidavit is sworn to, the effect that the affidavit was read, translated or explained in his presence to the deponent, and the deponent seemed perfectly to understand it and has signed the affidavit or affixed his mark in his presence, shall be attached at the end of the affidavit.

(8) Every affidavit filed before the Controller in connection with any proceeding under the Act or these rules shall be duly stamped under the provision of any law for that time being in force.

AWARD OF COST BY CONTROLLER

43. Scale of Costs. - In all proceedings before the Controller, the Controller may, save as otherwise expressly provided by the Act or these rules, award such costs as he considers reasonable, having regard to all circumstances of the case provided that the amount of costs awarded in respect of any matters set forth in the Fourth Schedule to these rules shall not exceed the amount therein specified.

MISCELLANEOUS POWERS OF CONTROLLER

44. Exercise of discretionary power of Controller, miscellaneous power of Controller. - The time within which a person entitled under section 33 of the Act, to an opportunity of being heard shall exercise his option of requiring to be heard shall be one month from the date of a notice which the Controller shall give to such person or his agent before determining the matter with reference to which such person is entitled to be heard. If within that month such person or his agent requires to be heard, the Controller shall appoint a date for the hearing and shall give ten days notice thereof:

Provided that if the giving of ten day's notice would cause an application for the registration of design to be deemed to have been abandoned before the hearing, the Controller may curtail the period of notice.

45. Controller may require statement. - Whether an applicant or agent desires to be heard or not, the Controller may at any time require him to submit a statement in writing within a time to be notified by the Controller, or to attend before him and make explanations with respect to such matters as the Controller may require.

General Power of amendment. - Any document for the amending of which no special provision is made by the Act may be amended, and any irregularity in procedure which, in the opinion of the Controller, may be obviated without detriment to the interest of any person, may be corrected if the Controller thinks fit, and upon such terms as he may direct.

47. General Power to enlarge time. - The time prescribed by these rules for doing any act or taking any proceeding thereunder maybe enlarged by the Controller, if he thinks fit, and upon such terms as he may direct.

REPEAL

48. Repeal. - The Designs Rules, 1933 are hereby repealed:

Provided that any application or other matter pending under those rules on the date of the coming into force of these rules shall be disposed of under those rules.

THE FIRST SCHEDULE

See rule 5
FEES

No. of Entry	on what payable	No. of form	Fee (Rs.)
1.	On application for registration of design under sections 5 and 44.	1	1000.00
2.	On claim under section 8(1) to proceed as an applicant or joint applicant.	2	500.00
3.	On application for extension of copy right under section 11(2).	3	2000.00
4.	On application for restoration of lapsed design under section 12(2).	4	1000.00
5.	Additional fee for restoration.	__	1000.00
6.	Inspection of registered design under section 17(1).	5	500.00
7.	On request for information of design when registration no. given under Section 18.	6	500.00
8.	On request for information of design when registration no. not given.	7	1000.00
9.	On petition for cancellation of design under section 19.	8	1500.00
10.	Notice of intended exhibition or publication of an unregistered design under section 21.	9	500.00
11.	Application for registration of a document in Register of Design under section 30(3), -	10	
	in respect of one design.		500.00
	for each additional design.		200.00
12.	On application for entry of name of proprietor or part proprietor in Register of Design under section 30,-	11	
	in respect of one design.		500.00
	for each additional design.		200.00

Contd...

No. of Entry	on what payable	No. of form	Fee
13.	On application for entry of mortgage or licence in Register of design under section 30	12	
	in respect of one design.		500.00
	for each additional design.		200.00
14.	Application for entry of notification of a document in the Register of Design under section 30 and rule 37,-	13	
	in respect of one design.		500.00
	for each additional design.		200.00
15.	On request for correction of clerical error under section 29.	14	500.00
16.	On request for certificate under section 26 and rule 41.	15	500.00
17.	On application for certified copy of registered design under section 17(2)	16	500.00
18.	On application for rectification of Register of Design under section 31.	17	500.00
19.	On application for extension of time for filing priority document under rule 15.	18	200.00 (per. month)
20.	On notice of opposition under rule 40.	19	100.00
21.	Notice of intention to attend hearing under rules 29 and 40.	20	500.00
22.	Form for authorisation of agent or other person.	21	___
23.	On request to alter name or address or address for Service in the Register of Design under rule 31.	22	200.00
24.	On request for entries of two addresses in the Register of Design.	23	200.00
25.	On petition under rule 46 for amendment of any document.	__	500.00
26.	On petition under rule 47 for enlargement of time.	__	500.00
27.	Inspection of Register of Design under rule 38 (in respect of each design).	__	250.00

THE SECOND SCHEDULE

(See rule 6)

List of forms

Form No.	Section or Rule	Title
1	Sections 5 and 44	Application for registration of design/Application under reciprocal arrangement.
2	Section 8(1)	Claim to proceed as an applicant or joint applicant.
3	Section 11(2)	Application for Extension of copyright.
4	Section 12(2)	Application for Restoration of lapsed design
5	Section 17(1)	Inspection of registered design

6	Section 18	Request for information when registration number is given.
7	Section 18	Request for information when registration number is not given.
8	Section 19	Petition to cancel registration of design.
9	Section 21	Notice of intended exhibition or publication of unregistered design.
10.	Section 30(3)	Application for registration of a document in the Register Design.
11	Section 30	Application for entry of name of proprietor or part proprietor in the Register
12	Section 30	Application for entry of mortgage or licence in the Register.
13.	Section 30 and rule 37	Application for entry of notification of a document in the Register.
14	Section 29	Request for correction of clerical error.
15	Section 26 and rule 41	Request for certificate.
16	Section 17(2)	Application for certified copy of registered design.
17	Section 31	Application for rectification of Register.
18	rule 15	Application for extension of time for filing priority document.
19	rule 40	Notice of opposition.
20	rules 29 and 40	Notice of intention to attend hearing.
21	Section 43	Power of authority to agents.
22	rule 31	Request to alter name or address or address for service in Register
23	Section 10	Request for entries of two addresses in the Register

THE THIRD SCHEDULE

Classification of Good

(See rule 10)

List of Classes and Subclasses, with Explanatory Notes

CLASS 01

Foodstuffs

Note: (a) Includes foodstuffs for human beings, foodstuffs for animal and dietetic foods.

(b) Not including packages (Cl. 09).

01-01 BAKERS' PRODUCTS, BISCUITS, PASTRY, MACARONI AND OTHER CEREAL PRODUCTS. CHOCOLATES, CONFECTIONERY, ICES

01-02 FRUIT AND VEGETABLES

01-03 CHEESES, BUTTER AND BUTTER SUBSTITUTES, OTHER DAIRY PRODUCE

01-04 BUTCHER'S MEAT (INCLUDING PORK PRODUCTS), FISH

01-05 [vacant]

01-06 ANIMAL FOODSTUFFS

01-99 MISCELLANEOUS

CLASS 02

Articles of clothing and haberdashery

Note: Not including articles of clothing for dolls (Cl. 21-01), special equipment for protection against fire hazards, for accident prevention and for rescue (Cl. 29), and animal clothing (Cl. 30-01).

02-01 UNDERGARMENTS, LINGERIE, CORSETS, BRASSIERES, NIGHTWEAR

Note: (a) Including orthopedic corsets and body linen.

(b) Not including household linen (Cl. 06-13).

02-02 GARMENTS

Note: (a) Includes all sorts of garments, including furs, bathing costumes, sports clothing and orthopedic garments, subject to the exceptions indicated under (b).

(b) Not including undergarments (Cl. 02-01), or garments to be placed in Classes 02-03; 02-04; 02-05 or 02-06.

02-03 HEADWEAR

Note: Includes all kinds of headwear for men, women and children.

02-04 FOOTWEAR, SOCKS AND STOCKINGS

Note: Including special boots for sports such as football, skiing and ice hockey, orthopedic footwear and socks, as well as tights, gaiters and other legwear.

02-05 NECKTIES, SCARVES, NECKERCHIEFS AND HANDKERCHIEFS

Note: Includes all “flat” clothing accessories.

02-06 GLOVES

Note: Includes surgical gloves and rubber or plastic protective gloves for household use or for various occupations or sports.

02-07 HABERDASHERY AND CLOTHING ACCESSORIES

Note: (a) Including buttons, clasps for garments, for headwear and for footwear, laces, pins, hand sewing, knitting and embroidery equipment and clothing accessories such as bells, suspenders, braces.

(b) Not including yarns or other threads (Cl. 05-01), decorative trimmings (Cl. 05-04), sewing, knitting and embroidery machines (Cl. 15-06) or sewing kits (containers) (Cl. 03-01).

02-99 MISCELLANEOUS

CLASS 03

Travel goods, cases, parasols and personal belongings, not elsewhere specified

03-01 TRUNKS, SUITCASES, BRIEFCASES, HANDBAGS, KEYHOLDERS, CASES SPECIALLY DESIGNED FOR THEIR CONTENTS, WALLETS AND SIMILAR ARTICLES

Note: Not including articles for the transport of goods (Cl. 09) or cigar cases and cigarette cases (Cl. 27-06).

03-02 [vacant]

03-03 UMBRELLAS, PARASOLS, SUNSHADES AND WALKING STICKS

03-04 FANS

03-99 MISCELLANEOUS

CLASS 04

Brushware

04-01 BRUSHES AND BROOMS FOR CLEANING

Note: Not including clothes brushes (Cl. 04-02).

04-02 TOILET BRUSHES, CLOTHES BRUSHES AND SHOE BRUSHES

Note: “Toilet brushes” means brushes for corporal use; for example, for the hair, nails or teeth.

04-03 BRUSHES FOR MACHINES

Note: “Brushes for machines” means brushes incorporated in machines or in special vehicles.

04-04 PAINTBRUSHES, BRUSHES FOR USE IN COOKING

04-99 MISCELLANEOUS

CLASS 05

Textile piecegoods, artificial and natural sheet material

Note: (a) Includes all textile or similar articles, sold by the yard and not made up.
(b) Not including ready-made articles (Cl. 02 or 06).

05-01 SPUN ARTICLES

Note: (a) Including yarn and thread.

(b) Not including, for instance, rope wire, string, twine (Cl. 09-06).

05-02 LACE

05-03 EMBROIDERY

05-04 RIBBONS, BRAIDS AND OTHER DECORATIVE TRIMMINGS

05-05 TEXTILE FABRICS

Note: (a) Including textile fabrics, woven, knitted or otherwise manufactured, tarpaulins, felt and loden.

05-06 ARTIFICIAL OR NATURAL SHEET MATERIAL

Note: (a) Includes sheets whose only characteristic features are their surface ornamentation or their texture; in particular, covering sheets such as wallpaper, linoleum, self-adhesive plastic sheets, wrapping sheets and rolls of paper, subject to the exceptions indicated under (b).

(b) Not including writing paper, even in rolls (Cl. 19-01), or sheets used as building components such as wall panels and wainscoting (Cl. 25-01).

05-99 MISCELLANEOUS

CLASS 06

Furnishing

Note: (a) Composite furniture articles embodying components includes in several subclasses are classified in Class 06-05.
(b) Sets of furniture, as far as they can be looked upon as one design, are classified in Class 06-05.
(c) Not including textile piecegoods (Cl. 05)

06-01 BEDS AND SEATS

Note: Including mattress supports and vehicle seats.

06-02 [vacant]

06-03 TABLES AND SIMILAR FURNITURE

06-04 STORAGE FURNITURE

Note: Including cupboards, furniture with drawers or compartments, and shelves.

06-05 COMPOSITE FURNITURE

06-06 OTHER FURNITURE AND FURNITURE PARTS

06-07 MIRRORS AND FRAMES

Note: Not including mirrors included in other classes (see Alphabetical List).

06-08 CLOTHES HANGERS

N.B.: The French text contains a note which does not concern the English text.

06-09 MATTRESSES AND CUSHIONS

06-10 CURTAINS AND INDOOR BLINDS

06-11 CARPETS, MATS AND RUGS

06-12 TAPESTRIES

06-13 BLANKETS AND OTHER COVERING MATERIALS, HOUSEHOLD LINEN AND NAPERY

Note: Including furniture covers, bedspreads and table covers.

06-99 MISCELLANEOUS

CLASS 07

Household good, not elsewhere specified

Note: (a) Including household appliances and utensils operated by hand, even if motor driven.

(b) Not including machines and appliances for preparing food and drink (Cl. 31).

07-01 CHINA, GLASSWARE, DISHES AND OTHER ARTICLES OF A SIMILAR NATURE

Note: (a) Includes dishes and crockery in all materials; in particular, paper and cardboard dishes.

(b) Not including cooking utensils and containers, such as glass and earthenware pots (Cl. 07-02), or flower vases, flower pots and china glassware of a purely ornamental nature (Cl. 11-02).

07-02 COOKING APPLIANCES, UTENSILS AND CONTAINERS

07-03 TABLE KNIVES, FORKS AND SPOONS

07-04 APPLIANCES AND UTENSILS, HAND-MANIPULATED, FOR PREPARING FOOD OR DRINK

Note: Not including appliances and utensils classified in Class 07-02 and in Class 31.

07-05 FLATIRONS AND WASHING, CLEANING AND DRYING EQUIPMENT

Note: Not including electric household appliances for washing, cleaning or drying (Cl. 15-05).

07-06 OTHER TABLE UTENSILS

07-07 OTHER HOUSEHOLD RECEPTACLES

07-08 FIREPLACE IMPLEMENTS

07-99 MISCELLANEOUS

CLASS 08

Tools and hardware

Note: (a) Includes hand-operated tools, even if mechanical power takes the place of muscular force, or example, electric saws and drills.
(b) Not including machines or machine tools (Cl. 15 or 31).

08-01 TOOLS AND IMPLEMENTS FOR DRILLING, MILLING OR DIGGING

08-02 HAMMERS AND OTHER SIMILAR TOOLS AND IMPLEMENTS

08-03 CUTTING TOOLS AND IMPLEMENTS

Note: (a) Including tools and instruments for sawing.
(b) Not including table knives (Cl. 07-03), cutting tools and implements for kitchen use (Cl. 31), or knives used in surgery (Cl. 24-02).

08-04 SCREWDRIVERS AND OTHER SIMILAR TOOLS AND IMPLEMENTS

08-05 OTHER TOOLS AND IMPLEMENTS

Note: Includes tools which are not classified, or not to be placed, in other subclasses or classes.

08-06 HANDLES, KNOBS AND HINGES

08-07 LOCKING FOR CLOSING DEVICES

08-08 FASTENING, SUPPORTING OR MOUNTING DEVICES NOT INCLUDED IN OTHER CLASSES

Note: (a) Including nails, screws, nuts and bolts.
(b) Not including fastening devices for clothing (Cl. 02-07), for adornment (Cl. 11-01), or for office use (Cl. 19-02).

08-09 METAL FITTINGS AND MOUNTINGS FOR DOORS, WINDOWS AND FURNITURE, AND SIMILAR ARTICLES

08-10 BICYCLE RACKS

08-99 MISCELLANEOUS

Note: Including non-electric cables, regardless of the material of which they are made.

CLASS 09

Packages and containers for the transport or handling of goods

09-01 BOTTLES, FLASKS, POTS, CARBOYS, DEMIJOHNS, AND CONTAINERS WITH DYNAMIC DISPENSING MEANS

Note: (a) “Pots” means those serving as containers.
(b) Not including pots regarded as crockery (Cl. 07-01), or flower pots (Cl. 11-02).

09-02 STORAGE CANS, DRUMS AND CASKS

09-03 BOXES, CASES, CONTAINERS, (PRESERVE) TINS OR CANS

Note: Including freight containers.

09-04 HAMPERS, CRATS AND BASKETS

09-05 BAGS, SACHETS, TUBES AND CAPSULES

Note: (a) Including plastic bags or sachets, with or without handle or means of closing.
(b) “Capsules” means those used for packaging.

09-06 ROPES AND HOOPING MATERIALS

09-07 CLOSING MEANS AND ATTACHMENTS

Note: (a) Includes only closing means for packages.
(b) “Attachments” means, for example, dispensing and dosing devices incorporated in containers and detachable atomizers.

09-08 PALLETS AND PLATFORMS FOR FORKLIFTS

09-09 REFUSE AND TRASH CONTAINERS AND STANDS THEREFOR

09-99 MISCELLANEOUS

CLASS 10

Clocks and watches and other measuring instruments, checking and signalling instruments

Note: Including electrically-driven instruments.

10-01 CLOCK AND ALARM CLOCKS

10-02 WATCHES AND WRIST WATCHES

10-03 OTHER TIME-MEASURING INSTRUMENTS

Note: Including time-measuring apparatus such as parking meters, timers for kitchen use and similar instruments.

10-04 OTHER MEASURING INSTRUMENTS, APPARATUS AND DEVICES

Note: (a) Including instruments, apparatus and devices for measuring temperature, pressure, weight, length, volume and electricity.

(b) Not including exposure meters (Cl. 16-05).

10-05 INSTRUMENTS, APPARATUS AND DEVICES FOR CHECKING, SECURITY OR TESTING

Note: Including fire and burglar alarms, and detectors of various types.

10-06 SIGNALLING APPARATUS AND DEVICES

Note: Not including lighting or signalling devices for vehicles (Cl. 26-06).

10-07 CASINGS DIALS, HANDS AND ALL OTHER PARTS AND ACCESSORIES OF INSTRUMENTS FOR MEASURING, CHECKING AND SIGNALLING

Note: “Casings” means watch and clock casings and all casings being integral parts of instruments of which they protect the mechanism, with the exception of cases specify designed for their contents (Cl. 03-01) or for packaging (Cl. 09-03).

10-99 MESCELLANEOUS

CLASS 11

Articles of adornment

11-01 JEWELLERY

Note: (a) Including fancy and imitation jewellery.

(b) Not including watches (Cl. 10-02).

11-02 TRINKETS, TABLE, MANTEL AND WALL ORNAMENTS, FLOWER VASES AND POTS

Note: Including sculptures, mobiles and statues.

11-03 MEDALS AND BADGES

11-04 ARTIFICIAL FLOWERS, FRUIT AND PLANTS

11-05 FLAGS, FESTIVE DECORATIONS

Note: (a) Including garlands, streamers and Christmas tree decorations.

(b) Not including candles (Cl. 26-04).

11-99 MISCELLANEOUS

CLASS 12

Means of transport or hoisting

Note: (a) Includes all vehicles, land, sea, air, space and others.

(b) Including parts, components and accessories which exist only in connection with a and vehicle cannot be placed in another class; these parts, components and accessories of vehicles are to be placed in the subclass of the vehicle in question, or in Class 12-16 if they are common to several vehicles included in different subclasses.

(c) Not including, in principle, parts, components and accessories of vehicles which can be placed another class; these parts, components and accessories are to be placed in the same class as articles of the same type, in other words, having the same function. Thus, carpets or mats for automobiles are to be placed with carpets (Cl. 06-11); electric motors for vehicles are to be placed in Class 13-01, and non-electric motors for vehicles in Class 15-01 (the same applies to the components of such motors); automobile headlamps are to be placed with lighting apparatus (Cl. 26-06).

(d) Not including scale models of vehicles (Cl. 21-01).

12-01 VEHICLES DRAWN BY ANIMALS

12-02 HANDCARTS, WHEELBARROWS

12-03 LOCOMOTIVES AND ROLLING STOCK FOR RAILWAYS AND OTHER RAIL VEHICLES

12-04 TELPHER CARRIERS, CHAIR LIFTS AND SKILIFTS

12-05 ELEVATORS AND HOISTS FOR LOADING OR CONVEYING

Note: Including passenger lifts, goods lifts, cranes, forklift trucks and conveyor belts.

12-06 SHIPS AND BOATS

12-07 AIRCRAFTS AND SPACE VEHICLES

12-08 MOTOR CARS, BUSES AND LORRIES

Note: Including ambulances and refrigerator vans (road).

12-09 TRACTORS

12-10 ROAD VEHICLE TRAILERS

Note: Including caravans.

12-11 CYCLES AND MOTORCYCLES

12-12 PERAMBULATORS, INVALID CHAIRS, STRETCHERS

Note: (a) :Perambulators" means hand carriage for infants.

(b) Not including toy perambulators (Cl. 21-01).

12-13 SPECIAL-PURPOSE VEHICLES

Note: (a) Includes only vehicles not specially intended for transport, such as street - cleaning vehicles, watering lorries, fire engines, snow ploughs and breakdown lorries.

(b) Not including mixed-purpose agricultural machines (Cl. 15-03), or self-propelled machines for use in construction and civil engineering (Cl. 15-04).

12-14 OTHER VEHICLES

Note: Including sleighs and air-cushion vehicles.

12-15 TYRES AND ANTI-SKID CHAINS FOR VEHICLES

12-16 PARTS, EQUIPMENT AND ACCESSORIES FOR VEHICLES, NOT INCLUDED IN OTHER CLASSES OR SUBCLASSES

12-99 MISCELLANEOUS

CLASS 13

Equipment for production, distribution or transformation of electricity

Note : (a) Includes only apparatus which produces, distributes or transforms electric current.

(b) Including electric motors, however.

(c) Not Including electrically-driven apparatus, such as electric watches (Cl. 10-02), or apparatus for the measurement of electric current (Cl. 10-04).

13-01 GENERATORS AND MOTORS

Note: including electric motors for vehicles.

13-02 POWER TRANSFORMETERS, RECTIFIERS, BATTERIES AND ACCUMULATORS

13-03 EQIUPMENT FOR DISTRIBUTION OR CONTROL OF ELECTRIC POWER

Note: Including conductors, switches and switchboards.

13-99 MISCELLANEOUS

CLASS 14

Recording, communication or information retrieval equipment

14-01 EQUIPMENT FOR THE RECORDING OR REPRODUCING OR REPRODUCTION OF SOUNDS OR PICTUREA

Note: Not including photographic or cinematographic apparatus (Cl. 16).

14-02 DATA PROCESSING EQUIPMENT AS WELL AS PERIPHERAL APPARATUS AND DEVICES

14-03 COMMUNICATIONS EQUIPMENT, WIRELESS REMOTE CONTROLS AND RADIIO AMPLIFIERS

Note: Including telegraphic, telephone and television apparatus, as well as wireless apparatus and teleprinters.

14-99 MISCELLANEOUS

CLASS 15

Machines, not elsewhere specified

15-01 ENGINES

Note: (a) Including non-electric engines for vehicles.

(b) Not including electric motors (Cl. 13).

15-02 PUMPS AND COMPRESSORS

Note: Not including hand or foot pumps (Cl. 08-05), or or fire extinguishing pumps. (Cl. 29-01).

15-03 AGRICULTURAL MACHINERY

Note: (a) Including ploughs and combined machinery, i.e. , both machines and vehicles, for examples, reaping and binding machines.

(b) Not including hand tools (Cl. 08).

15-04 CONSTRUCTION MACHINERY

Note: (a) Including machines used in civil engineering and self propelled machines such as excavators, concrete mixer and dredgers.

(b) Not including hoists and cranes (Cl. 12-05).

15-05 WASHING CLEANING AND DRYING MACHINES.

Note: Including:

(a) appliances and machines for treating lines and clothes, such as ironing machines and wringers.

(b) dishwashing machines and industrial drying equipment.

15-06 TEXTILE, SEWING, KNITTING AND EMBROIDERING MACHINES INCLUDING THEIR INTEGRAL PARTS

15-07 REFRIGERATION MACHINERY AND APPARATUS

Note: (a) Including household refrigeration apparatus.

(c) Not including refrigerator wagons (rail) (Cl. 12-03) or refrigerator vans (road) (Cl. 12-08).

15-08 [vacant]

15-09 MACHINE TOOLS, ABRADING AND FOUNDING MACHINERY

Note: Not including earth working machinery and material separators (Cl. 15-99).

15-99 MISCELLANEOUS

CLASS 16

Photographic, cinematographic and optical apparatus

Note: Not including lamps for photography or filming (Cl. 26-05).

16-01 PHOTOGRAPHIC CAMERAS AND FILM CAMERAS

16-02 PROJECTORS AND VIEWERS

16-03 PHOTOCOOPYING APPARATUS AND ENLARGERS

Note: Including microfilming equipment and apparatus for viewing microfilms, as well as office machines known as "photocopying" apparatus which use other than photographic processes (in particular, thermal or magnetic processes).

16-04 DEVELOPING APPARATUS AND EQUIPMENT

16-05 ACCESSORIES

Note: Including filters for photographic cameras, exposure meters, tripods and photographic flashlight apparatus.

16-06 OPTICAL ARTICLES

Note: (a) Including spectacles and microscopes.

(b) Not including measuring instruments embodying optical devices (Cl. 10-04).

16-99 MISCELLANEOUS

CLASS 17

Musical instruments

Note: Not including cases for musical instruments (Cl. 03-01), or equipment for the recording or reproduction of sounds (Cl. 14-01).

17-01 KEYBOARD INSTRUMENTS

Note: Including electronic and other organs, accordions, and mechanical and other pianos.

17-02 WIND INSTRUMENTS

Note: Not including organs, harmoniums and accordions, and mechanical and other pianos.

17-03 STRINGED INSTRUMENTS

17-04 PERCUSSION INSTRUMENTS

17-05 MECHANICAL INSTRUMENTS

Note: (a) Including music boxes.

(b) Not including mechanical keyboard instruments (Cl. 17-01).

17-99 MISCELLANEOUS

CLASS 18

Printing and office machinery

18-01 TYPEWRITERS AND CALCULATING MACHINES

Note: Not including computers and other apparatus to be placed in Class 14-02

18-02 PRINTING MACHINES

Note: (a) Including typesetting machines, stereotype machines and apparatus, typographic machines and other reproducing machines such as duplicators and offset equipment, as well as addressing machines, franking and cancelling machines.

(b) Not including photocopying machinery (Cl. 16-03).

18-03 TYPE AND TYPE FACES

18-04 BOOKBINDING MACHINES, PRINTERS' STAPLING MACHINES, GUILLOTINES AND TRIMMERS (FOR BOOKBINDING)

Note: Including machines and similar devices for cutting paper, analogous to guillotines and trimmers.

18-99 MISCELLANEOUS

CLASS 19

Stationery and office equipment, artists' and teaching materials

19-01 WRITING PAPER, CARDS FOR CORRESPONDENCE AND ANNOUNCEMENTS

Note: Includes all paper, in the widest sense of the term, which is used for writing, drawing, painting or printing, such as tracing paper, carbon paper, newsprint, envelopes, greetings cards and illustrated postcards, even if they embody a sound recording.

19-02 OFFICE EQUIPMENT

Note: (a) Including equipment used at cash desks, such as change sorters.

(b) Some office equipment is to be placed in other subclasses or classes; for example, office furniture in Class 06, office machines and equipment in Class 14-02; 16-03; 18-01; 18-02 or 18-04, and writing materials in Class 19-01 or 19-06 (see alphabetical List).

19-03 CALENDERS

Note: Not including diaries (Cl. 19-04).

19-04 BOOKS AND OTHER OBJECTS OF SIMILAR OUTWARD APPEARANCE

Note: Including covers of books, binding, albums, diaries and similar objects.

19-05 [vacant]

19-06 MATERIALS AND INSTRUMENTS FOR WRITING BY HAND, FOR DRAWING, FOR PAINTING, FOR SCULPTURE, FOR ENGRAVING AND FOR OTHER ARTISTIC TECHNIQUES

Note: Not including paintbrushes (Cl. 04-04), drawing tables and attached equipment (Cl. 06-03), or writing papaer (Cl. 19-01).

19-07 TEACHING MATERIALS

Note: (a) Including maps of all kinds, globes and planetariums.
(b) Not including audio-visual teaching aids (Cl. 14-01).

19-08 OTHER PRINTED MATTER

Note: Including printed advertising materials.

19-99 MISCELLANEOUS

CLASS 20

Sales and advertising equipment, signs

20-01 AUTOMATIC VENDING MACHINE

20-02 DISPLAY AND SALES EQUIPMENT

Note: Not including articles of furniture (Cl. 06).

20-03 SIGNS, SIGNBOARDS AND ADVERTISING DEVICES

Note: (a) Including luminous advertising devices and mobile advertising devices.
(b) Not includingn pacjages (Cl. 09), or signalling devices (Cl. 10-06).

20-99 MISCELLANEOUS

CLASS 21

Games, toys, tents and sports goods

21-01 GAMES AND TOYS

Note: (a) Including scale models.
(b) Not including toys for animals (Cl. 30-99).

21-02 GYMNASTIC AND SPORTS APPARATUS AND EQUIPMENT

Note: (a) Includes, as sports equipment: apparatus and equipment necessary for the various sports which have no other specific purpose, such as footballs, skis and tennis rackets, to the exclusion of all other objects which may also be used in practing a given sport.

(b) Including subject to the reservation mentioned under (a), training equipment and apparatus and equipment necessary for outdoor games.

(c) Not including sports clothing (Cl. 02), toboggans or sleighs (Cl. 12-14).

21-03 OTHER AMUSEMENT AND ENTERTAINMENT ARTICLES

Note : (a) Including fairground roundabouts and automatic machines for games of chance.

(b) Not including games and toys (Cl. 21-01), or other articles to be placed in Class 21-01 or 21- 02.

21-04 TENTS AND ACCESSORIES THEREOF

Note: (a) Including poles, pegs and other similar articles.

(c) Not including other camping articles to be placed in other classes according to their nature, such as chairs (Cl. 06-01), tables (Cl. 06-03), plates (Cl. 07-01), and caravans (Cl. 12-10).

21-99 MISCELLANEOUS

CLASS 22

Arms, pyrotechnic articles, articles for hunting, fishing and pest killing

22-01 PROJECTILE WEAPONS

22-02 OTHER WEAPONS

22-03 AMMUNITION, ROCKETS AND PYROTECHING ARTICLES

22-04 TARGETS AND ACCESSORIES

Note: Including the special device for actuating mobile targets.

22-05 HUNTING AND FISHING EQUIPMENT
Note: Not including articles of clothing (Cl. 02), or weapons (Cl. 22-01 or 22-02).

22-06 TRAPS, ARTICLES FOR PEST KILLING

22-99 MISCELLANEOUS

CLASS 23

Fluid distribution equipment, sanitary, heating, ventilation and air-conditioning equipment, solid fuel

23-01 FLUID DISTRIBUTION EQUIPMENT
Note: Including pipes and pipe fittings.

23-02 SANITARY APPLIANCES
Note: (a) Including baths, showers, washbasins, saunas, waterclosets, sanitary units and sanitary accessories not included in other classes.
(b) Not including pipes or pipe fittings (Cl. 23-01).

23-03 HEATING EQUPMENT
23-04 VENTILATION AND AIR-CONDITIONING EQUIPMENT

23-05 SOLID FUEL

23-99 MISCELLANEOUS

CLASS 24

Medical and laboratory equipment

Note: The term "medical equipment" covers also surgical, dental and veterinary equipment.

24-01 APPARTUS EQUIPMENT FOR DOCTORS, HOSPITALS AND LABORATORIES

24-02 MEDICAL INSTRUMENTS, INSTRUMENTS AND TOOLS FOR LABORATORY USE

Note: Includes only hand-operated instruments.

24-03 PROSTHETIC ARTICLES

24-04 MATERIALS FOR DRESSING WOUNDS, NURSING AND MEDICAL CARE

24-99 MISCELLANEOUS

CLASS 25

Building units and construction elements

25-01 BUILDING MATERIALS

Note: Including bricks, beams, pre-shaped strips, tiles, slates and panels.

25-02 PREFABRICATED OR PRE-ASSEMBLED BUILDING PARTS

Note: (a) Including windows, doors, outdoors shutters, partition walls and gratings.
(b) Not including staircases (Cl. 25-04).

25-03 HOUSES, GARAGES AND OTHER BUILDINGS

25-04 STEPS, LADDERS AND SCAFFOLDS

25-99 MISCELLANEOUS

CLASS 26

Lighting apparatus

26-01 CANDLESTICKS AND CANDELABRA
26-02 TORCHES AND HAND LAMPS AND LANTERNS

26-03 PUBLIC LIGHTING FIXTURES
Note: Including outside lamps, stage lighting and searchlight projectors.

26-04 LUMINOUS SOURCES, ELECTRICAL OR NOT
Note: Including bulbs for electric lamps, luminous plaques and tubes, and candles.

26-05 LAMPS, STANDARD LAMPS, CHANDELIERS, WALL AND CEILING FIXTURES, LAMPSHADES, REFLECTORS, PHOTOGRAPHIC AND CINEMATOGRAPHIC PROJECTOR LAMPS
26-06 LUMINOUS DEVICES FOR VEHICLES
26-99 MISCELLANEOUS

CLASS 27

Tobacco and smokers' supplies

27-01 TOBACCO, CIGARS AND CIGARETTES

27-02 PIPES, CIGAR AND CIGARETTE HOLDERS

27-03 ASHTRAYS

27-04 MATCHES

27-05 LIGHTERS

27-06 CIGAR CASES, CIGARETTE CASES, TOBACCO JARS AND POUCHES

Note: Not including packages (Cl. 09).

27-99 MISCELLANEOUS

CLASS 28

Pharmaceutical and cosmetic products, toiler articles and apparatus

28-01 PHARMACEUTICAL PRODUCTS

Note: (a) Including for animals.
(b) Not including materials for dressing wounds and nursing (Cl. 24-04).
(c) Including chemicals in cachet, capsule, lozenge, pill and tablet forms.

28-02 COSMETIC PRODUCTS

Note: Including for animals.

28-03 TOILET ARTICLES AND BEAUTY PARLOR EQUIPMENT

Note (a) Including razors, apparants and appliances for hair removing or hair dressing.
(b) Not including toilet and make-up brushes (Cl. 04-02), or articles and equipment for animals (Cl. 30-99)

28-04 WIGS, FALSE HAIRPIECES

28-99 MISCELLANEOUS

CLASS 29

Devices and equipment against fire hazards, for accident prevention and for rescue

29-01 DEVICES AND EQUIPMENT AGAINST FIRE HAZARDS

Note : (a) Including fire extinguishers.
(b) Not including fire engines (vehicles) (Cl. 12-13), free-hoses and nozzles for fire-hoses (Cl. 23-01).

29-02 DEVICES AND EQUIPMENT AGAINST FOR ACCIDENT PREVENTION AND FOR RESCUE, NOT ELSEWHERE SPECIFIED

Note: (a) Including devices and equipment for animals.

(b) Not including helmets (Cl. 02-03) and garments for protection against accidents (Cl. 02-02; 02-04 or 02-06).

29-99 MISCELLANEOUS

CLASS 30

Articles for the care and handling of animals

Note: Not including animal foodstuffs (Cl. 01), or pharmaceutical and cosmetic products for animals (Cl. 28-01 or 28-02).

30-01 ANIMAL CLOTHING

30-02 PENS, CAGES, KENNELS AND SIMILAR SHELTERS

Note: Not including buildings (Cl. 25)

30-03 FEEDERS AND WATERERS

30-04 SADDLERY

Note: Including collars for animals.

30-05 WHIPS AND PRODS

30-06 BEDS AND NESTS

30-07 PERCHES AND OTHER CAGE ATTACHMENTS

30-08 MARKERS, MARLS AND SHACKLES

30-09 HITCHING POSTS

30-99 MISCELLANEOUS

CLASS 31

Machines and appliances for preparing food or drink, not elsewhere specified

Note: Not including hand-manipulated utensil, instruments and appliances for serving or preparing food or drink (Cl. 07).

31-00 MACHINES AND APPLIANCES FOR PREPARING FOOD OR DRINK, NOT ELSEWHERE SPECIFIED

CLASS 99

Miscellaneous

Note: Includes all products not included in the preceding classes.

99-00 MISCELLANEOUS

THE FOURTH SCHEDULE
(see rule 43)

Scale of costs allowable in proceedings before the Controller

Entry No.	Matter in respect of which cost is to be awarded.	Amount
1.	For Notice of Opposition under rule 40	Rs. 100.00
2.	For petition for cancellation of the registration of for design under section 19.	Rs.1000.00
3.	For notice of information to attend Hearing.	Rs. 200.00

4.	Stamps for Power of Attorney, where a professional has been appointed.	The amount actually paid.
5.	Stamps fee in respect of relevant Affidavit.	actually paid
6.	For Statement under rules 29(1) and 40(2).	Rs. 200.00
7.	For Counter Statement under rules29(3) and 40(4)	Rs. 200.00
8.	For each Affidavit, if relevant.	Rs. 100.00
9.	For each Citation, if relevant.	Rs. 100.00
10.	For each unnecessary or irrelevant Affidavit or Citation.	Rs. 100.00
11.	For every day or part of a day of Hearing before the Controller.	Rs. 500.00

रजिस्ट्री सं० डी०एल०-33004 / 2000 REGISTERED NO. DL-33004/2000

भारत का राजपत्र
The Gazette of India

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 4th September, 2000/*Bhadra* 13, 1922 *(Saka)*

The following Act of Parliament received the assent of the President on the 4th September, 2000, and is hereby published for general information:—

THE SEMICONDUCTOR INTEGRATED CIRCUITS LAYOUT-DESIGN ACT, 2000

No. 37 OF 2000

[*4th September,* 2000]

An Act to provide for the protection of semiconductor integrated circuits layout-designs and for matters connected therewith or incidental thereto.

WHEREAS the Final Act embodying the results of the Uruguay Round of Multilateral Trade Negotiations done at Marrakesh on the 15th day of April, 1994 provides for establishment of the World Trade Organisation;

AND WHEREAS the Agreement on Trade Related Aspects of Intellectual Property Rights is part of the said Final Act;

AND WHEREAS the Government of India, having ratified the said Final Act, should, *inter alia,* make provisions for giving effect to section 6 in Part II of the Agreement on Trade Related Aspects of Intellectual Property Rights relating to Layout-Design (Topographies) of Integrated Circuits:

BE it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title, extent and commencement.

1. *(1)* This Act may be called the Semiconductor Integrated Circuits Layout-Design Act, 2000.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act, and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Definitions.

2. In this Act, unles the context otherwise requires,—

(a) ''Appellate Board'' means the Appellate Board established under section 32;

(b) ''assignment'' means an assignment in writing by act of the parties concerned;

(c) ''Bench'' means a Bench of the Appellate Board;

(d) ''Chairperson'' means the Chairperson of the Appellate Board;

(e) ''commercial exploitation'', in relation to Semiconductor Integrated Circuits Layout-Design, means to sell, lease, offer or exhibit for sale or otherwise distribute such semiconductor integrated circuit for any commercial purpose;

(f) ''convention country'' means a country notified as such under section 93;

(g) ''Judicial Member'' means a Member of the Appellate Board appointed as such under this Act, and includes the Chairperson or such Vice-Chairperson who possesses any of the qualifications specified in sub-section *(3)* of section 34;

(h) ''layout-design'' means a layout of transistors and other circuitry elements and includes lead wires connecting such elements and expressed in any manner in a semiconductor integrated circuit;

(i) ''Member'' means a Judicial Member or a Technical Member of the Appellate Board and includes the Chairperson and the Vice-Chairperson;

(j) ''notify" means to notify in the Semiconductor Integrated Circuit Journal published by the Registrar;

(k) ''prescribed'' means prescribed by rules made under this Act;

(l) ''register'' means the Register of Layout-Designs referred to in section 6;

(m) ''registered'' (with its grammatical variations) means registered under this Act;

(n) ''registered layout-design" means a layout-design which is actually on the register;

(o) ''registered proprietor'', in relation to a layout-design, means the person for the time being entered in the register as proprietor of the layout-design;

(p) ''registered user'' means a person who is for the time being registered as such under section 25;

(q) ''Registrar'' means the Registrar of Semiconductor Integrated Circuits Layout-Design referred to in section 3;

(r) ''semiconductor integrated circuit'' means a product having transistors and other circuitry elements which are inseparably formed on a semiconductor material or an insulating material or inside the semiconductor material and designed to perform an electronic circuitry function;

(s) "Technical Member" means a Member of the Appellate Board who is not a Judicial Member and includes the Chairperson or such Vice-Chairperson who possesses any of the qualifications specified in sub-section *(4)* of section 34;

(t) "transmission" means transmission by operation of law, devolution on the personal representation of a deceased person or any other mode of transfer not being assignment;

(u) "Vice-Chairperson" means the Vice-Chairperson of the Appellate Board;

(v) any reference to the Semiconductor Integrated Circuits Layout-Design Registry shall be construed as including a reference to any office of the Semiconductor Integrated Circuits Layout-Design Registry.

CHAPTER II

THE REGISTER AND CONDITIONS OF REGISTRATION

Registrar of Semiconductor Integrated Circuits Layout-Design.

3. *(1)* The Central Government may, by notification in the Official Gazette, appoint a person to be known as the Registrar of Semiconductor Integrated Circuits Layout-Design for the purposes of this Act.

(2) The Central Government may appoint such other officers with such designation as it thinks fit for the purpose of discharging, under the superintendence and direction of the Registrar, such functions of the Registrar under this Act as he may from time to time authorise them to discharge.

Power of Registrar to transfer pending matters.

4. Without prejudice to the generality of the provisions of sub-section *(2)* of section 3, the Registrar may, by order in writing and for reasons to be recorded therein, withdraw any matter pending before an officer appointed under the said sub-section *(2)* and deal with such matter himself either *de novo* or from the stage it was so withdrawn or transferred the same to another officer so appointed who may subject to the special direction in the order of transfer deal with the matter either *de novo* or from the stage it was so transferred.

Registry.

5. *(1)* For the purposes of this Act, there shall be established a Registry which shall be known as the Semiconductor Integrated Circuits Layout-Design Registry.

(2) The head office of the Semiconductor Integrated Circuits Layout-Design Registry shall be at such place as the Central Government may specify and for the purposes of facilitating the registration of layout-designs, there may be established, at such places as the Central Government may think fit, branch offices of the Semiconductor Integrated Circuits Layout-Design Registry.

(3) The Central Government may, by notification in the Official Gazette, define the territorial limits within which an office of the Semiconductor Integrated Circuits Layout-Design Registry may exercise its functions.

(4) There shall be seal of the Semiconductor Integrated Circuits Layout-Design Registry.

Register of Layout-Designs.

6. *(1)* For the purposes of this Act, a record called the Register of Layout-Designs shall be kept at the head office of the Semiconductor Integrated Circuits Layout-Design Registry wherein shall be entered all registered layout-designs with the names, addresses and descriptions of the proprietor and such other matters related to the registered layout-designs as may be prescribed.

(2) Subject to the superintendence and direction of the Central Government, the register shall be kept under the control and management of the Registrar.

(3) There shall be kept at each Branch office of the Semiconductor Integrated Circuits Layout-Design Registry a copy of the register and other documents as the Central Government may, by notification in the Official Gazette, direct.

Prohibition of registration of certain layout-designs.

7. *(1)* A layout-design—

(a) which is not original; or

(b) which has been commercially exploited anywhere in India or in a convention country; or

(c) which is not inherently distinctive; or

(d) which is not inherently capable of being distinguishable from any other registered layout-design,

shall not be registered as a layout-design:

Provided that a layout-design which has been commercially exploited for not more than two years from the date on which an application for its registration has been filed either in India or in a convention country shall be treated as not having been commercially exploited for the purposes of this sub-section.

(2) A layout-design shall be considered to be original if it is the result of its creator's own intellectual efforts and is not commonly known to the creators of layout-designs and manufacturers of semiconductor integrated circuits at the time of its creation:

Provided that a layout-design consisting of such combination of elements and interconnections that are commonly known among creators of layout-designs and manufacturers of semiconductor integrated circuits shall be considered as original if such combination taken as a whole is the result of its creator's own intellectual efforts.

(3) Where an original layout-design has been created in execution of a commission or a contract of employment, the right of registration to such layout-design under this Act shall belong, in the absence of any contractual provision to the contrary, to the person who commissioned the work or to the employer.

CHAPTER III

PROCEDURE FOR AND DURATION OF REGISTRATION

Application for registration.

8. *(1)* Any person claiming to be the creator of a layout-design, who is desirous of registering it, shall apply in writing to the Registrar in the prescribed manner for the registration of his layout-design.

(2) Every application under sub-section *(1)* shall be filed in the office of the Semiconductor Integrated Circuits Layout-Design Registry within whose territorial limits the principal place of business in India of the applicant or in the case of joint application the principal place of business in India of the applicant whose name is first mentioned in the application, as having a place of business in India, is situate:

Provided that, where the applicant or any of the joint applicant does not carry on business in India, the application shall be filed in the office of the Semiconductor Integrated Circuits Layout-Design Registry within whose territorial limits the place mentioned in the address for service in India as disclosed in the application is situate.

(3) Subject to the provisions of this Act, the Registrar may refuse the application or may accept it absolutely or subject to such amendments or modifications, as he may think fit.

Withdrawal of acceptance.

9. Where after the acceptance of an application for registration of layout-design, but before its registration, the Registrar is satisfied that the layout-design is prohibited of registration under section 7, the Registrar may, after hearing the applicant if he so desires, withdraw the acceptance and proceed as if the application had not been accepted.

Advertisement of application.

10. *(1)* When an application for registration of a layout-design has been accepted, the Registrar shall, within fourteen days after the date of acceptance, cause the application as accepted to be advertised in the prescribed manner.

(2) Where after advertisement of an application—

(a) an error in the application has been corrected; or

(b) the application has been permitted to be amended under section 12,

the Registrar may in his discretion cause the application to be advertised again or, in any case falling under clause *(b)*, may, instead of causing the application to be advertised again, notify in the prescribed manner the correction or amendment made in the application.

Opposition to registration.

11. *(1)* Any person may, within three months from the date of the advertisement or re-advertisement of an application for registration or within such further period, not exceeding one month in the aggregate, as the Registrar, on application made to him in the prescribed manner and on payment of the prescribed fee, allows, give notice in writing in the prescribed manner to the Registrar of opposition to the registration.

(2) The Registrar shall serve a copy of the notice on the applicant for registration and, within two months from the receipt by the applicant of such copy of the notice of opposition, the applicant shall send to the Registrar in the prescribed manner a counter-statement of the grounds on which he relies for his application and if he does not do so, he shall be deemed to have abandoned his application.

(3) If the applicant sends such counter-statement, the Registrar shall serve a copy thereof on the person giving notice of opposition.

(4) Any evidence upon which the opponent and the applicant may rely shall be submitted in the prescribed manner and within the prescribed time to the Registrar, the Registrar shall give an opportunity to them to be heard, if they so desire.

(5) The Registrar shall, after hearing the parties, if so required, and considering the evidence, decide, after taking into account any ground of objection whether relied upon by the opponent or not.

(6) When a person giving notice of opposition or an applicant sending a counter-statement after receipt of a copy of such notice neither resides nor carries on business in India, the Registrar may require him to give security for the costs of proceedings before him and, in default of such security being duly given, may treat the opposition or application, as the case may be, as abandoned.

Correction and amendment.

12. The Registrar may on such terms as he thinks just—

(a) at any time, whether before or after acceptance of an application for registration under section 8, permit the correction of any error in or in connection with the application or permit an amendment of the application; or

(b) permit correction of any error in, or an amendment of, a notice of opposition or a counter-statement under section 11.

Registration.

13. *(1)* Subject to the provisions of section 9, when an application for the registration of the layout-design has been accepted and either—

(a) the application has not been opposed and time for notice of opposition has expired; or

(b) the application has been opposed and the opposition has been decided in favour of the applicant,

the Registrar shall register the said layout-design in the register and the layout-design shall be registered as of the date of the making of the said application and that date shall be deemed to be the date of registration.

(2) On the registration of a layout-design, the Registrar shall issue to the applicant a certificate in the prescribed form of the registration thereof sealed with the seal of the Semiconductor Integrated Circuits Layout-Design Registry.

(3) Where registration of a layout-design is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice to the applicant in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf in the notice.

(4) The Registrar may amend the register or a certificate of registration for the purpose of correcting a clerical error or an obvious mistake.

Jointly owned layout-design.

14. *(1)* Save as provided in sub-section *(2)*, nothing in this Act shall authorise the registration of two or more persons who claim to be the creator of a layout-design.

(2) Where the relation between two or more persons claiming to be the creator of layout-design are such that—

(a) both of them or all of them have put the combined intellectual effort in creating such design; or

(b) in relation to the creation of such layout-design both of them or all of them are connected in such manner that intellectual effort of each of them are not distinguishable in creation of such layout-design,

those persons may be registered as joint proprietor of the layout-design and this Act shall have effect in relation to any right to the use of the layout-design vested in those persons as if in those rights vested in a single person.

Duration of registration.

15. The registration of a layout-design shall be only for a period of ten years counted from the date of filing an application for registration or from the date of first commercial exploitation anywhere in India or in any country whichever is earlier.

CHAPTER IV

EFFECT OF REGISTRATION

No action of infringement of unregistered layout-design.

16. No person shall be entitled to institute any proceeding to prevent, or to recover damages for, the infringement of an unregistered layout-design.

Rights conferred by registration.

17. Subject to the other provisions of this Act, the registration of a layout-design shall, if valid, give to the registered proprietor of layout-design the exclusive right to the use of the layout-design and to obtain relief in respect of infringement in the manner provided by this Act.

Explanation.—For removal of doubts, it is hereby declared that the rights conferred by the registration of a layout-design shall be available to the registered proprietor of that layout-design irrespective of the fact as to whether the layout-design is incorporated in an article or not.

Infringement of layout-design.

18. *(1)* A registered layout-design is infringed by a person who, not being the registered proprietor of the layout-design or a registered user thereof,—

(a) does any act of reproducing, whether by incorporating in a semiconductor integrated circuit or otherwise, a registered layout-design in its entirety or any part thereof, except such act of reproducing any part thereof which is not original within the meaning of sub-section *(2)* of section 7;

(b) subject to the provisions of sub-section *(5)*, does any act of importing or selling or otherwise distributing for commercial purposes a registered layout-design or a semiconductor integrated circuit incorporating such registered layout-design or an article incorporating such a semiconductor integrated circuit containing such registered layout-design for the use of which such person is not entitled under this Act.

(2) Notwithstanding anything contained in section 17, sub-section *(1)* or sub-section

(5), the performance of the act of reproduction referred to in clause *(a)* of sub-section *(1)*, where such act is performed for the limited purposes of scientific evaluation, analysis, research or teaching, shall not constitute act of infringement within the meaning of that clause.

(3) Where a person, on the basis of scientific evaluation or analysis of a registered layout-design, creates another layout-design which is original within the meaning of sub-section *(2)* of section 7, that person shall have the right to incorporate such another layout-design in a semiconductor integrated circuit or to perform any of the acts referred to in sub-section *(1)* or sub-section *(5)* in respect of such another layout-design and such incorporation or performance of any act shall not be regarded as infringement within the meaning of sub-section *(1)*.

(4) Where a layout-design is created by the process of scientific evaluation or analysis of the registered layout-design as referred to in sub-section *(3)*, the use of such layout-design by the proprietor of such registered layout-design shall be regarded as infringement within the meaning of sub-section *(1)* after the date of registration of such layout-design under this Act.

(5) Notwithstanding anything contained in clause *(b)* of sub-section *(1)*, the performance of any of the acts referred to in that clause by a person shall not be regarded as infringement within the meaning of that clause if such act is performed or directed to be performed in respect of a semiconductor integrated circuit incorporating a registered layout-design or any article incorporating such a semiconductor integrated circuit where such person does not possess any knowledge or has no reasonable ground to know while performing or directing to be performed such act in respect of such semiconductor integrated circuit or article that it incorporated a registered layout-design but after the time when such person has received notice of such knowledge, he may continue to perform or directing to be performed such act in respect of the stock on hand or ordered before such time and, then, he shall be liable to pay the proprietor of the registered layout-design a sum by way of royalty to be determined by negotiation between registered proprietor of the registered layout-design and that person or by the Appellate Board having regard to the benefit accrued to such person by performing or directing to be performed such act in respect of such semiconductor integrated circuit or article, as the case may be.

(6) Where any other person purchases a semiconductor integrated circuit incorporating a registered layout-design or any article incorporating such a semiconductor integrated circuit referred to in sub-section *(5)* from a person referred to in that sub-section, then, such other person shall be entitled to the immunity from infringement in respect of that semiconductor integrated circuit or article, as the case may be, to the extent and in the manner as if the word "person" referred in that sub-section includes the word any other person referred in this sub-section.

(7) Nothing contained in clause *(b)* of sub-section *(1)* shall be construed as constituting an act of infringement where any person performs any of the acts specified in that clause with the written consent of the registered proprietor of a registered layout-design or within the control of the person obtaining such consent, or in respect of a registered layout-design or a semiconductor integrated circuit incorporating a registered layout-design or any article incorporating such a semiconductor integrated circuit, that has been put on the market by or with the consent of the registered proprietor of such registered layout-design.

(8) Notwithstanding anything contained in this Act, where any person by application of independent intellect has created a layout-design which is identical to a registered layout-design, then, any act of such person in respect of the layout-design so created shall not be the infringment of the registered layout-design.

Registration to be *prima facie* evidence of validity.

19. *(1)* In all legal proceedings relating to a layout-design registered under this Act (including application under section 30), the original registration of the layout-design and all subsequent assignments and transmissions of layout-design shall be *prima facie* evidence of the validity thereof.

(2) In all legal proceedings as aforesaid, a registered layout-design shall not be held to be invalid on the ground that it was not a registerable layout-design under section 7 except upon evidence of originality and that such evidence was not submitted to the Registrar before registration.

CHAPTER V

ASSIGNMENT AND TRANSMISSION

Power of Registered Proprietor to assign and give receipts.

20. The person for the time being included in the register as proprietor of a layout-design shall, subject to the provisions of this Act and to any right appearing from the register to be vested in any other person, have power to assign the layout-design, and to give effectual receipts for any consideration for such assignment.

Assignability and transmissibility of registered layout-design.

21. Notwithstanding anything in any other law to the contrary, a registered layout-design shall, subject to the provisions of this Chapter, be assignable and transmissible whether with or without the goodwill of the business concerned.

Conditions for assignment otherwise than in connection with the goodwill of a business.

22. Where an assignment of a registered layout-design is made otherwise than in connection with the goodwill of business in which such layout-design has been or is used, the assignment shall not take effect unless the assignee, not later than the expiration of six months from the date on which the assignment is made or within such extended period, if any, not exceeding three months in the aggregate, as the Registrar may allow, apply to the Registrar for directions with respect to the advertisement of the assignment, and advertises it in such form and manner and within such period as the Registrar may direct.

Registration of assignments and transmissions.

23. *(1)* Where a person becomes entitled by assignment or transmission to a registered layout-design, he shall apply in the prescribed manner to the Registrar to register his title, and the Registrar shall, on receipt of the application and on proof of his title to his satisfaction, register him as the proprietor of the layout-design and shall cause particulars of the assignment or transmission to be entered on the register:

Provided that where the validity of an assignment of transmission is in dispute between the parties, the Registrar may refuse to register the assignment or transmission until the rights of the party have been determined by a competent court.

(2) Except for the purpose of an application before the Registrar under sub-section *(1)* or an appeal from an order thereon, or an application under section 30 or an appeal from an order thereon, a document or instrument in respect of which no entry has been made in the register in accordance with sub-section *(1)*, shall not be admitted in evidence by the Registrar or the Appellate Board or any court in proof of title to the layout-design by assignment or transmission unless the Registrar or the Appellate Board or the court, as the case may be, otherwise directs.

CHAPTER VI

USE OF LAYOUT-DESIGN AND REGISTERED USERS

Registered users.

24. Subject to the provisions of section 25, a person other than the registered proprietor of a layout-design may be registered as a registered user thereof.

Registration as registered user.

25. *(1)* Where it is proposed that a person should be registered as a registered user of a layout-design, the registered proprietor and the proposed registered user shall jointly apply in writing to the Registrar in the prescribed manner and every such application shall be accompanied by—

(*a*) the agreement in writing or a duly authenticated copy thereof, entered into between the registered proprietor and the proposed registered user with respect to the permitted use of the layout-design; and

(*b*) an affidavit made by the registered proprietor or by some person authorised to the satisfaction of Registrar to act on his behalf—

(*i*) giving particulars of the relationship, existing or proposed, between the registered proprietor and the proposed registered user, including particulars showing the degree of control by the proprietor over the permitted use which the relationship will confer and whether it is a term of their relationship that the proposed registered user shall be sole registered user or that there shall be any other restriction as to persons for whose registration as registered user application may be made;

(*ii*) stating the conditions or restrictions, if any, proposed with respect to the place of permitted use or any other matter;

(*iii*) stating whether the permitted use to be for a period or without limit of period, and, if for a period, the duration thereof; and

(*c*) such further documents or other evidence as may be required by the Registrar or as may be prescribed.

(2) Where the requirement of sub-section (*1*) have been complied with, the Registrar shall register the proposed registered user.

(3) The Registrar shall issue notice in the prescribed manner of the registration of a person as a registered user to other registered users of the layout-design, if any.

(*4*) The Registrar shall, if so requested by the applicant, take steps of securing that information given for the purposes of an application under this section (other than matters entered in the register) is not disclosed to rivals in trade.

Power of Registrar for cancellation of registration as registered user.

26. (*1*) Without prejudice to the provisions of section 30, the registration of a person as registered user—

(*a*) may be cancelled by the Registrar on application in writing in the prescribed manner of the registered proprietor or of the registered user or of any other registered user of the layout-design;

(*b*) may be cancelled by the Registrar on the application in writing in the prescribed manner of any person on any of the following grounds, namely:—

(*i*) that the registered user has used the layout-design otherwise than in accordance with the agreement under clause (*a*) of sub-section (*1*) of section 25;

(*ii*) that the proprietor or the registered user misrepresented, or failed to disclose, some fact material to the application for registration which if accurately represented or disclosed would not have justified the registration of the registered user;

(*iii*) that the circumstances have changed since the date of registration in such a way that at the date of such application for cancellation they would not have justified registration of the registered user;

(*iv*) that the registration ought not to have been effected having regard to right vested in the applicant by virtue of a contract in the performance of which he is interested.

(*c*) may be cancelled by the Registrar on his own motion or on the application in writing in the prescribed manner by any person on the ground that any stipulation in the agreement between the registered proprietor and the registered user regarding the topographical dimensions of the layout-design is either not being enforced or is not being complied with;

(*d*) may be cancelled by the Registrar if the layout-design is no longer registered.

(*2*) The Registrar shall issue notice in the prescribed manner in respect of every application under this section to the registered proprietor and each registered user (not being the applicant) of the layout-design.

(*3*) The procedure for cancelling a registration shall be such as may be prescribed:

Provided that before cancelling of registration, the registered proprietor shall be given a reasonable opportunity of being heard.

Power of Registrar to call for information relating to agreement in respect of registered users.

27. (*1*) The Registrar may, at any time during the continuance of the registration of the registered user, by notice in writing, require the registered proprietor to confirm to him within one month that the agreement filed under clause (*a*) of sub-section (*1*) of section 25 continues to be in force.

(*2*) If the registered proprietor fails to furnish the confirmation within one month as required under sub-section (*1*), the registered user shall cease to be the registered user on the day immediately after the expiry of said period and the Registrar shall notify the same.

Right of registered user to take proceedings against infringement.

28. Subject to any agreement subsisting between the parties, a registered user may make complaint before the competent criminal court for the infringement in his own name as if he were the registered proprietor.

Registered user not to have right of assignment or transmission.

29. Nothing in this Act shall confer on a registered user of a layout-design any assignable or transmissible right to the use thereof.

Explanation I.—The right of a registered user of a layout-design shall not deem to have been assigned or transmitted within the meaning of this section in the following cases, namely:—

(*a*) where the registered user being an individual enters into a partnership with any other person for carrying on the business concerned; but in any such case the firm may use the layout-design, if otherwise in force, only for so long as the registered user is a member of the firm;

(*b*) where the registered user being a firm subsequently undergoes a change in its constitution; but in any such case the reconstituted firm may use the layout-design, if otherwise in force, only for so long as any partner of the original firm at the time of its registration as registered user, continues to be a partner of the reconstituted firm.

Explanation II.—For the purposes of *Explanation I,* "firm" has the same meaning as in the Indian Partnership Act, 1932.

CHAPTER VII

RECTIFICATION AND CORRECTION OF THE REGISTER

Power to rectify the register.

30. (*1*) Any person aggrieved by the absence or omission from the register of any entry, or by any entry made in the register without sufficient cause, or by any entry wrongly remaining on the register, or by any error or defect in any entry in the register, may apply in the prescribed manner to the Appellate Board or to the Registrar, and the Appellate Board or the Registrar, as the case may be, may make such order for making, expunging or varying the entry as it may think fit.

(*2*) The Appellate Board or the Registrar may in any proceedings under this section decide any question that may be necessary or expedient to decide in connection with the rectification of the register.

(*3*) The Appellate Board or the Registrar, of its own motion, may, after giving notice in the prescribed manner to the parties concerned and after giving them an opportunity of being heard, make any order referred to in sub-section (*1*).

(*4*) Any order of the Appellate Board rectifying the register shall direct that notice of the rectification shall be served upon the Registrar in the prescribed manner who shall upon receipt of such notice, rectify the register accordingly.

Correction of register.

31. (*1*) The Registrar may, on application made in the prescribed manner by the registered proprietor,—

(*a*) correct any error in the name, address or description of the registered proprietor of a layout-design, or any other entry relating to the layout-design;

(*b*) enter any change in the name, address or description of the person who is registered as proprietor of a layout-design;

(*c*) cancel the entry of a layout-design on the register,

and may make any consequential amendment or alteration in the certificate of registration, and for that purpose, may require the certificate of registration to be produced to him.

(2) The Registrar may, on application made in the prescribed manner by a registered user of a layout-design, and after notice to the registered proprietor, correct any error, or enter any change in the name, address or description of the registered user.

CHAPTER VIII

APPELLATE BOARD

Establishment of Layout-Design Appellate Board.

32. The Central Government shall, by notification in the Official Gazette, establish an Appellate Board to be known as the Layout-Design Appellate Board to exercise the jurisdiction, powers and authority conferred on it by or under this Act.

Composition of Appellate Board.

33. (*1*) The Appellate Board shall consist of a Chairperson, Vice-Chairperson, and such other Members as the Central Government may deem fit and, subject to the other provisions of this Act, the jurisdiction, powers and authority of the Appellate Board may be exercised by a Bench thereof.

(*2*) Subject to the other provisions of this Act, a Bench shall consist of one Judicial Member and one Technical Member and shall sit at such place as the Central Government may, by notification in the Official Gazette, specify.

(*3*) Notwithstanding anything contained in sub-section (*2*), the Chairperson—

(*a*) may, in addition to discharging the functions of the Judicial Member or Technical Member of the Bench to which he is appointed, discharge the function of the Judicial Member or, as the case may be, the Technical Member, of any other Bench;

(*b*) may transfer a Member from one Bench to another Bench;

(*c*) may authorise Vice-Chairperson, the Judicial Member or the Technical Member appointed to one Bench to discharge also the functions of the Judicial Member or the Technical Member, as the case may be, of another Bench.

(*4*) Where any Benches are constituted, the Central Government may, from time to time, by notification, make provisions as to the distribution of the business of the Appellate Board amongst the Benches and specify the matters which may be dealt by each Bench.

Explanation.—For the removal of doubts, it is hereby declared that the expression "matter" includes an application or appeal under section 40 or section 42.

(*5*) If the Members of a Bench differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members and such point or points shall be decided according to the

opinion of the majority of the Members who have heard the case including those who first heard it.

Qualifications for appointment as Chairperson, Vice-Chairperson, or other Members.

34. (*1*) A person shall not be qualified for appointment as Chairperson unless he—

(*a*) is, or has been, a Judge of a High Court; or

(*b*) has, for at least two years, held the office of a Vice-Chairperson:

(*2*) A person shall not be qualified for appointment as a Vice-Chairperson, unless he—

(*a*) has, for at least two years, held the office of a Judicial Member or a Technical Member; or

(*b*) has been a member of the Indian Legal Service and has held a post in Grade I of that Service or any higher post for at least five years.

(*3*) A person shall not be qualified for appointment as a Judicial Member unless he—

(*a*) has been a member of the Indian Legal Service and has held the post in Grade I of that Service for at least three years; or

(*b*) has, for at least ten years, held a civil judicial office.

(*4*) A person shall not be qualified for appointment as a Technical Member, unless he possesses a Master's Degree in Physics or Bachelor's Degree in Electronics Engineering or Electrical Engineering or Computer Engineering from an University or Institution established under law for the time being in force and has held a post equivalent to the post of Joint Secretary to the Government of India or any higher post for at least five years and possesses at least five years' experience in the area of semiconductors.

(*5*) Subject to the provisions of sub-section (6), the Chairperson, Vice-Chairperson and every other Member shall be appointed by the President of India.

(*6*) No appointment of a person as the Chairperson shall be made except after consultation with the Chief Justice of India.

Term of office of Chairperson, Vice-Chairperson and Members.

35. The Chairperson, Vice-Chairperson or other Member shall hold office as such for a term of five years from the date on which he enters upon his office or until he attains,—

(*a*) in the case of Chairperson and Vice-Chairperson, the age of sixty-five years; and

(*b*) in the case of Member, the age of sixty-two years,

whichever is earlier.

Vice Chairperson or senior-most Member to act as Chairperson or discharge his function in certain circumstances.

36. (*1*) In the event of occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the Vice-Chairperson and in his absence the senior-most Member shall act as Chairperson until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

(*2*) When the Chairperson is unable to discharge his functions owing to his absence, illness or any other cause, the Vice-Chairperson and in his absence the senior-most Member shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duty.

Salaries, allowances and other terms and conditions of service of Chairperson, Vice-Chairperson and other Members.

37. (*1*) The salaries and allowance payable to, and other terms and conditions of service (including pension, gratuity and other retirement benefits) of, the Chairperson, Vice-Chairperson and other Members shall be such as may be prescribed.

(*2*) Notwithstanding anything contained in sub-section (*1*), a person who, immediately before the date of assuming office as the Chairperson, Vice-Chairperson or other Member, was in service of Government shall be deemed to have retired from service on the date on

which he enters upon as the Chairperson, Vice-Chairperson or other Member, as the case may be.

Resignation and removal.

38. (*1*) The Chairperson, Vice-Chairperson and any other Member may, by notice in writing under his hand addressed to the President of India, resign his office:

Provided that the Chairperson, Vice-Chairperson or any other Member shall, unless he is permitted by the President of India to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is ealier.

(*2*) The Chairperson, Vice-Chairperson or any other Member shall not be removed from his office except by an order by the President of India on the ground of proved misbehaviour or incapacity after an enquiry made by a Judge of the Supreme Court in which the Chairperson, Vice-Chairperson or other Member has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(*3*) The Central Government may, by rules, regulate the procedure for the investigation of misbehaviour or incapacity of the Chairperson, Vice-Chairperson or other Member referred to in sub-section (*2*).

Staff of Appellate Board.

39. (*1*) The Central Government shall determine the nature and categories of the officers and other employees required to assist the Appellate Board in the discharge of its functions and provide the Appellate Board with such officers and other employees as it may think fit.

(*2*) The salaries and other allowances and conditions of service of the officers and other employees of the Appellate Board shall be such as may be prescribed.

(*3*) The officers and other employees of the Appellate Board shall discharge their functions under the general superintedence of the Chairperson in the manner as may be prescribed.

Application to the Appellate Board to determine royalty.

40. (*1*) The registered proprietor of a registered layout-design may make an application to the Appellate Board for determination of royalty under sub-section (*5*) of section 18.

(*2*) Every application under sub-section (*1*) shall be in such form and be accompanied by such affidavits, documents or any other evidence and by such fee in respect of the filing of such application and by such other fees for the service or execution of processes as may be prescribed.

(*3*) On receipt of an application under sub-section (*1*), the Appellate Board shall, after giving notice to the opposite party to file opposition within the prescribed time and manner and after giving opportunity of being heard to the applicant and the opposite party, dispose of the application.

(*4*) An order or decision made by the Appellate Board in disposing of the application under sub-section (*3*) shall be executable by a civil court having local jurisdiction as if it were a decree made by that court.

Power of the Board to cancel registration.

41. (*1*) Any person may make an application, in the prescribed form accompanied by prescribed fee, to the Ap pellete Board for cancellation of the registration of a layout-design registered under this Act or registration of assignment or transmission relating thereto, as the case may be, on the ground that—

(*a*) in the case of the registration of a layout-design, the layout-design is prohibited for being registered under section 7; or

(*b*) in the case of the registration of assignment or transmission relating to a registered layout-design, such assignment or transmission is contrary to any provision of the law for the time being in force.

(*2*) The Appellete Board shall, on receipt of an application under sub-section (*1*), give

notice to the opposite parties in the prescribed manner and after giving them an opportunity of being heard, make such order as it may deem fit regarding cancellation of registration:

Provided that where the ground of cancellation has been established with respect only to a part of a layout-design, the Board shall cancel only such part and the remaining part of the layout-design if capable of performing as a semiconductor integrated circuit shall be retained as registered on the register in the name of the registered proprietor of such layout-design.

(*3*) Any cancellation of the registration of a layout-design either in whole or in part under sub-section (*2*) shall be deemed to be effective on the date from which the period of ten years referred to in section 15 is countable in respect of that layout-design.

(*4*) The Appellete Board shall, without delay after making any order of cancellation under sub-section (*2*), send a copy of such order to the Registrar who shall correct the register to give effect to such order.

Appeal to Appellate Board.

42. (*1*) Any person aggrieved by an order or decision of the Registrar under this Act, or the rules made thereunder may prefer an appeal to the Appellate Board within three months from the date on which the order or decision sought to be appealed against is communicated to such person preferring the appeal.

(*2*) No appeal shall be admitted if it is preferred after the expiry of the period specified under sub-section (*1*):

Provided that an appeal may be admitted after the expiry of the period specified therefor, if the appellant satisfies the Appellate Board that he had sufficient cause for not preferring the appeal within the specified period.

(*3*) An appeal to the Appellate Board shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by a copy of the order or decision appealed against and by such fees as may be prescribed.

Procedure and powers of Appellate Board.

43. *(1)* The Appellate Board shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 but shall be guided by principles of natural justice and, subject to the provisions of this Act and the rules made thereunder, the Appellate Board shall have powers to regulate its own procedure including the fixing of places and times of its hearing. 5 of 1908.

(2) The Appellate Board shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:— 5 of 1908.

(*a*) receiving evidence;

(*b*) issuing commissions for examination of witnesses;

(*c*) requisitioning any public record; and

(*d*) any other matter which may be prescribed.

(3) Any proceeding before the Appellate Board shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code, and the Appellate Board shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973. 45 of 1860. 2 of 1974.

Bar of jurisdiction of courts, etc.

44. No court or other authority shall have or, be entitled to, exercise any jurisdiction, powers or authority in relation to the matters referred to in sub-section *(1)* of section 40 or sub-section *(1)* of section 42.

Bar to appear before Appellate Board.

45. On ceasing to hold office, the Chairperson, Vice-Chairperson or other Members shall not appear before the Appellate Board or the Registrar.

Conditions as to making of interim order.

46. Notwithstanding anything contained in any other provisions of this Act or in any other law for the time being in force, no interim order (whether by way of injunction or stay or any other manner) shall be made on, or in any proceedings relating to, an appeal unless—

(*a*) copies of such appeal and of all documents in support of the plea for such interim order are furnished to the party against whom such appeal is made or proposed to be made; and

(*b*) opportunity is given to such party to be heard in the matter.

Power of Chairperson to transfer cases from one Bench to another.

47. On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairperson may transfer any case pending before one Bench, for disposal, to any other Bench.

Procedure for application for rectification, etc., before Appellate Board.

48. *(1)* An application for rectification of the register made to the Appellate Board under section 30 shall be in such form as may be prescribed.

(2) A certified copy of every order or judgment of the Appellate Board relating to a registered layout-design under this Act shall be communicated to the Registrar by the Board and the Registrar shall give effect to the order of the Board and shall, when so directed, amend the entries in, or rectify, the register in accordance with such order.

Appearance of Registrar in legal proceedings.

49. *(1)* The Registrar shall have the right to appear and be heard—

(*a*) in any legal proceedings before the Appellate Board in which the relief sought includes alteration or rectification of the register or in which any question relating to the practice of the Semiconductor Integrated Circuit Layout-Design Registry is raised;

(*b*) in any appeal to the Board from an order of the Registrar on an application for registration of a layout-design—

(*i*) which is not opposed, and the application is either refused by the Registrar or is accepted by him subject to any amendments or modifications, or

(*ii*) which has been opposed and the Registrar considers that his appearance is necessary in the public interest,

and the Registrar shall appear in any case if so directed by the Board.

(2) Unless the Appellate Board otherwise directs, the Registrar may, in lieu of appearing, submit a statement in writing signed by him, giving such particulars as he thinks proper of the proceedings before him relating to the matter in issue or of the grounds of any decision given by him affecting it, or of the practice of the Semiconductor Integrated Circuits Layout-Design Registry in like cases, or of other matters relevant to the issues and within his knowledge as Registrar, and such statement shall be evidence in the proceeding.

Registrar to refer certain disputes to the Board.

50. If any question arises in any proceedings before Registrar, whether a layout-design has been commercially exploited for more than two years anywhere in a convention country for the purpose of registration of such layout-design under this Act, the Registrar shall refer such question to the Appellate Board, and the decision of the Board thereon shall be final.

Power of the Board to permit certain uses.

51. *(1)* Notwithstanding anything contained in this Act, the Appellate Board may on an application made in the prescribed manner before it on behalf of the Government or by any person authorised by the Government and after giving notice of such application to the registered proprietor of a layout-design and providing the opportunity of being heard to the parties concerned permit the use of such registered layout-design by the Government or by such person so authorised, as the case may be, subject to any or all of the following conditions as the Board deems fit under the circumstances of such use, namely:—

(a) that the use of the layout-design shall be for non-commercial public purposes or for the purposes relating to national emergency or of extreme public urgency;

(b) that the duration of the use of the layout-design shall be limited for a period specified by the Board.

(c) that the use of the layout-design shall be non-assignable and non-transmissible;

(d) that the use of the layout-design shall be to the extent which the Board deems necessary to remedy the anti-competitive practice;

(e) that the use of the layout-design shall be predominantly for the supply of semiconductor integrated circuits or articles incorporating semiconductor integrated circuits in domestic market of India:

Provided that Board shall not permit the use of a registered layout-design, by any such person authorised by the Government, under this sub-section unless the Board is satisfied that such person so authorised has made efforts to enter into agreement with the registered proprietor of such layout-design on reasonable commercial terms and conditions for permitted use of such layout-design and such efforts had not been successful within prescribed period:

Provided further that the first proviso shall not be applicable in a case where the person so authorised produces to the Board a certificate issued by the Government to the effect that such use is required due to national emergency or any other circumstances which the Government considers to be of extreme urgency or of public non-commercial use.

(2) The Appellate Board shall, while granting the permission for the use of a registered layout-design under sub-section *(1)*, determine the amount of royalty to be paid by the Government or the person authorised by the Government, as the case may be, to the registered proprietor of such layout-design for such permitted use.

(3) The Appellate Board may, on the application of the registered proprietor of a layout-design referred to in sub-section *(1)*, may review the permission granted under that sub-section and, after giving notice and opportunity of hearing to the parties concerned in the prescribed manner, cancel or amend such permission if the Board is satisfied that any of the conditions subject to which the permission was granted has not been observed or the circumstances which led to the granting of such permission has ceased to exist or substantially altered.

Costs of Registrar in proceedings before Appellate Board.

52. In all proceedings under this Act before the Appellate Board the costs of the Registrar shall be in the discretion of the Board, but the Registrar shall not be ordered to pay the costs of any of the parties.

Appeal.

53. *(1)* Any person aggrieved by any decision or order of the Appellate Board under this Act may, within the prescribed period appeal to the High Court within whose the jurisdiction of head office or the branch office of the Semiconductor Integrated Circuits Layout-Design Registry against the decision or order of which the appeal arises is situated.

(2) Every such appeal shall be preferred by petition in writing and shall be in such form and shall contain such particulars as may be prescribed.

(3) Subject to the provisions of this Act and the rules made thereunder, the provisions of the Code of Civil Procedure, 1908 shall apply to appeals before a High Court under this Act. 5 of 1908.

Powers of High Courts to make rules.

54. The High Court may make rules consistent with this Act as to the conduct and procedure of all proceeding under this Act before it.

Transitional provisions.

55. Notwithstanding anything contained in this Act, till the establishment of the Appellate Board under section 32, the Intellectual Property Appellate Board establishment under section 83 of the Trade Marks Act, 1999 shall exercise the jurisdiction, powers and authority conferred on the Appellate Board under this Act subject to the modification that in any Bench of such Intellectual Property Appellate Board constituted for the purposes of this section, for the Technical Member referred to in sub-section *(2)* of section 84 of the 47 of 1999.

Trade Marks Act, 1999, the Technical Member shall be appointed under this Act and he shall be deemed to be the Technical Member for constituting the Bench under the said sub-section *(2)* of section 84 for the purposes of this Act.

CHAPTER IX

OFFENCES, PENALTIES AND PROCEDURE

Penalty for infringement of layout-design.

56. Any person who contravenes knowingly and wilfully any of the provisions of section 18 shall be punishable with imprisonment for a term which may extend to three years, or with fine which shall not be less than fifty-thousand rupees but which may extend to ten lakh rupees, or with both.

Penalty for falsely representing a layout-design as registered.

57. *(1)* No person shall make any representation with respect to a layout-design not being a registered layout-design, to the effect that it is a registered layout-design.

(2) If any person contravenes the provisions of sub-section *(1)*, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to fifty thousand rupees, or with both.

(3) For the purposes of this section, the use in India in relation to a layout-design of the word "registered", or of any other expression referring whether expressly or impliedly to registration, shall be deemed to import a reference to registration in the register, except—

(a) where that word or other expression, is used in direct association with other words delineated in characters at least as large as those in which that word or other expression is delineated and indicating that the reference is to registration as a layout-design under the law of a country outside India being a country under the law of which the registration referred to is in fact in force; or

(b) where that other expression is of itself such as to indicate that the reference is to such registration as is mentioned in clause *(a)*; or

(c) where that word is used in relation to a layout-design registered as a layout-design under the law of a country outside India and in relation solely to such layout-design.

Penalty for improperly describing a place of business as connected with the Semiconductor Integrated Circuits Layout-Design Registry.

58. If any person uses on his place of business, or on any document issued by him, or otherwise, words which would reasonably lead to the belief that his place of business is, or is officially connected with, the Semiconductor Integrated Circuits Layout-Design Registry, he shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

Penalty for falsification of entries in the register.

59. If any person makes, or causes to be made, a false entry in the register, or a writing falsely purporting to be a copy of an entry in the register, or produces or tenders, or causes to be produced or tendered, in evidence any such writing, knowing the entry or writing to be false, he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

Forfeiture of goods.

60. *(1)* Where a person is convicted of an offence under section 56, the court convicting him may direct the forfeiture to Government of all goods and things by means of, or in relation to, which the offence has been committed.

(2) When a forfeiture is directed on a conviction and an appeal lies against the conviction, an appeal shall lie against the forfeiture also.

(3) When a forfeiture is directed on a conviction, the court, before whom the person is

convicted, may order any forfeited articles to be destroyed or otherwise disposed of as the court thinks fit.

Exemption of certain persons employed in ordinary course of business.

61. Where a person accused of an offence under section 56 proves—

(a) that in the case which is the subject of the charge he was so employed that it relates to the duty of his employment, and was not interested in the profit accruing from such commission of offence except the duty of his employment; and

(b) that, having taken all reasonable precautions against committing the offence charged, he had, at the time of commission of the alleged offence, no reason to suspect the genuineness of the registered layout-design or a semiconductor integrated circuit in which such layout-design is incorporated; and

(c) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the commission of such offence,

he shall be acquitted.

Procedure where invalidity of registration is pleaded by the accused.

62. *(1)* Where the offence charged under section 56 is in relation to a registered layout-design and the accused pleads that the registration of the layout-design is invalid, the following procedure shall be followed:—

(a) if the court is satisfied that such defence is *prima facie* tenable, it shall not proceed with the charge but shall adjourn the proceeding for three months from the date on which the plea of accused is recorded to enable the accused to file an application before the Appellate Board under this Act, for the rectification of the register on the ground that the registration is invalid;

(b) if the accused proves to the court that he has made such application within the time so limited or within such further time as the time court may for sufficient cause may allow, the further proceedings in the prosecution shall stand stayed till the disposal of such application for rectification;

(c) if within a period of three months or within such extended time as may be allowed by the court the accused fails to apply to the Appellate Board for rectification of the register, the court shall proceed with the case as if the registration were valid.

(2) Where before the institution of a complaint of an offence referred to in sub-section *(1)*, any application for the rectification of the register concerning the layout-design in question on the ground of invalidity of the registration thereof has already been properly made to and is pending before the Appellate Board or the Registrar, the Court shall stay the further proceedings in the prosecution pending the disposal of the application aforesaid and shall determine the charge against the accused in conformity with the result of the application for rectification in so far as the complainant relies upon the registration of his layout-design.

Offences by companies.

63. *(1)* If the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section *(1)*, where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section—

(a) "company" means any body corporate and includes a firm or other association or individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

Cognizance of certain offences.

64. No. court shall take cognizance—

(a) of an offence under section 56 or section 57 except on the complaint in writing made by the registered proprietor or the registered user of a layout-design in respect of which the offence has been committed;

(b) of an offence under section 58 or section 59 except on complaint in writing made by the Registrar or any officer authorised by him in writing.

Costs of defence or prosecution.

65. In any prosecution under this Act, the court may order such costs to be paid by the accused to the complainant, or by the complainant to the accused, as the court deemed reasonable having regard to all the circumstances of the case and the conduct of the parties. Costs so awarded shall be recoverable as if they were a fine.

Information as to commission of offence.

66. An officer of the Government whose duty it is to take part in the enforcement of the provisions of this Chapter, shall not be compelled in any court to say whence he got any information as to the commission of any offence against this Act.

Punishment of abetment in India of acts done out of India.

67. If any person, being within India, abets the commission, without India, of any act which, if committed in India, would, under this Act, be an offence, he may be tried for such abetment in any place in India in which he may be found, and be punished therefor with the punishment to which he would be liable if he had himself committed in that place the act which he abetted.

CHAPTER X

MISCELLANEOUS

Protection of security of India.

68. Notwithstanding anything contained in this Act, the Registrar shall—

(*a*) not disclose any information relating to the registration of a layout-design or any application relating to the registration of a layout-design under this Act which the Central Government considers prejudicial to the interest of the security of India; and

(*b*) take any action, including the cancellation of registration of a layout-design registered under this Act, which the Central Government may, by notification in the Official Gazette, specify in the interest of security of India.

Explanation.—For the purposes of this section, the expression "interest of the security of India" means any action necessary for the security of India which relates to the use of a layout-design or a semiconductor integrated circuit incorporating a layout-design or an article incorporating such semiconductor integrated circuit and which—

(*a*) relates to fissionable materials or the materials from which they are derived; or

(*b*) relates to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment; or

(*c*) is taken in time of war or other emergency in international relations.

Protection of action taken in good faith.

69. No suit or other legal proceedings shall lie against any person in respect of anything which is in good faith done or intended to be done in pursuance of this Act.

Certain persons to be public servants.

70. Every person appointed, under this Act and every Member of the Appellate Board shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code. 45 of 1860.

Implied warranty on sale of layout-design, etc.

71. Where a registered layout-design, or a semiconductor integrated circuit in which a registered layout-design is incorporated, or an article incorporating such a semiconductor integrated circuit is sold or has been contracted for sale, the seller shall be deemed to warrant that the registration, of such layout-design or the layout-design so incorporated is genuine within the meaning of this Act unless the contrary is expressed in writing signed by or on behalf of the seller and delivered at the time of the sale or contract to sell of such layout-design, or semiconductor integrated circuit or article, as the case may be, and accepted by the buyer.

Powers of Registrar.

72. In all proceedings under this Act before the Registrar,—

(*a*) the Registrar shall have all the powers, of a civil court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, compelling the discovery and production of documents and issuing commissions for the examination of witnesses;

(*b*) the Registrar may, subject to any rules in this behalf, made under section 96 make such orders as to costs as he considers reasonable, and any such order shall be executable as decree to a civil court;

(*c*) the Registrar may, on an application made in the prescribed manner, review his own decision.

Exercise of discretionary power by Registrar.

73. Subject to the provisions of section 76, the Registrar shall not exercise any discretionary or other power vested in him by this Act or the rules made thereunder adversely to a person applying for the exercise of the power without (if so required by that person within the prescribed time) giving to the person an opportunity of being heard.

Evidence before Registrar.

74. In any proceeding under this Act before the Registrar, evidence shall be given by affidavit:

Provided that the Registrar may, if he thinks fit, take oral evidence in lieu of, or in addition to, such evidence by affidavit.

Death of party to a proceeding.

75. If a person who is a party to a proceeding under this Act (not being a proceeding before the Appellate Board or a court) dies pending the proceeding, the Registrar may, on request, and on proof to his satisfaction of the transmission of the interest of the deceased person, substitute in the proceeding his successor in interest in his place, or, if the Registrar is of opinion that the interest of the deceased person is sufficiently represented by the surviving parties, permit the proceeding to continue without the substitution of his successor in interest.

Extention of time.

76. (*1*) If the Registrar is satisfied, on application made to him in the prescribed manner and accompanied by the prescribed fee, that there is sufficient cause for extending the time for doing any act (not being a time expressly provided in the Act), whether the time so specified has expired or not, he may, subject to such conditions as he may think fit to impose, extend the time and inform the parties accordingly.

(*2*) Nothing in sub-section (*1*) shall be deemed to require the Registrar to hear the parties, before disposing of an application for extension of time and no appeal shall lie from any order of the Registrar under this section.

Abandonment.

77. Where, in the opinion of the Registrar, an applicant is in default in the prosecution of an application filed under this Act, the Registrar may, by notice require the applicant to remedy the default within a time specified and after giving him, if so desired, an opportunity of being heard, treat the application as abandoned, unless the default is remedied within the time specified in the notice.

Preliminary advice by the Registrar.

78. (*1*) The Registrar may, on application made to him in the prescribed manner by any person who proposes to apply for the registration of a layout-design, give advice as to whether the layout-design appears to him *prima facie* to be original.

(*2*) If, on an application for the registration of a layout-design as to which the Registrar has given advice as aforesaid in the affirmative made within three months after the advice was given, the Registrar, after further investigation or consideration, gives notice, to the applicant of objection on the ground that the layout-design is not original, the applicant shall be entitled, on giving notice of withdrawal of the application within the prescribed period, to have repaid to him any fee paid on the filing of the application.

Registered user to be impleaded in certain proceedings.

79. (*1*) In every proceeding under Chapter VII or under section 42, every registered user of a layout-design, who is not himself an applicant in respect of any proceeding under that Chapter or section shall be made a party to the proceeding.

(*2*) Notwithstanding anything contained in any other law, a registered user so made a party to the proceeding shall not be liable for any costs unless he enters an appearance and takes part in the proceeding.

Evidence of entries in register, etc., and things done by the Registrar.

80. (*1*) A copy of any entry in the register or of any document referred to in sub-section *(1)* of section 87 purporting to be certified by the Registrar and sealed with the seal of the Semiconductor Integrated Circuits Layout-Design Registry shall be admitted in evidence in all courts and in all proceedings without further proof or production of the original.

(*2*) A certificate purporting to be under the hand of the Registrar as to any entry, matter or thing that he is authorised by this Act or the rules to make or do shall be *prima facie* evidence of the entry having been made, and of the contents thereof, or of the matter or things having been done or not done.

Registrar and other officers not compellable to produce register, etc.

81. The Registrar or any other officer of the Semiconductor Integrated Circuits Layout-Design Registry shall not, in any legal proceedings to which he is not a party, be compellable to produce the register or any other document in his custody, the contents of which can be proved by the production of a certified copy issued under this Act or to appear as a witness to prove the matters therein recorded unless by order of the court made for special cause.

Certificate of validity.

82. If in any legal proceeding for rectification of the register before the Appellate Board a decision is on contest given in favour of the registered proprietor of the layout-design on the issue as to the validity of the registration of the layout-design, the Appellate Board may grant a certificate to that effect, and if such a certificate is granted, then, in any subsequent legal proceedings in which the said validity comes into question, the said proprietor on obtaining a final order or judgment in his favour affirming validity of the registration of the layout-design shall, unless the said final order or judgment for sufficient reason directs otherwise, be entitled to his full cost, charges and expenses as between legal practitioner and client.

Address for service.

83. An address for service stated in an application or notice of opposition shall, for the purposes of the application or notice of opposition, be deemed to be the address of the applicant or opponent, as the case may be, and all documents in relation to the application or notice of opposition may be served by leaving them at or sending them by post to the address for service of the applicant or opponent, as the case may be.

Agents.

84. Where, by or under this Act, any act, other then the making of an affidavit, is required to be done before the Registrar by any person, the act may, subject to the rules made in this behalf, be done, instead of by that person himself, by a person duly authorised in the prescribed manner, who is—

(a) a legal practitioner, or

(b) a person registered in the prescribed manner as a layout-design agent, or

(c) a person in the sole and regular employment of the principal.

Layout-design registered by an agent or representative without authority.

85. If an agent or a representative of the proprietor of a registered layout-design, without authority uses or attempts to register or registers the layout-design in his own name, the proprietor shall be entitled to oppose the registration applied for or secure its cancellation or rectification of the register so as to bring him as the registered proprietor of the said layout-design by assignment in his favour:

Provided that such action shall be taken within three years of the registered proprietor of the layout-design becoming aware of the conduct of the agent or representative.

Indexes.

86. There shall be kept under the direction and supervision of the Registrar—

(a) an index of registered layout-designs,

(b) an index of layout-designs in respect of which applications for registration are pending.

(c) an index of the names of the proprietors of registered layout-designs, and

(d) an index of the names of registered users.

Documents open to public inspection.

87. *(1)* Save as otherwise provided in sub-section *(4)* of section 25,—

(a) the register and any document upon which any entry in the register is based;

(b) every notice of opposition to the registration of a layout-design application for rectification before the Registrar, counter-statement thereto, and any affidavit or document filed by the parties in any proceedings before the Registrar; and

(c) the indexes mentioned in section 86 and such other documents as the Central Government may, by notification in the Official Gazette, specify;

shall, subject to such conditions as may be prescribed, be open to public inspection at the Semiconductor Integrated Circuits Layout-Design Registry.

(2) Any person may, on an application to the Registrar and on payment of such fees as may be prescribed, obtain a certified copy of any entry in the register or any document referred to in sub-section *(1)*.

Reports of Registrar to be placed before Parliament.

88. The Central Government shall cause to be placed before both Houses of Parliament once a year a report respecting the execution by or under the Registrar of this Act.

Fees and surcharge.

89. *(1)* There shall be paid in respect of applications and registration and other matters under this Act such fees and surcharge as may be prescribed by the Central Government.

(2) Where a fee is payable in respect of the doing of an act by the Registrar, the Registrar shall not do that act until the fee has been paid.

(3) Where a fee is payable in respect of the filing of a document at the Semiconductor Integrated Circuits Layout-Design Registry, the document shall be deemed not to have been filed at the Registry until the fee has been paid.

Savings in respect of Chapter IX.

90. Nothing in Chapter IX shall be construed so as to render liable to any prosecution or punishment any servant of a master resident in India who in good faith acts in obedience to the instructions of such master, and, on demand made by or on behalf of prosecutor, has given full information as to his master and as to the instructions which he has received from his master.

Declaration as to ownership of layout-design not registerable under the Registration Act, 1908.

91. Notwithstanding anything contained in the Registration Act, 1908, no document declaring or purporting to declare the ownership or title of a person to a layout-design other than a registered layout-design shall be registered under that Act. 16 of 1908.

Government to be bound.

92. The provisions of this Act shall be binding on the Government.

Convention countries.

93. With a view to the fulfilment of a treaty, convention or arrangement with any country outside India which affords to citizens of India similar privileges as granted to its own citizens, the Central Government may, by notification in the Official Gazette, specify such country to be a convention country for providing the citizens of such convention country the similar privileges as granted to the citizens of India under this Act.

Explanation.—For the purposes of this section "country" includes any group of countries or union of countries or inter-governmental organisation and the expression "convention country" shall be construed accordingly.

Provision as to reciprocity.

94. Where any country specified by the Central Government in this behalf by notification in the Official Gazette under section 93 does not accord to citizens of India the same rights in respect of registration and protection of layout-design as it accords to its own nationals, no national of such country shall be entitled, either solely or jointly with any other person,—

(a) to apply for the registration of, or be registered as the proprietor of, a layout-design;

(b) to be registered as the assignee of the proprietor of a registered layout-design; or

(c) to apply for registration or be registered as a registered user of a layout-design under section 25.

Power of Central Government to remove difficulties.

95. *(1)* If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of five years from the commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

Power to make rules.

96. *(1)* The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the other matters relating to the registered layout-designs to be entered in the register under sub-section (*1*) of section 6;

(b) the manner of applying to the Registrar for registration under sub-section (*1*) of section 8;

(c) the manner of advertising the application under sub-section (*1*) of section 10;

(d) the manner of notifying the correction or amendment in application under sub-section (*2*) of section 10;

(e) the manner of making application, the fee to be paid and the manner of giving notice under sub-section *(1)* of section 11;

(f) the manner of sending counter statement under sub-section (*2*) of section 11;

(g) the manner of submitting evidence under sub-section (*4*) of section 11;

(h) the form of issuing certificate under sub-section (*2*) of section 13;

(i) the manner of giving notice under sub-section (*3*) of section 13;

(j) the manner of making applications to register the title under sub-section (*1*) of section 23;

(k) the manner of applying to Registrar under sub-section (*1*) of section 25;

(l) the document to be prescribed under clause (*c*) of sub-section (*1*) of section 25;

(m) the manner of issuing notice under sub-section (*3*) of section 25;

(n) the manner of applications under clause (*a*) of sub-section (*1*) of section 26;

(o) the manner of making applications under clause (*b*) of sub-section (*1*) of section 26;

(p) the manner of making applications under clause (*c*) of sub-section (*1*) of section 26;

(q) the manner of issuing notice under sub-section (*2*) of section 26;

(r) the procedure of cancelling registration under sub-section (*3*) of section 26;

(s) the manner of applying to the Appellate Board under sub-section (*1*) of section 30;

(t) the manner of giving notice under sub-section (*3*) of section 30;

(*u*) the manner of serving notice under sub-section (*4*) of section 30;

(v) the manner of making application under sub-section (*1*) of section 31;

(*w*) the manner of making application under sub-section (*2*) of section 31;

(*x*) the salaries and allowances payable to and other terms and conditions of service of the Chairperson, Vice-Chairperson and other Members under sub-section (*1*) of section 37;

(*y*) the procedure for investigation of misbehaviour or incapacity of the Chairperson, Vice-Chairperson and other Members under sub-section (*3*) of section 38;

(*z*) the salaries and allowances and other conditions of service of the officers and other employees of the Appellate Board under sub-section (*2*) of section 39;

(*za*) the manner of general superintendence by the Chairperson under sub-section (*3*) of section 39;

(*zb*) the form of application, the affidavit, documents and other evidence and fee payable in respect of, filing of such application and other fees for the services or execution of process to be accompanied therewith under sub-section (*2*) of section 40;

(*zc*) the time limit for filing the opposition under sub-section (*3*) of section 40;

(*zd*) the form of making application and the fee to be a accompanied therewith under sub-section (*1*) of section 41;

(*ze*) the manner of giving notice under sub-section (*2*) of section 41;

(*zf*) the form of appeal, the manner of verification of such appeal and the fee to be accompanied therewith under sub-section (*3*) of section 42;

(*zg*) any other matter to be prescribed under clause (*d*) of sub-section (*2*) of section 43;

(*zh*) the form of application under sub-section (*1*) of section 48;

(*zi*) the manner of making application under sub-section (*1*) of section 51;

(*zj*) the period to be prescribed under the first proviso to sub-section (*1*) of section 51;

(*zk*) the manner of giving notice and opportunity of hearing to the parties under sub-section (*3*) of section 51;

(*zl*) the period to be prescribed under sub-section (*1*) of section 53;

(*zm*) the form of petition and particulars to be contained therein under sub-section (*2*) of section 53;

(*zn*) the manner of reviewing decisions by the registrar under clause (*c*) of section 72;

(*zo*) the time to be prescribed under section 73;

(*zp*) the manner of making application and the fee to be accompanied therewith under sub-section (*1*) of section 76;

(*zq*) the manner of making application under sub-section (*1*) of section 78;

(*zr*) the period of giving notice of withdrawal of application under sub-section (*2*) of section 78;

(*zs*) the manner of authorising a person under section 84;

(*zt*) the manner of registering a person as a layout-design agent under clause (*b*) of section 84;

(*zu*) the conditions to be prescribed under sub-section (*1*) of section 87;

(*zv*) the fee payable under sub-section (*2*) of section 87;

(*zw*) the fees and the surcharge to be paid under sub-section (*1*) of section 89;

(*zx*) any other matter which is required to be or may be prescribed.

(*3*) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of any thing previously done under that rule.

SUBHASH C. JAIN,
Secy. to the Govt. of India.

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MINISTRY OF INFORMATION TECHNOLOGY

NOTIFICATION

New Delhi, the 10th December, 2001

G.S.R. 892(E).—In exercise of the powers conferred by Sub-section (1) read with Sub-section (2) of Section 96 of the Semiconductor Integrated Circuits Layout-Design Act, 2000 (37 of 2000), the Central Government hereby makes the following rules, namely:—

CHAPTER I

PRELIMINARY

1. Short Title, extent and commencement.— (1) These rules may be called the Semiconductor Integrated Circuits Layout-Design Rules, 2001.

(2) They extend to the whole of India.

(3) They shall come into force on the date of the commencement of the Act.

2. Definitions.— In these rules unless the context otherwise requires,—

(a) "Act" means the Semiconductor Integrated Circuits Layout-Design Act, 2000 (37 of 2000);

(b) "Form" means a form set out in the Schedule II;

(c) "journal" means the Semiconductor Integrated Circuits Layout-Design Journal published by the Registrar of Semiconductor Integrated Circuits Layout-Designs;

(d) "layout-design no." means the Registration number of the Layout-Design registered under the Act;

(e) "Registry" means the Semiconductor Integrated Circuits Layout-Design Registry;

(f) "Schedule" means a Schedule to these rules;

(g) "Section" means a section of the Act.

3. Principal place of business in India.—"Principal place of business in India" means, —

(i) where a person carries on business of Semiconductor Integrated Circuits or Layout-Design, —

(a) if the business is carried on in India at only one place, that place;

(b) if the business is carried on in India at more places than one, the place mentioned by him as the principal place of business in India;

(ii) where a person is not carrying on a business of Semiconductor Integrated Circuits or Layout-Design, -

(a) if he is carrying on any other business in India at only one place, that place;

(b) if he is carrying on any other business in India at more places than one, the place mentioned by him as the principal place of the business in India; and

(iii) where a person does not carry on any business in India but has a place of residence in India, then, such place of residence in India.

4. Appropriate office of the Semiconductor Integrated Circuits Layout-Design Registry.—The "appropriate office of the Semiconductor Integrated Circuits Layout-Design Registry" for the purpose of making an application for registration of a layout-design shall be the office of the Registry as specified in section 8 and for giving notice of opposition under section 11 or for filing an application for rectification under section 30 or for any other proceedings under the Act and the rules shall be,

(a) in relation to a layout-design on the register, the office of the Registry within whose territorial limits—

(i) the principal place of business in India of the registered proprietor of the layout-design as entered in the register at such date is situate;

(ii) where there is no entry in the register as to the principal place of business in India of the registered proprietor, the place mentioned in the address for service in India as entered in the register at such date is situate;

(iii) in the case of jointly registered proprietors, the principal place of business in India of the proprietor whose name is entered first in the register as having such place of business in India at such date is situate;

(iv) where none of the jointly registered proprietors is shown in the register as having a principal place of business in India, the place mentioned in the address for service in India of the joint proprietors as entered in the register at such date is situate;

(v) if no principal place of business in India of the registered proprietor of the layout-design or in the case of joint registration, of any of the joint proprietors of the layout-design, is entered in the register, and the register does not contain any address for service in India, the place of the office of the Registry where the application for registration of the layout-design was made, is situate; and

(b) in relation to a layout-design for which an application for registration is pending, the office of the Registry within whose territorial limits—

(i) the principal place of business in India of the applicant as disclosed in his application or, in the case of joint applicants, the principal place of business in India of the applicant whose name is first mentioned in the application, as having such place of business is situate;

(ii) where neither the applicant nor any of the joint applicants, as the case may be, has a principal place of business in India, the place mentioned in the address for service in India as specified in the application is situate.

5. **Jurisdiction of appropriate office not altered by change in the principal place of business or address for service.**—No change in the principal place of business in India or in the address for service in India, as the case may be—

(a) of a registered proprietor or of any of the jointly registered proprietors in relation to any layout-design on the register, or

(b) of an applicant for registration or of any of the joint applicants for registration in relation to any layout-design for which an application for registration is pending,

shall effect the jurisdiction of the appropriate office of the Registry.

6. **Entry of the appropriate office in the register.**—In respect of every layout-design on the register, the Registrar shall cause to be entered in the register the appropriate office of the Registry and the Registrar may, at any time, correct any error in the entry so made.

7. **Leaving of documents etc.**— (1) Save as otherwise provided in sub-rule (2), all applications, notices, statements or other documents or any fees authorised or required by the Act or the rules to be made, served, left or sent or paid at or to the Registry in relation to a layout-design on the register for which an application for registration is pending, shall be made, served, left or sent or paid to the appropriate office of the Registry.

(2) Documents or fees authorised or required by the Act or the rules to be sent or paid may be sent or paid at either to the appropriate office or the head office of the Registry in the following matters,—

(a) communication and other documents including affidavits in relation to an application filed for registration of a layout-design;

(b) application or request on forms LD-8, LD-9, LD-10, LD-11, LD-13, LD-14, LD-15, LD-16, LD-17, LD-18, LD-19, LD-20, LD-21, LD-22, LD-25, LD-31.

8. **Documents, etc. filed or left not at the appropriate office.**—Subject to the provisions of rule 7, where any application, notice, statement or other document or any fee authorised or required by the Act or the rules is made, served, left or sent or paid, at or to an office which is not the appropriate office of the Registry, the Registrar shall return such application, notice, statement or document or fee to the person concerned.

9. **Issue of notices, etc.** —Any notice or communication relating to any application, matter or proceeding under the Act or the rules shall ordinarily be issued from the appropriate office of the Registry but may, nevertheless, be issued from any office of the Registry.

10. **Fees.** — (1) The fees to be paid in respect of applications, oppositions, registration and other matters under the Act and the rules shall be those specified in Schedule I, hereinafter referred to as the "prescribed fee".

(2) Where in respect of any matter a fee is required to be paid under the rules, the form or the application or the request or the petition, therefor, shall be accompanied by the prescribed fee.

(3) Fees may be paid in cash or sent by money order addressed to the Registrar or by postal order or by a bank draft issued by, or by a cheque drawn on and guaranteed, by a scheduled bank as defined in the Reserve Bank of India

Act, 1934 (2 of 1934) or at the discretion of the Registrar by a cheque drawn on such bank even though not so guaranteed, and if sent through post shall be deemed to have been paid at the time when the money order or the properly addressed and prepaid letter containing the postal order, or bank draft or cheque would be delivered in the ordinary course of post.

(4) Postal orders shall be crossed and made payable to the Registrar at the appropriate office of the Registry and bank drafts and cheque shall also be similarly crossed and made payable to the Registrar but they shall be drawn on a scheduled bank at the place where the appropriate office of the Registry is situate.

(5) Where a fee is payable in respect of the filing of a document, the date on which the entire fee is paid shall be deemed to be the date of filing of the document.

(6) Where any fee paid by a party is ordered to be returned by the Registrar under any of the provisions of the Act or the rules the amount may be refunded by money order in which event money order commission shall be deductible from such amount.

11. Forms. — (1) The forms set forth in Schedules II and III shall be used in all cases to which they are applicable and may be modified as directed by the Registrar to meet other cases.

(2) Any form, when filed at the Registry, shall be accompanied by prescribed fee.

12. Size, etc. of the documents.— (1) Subject to any other directions that may be given by the Registrar, all applications, notices, statements, or other documents, authorised or required by the Act or the rules to be made, served, left or sent, at or to the Registry or with or to the Registrar or the Appellate Board, shall be written, typewritten or printed in Hindi or in English in large and legible characters with deep permanent ink upon strong paper, and except in the case of affidavits, on one side only, of a size of approximately 33 centimeters by 20 centimeters and shall have on the left hand part thereof a margin of less than 4 centimeters.

(2) Duplicate documents including layout-designs shall be filed at the Registry, if at any time required by the Registrar.

13. Signing of documents.—(1) A document purporting to be signed by a partnership shall be signed by at least one of the partners and the document purporting to be signed by a body corporate shall be signed by a director or by the secretary or other principal officer of the body corporate. The capacity in which an individual signs a document on behalf of a partnership or a body corporate shall be stated below his signature.

(2) Signature to any documents if written in letters other than Roman, or if not eligible shall be accompanied by a transliteration in English and in block capital letters.

14. Service of documents.—(1) All applications, notices, statements, papers having representations affixed thereto, or other documents authorised or required by the Act or the rules to be made, served, left or sent, at or to the Registry or with or to the Registrar or the Appellate Board, or any other person may be sent through the post by a pre-paid letter.

(2) Any application or any document so sent shall be deemed to have been made, served, left or sent at the time when the letter containing the same would be delivered in the ordinary course of post.

(3) In proving such sending it shall be sufficient to prove that the letter was properly addressed and put into the post.

15. Particulars of address, etc. of applicants and other persons.—(1) Names and addresses of the applicants and other persons shall be given in full, together with their nationality, calling, and such other particulars as are necessary for identification.

(2) In the case of a firm the full name and nationality of every partner thereof shall be stated.

(3) In the case of foreign applicants and persons having no principal place of business in India, their addresses in their home country shall be given in addition to their address for service in India.

(4) In the case of a body corporate or firm, the country of incorporation or the nature of registration, if any, as the case may be, shall be given.

16. Statement of principal place of business in India in an application.—(1) Every application for registration of a layout-design shall state the principal place of business in India, if any, of the applicant or in the case of joint applicants, of such of the joint applicants as have a principal place of business in India.

(2) Subject to the provisions of rules 17, 18 and 20 any written communication addressed to an applicant, or in the case of joint applicants to a joint applicant, in connection with the registration of a layout-design, at the address of his principal place of business in India given by him in the application shall be deemed to be properly addressed.

17. Address for service.— (1) An address for service in India shall be given,-

(a) by every applicant for registration of a layout-design who has no principal place of business in India;

(b) in the case of joint applicants for registration of a layout-design if none of them has a principal place of business in India;

(c) by the proprietor of a layout-design who had his principal place of business in India at the date of making the application for registration but has subsequently ceased to have such place; and

(d) by every applicant in any proceeding under the Act or the rules and every person filing a notice of opposition, who does not have a principal place of business in India.

(2) Any written communication addressed to a person as aforesaid at an address for service in India given by him shall be deemed to be properly addressed.

(3) Unless an address for service in India as required in sub-rule (1) is given, the Registrar shall be under no obligation to send any notice that may be required by the Act or the rules and no subsequent order or decision in the proceedings shall be called in question on the ground of any lack or non-service of notice.

18. Address for service in application and opposition proceedings.—An applicant for registration of a layout-design or an opponent filing a notice of opposition may, notwithstanding that he has a principal place of business in India, if he so desires, furnish the Registrar with an address in India to which communications in relation to the application or opposition proceedings only may be sent. Such address of the applicant or the opponent shall be deemed, unless subsequently cancelled, to be the actual address of the applicant or the opponent, as the case may be, and all communications and documents in relation to the application or notice of opposition may be served by leaving them at, or sending them by post to such address of the applicant or the opponent, as the case may be.

19. Non-availability of an address for service.—The Registrar may, at any time when a doubt arises as to the continued availability of an address for service in India entered in the register, request the person for whom it is entered, by letter directed to any other address entered in the register or if no such address is entered in the register to the address at which the Registrar considers that the letter would reach him, to confirm the address for service in India and if within three months of making such a request the Registrar receives no such confirmation, he may strike the entry in the register of the address for service in India and require such person to furnish a fresh address for service in India, or his address at the principal place of business in India, if he has, any, at that time.

20. Agency.—(1) The authorisation of an agent for the purpose of Section 84 shall be executed on Form LD-32 or in such other written form as the Registrar may deem sufficient and proper.

(2) In the case of such authorisation, service upon the agent of any document relating to the proceeding or matter shall be deemed to be service upon the person so authorising him; all communications directed to be made to such person in respect of the proceeding or matter may be addressed to such agent, and all appearances before Registrar relating thereto may be made by or through such agent.

(3) In any particular case the Registrar may require the personal signature or presence of an applicant, opponent, proprietor, registered user or other person.

21. Preliminary advice by Registrar as to originality of the layout-design.—An application for preliminary advice by the Registrar under Sub-section (1) of Section 78 shall be made on Form LD-21 accompanied by prescribed fee.

CHAPTER II

PROCEDURE FOR REGISTRATION OF LAYOUT-DESIGN

Application for Registration of Layout-Design

22. Form and signing of application.— (1) An application to the Registrar for the registration of a layout-design under Sub-section (1) of Section 8 shall be made on Form LD-1 accompanied by prescribed fee and shall be signed by the applicant or his agent.

(2) Three sets of one of the following items, which clearly describe the layout-design, shall be attached. The size of the drawing or the photograph shall not be less than 20 times the size of the semiconductor integrated circuit fabricated using such layout-design, namely:—

(a) three sets of drawings produced with a plotter which describes the layout-design applied for registration; or

(b) three sets of photographs of masks used for the fabrication of the semiconductor integrated circuit by using of the layout-design applied for registration, or drawings which describe the pattern of such masks.

(3) In the case the applicant for registration of layout-design makes a request in writing for maintaining the secrecy of the layout-design, he may attach in place of the drawings or photographs specified in sub-rule (2), the three sets of partially blocked drawings or photographs of such layout-design to the satisfaction of the Registrar. The Registrar may inspect the complete drawing or photographs of such layout-design. The blocking of such drawing or photograph shall be to the satisfaction of the Registrar such that it does not hamper the identification of the applied-for layout-design. The blocked out area of such drawing or photograph shall not be greater than the area of the remaining portion of layout-design.

23. Application under reciprocal arrangements.—Every application claiming priority under section 93 by reason of an application to register the layout-design having been made in a convention country, so declared under this section, which country shall be named, shall state the date of that application and the applicant shall furnish a certificate by the registrar or other registering authority of that country or shall otherwise verify the application made therein to the satisfaction of the Registrar.

Procedure on receipt of application for registration

24. Acknowledgment or receipt of application.—Every application for the registration of a layout-design shall, on receipt, be acknowledged by the Registrar. The acknowledgement shall be by way of return of one copy of the application on Form LD-1 with the official number of the application duly entered thereon.

25. Objections to acceptance and hearing.—(1) If, on consideration of the application of any evidence of use or of originality or of any other matter which the applicant may or may, be required to, furnish, the Registrar has any objection to the acceptance of the application or proposes to accept it subject to such amendments or modifications as he may think right to impose, the Registrar shall communicate such objections or proposal in writing to the applicant.

(2) If within three months from the date of the communication mentioned in sub-rule (1), the applicant does not amend the application according to the proposal aforesaid, or submit his observations to the Registrar or apply for a hearing, the application shall be deemed to have been abandoned.

26. Notice of withdrawal of the application for registration.—A notice of withdrawal of application for registration of a layout-design under sub-section (2) of section 78 for the purpose of obtaining repayment of any fee paid on the filing of the application, shall be given in writing within three months from the date of communication mentioned in sub-rule (1) of rule 25.

27. Decision of the Registrar.—(1) The decision of the Registrar under rule 25 or rule 29 after a hearing, or without a hearing if the applicant has duly communicated his observation in writing and has stated that he does not desire to be heard, shall be communicated to the applicant in writing, and if the applicant intends to appeal from such decision he may within one month from the date of such communication apply on Form LD-5 accompanied by prescribed fee to the Registrar requiring him to state in writing the grounds of, and materials used by him in arriving at, his decision.

(2) In case where the Registrar makes any requirements to which the applicant does not object, the applicant shall comply therewith before the Registrar issues a statement in writing under sub-rule (1).

(3) The date when the statement in writing under sub-rule (1) is received by the applicant shall be deemed to be the date of communication of the Registrar's decision for the purpose of appeal.

28. Correction and amendment of application.—An applicant for registration of a layout-design, may, whether before or after acceptance of his application but before the registration of the layout-design apply on Form LD-6 accompanied by prescribed fee for the correction of any error in or in connection with his application or any amendment of his application.

29. Withdrawal of acceptance by the Registrar.—(1) If, after the acceptance of an application but before the registration of the layout-design, the Registrar has any objection to the acceptance of the application on the ground that it was accepted in error, or that the layout-design ought not to have been accepted in the circumstances of the case, or proposes that the layout-design should be registered only subject to, additional to or different from the amendments or modifications subject to which the application has been accepted, the Registrar shall communicate such objection in writing to the applicant.

(2) Unless within two months from the date of the communication mentioned in sub-rule (1), the applicant amends his application to comply with the requirements of the Registrar or applies for a hearing, the acceptance of the application shall be deemed to be withdrawn by the Registrar, and the application shall proceed as if it has not been accepted.

(3) Where the applicant intimates the Registrar within the period mentioned in sub-rule (2) that he desires to be heard, the Registrar shall give notice to the applicant of a date when he shall hear him. Such appointment shall be for a date at least fifteen days after the date of the notice, unless the applicant consents to a shorter notice. The applicant may state that he does not desire to be heard and submit such submission as he may consider desirable.

(4) The Registrar may, after hearing the applicant, or considering the submissions, if any, of the applicant, pass such orders as he may deem fit.

Advertisement of application

30. Manner of advertisement.—An application for the registration of a layout-design required to be advertised under sub-section (1) of section 10 or to be re-advertised under sub-section (2) of that section shall be advertised in the journal. The following details shall be given in the advertisement, namely:-

(i) application No;

(ii) date of acceptance of application for registration of layout-design;

(iii) name and address of the proprietor as given in the application;

(iv) brief description of the layout-design;

(v) whether the layout-design has been commercially exploited, if so the period of such exploitation;

(vi) the address of the office of the Registry where the application is filed.

31. Notification of correction or amendment of application.—In the case of an application to which clause (b) of sub-section (2) of section 10 applies, the Registrar may, if he so decides, instead of causing the application to be advertised again, insert in the journal a notification setting out the application number, the name and address of the principal place of business in India, if any, of the applicant or address for service in India of the applicant or where the applicant has no principal place of business in India his address for service in India, and the correction or amendment made in the application.

32. Request to Registrar for particulars of advertisement of layout-design.—Any person may request the Registrar on Form LD-31 to be informed of the number, date and page of the journal in which a layout-design specified in the form was advertised and the Registrar shall furnish such particulars to the person making the request.

Opposition to Registration

33. Notice of opposition .—(1) A notice of opposition to the registration of a layout-design under sub-section (1) of section 11 shall be given in triplicate on Form LD-2 accompanied by prescribed fee within three months from the date of advertisement or re-advertisement, as the case may be, of the application for registration in the journal. The notice shall include a statement of the grounds on which the opponent objects to the registration.

(2) An application for an extension of the period within which a notice of opposition to the registration of a layout-design may be given, shall be made on a Form LD-30 accompanied by the prescribed fee. Such period of extension shall not exceed one month in the aggregate.

34. Counter Statement.—The counter statement required by sub-section (2) of section 11 shall be sent in triplicate on Form LD-3 accompanied by the prescribed fee within two months from the receipt by applicant of the copy of the notice of opposition and shall set out what facts, if any, alleged in the notice of opposition, are admitted by the applicant. The Registrar, on the person giving notice of opposition, shall serve a copy of the counter-statement.

35. Evidence in support of opposition.—(1) Within two months from the service on him of a copy of the counter-statement by the Registrar, the opponent shall either leave with the Registrar such evidence by way of affidavit as he may desire to adduce in support of his opposition or shall intimate to the Registrar and to the applicant in writing that he does not desire to adduce evidence in support of his opposition but intends to rely on the facts in the notice of opposition. He shall deliver to the applicant copies of any evidence that he leaves with the Registrar under this sub-rule.

(2) If an opponent takes no action under sub-rule (1) within the time therein prescribed, he shall, unless the Registrar otherwise directs, be deemed to have abandoned his opposition.

36. Evidence in support of application.—Within two months from the receipt by the applicant of the copies of affidavits in support of the opposition or of the intimation that the opponent does not desire to adduce any evidence in support of its

opposition, the applicant shall leave with the Registrar such evidence by way of affidavit as he desires to adduce in support of his application and shall deliver to the opponent copies thereof or shall intimate to the Registrar and the opponent that he does not desire to adduce any evidence but intends to rely on the facts stated in the counter statement and/or on the evidence already left by him in connection with the application in question. In case the applicant relies on any evidence already left by him in connection with the application, he shall deliver to the opponent copies thereof.

37. Evidence in reply by opponent.—Within one month from the receipt by the opponent of the copies of the applicant's affidavits, the opponent may leave with the Registrar evidence by affidavit in reply and shall deliver to the applicant copies thereof. This evidence shall be confined to matters strictly in reply.

38. Further evidence.—No further evidence shall be left on either side; but in any proceedings before the Registrar, he may at any time, if he thinks fit, give leave to either the applicant or the opponent to leave any evidence upon such terms as to costs or otherwise as he may think fit.

39. Exhibits.—Where there are exhibits to affidavits filed in an opposition a copy of each exhibit shall be sent to the other party on his request and at his expenses, or, if such copies cannot conveniently be furnished the originals shall be left with the Registrar in order that they may be open to inspection. The original exhibits shall be produced at the hearing unless the Registrar otherwise directs.

40. Translation of documents.—Where a document in a language other than Hindi or English referred to in the notice of opposition, counter-statement or an affidavit filed in an opposition, an attested translation thereof in Hindi or English shall be furnished in duplicate.

41. Hearing and decision.—(1) Upon completion of the evidence (if any), the Registrar shall give notice to the parties of a date when he shall hear the arguments in the case. Such appointment shall be for a date at least one-month after the date of the notice, unless the parties consent to a shorter notice. Within fourteen days from the receipt of the notice, any party who intends to appear shall so notify the Registrar on Form LD-4 accompanied by the prescribed fee. Any party who does not so notify the Registrar within the time last aforesaid may be treated as not desiring to be heard and the Registrar may act accordingly.

(2) The decision of the Registrar shall be notified to the parties in writing.

42. Security for costs.—The security of costs which the Registrar may require under sub-section (6) of section 11 may be fixed at any amount which he may consider proper; any such amount may be further enhanced by him at any stage in the opposition proceeding.

Notice of non-completing of Registration

43. Procedure for giving notice.—The notice which the Registrar is required by sub-section (3) of section 13 to give to an applicant shall be sent on Form OLD-1 to the applicant at the address of his principal place of business in India or if he has no principal place of business in India at the address for service in India stated in the application but if the applicant has authorised an agent for the purpose of the application, the notice shall be sent to the agent and a duplicate thereof to the applicant. The notice shall specify twenty-one days' time from the date thereof or such further time as the Registrar may allow, for completion of the registration.

Registration

44. Entry in the Register.—(1) As soon as may be after the expiration of three months from the date of the advertisement or re-advertisement, as the case may be, in the journal of any application for the registration of a layout-design, the Registrar shall, subject to the provisions of sub-section (1) of section 13, enter the layout-design in the register.

(2) The entry of layout-design in the register shall specify the date of the registration of such layout-design, and all particulars required by sub-section (1) of section 6 including—

(a) date of acceptance of application for registration of layout-design under sub-section (1) of section 10;

(b) name, address and nationality of the registered proprietor;

(c) in case the layout-design has been commercially exploited before date of registration under section 13, the period of such exploitation and the place of exploitation;

(d) office of the Registry where the request for registration was filed;

(e) the address of the principal place of business in India, if any, of the proprietor of the layout-design or in case of a jointly owned layout-design, of such of the joint proprietors of the layout-design as have a principal place of business in India;

(f) where the proprietor of the layout-design has no place of business in India his address for service in India as entered in the application for registration together with his address in his home country;

(g) in case of a jointly owned layout-design, where none of the joint proprietors has a principal place of business in India, the address for service in India as given in the application together with the address of each of the joint proprietors in his home country;

45. Death of applicant before registration.— In case of death of any applicant for the registration of a layout-design after the date of his application and before the layout-design has been entered in the register, the Registrar may on proof of the applicant's death and on proof of the transmission of the interest of the deceased person, substitute in the application his successor in interest in place of the name of such deceased applicant and the application may proceed thereafter as so amended.

46. Certificate of registration.—(1) The Certificate of registration of a layout-design to be issued by the Registrar under sub-section (2) of 13 shall be on Form OLD-2 with such modifications as the circumstances of any case may require.

(2) The Registrar may issue a duplicate or further copies of the certificate of registration to be copy of entry in register on request by the registered proprietor on Form LD-25 accompanied by prescribed fee.

CHAPTER III

ASSIGNMENT AND TRANSMISSION

47. Application for entry of assignment or transmission.—An application to register the title of a person who becomes entitled, by assignment or transmission, to a registered layout-design shall be made on Form LD-10 or Form LD-11 accompanied by prescribed fee according as it is made by such person alone or conjointly with the registered proprietor.

48. Particulars to be stated in application.—An application under rule 47 shall contain full particulars of the instrument, if any, under which the application or in case of a joint application, the person other than the registered proprietor claims to be entitled to the layout-design; and such instrument or a duly certified copy thereof shall be produced at the Registry for inspection at the time of application. The Registrar may require and retain an attested copy of any instrument produced for inspection in proof of title, but such copy shall not be open to public inspection.

49. Case accompanying application.—Where a person applying under rule 47 for registration of his title, does not establish his claim under any document or instrument which is capable in itself of furnishing proof of his title, he shall, unless the Registrar otherwise directs, either upon or with the application, state a case setting forth the full particulars of the facts upon which his claim to be proprietor of the layout-design is based, and showing that the layout-design has been assigned or transmitted to him. If the Registrar so requires, the case shall be verified by an affidavit on Form LD-7.

50. Proof of title.—The Registrar may call upon any person who applies to be registered as proprietor of a registered layout-design to furnish such proof or additional proof of title as he may require for his satisfaction.

51. Impounding of instruments.—If in the opinion of the Registrar any instrument produced in proof of title of a person is not properly or sufficiently stamped, the Registrar shall impound and deal with it in the manner provided by Chapter IV of the Indian Stamp Act, 1899.

52. Assignments involving transmission of moneys outside India.—If there is in force any law regulating the transmission of moneys outside India, the Registrar shall not register the title of a person who becomes entitled to a layout-design by an assignment which involves such transmission except on production of the permission of the authority specified in such law for such transmission.

53. Application for Registrar's direction as to advertisement of an assignment of a layout-design without goodwill of the business.—(1) An application for directions under section 22 shall be made on Form LD-8 accompanied by prescribed fee and shall state the date on which the assignment was made. The application shall give particulars of the registration of registered layout-design including user of the registered layout-design. The Registrar may call for any evidence or further information and if he is satisfied with regard to the various matters he shall issue directions in writing with respect to the advertisement of the assignment.

(2) A request for an extension of the period within which the application mentioned in sub-rule (1) may be made shall be on Form LD-9 accompanied by prescribed fee.

54. Application for entry of assignment without goodwill.—An application under rule 47 relating to an assignment of a layout-design shall state—

(a) whether the layout-design had been or was used in the business; and

(b) whether the assignment was made otherwise than in connection with the goodwill of that business;

and if both those circumstances subsisted, then, the applicant shall leave at the Registry a copy of the directions to advertise the assignment, obtained upon application under rule 53, and such proof, including copies of advertisement or otherwise, as the Registrar may require, to show that his directions have been fulfilled and if the Registrar is not satisfied that the directions have been fulfilled, he shall not proceed with the application.

CHAPTER IV

REGISTERED USER

55. Application for registration as registered user.—(1) An application to Registrar for the registration under section 25 of a person as a registered user of a registered layout-design shall be made jointly by that person and the registered proprietor of the layout-design on Form LD-13 accompanied by prescribed fee and shall also be accompanied by the following documents—

(a) the agreement in writing or a duly authenticated copy thereof, entered into between the registered proprietor and the proposed registered user with respect to the permitted use of the layout-design;

(b) the documents and correspondence, if any, mentioned in the agreement referred to in clause (a) or duly authenticated copies thereof;

(c) Agreement if any or duly authenticated copies thereof, entered into between the proposed registered user and the registered proprietor as regards the price at which the semiconductor integrated circuit incorporating registered layout-design or an article incorporating such a semiconductor integrated circuit should be sold or the maintenance of particular price for such semiconductor integrated circuits or articles.

(2) There shall also be filed along with the application an affidavit made by the registered proprietor or by some person authorised to the satisfaction of the Registrar to act on his behalf giving—

(a) particulars and statements required by sub-clauses (i) to (iii) of clause (b) of Sub-section (1) of Section 25;

(b) a statement as to whether the layout-design which is the subject of the application has been used by him in the course of trade before the date of the application and if so the amount and duration of such use;

(c) a statement as to whether the registered proprietor has acquired title to the layout-design by way of assignment;

(d) a statement as to whether the registered proprietor had, before the date of the application for registration as registered user, allowed the use of the layout-design by any person and if so by whom;

(e) a statement whether or not the proposed permitted use is intended solely for export from India.

(3) The registered proprietor and the proposed registered user shall also produce and file such other documents and furnish such other evidence and information as may be required in that behalf by the Registrar.

(4) Notwithstanding anything contained in sub-rule (1), where more than one application for registration as registered user is made by the same registered proprietor and the same proposed registered user in respect of layout-design covered by the same agreement, the documents mentioned in sub-rule (1) may be filed with any one of the applications and a cross reference to such documents given in other application or applications.

56. Entry in the Register.—(1) Where the requirements of rule 55 have been complied with, the Registrar shall register the proposed registered user.

(2) The entry of a registered user in the register shall state the date on which the application for registration of registered user was made and the date of registration of the registered user. The entry shall also state, in addition to the particulars and the statements mentioned in clause (b) of Sub-section (1) of Section 25, the name, description and principal place of business in India of the registered user and if he does not carry on business in India his address for service in India.

57. Notice of registration as registered user.—A notice in writing of the registration of the registered user of a layout-design shall be sent by the Registrar to the registered proprietor of the layout-design, to the registered user and to every other registered user whose name is entered in relation to same layout-design on Form OLD-5. This Form shall also be inserted in the journal.

58. Cancellation of the registration of the registered user.—An application for the cancellation of the registration of a registered user under clause (a) or clause (b) or clause (c) of Sub-section (1) of Section 26 shall be made on Form LD-14 or Form LD-15, as the case may be, accompanied by prescribed fee and shall be accompanied by a statement of grounds on which it is made.

59. Registrar to require information for enforcing of topographical dimensions of the layout-design.—(1) The Registrar may at any time or from time to time require the registered proprietor or the registered user of a layout-design to furnish him with such information as he may require for satisfying himself that the stipulations in the agreement between the registered proprietor and the registered user, regarding the topographical dimensions of the layout-design are being enforced or complied with.

(2) Where any such information as is referred to in sub-rule (1) is not furnished within the stipulated time allowed by the Registrar, the Registrar may presume that the stipulation in the agreement regarding the topographical dimensions of the layout-design is not being enforced or is not complied with.

60. Notification for cancellation of Registration.—The notice required for in respect of every application under Sub-section (2) of Section 26 shall be made on Form OLD-6 and shall be sent to the registered proprietor and each registered user (not being the applicant) of the layout-design.

61. Procedure on application to cancel registration.—(1) The Registrar shall notify in writing applications under section 26 to the registered proprietor and each registered user (not being the applicant in either case) of the layout-design.

(2) Any person notified under sub-rule (1) who intends to intervene in the proceedings, shall within one month of the receipt of such notification give notice to the Registrar on Form LD-16 accompanied by prescribed fee to the effect and shall send therewith a statement of the grounds of his intervention. The Registrar shall thereupon serve or cause to be served copies of such notice and statement on the other parties, namely, the applicant, the registered proprietor, the registered user whose registration is the subject-matter of the proceeding in question and any other registered user who intervenes.

(3) The applicant and any person notified under sub-rule (1) may, within such time or times as the Registrar may appoint, leave evidence in support of his case, and the Registrar after giving the parties an opportunity of being heard, may accept or refuse the application.

62. Registered user's application under Sub-section (2) of Section 31.—Application under Sub-section (2) of Section 31 shall be made on Form LD-6 or Form LD-17 or Form LD-18 or Form LD-19 accompanied by prescribed fee as may be appropriate by a registered user of a layout-design and the Registrar may require such evidence by affidavit or otherwise as he may think fit as to the circumstances in which the application is made.

CHAPTER VI

RECTIFICATION AND CORRECTION OF REGISTER

Rectification of Register

63. Application to rectify the register.—An application to the Appellate Board or to the Registrar under section 30 or Sub-section (1) of Section 48 for making, expunging or varying of any entry relating to a layout-design in the register shall be made in duplicate on Form LD-12 accompanied by prescribed fee and shall be accompanied by a statement in duplicate setting out fully the nature of the applicant's interest and the facts upon which he bases his case. Where the application is made by a person who is not the registered proprietor of the layout-design in question, the application and the statement aforesaid shall be left at the Registry in triplicate. In case there are registered user, such application and statements shall be accompanied by as many copies thereof as there are registered users. A copy each of the application and statement shall be transmitted forthwith by the Registrar to the Registered proprietor and to each of the registered user and to any other person who appears from the register to have an interest in the layout-design.

64. Further procedure.—Within two months from the receipt by a registered proprietor of the copy of the application mentioned in rule 63, he shall send to the Registrar on Form LD-3 a counter statement in triplicate of the grounds on which the application is contested and if he does so the Registrar shall serve a copy of the counter-statement on the person making the application. The provisions of the rules 35 to 41 shall thereafter apply *mutatis mutandis* to the further proceedings

on the application. The Appellate Board or the Registrar shall not, however, rectify the register merely because the registered proprietor has not filed a counter-statement. In any case of doubt, any party may apply to the Appellate Board or the Registrar, as the case may be, for the directions.

65. Rectification of the Register by Appellate Board or the Registrar of its own motion.— (1) The notice which the Appellate Board or the Registrar is required to give under sub-section (3) of section 30, shall be sent in writing to the registered proprietor, to each registered user, if any, to any other person who appears from the register to have any interest in the layout-design, and shall state the grounds on which the Appellate Board or the Registrar proposes to rectify the register and shall also specify the time, not being less than one month from the date of such notice, within which an application for a hearing shall be made.

(2) Unless within the time specified in the notice aforesaid, any person so notified sends to the Appellate Board or the Registrar a statement in writing setting out fully the facts upon which he relies to meet the grounds stated in the notice or applies for a hearing, he may be treated as not desiring to take part in the proceedings and the Appellate Board or the Registrar may act accordingly.

(3) If the Appellate Board or the Registrar decides to rectify the register it shall communicate the decision in writing to the registered proprietor and each registered user, if any.

66. Order of the Appellate Board to the Registrar.—Any order of the Appellate Board to the Registrar for rectification of the register shall indicate the details of making, expunging or varying an entry in the register. The Registrar upon receipt of the notice in Form OLD-7 from the Appellate Board shall rectify the register accordingly.

Change of Address

67. Alteration of Address in register.—(1) A registered proprietor or a registered user of a layout-design, the address or whose principal place of business in India or whose address in his home country, as the case may be, is changed so that the entry in the register is rendered incorrect, shall forthwith request the Registrar on Form LD-18 to make the appropriate change of the address in the register, and the Registrar shall alter the register accordingly, if he is satisfied in the matter.

(2) A registered proprietor or a registered user of a layout-design, whose address for service in India entered in the register if changed, whether by discontinuance of the address or otherwise, so that the entry in the register is rendered incorrect, shall forthwith request the Registrar on Form LD-19 to make appropriate alteration of the address in the register, and the Registrar shall alter the register accordingly if he is satisfied in the matter.

(3) A registered proprietor or a registered user of a layout-design the address of whose principal place of business in India or whose address for service in India is altered by a public authority, so that the changed address designates the same premises as entered in the register, may make the aforesaid request to the Registrar on Form LD-18 or Form LD-19, as the case may be, and if he does so he shall leave therewith a certificate of the alteration given by the said authority. If the Registrar is satisfied as to the facts of the case, he shall alter the register accordingly, but shall not require any fees to be paid on the form, notwithstanding the provisions of sub-rule (2) of rule 10 or sub-rule (2) of rule 11.

(4) (i) Where a registered proprietor makes a request under sub-rules (1), (2) or (3), he shall serve a copy of the request on the registered user or users, if any, and inform the Registrar accordingly.

(ii) When the request aforesaid is made by a registered user, he shall serve a copy thereof on the registered proprietor and other registered users, if any, and inform the Registrar that he had done so.

(5) In case of the alteration of the address of a person entered in the register as the address for service in India of more than one registered proprietor or registered user of layout-designs, the Registrar may, on proof that the said address is the address of the applicant and if satisfied that it is just to do so, accept an application from that person on Form LD-19 amended as to suit the case, for appropriate alteration of the entries of his address as the address for service in the several registrations, particulars of which shall be given in such form and may alter entries accordingly

(6) All applications under this rule on Form LD-19 shall be signed by the registered proprietor or the registered user, as the case may be, or by an agent expressly authorised by him for the purpose of such an application unless in exceptional circumstances the Registrar otherwise allows.

Correction of Register

68. Application under sub-section (1) of section 31.—Where an application has been made by the registered proprietor under sub-section (1) of section 31 for the alteration of the register by correction or change of any entry relating to layout-design or cancellation of entry of layout-design in the register, the Registrar may require the applicant to furnish such

evidence by affidavit or otherwise as the Registrar may think fit, as to the circumstances in which the application is made. Such application shall be made on Form LD-6, LD-17, LD-18, LD-19 or LD-20 accompanied by prescribed fee as may be appropriate and a copy thereof shall be served by the applicant on the registered user or users, if any, under the registration of the layout-design in question and to any other person who appears from the register to have an interest in the layout-design.

CHAPTER VII

APPELLATE BOARD

69. Cancellation of registration or of assignment or transmission of layout-design.— (1) Any person may make application under sub-section (1) of section 41 to apply for the cancellation of the registration or of assignment or transmission of the layout-design to the Appellate Board on Form LD-33 accompanied by prescribed fee. The Board shall give notice on Form OLD-8 to the opposite parties.

(2) The Appellate Board shall on receipt of replies, to the opposition to the application referred to in sub-rule (1) within the time specified in the notices or where no such reply is filed after the expiration of the period so specified, after giving opportunity of being heard to the applicant and the opposite parties dispose of the application.

70. Board to permit certain uses of the registered layout-design.—Subject to the provisions of section 51 of the Act, the Appellate Board may permit the Government or the person authorised by the Government to use the registered layout-design. The application for such permission shall be made on the Form LD-34 accompanied by prescribed fee.

71. The time period for efforts under first proviso to the sub-section (1) of section 51.— The person authorised under sub-section (1) of section 51 shall not be permitted under that sub-section the use of a registered layout-design unless the Appellate Board is satisfied that such person has made efforts to enter into agreement with the registered proprietor of such layout-design on reasonable commercial terms and conditions for permitted use of such layout-design and such efforts had not been successful within a period of six months.

72. Review of the decision of the Appellate Board to permit use of Registered Layout-Design.— (1)The registered proprietor of a layout-design may request the Appellate Board to review the permission granted under sub-section (1) of section 51, giving details of the reasons for such a review. The request shall be filed on Form LD-29 accompanied by prescribed fee.

(2) The Appellate Board, on receiving application under sub-rule (1) for review of its decision, shall issue the notice to the person authorised to use the registered layout-design under sub-section (1) of section 51 on Form OLD-9. The date of hearing the arguments of the case shall also be indicated in the notice.

(3) Appointment for hearing of the arguments in the case under sub-rule (2) shall be for a date at least one month after the date of the notice, unless the parties consent for a shorter notice. Within fourteen days from the receipt of the notice, any party who intends to appear shall notify the Appellate Board. Any party who does not so notify the Appellate Board within the time last aforesaid may be treated as not desiring to be heard and Appellate Board may act accordingly.

(4) The decision of the Appellate Board shall be notified to the parties in writing.

73. Application to the Appellate Board for determining of royalty.— (1) The application under sub-section (1) of section 40 for determining royalty shall be made to the Appellate Board on Form LD-27. Such application shall be accompanied by an affidavit supporting the facts and grounds stated in the application and the copy of the document or other evidences in support of the benefit accrued by performing or directing to perform any of the acts referred to in clause (b) of sub-section (1) of section 18 in respect of the semiconductor integrated circuit or article, as the case may be, in respect of which the royalty is claimed and fee in respect of filing and for the service or execution of the processes amounting to two per cent of the royalty claimed.

(2) On receipt of an application under sub-rule (1) the Appellate Board shall give notice to the opposite party on the Form OLD-3. The opposing party may file opposition within thirty days from the date on which such notice is served to him on Form LD-28.

(3) The Appellate Board shall on receipt of opposition under sub-rule (2) or where no such opposition is filed after the expiration of the period of thirty days referred to in sub-rule (2), after giving opportunity of being heard to the applicant and the opposite party, dispose of the application.

74. Appeal to the Appellate Board.—An appeal to the Appellate Board under sub-section (1) of section 42 shall be preferred on Form LD-26 accompanied by prescribed fee and shall be verified by the person preferring the appeal in the manner specified in such form.

A copy of the order on decision against which such appeal is preferred shall be accompanied with such form.

CHAPTER VIII
MISCELLANEOUS

75. Extension of time.—(1) An application for extension of time under section 76 not being a time expressly provided in the Act or a time for extension of which provision is made in these rules shall be made on Form LD-23 accompanied by prescribed fee.

(2) Upon an application made under sub-rule (1) the Registrar, if satisfied that the circumstances are as to justify the extension of the time applied for, may, subject to the provisions of these rules where a maximum time limit is prescribed and subject to such conditions as he may think fit to impose, extend the time and notify the parties accordingly and the extension may be granted though the time for doing the act or taking the proceeding for which it is applied for has already expired or not.

76. Exercise of discretionary power of Registrar.—The time within which a person entitled under section 72 to an opportunity of being heard shall exercise his option of requiring to be heard shall, save as otherwise expressly provided in the Act or these rules, be one month from the date of a notice which the Registrar shall give to such person before determining the matter with reference to which such person is entitled to be heard. If within that month such person is required to be heard, the Registrar shall appoint a date for the hearing and shall give ten days' notice thereof.

77. Notification of decision.—The decision of the Registrar in the exercise of any discretionary power given to him by the Act or these rules shall be notified to the person affected.

78. Amendments and correction of irregularity in procedure.—(1) Any document or drawing or other representation of a layout-design may be amended, and any irregularity in procedure which, in the opinion of the Registrar may be obviated without detriment to the interests of any person, might be corrected, if the Registrar thinks fit on such terms as he may direct.

(2) The Registrar may require the amendment of any application or representation of a layout-design or any other document or the addition of any matter thereto in order to bring it in accordance with the formal requirements of the Act.

79. Directions not otherwise prescribed.—Where in the opinion of the Appellate Board or the Registrar, it is necessary for the proper prosecution or completion of any proceedings under the Act or these rules for a person to perform an act, file a document or produce evidence, which is not provided for by the Act or the rules, the Appellate Board or the Registrar may by notice in writing require the person to perform the act, file the document or produce the evidence, specified in the notice.

Hearings

80. Hearings.—(1) In relation to a layout-design for which an application for registration is made, the application as well as any proceeding under the act and the rules shall, in the event of a hearing becoming necessary, be heard at the office of the Registry at which such application was made under sub-section (2) of section 8 or at such place within the territorial jurisdiction of that office as the Registrar may deem proper.

(2) Where an officer exercising the powers of the Registrar who has heard any matter under the Act or these rules has reserved order thereon, is transferred from one office of the Registry to another office or reverts to another appointment before passing an order or rendering decision thereon, he may, if the Registrar so directs, pass the order or render the decision as if he had continued to be the officer in the office of the Registry where the matter was heard.

Award of costs

81. Costs in uncontested cases.—Where any opposition duly instituted under these rules is not contested by the applicant, the Registrar in deciding whether costs should be awarded to the opponent shall consider whether the proceedings might have been avoided if reasonable notice had been given by the opponent to the applicant before the notice of opposition was filed.

82. Exception to rule 81.—Notwithstanding the provisions of rule 81 costs in respect of fees specified under Forms LD-2, LD-3 and LD-4 and of all stamps used on and affixed to affidavit used in the proceedings shall follow the event.

83. Scale of costs.—Subject to the provisions of rules 81 and 82, in all proceedings before the Registrar, the Registrar may, save as otherwise expressly provided by the Act, award such costs, not exceeding the amount admissible thereof under Schedule I, as he considers reasonable having regard to all the circumstances of the cases.

Review of Decision by Registrar

84. Application for review of Registrar's decision.—An application to the Registrar for the review of his decision under clause (c) of section 72 shall be made on Form LD-24 accompanied by prescribed fee within one month from the date of such decision or within such further period not exceeding one month thereafter as the Registrar may on request allow, and shall be accompanied by the statement setting forth the grounds on which the review is sought. Where the decision in question concern any other person in addition to the applicant, such application and statement shall be left in triplicate and the Registrar shall forthwith transmit a copy each of the application and statement to the other person concerned. The Registrar may, after giving the parties an opportunity of being heard, reject or grant the application, either unconditionally or subject to any conditions or limitations, as he thinks fit.

Affidavits

85. Form, etc. of affidavits.—(1) The affidavits required by the Act and these rules to be filed at the Registry or furnished to the Appellate Board or the Registrar, unless otherwise provided in Schedule II, shall be headed in the matter or matters to which they relate, shall be drawn up in the first person, and shall be divided into paragraphs consecutively numbered; and each paragraph shall, as far as practicable, be confine to one subject. Every affidavit shall state the description and the true place of abode of the person making the same, shall bear the name and address of the person filing it and shall state on whose behalf it is filed.

(2) Where two or more persons join in an affidavit, each of them shall depose separately to such facts which are within his personal knowledge and those facts shall be stated in separate paragraphs.

(3) Affidavits shall be taken -

(a) in India before any court or person having by law authority to receive evidence, or before any officer empowered by such court as aforesaid to administer oaths or to take affidavits;

(b) in any country or place outside India - before a diplomatic or counsellor officer , within the meaning of the Diplomatic and Counsellor Officers (Oath and Fees) Act, 1948, of such country, or place or before the Notary Public, or before a Judge or Magistrate, of the country or place.

(4) The person before whom affidavit is taken shall state the date on which and the place where the same is taken and shall affix his seal, if any, or the seal of the court to which he is attached thereto and sign his name and description at the end thereof.

(5) Any affidavit purporting to have affixed, impressed or subscribed thereto or thereon the seal or signature of any person authorised by sub-rule (3) to take an affidavit, in testimony of the affidavit having been taken before him, may be admitted by the Registrar without proof of the genuineness of the seal or signature, or of the official character of that person.

(6) Alterations and interlineations shall, before an affidavit is sworn or affirmed, be authenticated by the initials of the person before whom the affidavit is taken.

(7) Where the deponent is unacquainted with the language in which the affidavit is written, a certificate by the person taking the affidavit that the affidavit was translated in his presence to the deponent, that the deponent seemed perfectly to understand it and that the deponent made his signature in his presence, shall appear in the jurat.

(8) Every affidavit filed before the Registrar in connection with any of the proceedings under the Act or these rules shall be duly stamped under the law for the time being in force.

Inspection of Documents by the Public

86. Inspection of documents.—The documents mentioned in sub-section (1) of section 87 shall be available for inspection at the head office of the Registry. A copy of the register and such of the other documents mentioned in section 87, and as the Central Government may by notification in the Official Gazette, specify, shall be available for inspection at each branch office of the Registry. The inspection shall be made at such times on all the days on which the offices of the Registry are not closed to the public, as may be fixed by the Registrar.

87. Distribution of copies of journal and other documents.—The Central Government may direct the Registrar to distribute the journal and any other document which it may consider necessary, to such places as may be fixed by the Central Government in consultation with the State Governments and notified by the Central Government from time to time in the Official Gazette.

Certificates

88. Certified copies of documents.—The Registrar may furnish certified copies of any entry in the register or certified copies of any document referred to in sub-section (1) of section 87 or of any decision or order of the Registrar, or give a certificate other than a certificate under sub-section (2) of section 13, as to any entry, matter or thing which he is authorised or required by the Act or these rules to make or do, upon receipt from any person of an application therefor on Form LD-22 accompanied by prescribed fee.

89. Certificate for use in obtaining registration abroad.— Where a certificate relating to the registration of a layout-design is desired for use in obtaining registration in any territory outside India, Registrar may furnish the same. The Registrar may state in the certificate such particulars concerning the registration of the layout-design as may seem fit to him. The purpose for which the certificate is issued shall be stated therein.

90. Destruction of records.—Where an application for the registration of a layout-design has been withdrawn, abandoned or refused or a layout-design has been removed from the register, the Registrar may, at the expiration of five years after the application is withdrawn or is abandoned or is refused or after the layout-design is removed from the register, as the case may be, destroy all or any of the records relating to the application of the layout-design concerned.

Appeals to High Court

91. Time for appeal.—An appeal to a High Court from any decision or order of the Appellate Board under the Act shall be made within three months from the date of such decision or order, as the case may be, or within such further time as the High Court may allow. The appeal shall be made on Form LD-35 accompanied by prescribed fee. The appeal shall contain a copy of the decision or order against which the appeal is preferred and grounds on which the appeal is preferred along with evidences, if any.

Application to High Courts

92. Application made to the High Court to be served on the Appellate Board.— A copy of every appeal to the High Court under the Act shall be served on the Appellate Board.

CHAPTER X

REGISTRATION OF LAYOUT-DESIGNS AGENTS

93. Register of layout-design agents.—The Registrar shall maintain a register of layout-design agents wherein shall be entered the name, address of the place of residence, address of the principal place of business, the nationality, qualifications and date of registration of every registered layout-design agent.

94. Qualifications for registrations.—Subject to the provisions of rule 95, a person shall be qualified to be registered as a layout-design agent if he—

(i) is a citizen of India;

(ii) is not less than 21 years of age;

(iii) has passed the examination prescribed in rule 98;

(iv) is a graduate of any university in India or possesses an equivalent qualification; and

(v) is considered by the Central Government as a fit and proper person to be registered as a layout-designs agent.

95. Persons debarred from registration.—A person shall not be eligible for registration as a layout-design agent if he—

(i) has been adjudged by a competent court to be of unsound mind;

(ii) is an undischarged insolvent;

(iii) being a discharged insolvent has not obtained from the court a certificate to the effect that his insolvency was caused by misfortune without any misconduct on his part;

(iv) has been convicted by a competent court, whether within or without India of an offence punishable with imprisonment, unless the offence of which he has been convicted has been pardoned or unless on an application made by him, the Central Government has, by order in this behalf, removed the disability;

(v) being a legal practitioner has been held guilty of professional misconduct by any High Court in India or by any court beyond the limits of India; or

(vi) being a chartered accountant, has been held guilty of negligence or misconduct by a High Court.

96. Manner of making application.—All applications under the provisions of this Part shall be made in triplicate, shall be sent to or left at that office of the Registry within whose territorial limits the principal place of business of the applicant is situate.

97. Application for registration as a layout-design agent.—(1) Every person desiring to be registered as a layout-design agent shall make an application on Form LDA-1 accompanied by prescribed fee.

(2) The applicant shall furnish such further information bearing on his applications as may be required of him at any time by the Registrar.

98. Procedure on application and qualifying requirements.— (1) On receipt of an application for the registration of a person as a layout-design agent, the Registrar, if satisfied that the applicant fulfils the prescribed qualifications, under the fore-going rules shall appoint a date in due course on which the candidate shall appear before him for a written examination in the Semiconductor Integrated Circuits Layout-Design Law and practice followed by an interview. The candidate shall be expected to possess a detailed knowledge of the provisions of the Act and rules and a knowledge of the elements of the Semiconductor Integrated Circuits Layout-Design Law.

(2) The qualifying marks for the written examination and for interview shall be 40 per cent and 60 per cent respectively and a candidate shall be declared to have passed the examination only if he obtains an aggregate of 50 per cent of the total marks.

99. Certificate of registration.— After a candidate has been interviewed and any further information bearing on his application, which the Registrar may consider necessary has been obtained and if the Registrar considers the applicant eligible and qualified for registration as a layout-design agent, he shall send an intimation to that effect to the applicant and any person so intimated may inform in writing for his registration as a layout-design agent. Upon receipt of the information the Registrar shall cause the applicant's name to be entered in the register of layout-design agents and shall issue to him a certificate on Form OLD-4 of his registration as a layout-design agent on payment of prescribed fee.

100. Continuance of a name in the register of layout-design agents.—The continuance of a person's name in the register of layout-design agents shall be subject to his payment of the fees prescribed in that behalf.

101. Removal of agent's name from the register of layout-design agents.— (1) The Registrar shall remove from the register of layout-designs agents the name of any registered layout-design agent —

(a) from whom a request has been received to that effect; or

(b) from whom the annual fee has not been received on the expiry of three months from the date on which it became due.

(2) The Registrar shall remove from the register of layout-design agents the name of any registered layout-design agent —

(a) who is found to have been subject at the time of his registration or thereafter has become subject, to any of the disabilities stated in clauses (i) to (vi) of rule 95; or

(b) whom the Registrar has declared not be a fit and proper person to remain in the register by reason of any act of negligence, misconduct or dishonesty committed in his professional capacity;

(c) whose name has been entered in the register by an error or on account of misrepresentation or suppression of material fact:

Provided that before making such declaration under clause (b), the Registrar shall call upon the person concerned to show cause why his registration should not be cancelled and shall make such further enquiry, if any, as he may consider necessary.

(3) The Registrar shall remove from the register of layout-design agents, the name of any registered layout-designs agent who is dead.

(4) The removal of the name of any person from the register of layout-design agents shall be notified in the Official Gazette and in the journal and shall, wherever possible be communicated to the person concerned.

102. Power of Registrar to refuse to deal with certain agents.—(1) The Registrar may refuse to recognise—

(a) any individual whose name has been removed from, and not restored to the register of layout-design agents;

(b) any person, not being registered as a layout-design agent, who in the opinion of the Registrar is engaged wholly or mainly in acting as agent in applying for layout-designs in India or elsewhere in the name or for the benefit of the person by whom he is employed;

(c) any company or firm, if any person whom the Registrar could refuse to recognise as layout-design agent in respect of any business under these rules, is acting as a director or manager of the company or is a partner in the firm.

(2) The Registrar shall also refuse to recognise as layout-design agent in respect of any business under this rule any person who neither resides nor has a place of business in India.

103. Restoration of removed names.—(1) The Registrar may on an application made on Form LDA-2 accompanied by prescribed fee within six months from the date of removal of his name from the register of layout-design agents from a person whose name has been removed under clause (b) of sub-rule (1) of rule 101, restore his name to the register of layout-design agents and continue his name therein.

(2) The restoration of a name to the register of layout-designs agents shall be notified in the Official Gazette and in the journal and shall be communicated to the person concerned.

104. Alteration in the register of layout-design agents.— (1) A registered layout-designs agent may apply on Form LDA-3 accompanied by prescribed fee for alteration of his name, address of the place of residence, address of the principal place of business or qualifications entered in the register of layout-design agents. On receipt of such application, the Registrar shall cause the necessary alteration to be made in the register of layout-design agents.

(2) Every alteration made in the register of layout-design agents shall be notified in the Official Gazette and in the journal.

105. Publication of the register of layout-design agents.—The register of layout-design agents shall be published from time to time, as the Registrar may deem fit, the entries being arranged in the alphabetical order of the surnames of the registered layout-designs agents and, copies thereof shall be placed on sale.

[No. 12 (31)/99-IPC (Pt) Vol.-IV]

S. LAKSHMINARAYANAN, Jt. Secy.

SCHEDULE I

(Rule 10)

No. of entry	On what payable	Amount Rs. P.	Corresponding Form Number
1	2	3	4
1.	On application to register a layout-design	5000	LD-1
2.	On a notice of opposition under section 11(1)	500	LD-2
3.	On a counter statement in answer to a notice of opposition under section 11(2) or in answer to an application under section 30	500	LD-3
4.	On notice of intention to attend hearing under sections 11 and 30	500	LD-4
5.	On a request under rule 27(1) to state grounds of decision	500	LD-5
6.	On a request for correction of error or for amendment	300	LD-6
7.	On application under section 22 for directions of the Registrar for advertisement of an assignment of layout-design otherwise than in connection with the goodwill of the business	2000	LD-8
8.	On application for extension of time for applying for directions under section 22 for advertisement of assignment of a layout-design otherwise than in connection with the goodwill of the business	500	LD-9

1	2	3	4
9.	On Application under section 23 to register a subsequent proprietor in case of assignment or transmission of a layout-design	1500	LD-11 or LD-10
10.	On application under section 30 for rectification of register or removal of layout-design form register	2000	LD-12
11.	On application under section 25 to register a registered user of a registered layout-design	3000	LD-13
12.	On application under clause (a) of section 26(a) for cancellation of the entry of a registered user of registered layout-design	1000	LD-14
13.	On application under clause (b) or (c) of section 26(1) to cancel the entry of a registered user of a registered layout-design	1000	LD-15
14.	On notice under rule 61(2) of intention to intervene in one proceeding for cancellation of entries of a registered user of a registered layout-design	1000	LD-16
15.	On application under section 31 to change the name or description of a registered proprietor or a registered user of a layout-design where there has been no change in the proprietorship or in the identity of a registered user	1000	LD-17
16.	On application under section 31(2) to alter an entry of the address of a registered proprietor or a registered user of a layout-design unless exempted from fee under rule 67(3).	1000	LD-18
17.	On application to make an entry of an address for service in India of a registered proprietor or a registered user of a layout-design unless exempted from fee under rule 67(3)	1000	LD-19
18.	On application under clause (c) of section 31(1) for cancelling the entry of a layout-design from the register	1500	LD-20
19.	On request for the Registrar's preliminary advice under section 78 for a layout-design	500	LD-21
20.	On request for certificate of the Registrar under section 80 or 86 [other than a certificate under section 13(2)]	1000	LD-22
21.	On application for extension of time for a month or part thereof under section 76 [not being a time expressly provided in the Act]	1000	LD-23
22.	On application for review of Registrar's decision under section 72(c)	1500	LD-24
23.	On a request for a duplicate or further copy of the certificate of registration	2000	LD-25
24.	On application for appeal under section 42(1)	1500	LD-26
25.	On application to Appellate Board to review its decision granting permission to use layout-design by Government or a person authorised by the Government	2000	LD-29
26.	On application for extension of time for giving notice of opposition	500	LD-30
27.	On application for cancellation of registration of a layout-design or of assignment or transmission relating thereto	2000	LD-33
28.	On application to Appellate Board for permission to use layout-design by the Government or a person authorised by the Government	2000	LD-34
29.	On appeal to High Court	2000	LD-35
30.	On application for registration of a Layout-Design Agent under rule 97	2000	LDA-1
31.	For continuance of the name of a person in the register of Layout-Design Agents under rule 100	1000	
	For every year (excluding the first year) to be paid on the 1st of April, in each year	500	
	For the first year to be paid along with the fee for registration	1500	
	NB : A year for this purpose will commence on the 1st day of April and end on the 31st day of March following.		
32.	On application for restoration of the name of a person to the Register of Layout-Design Agents under rule 103	1000	LDA-2
33.	On application for an alteration of any entry in the Register of Layout-Design Agents under rule 104	500	LDA-3

SCHEDULE II

FORMS

[LIST OF FORMS]

Form No.	Section of the Act	Title
1	2	3
LD-1	8(1)	Application for registration of layout-design
LD-2	11(1)	Notice of Opposition to Application for Registration of Layout-Design
LD-3	11(2)	Form of Counter-Statement
LD-4	11, 30	Notice of intention to attend hearing
LD-5		Request for statement of grounds of decision under rule 27(1)
LD-6	8(3), 12 & 31	Request for clerical error or for amendment
LD-7		Affidavit (only to be furnished when required by registrar in support of a request under Rule 49)
LD-8	22	Application for directions for the advertisement of an assignment of layout-design otherwise than in connection with the goodwill of the business
LD-9	22	Application for extension of time in which to apply for the registrar's direction for the advertisement of an assignment of layout-design otherwise than in connection with the goodwill of the business
LD-10	23	Request to register a subsequent proprietor of a layout-design upon the same devolution of title
LD-11	23	Joint request by registered proprietor and transferee to register the transferee as subsequent proprietor of layout-design upon the same devolution of title
LD-12	30 & 48(1)	Application for the rectification of the register
LD-13	25	Application for registration of registered user
LD-14	26(1)(a)	Application by registered proprietor of a layout-design or by any of the registered user of the layout-design for the cancellation of the registered user thereof
LD-15	26(1)(b) or (c)	Application for cancellation of entry of a registered user of a layout-design
LD-16		Notice of intention to intervene in proceedings for the cancellation of an entry of a registered user of a layout-design [rule 61(2)]
LD-17	31	Request to enter change of name or description of registered proprietor (or registered user) of the layout-design upon the register
LD-18	31	Application under section 31(2) to alter an entry of the address of a registered proprietor or a registered user of a layout-design unless exempted from fee under rule 67(3)
LD-19		Form for request by a registered proprietor or a registered user of a layout-design who has no principal place of business in India, to enter, alter or substitute an address for service in India as part of his registration
LD-20	31(1)(c)	Application by registered proprietor of layout-design for the cancellation of entry thereof in the register
LD-21	78	Request for registrar's preliminary advice as to on the originality or distinctiveness of the layout-design by a person proposing to apply for the registration of layout-design
LD-22	80 and 87	Request for certificate of the registrar

1	2	3
LD-23	76	Application for extension of time [not being a time expressly provided in the Act or a time for the extension of which provision is made in the rule
LD-24	72(c)	Application for review of registrar's decision
LD-25		Request for duplicate or further copy of the certificate of registration [rule 46(3)]
LD-26	42	Appeal to the Appellate Board under sub-section (1) of section 41
LD-27	40	Application to Appellate Board to determine royalty (rule 73)
LD-28	40(3)	Opposition under section 40(3) before the Appellate Board
LD-29	51(2)	Request for review of decision of Appellate Board to permit use of registered layout-design
LD-30	11(1)	Application for extension of time for giving notice of opposition
LD-31		Request to registrar for particulars of advertisement of a layout-design rule 32
LD-32	84	Form of authorisation of agent in a matter or proceeding under the Act
LD-33	41	Notice of cancellation of registration of a layout-design or of assignment or transmission relating thereto
LD-34	51	Request for the permission to use the registered layout-design without authorisation of the proprietor
LDA-1		Application for registration as a layout-designs agent (rule 97)
LDA-2		Application for the restoration of the name of a person to the register of layout-designs agents (rule 103)
LDA-3		Application for an alteration of an entry in the register of trade marks agents (rule 104)

FORM LD-1

APPLICATION FOR REGISTRATION OF LAYOUT-DESIGN

[Section 8(1), Rule 22]

(to be filed in triplicate)

Application is hereby made for the registration of layout-design[1] ————————in the name(s)[2] of ———— — whose address(s)[3] ————————is claim(s) to be the proprietor thereof in respect of the said layout-design.

Endorsed herewith is the duly completed Statement of Particulars relating to the layout-design

The particulars set forth in the enclosed Statement of Particulars are true to the best of my/our knowledge, information and belief.

Dated this ————————day of ———————— 20—.

[4]————————————————————

To

The Registrar Semiconductor Integrated Circuits Layout-Design, Office of the Semiconductor Integrated Circuits Layout-Design Registry at[5]————.

1. Title of the layout-design.
2. Insert legibly the full name, description and nationality of the applicant. In the case of a body corporate or firm the country of incorporation or the names and description of the partners composing the firm and the nature of registration, if any, as the case may be, should be stated. See rule 15.
3. The applicant must state the address of his principal place of business in India, if any. See rules 3 and 16.
4. Signature of the applicant or his agent (legal practitioner or registered layout-design agent or person in the sole and regular employment of the applicants. See section 84).
5. State the name of the place of the appropriate office of the Semiconductor Integrated Circuits Layout-Design Registry. See rule 4.
6. Layout-design drawings should be preferably on a paper of size 33-centimeter by 20-centimeter.

Statement of Particulars

(Refer Form LD-1)

1. Application No. (to be filled in by the Semiconductor Integrated Circuits Layout-Design Registry):
2. Title of the layout-design
3. Classification of the semiconductor integrated circuit which can be manufactured using the layout-design
   (i) Structure[1]
   (ii) Technique[2]
   (iii) Function[3]
4. Brief description of the layout-design
5. Whether the layout-design has been commercially exploited [Yes /No]
   If yes, then in Place / Country ———————— on Dated this ————day of———— Year —
6. Documents enclosed
   (i) Drawings/ photograph (three sets)
   (ii) Semiconductor integrated circuits (4 pieces)
   [Where an Integrated Circuit (IC) has been made using layout-design applied for registration]
   (iii) Details of the fees deposited
   (iv) Others
7. Name and address of the agent
8. Others, if any

Place: [4]————————————

Date:

1. Structure implies giving structure details like Bipolar, MOS, Bi-MOS, Optical IC, Other (specify).
2. Technique implies giving technique details like TTL, DTL, CMOS, NMOS, PMOS, Other (specify).
3. Function implies giving functional details like Logic, Memory, Linear, Microcomputer, Other (specify)
4. Signature of the applicant or his agent (legal practitioner or registered layout-design agent or person in the sole and regular employment of the applicant. See section 84.)

FORM LD-2

NOTICE OF OPPOSITION TO APPLICATION FOR REGISTRATION OF A LAYOUT-DESIGN

[Section 11(1), Rule 33]

(To be filled in triplicate)

In the matter of Application No. ———————— by ———————— I (we)[1] ———— hereby give notice of my (our) intention to oppose the registration of the semiconductor integrated circuit layout-design advertised under the above number in the semiconductor integrated circuits layout-design Journal dated the ———— day of ———— 20— , No. ——— page ———.

The grounds of opposition are as follows[2], [3]:

————————————————————————————————————

All communication in relation to these proceedings may be sent to the following address in India[4].

————————————————————————————————————

Dated this ————————day of ———— 20—

[5]————————————————————

To

The Registrar of Semiconductor Integrated Circuits Layout-Design Office of the Semiconductor Integrated Circuits Layout-Design Registry at[6] —.

1. State full name and address. An address for service in India should be given if the opponent has no place of business or residence in India
2. Give proof/details if opposition is on the ground that the layout-design applied-for registration is not original.
3. Give proof if the opposition is on the ground that the layout-design has been commercially exploited for a period more than two years on the date on which the application is applied for registration.
4. To be stated only by an opponent who has given the address of his principal place of business or of residence in India but who desires to give for the purposes of the opposition proceedings address in India different form that address.
5. Signature of the applicant or his agent (legal practitioner or registered layout-design agent or person in the sole and regular employment of the applicant. See section 84.)
6. State the name of the place of the appropriate office of the Semiconductor Integrated Circuits Layout-Design Registry.

FORM LD-3

FORM OF COUNTER-STATEMENT

[Section 11(2) , Rules 34, 64]

(To be filled in triplicate)

In the matter of an [4]opposition/cancellation no. ——— to application no. ——— for the registration of a semiconductor integrated circuit layout-design.

I/ we[1] ——— the applicant(s) for registration/registered proprietor of the above semiconductor integrated circuit layout-design, here by give notice that the following are the grounds on which I/we rely for my/our application:

_____

I / we admit the following allegations in the notice of [4]opposition / cancellation :

_____

All communication in relation to these proceedings may be sent to the following address in India[2].

_____

———Dated this ———day of ——— 20—

[3]_____

[5]To

_____

1. State full name and address. An address for service in India should be given if the opponent has no place of business or residence in India
2. To be stated only by an applicant who has given the address of his principal place of business or of residence in India but who desires to give for the purposes of the opposition proceedings address in India different from that address.
3. Signature of the applicant or his agent (legal practitioner or registered layout-design agent or person in the sole and regular employment of the applicant - see section 84.)
4. Strike out whichever is not applicable
5. Counter statement shall be addressed to Layout-Design Appellate Board in the case of cancellation of Registration or of assignment or transmission of a layout-design (see rule 69) and shall be addressed to the Registrar of the Semiconductor Integrated Circuits Layout-Design in the case of opposition to registration [see rule 33(2)].

FORM LD-4

NOTICE OF INTENTION TO ATTEND HEARING

[Section 11, 30; Rule 41(1), 64]

In the matter of [1]——— I/ we[2] ——— hereby give notice that the hearing in reference to the above matter, which by the official notice to me / us dated the ——— day ——— of —— 20— is fixed for ——— A.M. or P.M. at ——— the[3] ——— on the day of ——— 20— will be attended by me / us or by some person on my / our behalf.

Dated this ———day of ——— 20—.

[4]_____

[5]To

_____

1. Insert particulars as in the official notice.
2. Insert name and address
3. Insert the Office of the Semiconductor Integrated Circuits Layout-Design Registry or place at which hearing will take place accordin the office notice.
4. Signature of the person giving notice or his agent (legal practitioner or registered layout-design agent or person in the sole and regular employment of the applicant. See section 84)
5. State the name of the place of the appropriate office of the Semiconductor Integrated Circuits Layout-Desig n Registry. See rule 4.
6. Notice of Intention to attend hearing shall be addressed to Layout-Design Appellate Board in the case of cancellation of Registration or of assignment or transmission of a layout-design (see rule 69) and shall be addressed to the Registrar of the Semiconductor Integrated Circuits Layout-Design in case of opposition to registration.

FORM LD-5

REQUEST FOR STATEMENT OF GROUNDS OF DECISION

[Rule 27(1)]

In the matter of[1] ———— the Registrar is hereby requested to state in writing the grounds of his decision dated the ————day of ———— 20— after hearing on the ———day of ———— 20— and the materials used by him in arriving at the decision.

Dated this ————day of ———— 20—.

[2]_____

To

The Registrar of the Semiconductor Integrated Circuits Layout-Design, Office of the Semiconductor Integrated Circuits Layout-Design Registry at[3] ————

1. Insert particulars identifying the application.
2. Signature of the applicant or his agent (legal practitioner or registered layout-design agent or person in the sole and regular employment of the applicant - see section 84).
3. State the name of the place of the appropriate office of the Semiconductor Integrated Circuits Layout-Design Registry. See rule 4.

FORM LD-6

REQUEST FOR CORRECTION OF CLERICAL ERROR OR FOR AMENDMENT

[Sections 8(3), 12 and 31 Rules 28, 62, 68]

In matters of[1] ———— I / we ———— being the[2] applicant(s) in the above matter hereby

opponent(s)

registered proprietor(s)

registered user(s)

request that ————

[3]A copy of the request has been served on the registered proprietor(s) / registered user(s).

Dated this ————day of ———— 20—.

[4]_____

To

The Registrar of the Semiconductor Integrated Circuits Layout-Design, Office of the Semiconductor Integrated Circuits Layout-Design Registry at[5] ————

1. Insert words and reference number identifying the entry or application or opposition.
2. Strike out words which are not applicable.
3. Strike out if not applicable.
4. Signature.
5. State the name of the place of the appropriate office of the Semiconductor Integrated Circuits Layout-Design Registry. See Rule 4.

FORM LD-7

AFFIDAVIT (ONLY TO BE FURNISHED WHEN REQUIRED BY REGISTRAR IN SUPPORT OF A REQUEST UNDER RULE 49)

(Rule 49)

I[1], ———— of ———— do hereby solemnly and sincerely declare that the particulars set out in the statement of case and left by me in connection with[2] ———— in respect of the layout-design no. ———— are true and comprise every material fact and document affecting the present proprietorship of the layout-design, to the best of my knowledge, information and belief.

[3] ————

Dated this ————day of ———— 20— Before me[4] ————

1. Insert full name, address and nationality of deponent.
2. Insert particulars of the proceedings concerned.
3. To be signed here by the person making the declaration.
4. Signature and title of authority before whom affidavit is taken. In India affidavit may be taken before any court or person having by law authority to receive evidence or before an officer empowered by a court to administer oath. Outside India affidavit may be taken before a diplomatic or consular officer within the meaning of the Diplomatic and Consular Officers (Oath and Fees) Act, 1948, (41 of 1948) of such country or place or before a notary of the place if the notarial acts done by notaries of the place have been recognised by Central Government under section 14 of the Notaries Act, 1952 (53 of 1952).

FORM LD-8

APPLICATION FOR DIRECTIONS FOR THE ADVERTISEMENT OF AN ASSIGNMENT OF LAYOUT-DESIGN OTHERWISE THAN IN CONNECTION WITH THE GOODWILL OF THE BUSINESS

[Section 22 Rule 53(1)]

(To be filed in duplicate)

Application is hereby made by[1] ———— for the Registrar's direction with respect to the advertisement of an assignment of the following layout-design otherwise than in connection with the goodwill of the business in which it had been/was[4] used namely :—

Layout-design No.————.

The date of assignment was the —— day of — 20—.

The instrument effecting the assignment is sent herewith, together with a copy thereof.

It is suggested that the advertisement shall be directed on the Semiconductor Integrated Circuits Layout-Design Journal————.

All communication relating to this application may be sent to the following address in India ————

Dated this ————day of ———— 20—.

[2] ———— ————

To

The Registrar of Semiconductor Integrated Circuits Layout-Design,

The Office of the Semiconductor Integrated Circuits Layout-Design Registry at[3] ————

1. Insert the name, nationality and address of the assignee (applicant).
2. Signature of the applicant or his agent (legal practitioner or registered layout-design agent or person in the sole and regular employment of the applicant - see section 84).
3. State the name of the place of the appropriate office of the Semiconductor Integrated Circuits Layout-Design Registry. See rule 4.
4. Strike out whichever is not applicable.

FORM LD-9

APPLICATION FOR EXTENSION OF TIME IN WHICH TO APPLY FOR THE REGISTRAR'S DIRECTION FOR THE ADVERTISEMENT OF AN ASSIGNMENT OF LAYOUT-DESIGN OTHERWISE THAN IN CONNECTION WITH THE GOODWILL OF THE BUSINESS

[Section 22 Rule 53(2)]

Application is hereby made by[1] ——— for extension of time of[2] —— month(s) in which to apply for Registrar's directions for the advertisement of an assignment of the following layout-design otherwise than in connection with the goodwill of the business in which it[3] has been/was used, namely :—

Layout-design number ————————————

The date of assignment was the —— day of — 20—.

All communication relating to this application may be sent to the following address in India ————————————

Dated this ————day of ———— 20--.

[4]————————————

To

The Registrar of Semiconductor Integrated Circuits Layout-Design,
The Office of the Semiconductor Integrated Circuits Layout-Design Registry at[5] ————————————

1. Insert the name and address of the assignee (applicant).
2. Insert "one", "two" or "three".
3. Strike out words not applicable.
4. Signature of the applicant or his agent (legal practitioner or registered layout-design agent or person in the sole and regular employment of the applicant. See section 84).
5. State the name of the place of the appropriate office of the Semiconductor Integrated Circuits Layout-Design Registry. See rule 4.

FORM LD-10

REQUEST TO REGISTER A SUBSEQUENT PROPRIETOR OF A LAYOUT-DESIGN UPON THE SAME DEVOLUTION OF TITLE

(Section 23 Rule 47)

I/ we[1] ————————hereby request that my/our name may be entered in the register of layout-designs as proprietor of layout-design No. ———— as from the[2] ————.

I am (or we are) entitled to layout-design by virtue of[3] —— of which the original and an attested copy are enclosed herewith.

The assignment of the layout-design was[4] (not) made otherwise than in connection with the goodwill of the business in which layout-design[4] (had been)/(was)[4] used (and there is sent herewith a copy of the Registrar's direction to advertise the assignment, a copy of each of the advertisement complying therewith).

I / we declare that the facts and matters stated herein are true to the best of my/our knowledge, information and belief.

Dated this ————day of ———— 20—.

[5]————————————

To

The Registrar of Semiconductor Integrated Circuits Layout-Design,
The Office of the Semiconductor Integrated Circuits Layout-Design Registry at[6] ————————————

1. Insert full name, address of the principal place of business in India, if any, nationality and description of the applicant. If there is no place of business in India, state the address of the place of residence in India, if any. If there is not even a place of residence in India, state the address in the home country abroad and an address for service in India.
2. State the date of acquisition of proprietorship.
3. Insert full particulars of the instrument of assignment or transmission, if any, or statement of case.
4. Strike out any words not applicable.
5. Signature of the applicant.
6. State the name of the place of the appropriate office of the Semiconductor Integrated Circuits Layout-Design Registry. See rule 4.

FORM LD-11

JOINT REQUES T BY REGISTERED PROPRIETOR AND TRANSFEREE TO REGISTER THE TRANSFEREE AS SUBSEQUENT PROPRIETOR OF LAYOUT-DESIGN UPON THE SAME DEVOLUTION OF TITLE

(Section 23 Rule 47)

We[1] ——— and[2] ——— hereby request, under rule 47, that the name of[3] ——— carrying on business as[4] ——— at[5] ——— may be entered in the register of layout-design as proprietor of the layout-design no. ——— as from the[6] ——— by virtue of[7] ——— of which the original and an attested copy are enclosed herewith.

The assignment of the layout-design was[8] (not) made otherwise than in connection with the goodwill of the business in which the layout-design (has been)/was used[8] (and there is sent herewith copy of the Registrar's direction to advertise the assignment, a copy of each of the advertisement, complying therewith and a statement of the dates of the issue of any publications containing them).

We declare that the facts and matters stated herein are true to the best of our knowledge, information and belief.

Dated this ——— day of ——— 20—.

———

(Signature of the applicants)

To

The Registrar of Semiconductor Integrated Circuits Layout-Design,

The Office of the Semiconductor Integrated Circuits Layout-Design Registry at[9] ———

1. Full name, address, and nationality of registered proprietor, or other assignor or transmitter.
2. Full name, address and nationality of transferee.
3. Name of transferee.
4. Description of transferee (calling or profession).
5. Address of the principal place of business in India, if any, of the transferee. If there is no place of business in India state the address of the place of residence in India. If there is not even place of residence in India, state the address in the home country abroad and an address for service in India.
6. Date of acquisition of proprietorship.
7. Full particulars of the instrument of assignment or transmission, if any, or statement of case.
8. Strike out words not applicable.
9. State the name of the place of the appropriate office of the Semiconductor Integrated Circuits Layout-Design Registry. See rule 4.

FORM LD-12

APPLICATION FOR THE RECTIFICATION OF THE REGISTER

[Sections 30 and 48(1) Rule 63]

(to be filed in duplicate along with the statement of case in duplicate and accompanied by as many copies of each of them as there are registered users under the registration)

In the matter of layout-design no. ——— in the name of ———

I/we[1] ——— hereby apply that the entry in the register in respect of the above mentioned layout-design may be (removed)[2] / (rectified) in the following manner :—

———

The grounds of my/our application are as follows :—

———

The[3] ——— office of the Semiconductor Integrated Circuits Layout-Design Registry has been entered in the register as the appropriate office in relation to this layout-design.

No action concerning the layout-design in question is pending in court.

All communications relating to these proceedings may be sent to the following address in India[4] :—

———

Dated this ——— day of ——— 20—

Signature ———

To

The Layout-Design Appellate Board,

Or

To

The Registrar of Semiconductor Integrated Circuits Layout-Design,

The Office of the Semiconductor Integrated Circuits Layout-Design Registry at[5]———————————

1. State full name, address and nationality. An address for service in India should be stated if the applicant has no place of business or of residence in India - see rule 17.
2. Strike out whichever is not applicable.
3. State the name of the place of the appropriate office of the Semiconductor Integrated Circuits Layout-Design Registry. See rule 4.
4. To be stated only by an applicant who has given the address of the principal place of business or of residence in India but who desires to give for the purpose of these proceedings an address in India different from that address.
5. State the name of the place of the appropriate office of the Semiconductor Integrated Circuits Layout-Design Registry. See rule 4.

FORM LD-13

APPLICATION FOR REGISTRATION OF REGISTERED USER

[Section 25 Rule 55]

(To be filed in triplicate accompanied by the agreement in writing between the registered proprietor and the proposed registered user or a duly authenticated copy thereof, the other documents mentioned in rule 55(1), an affidavit setting forth particulars and statement as required by rule 55(2) and by two copies of each of the aforesaid document)

Application is hereby made by[1] ——————— who is (or are) the registered proprietor (s) of the layout-design no. ——————— in respect of[2] ——————— and by[3] ——————— that the said[4] ——————— may be registered as a registered user of the above mentioned registered layout-design subject to the following conditions and restrictions[5] :—

——————— ———————————————————————

[6](The proposed permitted use is to end on the ——————— day of ——— 20—) /

(The proposed permitted use is without limit of period)

Dated this ——————day of ——————— 20—.

[7]———————————

[8]———————————

To

The Registrar of Semiconductor Integrated Circuits Layout-Design,

The Office of the Semiconductor Integrated Circuits Layout-Design Registry at[9] ———————————

1. State full name, address and nationality of the registered proprietor.
2. Insert specifications as in the register.
3. Insert full name, address of the principal place of business in India, if any, nationality and description of the proposed registered user. If there is no place of business in India, state the address of the place of residence in India, if any. If there is not even a place of residence in India, state the address in the home country abroad and an address for service in India.
4. Insert name of the proposed registered user.
5. Write none if there are no conditions or restrictions.
6. Strike out the words that are not applicable.
7. Signature of the registered proprietor or his agent.
8. Signature of the proposed registered user or of his agent.
9. State the name of the place of the appropriate office of the Semiconductor Integrated Circuits Layout-Design Registry. See rule 4.

FORM LD-14

APPLICATION BY REGISTERED PROPRIETOR OF A LAYOUT-DESIGN OR BY ANY OF THE REGISTERED USER OF THE LAYOUT-DESIGN FOR THE CANCELLATION OF THE REGISTERED USER THEREOF

[Section 26(1)(a) Rule 58]

(To be filed in triplicate accompanied by a statement in triplicate of the grounds for the application)

Application is hereby made by[1] ————————being (the registered proprietor)[2] (a registered user) of layout-design no. ———————— in respect of[3] —— for the cancellation of the entry under the above mentioned registration of[4] ———————— as a registered user of the layout-design.

The grounds for this application are set forth in the accompanying statement.

Dated this ————————day of———————— 20—.

Signature————————————

To

The Registrar of Semiconductor Integrated Circuits Layout-Design,

The Office of the Semiconductor Integrated Circuits Layout-Design Registry at[5] ————————————

1. Insert full name and address of the applicant or of the applicants.
2. Strike out the words which are not applicable.
3. Insert the specifications as in the register.
4. Insert the full name and address of the registered user whose entry is sought to be cancelled.
5. State the name of the place of the appropriate office of the Semiconductor Integrated Circuits Layout-Design Registry. See rule 4.

FORM LD-15

APPLICATION FOR CANCELLATION OF ENTRY OF A REGISTERED USER OF A LAYOUT-DESIGN

[Section 26(1)(b) or (c) Rule 58]

(To be filed in triplicate accompanied by a statement in triplicate of the grounds for the application)

In the matter of the layout-design no. ———————— registered in the name of[1] ————————

Application is hereby made by[2] ———————— for the cancellation of the entry under the above mentioned registration of[3] ———————— as the registered user thereof.

The grounds of this application, particulars of which are given in detail in the accompanying statement of case are[4]————————————

All communications relating to these proceedings may be sent to the following address in India[5] :—

————————————————————————————————————

Dated this ————————day of———————— 20—.

Signature————————————

To

The Registrar of Semiconductor Integrated Circuits Layout-Design,

The Office of the Semiconductor Integrated Circuits Layout-Design Registry at[6] ————————————

1. Insert the name of the registered proprietor.
2. Insert the name, address and nationality of the applicant for the cancellation.
3. Insert the name, address and description of the registered user as entered in the register.
4. Insert one or more of the sub-clauses of (b) of section 26(1).
5. To be stated only by an applicant who has given the address of the place of business or of residence in India but who desires to give for purposes of these proceedings address different from that address.
6. State the name of the place of the appropriate office of the Semiconductor Integrated Circuits Layout-Design Registry. See rule 4.

FORM LD-16

NOTICE OF INTENTION TO INTERVENE IN PROCEEDINGS FOR THE CANCELLATION OF AN ENTRY OF A REGISTERED USER OF A LAYOUT-DESIGN

[Rule 61 (2)]

(To be filed in triplicate accompanied by a statement in triplicate of the grounds of intervention)

In the matter of layout-design no. ———— registered in the name of[1] ————.

And

In the matter of registration of [2] ———— thereunder as a registered user of the layout-design. I / we[3] ———— hereby give notice of my/our intention to intervene in the proceedings in the above matter.

All communications relating to these proceedings may be sent to the following address in India :—

———————————————————————————

Dated this ————day of ———— 20—.

[4]————————

To

The Registrar of Semiconductor Integrated Circuits Layout-Design,

The Office of the Semiconductor Integrated Circuits Layout-Design Registry at[5] ————

1. Insert the name of the registered proprietor.
2. Insert the name, address of the registered user.
3. Insert full name, address and nationality of the person giving notice.
4. Signature of the person giving notice or his agent.
5. State the name of the place of the appropriate office of the Semiconductor Integrated Circuits Layout-Design Registry. See rule 4.

FORM LD-17

REQUEST TO ENTER CHANGE OF NAME OR DESCRIPTION OF REGISTERED PROPRIETOR (OR REGISTERED USER) OF THE LAYOUT-DESIGN UPON THE REGISTER

[Section 31 Rule 62, 68]

I / we[1] ———— hereby request that my/our name(s) and description may be entered in the Register of Layout-Designs as[2] proprietor(s)/registered user(s) of the layout-design no. ————.

I am/we are entitled to said layout-design as

———————————— to use the said layout-design.

There has been no change in the actual proprietorship[2]/identity of registered user(s) of the said layout-design, but[3] ————————

The entry at present standing in the register gives my/our name(s) and description as follows:—

———————————————————————————

———————————————————

[4]A copy of this request has been served upon the registered user(s)/proprietor(s).

Dated this ————day of ———— 20—.

[5]————————

To

The Registrar of Semiconductor Integrated Circuits Layout-Design,

The Office of the Semiconductor Integrated Circuits Layout-Design Registry at[6] ————

1. Insert present name and address of the registered proprietor or registered user.
2. Strike out the words that are not applicable.
3. State the circumstances under which the change of name took place.
4. Strike out if not applicable.
5. Signature of the applicant or his agent.
6. State the name of the place of the appropriate office of the Semiconductor Integrated Circuits Layout-Design Registry. See rule 4.

FORM LD-18

REQUEST TO ENTER CHANGE OF NAME OR DESCRIPTION OF REGISTERED PROPRIETOR (OR REGISTERED USER) OF LAYOUT-DESIGN UPON THE REGISTER

(Section 31, Rules 62, 67, 68)

In the matter of layout-design no. ————.

I / we ———— of ———— being the registered proprietor/user[1] of the layout-design numbered as above.

[2]Address of my/our principal place of business/or residence in India or address in my/our home country abroad in the Register of Layout-Designs be altered to ————————

[3]The change of address was ordered by[4] ———— on the ——— day of —— 20—. An officially certified copy of the order is enclosed herewith.

A copy of this request has been served on the registered proprietor/user[2].

Dated this ———— day of ———— 20—.

[5]————————

To

The Registrar of Semiconductor Integrated Circuits Layout-Design,

The Office of the Semiconductor Integrated Circuits Layout-Design Registry at[6] ————————

1. Strike out whichever is not applicable.
2. Strike out word(s) not applicable.
3. Strike out if not applicable.
4. Insert the name of the public authority ordering the change and date thereof.
5. Signature of the registered proprietor/user or of his agent.
6. State the name of the place of the appropriate office of the Semiconductor Integrated Circuits Layout-Design Registry. See rule 4.

FORM LD-19

FORM OF REQUEST BY A REGISTERED PROPRIETOR OR A REGISTERED USER OF A LAYOUT-DESIGN WHO HAS NO PRINCIPAL PLACE OF BUSINESS IN INDIA, TO ENTER, ALTER OR SUBSTITUTE AN ADDRESS FOR SERVICE IN INDIA AS PART OF HIS REGISTRATION

(Rules 62, 67, 68)

Request is made by[1] ———— who is registered [2]proprietor/user of layout-design no ——— for the [3]addition, alteration or substitution of an address for service in India in or to the entry thereof so that the address for service in India may read[4] ————.

Dated this ——— day of ———— 20—.

Signature ————————

To

The Registrar of Semiconductor Integrated Circuits Layout-Design,

The Office of the Semiconductor Integrated Circuits Layout-Design Registry at[5] ————————

Note: A registered proprietor or a registered user whose address for service in India has been altered by a public authority so that the changed address designates the same premises as before may also make the statement for which there is provision on the back of this Form in order to avoid payment of fees.

(To appear on the back of this form)

(For use only in case an address for service in India is changed by a public authority, without change of premises).

The change of address for service in India for the entry of which application is made on the otherside of this Form was ordered by[6] ——— on the ———— day of ——— 20—. An officially certified copy of the order is enclosed herewith.

Dated this ———— day of ———— 20—.

Signature ————————

Note : If the above statement be made and an officially certified copy of the order by the named authority necessitating the alteration be supplied, the Registrar if satisfied as to the facts of the case will not require any fee to be paid on Form LD-19.

1. Here insert the full name and address of the person making the request.
2. Strike out one of the word "proprietor" or "user" as the case may be.
3. Strike out the words that are not applicable.
4. State here the precise entry or changed entry desired.
5. State the name of the place of the appropriate office of the Semiconductor Integrated Circuits Layout-Design Registry. See rule 4.
6. Here insert the name of the public authority ordering the change and date thereof.

FORM LD-20

(APPLICATION BY REGISTERED PROPRIETOR OF LAYOUT-DESIGN FOR THE CANCELLATION OF ENTRY THEREOF IN THE REGISTER)

[Section 31(1)(c) Rule 68]

In the matter of Layout-Design No. ———— name of the registered proprietor ———— address as entered in the register ————.

Application is hereby made by the aforesaid registered proprietor that the entry in the Register of layout-design No. ———— may be cancelled.

[1]A copy of the application has been served on the registered user(s).

Dated this ————day of———— 20—.

[2]————

To

The Registrar of Semiconductor Integrated Circuits Layout-Design,

The Office of the Semiconductor Integrated Circuits Layout-Design Registry at[3] ————

1. Strike if not applicable.
2. Signature of the registered proprietor or of his agent.
3. State the name of the place of the appropriate office of the Semiconductor Integrated Circuits Layout-Design Registry. See rule 4.

FORM LD-21

REQUEST FOR REGISTRAR'S PRELIMINARY ADVICE AS TO THE ORIGINALITY OR DISTINCTIVENESS OF THE LAYOUT-DESIGN BY A PERSON PROPOSING TO APPLY FOR THE REGISTRATION OF LAYOUT-DESIGN

(Section 78 Rule 21)

I / we[1] ———— hereby request the Registrar to advice me/us whether the accompanying layout-design appears to him

prima facie original so as comply with the requirements of clause (a) of sub-section (1) of section 7 of the Act for registration in the Register of Layout-Design.

The Registrar's advice may be sent to the following address in India[2]————

Dated this ————day of———— 20—.

[3]————

To

The Registrar of Semiconductor Integrated Circuits Layout-Design,

The Office of the Semiconductor Integrated Circuits Layout-Design Registry at [4]————

1. State the name and address in full.
2. State only if the address given at 1 is not of a place in India.
3. Signature.
4. State the name of the place of the appropriate office of the Semiconductor Integrated Circuits Layout–Design Registry. See rule 4.

FORM LD-22

REQUEST FOR CERTIFICATE OF THE REGISTRAR

[Sections 80 and 87 Rules 88, 89]

In the matter[1] of layout-design No. ————————.

I / we[2] ———————— hereby request the Registrar to furnish me / us with[3] his certificate to the effect that[4] /a certified copy[5] ———————— a certificate of the registration of layout-design for use in obtaining registration in[6] ————————

[3]The certificate / certified copy may be sent to the following address in India[7] :

————————————————————————————————

Dated this ————day of ———— 20—.

Signature————————————

To

The Registrar of Semiconductor Integrated Circuits Layout-Design,

The Office of the Semiconductor Integrated Circuits Layout-Design Registry at[8] ————————

1. These words may be varied to suit other cases.
2. Insert the name, address and nationality of the person making the request.
3. Strike out words that are not applicable.
4. Set out the particulars which the registrar is required to certify or state particulars of the document of which a certified copy is required.
5. Strike out words that are not applicable.
6. Insert the name of the country.
7. To be stated only where the address given is not an address in India.
8. State the name of the place of the appropriate office of the Semiconductor Integrated Circuits Layout-Design Registry. See rule 4.

FORM LD-23

APPLICATION FOR EXTENSION OF TIME [NOT BEING A TIME EXPRESSLY PROVIDED IN THE ACT OR A TIME FOR THE EXTENSION OF WHICH PROVISION IS MADE IN THE RULE]

(Section 76 Rule 75)

In matter of[1] ————————————

I / we[2] ———————— being the ———— in the above matter hereby apply for an extension of time[3] ———— for[4] ———————— on the following grounds: ————————————————

Dated this ————day of ———— 20—.

[5]————————————

To

The Registrar of Semiconductor Integrated Circuits Layout-Design,

The Office of the Semiconductor Integrated Circuits Layout-Design Registry at[6] ————————

1. Insert words and reference number identifying the matter in respect of which the application is made.
2. State full name and address.
3. Insert the period of extension.
4. State the purpose for which extension of time is required.
5. Signature.
6. State the name of the place of the appropriate office of the Semiconductor Integrated Circuits Layout-Design Registry. See rule 4.

FORM LD-24

APPLICATION FOR REVIEW OF REGISTRAR'S DECISION

[Section 72(c) rule 84]

(To be filed in triplicate together with a statement in triplicate - vide rule 84)

In the matter of[1] ————————

I / we[2] ———————— being the ———————— in the above matter hereby apply to the Registrar for the review of this decision date the ———— day of ——— 20— in the above matter.

The grounds for making this application are set forth in the accompanying statement.

Dated this ————————day of ———————— 20—.

[3]————————————————————

To

The Registrar of Semiconductor Integrated Circuits Layout-Design,

The Office of the Semiconductor Integrated Circuits Layout-Design Registry at[4] ————————————

1. Insert words and reference number identifying the matter in respect of which the application is made.
2. State full name and address.
3. Signature.
4. State the name of the place of the appropriate office of the Semiconductor Integrated Circuits Layout-Design Registry. See rule 4.

FORM LD-25

REQUEST FOR DUPLICATE OR FURTHER COPY OF THE CERTIFICATE OF REGISTRATION

[rule 46(2)]

I / we[1] ———————— request the Registrar to furnish me/us with duplicate/further copy[2] of the certificate of registration issued to me/us under sub-section (2) of section 13 in respect of my/our layout-design No. ————.

The duplicate /further copy of the certificate may be sent to my/our following address in India :—

————————————————————————————————

Dated this ———————— day of ———— 20—.

————————————————

(signature of the applicant or of his agent)

To

The Registrar of the Semiconductor Integrated Circuits Layout-Design Registry,

The office of the Semiconductor Integrated Circuits Layout-Design Registry at[3]——

1. Insert the name and address of the registered proprietor.
2. Strike out whichever is not applicable.
3. State the name of the place of the appropriate office of the Semiconductor Integrated Circuits Layout-Design Registry- see rule 4.

FORM LD-26

APPEAL TO THE APPELLATE BOARD UNDER SUB-SECTION (3) OF SECTION 42

[Section 42(3) Rule 74]

Name and address of the appellant ———————

Name and address of the respondent ———————

Particulars of order and decision against which the appeal is preferred———————
———————

Grounds of appeal ———————
———————.

———————

Signature of the appellant

Verification

I, the above named appellant, do hereby verify that the contents of the grounds ———————
——————— are true to my personal knowledge and belief. And the contents of the grounds———————are based on the legal advice tendered to me. Nothing is concealed herein. Verified on ————day of ———— 20—.

———————

Signature of the appellant

To

The Layout-Design Appellate Board

FORM LD-27

APPLICATION FOR DETERMINING ROYALTY

[section 40(2) rule 73(1)]

Layout-design No. in respect of which application is filed ———————
Name and address of the applicant ———————
Name and address of the opposite party ———————
Brief facts and grounds in support of royalty ———————
———————
———————

Benefit accrued by performing or directing to be performed the acts referred to in clause (b) of sub-section (1) of section 18 in respect of above mentioned layout-design ———————
———————

———————

Signature of the applicant

To

The Layout-Design Appellate Board

FORM LD-28

OPPOSITION UNDER SECTION 40(3) OF THE SEMICONDUCTOR INTEGRATED CIRCUITS LAYOUT-DESIGN ACT, 2000 BEFORE THE LAYOUT-DESIGN APPELLATE BOARD

[Section 40(3) Rule 73(2)]

Particulars of the application against which the application is filed ——————————

Name and address of the applicant ——————————

Name and address of the opposite party ——————————

Grounds of opposition ——————————

——————————

Signature of opposite party

To

The Layout-Design Appellate Board

FORM LD-29

REQUEST FOR REVIEW OF DECISION OF APPELLATE BOARD TO PERMIT USE OF REGISTERED LAYOUT-DESIGN

[section 51(3) rule 72]

Layout-design No. ——————————

I/we[1] —————— registered proprietor of the layout-design hereby request for review of the decision of the Appellate Board dated——— day of —— 20—— permitting use of aforesaid layout-design under sub-section (1) of section 51, on the following grounds, namely :

——————————

Dated this——————— day of ——— 20—

[2]——————————

To

The Layout-Design Appellate Board

1. Name and address as mentioned in the register.
2. Signature of the registered proprietor or his agent.

FORM LD-30

APPLICATION FOR EXTENSION OF TIME FOR GIVING NOTICE OF OPPOSITION

[section 11(1) rule 33(2)]

In the matter of Application No. ——————

I/we[1] ——————— hereby apply for extension of time[2] ——————— for giving notice of opposition to the registration of the semiconductor integrated circuit layout-design advertised under the above number in the Semiconductor Integrated Circuits Layout-Design Journal dated the ——————— day of —— 20—.

The reasons for making this application are as follow :—

——————————

All communication relating to this application may be sent to the following address in India[3]:—

——————————

Dated this ——— day of ——— 20—.

Signature ——————

To

The Registrar of Semiconductor Integrated Circuits Layout-Design Registry.

The Office of the Semiconductor Integrated Circuits Layout-Design Registry at[4] ———.

1. State the full name and address.
2. Insert the period of extension required which shall not exceed one month beyond three months from the date of advertisement or re-advertisement, as the case may be, of the application in the Semiconductor Integrated Circuits Layout-Design Journal.
3. To be stated if the address given is not the address in India.
4. State the name of the place of the appropriate office of the Semiconductor Integrated Circuits Layout-Design Registry. See rule 4.

FORM LD-31

REQUEST TO REGISTRAR FOR PARTICULARS OF ADVERTISEMENT OF A LAYOUT-DESIGN

(rule 32)

I / we[1] ——————hereby request that I / we may be informed of the date on which the layout-design sought to be registered under application no. ———— in name of ———— is advertised in the Semiconductor Integrated Circuits Layout-Design Journal.

This information may be sent to the following address in India[2]

Dated this ———— day of ———— 20—.

(signature of the applicant or of his agent)

To

The Registrar of the Semiconductor Integrated Circuits Layout-Design Registry,

The office of the Semiconductor Integrated Circuits Layout-Design Registry at[3] ——

1. State full name and address.
2. State only if the address given in 1 is not of a place in India.
3. State the name of the place of the appropriate office of the Semiconductor Integrated Circuits Layout-Design Registry - see rule 4.

FORM LD-32

FORM OF AUTHORISATION OF AGENT IN A MATTER OR PROCEEDING UNDER THE ACT

[section 84, rule 20]

(To be stamped under the law for the time being in force)

I / we[1] ——————hereby authorise[2] ———— of ———— to act as my / our agent for[3] ———— and request that all notices, requisitions and communications relating thereto may be sent to such agent at the above address.

I / we hereby revoke all previous authorisation, if any, in respect of the proceeding.

Dated this ————day of ———— 20—.

[4]

To

The Registrar of Semiconductor Integrated Circuits Layout-Design,

The Office of the Semiconductor Integrated Circuits Layout-Design Registry at[5] ——————

1. Insert full name, address and nationality.
2. Insert full name and address of agent (legal practitioner, registered layout-design agent or a person in the sole and regular employment of the person appointing the agent.
3. State the particular matter or proceeding for which the agent is appointed, giving the reference number if known.
4. To be signed by the person appointing the agent.
5. State the name of the place of the appropriate office of the Semiconductor Integrated Circuits Layout-Design Registry. See rule 4.

FORM LD-33

APPLICATION FOR CANCELLATION OF REGISTRATION OF A LAYOUT-DESIGN OR OF ASSIGNMENT OR TRANSMISSION RELATING THERETO

[section 41 rule 69]

In the matter of Layout-Design No. ———— name of registered proprietor ———— address as entered in the register ————.

I / we[1] ———— hereby give notice of cancellation of [2]registration / assignment / transmission of above layout-design.

The grounds of cancellation are as follows[3,4] ————

Dated this ———— day of ———— 20—.

Signature ————

To

The Layout-Design Appellate Board

1. Give full name, address and nationality
2. Strike out whichever is not applicable
3. Give proof/details if cancellation of registration is on the ground that the layout-design is not original or it has been commercially exploited for a period of more than two years from the date on which application for its registration was filed (see section 7)
4. Give proof/detail that the assignment or transmission is contrary to any provision of the law [see clause (b) of sub-section (1) of section 41].

FORM LD-34

APPLICATION UNDER SECTION 51 FOR THE PERMISSION TO USE THE REGISTERED LAYOUT-DESIGN

(section 51 rule 70)

Name and address of the applicant ————

Name and address of the registered proprietor of the layout-design in respect of which the application is made ————

Layout-design No. (referred above) ————

Whether the permission is sought for the use of layout-design by the Central Government or by the State Government or by any other person authorised by such Government. ————

If permission is sought for the use of the layout-design by the person authorised by the Government, the name and address of such person ————

————

Signature of the applicant

Verification

I, the above-mentioned applicant, do hereby verify that the contents of the grounds ———— are true to [1]my personal knowledge and belief / on the basis of Government record. And the contents of the grounds ———— are based on the legal advice tendered to me. Nothing is concealed herein. Verified on ———— day of ———— 20—.

————

Signature of the applicant

1. Strike out whichever is not applicable

In the matter of layout-design No. ———— name of registered proprietor ———— address as entered in the register ————

I / we[1] ————, [2]having authorised by the Government, hereby give notice to use above layout-design on the grounds[3,4]

(a) for non-commercial public purposes

(b) for the purposes relating to national emergency or extreme public urgency

I / we[1] ———— hereby give notice to use the above layout-design on the grounds[3]

to remedy anti-competitive practice

I/we have tried to enter into agreement with the registered proprietor of layout-design on reasonable terms and conditions and such efforts have not been successful[5].

Dated this ————day of ———— 20—.

Signature ————

To

Layout-Design Appellate Board,

1. Give full name, address and nationality
2. Give details and proof of the Governmnet authorisation
3. Strike whichever is not applicable
4. Provide the details of grounds
5. Provide details of the efforts made including copies of the correspondence
6. Strike out whichever is not applicable

FORM LD-35

APPLICATION TO HIGH COURT AGAINST DECISION OR ORDER OF APPELLATE BOARD

[section 53(1) rule 91]

In the matter of layout-design No. ———— name of registered proprietor ———— address as entered in the register ————.

I / we[1] ———— hereby prefer appeal against the decision / order of the Layout-Design Appellate Board no. ———— dated this ————day of ———— 20—.

The grounds of appeal are as follows ————

Dated this ————day of ———— 20—.

Signature ————

To

The Registrar,

High Court at[2] ————

1. Strike out whichever is not applicable
2. State the name of the place of the appropriate High Court.

FORM LDA-1

APPLICATION FOR REGISTRATION AS A LAYOUT-DESIGNS AGENT

[rule 97]

(To be filled in triplicate)

I beg to apply for registration as a layout-designs agent under the Semiconductor Integrated Circuits Layout-Design Act, 2000 (37 of 2000).

A certificate of character from ———— is enclosed herewith.

I hereby declare that I am not subject to any of the disabilities state in clauses (i), (ii), (iii), (iv), (v) and (vi) of rule 95 of the Semiconductor Integrated Circuits Layout-Design Rules, 2001 and that the information given below is true to the best of my knowledge and belief.

1. Name in full beginning with surname if any (in capital letters) ————

2. Address of the place of residence ————

3. Principal place of business ————

4. Father's name ————

5. Nationality ————

6. Date and place of birth ————

7. Occupation in full ————

8. Particulars of qualifications for registration as a layout-designs agent ————

9. Whether at any time removed from the Register of Layout-Designs Agents and if so the reasons for such removal ————

Signature ————

To

The Registrar of Semiconductor Integrated Circuits Layout-Design,

The Office of the Semiconductor Integrated Circuits Layout-Design Registry at[1] ————

The certificate testifying to the character of the candidate should be from a person not related to the candidate and being a District Magistrate, A Chief Presidency Magistrate or the Chief Administrative Officer of the district where the candidate usually resides, or from any other person whom the Registrar may consider it.

Either original diplomas, certificates and other documents in support of qualifications claimed, or copies thereof duly attested by a Magistrate or a Notary Public must be sent with the application.

Particulars such as the amount of experience in layout-designs agent's office or with a commercial firm of repute, may be specified.

1. State the name of the place of the appropriate office of the Semiconductor Integrated Circuits Layout-Design Registry. See rule 4.

FORM LDA-2

APPLICATION FOR THE RESTORATION OF THE NAME OF A PERSON TO THE REGISTER OF LAYOUT-DESIGNS AGENTS

[rule 103]

(To be filled in triplicate)

I ———— (name and address)———— of ———— hereby apply for the restoration of my name to the Register of layout-designs agents in which my name was entered under No. ————. My name was removed on ———— under clause (b) of rule 101(1) of the Semiconductor Integrated Circuits Layout-Design Rules, 2001.

Dated this ——— day of ——— 20—.

Signature ————————

To

The Registrar of Semiconductor Integrated Circuits Layout-Design,

The Office of the Semiconductor Integrated Circuits Layout-Design Registry at[1] ————————

1. State the name of the place of the appropriate office of the Semiconductor Integrated Circuits Layout-Design Registry. See rule 4.

FORM LDA-3

APPLICATION FOR AN ALTERATION OF AN ENTRY IN THE REGISTER OF LAYOUT DESIGN AGENTS

[rule 104]

(To be filled in triplicate)

I ——— (name and address)———— of ——— being a registered layout-designs agent (Registration No. ————) hereby request that my [1]name, address of the place of residence, address of the principal place of business or qualifications entered in the register of layout-designs agents may be altered as follows :—

————————————————————————————————

Dated this ———— day of ——— 20—.

Signature ————————

To

The Registrar of Semiconductor Integrated Circuits Layout-Design,

The Office of the Semiconductor Integrated Circuits Layout-Design Registry at [2]————————

1. Strike out words not applicable
2. State the name of the place of the appropriate office of the Semiconductor Integrated Circuits Layout-Design Registry. See rule 4.

SCHEDULE III

List of the forms to be used by the Registrar

LIST OF FORMS

Form No.	Section	Title
OLD-1	13(3)	Notice of non-completion of registration.
OLD-2	13(2)	Certificate of registration of layout-design.
OLD-3	40(3)	Layout-Design Appellate Board Notice under section 40(3).
OLD-4	Rule 100	Certificate of registration of a person as Layout-Design Agent.
OLD-5	25(3)	Notice of registration as registered user.
OLD-6	26(2)	Notice of cancellation of registration of registered user.
OLD-7	30(4)	Notification of rectification/ correction of the register to Registrar from Appellate Board.
OLD-8	41	Notice of cancellation of registration of a layout-design or of assignment or transmission relating to.
OLD-9	51(2)	Notice for review of decision permitting use of registered layout-design.

FORM OLD-1

SEMICONDUCTOR INTEGRATED CIRCUITS LAYOUT-DESIGN REGISTRY

NOTICE OF NON-COMPLETION OF REGISTRATION

[Section 13(3), rule 43 1

No. ————————

Notice is hereby given as required by section 13(1) of the Semiconductor Integrated Circuits Layout-Design Act, 2001 that the registration of the layout-design, in respect of which application numbered as above was made on the ———— —— day of —— 20—, has not been completed by reason of default on the part of the applicant. Unless registration is completed within twenty-one days from the date of this notice, the application will be treated as abandoned.

Dated this ———— day of ———— 20—.

————————————————————

(Registrar of Semiconductor Integrated Circuits Layout-Design)

To

————————————————————

FORM OLD-2

GOVERNMENT OF INDIA

THE SEMICONDUCTOR INTEGRATED CIRCUITS LAYOUT-DESIGN REGISTRY

CERTIFICATE OF REGISTRATION

[Section 13(2) rule 46(1)]

Layout-design no.————————————

Dated————————————

Certified that the layout-design[1] ————————, of which a drawing/photograph ([2]complete or blocked out) is annexed herewith, has been registered in the register in the name of———————— as of date————————

Sealed at my direction this ———————— day of ———— 20—.

————————————————————

Registrar of the Semiconductor Integrated Circuits Layout-Design

Registration is for 10 years from the date first above mentioned.

This certificate is not for use in legal proceedings or for obtaining registration abroad.

Note : Upon any change of ownership of the layout-design or change in address of the principal place of business or address of service in India, applicant should at once be made to register the change.

1. Description of the Layout-Design as entered in the Register of Layout-Designs
2. Strike out whichever is not applicable

FORM OLD-3

LAYOUT-DESIGN APPELLATE BOARD

NOTICE UNDER RULE 73

[Section 40(3) rule 73(2)]

Notice is hereby given as required by section 40(3) of the Semiconductor Integrated Circuits Layout-Design Act, 2001, that[1] ———————— has filed an application before this Appellate Board, a copy of which is enclosed herewith. You may file opposition to the application within thirty days from the date on which this notice is served on you on Form LD-28 specified in schedule II to the Semiconductor Integrated Circuits Layout-Design Rules, 2001.

The application will come up before this Appellate Board on ———— day of ——— 20—.

Signature of the Officer authorised by the Appellate board

To

1. Name of the applicant

FORM OLD-4

GOVERNMENT OF INDIA

THE SEMICONDUCTOR INTEGRATED CIRCUITS LAYOUT-DESIGN REGISTRY

CERTIFICATE OF REGISTRATION TO A LAYOUT-DESIGNS AGENT

[Rule 99]

No.————

This is to certify that ———— of ———— was registered on this ——— day of —— 20— in the Register of Layout-Designs Agent maintained under rule 96 of the Semiconductor Integrated Circuits Layout-Design Rules, 2001.

Registrar of the Semiconductor Integrated Circuits Layout-Design Registry

FORM OLD-5

SEMICONDUCTOR INTEGRATED CIRCUITS LAYOUT-DESIGN REGISTRY

NOTICE OF REGISTRATION AS REGISTERED USER

[Section 25(3) rule 57]

Whereas[1] ———— the registered proprietor of the layout-design No. ———— and [2]———— proposed registered user made the application on ——— day of —— 20—for the registration of the said proposed registered user as a registered user of the said layout-design and [2]———— the proposed registered user has been registered under sub-section (2) of section 25 of the Semiconductor Integrated Circuits Layout-Design Act, 2000 (37 of 2000).

Therefore, this notice is issued under sub-section (3) of section 25 of the said Act of the registration of [2]——— ——————— as registered user to the other registered user of the said layout-design, namely:—

_____

_____

_____

_____

Registrar of the Semiconductor Integrated Circuits Layout-Design Registry

[3]To

_____

1. Name and address of the registered proprietor
2. Name and address of the proposed registered user
3. Address to whom the notice is sent

FORM OLD-6

SEMICONDUCTOR INTEGRATED CIRCUITS LAYOUT-DESIGN REGISTRY

NOTICE OF CANCELLATION OF REGISTRATION OF REGISTERED USER

[Section 26(2) rule 60]

No.———

Layout-design No. ———

Dated ———

Notice is hereby given, as required under sub-section (2) of section 26 of the Semiconductor Integrated Circuits Layout-Design Act, 2000 (37 of 2000), that [3]——— has filed an application to cancel the registration of the registered user[1] ——— of the above said layout-design registered on the[2] ——— day of ——— 20——— on the following grounds :

_____

_____

Registrar of Semiconductor Integrated Circuits Layout-Design

To

*[4,5]_____

1. Full name and address of the registered user
2. Date of registration of the registered user
3. Name and address of the applicant
4. Name and address of the proprietor
5. Name and address of the registered user

* Strike out whichever is not applicable

FORM OLD-7

LAYOUT-DESIGN APPELLATE BOARD

NOTICE OF RECTIFICATION/CORRECTION OF THE REGISTER

[Section 30(4) rule 66]

No.———

Layout-design No. ———

Dated ———

Notice is hereby given, as required under section 30(4) of the Semiconductor Integrated Circuits Layout-Design

Act, 2000 (37 of 2000), that the following rectification / corrections shall be done in the register with respect to the aforesaid layout-design :

[1]_____

[2]_____

Signature

To

The Registrar of Semiconductor Integrated Circuits Layout-Design

1. Details of the rectification/corrections to be carried out in the register
2. Signature of the authorised officer of the Appellate Board

FORM OLD-8

LAYOUT-DESIGN APPELLATE BOARD

NOTICE OF CANCELLATION OF REGISTRATION OF A LAYOUT-DESIGN OR OF ASSIGNMENT OR TRANSMISSION RELATING THERETO

[Section 41 rule 69(1)]

Notice is hereby given as required by section 41(2) of the Semiconductor Integrated Circuits Layout-Design Act, 2000 (37 of 2000) that[1] ———————————— has filed an application before the Appellate Board a copy of which is enclosed herewith. You may file reply to the application, if any, within thirty days from the date on which this notice is served on you.

The application will come up before this Appellate Board on ———day of ————20—.

_____

Signature of the person authorised by the Appellate Board

[2]To

_____

1. Name of the applicant
2. Name and address of the opposite party

FORM OLD-9

LAYOUT-DESIGN APPELLATE BOARD

NOTICE FOR REVIEW OF DECISION PERMITTING USE OF REGISTERED LAYOUT-DESIGN

[Section 51(3) rule 72(2)]

No.————————

Notice is hereby given as required under section 51(3) of the Semiconductor Integrated Circuits Layout-Design Act, 2000 (37 of 2000), in respect of the review of the decision to permit use of layout-design No. ———— on the following grounds, namely :

_____

The arguments in the case shall be heard on this ————————day of ——— 20—.

[1]_____

To

[2]_____

1. Signature of the authorised officer of the Appellate Board
2. Name and address of the person authorised to use the layout-design by the Appellate Board.

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THE PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS ACT, 2001

ARRANGEMENT OF SECTIONS

CHAPTER I

PRELIMINARY

SECTIONS

1. Short title, extend and commencement.
2. Definitions.

CHAPTER II

PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS AUTHORITY AND REGISTRY

Protection of Plant Varieties and Farmers' Rights Authority

3. Establishment of Authority.
4. Meetings of Authority.
5. Committees of Authority.
6. Officers and other employees of Authority.
7. Chairperson to be Chief Executive.
8. General functions of Authority.
9. Authentication of orders, etc., of Authority.
10. Delegation.
11. Power of Authority.

Registry

12. Registry and offices thereof.
13. National Register of Plant Varieties.

CHAPTER III

REGISTRATION OF PLANT VARIETIES AND ESSENTIALLY DERIVED VARIETY

Application for registration

14. Application for registration.
15. Registrable varieties.
16. Persons who may make application.
17. Compulsory variety denomination.
18. Form of application.
19. Test to be conducted.
20. Acceptance of application or amendment thereof.
21. Advertisement of application.
22. Registrar to consider grounds of opposition.

Registration of essentially derived variety

SECTIONS

23. Registration of essentially derived variety.

CHAPTER IV

DURATION AND EFFECT OF REGISTRATION AND BENEFIT SHARING

24. Issue of certificate of registration.
25. Publication of list of varieties.
26. Determination of benefit sharing by Authority.
27. Breeder to deposit seeds or propagating material.
28. Registration to confer right.
29. Exclusion of certain varieties.
30. Researcher's rights.
31. Special provisions relating to application for registration from citizens of convention countries.
32. Provisions as to reciprocity.

CHAPTER V

SURRENDER AND REVOCATION OF CERTIFICATE AND RECTIFICATION AND CORRECTION OF REGISTER

33. Surrender of certificate of registration.
34. Revocation of protection on certain grounds.
35. Payment of annual fees and forfeiture of registration in default thereof.
36. Power to cancel or change registration and to rectify the Register.
37. Correction of Register.
38. Alteration of denomination of a registered variety.

CHATER VI

FARMERS' RIGHTS

39. Farmers' rights.
40. Certain information to be given in application for registration.
41. Rights of communities.
42. Protection of innocent infringement.
43. Authorisation of farmers' variety.
44. Exemption from fees.
45. Gene Fund.
46. Framing of schemes, etc.

CHAPTER VII

COMPULSORY LICENCE

47. Power of Authority to make order for compulsory licence in certain circumstances.
48. When requirement of public deemed to have not been satisfied.
49. Adjournment of application for grant of compulsory licence.

SECTIONS

50. Duration of compulsory licence.
51. Authority to settle terms and conditions of licence.
52. Revocation of compulsory licence.
53. Modification of compulsory licence.

CHAPTER VIII

PLANT VARIETIES PROTECTION APPELLANTE TRIBUNAL

54. Tribunal.
55. Composition of Tribunal.
56. Appeals to Tribunal.
57. Orders of Tribunal.
58. Procedure of Tribunal.
59. Transitional provision.

CHAPTER IX

FINANCE, ACCOUNTS AND AUDIT

60. Grants by Central Government.
61. Authority Fund.
62. Budget, accounts and audit.
63. Financial and administrative powers of Chairperson.

CHAPTER X

INFRINGEMENT, OFFENCES, PENALTIES AND PRODURE

Infringement

64. Infringement.
65. Suit for infringement, etc.
66. Relief in suits for infringement.
67. Opinion of scientific adviser.

Offences, penalties and procedure

68. Prohibition to apply denomination of a registered variety.
69. Meaning of falsely applying denomination of a registered variety.
70. Penalty for applying false denomination, etc.
71. Penalty for selling varieties to which false denomination is applied, etc.
72. Penalty for falsely representing a variety as registered.
73. Penalty for subsequent offence.
74. No offence in certain cases.
75. Exemption of certain persons employed in ordinary course of business.
76. Procedure where invalidity of registration is pleaded by the accused.
77. Offences by companies.

CHAPTER XI

MISCELLANEOUS

SECTIONS

78. Protection of security of India.
79. Implied warranty on sale of registered variety, etc.
80. Death of party to a proceeding.
81. Right of registered agent and the registered licensee to institute suit.
82. Evidence of entry in Register, etc., and things done by the Authority and the Registrar.
83. Authority, Registrar and other officers not compellable to production of Register, etc.
84. Document open to public inspection.
85. Report of Authority to be placed before Parliament.
86. Government to be bound.
87. Proceedings before Authority or Registrar.
88. Protection of action taken in good faith.
89. Bar of jurisdiction.
90. Members and staff of Authority, etc., to be public servants.
91. Exemption from tax on wealth and income.
92. Act to have overriding effect.
93. Power of Central Government to give directions.
94. Power to remove difficulties.
95. Power to make regulations.
96. Power of Central Government to make rules.
97. Rules, regulations and schemes to be laid before Parliament.

THE PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS ACT, 2001

ACT NO. 53 OF 2001

[30*th October*, 2001.]

An Act to provide for the establishment of an effective system for protection of plant varieties, the rights of farmers and plant breeders and to encourage the development of new varieties of plants.

WHEREAS it is considered necessary to recognise and protect the rights of the farmers in respect of their contribution made at any time in conserving, improving and making available plant genetic resources for the development of new plant varieties;

AND WHEREAS for accelerated agricultural development in the country, it is necessary to protect plant breeders' rights to stimulate investment for research and development, both in the public and private sector, for the development of new plant varieties;

AND WHEREAS such protection will facilitate the growth of the seed industry in the country which will ensure the availability of high quality seeds and planting material to the farmers;

AND WHEREAS, to give effect to the aforesaid objectives, it is necessary to undertake measures for the protection of the rights of farmers and plant breeders;

AND WHEREAS India, having ratified the Agreement on Trade Related Aspects of Intellectual Property Rights should, *inter alia*, make provision for giving effect to sub-paragraph (*b*) of paragraph 3 of article 27 in Part II of the said Agreement relating to protection of plant varieties.

BE it enacted by Parliament in the Fifty-second Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(*1*) This Act may be called the Protection of Plant Varieties and Farmers' Rights Act, 2001.

(*2*) It extends to the whole of India.

(*3*) It shall come into force on such date[1] as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. Definitions.—In this Act, unless the context otherwise requires,—

(*a*) "Authority" means the Protection of Plant Varieties and Farmers' Rights Authority established under sub-section (*1*) of section 3;

(*b*) "benefit sharing", in relation to a variety, means such proportion of the benefit accruing to a breeder of such variety or such proportion of the benefit accruing to the breeder from an agent or a licensee of such variety, as the case may be, for which a claimant shall be entitled as determined by the Authority under section 26.

(*c*) "breeder" means a person or group of persons or a farmer or group of farmers or any institution which has bred, evolved or developed any variety;

(*d*) "Chairman" means the Chairman of the Tribunal;

(*e*) "Chairperson" means the Chairperson of the Authority appointed under clause (*a*) of sub-section (*5*) of section 3;

(*f*) "convention country" means a country which has acceded to an international convention for the protection of plant varieties to which India has also acceded, or a country which has a law on protection of plant varieties on the basis of which India has entered into an agreement for granting plant breeders' right to the citizens of both the countries;

---

1. 11th November, 2005, ss. 2 to 13 (both inclusive) and ss. 95, 96 and 97, *vide* notification No. S.O. 1588(E), dated 11th November, 2005, *see* Gazette of India, Extraordinary, Part II, sec. 3(*ii*).
19th October, 2006, s. 1 and ss. 14 to 94 (both inclusive) *vide* notification No. S.O. 1797(E), dated 19th October, 2006, *see* Gazette of India Extraordinary, Part II, sec. 3(*ii*).

(*g*) "denomination", in relation to a variety or its propagating material or essentially derived variety or its propagating material, means the denomination of such variety or its propagating material or essentially derived variety or its propagating material, as the case may be, expressed by means of letters or a combination of letters and figures written in any language;

(*h*) "essential characteristics" means such heritable traits of a plant variety which are determined by the expression of one or more genes of other heritable determinants that contribute to the principle features, performance or value of the plant variety;

(*i*) "essentially derived variety", in respect of a variety (the initial variety), shall be said to be essentially derived from such initial variety when it—

(*i*) is predominantly derived from such initial variety, or from a variety that itself is predominantly derived from such initial variety, while retaining the expression of the essential characteristics that results from the genotype or combination of genotype of such initial variety;

(*ii*) is clearly distinguishable from such initial variety; and

(*iii*) conforms (except for the differences which result from the act of derivation) to such initial variety in the expression of the essential characteristics that result from the genotype or combination of genotype of such initial variety;

(*j*) "extant variety" means a variety available in India which is—

(*i*) notified under section 5 of the Seeds Act, 1966 (54 of 1966); or

(*ii*) farmers' variety; or

(*iii*) a variety about which there is common knowledge; or

(*iv*) any other variety which is in public domain;

(*k*) "farmer" means any person who—

(*i*) cultivates crops by cultivating the land himself; or

(*ii*) cultivates crops by directly supervising the cultivation of land through any other person; or

(*iii*) conserves and preserves, severally or jointly, with any person any wild species or traditional varieties or adds value to such wild species or traditional varieties through selection and identification of their useful properties;

(*l*) "farmers' variety" means a variety which—

(*i*) has been traditionally cultivated and evolved by the farmers in their fields; or

(*ii*) is a wild relative or land race of a variety about which the farmers possess the common knowledge;

(*m*) "Gene Fund" means the National Gene Fund constituted under sub-section (*1*) of section 45;

(*n*) "Judicial Member" means a Member of the Tribunal appointed as such under sub-section (*1*) of section 55 and includes the Chairman;

(*o*) "Member" means a Judicial Member or a Technical member of the Tribunal and includes the Chairman;

(*p*) "member" means a member of the Authority appointed under clause (*b*) of sub-section (*5*) of section 3 and includes the member-secretary;

(*q*) "prescribed" means prescribed by rules made under this Act;

(*r*) "propagating material" means any plant or its component or part thereof including an intended seed or seed which is capable of, or suitable for, regeneration into a plant;

(*s*) "Register" means a national Register of Plant Varieties referred to in section 13;

(*t*) "Registrar" means a Registrar of Plant Varieties appointed under sub-section (*4*) of section 12 and includes the Registrar-General;

(*u*) "Registrar-General" means the Registrar-General of Plant Varieties appointed under sub-section (*3*) of section12;

(*v*) "Registry" means the Plant Variety Registry referred to in sub-section (*1*) of section 12;

(*w*) "regulations" means regulations made by the Authority under this Act;

(*x*) "seed" means a type of living embryo or propagule capable of regeneration and giving rise to a plant which is true to such type;

(*y*) "Tribunal" means the Plant Varieties Protection Appellate Tribunal established under section 54;

(*z*) "Technical Member" means a Member of the Tribunal who is not a Judicial Member;

(*za*) "variety", means a plant grouping except micro-organism within a single botanical taxon of the lowest known rank, which can be—

(*i*) defined by the expression of the characteristics resulting from a given genotype of that plant grouping;

(*ii*) distinguished from any other plant grouping by expression of at least one of the said characteristics; and

(*iii*) considered as a unit with regard to its suitability for being propagated, which remains unchanged after such propagation,

and includes propagating material of such variety, extant variety, transgenic variety, farmers' variety and essentially derived variety.

CHAPTER II

PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS AUTHORITY AND REGISTRY

Protection of Plant Varieties and Farmers' Rights Authority

3. Establishment of Authority.—(*1*) The Central Government shall, by notification in the Official Gazette, establish an authority to be known as the Protection of Plant Varieties and Farmers' Rights Authority for the purposes of this Act.

(*2*) The Authority shall be a body corporate by the name aforesaid, having perpetual succession and a common seal with power to acquire, hold and dispose of properties, both movable and immovable, and to contract, and shall by the said name sue and be sued.

(*3*) The head office of the Authority shall be at such place as the Central Government may, by notification in the Official Gazette, specify and the Authority may, with the previous approval of the Central Government, establish branch offices at other places in India.

(*4*) The Authority shall consist of a Chairperson and fifteen members.

(*5*) (*a*) The Chairperson to be appointed by the Central Government shall be a person of outstanding caliber and eminence, with long practical experience to the satisfaction of that Government especially in the field of plant varietal research or agricultural development.

(*b*) The members of the Authority, to be appointed by the Central Government, shall be as follows, namely:—

(*i*) the Agriculture Commissioner, Government of India, Department of Agriculture and Cooperation, New Delhi, *ex officio*;

(*ii*) the Deputy Director General incharge of Crop Sciences, Indian Council of Agricultural Research, New Delhi, *ex officio*;

(*iii)* the Joint Secretary incharge of Seeds, Government of India, Department of Agriculture and Cooperation, New Delhi, *ex officio*;

(*iv*) the Horticulture Commissioner, Government of India, Department of Agriculture and Cooperation, New Delhi, *ex officio;*

(*v*) the Director, National Bureau of Plant Genetic Resources, New Delhi, *ex officio*;

(*vi*) one member not below the rank of Joint Secretary to the Government of India, to represent the Department of Bio-technology, Government of India, *ex officio*;

(*vii*) one member not below the rank of Joint Secretary to the Government of India to represent the Ministry of Environment and Forests, Government of India, *ex officio*;

(*viii*) one member not below the rank of Joint Secretary to the Government of India to represent the Ministry of Law, Justice and Company Affairs, Government of India, *ex officio*;

(*ix*) one representative from a National or State level farmers' organisation to be nominated by the Central Government;

(*x*) one representative from a tribal organisation to be nominated by the Central Government;

(*xi*) one representative from the seed industry to be nominated by the Central Government;

(*xii*) one representative from an agricultural University to be nominated by the Central Government;

(*xiii*) one representative from a National or State level women's organisation associated with agricultural activities to be nominated by the Central Government; and

(*xiv*) two representatives of State Governments on rotation basis to be nominated by the Central Government.

(*c*) The Registrar-General shall be the *ex officio* member-secretary of the Authority.

(*6*) The term of office of the Chairperson and the manner of filling the post shall be such as may be prescribed.

(*7*) The Chairperson shall appoint a Standing Committee consisting of five members, one of whom shall be a member who is a representative from a farmers organisation, to advise the Authority on all issues including farmers' rights.

(*8*) The Chairperson shall be entitled to such salary and allowances and shall be subject to such conditions of service in respect of leave, pension, provident fund and other matters as may be prescribed. The allowances for non-official members for attending the meetings of the Authority shall be as such as may be prescribed.

(*9*) The Chairperson may resign his office by giving notice thereof in writing to the Central Government and on such resignation being accepted, he shall be deemed to have vacated his office.

(*10*) On the resignation of the Chairperson or on the vacation of the office of Chairperson for any reason, the Central Government may appoint one of the members to officiate as Chairperson till a regular Chairperson is appointed in accordance with clause (*a*) of sub-section (*5*).

4. Meetings of Authority.—(*1*) The Authority shall meet at such time and place and shall observe such rules of procedure in regard to the transaction of business at its meetings [including the quorum at its meetings and the transaction or business of its Standing Committee appointed under sub-section (*7*) of section 3] as may be prescribed.

(*2*) The Chairperson of the Authority shall preside at the meetings of the Authority.

(*3*) If, for any reason the Chairperson is unable to attend any meeting of the Authority, any member of the Authority chosen by the members present shall preside at the meeting.

(*4*) All questions which come before any meeting of the Authority shall be decided by a majority of the votes of the members of the Authority present and voting and in the event of equality of votes, the Chairperson of the Authority or in his absence, the person presiding shall have and exercise a second or casting vote.

(*5*) Every member who is in any way, whether directly, indirectly or personally, concerned or interested in a matter to be decided at the meeting shall disclose the nature of his concern of interest and after such disclosure, the member, concerned or interested, shall not attend that meeting.

(*6*) No act or proceeding of the Authority shall be invalid merely by reason of—

(*a*) any vacancy in, or any defect in the constitution of, the Authority; or

(*b*) any defect in the appointment of a person acting as the Chairperson or a member of the Authority; or

(*c*) any irregularity in the procedure of the Authority not affecting the merits of the case.

5. Committees of Authority.—(*1*) The Authority may appoint such committees as may be necessary for the efficient discharge of its duties and performance of its functions under this Act.

(*2*) The persons appointed as members of the committee under sub-section (*1*) shall be entitled to receive such allowances or fees for attending the meetings of the committee as may be fixed by the Central Government.

6. Officers and other employees of Authority.—Subject to such control and restriction as may be prescribed, the Authority may appoint such officers and other employees as may be necessary for the efficient performance of its functions and the method of appointment, the salary and allowances and other conditions of service of such other officers and employees of the Authority shall be such as may be prescribed.

7. Chairperson to be Chief Executive.—The Chairperson shall be the Chief Executive of the Authority and shall exercise such powers and perform such duties as may be prescribed.

8. General functions of Authority.—(*1*) It shall be the duty of the Authority to promote, by such measures as it thinks fit, the encouragement for the development of new varieties of plants and to protect the rights of the farmers and breeders.

(*2*) In particular, and without prejudice to the generality of the foregoing provisions, the measures referred to in sub-section (*1*) may provide for—

(*a*) the registration of extant varieties subject to such terms and conditions and in the manner as may be prescribed;

(*b*) developing characterisation and documentation of varieties registered under this Act;

(*c*) documentation, indexing and cataloguing of farmers' varieties;

(*d*) compulsory cataloguing facilities for all varieties of plants;

(*e*) ensuring that seeds of the varieties registered under this Act are available to the farmers and providing for compulsory licensing of such varieties if the breeder of such varieties or any other person entitled to produce such variety under this Act does not arrange for production and sale of the seed in the manner as may be prescribed;

(*f*) collecting statistics with regard to plant varieties, including the contribution of any person at any time in the evolution or development of any plant variety, in India or in any other country, for compilation and publication;

(*g*) ensuring the maintenance of the Register.

9. Authentication of orders, etc., of Authority.—All orders and decisions of the Authority shall be authenticated by the signature of the Chairperson or any other member authorised by the Authority in this behalf.

10. Delegation.—The Authority may, by general or special order in writing, delegate to the Chairperson, any member or officer of the Authority subject to such conditions or limitations, if any, as may be specified in the order, such of its powers and functions (except the power to make regulations under section 95) under this Act as it may deem necessary.

11. Power of Authority.—In all proceedings under this Act before the Authority or the Registrar,—

(*a*) the Authority or the Registrar, as the case may be, shall have all the powers of a civil court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, compelling the discovery and production of documents and issuing commissions for the examination of witnesses;

(*b*) the Authority or the Registrar may, subject to any rules made in this behalf under this Act, make such orders as to cost as it considers reasonable and any such order shall be executable as a decree of a civil court.

Registry

12. Registry and offices thereof.—(*1*) The Central Government shall establish, for the purpose of this Act, a Registry which shall be known as the Plant Varieties Registry.

(*2*) The head office of the Plant Varieties Registry shall be located in the head office of the Authority, and for the purpose of facilitating the registration of varieties, there may be established, at such places, as the Authority may think fit, branch offices of the Registry.

(*3*) The Authority shall appoint a Registrar-General of Plant Varieties who shall be entitled to such salary and allowances and shall be subject to such conditions of service in respect of leave, pension, provident fund and such other matters as may be prescribed.

(*4*) The Authority may appoint such number of Registrars as it thinks necessary for registration of plant varieties under the superintendence and direction of the Registrar-General under this Act and may make regulations with respect to their duties and jurisdiction.

(*5*) The term of office and the conditions of service of the Registrars shall be such as may be provided by regulations.

(*6*) The Authority may, by notification in the Official Gazette, define the territorial limits within which a branch office of the Registry may exercise its functions.

(*7*) There shall be a seal of the Plant Varieties Registry.

13. National Register of Plant Varieties.—(*1*) For the purposes of this Act, a Register called the National Register of Plant Varieties shall be kept at the head office of the Registry, wherein shall be entered the names of all the registered plant varieties with the names and addresses of their respective breeders, the right of such breeders in respect of the registered varieties, the particulars of the denomination of each Registered variety, its seed or other propagating material along with specification of salient features thereof and such other matters as may be prescribed.

(*2*) Subject to the superintendence and direction of the Central Government, the Register shall be kept under the control and management of the Authority.

(*3*) There shall be kept at each branch office of the Registry a copy of the Register and such other documents as the Central Government may, by notification in the Official Gazette, direct.

CHAPTER III

REGISTRATION OF PLANT VARIETIES AND ESSENTIALLY DERIVED VARIETY

Application for registration

14. Application for registration.—Any person specified in section 16 may make an application to the Registrar for registration of any variety—

(*a*) of such genera and species as specified under sub-section (*2*) of section 29; or

(*b*) which is an extant variety; or

(*c*) which is a farmers' variety.

15. Registrable varieties.—(*1*) A new variety shall be registered under this Act if it conforms to the criteria of novelty, distinctiveness, uniformity and stability.

(*2*) Notwithstanding anything contained in sub-section (*1*), an extant variety shall be registered under this Act within a specified period if it conforms to such criteria of distinctiveness, uniformity and stability as shall be specified under the regulations.

(*3*) For the purposes of sub-sections (*1*) and (*2*), as the case may be, a new variety shall be deemed to be—

(*a*) novel, if, at the date of filing of the application for registration for protection, the propagating or harvested material of such variety has not been sold or otherwise disposed of by or with the consent of its breeder or his successor for the purposes of exploitation of such variety—

(*i*) in India, earlier than one year; or

(*ii*) outside India, in the case of trees or vines earlier than six years, or in any other case, earlier than four years,

before the date of filing such application:

Provided that a trial of a new variety which has not been sold or otherwise disposed of shall not affect the right to protection:

Provided further that the fact that on the date of filing the application for registration, the propagating or harvested material of such variety has become a matter of common knowledge other than through the aforesaid manner shall not affect the criteria of novelty for such variety;

(*b*) distinct, if it is clearly distinguishable by at least one essential characteristic from any another variety whose existence is a matter of common knowledge in any country at the time of filing of the application.

Explanation.—For the removal of doubts, it is hereby declared that the filing of an application for the granting of a breeder's right to a new variety or for entering such variety in the official register of varieties in any convention country shall be deemed to render that variety a matter of common knowledge from the date of the application in case the application leads to the granting of the breeder's right or to the entry of such variety in such official register, as the case may be;

(*c*) uniform, if subject to the variation that may be expected from the particular features of its propagation it is sufficiently uniform in its essential characteristics;

(*d*) stable, if its essential characteristics remain unchanged after repeated propagation or, in the case a particular cycle of propagation, at the end of each such cycle.

(*4*) A new variety shall not be registered under this Act if the denomination given to such variety—

(*i*) is not capable of identifying such variety; or

(*ii*) consists solely of figures; or

(*iii*) is liable to mislead or to cause confusion concerning the characteristics, value identity of such variety or the identity of breeder of such variety; or

(*iv*) is not different from every denomination which designates a variety of the same botanical species or of a closely related species registered under this Act; or

(*v*) is likely to deceive the public or cause confusion in the public regarding the identity of such variety; or

(*vi*) is likely to hurt the religious sentiments respectively of any class or section of the citizens of India; or

(*vii*) is prohibited for use as a name or emblem for any of the purposes mentioned in section 3 of the Emblems and Names (Prevention of Improper Use) Act, 1950 (12 of 1950); or

(*viii*) is comprised of solely or partly of geographical name:

Provided that the registrar may register a variety, the denomination of which comprises solely or partly of a geographical name, if he considers that the use of such denomination in respect of such variety is an honest use under the circumstances of the case.

16. Persons who may make application.—(*1*) An application for registration under section 14 shall be made by—

(*a*) any person claiming to be the breeder of the variety; or

(*b*) any successor of the breeder of the variety; or

(*c*) any person being the assignee of the breeder of the variety in respect of the right to make such application; or

(*d*) any farmer or group of farmers or community of farmers claiming to be the breeder of the variety; or

(*e*) any person authorised in the prescribed manner by a person specified under clauses (*a*) to (*d*) to make application on his behalf; or

(*f*) any university or publicly funded agricultural institution claiming to be the breeder of the variety.

(*2*) An application under sub-section (*1*) may be made by any of the persons referred to therein individually or jointly with any other person.

17. Compulsory variety denomination.—(*1*) Every application shall assign a single and distinct denomination to a variety with respect to which he is seeking registration under this Act in accordance with the regulations.

(*2*) The Authority shall, having regard to the provisions of any international convention or treaty to which India has become a party, make regulation governing the assignment of denomination to a variety.

(*3*) Where the denomination assigned to the variety does not satisfy the requirements specified in the regulations, the Registrar may require the applicant to propose another denomination within such time as may be specified by such regulations.

(*4*) Notwithstanding anything contained in the Trade Marks Act, 1999 (47 of 1999), a denomination assigned to a variety shall not be registered as a trade mark under that Act.

18. Form of application.—(*1*) Every application for registration under section 14 shall—

(*a*) be with respect to a variety;

(*b*) state the denomination assigned to such variety by the applicant;

(*c*) be accompanied by an affidavit sworn by the applicant that such variety does not contain any gene or gene sequence involving terminator technology;

(*d*) be in such form as may be specified by regulations;

(*e*) contain a complete passport data of the parental lines from which the variety has been derived along with the geographical location in India from where the genetic material has been taken and all such information relating to the contribution, if any, of any farmer, village community, institution or organisation in breeding, evolving or developing the variety;

(*f*) be accompanied by a statement containing a brief description of the variety bringing out its characteristics of novelty, distinctiveness, uniformity and stability as required for registration;

(*g*) be accompanied by such fees as may be prescribed;

(*h*) contain a declaration that the genetic material or parental material acquired for breeding, evolving or developing the variety has been lawfully acquired; and

(*i*) be accompanied by such other particulars as may be prescribed:

Provided that in case where the application is for the registration of farmers' variety, nothing contained in clauses (*b*) to (*i*) shall apply in respect of the application and the application shall be in such form as may be prescribed.

(*2*) Every application referred to in sub-section (*1*) shall be filed in the office of the Registrar.

(*3*) Where such application is made by virtue of a succession or an assignment of the right to apply for registration, there shall be furnished at the time of making the application, or within such period after making the application as may be prescribed, a proof of the right to make the application.

19. Test to be conducted.—(*1*) Every applicant shall, along with the application for registration made under this Act, make available to the Registrar such quantity of seed of a variety for registration of which such application is made, for the purpose of conducting tests to evaluate whether seed of such variety along with parental material conform to the standards as may be specified by regulations:

Provided that the Registrar or any person or test centre to whom such seed has been sent for conducting test shall keep such seed during his or its possession in such manner and in such condition that its viability and quality shall remain unaltered.

(*2*) The applicant shall deposit such fees as may be prescribed for conducting tests referred to in sub-section (*1*).

(*3*) The tests referred to in sub-section (*1*) shall be conducted in such manner and by such method as may be prescribed.

20. Acceptance of application or amendment thereof.—(*1*) On receipt of an application under section 14, the Registrar may, after making such inquiry as he thinks fit with respect to the particulars contained in such application, accept the application absolutely or subject to such conditions or limitations as he deems fit.

(*2*) Where the Registrar is satisfied that the application does not comply with the requirements of this Act or any rules or regulations made thereunder, he may, either—

(*a*) require the applicant to amend the application to his satisfaction; or

(*b*) reject the application:

Provided that no application shall be rejected unless the applicant has been given a reasonable opportunity of presenting his case.

21. Advertisement of application.—(*1*) Where an application for registration of a variety has been accepted absolutely or subject to conditions or limitations under sub-section (*1*) of section 20, the Registrar shall, as soon as after its acceptance, cause such application together with the conditions or limitations, if any, subject to which it has been accepted and the specifications of the variety for registration of which such application is made including its photographs or drawings, to be advertised in the prescribed manner calling objections from the persons interested in the matter.

(*2*) Any person may, within three months from the date of the advertisement of an application for registration on payment of the prescribed fees, give notice in writing in the prescribed manner, to the Registrar of his opposition to the registration.

(*3*) Opposition to the registration under sub-section (*2*) may be made on any of the following grounds, namely:—

(*a*) that the person opposing the application is entitled to the breeder's right as against the applicant; or

(*b*) that the variety is not registrable under this Act; or

(*c*) that the grant of certificate of registration may not be in public interest; or

(*d*) that the variety may have adverse effect on the environment.

(*4*) The Registrar shall serve a copy of the notice of opposition on the applicant for registration and, within two months from the receipt by the applicant of such copy of the notice of opposition, the applicant shall send to the Registrar in the prescribed manner a counter-statement of the grounds on which he relies for his application, and if he does not do so, he shall be deemed to have abandoned his application.

(*5*) If the applicant sends such counter-statement, the Registrar shall serve a copy thereof on the person giving notice of opposition.

(*6*) Any evidence upon which the opponent and the applicant may rely shall be submitted, in the manner prescribed and within the time prescribed, to the Registrar and the Registrar shall give an opportunity to them to be heard, if so desired.

(*7*) The Registrar shall, after hearing the parties, if so required, and considering the evidence, decide whether and subject to what conditions or limitations, if any, the registration is to be permitted and may take into account a ground of objection whether relied upon by the opponent or not.

(*8*) Where a person giving notice of opposition or an applicant sending a counter-statement after receipt of a copy of such notice neither resides nor carries on business in India, the Registrar may require him to give security for the cost of proceedings before him and in default of such security being duly given may treat the opposition or application, as the case may be, as abandoned.

(*9*) The Registrar may, on request, permit correction of any error in, or any amendment of, a notice of opposition or a counter-statement on such terms as he may think fit.

22. Registrar to consider grounds for opposition.—The Registrar shall consider all the grounds on which the application has been opposed and after giving reasons for his decision, by order, uphold or reject the opposition.

Registration of essentially derived variety

23. Registration of essentially derived variety.—(*1*) An application for the registration of an essentially derived variety of the genera or species specified under sub-section (*2*) of section 29 by the Central Government shall be made to the Registrar by or on behalf of any person referred to in section 14 and in the manner specified in section 18 as if for the word "variety", the words "essentially derived variety" have been substituted therein and shall be accompanied by such documents and fees as may be prescribed.

(*2*) When the Registrar is satisfied that the requirements of sub-section (*1*) have been complied with to his satisfaction, he shall forward the application with his report and all the relevant document to the Authority.

(3) On receipt of an application under sub-section (*2*), the Authority shall get examined such essentially derived variety to determine as to whether the essentially derived variety is a variety derived from the initial variety by conducting such tests and following such procedure as may be prescribed.

(*4*) When the Authority is satisfied on the report of the test referred to in sub-section (*3*) that the essentially derived variety has been derived from the initial variety, it may direct the Registrar to register such essentially derived variety and the Registrar shall comply with the direction of the Authority.

(*5*) Where the Authority is not satisfied on the report of the test referred to in sub-section (*3*) that the essentially derived variety has been derived from the initial variety it shall refuse the application.

(*6*) The rights of the breeder of a variety contained in section 28 shall apply to the breeder of essentially derived variety:

Provided that the authorisation by the breeder of initial variety to the breeder of essentially derived variety under sub-section (*2*) of section 28 may be subject to such terms and conditions as both the parties may mutually agree upon.

(*7*) An essentially derived variety shall not be registered under this section unless it satisfies the requirements of section 15 as if for the word "variety", the words "essentially derived variety" have been substituted therein.

(*8*) When an essentially derived variety has been registered by the Registrar in compliance with the direction of the Authority under sub-section (*4*), the Registrar shall issue to the applicant a certificate of registration in the prescribed form and sealed with seal of the Registry and send a copy thereof to the Authority and to such other authority, as may be prescribed, for information.

CHAPTER IV

DURATION AND EFFECT OF REGISTRATION AND BENEFIT SHARING

24. Issue of certificate of registration.—(*1*) When an application for registration of a variety (other than an essentially derived variety) has been accepted and either—

(*a*) the application has not been opposed and the time of notice of opposition has expired; or

(*b*) the application has been opposed and opposition has been rejected,

the Registrar shall register the variety.

(*2*) On the registration of the variety (other than an essentially derived variety), the Registrar shall issue to the applicant a certificate of registration in the prescribed form and sealed with the seal of the Registry and send a copy to the Authority for determination of benefit sharing and to such other authority, as may be prescribed, for information. The maximum time required by the Registrar for issuing the certificate of registration from the date of filing of the application for registration of a variety shall be such as may be prescribed.

(*3*) Where registration of a variety (other than an essentially derived variety), is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice to the applicant in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf in the notice.

(*4*) The Registrar may amend the register or a certificate of registration for the purpose of correcting a clerical error or an obvious mistake.

(*5*) The Registrar shall have power to issue such directions to protect the interests of a breeder against any abusive act committed by any third party during the period between filing of application for registration and decision taken by the Authority on such application.

(*6*) The certificate of registration issued under this section or sub-section (*8*) of section 23 shall be valid for nine years in the case of trees and vines and six years in the case of other crops and may be reviewed and renewed for remaining period on payment of such fees as may be fixed by the rules made in this behalf subject to the condition that the total period of validity shall not exceed,—

(*i*) in the case of trees and vines, eighteen years from the date of registration of the variety;

(*ii*) in the case of extant variety, fifteen years from the date of the notification of that variety by the Central Government under section 5 of the Seeds Act**,** 1966 (54 of 1966); and

(*iii*) in other cases, fifteen years from the date of registration of the variety.

25. Publication of list of varieties.—The Authority shall, within such intervals as it thinks appropriate, publish the list of varieties which have been registered during that interval.

26. Determination of benefit sharing by Authority.—(*1*) On receipt of a copy of the certificate of registration under sub-section (*8*) of section 23 or sub-section (*2*) of section 24, the Authority shall publish such contents of the certificate and invite claims of benefit sharing to the variety registered under such certificate in the manner as may be prescribed.

(*2*) On invitation of the claims under sub-section (*1*), any person or group of persons or firm or governmental or non-governmental organisation shall submit its claim of benefit sharing to such variety in the prescribed form within such period, and accompanied with such fees, as may be prescribed:

Provided that such claim shall only be submitted by any—

(*i*) person or group of persons, if such person or every person constituting such group is a citizen of India; or

(*ii*) firm or governmental or non-governmental organisation, if such firm or organisation is formed or established in India.

(*3*) On receiving a claim under sub-section (*2*), the Authority shall send a copy of such claim to the breeder of the variety registered under such certificate and the breeder may, on receipt of such copy, submit his opposition to such claim within such period and in such manner as maybe prescribed.

(*4*) The Authority shall, after giving an opportunity of being heard to the parties, dispose of the claim received under sub-section (*2*).

(*5*) While disposing of the claim under sub-section (*4*), the Authority shall explicitly indicate in its order the amount of the benefit sharing, if any, for which the claimant shall be entitled and shall take into consideration the following matters, namely:—

(*a*) the extent and nature of the use of genetic material of the claimant in the development of the variety relating to which the benefit sharing has been claimed;

(*b*) the commercial utility and demand in the market of the variety relating to which the benefit sharing has been claimed.

(*6*) The amount of benefit sharing to a variety determined under this section shall be deposited by the breeder of such variety in the manner referred to in clause (*a*) of sub-section (*1*) of section 45 in the National Gene Fund.

(*7*) The amount of benefit sharing determined under this section shall, on a reference made by the Authority in the prescribed manner, be recoverable as an arrear of land revenue by the District Magistrate within whose local limits of jurisdiction the breeder liable for such benefit sharing resides.

27. Breeder to deposit seeds or propagating material.—(*1*) The breeder shall be required to deposit such quantity of seeds or propagating material including parental line seeds of registered variety in the National Gene Bank as may be specified in the regulations for reproduction purpose at the breeder's expense within such time as may be specified in that regulation.

(*2*) The seeds or propagating material or parental line seeds to be deposited under sub-section (*1*) shall be deposited to the National Gene Bank specified by the Authority.

28. Registration to confer right.—(*1*) Subject to the other provisions of this Act, a certificate of registration for a variety issued under this Act shall confer an exclusive right on the breeder or his successor, his agent or licensee, to produce, sell, market, distribute, import or export the variety:

Provided that in the case of an extant variety, unless a breeder or his successor establishes his right, the Central Government, and in cases where such extant variety is notified for a State or for any area thereof under section 5 of the Seeds Act, 1966 (54 of 1966), the State Government, shall be deemed to be the owner of such right.

(*2*) A breeder may authorise any person to produce, sell, market or otherwise deal with the variety registered under this Act subject to such limitations and conditions as may be specified by regulations.

(*3*) Every authorisation under this section shall be in such form as may be specified by regulations.

(*4*) Where an agent or a licensee referred to in sub-section (*1*) becomes entitled to produce, sell, market, distribute, import or export a variety, he shall apply in the prescribed manner and with the prescribed fees to the Registrar to register his title and the registrar shall, on receipt of application and on proof of title to his satisfaction, register him as an agent or a licensee, as the case may be, in respect of the variety for which he is entitled for such right, and shall cause particulars of such entitlement and conditions or restrictions, if any, subject to which such entitlement is made, to be entered in the Register:

Provided that when the validity of such entitlement is in dispute between the parties, the Registrar may refuse to register the entitlement and refer the matter in the prescribed manner to the Authority and withhold the registration of such entitlement until the right of the parties in dispute so referred to has been determined by the Authority.

(*5*) The Registrar shall issue a certificate of registration under sub-section (*4*) to the application after such registration and shall enter in the certificate the brief conditions of entitlement, if any, in the prescribed manner, and such certificate shall be the conclusive proof of such entitlement and the conditions or restriction thereof, if any.

(*6*) Subject to any agreement subsisting between the parties, an agent or licensee of a right to a variety registered under sub-section (*4*) shall be entitled to call upon the breeder or his successor thereof to take proceedings to prevent infringement thereof, and if the breeder or his successor refuses or neglects to do so within three months after being so called upon, such registered agent or licensee may institute proceedings for infringement in his own name as if he were the breeder, making the breeder or his successor a defendant.

(*7*) Notwithstanding anything contained in any other law, a breeder or his successor so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

(*8*) Nothing in this section shall confer on a registered agent or registered licensee of a variety any right to transfer such right further thereof.

(*9*) Without prejudice to the registration under sub-section (*4*), the terms of registration—

(*a*) may be varied by the Registrar as regards the variety in respect of which, or any condition or restriction subject to which, it has effect on receipt of an application in the prescribed manner of the registered breeder of such variety or his successor;

(*b*) may be cancelled by the Registrar on the application in the prescribed manner of the registered breeder of such variety or his successor or of the registered agent or registered licensee of such variety;

(*c*) may be cancelled by the Registrar on the application in the prescribed manner of any person other than the breeder, his successor, the registered agent or the registered licensee on any of the following grounds, namely:—

(*i*) that the breeder of a variety or his successor or the registered agent or registered licensee of such variety, misrepresented, or failed to disclose, some fact material to the application for registration under sub-section (*4*) which if accurately represented or disclosed would have justified the refusal of the application for registration of the registered agent or registered licensee;

(*ii*) that the registration ought not to have effected having regard to the right vested in the applicant by virtue of a contract in the performance of which he is interested;

(*d*) may be cancelled by the Registrar on the application in the prescribed manner of the breeder of a registered variety or his successor on the ground that any stipulation in the agreement between the registered agent or the registered licensee, as the case may be, and such breeder or his successor regarding the variety for which such agent or licensee is registered is not being enforced or is not being complied with;

(*e*) may be cancelled by the registrar on the application of any person in the prescribed manner on the ground that the variety relating to the registration is no longer existing.

(*10*) The registrar shall issue notice in the prescribed manner of' every application under this section to the registered breeder of a variety or his successor and to each registered agent or registered licensee (not being the applicant) of such variety.

(*11*) The Registrar shall, before making any order under sub-section (*9*) forward the application made in that behalf along with any objection received by any party after notice under sub-section (*10*) for the consideration of the Authority, and the Authority may, after making such inquiry as it thinks fit, issue such directions to the Registrar as it thinks fit and the Registrar shall dispose of the application in accordance with such directions.

29. Exclusion of certain varieties—(*1*) Notwithstanding anything contained in this Act**,** no registration of a variety shall be made under this Act in cases where prevention of commercial exploitation of such variety is necessary to protect public order or public morality or human, animal and plant life and health or to avoid serious prejudice to the environment.

(*2*) The Central Government shall, by notification in the Official Gazette, specify the genera or species for the purposes of registration of varieties other than extant varieties and farmers' varieties under this Act.

(*3*) Notwithstanding anything contained under sub-section (*2*) and sub-sections (*1*) and (*2*) of section 15, no variety of any genera or species which involves any technology which is injurious to the life or health of human beings, animals or plants shall be registered under this Act. .

Explanation.—For the purposes of this sub-section, the expression "any technology" includes genetic use restriction technology and terminator technology.

(*4*) The Central Government shall not delete any genera or species from the list of genera or species specified in a notification issued under sub-section (*2*) except in the public interest.

(*5*) Any variety belonging to the genera or species excluded under sub-section (*4*) shall not be eligible for any protection under this Act.

30. Researcher's rights—Nothing contained in this Act shall prevent—

(*a*) the use of any variety registered under this Act by any person using such variety for conducting experiment or research; or

(*b*) the use of a variety by any person as an initial source of variety for the purpose of creating other varieties:

Provided that the authorisation of the breeder of a registered variety is required where the repeated use of such variety as a parental line is necessary for commercial production of such other newly developed variety.

31. Special provisions relating to application for registration from citizens of convention countries.—(*1*) With a view to the fulfilment of a treaty, convention or arrangement with any country outside India which affords to citizens of India similar privileges as granted to its own citizens, the Central Government may, by notification in the Official Gazette, declare such country to be a convention country for the purposes of this Act.

(*2*) Where a person has made an application for the granting of a breeder's right to a variety or for entering such variety in the official register of varieties in a convention country and that person, or any person entitled to make application on his behalf under section 14 or section 23, makes an application for the registration of such variety in India within twelve months after the date on which the application was made in the convention country, such variety shall, if registered under this Act, be registered as of the date on which the application was made in the convention country and that date shall be deemed for the purposes of this Act to be the date of registration.

(*3*) Where applications have been made for granting of a breeder's right to a variety, or for entering such variety in the official register of varieties in two or more convention countries, the period of twelve months referred to in sub-section (*2*) shall be reckoned from the date on which the earlier or earliest of those applications were made.

(*4*) Nothing in this Act shall entitle the breeder of a registered variety to infringement of rights other than protected under this Act which took place prior to the date of application of registration under this Act.

32. Provisions as to reciprocity.—Where any country declared by the Central Government in this behalf by notification in the Official Gazette under sub-section (*1*) of section 31 does not accord to citizens of India the same rights in respect of the registration and protection of a variety, as it accords to its own nationals, no nationals of such country shall be entitled, either solely or jointly with any other person, to apply for the registration of a variety or be entitled to get a variety registered under this Act**.**

CHAPTER V

SURRENDER AND REVOCATION OF CERTIFICATE AND RECTIFICATION AND CORRECTION OF REGISTER

33. Surrender of certificate of registration.—(*1*) A breeder of a variety registered under this Act may, at any time by giving notice in the prescribed manner to the Registrar, offer to surrender his certificate of registration.

(*2*) Where such an offer is made, the Registrar shall notify in the prescribed manner every registered agent or registered licensee relating to such certificate.

(*3*) Any of such agent or licensee may, within the prescribed period after such notification, give notice to the Registrar of his opposition to the surrender and where any such notice is given, the Registrar shall intimate the contents of such notice to the breeder of such variety.

(*4*) If the Registrar is satisfied after hearing the applicant and all the opponents, if desirous of being heard, that the certificate of registration may properly be surrendered, he may accept the offer and by order revoke the certificate of registration.

34. Revocation of protection on certain grounds.—Subject to the provisions contained in this Act, the protection granted to a breeder in respect of a variety may, on the application in the prescribed manner of any person interested, be revoked by the Authority on any of the following grounds, namely:—

(*a*) that the grant of the certificate of registration has been based on incorrect information furnished by the applicant;

(*b*) that the certificate of registration has been granted to a person who is not eligible for protection under this Act;

(*c*) that the breeder did not provide the Registrar with such information, documents or material as required for registration under this Act;

(*d*) that the breeder has failed to provide an alternative denomination of the variety which is the subject matter of the registration to the Registrar in case where the earlier denomination of such variety provided to the Registrar is not permissible for registration under this Act;

(*e*) that the breeder did not provide the necessary seeds or propagating material to the person to whom compulsory licence has been issued under section 47 regarding the variety in respect of which registration certificate has been issued to such breeder;

(*f*) that the breeder has not complied with the provisions of this Act or rules or regulations made thereunder;

(*g*) that the breeder has failed to comply with the directions of the Authority issued under this Act;

(*h*) that the grant of the certificate of registration is not in the public interest:

Provided that no such protection shall be revoked unless the breeder is given a reasonable opportunity to file objection and of being heard in the matter.

35. Payment of annual fees and forfeiture of registration in default thereof.—(*1*) The Authority may, with the prior approval of the Central Government, by notification in the Official Gazette, impose a fees to be paid annually, by every breeder of a variety, agent and licensee thereof registered under this Act determined on the basis of benefit or royalty gained by such breeder, agent or licensee, as the case may be, in respect of the variety, for the retention of their registration under this Act.

(*2*) If any breeder, agent or licensee fails to deposit the fees referred to in sub-section (*1*) imposed upon him under that sub-section in the prescribed manner up to two consecutive years, the Authority shall issue notice to such breeder, agent or licensee and on service of such notice if he fails to comply with the direction in the notice, the Authority shall declare all the protection admissible under registration certificate issued to such breeder or agent or licensee forfeited.

(*3*) The arrears of fees imposed under sub-section (*1*) shall be deemed to be arrears of land revenue and shall be recoverable accordingly.

36. Power to cancel or change registration and to rectify the Register—(*1*) On an application made in the prescribed manner to the Registrar by any person aggrieved, the Registrar may make such order as he may think fit for cancelling or changing any certificate of registration issued under this Act on the ground of any contravention of the provisions of this Act or failure to observe a condition subject to which such registration certificate is issued.

(*2*) Any person aggrieved by the absence or omission from the Register of any entry, or by any entry made in the Register without sufficient cause, or by any entry wrongly remaining on the Register, may apply in the prescribed manner to the Registrar and the Registrar may make such order for making, expunging or varying the entry as he may think fit.

(*3*) The Registrar may, in any proceeding under this section, decide any question that may be necessary or expedient to decide in connection with the rectification of the Register.

(*4*) The Registrar on his own motion may, after giving notice in the prescribed manner to the parties concerned and after giving them an opportunity of being heard, make any order referred to in sub-section (*1*) or sub-section (*2*).

37. Correction of Register.—(*1*) The Registrar may, on an application in the prescribed manner by the breeder of a variety registered under this Act,—

(*a*) correct any error in the Register in the name, address or description of such breeder or any other entry relating to such variety;

(*b*) enter in the Register any change in the name, address or description of such breeder;

(*c*) cancel the entry in the Register of the variety in respect of which such application is made; and may make any consequential amendment or alteration in the certificate of registration and for that purpose require the certificate of registration to be produced to him.

(*2*) The Registrar may, on application made in the prescribed Register by a registered agent or a registered licensee of a variety and after notice to the registered breeder of such variety, correct any error, or enter any change, in the name, address or description of such registered agent or registered licensee, as the case may be, in the Register or certificate of registration under this Act.

38. Alteration of denomination of a registered variety.—(*1*) The breeder of a variety registered under this Act may apply in the prescribed manner to the Registrar to delete any part or to add to or alter the denomination of such variety in any manner not substantially affecting the identity thereof, and the Registrar may refuse leave or may grant it on such terms and subject to such limitations as he may think fit to avoid any conflict with the rights of other breeders of the varieties registered under this Act.

(*2*) The Registrar may cause an application under this section to be advertised in the prescribed manner in any case where it appears to him that it is expedient so to do, and where he does so, if within the prescribed time from the date of the advertisement any person gives notice to the Registrar in the prescribed manner of opposition to the application, the Registrar shall, after hearing the parties if so required, decide the matter.

(*3*) Where leave is granted under this section, the denomination of the variety as altered shall be advertised in the prescribed manner, unless the application has already been advertised under sub-section (*2*).

CHAPTER VI

FARMERS' RIGHTS

39. Farmers' rights.—(*1*) Notwithstanding anything contained in this Act,—

(*i*) a farmer who has bred or developed a new variety shall be entitled for registration and other protection in like manner as a breeder of a variety under this Act;

(*ii*) the farmers' variety shall be entitled for registration if the application contains declarations as specified in clause (*h*) of sub-section (*1*) of section 18;

(*iii*) a farmer who is engaged in the conservation of genetic resources of land races and wild relatives of economic plants and their improvement through selection and preservation shall be entitled in the prescribed manner for recognition and reward from the Gene Fund:

Provided that material so selected and preserved has been used as donors of genes in varieties registrable under this Act;

(*iv*) a farmer shall be deemed to be entitled to save, use, sow resow, exchange, share or sell his farm produce including seed of a variety protected under this Act in the same manner as he was entitled before the coming into force of this Act:

Provided that the farmer shall not be entitled to sell branded seed of a variety protected under this Act.

Explanation.—For the purpose of clause (*iv*), "branded seed" means any seed put in a package or any other container and labelled in a manner indicating that such seed is of a variety protected under this Act.

(*2*) Where any propagating material of a variety registered under this Act has been sold to a farmer or a group of farmers or any organisation of farmers, the breeder of such variety shall disclose to the farmer or the group of farmers or the organisation of farmers, as the case may be, the expected performance under given conditions, and if such propagating material fails to provide such performance under such given conditions, the farmer or the group of farmers or the organisation of farmers, the case may be, may claim compensation in the prescribed manner before the Authority and the Authority, after giving notice to the breeder of the variety and after providing him an opportunity to file opposition in the prescribed manner and after hearing the parties, may direct the breeder of the variety to pay such compensation as it deems fit, to the farmer or the group of farmers or the organisation of farmers, as the case may be.

40. Certain information to be given in application registration.—(*1*) A breeder or other person making application for registration of any variety under Chapter III shall disclose in the application the information regarding the use of genetic material conserved by any tribal or rural families in the breeding or development of such variety.

(*2*) If the breeder or such other person fails to disclose any information under sub-section (*1*), the Registrar may, after being satisfied that the breeder or such person has wilfully and knowingly concealed such information, reject the application for registration.

41. Rights of communities.—(*1*) Any person or group of persons (whether actively engaged in farming or not) or any governmental or non-governmental organisation may, on behalf of any village or local community in India, file in any centre notified, with the previous approval of the Central Government, by the Authority, in the Official Gazette, any claim attributable to the contribution of the people of that village or local community, as the case may be, in the evolution of any variety for the purpose of staking a claim on behalf of such village or local community.

(*2*) Where any claim is made under sub-section (*1*), the centre notified under that sub-section may verify the claim made by such person or group of persons or such governmental or non-governmental organisation in such manner as it deems fit, and if it is satisfied that such village or local community has contributed significantly to the evolution of the variety which has been registered under this Act, it shall report its findings to the Authority.

(*3*) When the Authority, on a report under sub-section (*2*) is satisfied, after such inquiry as it may deem fit, that the variety with which the report is related has been registered under the provisions of this Act, it may issue notice in the prescribed manner to the breeder of that variety and after providing opportunity to such breeder to file objection in the prescribed manner and of being heard, it may subject to any limit notified by the Central Government, by order, grant such sum of compensation to be paid to a person or group of persons or governmental or non-governmental organisation which has made claim under sub-section (*1*), as it may deem fit.

(*4*) Any compensation granted under sub-section (*3*) shall be deposited by the breeder of the variety in the Gene Fund.

(*5*) The compensation granted under sub-section (*3*) shall be deemed to be an arrear of land revenue and shall be recoverable by the Authority accordingly.

42. Protection of innocent infringement.—Notwithstanding anything contained in this Act,—

(*i*) a right established under this Act shall not be deemed to be infringed by a farmer who at the time of such infringement was not aware of the existence of such right; and

(*ii*) a relief which a court may grant in any suit for infringement referred to in section 65 shall not be granted by such court, nor any cognizance of any offence under this Act shall be taken, for such infringement by any court against a farmer who proves, before such court, that at the time of the infringement he was not aware of the existence of the right so infringed.

43. Authorisation of farmers' variety.—Notwithstanding anything contained in sub-section (*6*) of section 23 and section 28, where an essentially derived variety is derived from a farmers' variety, the authorisation under sub-section (*2*) of section 28 shall not be given by the breeder of such farmers' variety except with the consent of the farmers or group of farmers or community of farmers who have made contribution in the preservation or development of such variety.

44. Exemption from fees.—A farmer or group of farmers or village community shall not be liable to pay any fees in any proceeding before the Authority or Registrar or the Tribunal or the High Court under this Act or the rules made thereunder.

Explanation.—For the purposes of this section, "fees in any proceeding" includes any fees payable for inspection of any document or for obtaining a copy of any decision or order or document under this Act or the rules made thereunder.

45. Gene Fund.—(*1*) The Central Government shall constitute a Fund to be called the National Gene Fund and there shall be credited thereto—

(*a*) the benefit sharing received in the prescribed manner from the breeder of a variety or an essentially derived variety registered under this Act, or propagating material of such variety or essentially derived variety, as the case may be;

(*b*) the annual fees payable to the Authority by way of royalty under sub-section (*1*) of section 35;

(*c*) the compensation deposited in the Gene Fund under sub-section (*4*) of section 41;

(*d*) the contribution from any national and international organisation and other sources.

(*2*) The Gene Fund shall, in the prescribed manner, be applied for meeting—

(*a*) any amount to be paid by way of benefit sharing under sub-section (*5*) of section 26;

(*b*) the compensation payable under sub-section (*3*) of section 41;

(*c*) the expenditure for supporting the conservation and sustainable use of genetic resources including *in-situ* and *ex-situ* collections and for strengthening the capability of the Panchayat in carrying out such conservation and sustainable use;

(*d*) the expenditures of the schemes relating to benefit sharing framed under section 46.

46. Framing of schemes, etc.—(*1*) The Central Government shall, for the purposes of section 41 and clause (*d*) of sub-section (*2*) of section 45, frame, by notification in the Official Gazette, one or more schemes.

(*2*) In particular, and without prejudice to the generality of the provisions of sub-section (*1*), the scheme may provide for all or any of the following matters, namely:—

(*a*) the registration of the claims for the purposes of section 41 under the scheme and all matters connected with such registration;

(*b*) the processing of such claims for securing their enforcement and matters connected therewith;

(*c*) the maintenance of records and Registers in respect of such claims;

(*d*) the utilisation, by way of disbursal (including apportionment) or otherwise, of any amounts received in satisfaction of such claims;

(*e*) the procedure for disbursal or apportionment by the Authority in the event of dispute regarding such claims;

(*f*) the utilisation of benefit sharing for the purposes relating to breeding, discovery or development of varieties;

(*g*) the maintenance and audit of accounts with respect to the amounts referred to in clause (*d*).

CHAPTER VII

COMPULSORY LICENCE

47. Power of Authority to make order for compulsory licence in certain circumstances.—(*1*) At any time, after the expiry of three years from the date of issue of a certificate of registration of a variety, any person interested may make an application to the Authority alleging that the reasonable requirements of the public for seed or other propagating material of the variety have not been satisfied or that the seed or other propagating material of the variety is not available to the public at a reasonable price and pray for the grant of a compulsory licence to undertake production, distribution and sale of the seed or other propagating material of that variety.

(*2*) Every application under sub-section (*1*) shall contain a statement of the nature of the applicant's interest together with such particulars as may be prescribed and the facts upon which the application is based.

(*3*) The Authority, after consultation with Central Government, and if satisfied after giving an opportunity to the breeder of such variety, to file opposition and after hearing the parties, on the issue that the reasonable requirements of the public with respect to the variety have not been satisfied or that the seed or other propagating material of the variety is not available to the public at a reasonable price, may order such breeder to grant a licence to the applicant upon such terms and conditions as it may deem fit and send a copy of such order to the Registrar to register the title of such applicant as licensee under sub-section (*4*) of section 28 on payment of such fees by the applicant as is referred to in that sub-section.

48. When requirement of public deemed to have not been satisfied.—In determining the question as to whether the reasonable requirements of the public for seeds of a variety or its propagating material as referred to in sub-section (*1*) or sub-section (*3*) of section 47, the Authority shall take into account—

(*i*) the nature of the variety, the time which has elapsed since the grant of the certificate of registration of the variety, price of the seed of the variety and the measures taken by the breeder or any registered licensee of the variety to meet the requirement of the public; and

(*ii*) the capacity, ability and technical competence of the applicant to produce and market the variety to meet the requirement of the public.

49. Adjournment of application for grant of compulsory licence.—(*1*) If the breeder of a variety registered under this Act in respect of which any application has been pending before the Authority under section 47 makes a written request to the Authority on the ground that due to any reasonable factor, such breeder has been unable to produce seed or other propagating material of the variety on a commercial scale to an adequate extent till the date of making such request, the Authority may, on being satisfied that the said ground is reasonable, adjourn the hearing of such application for such period not exceeding twelve months in aggregate as it may consider sufficient for optimum production of the seed or propagating material of such variety, as the case may be, by such breeder.

(*2*) No adjournment of the application under sub-section (*1*) shall be granted unless the Authority is satisfied that the breeder of the variety registered under this Act in respect of which such application is made, has taken immediate measures to meet the reasonable requirements of the public for the seed or other propagating material of such variety.

50. Duration of compulsory licence.—The Authority shall determine the duration of the compulsory licences granted under this Chapter and such duration may vary from case to case keeping in view the gestation periods and other relevant factors but in any case it shall not exceed the total remaining period

of the protection of that variety and when a compulsory licence is granted the prescribed authority shall, in the prescribed manner make available to the licensee of such compulsory licence, the reproductive material of the variety relating to such compulsory licence stored in the National Gene Bank or any other centre.

51. Authority to settle terms and conditions of licence.—(*1*) The Authority shall, while determining the terms and conditions of a compulsory licence under the provisions of this Chapter, endeavour to secure—

(*i*) reasonable compensation to the breeder of the variety relating to the compulsory licence having regard to the nature of the variety, the expenditure incurred by such breeder in breeding the variety or for developing it, and other relevant factors;

(*ii*) that the compulsory licensee of such variety possesses the adequate means to provide to the farmers, the seeds or its other propagating material of such variety timely and at reasonable market price.

(*2*) No compulsory licence granted by the Authority shall authorise the licensee to import the variety relating to such licence or any seed or other propagating material of such variety from abroad where such import would constitute an infringement of the rights of the breeder of such variety.

52. Revocation of compulsory licence.—(*1*) The Authority, may on its own motion or on application from an aggrieved person made to it in the prescribed form, if it is satisfied that a compulsory licensee registered under this Chapter has violated any terms or conditions of his licence or it is not appropriate to continue further such licence in public interest, it may after giving such licensee an opportunity to file opposition and of being heard make order to revoke such licence.

(*2*) When a licence is revoked under sub-section (*1*) by an order of the Authority, the Authority shall send a copy of such order to the Registrar to rectify the entry or correct the Register relating to such revocation and the Registrar shall rectify the entry or correct the Register accordingly.

53. Modification of compulsory licence.—The Authority may, on its own motion or on application from licensee of a compulsory licence, after providing the opportunity of being heard to the breeder of the variety registered under this Act relating to such compulsory licence, if it considers, in public interest, so to do, modify, by order, such terms and conditions as it thinks fit and send a copy of such order to the Registrar to correct the entries and Register according to such modification and the Registrar shall ensure such corrections to be made accordingly.

CHAPTER VIII

PLANT VARIETIES PROTECTION APPELLATE TRIBUNAL

54. Tribunal.—The Central Government may, by notification in the Official Gazette, establish a Tribunal to be known as the Plant Varieties Protection Appellate Tribunal to exercise the jurisdiction, powers and authority conferred on it by or under this Act.

55. Composition of Tribunal.—(*1*) The Tribunal shall consist of a Chairman and such number of Judicial Members and Technical Members as the Central Government may deem fit to appoint.

(*2*) A Judicial Member shall be a person who has for at least ten years held a judicial office in the territory of India or who has been a member of the Indian Legal Service and has held a post in Grade-II of that Service or any equivalent or higher post for at least three years or who has been an advocate for at least twelve years.

Explanation.—For the purposes of this sub-section,—

(*i*) in computing the period during which a person has held judicial office in the territory of India, there shall be included any period, after he has held any judicial office, during which the person has been an advocate or has held the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law;

(*ii*) in computing the period during which a person has been an advocate, there shall be included any period during which the person has held judicial office or the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law after he became an advocate.

(*3*) A Technical Member shall be a person who is an eminent agricultural scientist in the field of plant breeding and genetics and possesses an experience of at least twenty years to deal with plant variety or seed development activity, or who has held the post in the Central Government or a State Government dealing with plant variety or seed development equivalent to the Joint Secretary to the Government of India for at least three years and possesses the special knowledge in the field of plant breeding and genetics.

(*4*) The Central Government shall appoint a Judicial Member of the Tribunal to be the Chairman thereof.

(*5*) The Central Government may appoint one of the Members of the Tribunal to be the senior Member thereof.

(*6*) The senior Member or a Member shall exercise such of the powers and perform such of the functions of the Chairman as may be delegated to him by the Chairman by a general or special order in writing.

56. Appeals to Tribunal.—(*1*) An appeal shall be preferred to the Tribunal within the prescribed period from any—

(*a*) order or decision of the Authority or Registrar, relating to registration of a variety; or

(*b*) order or decision of the Registrar relating to registration as an agent or a licensee of a variety; or

(*c*) order or decision of the Authority relating to claim for benefit sharing; or

(*d*) order or decision of the Authority regarding revocation of compulsory licence or modification of compulsory licence; or

(*e*) order or decision of the Authority regarding payment of compensation, made under this Act or rules made thereunder.

(*2*) Every such appeal shall be preferred by a petition in writing and shall be in such form and shall contain such particulars as may be prescribed.

(*3*) The Tribunal in disposing of an appeal under this section shall have the power to make any order which the Authority or the Registrar could make under this Act.

57. Orders of Tribunal.—(*1*) The Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit.

(*2*) The Tribunal may, at any time within thirty days from the date of the order, with a view to rectifying the mistake apparent from the record, amend any order passed by it under sub-section (*1*), and make such amendment if the mistake is brought to its notice by the appellant or the opposite party.

(*3*) In every appeal, the Tribunal may, where it is possible, hear and decide such appeal within a period of one year from the date of filing of the appeal.

(*4*) The Tribunal shall send a copy of any order passed under this section to the Registrar.

(*5*) The orders of the Tribunal under this Act shall be executable as a decree of a civil court.

58. Procedure of Tribunal.—(*1*) The powers and functions of the Tribunal may be exercised and discharged by Benches constituted by the Chairman of the Tribunal from among the Members thereof.

(*2*) A Bench shall consist of one Judicial Member and one Technical Member.

(*3*) If the Members of a Bench differ in opinion on any point, they shall state the point or points on which they differ, and the case shall be referred to the Chairman for hearing on such point or points by one or more of the other Members and such point or points shall be decided according to the opinion of the majority of the Members who have heard the case, including those who first heard it.

(*4*) Subject to the provisions of this Act, the Tribunal shall have power to regulate its own procedure and the procedure of Benches thereof in all matters arising out of the exercise of its powers or the discharge of its functions, including the places at which the Benches shall holding their sittings.

(*5*) The Tribunal shall, for the purpose of discharging its functions, have all the powers which are vested in the Registrar under section 11, and any proceeding before the Tribunal shall be deemed to be a judicial proceeding within the measuring of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code (45 of 1860), and the Tribunal shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) Notwithstanding anything contained in any other provisions of this Act or in any other law for the time being in force, no interim order (whether by way of injunction or stay or any other manner) shall be made on, or in, any proceedings relating to an appeal unless—

(*a*) copies of such appeal and of all documents in support of the plea for such interim order are furnished to the party against whom such appeal is made or proposed to be made; and

(*b*) opportunity is given to such party to be heard in the matter.

59. Transitional provision.—Notwithstanding anything contained in this Act, till the establishment of the Tribunal under section 54, the Intellectual Property Appellate Board established under section 83 of the Trade Marks Act, 1999 (47 of 1999) shall exercise the jurisdiction, powers and authority conferred on the Tribunal under this Act subject to the modification that in any Bench of such Intellectual Property Appellate Board constituted for the purposes of this section, for the Technical Member referred to in sub-section (*2*) of section 84 of the Trade Marks Act, the Technical Member shall be appointed under this Act and he shall be deemed to be the Technical Member for constituting the Bench under the said sub-section (*2*) of section 84 for the purposes of this Act.

CHAPTER IX

FINANCE, ACCOUNTS AND AUDIT

60. Grants by Central Government.—The Central government may, after due appropriation made by Parliament by law in this behalf, make to the Authority grants and loans of such sums of money as the Central Government may think fit for being utilised for the purposes of this Act.

61. Authority Fund.—(*1*) There shall be constituted a fund to be called the Protection of Plant Varieties Authority Account and there shall be credited thereto—

(*a*) all grants and loans made to the Authority by the Central Government under section 60;

(*b*) all fees received by the Authority and the Registrars except the annual fees determined on the basis of benefit or royalty under sub-section (*1*) of section 35;

(*c*) all sums received by the Authority from such other sources as may be decided upon by the Central Government.

(*2*) The Protection of Plant Varieties Authority Account shall be applied for meeting—

(*a*) the salaries, allowances and other remuneration of the Chairperson, officers and other employees of the Authority and allowances, if any, payable to the members;

(*b*) the other expenses of the Authority in connection with the discharge of its functions and for purposes of this Act.

62. **Budget, accounts and audit.—**(*1*) The Authority shall prepare a budget, maintain proper accounts and other relevant records (including the accounts and other relevant records of the Gene Fund) and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(*2*) The accounts of the Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Authority to the Comptroller and Auditor-General of India.

(*3*) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Authority shall have the same right and privileges and authority in connection with such audit as the Comptroller and Auditor-General of India generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Authority.

(*4*) The accounts of the Authority as certified by the Comptroller and Auditor-General of India or any other person appointed by him in his behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

63. Financial and administrative powers of the Chairperson.—The Chairperson shall exercise such financial and administrative powers over the functions of the Authority as may be prescribed:

Provided that the Chairperson shall have the authority to delegate such of his financial and administrative powers as he may think fit to a member or any other officer of the Authority subject to the condition that the member or such officer shall, while exercising such delegated powers, continue to be under the direction, control and supervision of the Chairperson.

CHAPTER X

INFRINGEMENT, OFFENCES, PENALATIES AND PROCEDURE

Infringement

64. Infringement.—Subject to the provisions of this Act, a right established under this Act is infringed by a person—

(*a*) who, not being the breeder of a variety registered under this Act or a registered agent or registered licensee of that variety, sells, exports, imports or produces such variety without the permission of its breeder or within the scope of a registered licence or registered agency without permission of the registered licensee or registered agent, as the case may be;

(*b*) who uses, sells, exports, imports or produces any other variety giving such variety, the denomination identical with or deceptively similar to the denomination of a variety registered under this Act in such manner as to cause confusion in the mind or general people in identifying such variety so registered.

65. Suit for infringement, etc.—(*1*) No suit—

(*a*) for the infringement of a variety registered under this Act; or

(*b*) relating to any right in a variety registered under this Act,

shall be instituted in any court inferior to a District Court having jurisdiction to try the suit.

(*2*) For the purposes of clauses (*a*) and (*b*) of sub-section (*1*), "District court having jurisdiction" shall mean the District Court within the local limit of whose jurisdiction the cause of action arises.

66. Relief in suits for infringement.—(*1*) The relief which a court may grant in any suit for infringement referred to in section 65 includes an injunction and at the option of the plaintiff, either damages or a share of the profits.

(*2*) The order of injunction under sub-section (*1*) may include an *ex parte* injunction or any interlocutory order for any of the following matters, namely:—

(*a*) discovery of documents;

(*b*) preserving of infringing variety or documents or other evidence which are related to the subject-matter of the suit;

(*c*) attachment of such property of the defendant which the court deems necessary to recover damages, costs or other pecuniary remedies which may be finally awarded to the plaintiff.

67. Opinion of scientific adviser.—(*1*) When the court has to form an opinion upon any question of fact or a scientific issue, such court may appoint an independent scientific adviser to suggest it or to inquire and report upon the matter to enable it to from the desired opinion.

(*2*) The scientific adviser may be paid such remuneration or expenses as the court may fix.

Offences, penalties and procedure

68. Prohibition to apply the denomination of a registered variety.—(*1*) No person other than the breeder of a variety registered under this Act or a registered licensee or registered agent thereof shall use the denomination of that variety in the manner as may be prescribed.

(*2*) A person shall be deemed to apply the denomination of a variety registered under this Act who—

(*a*) applies it to the variety itself; or

(*b*) applies it to any package in or with which the variety is sold, or exposed for sale, or had in possession such package for sale or for any purpose of trade or production; or

(*c*) places, encloses or annexes the variety which is sold, or exposed for sale, or had in possession for sale or for any purpose of trade or production, in or with any package or other thing to which the denomination of such variety registered under this Act has been applied; or

(*d*) uses the denomination of such variety registered under this Act in any manner reasonably likely to lead to the belief that the variety or its propagating material in connection with which it is used is designated or described by that denomination; or

(*e*) in relation to the variety uses such denomination in any advertisement, invoice, catalogue, business letter, business paper, price list or other commercial document and such variety is delivered to a person in pursuance of a request or order made by reference to the denomination as so used.

(*3*) A denomination shall be deemed to be applied to a variety whether it is woven in, impressed on, or otherwise worked into, or annexed or affixed to, such variety or to any package or other thing.

69. Meaning of falsely applying denomination of a registered variety.—(*1*) A person shall be deemed to falsely apply the denomination of a variety registered under this Act who, without the assent of the breeder of such variety,—

(*a*) applies such denomination or a deceptively similar denomination to any variety or any package containing such variety;

(*b*) uses any package bearing a denomination which is identical with or deceptively similar to the denomination of such variety registered under this Act, for the purpose of packing, filling or wrapping therein any variety other than such variety registered under this Act.

(*2*) Any denomination of a variety registered under this Act falsely applied as mentioned in sub-section (*1*), is in this Act referred to as false denomination.

(*3*) In any prosecution for falsely applying a denomination of a variety registered under this Act the burden of proving the assent of the breeder of such variety shall lie on the accused.

70. Penalty for applying false denomination, etc.—(*1*) Any person who—

(*a*) applies any false denomination to a variety; or

(*b*) indicates the false name of a country or place or false name and address of the breeder of a variety registered under this Act in the course of trading such variety,

shall unless he proves that he acted, without intend to defraud, be punishable with imprisonment for a term which shall not be less than three months but which may extend to two years, or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

71. Penalty for selling varieties to which false denomination is applied, etc.—Any person who sells, or exposes for sale, or has in his possession for sale or for any purpose of trade or production or any variety to which any false denomination is applied or to which an indication of the country or place in

which such variety was made or produced or the name and address of the breeder of such variety registered under this Act has been falsely made, shall, unless he proves—

(*a*) that having taken all reasonable precautions against committing an offence against this section, he had at the time of commission of the alleged offence no reason to suspect the genuineness of the denomination of such variety or that any offence had been committed in respect of indication of the country or place in which such variety registered under this Act, was made or produced or the name and address of the breeder of such variety;

(*b*) that, on demand by or on behalf of the prosecutor, he gave all the information in his possession with respect to the person from whom he obtained such variety; or

(*c*) that otherwise he had acted innocently,

be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years, or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

72. Penalty for falsely representing a variety as registered.—Whoever makes any representation with respect to the denomination of a variety or its propagating material or essentially derived variety or its propagating material not being variety or its propagating material or essentially derived variety or its propagating material registered under this Act, to the effect that it is a variety or its propagating material or essentially derived variety or its propagating material registered under this Act or otherwise represents any variety, or its propagating material, or essentially derived variety or its propagating material not registered under this Act to the effect that it is registered under this Act shall be punishable with imprisonment for a term, which shall not be less than six months but which may extend to three years, or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.

73. Penalty for subsequent offence.—Whoever having already been convicted of an offence under this Act is again convicted of such offence shall be punishable for the second and for every subsequent offence with imprisonment for a term which shall not be less than one year but which may extend to three years, or with fine which shall not be less than two lakh rupees but which may extend to twenty lakh rupees, or with both.

74. No offence in certain cases.—The provisions of this Act relating to offences shall be subject to the right created as recognised by this Act and no act or omission shall be deemed to be an offence under the provisions of this Act if such act or omission is permissible under this Act.

75. Exemption of certain persons employed in ordinary course of business.—Where a person accused of an offence under this Act proves that in the ordinary course of his employment, he has acted without any intention to commit the offence and having taken all reasonable precautions against committing the offence charged, he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the act so charged as an offence and on demand made by or on behalf of the prosecutor, he gave all the information in his possession with respect to the persons on whose behalf the offence was committed, he shall be acquitted.

76. Procedure where invalidity of registration is pleaded by the accused.—(*1*) Where the offence charged under this Act is in relation to a variety or its propagating material or essentially derived variety or its propagating material registered under this Act and the accused pleads that the registration of such variety or its propagating material or essentially derived variety or its propagating material, as the case may be, is invalid and the court is satisfied that such offence is *prima facie* not tenable, it shall not proceed with the charge but shall adjourn the proceedings for three months from the date on which the plea of the accused is recorded to enable the accused to file an application before the Registrar under this Act for the rectification of the Register on the ground that the registration is invalid.

(*2*) If the accused proves to the court that he has made such application within the time so limited or within such further time as the court for sufficient cause allow, the further proceedings in the prosecution shall stand stayed till the disposal of such application for rectification.

(*3*) If within a period of three months or within such extended time as may be allowed by the court, the accused fails to apply to the Registrar for rectification of the Register, the court shall proceed with the case as if the registration were valid.

(*4*) Where before institution of a complaint of an offence referred to in sub-section (*1*), any application for the rectification of the Register concerning the registration of the variety or its propagating material or essentially derived variety or its propagating material, as the case may be, in question on the ground of invalidity of such registration has already been properly made to and is pending before the Registrar, the court shall stay the further proceedings in the prosecution pending the disposal of the application aforesaid and shall determine the charge against the accused in conformity with the result of the application for rectification.

77. Offences by companies.—(*1*) If the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(*2*) Notwithstanding anything contained in sub-section (*1*), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(*a*) "company" means any body corporate and includes a firm or other association of individuals; and

(*b*) "director", in relation to a firm, means a partner in the firm.

CHAPTER XI

MISCELLANEOUS

78. Protection of security of India.—Notwithstanding anything contained in this Act, the Authority or the Registrar shall—

(*a*) not disclose any information relating to the registration of a variety or any application relating to the registration of a variety under this Act, which it considers prejudicial to the interest of the security of India; and

(*b*) take any action regarding the cancellation of registration of such varieties registered under this Act which the Central Government may by notification in the Official Gazette specify in the interest of the security of India.

Explanation.—For the purposes of this section, the expression "security of India" means any action necessary for the security of India which relates to the use of any produce of any variety registered under this Act directly or indirectly for the purposes of war or military establishment or for the purposes of war or other emergency in international relations.

79. **Implied warranty on sale of registered variety, etc.**—Where a denomination of a variety or its propagating material or essentially derived variety or its propagating material registered under this Act has been applied to the variety or its propagating material or essentially derived variety or its propagating material, as the case may be, on sale or in the contract for sale of such variety or its propagating material or essentially derived variety or its propagating material, as the case may be, the seller shall be deemed to warrant that the denomination is a genuine denomination and not falsely applied, unless the contrary is expressed in writing signed by or on behalf of the seller and delivered at the time of the sale of the variety or its propagating material or essentially derived variety or its propagating material, as the case may be, or contract to and accepted by the buyer.

80. Death of party to proceeding.—If a person who is a party to a proceeding under this Act (not being a proceeding in a court) dies pending the proceeding, the Authority or the Registrar, as the case may be, may, on request, and on proof to the satisfaction of such Authority or Registrar, of the transmission of the interest of the deceased person, substitute in the proceedings his successor in interest in his place, or, if the Authority or the Registrar is of opinion that the interest of the deceased person is sufficiently represented by the surviving party, permit the proceedings to continue without the substitution of his successor in interest.

81. Right of registered agent and the registered licensee to institute suit.—The registered agent or the registered licensee of a variety or its propagating material or essentially derived variety or its propagating material registered under this Act may institute appropriate proceedings in the court under this Act on behalf of the breeder of such variety or its propagating material or essentially derived variety or its propagating material, as the case may be, if such agent or licensee has been authorised in the prescribed manner by such breeder for doing so.

82. **Evidence of entry in Register, etc., and things done by the Authority and the Registrar**.—(*1*) A copy of any entry in the Register, or of any document issued under this Act purporting to be certified by the Authority or the Registrar and sealed with the seal of such Authority or Registrar, as the case may be, shall be admitted in evidence in all courts and in all proceedings without further proof or production of the original.

(*2*) A certificate purporting to be under the hand of the Authority or the Registrar, as the case may be, as to any entry, matter or things that such Authority or Registrar is authorised by this Act or the rules to make or do shall be *prima facie* evidence of the entry having been made, and of the content thereof, or of the matter or things having been done or not done.

83. Authority, Registrar and other officers not compellable to production of Register, etc.—The Authority or the Registrar or any officer working under the Authority or the Registrar, as the case may be, shall not, in any legal proceedings, be compelled to produce the Register or any other document in its or his custody, the content of which can be proved by the production of a certified copy issued under this Act in the prescribed manner or to appear as a witness to prove the matter therein recorded unless by order of the court made for special cause.

84. Document open to public inspection.—Any person may, on an application to the Authority or the Registrar, as the case may be, and on payment of such fees as may be prescribed, obtain a certified copy of any entry in the Register or any other document in any proceedings under this Act pending before such Authority or Registrar or may inspect such entry or document.

85. Report of Authority to be placed before Parliament.—The Central Government shall cause to be placed before both Houses of Parliament once a year a report regarding the performance of the Authority under this Act.

86. Government to be bound.—The provisions of this Act shall be binding on the Government.

87. Proceedings before Authority or Registrar.—All proceedings before the Authority or the Registrar, as the case may be, relating to registration of variety or essentially derived variety, registration of agent, registration of licence or registration of compulsory licensing under this Act shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code (45 of 1860) and the Authority or the Registrar, as the case may be, shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

88. Protection of action taken in good faith.—No suit, prosecution or other legal proceeding shall lie against the Central Government, or against the Chairperson, or members, or the Registrar or any person acting under such Government, Authority or Registrar under the provisions of this Act, for anything which is in good faith done or intended to be done in pursuance of this Act or any rule, regulation, scheme or order made thereunder.

89. Bar of jurisdiction.—No civil court shall have jurisdiction in respect of any matter which the Authority or the Registrar or the Tribunal is empowered by or under this Act to determine.

90. Members and staff of Authority, etc., to be public servants.—The Chairperson, members, officers and other employees of the Authority and the Registrar-General and the officers and other employees working under him shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

91. Exemption from tax on wealth and income.—Notwithstanding anything contained in the Wealth-tax Act, 1957 (26 of 1957), the Income-tax Act, 1961 (43 of 1961), or any other enactment for the time being in force relating to tax on wealth, income, profits or gains, the Authority shall not be liable to pay wealth-tax, income-tax or any other tax in respect of its wealth, income, profits or gains derived.

92. Act to have overriding effect.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

93. Power of Central Government to give directions.—The Central Government may give directions to the Authority as it may think necessary in the public interest for the execution of all or any of the functions of the Authority under any provision of this Act or rules and regulations made thereunder.

94. Power to remove difficulties.—(*1*) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of two years from the date of commencement of this Act.

(*2*) Every order made under sub-section (*1*) shall be laid before each House of Parliament.

95. Power to make regulations.—(*1*) The Authority may, with the previous approval of the Central Government, by notification in the Official Gazette, make regulations consistent with this Act and the rules made thereunder to carry out the provisions of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(*a*) duties and jurisdiction of the Registrars under sub-section (*4*) of section 12;

(*b*) the term of office and the conditions of service of the Registrars under sub-section (*5*) of section 12;

(*c*) the criteria of distinctiveness, uniformity and stability for registration of extant variety under sub-section (*2*) of section 15;

(*d*) the manner in which a single and distinct denomination to a variety shall be assigned by the applicant under sub-section (*1*) of section 17;

(*e*) the matters governing the assignment of denomination to a variety under sub-section (*2*) of section 17;

(*f*) the time within which the Registrar may require the applicant to propose another denomination under sub-section (*3*) of section 17;

(*g*) the form of application under clause (*d*) of sub-section (*1*) of section 18;

(*h*) the standards for evaluating seed during test sunder sub-section (*1*) of section 19;

(*i*) the quantity of seeds or propagating material including parental line seeds to be deposited by a breeder and the time to be specified under sub-section (*1*) of section 27;

(*j*) the limitations and conditions subject to which a breeder may authorise a person to produce, sell, market or otherwise deal with variety under sub-section (*2*) of section 28;

(*k*) the form for authorisation under sub-section (*3*) of section 28.

96. Power of Central Government to make rules.—(*1*) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(*i*) the term of office of the Chairperson and the manner of filling the post under sub-section (*6*) of section 3;

(*ii*) the salary and allowances of the Chairperson and his conditions of service in respect of leave, pension, provident fund and other matters and the allowances for non-official members for attending the meeting under sub-section (*8*) of section 3;

(*iii*) the time and place of meetings of the Authority and the rules of procedure in regard to the transaction of business at its meetings [including the quorum at its meetings and the transaction of business of its Standing Committee appointed under sub-section (*7*) of section 3] under sub-section (*1*) of section 4;

(*iv*) the control and restriction regarding appointment of the officers and other employees of the Authority and the method of such appointment, salary and allowances and other conditions of service under section 6;

(*v*) the powers and duties of the Chairperson under section 7;

(*vi*) the terms and conditions subject to which and the manner in which the measures referred to in sub-section (*1*) of section 8 may provide for the registration of new extant varieties under clause (*a*) of sub-section (*2*) of that section;

(*vii*) the manner for arranging production and sale of the seed under clause (*e*) of sub-section (*2*) of section 8;

(*viii*) the orders by the Authority or the Registrar as to costs under clause (*b*) of section 11;

(*ix*) the salary and allowances of Registrar-General of Plant Varieties and the conditions of service in respect of his leave, pension, provident fund and other matters under sub-section (*3*) of section 12;

(*x*) the matters to be included in the National Register of Plant Varieties under sub-section (*1*) of section 13;

(*xi*) the manner of authorising a person under clause (*e*) of sub-section (*1*) of section 16;

(*xii*) the fees under clause (*g*) and the other particulars under clause (*i*) which shall accompany the application under sub-section (*1*) of section 18;

(*xiii*) the form of application under the proviso to sub-section (*1*) of section 18;

(*xiv*) the period within which after making application a proof of the right to make the application is to be furnished under sub-section (*3*) of section 18;

(*xv*) the fees to be deposited by the applicant under sub-section (*2*) of section 19;

(*xvi*) the manner and method of conducting the tests under sub-section (*3*) of section 19;

(*xvii*) the manner of advertising application, conditions or limitations and specifications of variety for registration including its photographs or drawings under sub-section (*1*) of section 21;

(*xviii*) the manner of giving notice and the fees payable therefor under sub-section (*2*) of section 21;

(*xix*) the manner of sending counter-statement under sub-section (*4*) of section 21;

(*xx*) the manner of submitting evidence and the time within which such evidence may be submitted under sub-section (*6*) of section 21;

(*xxi*) the documents and fees under sub-section (*1*) and the tests to be conducted and the procedure to be followed under sub-section (*3*) of section 23;

(*xxii*) the form of a certificate of registration and the other authority to which a copy thereof shall be sent under sub-section (*8*) of section 23;

(*xxiii*) the form of a certificate of registration and the other authority to which a copy thereof and the maximum time for issuing the certificate of registration under sub-section (*2*) of section 24;

(*xxiv*) the manner of giving notice to the applicant under sub-section (*3*) of section 24;

(*xxv*) the fees for review and renewal under sub-section (*6*) of section 24;

(*xxvi*) the contents of the certificate and the manner of publishing such contents and inviting claim of benefits sharing under sub-section (*1*) of section 26;

(*xxvii*) the form for submitting claims of benefit sharing and the fees to be accompanied therewith under sub-section (*2*) of section 26;

(*xxviii*) the matter in which and the time within which opposition to claims shall be submitted under sub-section (*3*) of section 26;

(*xxix*) the manner of making reference under sub-section (*7*) of section 26;

(*xxx*) the manner of making an application for registration for title and the fees to be accompanied therewith under sub-section (*4*) of section 28;

(*xxxi*) the manner of referring the disputes regarding registration of entitlement under the proviso to sub-section (*4*) of section 28;

(*xxxii*) the manner to enter into a certificate the brief conditions of entitlement under sub-section (*5*) of section 28;

(*xxxiii*) the manner of making an application for varying the terms of registration under clause (*a*) of sub-section (*9*) of section 28;

(*xxxiv*) the manner of making an application by the registered breeder and certain other for cancellation of terms of registration under clause (*b*) of sub-section (*9*) of section 28;

(*xxxv*) the manner of application by any person other than the breeder, his successor, the registered agent or the registered licensee for cancellation of terms of registration under clause (*c*) of sub-section (*9*) of section 28;

(*xxxvi*) the manner of application for cancellation of the terms of registration under clause (*d*) of sub-section (*9*) of section 28;

(*xxxvii*) the manner of application for cancellation of the terms of registration under clause (*e*) of sub-section (*9*) of section 28;

(*xxxviii*) the manner of issuing notice to the registered breeder of a variety or his successor or to each registered agent or registered licensee (not being the applicant) under sub-section (*10*) of section 28;

(*xxxix*) the manner of giving notice to the registrar under sub-section (*1*) of section 33;

(*xl*) the manner of notifying to the registered agent or registered licensee under sub-section (*2*) of section 33;

(*xli*) the period within which the notice of opposition under sub-section (*3*) of section 33 may be given;

(*xlii*) the manner of making application under section 34;

(*xliii*) the manner of depositing fees under sub-section (*2*) of section 35;

(*xliv*) the manner of making application under sub-section (*1*) of section 36;

(*xlv*) the manner of applying to the Registrar under sub-section (*2*) of section 36;

(*xlvi*) the manner of giving notice under sub-section (*4*) of section 36;

(*xlvii)* the manner of application under sub-section (*1*) of section 37;

(*xlviii*) the manner of making application under sub-section (*2*) of section 37;

(*xlix*) the manner to apply to the Registrar under sub-section (*1*) of section 38;

(*l*) the manner of advertising application and to give notice to the Registrar, and the time from the date of the advertisement within which a person may give such notice under sub-section (*2*) of section 38;

(*li*) the manner of advertising the denomination of the variety under sub-section (*3*) of section 38;

(*lii*) the manner of recognition and reward from Gene Fund under clause (*iii*) of sub-section (*1*) of section 39;

(*liii*) the manner of claiming compensation and filing of opposition under sub-section (*2*) of section 39;

(*liv*) the manner of issuing notice and filing objection under sub-section (*3*) of section 41;

(*lv*) the manner of receiving benefit sharing under clause (*a*) of sub-section (*1*) of section 45;

(*lvi*) the manner of applying Gene Fund under sub-section (*2*) of section 45;

(*lvii*) the particulars to be contained in the application under sub-section (*2*) of section 47;

(*lviii*) the authority and the manner in which such authority shall make available to the compulsory licensee the reproduction material of the variety under section 50;

(*lix*) the form for making application under sub-section (*1*) of section 52;

(*lx*) the period within which an appeal shall be preferred under sub-section (*1*) of section 56;

(*lxi*) the form of petition and the particulars which such petition shall contain under sub-section (*2*) of section 56;

(*lxii*) the form for preparing annual statement of accounts under sub-section (*1*) of section 62;

(*lxiii*) the financial and administrative powers which the Chairperson shall exercise under section 63;

(*lxiv*) the manner of using the denomination of a variety under sub-section (*1*) of section 68;

(*lxv*) the manner of authorising registered agent or registered licensee under section 81;

(*lxvi*) the manner of issuing certified copy of content of Register or any other document under section 83;

(*lxvii*) the fees payable for obtaining a certified copy of, or to inspect, any entry in the Register or any other document under section 84;

(*lxviii*) any other matter which is to be, or may be, prescribed or in respect of which this Act makes no provision or makes insufficient provision and provision is, in the opinion of the Central Government, necessary for the proper implementation of this Act.

97. Rules, regulations and schemes to be laid before Parliament.—Every rule and every regulation and every scheme made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or scheme or both Houses agree that the rule or regulation or scheme should not be made, the rule or regulation or scheme shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or scheme.





THE PATENTS ACT, 1970

Notes and Disclaimers:

1. The e-Version incorporates all the amendments in the Patents Act, 1970 and the Patent Rules, 2003 and is updated till 23-06-2017.
2. For details of every amendment, please refer to the relevant Gazette available on website (http://www.ipindia.gov.in)
3. While every efforts has been made to ensure the correctness of the contents of e-version, any deviation(s) noted may be brought to the notice of Sh B P Singh, Deputy Controller of Patents and Designs, at "birendrap.singh@nic.in" for corrective measures. The contents of the Gazette(s) shall prevail on e-Version in case of any deviations.

CONTENTS

Sl No.	Chapters	Description
1.	Chapter I	Preliminary
2.	Chapter II	Inventions Not Patentable
3.	Chapter III	Applications for Patents
4.	Chapter IV	Publication and Examination of Applications
5	Chapter IVA	Exclusive Marketing Rights (Omitted)
6.	Chapter V	Opposition Proceedings to Grant of Patents
7.	Chapter VI	Anticipation
8.	Chapter VII	Provisions for Secrecy of Certain Inventions
9.	Chapter VIII	Grant of Patents and Rights conferred thereby
10.	Chapter IX	Patents of Addition
11.	Chapter X	Amendment of Applications and Specification
12.	Chapter XI	Restoration of Lapsed Patents
13.	Chapter XII	Surrender and Revocation of Patents
14.	Chapter XIII	Register of Patents
15.	Chapter XIV	Patent Office and Its Establishment
16.	Chapter XV	Powers of Controller Generally
17.	Chapter XVI	Working of Patents, Compulsory Licences and Revocation
18.	Chapter XVII	Use of Inventions For Purposes of Government and Acquisition of Inventions by Central Government
19.	Chapter XVIII	Suits Concerning Infringement of Patents

20.	**Chapter XIX**	Appeals to the Appellate Board
21.	**Chapter XX**	Penalties
22.	**Chapter XXI**	Patent Agents
23.	**Chapter XXII**	International Arrangements
24.	**Chapter XXIII**	Miscellaneous

THE PATENTS ACT, 1970

(39 of 1970)

[19th September, 1970]

An Act to amend and consolidate the law relating to patents.

BE it enacted by Parliament in the Twenty-first Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—

(1) This Act may be called the Patents Act, 1970.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act, and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. Definitions and interpretation.—

(1) In this Act, unless the context otherwise requires,—

(a) "Appellate Board" means the Appellate Board referred to in section 116;

(ab) "assignee" includes an assignee of the assignee and the legal representative of a deceased assignee and references to the assignee of any person include references to the assignee of the legal representative or assignee of that person;

(aba) "Budapest Treaty" means the Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the purposes of Patent Procedure done at Budapest on 28th day of April, 1977, as amended and modified from time to

time;

(ac) "capable of industrial application", in relation to an invention, means that the invention is capable of being made or used in an industry;

(b) "Controller" means the Controller General of Patents, Designs and Trade Marks referred to in section 73;

(c) "convention application" means an application for a patent made by virtue of section 135;

(d) "convention country" means a country or a country which is member of a group of countries or a union of countries or an Intergovernmental organization referred to as a convention country in section 133;

(e) "district court" has the meaning assigned to that expression by the *Code* of Civil Procedure, 1908 (5 of 1908);

(f) "exclusive licence" means a licence from a patentee which confers on the licensee, on the licensee and persons authorised by him, to the exclusion of all other persons (including the patentee), any right in respect of the patented invention, and exclusive licensee shall be construed accordingly.

(g) Omitted by the *Patents (Amendment) Act,* 2005

(h) "Government undertaking" means any industrial undertaking carried on—

(i) by a department of the Government, or

(ii) by a corporation established by a Central, Provincial or State Act, which is owned or controlled by the Government, or

(iii) by a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956), or

(iv) by an institution wholly or substantially financed by the Government;

(i) "High Court", in relation to a State or Union territory, means the High Court having territorial jurisdiction in that State or Union territory, as the case may be;

(ia) "international application" means an application for patent made in accordance with the Patent Cooperation Treaty;

(j)"invention" means a new product or process involving an inventive step and capable of industrial application;

(ja) "inventive step" means a feature of an invention that involves technical advance as compared to the existing knowledge or having economic significance or both and that makes the invention not obvious to a person skilled in the art;

(k) "legal representative" means a person who in law represents the estate of a deceased person;

(l) "new invention" means any invention or technology which has not been anticipated by publication in any document or used in the country or elsewhere in the world before the date of filing of patent application with complete specification, i.e., the subject matter has not fallen in public domain or that it does not form part of the state of the art;

(la) "Opposition Board" means an Opposition Board constituted under sub-section (3) of section 25;

(m) "patent" means a patent for any invention granted under this Act;

(n) "patent agent" means a person for the time being registered under this Act as a patent agent;

(o) "patented article" and "patented process" means respectively an article or process in respect of which a patent is in force;

(oa) "Patent Cooperation Treaty" means the Patent Cooperation Treaty done at Washington on the 19th day of June, 1970 as amended and modified from time to time;

(p) "patentee" means the person for the time being entered on the register as the grantee or proprietor of the patent;

(q) "patent of addition" means a patent granted in accordance with section 54;

(r) "patent office" means the patent office referred to in section 74;

(s) "person" includes the Government;

(t) "person interested" includes a person engaged in, or in promoting, research in the same field as that to which the invention relates;

(ta) "pharmaceutical substance" means any new entity involving one or more inventive steps;

(u) "prescribed" means,—

(A) in relation to proceedings before a High Court, prescribed by rules made by the High Court;

(B) in relation to proceedings before the Appellate Board, prescribed by rules made by the Appellate Board; and

(C) in other cases, prescribed by rules made under this Act;

(v) "prescribed manner" includes the payment of the prescribed fee;

(w) "priority date" has the meaning assigned to it by section 11;

(x) "register" means the register of patents referred to in section 67;

(y) "true and first inventor" does not include either the first importer of an invention into India,

or a person to whom an invention is first communicated from outside India.

(2) In this Act, unless the context otherwise requires, any reference—

(a) to the Controller shall be construed as including a reference to any officer discharging the functions of the Controller in pursuance of section 73;

(b) to the patent office shall be construed as including a reference to any branch office of the patent office.

CHAPTER II

INVENTIONS NOT PATENTABLE

3. What are not inventions.—The following are not inventions within the meaning of this Act,—

(a) an invention which is frivolous or which claims anything obviously contrary to well established natural laws;

(b) an invention the primary or intended use or commercial exploitation of which could be contrary public order or morality or which causes serious prejudice to human, animal or plant life or health or to the environment;

(c) the mere discovery of a scientific principle or the formulation of an abstract theory or discovery of any living thing or non-living substance occurring in nature;

(d) the mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance or the mere discovery of any new property or new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant.

Explanation.—For the purposes of this clause, salts, esters, ethers, polymorphs, metabolites, pure form, particle size, isomers, mixtures of isomers, complexes, combinations and other derivatives of known substance shall be considered to be the same substance, unless they differ significantly in properties with regard to efficacy;

(e) a substance obtained by a mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substance;

(f) the mere arrangement or re-arrangement or duplication of known devices each functioning independently of one another in a known way;

(g) Omitted by the *Patents (Amendment) Act,* 2002

(h) a method of agriculture or horticulture;

(i) any process for the medicinal, surgical, curative, prophylactic diagnostic, therapeutic

or other treatment of human beings or any process for a similar treatment of animals to render them free of disease or to increase their economic value or that of their products.

(j) plants and animals in whole or any part thereof other than micro organisms but including seeds, varieties and species and essentially biological processes for production or propagation of plants and animals;

(k) a mathematical or business method or a computer programme *per se* or algorithms;

(l) a literary, dramatic, musical or artistic work or any other aesthetic creation whatsoever including cinematographic works and television productions;

(m) a mere scheme or rule or method of performing mental act or method of playing game;

(n) a presentation of information;

(o) topography of integrated circuits;

(p) an invention which in effect, is traditional knowledge or which is an aggregation or duplication of known properties of traditionally known component or components.

4. Inventions relating to atomic energy not patentable.—No patent shall be granted in respect of an invention relating to atomic energy falling within sub section (1) of section 20 of the Atomic Energy Act, 1962 (33 of 1962).

5. Inventions where only methods or processes of manufacture patentable: [Omitted by the *Patents (Amendment) Act,* 2005]

CHAPTER III

APPLICATIONS FOR PATENTS

6. Persons entitled to apply for patents—(1) Subject to the provisions contained in section 134, an application for a patent for an invention may be made by any of the following persons, that is to say,—

(a) by any person claiming to be the true and first inventor of the invention;

(b) by any person being the assignee of the person claiming to be the true and first inventor in respect of the right to make such an application;

(c) by the legal representative of any deceased person who immediately before his death was entitled to make such an application.

(2) An application under sub-section (1) may be made by any of the persons referred to therein either alone or jointly with any other person.

7. Form of application.—(1) Every application for a patent shall be for one invention only and shall be made in the prescribed form and filed in the patent office.

(1A) Every international application under the Patent Cooperation Treaty for a patent, as may be filed designating India shall be deemed to be an application under this Act, if a corresponding application has also been filed before the Controller in India.

(1B) The filing date of an application referred to in sub-section (1A) and its complete specification processed by the patent office as designated office or elected office shall be the international filing date accorded under the Patent Cooperation Treaty.

(2) Where the application is made by virtue of an assignment of the right to apply for a patent for the invention, there shall be furnished with the application, or within such period as may be prescribed after the filing of the application, proof of the right to make the application.

(3) Every application under this section shall state that the applicant is in possession of the invention and shall name the person claiming to be the true and first inventor; and where the person so claiming is not the applicant or one of the applicants, the application shall contain a declaration that the applicant believes the person so named to be the true and

first inventor.

(4) Every such application (not being a convention application or an application filed under the Patent Cooperation Treaty designating India) shall be accompanied by a provisional or a complete specification.

8. Information and undertaking regarding foreign applications.—(1) Where an applicant for a patent under this Act is prosecuting either alone or jointly with any other person an application for a patent in any country outside India in respect of the same or substantially the same invention, or where to his knowledge such an application is being prosecuted by some person through whom he claims or by some person deriving title from him, he shall file along with his application or subsequently within the prescribed period as the Controller may allow—

(a) a statement setting out detailed particulars of such application; and

(b) an undertaking that, up to the date of grant of patent in India, he would keep the Controller informed in writing, from time to time, of detailed particulars as required under clause (a) in respect of every other application relating to the same or substantially the same invention, if any, filed in any country outside India subsequently to the filing of the statement referred to in the aforesaid clause, within the prescribed time.

(2) At any time after an application for patent is filed in India and till the grant of a patent or refusal to grant of a patent made thereon, the Controller may also require the applicant to furnish details, as may be prescribed, relating to the processing of the application in a country outside India, and in that event the applicant shall furnish to the Controller information available to him within such period as may be prescribed.

9. Provisional and complete specifications.—(1) Where an application for a patent (not being a convention application or an application filed under the Patent Cooperation Treaty designating India) is accompanied by a provisional specification, a complete specification shall be filed within twelve months from the date of filing of the application, and if the complete specification is not so filed, the application shall be deemed to be abandoned.

(2) Where two or more applications in the name of the same applicant are accompanied by provisional specifications in respect of inventions which are cognate or of which one is a modification of another and the Controller is of opinion that the whole of such inventions

are such as to constitute a single invention and may properly be included in one patent, he may allow one complete specification to be filed in respect of all such provisional specifications.

Provided that the period of time specified under sub-section (1) shall be reckoned from the date of filing of the earliest provisional specification.

(3) Where an application for a patent (not being a convention application or an application filed under the Patent Cooperation Treaty designating India) in. accompanied by a specification purporting to be a complete specification, the Controller may, if the applicant be requests at any time within twelve months from the date of filing of the application, direct that such specification shall be treated, for the purposes of this Act, as a provisional specification and proceed with the application accordingly.

(4) Where a complete specification has been filed in pursuance of an application for a patent accompanied by a provisional specification or by a specification treated by virtue of a direction under sub-section (3) as a provisional specification, the Controller may, if the applicant so requests at any time before grant of patent, cancel the provisional specification and post-date the application to the date of filing of the complete specification.

10. Contents of specifications.—(1) Every specification, whether provisional of complete, shall describe the invention and shall begin with a title sufficiently indicating the subject-matter to which the invention relates.

(2) Subject to any rules that may be made in this behalf under this Act, drawings may, and shall, if the Controller so requires, be supplied for the purposes of any specification, whether complete or provisional; and any drawings so supplied shall, unless the Controller otherwise directs be deemed to form part of the specification, and references in this Act to a specification shall be construed accordingly.

(3) If, in any particular case, the Controller considers that an application should be further supplemented by a model or sample of anything illustrating the invention or alleged to constitute an invention, such model or sample as he may require shall be furnished before the application is found in order for grant of a patent, but such model or sample shall not be deemed to form part of the specification.

(4) Every complete specification shall—

(a) fully and particularly describe the invention and its operation or use and the method

by which it is to be performed;

(b) disclose the best method of performing the invention which is known to the applicant and for which he is entitled to claim protection; and

(c) end with a claim or claims defining the scope of the invention for which protection is claimed;

(d) be accompanied by an abstract to provide technical information on the invention:

Provided that—

(i) the Controller may amend the abstract for providing better information to third parties; and

(ii) if the applicant mentions a biological material in the specification which may not be described in such a way as to satisfy clauses (a) and (b), and if such material is not available to the public, the application shall be completed by depositing the material to an international depository authority under the Budapest Treaty and by fulfilling the following conditions, namely:—

(A) the deposit of the material shall be made not later than the date of filing the patent application in India and a reference thereof shall be made in the specification within the prescribed period;

(B) all the available characteristics of the material required for it to be correctly identified or indicated are included in the specification including the name, address of the depository institution and the date and number of the deposit of the material at the institution;

(C) access to the material is available in the depository institution only after the date of the application of patent in India or if a priority is claimed after the date of the priority;

(D) disclose the source and geographical origin of the biological material in the specification, when used in an invention.

(4A) In case of an international application designating' India, the title, description, drawings, abstract and claims filed with the application shall be taken as the complete specification for the purposes of this Act.

(5) The claim or claims of a complete specification shall relate to a single invention, or to a group of inventions linked so as to form a single inventive concept, shall be clear and succinct and shall be fairly based on the matter disclosed in the specification.

(6) A declaration as to the inventor ship of the invention shall, in such cases as may be

prescribed, be furnished in the prescribed form with the complete specification or within such period as may be prescribed after the filing of that specification.

(7) Subject to the foregoing provisions of this section, a complete specification filed after a provisional specification may include claims in respect of developments of, or additions to, the invention which was described in the provisional specification, being developments or additions in respect of which the applicant would be entitled under the provisions of section 6 to make a separate application for a patent.

11. Priority dates of claims of a complete specification.—(1) There shall be a priority date for each claim of a complete specification.

(2) Where a complete specification is filed in pursuance of a single application accompanied by—

(a) a provisional specification; or

(b) a specification which is treated by virtue of a direction under subsection (3) of section 9 as a provisional specification,

and the claim is fairly based on the matter disclosed in the specification referred to in clause (a) or clause (b), the priority date of that claim shall be the date of the filing of the relevant specification.

(3) Where the complete specification is filed or proceeded with in pursuance of two or more applications accompanied by such specifications as are mentioned in sub-section (2) and the claim is fairly based on the matter disclosed—

(a) in one of those specifications, the priority date of that claim shall be the date of the filing of the application accompanied by that specification;

(b) partly in one and partly in another, the priority date of that claim shall be the date of the filing of the application accompanied by the specification of the later date.

(3A) Where a complete specification based on a previously filed application in India has been filed within twelve months from the date of that application and the claim is fairly based on the matter disclosed in the previously filed application, the priority date of that claim shall be the date of the previously filed application in which the matter was first disclosed.

(4) Where the complete specification has been filed in pursuance of a further application made by virtue of sub-section (1) of section 16 and the claim is fairly based on the matter disclosed in any of the earlier specifications, provisional or complete, as the case may be, the priority date of that claim shall be the date of the filing of that specification in which the

matter was first disclosed.

(5) Where, under the foregoing provisions of this section, any claim of a complete specification would, but for the provisions of this sub-section, have two or more priority dates, the priority date of that claim shall be the earlier or earliest of those dates.

(6) In any case to which sub-sections (2), (3), (3A), (4) and (5) do not apply, the priority date of a claim shall, subject to the provisions of section 137, be the date of filing of the complete specification.

(7)The reference to the date of the filing of the application or of the complete specification in this section shall, in cases where there has been a post-dating under section 9 or section 17 or, as the case may be, an ante-dating under section 16, be a reference to the date as so post-dated or ante-dated.

(8)A claim in a complete specification of a patent shall not be invalid by reason only of—

(a) the publication or use of the invention so far as claimed in that claim on or after the priority date of such claim; or

(b) the grant of another patent which claims the invention, so far as claimed in the first mentioned claim, in a claim of the same or a later priority date.

CHAPTER IV

PUBLICATION AND EXAMINATION OF APPLICATIONS

11A. Publication of applications.—(1) Save as otherwise provided, no application for patent shall ordinarily be open to the public for such period as may be prescribed.

(2) The applicant may, in the prescribed manner, request the Controller to publish his application at any time before the expiry of the period prescribed under sub-section (1) and subject to the provisions of sub-section (3), the Controller shall publish such application as soon as possible.

(3) Every application for a patent shall, on the expiry of the period specified under sub-section (1), be published, except in cases where the application—

(a) in which secrecy direction is imposed under section 35; or

(b) has been abandoned under sub-section (1) of section 9; or

(c) has been withdrawn three months prior to the period specified under sub-section (1).

(4) In case a secrecy direction has been given in respect of an application under section 35, then it shall be published after the expiry of the period prescribed under sub-section (1) or when the secrecy direction has ceased to operate, whichever is later.

(5) The publication, of every application under this section shall include the particulars of the date of application, number of application, name and address of the applicant identifying the application and an abstract.

(6) Upon publication of an application for a patent under this section—

(a) the depository institution shall make the biological material mentioned in the specification available to the public;

(b) the patent office may, on payment of such fee as may be prescribed, make the specification and drawings, if any, of such application available to the public.

(7) On and from the date of publication of the application for patent and until the date of grant of a patent in respect of such application, the applicant shall have the like privileges and rights as if a patent for the invention had been granted on the date of publication of the

application:

Provided that the applicant shall not be entitled to institute any proceedings for infringement until the patent has been granted:

Provided further that the rights of a patentee in respect of applications made under sub-section (2) of section 5 before the 1st day of January, 2005 shall accrue from the date of grant of the patent:

Provided also that after a patent is granted in respect of applications made under sub-section (2) of section 5, the patent-holder shall only be entitled to receive reasonable royalty from such enterprises which have made significant investment and were producing and marketing the concerned product prior to the 1st day of January, 2005 and which continue to manufacture the product covered by the patent on the date of grant of the patent and no infringement proceedings shall be instituted against such enterprises.

11B. Request for examination.—(1) No application for a patent shall be examined unless the applicant or any other interested person makes a request in the prescribed manner for such examination within the prescribed period.

(2) Omitted by the *Patents (Amendment) Act,* 2005

(3) In case of an application in respect of a claim for a patent filed under sub-section (2) of section 5 before the 1st day of January, 2005 a request for its examination shall be made in the prescribed manner and within the prescribed period by the applicant or any other interested person.

(4) In case the applicant or any other interested person does not make a request for examination of the application for a patent within the period as specified under sub-section (1) or sub-section (3), the application shall be treated as withdrawn by the applicant:

Provided that—

(i) the applicant may, at any time after filing the application but before the grant of a patent, withdraw the application by making a request in the prescribed manner; and

(ii) in a case where secrecy direction has been issued under section 35, the request for examination may be made within the prescribed period from the date of revocation of the secrecy direction.

12. Examination of application.—(1) When a request for examination has been made in respect of an application for a patent in the prescribed manner under sub-section (1) or sub-

section (3) of section 11B, the application and specification and other documents related thereto shall be referred at the earliest by the Controller to an examiner for making a report to him in respect of the following matters, namely:—

(a) whether the application and the specification and other documents relating thereto are in accordance with the requirements of this Act and of any rules made thereunder;

(b) whether there is any lawful ground of objection to the grant of the patent under this Act in pursuance of the application;

(c) the result of investigations made under section 13; and

(d) any other matter which may be prescribed.

(2) The examiner to whom the application and the specification and other documents relating thereto are referred under sub-section (1) shall ordinarily make the report to the Controller within such period as may be prescribed.

13. Search for anticipation by previous publication and by prior claim. — (1) The examiner to whom an application for a patent is referred under section 12 shall make investigation for the purpose of ascertaining whether the invention so far as claimed in any claim of the complete specification—

(a) has been anticipated by publication before the date of filing of the applicant's complete specification in any specification filed in pursuance of an application for a patent made in India and dated on or after the 1st day of January, 1912;

(b) is claimed in any claim of any other complete specification published on or after the date of filing of the applicant's complete specification, being a specification filed in pursuance of an application for a patent made in India and dated before or claiming the priority date earlier than that date.

(2) The examiner shall, in addition, make such investigation for the purpose of ascertaining whether the invention, so far as claimed in any claim of the complete specification, has been anticipated by publication in India or elsewhere in any document other than those mentioned in sub-section (1) before the date of filing of the applicant's complete specification.

(3) Where a complete specification is amended under the provisions of this Act before the grant of patent, the amended specification shall be examined and investigated in like manner as the original specification.

(4) The examination and investigations required under section 12 and this section shall not be deemed in any way to warrant the validity of any patent, and no liability shall be incurred by the Central Government or any officer thereof by reason of, or in connection with, any

such examination or investigation or any report or other proceedings consequent thereon.

14. Consideration of the report of examiner by Controller.—Where, in respect of an application for a patent, the report of the examiner received by the Controller is adverse to the applicant or requires any amendment of the application, the specification or other documents to ensure compliance with the provisions of this Act or of the rules made thereunder, the Controller, before proceeding to dispose of the application in accordance with the provisions hereinafter appearing, shall communicate as expeditiously as possible the gist of the objections to the applicant and shall, if so required by the applicant within the prescribed period, give him an opportunity of being heard.

15. Power of Controller to refuse or require amended applications, etc., in certain case.—Where the Controller is satisfied that the application or any specification or any other document filed in pursuance thereof does not comply with the requirements of this Act or of any rules made thereunder, the Controller may refuse the application or may require the application, specification or the other documents, as the case may be, to be amended to his satisfaction before he proceeds with the application and refuse the application on failure to do so.

16. Power of Controller to make orders respecting division of application.—(1) A person who has made an application for a patent under this Act may, at any time before the grant of the patent, if he so desires, or with a view to remedy the objection raised by the Controller on the ground that the claims of the complete specification relate to more than one invention, file a further application in respect of an invention disclosed in the provisional or complete specification already filed in respect of the first mentioned application.

(2) The further application under sub-section (1) shall be accompanied by a complete specification, but such complete specification shall not include any matter not in substance disclosed in the complete specification filed in pursuance of the first mentioned application.

(3) The Controller may require such amendment of the complete specification filed in pursuance of either the original or the further application as may be necessary to ensure that neither of the said complete specifications includes a claim for any matter claimed in the other.

Explanation.—For the purposes of this Act, the further application and the complete specification accompanying it shall be deemed to have been filed on the date on which the first mentioned application had been filed, and the further application shall be

proceeded with as a substantive application and be examined when the request for examination is filed within the prescribed period.

17. Power of Controller to make orders respecting dating of application.— (1) Subject to the provisions of section 9, at any time after the filing of an application and before the grant of the patent under this Act, the Controller may, at the request of the -applicant made in the prescribed manner, direct that the application shall be post-dated to such date as may be specified in the request, and proceed with the application accordingly:

Provided that no application shall be post-dated under this sub-section to a date later than six months from the date on which it was actually made or would, but for the provisions of this sub-section, be deemed to have been made.

(2) Where an application or specification (including drawings) or am other document is required to be amended under section 15, the application or specification or other document shall, if the Controller so directs, be deemed to have been made on the date on which the requirement is complied with or where the application or specification or other document is returned to the applicant on the date on which it is re-filed after complying with the requirement.

18. Powers of Controller in cases of anticipation.—(1) Where it appears to the Controller that the invention so far as claimed in any claim of the complete specification has been anticipated in the manner referred to in clause (a) of sub section (1) or sub-section (2) of section 13, he may refuse the application unless the applicant—

(a) shows to the satisfaction of the Controller that the priority date of the claim of his complete specification is not later than the date on which the relevant document was published; or

(b) amends his complete specification to the satisfaction of the Controller.

(2) If it appears to the Controller that the invention is claimed in a claim of any other complete specification referred to in clause (b) of sub-section (1) of section 13, he may, subject to the provisions hereinafter contained, direct that a reference to that other specification shall be inserted by way of notice to the public in the applicant's complete specification unless within such time as may be prescribed,—

(a) the applicant shows to the satisfaction of the Controller that the priority date of his claim is not later than the priority date of the claim of the said other specification; or

(b) the complete specification is amended to the satisfaction of the Controller.

(3) If it appears to the Controller, as a result of an investigation under section 13 or otherwise,—

(a) that the invention so far as claimed in any claim of the applicant's complete specification has been claimed in any other complete specification referred to in clause (a) of sub-section (1) of section 13; and

(b) that such other complete specification was published on or after the priority date of the applicant's claim,

then, unless it is shown to the satisfaction of the Controller that the priority date of the applicant's claim is not later than the priority date of the claim of that specification, the provisions of sub-section (2) shall apply thereto in the same manner as they apply to a specification published on or after the date of filing of the applicant's complete specification.

(4) Omitted by the *Patents (Amendment) Act,* 2005

19. Powers of Controller in case of potential infringement.—(1) If, in consequence of the investigations required under this Act, it appears to the Controller that an invention in respect of which an application for a patent has been made cannot be performed without substantial risk of infringement of a claim of any other patent, he may direct that a reference to that other patent shall be inserted in the applicant's complete specification by way of notice to the public, unless within such time as may be prescribed—

(a) the applicant shows to the satisfaction of the Controller that there are reasonable grounds for contesting the validity of the said claim of the other patent; or

(b) the complete specification is amended to the satisfaction of the Controller.

(2) Where, after a reference to another patent has been inserted in a complete specification in pursuance of a direction under sub-section (1)—

(a) that other patent is revoked or otherwise ceases to be in force; or

(b) the specification of that other patent is amended by the deletion of the relevant claim; or

(c) it is found, in proceedings before the court or the Controller, that the relevant claim of that other patent is invalid or is not infringed by any working of the applicant's invention,

the Controller may, on the application of the applicant, delete the reference to that other patent.

20. Powers of Controller to make orders regarding substitution of applicants, etc.—(1) If the

Controller is satisfied, on a claim made in the prescribed manner at any time before a patent has been granted, that by virtue of any assignment or agreement in writing made by the applicant or one of the applicants for the patent or by operation of law, the claimant would, if the patent were then granted, be entitled thereto or to the interest of the applicant therein, or to an undivided share of the patent or of that interest, the Controller may, subject to the provisions of this section, direct that the application shall proceed in the name of the claimant or in the names of the claimants and the applicant or the other joint applicant or applicants, accordingly as the case may require.

(2) No such direction as aforesaid shall be given by virtue of any assignment or agreement made by one of two or more joint applicants for a patent except with the consent of the other joint applicant or applicants.

(3) No such direction as aforesaid shall be given by virtue of any assignment or agreement for the assignment of the benefit of an invention unless—

(a) the invention is identified therein by reference to the number of the application for the patent; or

(b) there is produced to the Controller an acknowledgement by the person by whom the assignment or agreement was made that the assignment or agreement relates to the invention in respect of which that application is made; or

(c) the rights of the claimant in respect of the invention have been finally established by the decision of a court; or

(d) the Controller gives directions for enabling the application to proceed or for regulating the manner in which it should be proceeded with under sub-section (5).

(4) Where one of two or more joint applicants for a patent dies at any time before the patent has been granted, the Controller may, upon a request in that behalf made by the survivor or survivors, and with the consent of the legal representative of the deceased, direct that the application shall proceed in the name of the survivor or survivors alone.

(5) If any dispute arises between joint applicants for a patent whether or in what manner the application should be proceeded with, the Controller may, upon application made to him in the prescribed manner by any of the parties, and after giving to all parties concerned an opportunity to be heard, give such directions as he thinks fit for enabling the application to proceed in the name of one or more of the parties alone or for regulating the manner in which it should be proceeded with, or for both those purposes, as the case may require.

21. Time for putting application in order for grant.—(1) An application for a patent shall be deemed to have been abandoned unless, Within such period as may be prescribed, the

applicant has complied with all the requirements imposed on him by or under this Act, whether in connection with the complete specification or otherwise in relation to the application from the date on which the first statement of objections to the application or complete specification or other documents related thereto is forwarded to the applicant by the Controller.

Explanation.—Where the application for a patent or any specification or, in the case of a convention application or an application filed under the Patent Cooperation Treaty designating India any document filed as part of the application has been returned to the applicant by the Controller in the course of the proceedings, the applicant shall not be deemed to have complied with such requirements unless and until he has re-filed it or the applicant proves to the satisfaction of the Controller that for the reasons beyond his control such document could not be re-filed.

(2) If at the expiration of the period as prescribed under sub section (1),—

(a) an appeal to the High Court is pending in respect of the application for the patent for the main invention; or

(b) in the case of an application for a patent of addition, an appeal to the High Court is pending in respect of either that application or the application for the main invention, the time within which the requirements of the Controller shall be complied with shall, on an application made by the applicant before the expiration of the period as prescribed under sub-section (1), be extended until such date as the High Court may determine.

(3) If the time within which the appeal mentioned in sub-section (2) may be instituted has not expired, the Controller may extend the period as prescribed under sub-section (1), to such further period as he may determine:

Provided that if an appeal has been filed during the said further period, and the High Court has granted any extension of time for complying with the requirements of the Controller, then the requirements may be complied with within the time granted by the Court.

22. Acceptance of complete specification.- [Omitted by the *Patents (Amendment) Act,* 2005]

23. Advertisement of acceptance of complete specification.- [Omitted by the *Patents (Amendment) Act,* 2005]

24. Effect of acceptance of complete specification.- [Omitted by the *Patents (Amendment) Act,* 2005]

CHAPTER IV A (Omitted)

EXCLUSIVE MARKETING RIGHTS

24A. **Application for grant of exclusive rights.-** [Omitted by the *Patents (Amendment) Act,* 2005]

24B. Grant of exclusive rights.- [Omitted by the *Patents (Amendment) Act,* 2005]

24C. Compulsory licences.- [Omitted by the *Patents (Amendment) Act,* 2005]

24D. Special provision for selling or distribution.- [Omitted by the *Patents (Amendment) Act,* 2005]

24E. Suits relating to infringements.- [Omitted by the *Patents (Amendment) Act,* 2005]

24F. Central Government and its officers not to be liable.- [Omitted by the *Patents (Amendment) Act,* 2005]

CHAPTER V

OPPOSITION PROCEEDINGS TO GRANT OF PATENTS

25. Opposition to the patent.—(1) Where an application for a patent has been published but a patent has not been granted, any person may, in writing, represent by way of opposition to the Controller against the grant of patent on the ground—

(a) that the applicant for the patent or the person under or through whom he claims, wrongfully obtained the invention or any part thereof from him or from a person under or through whom he claims;

(b) that the invention so far as claimed in any claim of the complete specification has been published before the priority date of the claim—

(i) in any specification filed in pursuance of an application for a patent made in India on or after the 1st day of January, 1912; or

(ii) in India or elsewhere, in any other document:

Provided that the ground specified in sub-clause (ii) shall not be available where such publication does not constitute an anticipation of the invention by virtue of sub-section (2) or subsection (3) of section 29;

(c) that the invention so far as claimed in any claim of the complete specification is claimed in a claim of a complete specification published on or after priority date of the applicant's claim and filed in pursuance of an application for a patent in India, being a claim of which the priority date is earlier than that of the applicant's claim;

(d) that the invention so far as claimed in any claim of the complete specification was publicly known or publicly used in India before the priority date of that claim.

Explanation.—For the purposes of this clause, an invention relating to a process for which a patent is claimed shall be deemed to have been publicly known or publicly used in India before the priority date of the claim if a product made by that process had already been imported into India before that date except where such importation has been for the purpose of reasonable trial or experiment only;

(e) that the invention so far as claimed in any claim of the complete specification is obvious and clearly does not involve any inventive step, having regard to the matter published as

mentioned in clause (b) or having regard to what was used in India before the priority date of the applicant's claim;

(f) that the subject of any claim of the complete specification is not an invention within the meaning of this Act, or is not patentable under this Act;

(g) that the complete specification does not sufficiently and clearly describe the invention or the method by which it is to be performed;

(h) that the applicant has failed to disclose to the Controller the information required by section 8 or has furnished the information which in any material particular was false to his knowledge;

(i) that in the case of a convention application, the application was not made within twelve months from the date of the first application for protection for the invention made in a convention country by the applicant or a person from whom he derives title;

(j) that the complete specification does not disclose or wrongly mentions the source or geographical origin of biological material used for the invention;

(k) that the invention so far as claimed in any claim of the complete specification is anticipated having regard to the knowledge, oral or otherwise, available within any local or indigenous community in India or elsewhere,

but on no other ground, and the Controller shall, if requested by such person for being heard, hear him and dispose of such representation in such manner and within such period as may be prescribed.

(2) At any time after the grant of patent but before the expiry of a period of one year from the date of publication of grant of a patent, any person interested may give notice of opposition to the Controller in the prescribed manner on any of the following grounds, namely:—

(a) that the patentee or the person under or through whom he claims, wrongfully obtained the invention or any part thereof from him or from a person under or through whom he claims;

(b) that the invention so far as claimed in any claim of the complete specification has been published before the priority date of the claim—

(i) in any specification filed in pursuance of an application for a patent made in India on or after the 1st day of January, 1912; or

(ii) in India or elsewhere, in any other document:

Provided that the ground specified in sub-clause (ii) shall not be available where such publication does not constitute an anticipation of the invention by virtue of sub-section (2) or sub-section (3) of section 29;

(c) that the invention so far as claimed in any claim of the complete specification is claimed in a claim of a complete specification published on or after the priority date of the claim of the patentee and filed in pursuance of an application for a patent in India, being a claim of which the priority date is earlier than that of the claim of the patentee;

(d) that the invention so far as claimed in any claim of the complete specification was publicly known or publicly used in India before the priority date of that claim.

Explanation.—For the purposes of this clause, an invention relating to a process for which a patent is granted shall be deemed to have been publicly known or publicly used in India before the priority date of the claim if a product made by that process had already been imported into India before that date except where such importation has been for the purpose of reasonable trial or experiment only;

(e) that the invention so far as claimed in any claim of the complete specification is obvious and clearly does not involve any inventive step, having regard to the matter published as mentioned in clause (b) or having regard to what was used in India before the priority date of the claim;

(f) that the subject of any claim of the complete specification is not an invention within the meaning of this Act, or is not patentable under this Act;

(g) that the complete specification does not sufficiently and clearly describe the invention or the method by which it is to be performed;

(h) that the patentee has failed to disclose to the Controller the information required by section 8 or has furnished the information which in any material particular was false to his knowledge;

(i) that in the case of a patent granted on a convention application, the application for patent was not made within twelve months from the date of the first application for protection for the invention made in a convention country or in India by the patentee or a person from whom he derives title;

(j) that the complete specification does not disclose or wrongly mentions the source and geographical origin of biological material used for the invention;

(k) that the invention so far as claimed in any claim of the complete specification was anticipated having regard to the knowledge, oral or otherwise, available within any local or indigenous community in India or elsewhere,

but on no other ground.

(3) (a) Where any such notice of opposition is duly given under sub- section (2), the Controller shall notify the patentee.

(b) On receipt of such notice of opposition, the Controller shall, by order in writing, constitute a Board to be known as the Opposition Board consisting of such officers as he may determine and refer such notice of opposition along with the documents to that Board for examination and submission of its recommendations to the Controller.

(c) Every Opposition Board constituted under clause (b) shall conduct the examination in accordance with such procedure as may be prescribed.

(4) On receipt of the recommendation of the Opposition Board and after giving the patentee and the opponent an opportunity of being heard, the Controller shall order either to maintain or to amend or to revoke the patent.

(5) While passing an order under sub-section (4) in respect of the ground mentioned in clause (d) or clause (e) of sub-section (2), the Controller shall not take into account any personal document or secret trial or secret use.

(6) In case the Controller issues an order under sub-section (4) that the patent shall be maintained subject to amendment of the specification or any other document, the patent shall stand amended accordingly.

26. In cases of "obtaining" Controller may treat the patent as the patent of opponent.—(1) Where in any opposition proceeding under this Act the Controller finds that—

(a) the invention, so far as claimed in any claim of the complete specification, was obtained from the opponent in the manner set out in clause (a) of sub-section (2) of section 25 and revokes the patent on that ground, he may, on request by such opponent made in the prescribed manner, direct that the patent shall stand amended in the name of the opponent;

(b) a part of an invention described in the complete specification was so obtained from the opponent, he may pass an order requiring that the specification be amended by the exclusion of that part of the invention.

(2) Where an opponent has, before the date of the order of the Controller requiring the amendment of a complete specification referred to in clause (b) of sub-section (1), filed an application for a patent for an invention which includes the whole or a part of the invention held to have been obtained from him and such application is pending, the Controller may treat such application and specification in so far as they relate to the invention held to have been obtained from him, as having been filed, for the purposes of this Act relating to the priority dates of claims of the complete specification, on the date on which the corresponding document was or was deemed to have been filed by the patentee in the earlier application but for all other purposes the application of the opponent shall be

proceeded with as an application for a patent under this Act.

27. Refusal to patent without opposition.—[Omitted by the *Patents (Amendment) Act,* 2005,]

28. Mention of inventor as such in patent.—(1) If the Controller is satisfied, upon a request or claim made in accordance with the provisions of this section,—

(a) that the person in respect of or by whom the request or claim is made is the inventor of an invention in respect of which application for a patent has been made, or of a substantial part of that invention; and

(b) that the application for the patent is a direct consequence of his being the inventor,

the Controller shall, subject to the provisions of this section, cause him to be mentioned as inventor in any patent granted in pursuance of the application in the complete specification and in the register of patents:

Provided that the mention of any person as inventor under this section shall not confer or derogate from any rights under the patent.

(2) A request that any person shall be mentioned as aforesaid may be made in the prescribed manner by the applicant for the patent or (where the person alleged to be the inventor is not the applicant or one of the applicants) by the applicant and that person.

(3) If any person other than a person in respect of whom a request in relation to the application in question has been made under sub-section (2) desires to be mentioned as aforesaid, he may make a claim in the prescribed manner in that behalf.

(4) A request or claim under the foregoing provisions of this section shall be made before the grant of patent.

(5) [Omitted by the *Patents (Amendment) Act,* 2005]

(6) Where a claim is made under sub-section (3), the Controller shall give notice of the claim to every applicant for the patent (not being the claimant) and to any other person whom the Controller may consider to be interested; and before deciding upon any request or claim made under sub-section (2), or subsection (3), the Controller shall, if required, hear the person in respect of or by whom the request or claim is made, and, in the case of a claim under sub-section (3), any person to whom notice of the claim has been given as aforesaid.

(7) Where any person has been mentioned as inventor in pursuance of this section, any other person who alleges that he ought not to have been so mentioned may at any time apply to the Controller for a certificate to that effect, and the Controller may, after

hearing, if required, any person whom he may consider to be interested, issue such a certificate, and if he does so, he shall rectify the specification and the register accordingly.

CHAPTER VI

ANTICIPATION

29. Anticipation by previous publication.—(1) An invention claimed in a complete specification shall not be deemed to have been anticipated by reason only that the invention was published in a specification filed in pursuance of an application for a patent made in India and dated before the 1st day of January, 1912.

(2) Subject as hereinafter provided, an invention claimed in a complete specification shall not be deemed to have been anticipated by reason only that the invention was published before the priority date of the relevant claim of the specification, if the patentee or the applicant for the patent proves—

(a) that the matter published was obtained from him, or (where he is not himself the true and first inventor) from any person from whom he derives title, and was published without his consent or the consent of any such person; and

(b) where the patentee or the applicant for the patent or any person from whom he derives title learned of the publication before the date of the application for the patent, or, in the case of a convention application, before the date of the application for protection in a convention country, that the application or the application in the convention country, as the case may be, was made as soon as reasonably practicable thereafter:

Provided that this sub-section shall not apply if the invention was before the priority date of the claim commercially worked in India, otherwise than for the purpose of reasonable trial, either by the patentee or the applicant for the patent or any person from whom he derives title or by any other person with the consent of the patentee or the applicant for the patent or any person from whom he derives title.

(3) Where a complete specification is filed in pursuance of an application for a patent made by a person being the true and first inventor or deriving title from him, an invention claimed in that specification shall not be deemed to have been anticipated by reason only of any other application for a patent in respect of the same invention made in contravention of the rights of that person, or by reason only that after the date of filing of that other

application the invention was used or published, without the consent of that person, by the applicant in respect of that other application, or by any other person in consequence of any disclosure of any invention by that applicant.

30. Anticipation by previous communication to Government.—An invention claimed in a complete specification shall not be deemed to have been anticipated by reason only of the communication of the invention to the Government or to any person authorized by the Government to investigate the invention or its merits, or of anything done, in consequence of such a communication, for the purpose of the investigation.

31. Anticipation by public display, etc.—An invention claimed in a complete specification shall not be deemed to have been anticipated by reason only of—

(a) the display of the invention with the consent of the true and first inventor or a person deriving title from him at an industrial or other exhibition to which the provisions of this section have been extended by the Central Government by notification in the Official Gazette, or the use thereof with his consent for the purpose of such an exhibition in the place where it is held; or

(b) the publication of any description of the invention in consequence of the display or use of the invention at any such exhibition as aforesaid; or

(c) the use of the invention, after it has been displayed or used at any such exhibition as aforesaid and during the period of the exhibition, by any person without the consent of the true and first inventor or a person deriving title from him; or

(d) the description of the invention in a paper read by the true and first inventor before a learned society or published with his consent in the transactions of such a society,

if the application for the patent is made by the true and first inventor or a person deriving title from him not later than twelve months after the opening of the exhibition or the reading or publication of the paper, as the case may be.

32. Anticipation by public working.—An invention claimed in a complete specification shall not be deemed to have been anticipated by reason only that at any time within one year before the priority date of the relevant claim of the specification, the invention was publicly worked in India—

(a) by the patentee or applicant for the patent or any person from whom he derives title; or

(b) by any other person with the consent of the patentee or applicant for the

patent or any person for whom he derives title,

if the working was effected for the purpose of reasonable trial only and if it was reasonably necessary, having regard to the nature of the invention, that the working for that purpose should be effected in public.

33. Anticipation by use and publication after provisional Specification.—

(1) Where a complete specification is filed or proceeded with in pursuance of an application which was accompanied by a provisional specification or where a complete specification filed along with an application is treated by virtue of a direction under sub-section (3) of section 9 as a provisional specification, then, notwithstanding anything contained in this Act, the Controller shall not refuse to grant the patent, and the patent shall not be revoked or invalidated, by reason only that any matter described in the provisional specification or in the specification treated as aforesaid as a provisional specification was used in India or published in India or elsewhere at any time after the date of the filing of that specification.

(2) Where a complete specification is filed in pursuance of a convention application, then, notwithstanding anything contained in this Act, the Controller shall not refuse to grant the patent, and the patent shall not be revoked or invalidated, by reason only that any matter disclosed in any application for protection in a convention country upon which the convention application is rounded was used in India or published in India or elsewhere at any time after the date of that application for protection.

34. No anticipation if circumstances are only as described in sections 29, 30, 31 and 32.— Notwithstanding anything contained in this Act, the Controller shall not refuse to grant a patent, and a patent shall not be revoked or invalidated by reason only of any circumstances which, by virtue of section 29 or section 30 or section 31 or section 32, do not constitute an anticipation of the invention claimed in the specification.

CHAPTER VII

PROVISIONS FOR SECRECY OF CERTAIN INVENTIONS

35. Secrecy directions relating to inventions relevant for defence purposes.—(1) Where, in respect of an application made before or after the commencement of this Act for a patent, it appears to the Controller that the invention is one of a class notified to him by the Central Government as relevant for defence purposes, or, where otherwise the invention appears to him to be so relevant, he may give directions for prohibiting or restricting the publication of information with respect to the invention or the communication of such information.

(2) Where the Controller gives any such directions as are referred to in subsection (1), he shall give notice of the application and of the directions to the Central Government, and the Central Government shall, upon receipt of such notice, consider whether the publication of the invention would be prejudicial to the defence of India, and if upon such consideration, it appears to it that the publication of the invention would not so prejudice, give notice to the Controller to that effect, who shall thereupon revoke the directions and notify the applicant accordingly.

(3) Without prejudice to the provisions contained in sub-section (1), where the Central Government is of opinion that an invention in respect of which the Controller has not given any directions under sub-section (1), is relevant for defence purposes, it may at any time before grant of patent notify the Controller to that effect, and thereupon the provisions of that sub-section shall apply as if the invention where one of the class notified by the Central Government, and accordingly the Controller shall give notice to the Central Government of the directions issued by him.

36. Secrecy directions to be periodically reviewed.—(1) The question whether an invention in respect of which directions have been given under section 35 continues to be relevant for defence purposes shall be reconsidered by the Central Government at intervals of six months or on a request made by the applicant which is found to be reasonable by the Controller and if, on such reconsideration it appears to the Central Government that the publication of the invention would no longer be prejudicial to the defence of India or in

case of an application filed by a foreign applicant it is found that the invention is published outside India it shall forthwith give notice to the Controller to revoke the direction and the Controllers shall thereupon revoke the directions previously given by him.

(2) The result of every re-consideration under sub-section (1), shall be communicated to the applicant within such time and in such manner as may be prescribed.

37. Consequences of secrecy directions.—(1) So long as any directions under section 35 are in force in respect of an application—

(a) the Controller shall not pass an order refusing to grant the same; and

(b) notwithstanding anything contained in this Act, no appeal shall lie from any order of the Controller passed in respect thereof:

Provided that the application may, subject to the directions, proceed up to the stage of grant of the patent, but the application and the specification found to be in order for grant of the patent shall not be published, and no patent shall be granted in pursuance of that application.

(2) Where a complete specification filed in pursuance of an application for a patent for an invention in respect of which directions have been given under section 35 is found to be in order for grant of the patent during the continuance in force of the directions, then—

(a) if, during the continuance in force of the directions, any use of the invention is made by or on behalf of, or to the order of the Government, the provisions of sections 100,101 and 103 shall apply in relation to that use as if the patent had been granted for the invention; and

(b) if it appears to the Central Government that the applicant for the patent has suffered hardship by reason of the continuance in force of the directions, the Central Government may make to him such payment (if any) by way of solatium as appears to the Central Government to be reasonable having regard to the novelty and utility of the invention and the purpose for which it is designed, and to any other relevant circumstances.

(3) Where a patent is granted in pursuance of an application in respect of which directions have been given under section 35, no renewal fee shall be payable in respect of any period during which those directions were in force.

38. Revocation of secrecy directions and extension of time.—When any direction given under

section 35 is revoked by the Controller, then, notwithstanding any provision of this Act specifying the time within which any step should be taken or any act done in connection with an application for the patent, the Controller may, subject to such conditions, if any, as he thinks fit to impose, extend the time for doing anything required or authorised to be done by or under this Act in connection with the application whether or not that time has previously expired.

39. Residents not to apply for patents outside India without prior permission.—(1) No person resident in India shall, except under the authority of a written permit sought in the manner prescribed and granted by or on behalf of the Controller, make or cause to be made any application outside India for the grant of a patent for an invention unless—

(a) an application for a patent for the same invention has been made in India, not less than six weeks before the application outside India; and

(b) either no direction has been given under sub-section (1) of section 35 in relation to the application in India, or all such directions have been revoked.

(2) The Controller shall dispose of every such application within such period as may be prescribed:

Provided that if the invention is relevant for defence purpose or atomic energy, the Controller shall not grant permit without the prior consent of the Central Government.

(3) This section shall not apply in relation to an invention for which an application for protection has first been filed in a country outside India by a person resident outside India.

40. Liability for contravention of section 35 or section 39.—Without prejudice to the provisions contained in Chapter XX, if in respect of an application for a patent any person contravenes any direction as to secrecy given by the Controller under section 35 or makes or causes to be made an application for grant of a patent outside India in contravention of section 39 the application for patent under this Act shall be deemed to have been abandoned and the patent granted, if any, shall be liable to be revoked under section 64.

41. Finality of orders of Controller and Central Government.—All orders of the Controller giving directions as to secrecy as well as all orders of the Central Government under this Chapter shall be final and shall not be called in question in any court on any ground whatsoever.

42. Savings respecting disclosure to Government.—Nothing in this Act shall be held to prevent the disclosure by the Controller of information concerning an application for a patent or a specification filed in pursuance thereof to the Central Government for the purpose of the application or specification being examined for considering whether an order under this Chapter should be made or whether an order so made should be revoked.

CHAPTER VIII

GRANT OF PATENTS AND RIGHTS CONFERRED THEREBY

43. Grant of patents.—(1) Where an application for a patent has been found to be in order for grant of the patent and either—

(a) the application has not been refused by the Controller by virtue of any power vested in him by this Act; or

(b) the application has not been found to be in contravention of any of the provisions of this Act,

the patent shall be granted as expeditiously as possible to the applicant or, in the case of a joint application, to the applicants jointly, with the seal of the patent office and the date on which the patent is granted shall be entered in the register.

(2) On the grant of patent, the Controller shall publish the fact that the patent has been granted and thereupon the application, specification and other documents related thereto shall be open for public inspection.

44. Amendment of patent granted to deceased applicant.—Where, at any time after a patent has been granted in pursuance of an application under this Act, the Controller is satisfied that the person to whom the patent was granted had died, or, in the case of a body corporate, had ceased to exist, before the patent was granted, the Controller may amend the patent by substituting for the name of that person the name of the person to whom the patent ought to have been granted, and the patent shall have effect, and shall be deemed always to have had effect, accordingly.

45. Date of patent.—(1) Subject to the other provisions contained in this Act, every patent shall be dated as of the date on which the application for patent was filed.

(2) The date of every patent shall be entered in the register.

(3) Notwithstanding anything contained in this section, no suit or other proceeding shall be commenced or prosecuted in respect of an infringement committed before the date of publication of the application.

46. Form, extent and effect of patent.—(1) Every patent shall be in the prescribed form and shall have effect throughout India.

(2) A patent shall be granted for one invention only:

Provided that it shall not be competent for any person in a suit or other proceeding to take any objection to a patent on the ground that it has been granted for more than one invention.

47. Grant of patents to be subject to certain conditions.—The grant of a patent under this Act shall be subject to the condition that—

(1) any machine, apparatus or other article in respect of which the patent is granted or any article made by using a process in respect of which the patent is granted, may be imported or made by or on behalf of the Government for the purpose merely of its own use;

(2) any process in respect of which the patent is granted may be used by or on behalf of the Government for the purpose merely of its own use;

(3) any machine, apparatus or other article in respect of which the patent is granted or any article made by the use of the process in respect of which the patent is granted, may be made or used, and any process in respect of which the patent is granted may be used, by any person, for the purpose merely of experiment or research including the imparting of instructions to pupils; and

(4) in the case of a patent in respect of any medicine or drug, the medicine or drug may be imported by the Government for the purpose merely of its own use or for distribution in any dispensary, hospital or other medical institution maintained by or on behalf of the Government or any other dispensary, hospital or other medical institution which the Central Government may, having regard to the public service that such dispensary, hospital or medical institution renders, specify in this behalf by notification in the Official Gazette.

48. Rights of patentees.—Subject to the other provisions contained in this Act and the conditions specified in section 47, a patent granted under this Act shall confer upon the patentee—

(a) where the subject matter of the patent is a product, the exclusive right to prevent third parties, who do not have his consent, from the act of making, using, offering for sale, selling or importing for those purposes that product in India;

(b) where the subject matter of the patent is a process, the exclusive right to prevent

third parties, who do not have his consent, from the act of using that process, and from the act of using, offering for sale, selling or importing for those purposes the product obtained directly by that process in India:

49. Patent rights not infringed when used on foreign vessels etc., temporarily or accidentally in India.—(1) Where a vessel or aircraft registered in a foreign country or a land vehicle owned by a person ordinarily resident in such country comes into India (including the territorial waters thereof) temporarily or accidentally only, the rights conferred by a patent for an invention shall not be deemed to be infringed by the use of the invention—

(a) in the body of the vessel or in the machinery, tackle, apparatus or other accessories thereof, so far as the invention is used on board the vessel and for its actual needs only; or

(b) in the construction or working of the aircraft or land vehicle or of the accessories thereof,

as the case may be.

(2) This section shall not extend to vessels, aircrafts or land vehicles owned by persons ordinarily resident in a foreign country the laws of which do not confer corresponding rights with respect to the use of inventions in vessels, aircraft or land vehicles owned by persons ordinarily resident in India while in the ports or within the territorial waters of that foreign country or otherwise within the jurisdiction of its courts.

50. Rights of co-owners of patents.—(1) Where a patent is granted to two or more persons, each of those persons shall, unless an agreement to the contrary is in force, be entitled to an equal undivided share in the patent.

(2) Subject to the provisions contained in this section and in section 51, where two or more persons are registered as grantee or proprietor of a patent, then, unless an agreement to the contrary is in force, each of those persons shall be entitled, by himself or his agents, to rights conferred by section 48 for his own benefit without accounting to the other person or persons.

(3) Subject to the provisions contained in this section and in section 51 and to any agreement for the time being in force, where two or more persons are registered as grantee or proprietor of a patent, then, a licence under the patent shall not be granted and share in the patent shall not be assigned by one of such persons except with the consent of the other person or persons.

(4) Where a patented article is sold by one of two or more persons registered as grantee or proprietor of a patent, the purchaser and any person claiming through him shall be entitled to deal with the article in the same manner as if the article had been sold by a sole patentee.

(5) Subject to the provisions contained in this section, the rules of law applicable to the ownership and devolution of movable property generally shall apply in relation to patents; and nothing contained in sub-section (1) or subsection (2) shall affect the mutual rights or obligations of trustees or of the legal representatives of a deceased person or their rights or obligations as such.

(6) Nothing in this section shall affect the rights of the assignees of a partial interest in a patent created before the commencement of this Act.

51. Power of Controller to give directions to co-owners.—(1) Where two or more persons are registered as grantee or proprietor of a patent, the Controller may, upon application made to him in the prescribed manner by any of those persons, give such directions in accordance with the application as to the sale or lease of the patent or any interest therein, the grant of licenses under the patent, or the exercise of any right under section 50 in relation thereto, as he thinks fit.

(2) If any person registered as grantee or proprietor of a patent fails to execute any instrument or to do any other thing required for the carrying out of any direction given under this section within fourteen days after being requested in writing so to do by any of the other persons so registered, the Controller may, upon application made to him in the prescribed manner by any such other person, give directions empowering any person to execute that instrument or to do that thing in the name and on behalf of the person in default.

(3) Before giving any directions in pursuance of an application under this section, the Controller shall give an opportunity to be heard—

(a) in the case of an application under sub-section (1) to the other person or persons registered as grantee or proprietor of the patent;

(b) in the case of an application under sub-section (2), to the person in default.

(4) No direction shall be given under this section so as to affect the mutual rights or obligations of trustees or of the legal representatives of a deceased person or of their rights or obligations as such, or which is inconsistent with the terms of any agreement between persons registered as grantee or proprietor of the patent.

52. Grant of patent to true and first inventor where it has been obtained by another in fraud of him.—(1) Where the patent has been revoked under section 64 on the ground that the patent was obtained wrongfully and in contravention of the rights of the petitioner or any person under or through whom he claims, or, where in a petition for revocation, the Appellate Board or court, instead of revoking the patent, directs the complete specification to be amended by the exclusion of a claim or claims in consequence of a finding that the invention covered by such claim or claims had been obtained from the petitioner, the Appellate Board or court may, by order passed in the same proceeding, permit the grant to the petitioner of the whole or such part of the invention which the Appellate Board or court finds has been wrongfully obtained by the patentee, in lieu of the patent so revoked or is excluded by amendment.

(2) Where any such order is passed, the Controller shall, on request by the petitioner made in the prescribed manner grant to him—

(i) in cases where the Appellate Board or court permits the whole of the patent to be granted, a new patent bearing the same date and number as the patent revoked;

(ii) in cases where the Appellate Board or court permits a part only of the patent to be granted, a new patent for such part bearing the same date as the patent revoked and numbered in such manner as may be prescribed:

Provided that the Controller may, as a condition of such grant, require the petitioner to file a new and complete specification to the satisfaction of the Controller describing and claiming that part of the invention for which the patent is to be granted.

(4) No suit shall be brought for any infringement of a patent granted under this section committed before the actual date on which such patent was granted.

53. Term of patent.—*(1)* Subject to the provisions of this Act, the term of every patent granted, after the commencement of the Patents (Amendment) Act, 2002, and the term of every patent which has not expired and has not ceased to have effect, on the date of such commencement, under this Act, shall be twenty years from the date of filing of the application for the patent.

Explanation.—For the purposes of this sub-section, the term of patent in case of International applications filed under the Patent Cooperation Treaty designating India, shall be twenty years from the international filing date accorded under the Patent Cooperation Treaty.

(2) A patent shall cease to have effect notwithstanding anything therein or in this Act on the expiration of the period prescribed for the payment of any renewal fee, if that fee is not paid within the prescribed period or within such extended period as may be prescribed.

(3) [Omitted by the *Patents (Amendment) Act,* 2005]

(4) Notwithstanding anything contained in any other law for the time being in force, on cessation of the patent right due to non-payment of renewal fee or on expiry of the term of patent, the subject matter covered by the said patent shall not be entitled to any protection.

CHAPTER IX

PATENTS OF ADDITION

54. Patents of addition.—(1)Subject to the provisions contained in this section, where an application is made for a patent in respect of any improvement in or modification of an invention described or disclosed in the complete specification filed therefor (in this Act referred to as the "main invention") and the applicant also applies or has applied for a patent for that invention or is the patentee in respect thereof, the Controller may, if the applicant so requests, grant the patent for the improvement or modification as a patent of addition.

(2) Subject to the provisions contained in this section, where an invention, being an improvement in or modification of another invention, is the subject of an independent patent and the patentee in respect of that patent is also the patentee in respect of the patent for the main invention, the Controller may, if the patentee so requests, by order, revoke the patent for the improvement or modification and grant to the patentee a patent of addition in respect thereof, bearing the same date as the date of the patent so revoked.

(3) A patent shall not be granted as a patent of addition unless the date of filing of the application was the same as or later than the date of filing of the application in respect of the main invention.

(4) A patent of addition shall not be granted before grant of the patent for the main invention.

55. Term of patents of addition.—(1) A patent of addition shall be granted for a term equal to that of the patent for the main invention, or so much thereof as has not expired, and shall remain in force during that term or until the previous cesser of the patent for the main invention and no longer:

Provided that if the patent for the main invention is revoked under this Act, the court, or, as the case may be, the Controller, on request made to him by the patentee in the prescribed manner, may order that the patent of addition shall become an independent patent for the remainder of the term for the patent for the main invention and thereupon the patent shall continue in force as an independent patent accordingly.

(2) No renewal fees shall be payable in respect of a patent of addition, but, if any such patent becomes an independent patent under sub-section (1) the same fees shall thereafter be

payable, upon the same dates, as if the patent had been originally granted as an independent patent.

56. Validity of patents of addition.—(1) The grant of a patent of addition shall not be refused, and a patent granted as a patent of addition shall not be revoked or invalidated, on the ground only that the invention claimed in the complete specification does not involve any inventive step having regard to any publication or use of—

(a) the main invention described in the complete specification relating thereto; or

(b) any improvement in or modification of the main invention described in the complete specification of a patent of addition to the patent for the main invention or of an application for such a patent of addition,

and the validity of a patent of addition shall not be questioned on the ground that the invention ought to have been the subject of an independent patent.

(2) For the removal of doubts it is hereby declared that in determining the novelty of the invention claimed in the complete specification filed in pursuance of an application for a patent of addition regard shall be had also to the complete specification in which the main invention is described.

CHAPTER X

AMENDMENT OF APPLICATIONS AND SPECIFICATIONS

57. Amendment of application and specification or any document relating thereto before Controller.—(1) Subject to the provisions of section 59, the Controller may, upon application made under this section in the prescribed manner by an applicant for a patent or by a patentee, allow the application for the patent or the complete specification or any document relating thereto to be amended subject to such conditions, if any, as the Controller thinks fit:

Provided that the Controller shall not pass any order allowing or refusing an application to amend an application for a patent or a specification or any document relating thereto under this section while any suit before a court for the infringement of the patent or any proceeding before the High Court for the revocation of the patent is pending, whether the suit or proceeding commenced before or after the filing of the application to amend.

(2) Every application for leave to amend an application for a patent or a complete specification or any document relating thereto under this section shall state the nature of the proposed amendment, and shall give full particulars of the reasons for which the application is made.

(3) Any application for leave to amend an application for a patent or a complete specification or a document related thereto under this section made after the grant of patent and the nature of the proposed amendment may be published.

(4) Where an application is published under sub-section (3), any person interested may, within the prescribed period after the publication thereof, give notice to the Controller of opposition thereto; and where such a notice is given within the period aforesaid, the Controller shall notify the person by whom the application under this section is made and shall give to that person and to the opponent an opportunity to be heard before he decides the case.

(5) An amendment under this section of a complete specification may be, or include, an amendment of the priority date of a claim.

(6) The provisions of this section shall be without prejudice to the right of an applicant for a patent to amend his specification or any other document related thereto to comply with the directions of the Controller issued before the grant of a patent.

58. Amendment of specification before Appellate Board or High Court.— (1) In any proceeding before the Appellate Board or the High Court for the revocation of a patent, the Appellate Board or the High Court, as the case may be, may, subject to the provisions contained in section 59, allow the patentee to amend his complete specification in such manner and subject to such terms as to costs, advertisement or otherwise, as the Appellate Board or the High Court may think fit, and if, in any proceedings for revocation the Appellate Board or the High Court decides that the patent is invalid, it may allow the specification to be amended under this section instead of revoking the patent.

(2) Where an application for an order under this section is made to the Appellate Board or the High Court, the applicant shall give notice of the application to the Controller, and the Controller shall be entitled to appear and be heard, and shall appear if so directed by the Appellate Board or the High Court.

(3) Copies of all orders of the Appellate Board or the High Court allowing the patentee to amend the specification shall be transmitted by the Appellate Board or the High Court to the Controller who shall, on receipt thereof, cause an entry thereof and reference thereto to be made in the register.

59. Supplementary provisions as to amendment of application or specification.—*(1)* No amendment of an application for a patent or a complete specification or any document relating thereto shall be made except by way of disclaimer, correction or explanation, and no amendment thereof shall be allowed, except for the purpose of incorporation of actual fact, and no amendment of a complete specification shall be allowed, the effect of which would be that the specification as amended would claim or describe matter not in substance disclosed or shown in the specification before the amendment, or that any claim of the specification as amended would not fall wholly within the scope of a claim of the specification before the amendment.

(2) Where after the date of grant of patent any amendment of the specification or any other documents related thereto is allowed by the Controller or by the Appellate Board or the High Court, as the case may be,—

(a) the amendment shall for all purposes be deemed to form part of the specification along with other documents related thereto;

(b) the fact that the specification or any other documents related thereto has been amended shall be published as expeditiously as possible; and

(c) the right of the applicant or patentee to make amendment shall not be called in question except on the ground of fraud.

(3) In construing the specification as amended, reference may be made to the specification as originally accepted.

CHAPTER XI

RESTORATION OF LAPSED PATENTS

60. Applications for restorations of lapsed patents.—(1) Where a patent has ceased to have effect by reason of failure to pay any renewal fee within the period prescribed under section 53 or within such period as may be allowed under sub-section (4) of section 142, the patentee or his legal representative, and the patent was held by two or more persons jointly, then, with the leave of the Controller, one or more of them without joining the others, may, within eighteen months from the date on which the patent ceased to have effect, make an application for the restoration of the patent.

(2) [Omitted by the *Patents (Amendment) Act,* 2002]

(3) An application under this section shall contain a statement, verified in the prescribed manner, fully setting out the circumstances which led to the failure to pay the prescribed fee, and the Controller may require from the applicant such further evidence as he may think necessary.

61. Procedure for disposal of applications for restoration of lapsed patents.—(1) If, after hearing the applicant in cases where the Applicant so desires or the Controller thinks fit, the Controller is *prima facie* satisfied that the failure to pay the renewal fee was unintentional and that there has been no undue delay in the making of the application, he shall publish the application in the prescribed manner; and within the prescribed period any person interested may give notice to the Controller of opposition thereto on either or both of the following grounds, that is to say,—

(a) that the failure to pay the renewal fee was not unintentional; or

(b) that there has been undue delay in the making of the application.

(2) If notice of opposition is given within the period aforesaid, the Controller shall notify the applicant, and shall give to him and to the opponent an opportunity to be heard before he decides the case.

(3) If no notice of opposition is given within the period aforesaid or if in the case of opposition, the decision of the Controller is in favour of the applicant, the Controller shall, upon payment of any unpaid renewal fee and such additional fee as may be

prescribed, restore the patent and any patent of addition specified in the application which has ceased to have effect on the cesser of that patent.

(4) The Controller may, if he thinks fit as a condition of restoring the patent, require that an entry shall be made in the register of any document or matter which, under the provisions of this Act, has to be entered in the register but which has not been so entered.

62. Rights of patentees of lapsed patents which have been restored.—(1) Where a patent is restored, the rights of the patentee shall be subject to such provisions as may be prescribed and to such other provisions as the Controller thinks fit to impose for the protection or compensation of persons who may have begun to avail themselves of, or have taken definite steps by contract or otherwise to avail themselves of, the patented invention between the date when the patent ceased to have effect and the date of publication of the application for restoration of the patent under this Chapter.

(2) No suit or other proceeding shall be commenced or prosecuted in respect of an infringement of a patent committed between the date on which the patent ceased to have effect and the date of the publication of the application for restoration of the patent.

CHAPTER XII

SURRENDER AND REVOCATION OF PATENTS

63. Surrender of patents.—(1) A patentee may, at any time by giving notice in the prescribed manner to the Controller, offer to surrender his patent.

(2) Where such an offer is made, the Controller shall publish the offer in the prescribed manner, and also notify every person other than the patentee whose name appears in the register as having an interest in the patent.

(3) Any person interested may, within the prescribed period after such publication, give notice to the Controller of opposition to the surrender, and where any such notice is given the Controller shall notify the patentee.

(4) If the Controller is satisfied after hearing the patentee and any opponent, if desirous of being heard, that the patent may properly be surrendered, he may accept the offer and, by order, revoke the patent.

64. Revocation of patents.—(1) Subject to the provisions contained in this Act, a patent, whether granted before or after the commencement of this Act, may, be revoked on a petition of any person interested or of the Central Government by the Appellate Board or on a counter-claim in a suit for infringement of the patent by the High Court on any of the following grounds, that is to say—

(a) that the invention, so far as claimed in any claim of the complete specification, was claimed in a valid claim of earlier priority date contained in the complete specification of another patent granted in India;

(b) that the patent was granted on the application of a person not entitled under the provisions of this Act to apply therefor:

(c) that the patent was obtained wrongfully in contravention of the rights of the petitioner or any person under or through whom he claims;

(d) that the subject of any claim of the complete specification is not an invention within the meaning of this Act;

(e) that the invention so far as claimed in any claim of the complete specification is not new, having regard to what was publicly known or publicly used in India before the

priority date of the claim or to what was published in India or elsewhere in any of the, documents referred to in section 13:

(f) that the invention so far as claimed in any claim of the complete specification is obvious or does not involve any inventive step, having regard to what was publicly known or publicly used in India or what was published in India or elsewhere before the priority date of the claim:

(g) that the invention, so far as claimed in any claim of the complete specification, is not useful;

(h) that the complete specification does not sufficiently and fairly describe the invention and the method by which it is to be performed, that is to say, that the description of the method or the instructions for the working of the invention as contained in the complete specification are not by themselves sufficient to enable a person in India possessing average skill in, and average knowledge of, the art to which the invention relates, to work the invention, or that it does not disclose the best method of performing it which was known to the applicant for the patent and for which he was entitled to claim protection;

(i) that the scope of any claim of the complete specification is not sufficiently and clearly defined or that any claim of the complete specification is not fairly based on the matter disclosed in the specification;

(j) that the patent was obtained on a false suggestion or representation;

(k) that the subject of any claim of the complete specification is not patentable under this Act;

(l) that the invention so far as claimed in any claim of the complete specification was secretly used in India, otherwise than as mentioned in sub-section (3), before the priority date of the claim;

(m) that the applicant for the patent has failed to disclose *to the* Controller the information required by section 8 or has furnished information which in any material particular was false to his knowledge;

(n) that the applicant contravened any direction for secrecy passed under section 35 or made or caused to be made an application for the grant of a patent outside India in contravention of section 39;

(o) that leave to amend the complete specification under section 57 or section 58 was obtained by fraud.

(p) that the complete specification does not disclose or wrongly mentions the source or

geographical origin of biological material used for the invention;

(q) that the invention so far as claimed in any claim of the complete specification was anticipated having regard to the knowledge, oral or otherwise, available within any local or indigenous community in India or elsewhere.

(2) For the purposes of clauses (e) and (f) of sub-section (1)—,

(a) no account shall be taken of personal document or secret trial or secret use; and

(b) where the patent is for a process or for a product as made by a process described or claimed, the importation into India of the product made abroad by that process shall constitute knowledge or use in India of the invention on the date of the importation, except where such importation has been for the purpose of reasonable trial or experiment only.

(3) For the purpose of clause (1) of sub-section (1), no account shall be taken of any use of the invention—

(a) for the purpose of reasonable trial or experiment only; or

(b) by the Government or by any person authorised by the Government or by a Government undertaking, in consequence of the applicant for the patent or any person from whom he derives title having communicated or disclosed the invention directly or indirectly to the Government or person authorised as aforesaid or to the Government undertaking; or

(c) by any other person, in consequence of the applicant for the patent or any person from whom he derives title having communicated or disclosed the invention, and without the consent or acquiescence of the applicant or of any person from whom he derives title.

(4) Without prejudice to the provisions contained in sub-section (1), a patent may be revoked by the High Court on the petition of the Central Government, if the High Court is satisfied that the patentee has without reasonable cause failed to comply with the request of the Central Government to make, use or exercise the patented invention for the purposes of Government within the meaning of section 99 upon reasonable terms.

(5) A notice of any petition for revocation of a patent under this section shall be served on all persons appearing from the register to be proprietors of that patent or to have shares or interests therein and it shall not be necessary to serve a notice on any other person.

65. Revocation of patent or amendment of complete specification on directions from Government in cases relating to atomic energy. — (1) Where at any time after grant of a patent, the Central Government is satisfied that a patent is for an invention relating to

atomic energy for which no patent can be granted under sub-section (1) of section 20 of the Atomic Energy Act, 1962 (33 of 1962), it may direct the Controller to revoke the patent, and thereupon the Controller, after giving notice, to the patentee and every other person whose name has been entered in the register as having an interest in the patent, and after giving them an opportunity of being heard, may revoke the patent.

(2) In any proceedings under sub-section (1), the Controller may allow the patentee to amend the complete specification in such manner as he considers necessary instead of revoking the patent.

66. Revocation of patent in public interest.—Where the Central Government is of opinion that a patent or the mode in which it is exercised is mischievous to the State or generally prejudicial to the public, it may, after giving the patentee an opportunity to be heard, make a declaration to that effect in the Official Gazette and thereupon the patent shall be deemed to be revoked.

CHAPTER XIII

REGISTER OF PATENTS

67. Register of patents and particulars to be entered therein.—(1) There shall be kept at the patent office a register of patents, wherein shall be entered—

(a) the names and addresses of grantees of patents;

(b) notifications of assignments, extension, and revocations of patents; and

(c) particulars of such other matters affecting the validity or proprietorship of patents as may be prescribed.

(2) No notice of any trust, whether express, implied or constructive, shall be entered in the register, and the Controller shall not be affected by any such notice.

(3) Subject to the superintendence and directions of the Central Government, the register shall be kept under the control and management of the Controller.

(4) Notwithstanding anything contained in sub-section (1), it shall be lawful for the Controller to keep the register of patents or any part thereof in computer floppies, diskettes or any other electronic form subject to such safeguards as may be prescribed.

(5) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), a copy of, or extracts from, the register of patents, certified to be a true copy under the hand of the Controller or any officer duly authorised by the Controller in this behalf shall, in all legal proceedings, be admissible in evidence.

(6) In the event the register is kept wholly or partly in computer floppies, diskettes or any other electronic form,—

(a) reference in this Act to an entry in the register shall be deemed to include reference to a record of particulars kept in computer floppies, diskettes or any other electronic form and comprising the register or part of the register;

(b) references in this Act to particulars being registered or entered in the register shall be deemed to include references to the keeping of record of those particulars comprising the register or part of the register in computer floppies, diskettes or any other electronic form; and

(c) references in this Act to the rectification of the register are to be read as including references to the rectification of the record of particulars kept in computer floppies,

diskettes or any other electronic form and comprising the register or part of the register.

68. Assignments, etc., not to be valid unless in writing and duly executed.—An assignment of a patent or of a share in a patent, a mortgage, licence or the creation of any other interest in a patent shall not be valid unless the same were in writing and the agreement between the parties concerned is reduced to the form of a document embodying all the terms and conditions governing their rights and obligations and duly executed.

69. Registration of assignments, transmissions, etc.—(1) Where any person becomes entitled by assignment, transmission or operation of law to a patent or to a share in a patent or becomes entitled as a mortgagee, licensee or otherwise to any other interest in a patent, he shall apply in writing in the prescribed manner to the Controller for the registration of his title or, as the case may be, of notice of his interest in the register.

(2) Without prejudice to the provisions of sub-section (1), an application for the registration of the title of any person becoming entitled by assignment to a patent or a share in a patent or becoming entitled by virtue of a mortgage, licence or other instrument to any other interest in a patent may be made in the prescribed manner by the assignor, mortgagor, licensor or other party to that instrument, as the case may be.

(3) Where an application is made under this section for the registration of the title of any person the Controller shall, upon proof to title of his satisfaction,—

(a) where that person is entitled to a patent or a share in a patent, register him in the register as proprietor or co-proprietor of the patent, and enter in the register particulars of the instrument or even by which he derives title; or

(b) where that person is entitled to any other interest in the patent, enter in the register notice of his interest, with particulars of the instrument, if any, creating it:

Provided that if there is any dispute between the parties whether the assignment, mortgage, licence, transmission, operation of law or any other such transaction has validly vested in such person a title to the patent or any share or interest therein, the Controller may refuse to take any action under clause (a) or, as the case may be, under clause (b), until the rights of the parties have been determined by a competent court.

(4) There shall be supplied to the Controller in the prescribed manner for being filed in the patent office copies of all agreements, licences and other documents affecting the title to any patent or any licence thereunder authenticated in the prescribed

manner and also such other documents as may be prescribed relevant to the subject matter:

Provided that in the case of a licence granted under a patent, the Controller shall, if so requested by the patentee or licensee, take steps for securing that the terms of the licence are not disclosed to any person except under the order of a court.

(5) Except for the purposes of an application under sub-section (1) or of an application to rectify the register, a document in respect of which no entry has been made in the register under sub-section (3) shall not be admitted by the Controller or by any court as evidence of the title of any person to a patent or to a share or interest therein unless the Controller or the court, for reasons to be recorded in writing, otherwise directs.

70. Power of registered grantee or proprietor to deal with patent.—Subject to the provisions contained in this Act relating to co-ownership of patents and subject also to any rights vested in any other person of which notice is entered in the register, the person or persons registered as grantee or proprietor of a patent shall have power to assign, grant licences under, or otherwise deal with, the patent and to give effectual receipts for any consideration for any such assignment, licence or dealing:

Provided that any equities in respect of the patent may be enforced in like manner as in respect of any other movable property.

71. Rectification of register by Appellate Board.—(1) The Appellate Board may, on the application of any person aggrieved—

(a) by the absence or omission from the register of any entry; or

(b) by any entry made in the register without sufficient cause; or

(c) by any entry wrongly remaining on the register; or

(d) by any error or defect in any entry in the register,

make such order for the making, variation or deletion, of any entry therein as it may think fit.

(2) In any proceeding under this section the Appellate Board may decide any question that may be necessary or expedient to decide in connection with the rectification of the register.

(3) Notice of any application to the Appellate Board under this section shall be given in the prescribed manner to the Controller who shall be entitled to appear and be heard on the application, and shall appear if so directed by the Board.

(4) Any order of the Appellate Board under this section rectifying the register shall direct that

notice of the rectification shall be served upon the Controller in the prescribed manner who shall upon receipt of such notice rectify the register accordingly.

72. Register to be open for inspection.—(1) Subject to the provisions contained in this Act and any rules made thereunder, the register shall at all convenient times be open to inspection by the public; and certified copies, sealed with the seal of the patent office, of any entry in the register shall be given to any person requiring them on payment of the prescribed fee.

(2) The register shall be *prima facie* evidence of any matters required or authorised by or under this Act to be entered therein.

(3) If the record of particulars is kept in computer floppies or diskettes or in any other electronic form, sub-sections (1) and (2) shall be deemed to have been complied with if the public is given access to such computer floppies, diskettes or any other electronic form or printouts of such record of particulars for inspection.

CHAPTER XIV

PATENT OFFICE AND ITS ESTABLISHMENT

73. Controller and other officers.—(1) The Controller General of Patents, Designs and Trade Marks appointed under sub-section (1) of section 3 of the Trade Marks Act, 1999 (47 of 1999), shall be the Controller of Patents for the purposes of this Act.

(2) For the purposes of this Act, the Central Government may appoint as many examiners and other officers and with such designations as it thinks fit.

(3) Subject to the provisions of this Act, the officers appointed under subsection (2) shall discharge under the superintendence and directions of the Controller such functions of the Controller under this Act as he may, from time to time by general or special order in writing, authorise them to discharge.

(4) Without prejudice to the generality of the provisions of sub-section (3), the Controller may, by order in writing and for reasons to be recorded therein withdraw any matter pending before an officer appointed under sub-section (2) and deal with such matter himself either *de novo* or from the stage it was so withdrawn or transfer the same to another officer appointed under sub-section (2) who may, subject to special directions in the order of transfer, proceed with the matter either *de novo* or from the stage it was so transferred.

74. Patent office and its branches.—(1) For the purposes of this Act, there shall be an office which shall be known as the patent office.

(2) The Central Government may, by notification in the Official Gazette, specify the name of the Patent Office.

(3) The head office of the patent office shall be at such place as the Central Government may specify, and for the purpose of facilitating the registration of patents there may be established, at such other places as the Central Government may think fit, branch offices of the patent office.

(4) There shall be a seal of the patent office.

75. Restriction on employees of patent office as **to right or interest in patents.**—All officers and employees of the patent office shall be incapable, during the period for which they hold their appointments, to acquire or take, directly or indirectly, except by inheritance or

bequest, any right or interest in any patent issued by that office.

76. Officers and employees not to furnish information, etc.—An officer or employee in the patent office shall not, except when required or authorised by this Act or under a direction in writing of the Central Government or Appellate Board or the Controller or by order of a court,—

(a) furnish information on a matter which is being, or has been, dealt with under this Act ; or

(b) prepare or assist in the preparation of a document required or permitted by or under this Act , to be lodged in the patent office; or

(c) conduct a search in the records of the patent office.

CHAPTER XV

POWERS OF CONTROLLER GENERALLY

77. Controller to have certain powers of a **civil court.**—(1) Subject to any rules made in this behalf, the Controller in any proceedings before him under this Act shall have the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses or documents;

(e) awarding costs;

(f) reviewing his own decision on application made within the prescribed time and in the prescribed manner;

(g) setting aside an order passed *ex- parte* on application made within the prescribed time and in the prescribed manner;

(h) any other matter which may be prescribed.

(2) Any order for costs awarded by the Controller in exercise of the powers conferred upon him under sub-section (1) shall be executable as a decree of a civil court.

78. Power of Controller to correct clerical errors etc.—(1) Without prejudice to the provisions contained in sections 57 and 59 as regards amendment of applications for patents or complete specifications or other documents related thereto and subject to the provisions of section 44, the Controller may, in accordance with the provisions of this section, correct any clerical error in any patent or in any specification or other document filed in pursuance of such application or in any application for a patent or any clerical error in any matter which is entered in the register.

(2) A correction may be made in pursuance of this section either upon a request in writing made by any person interested and accompanied by the prescribed fee, or without such a request.

(3) Where the Controller proposes to make any such correction as aforesaid otherwise than

in pursuance of a request made under this section, he shall give notice of the proposal to the patentee or the applicant for the patent, as the case may be, and to any other person who appears to him to be concerned, and shall give them an opportunity to be heard before making the correction.

(4) Where a request is made under this section for the correction of any error in a patent or application for a patent or any document filed in pursuance of such an application, and it appears to the Controller that the correction would materially alter the meaning or scope of the document to which the request relates and ought not to be made without notice to persons affected thereby, he shall require notice of the nature of the proposed correction to be published in the prescribed manner.

(5) Within the prescribed time after any such publication as aforesaid any person interested may give notice to the Controller of opposition to the request, and, where such notice of opposition is given, the Controller shall give notice thereof to the person by whom the request was made, and shall give to him and to the opponent an opportunity to be heard before he decides the case.

79. Evidence how to be given and powers of Controller in respect thereof. — Subject to any rules made in this behalf, in any proceeding under this Act before the Controller, evidence shall be given by affidavit in the absence of directions by the Controller to the contrary, but in any case in which the Controller thinks it right so to do, he may take oral evidence in lieu of, or in addition to, evidence by an affidavit, or may allow any party to be cross-examined on the contents of his affidavit.

80. Exercise of discretionary powers by Controller.—Without prejudice to any provision contained in this Act requiring the Controller to hear any party to the proceedings thereunder or to give any such party an opportunity to be heard, the Controller shall give to any applicant for a patent, or for amendment of a specification (if within the prescribed time the applicant so requires) an opportunity to be heard before exercising adversely to the applicant any discretion vested in the Controller by or under this Act.

Provided that the party desiring a hearing makes the request for such hearing to the Controller at least ten days in advance of the expiry of the time-limit specified in respect of the proceeding.

81. Disposal by Controller of applications for extension of time.—Where under the provisions of this Act or the rules made thereunder the Controller may extend the time for doing any act, nothing in this Act shall be deemed to require him to give notice to or hear the party interested in opposing the extension, nor shall any appeal lie from any order of the Controller granting such extension.

CHAPTER XVI

WORKING OF PATENTS, COMPULSORY LICENCES AND REVOCATION

82. Definition of "patented articles" and "patentee".—In this Chapter, unless the context otherwise requires,—

(a) "patented article" includes any article made by a patented process; and

(b) "patentee" includes an exclusive licensee.

83. General principles applicable to working of patented inventions.—Without prejudice to the other provisions contained in this Act, in exercising the powers conferred by this Chapter, regard shall be had to the following general considerations, namely;—

(a) that patents are granted to encourage inventions and to secure that the inventions are worked in India on a commercial scale and to the fullest extent that is reasonably practicable without undue delay;

(b) that they are not granted merely to enable patentees to enjoy a monopoly for the importation of the patented article;

(c) that the protection and enforcement of patent rights contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations;

(d) that patents granted do not impede protection of public health and nutrition and should act as instrument to promote public interest specially in sectors of vital importance for socio-economic and technological development of India;

(e) that patents granted do not in any way prohibit Central Government in taking measures to protect public health;

(f) that the patent right is not abused by the patentee or person deriving title or interest on patent from the patentee, and the patentee or a person deriving title or interest on patent from the patentee does not resort to practices which unreasonably restrain trade or adversely affect the international transfer of

technology; and

(g) that patents are granted to make the benefit of the patented invention available at reasonably affordable prices to the public.

84. Compulsory licences.—(1) At any time after the expiration of three years from the date of the grant of a patent, any person interested may make an application to the Controller for grant of compulsory licence on patent on any of the following grounds, namely:—

(a) that the reasonable requirements of the public with respect to the patented invention have not been satisfied,or

(b) that the patented invention is not available to the public at a reasonably affordable price, or

(c) that the patented invention is not worked in the territory of India.

(2) An application under this section may be made by any person notwithstanding that he is already the holder of a licence under the patent and no person shall be estopped from alleging that the reasonable requirements of the public with respect to the patented invention are not satisfied or that the patented invention is not worked in the territory of India or that the patented invention is not available to the public at a reasonably affordable price by reason of any admission made by him, whether in such a licence or otherwise or by reason of his having accepted such a licence.

(3) Every application under sub-section (1) shall contain a statement setting out the nature of the applicant's interest together with such particulars as may be prescribed and the facts upon which the application is based.

(4) The Controller, if satisfied that the reasonable requirements of the public with respect to the patented invention have not been satisfied or that the patented invention is not worked in the territory of India or that the patented invention is not available to the public at a reasonably affordable price, may grant a licence upon such terms as he may deem fit.

(5) Where the Controller directs the patentee to grant a licence he may, as incidental thereto, exercise the powers set out in section 88.

(6) In considering the application field under this section, the Controller shall take into account,—

(i) the nature of the invention, the time which has elapsed since the sealing of the patent and the measures already taken by the patentee or any licensee to make full use of the invention;

(ii) the ability of the applicant to work the invention to the public advantage;

(iii) the capacity of the applicant to undertake the risk in providing capital and working the invention, if the application were granted;

(iv) as to whether the applicant has made efforts to obtain a licence from the patentee on reasonable terms and conditions and such efforts have not been successful within a reasonable period as the Controller may deem fit:

Provided that this clause shall not be applicable in case of national emergency or other circumstances of extreme urgency or in case of public non-commercial use or on establishment of a ground of anticompetitive practices adopted by the patentee,

but shall not be required to take into account matters subsequent to the making of the application.

Explanation.—For the purposes of clause (iv), "reasonable period" shall be construed as a period not ordinarily exceeding a period of six months.

(7) For the purposes of this Chapter, the reasonable requirements of the public shall be deemed not to have been satisfied—

(a) if, by reason of the refusal of the patentee to grant a licence or licences on reasonable terms,—

(i) an existing trade or industry or the development thereof or the establishment of any new trade or industry in India or the trade or industry of any person or class of persons trading or manufacturing in India is prejudiced; or

(ii) the demand for the patented article has not been met to an adequate extent or on reasonable terms; or

(iii) a market for export of the patented article manufactured in India is not being supplied or developed; or

(iv) the establishment or development of commercial activities in India is prejudiced; or

(b) if, by reason of conditions imposed by the patentee upon the grant of licences under the patent or upon the purchase, hire or use of the patented article or process, the manufacture, use or sale of materials not protected by the patent, or the establishment or development of any trade or industry in India, is prejudiced; or

(c) if the patentee imposes a condition upon the grant of licences under the patent to provide exclusive grant back, prevention to challenges to the validity of patent or coercive package licensing; or

(d) if the patented invention is not being worked in the territory of India on a commercial scale to an adequate extent or is not being so worked to the fullest

extent that is reasonably practicable; or

(e) if the working of the patented invention in the territory of India on a commercial scale is being prevented or hindered by the importation from abroad of the patented article by—

(i) the patentee or persons claiming under him or

(ii) persons directly or indirectly purchasing from him; or

(iii) other persons against whom the patentee is not taking or has not taken proceedings for infringement.

85. Revocation of patents by the Controller for non-working.—(1) Where, in respect of a patent, a compulsory licence has been granted, the Central Government or any person interested may, after the expiration of two years from the date of the order granting the first compulsory licence, apply to the Controller for an order revoking the patent on the ground that the patented invention has not been worked in the territory of India or that reasonable requirements of the public with respect to the patented invention has not been satisfied or that the patented invention is not available to the public at a reasonably affordable price.

(2) Every application under sub-section (1) shall contain such particulars as may be prescribed, the facts upon which the application is based, and, in the case of an application other than by the Central Government, shall also set out the nature of the applicant's interest.

(3) The Controller, if satisfied that the reasonable requirements of the public with respect to the patented invention have not been satisfied or that patented invention has not been worked in the territory of India or that the patented invention is not available to the public at a reasonably affordable price, may make an order revoking the patent.

(4) Every application under sub-section (1) shall ordinarily be decided within one year of its being presented to the Controller.

86. Power of Controller to adjourn applications for compulsory licences, etc., in certain cases.—(1) Where an application under section 84 or section 85, as the case may be, is made on the grounds that the patented invention has not been worked in the territory of India or on the ground mentioned in clause (d) of sub-section (7) of section 84 and the Controller is satisfied that the time which has elapsed since the sealing of the patent has for any reason been insufficient to enable the invention to be worked on a commercial scale to

an adequate extent or to enable the invention to be so worked to the fullest extent that is reasonably practicable, he may, by order, adjourn the further hearing of the application for such period not exceeding twelve months in the aggregate as appears to him to be sufficient for the invention to be so worked:

Provided that in any case where the patentee establishes that the reason why a patented invention could not be worked as aforesaid before the date of the application was due to any State or Central Act or any rule or regulation made thereunder or any order of the Government imposed otherwise than by way of a condition for the working of the invention in the territory of India or for the disposal of the patented articles or of the articles made by the process or by the use of the patented plant, machinery, or apparatus, then, the period of adjournment ordered under this sub-section shall be reckoned from the date on which the period during which the working of the invention was prevented by such Act, rule or regulation or order of Government as computed from the date of the application, expires.

(2) No adjournment under sub-section (1) shall be ordered unless the Controller is satisfied that the patentee has taken with promptitude adequate or reasonable steps to start the working of the invention in the territory of India on a commercial scale and to an adequate extent.

87. Procedure for dealing with applications under sections 84 and 85.— (1) Where the Controller is satisfied, upon consideration of an application under section 84, Or section 85, that a *prima facie* case has been made out for the making of an order, he shall direct the applicant to serve copies of the application upon the patentee and any other person appearing from the register to be interested in the patent in respect of which the application is made, and shall publish the application in the official journal.

(2) The patentee or any other person desiring to oppose the application may, within such time as may be prescribed or within such further time as the Controller may on application (made either before or after the expiration of the prescribed time) allow, give to the Controller notice of opposition.

(3) Any such notice of opposition shall contain a statement setting out the grounds on which the application is opposed.

(4) Where any such notice of opposition is duly given, the Controller shall notify the applicant, and shall give to the applicant and the opponent an opportunity to be heard before deciding the case,

88. Powers of Controller in granting compulsory licences.—(1) Where the Controller is satisfied on an application made under section 84 that the manufacture, use or sale of materials not protected by the patent is prejudiced by reason of conditions imposed by the patentee upon the grant of licences under the patent, or upon the purchase, hire or use of the patented article or process, he may, subject to the provisions of that section, order the grant of licences under the patent to such customers of the applicant as he thinks fit as well as to the applicant.

(2) Where an application under section 84 is made by a person being the holder of a licence under the patent, the Controller may, if he makes an order for the grant of a licence to the applicant, order the existing licence to be cancelled, or may, if he thinks fit, instead of making an order for the grant of a licence to the applicant, order the existing licence to be amended.

(3) Where two or more patents are held by the same patentee and an applicant for a compulsory licence establishes that the reasonable requirements of the public have not been satisfied with respect to some only of the said patents, then, if the Controller is satisfied that the applicant cannot efficiently or satisfactorily work the licence granted to him under those patents without infringing the other patents held by the patentee and if those patents involve important technical advancement of considerable economic significance in relation to the other patents, he may, by order, direct the grant of a licence in respect of the other patents also to enable the licensee to work the patent or patents in regard to which a licence is granted under section 84.

(4) Where the terms and conditions of a licence have been settled by the Controller, the licensee may, at any time after he has worked the invention on a commercial scale for a period of not less than twelve months, make an application to the Controller for the revision of the terms and conditions on the ground that the terms and conditions settled have proved to be more onerous than originally expected and that in consequence thereof the licensee is unable to work the invention except at a loss:

Provided that no such application shall be entertained a second time.

89. General purposes for granting compulsory licences.—The powers of the Controller upon an application made under section 84 shall be exercised with a view to securing the following general purposes, that is to say,—

(a) that patented inventions are worked on a commercial scale in the territory of India without undue delay and to the fullest extent that is reasonably practicable;

(b) that the interests of any person for the time being working or developing an

invention in the territory of India under the protection of a patent are not unfairly prejudiced.

90. Terms and conditions of compulsory licences.—(1) In settling the terms and conditions of a licence under section 84, the Controller shall endeavour to secure—

(i) that the royalty and other remuneration, if any, reserved to the patentee or other person beneficially entitled to the patent, is reasonable, having regard to the nature of the invention, the expenditure incurred by the patentee in making the invention or in developing it and obtaining a patent and keeping it in force and other relevant factors;

(ii) that the patented invention is worked to the fullest extent by the person to whom the licence is granted and with reasonable profit to him;

(iii) that the patented articles are made available to the public at reasonably affordable prices;

(iv) that the licence granted is a non-exclusive licence;

(v) that the right of the licensee is non-assignable;

(vi) that the licence is for the balance term of the patent unless a shorter term is consistent with public interest;

(vii) that the licence is granted with a predominant purpose of supply in the Indian market and that the licensee may also export the patented product if need be in accordance with the provisions of sub-clause (iii) of clause (a) of sub-section (7) of section 84;

(viii) that in the case of semi-conductor technology, the licence granted is to work the invention for public non-commercial use;

(ix) that in case the licence is granted to remedy a practice etermined after judicial or administrative process to be anti-competitive, the licensee shall be permitted to export the patented product, if need be.

(2) No licence granted by the Controller shall authorise the licensee to import the patented article or an article or substance made by a patented process from abroad where such importation would, but for such authorisation, constitute an infringement of the rights of the patentee.

(3) Notwithstanding anything contained in sub-section (2), the Central Government may, if in its opinion it is necessary so to do, in the public interest,direct the Controller at any time to authorise any licensee in respect of a patent to import the patented article or an article or substance made by a patented process from abroad (subject to such conditions as it

considers necessary to impose relating among other matters to the royalty and other remuneration, if any, payable to the patentee, the quantum of import, the sale price of the imported article and the period of importation), and thereupon the Controller shall give effect to the directions.

91. Licensing of related patents.—(1) Notwithstanding anything contained in the other provisions of this Chapter, at any time after the sealing of a patent, any person who has the right to work any other patented invention either as patentee or as licensee thereof, exclusive or otherwise, may apply to the Controller for the grant of a licence of the first mentioned patent on the ground that he is prevented or hindered without such licence from working the other invention efficiently or to the best advantage possible.

(2) No order under sub-section (1) shall be made unless the Controller is satisfied—

(i) that the applicant is able and willing to grant, or procure the grant to the patentee and his licensees if they so desire, of a licence in respect of the other invention on reasonable terms; and

(ii) that the other invention has made a substantial contribution to the establishment or development of commercial or industrial activities in the territory of India.

(3) When the Controller is satisfied that the conditions mentioned in sub-section (1) have been established by the applicant, he may make an order on such terms as he thinks fit granting a licence under the first mentioned patent and a similar order under the other patent if so requested by the proprietor of the first mentioned patent or his licensee:

Provided that the licence granted by the Controller shall be non-assignable except with the assignment of the respective patents.

(4) The provisions of sections 87, 88, 89 and 90 shall apply to licences granted under this section as they apply to licences granted under section 84.

92. Special provision for compulsory licences on notifications by Central Government.—(1) If the Central Government is satisfied, in respect of any patent in force in circumstances of national emergency or in circumstances of extreme urgency or in case of public non-commercial use, that it is necessary that compulsory licenses should be granted at any time after the sealing thereof to work the invention, it may make a declaration to that effect, by notification in the Official Gazette, and thereupon the following provisions shall have effect, that is to say—

(i) the Controller shall on application made at any time after the notification by any

person interested, grant to the applicant a licence under the patent on such terms and conditions as he thinks fit;

(ii) in settling the terms and conditions of a licence granted under this section, the Controller shall endeavour to secure that the articles manufactured under the patent shall be available to the public at the lowest prices consistent with the patentees deriving a reasonable advantage from their patent rights.

(2) The provisions of sections 83, 87, 88, 89 and 90 shall apply in relation to the grant of licences under this section as they apply in relation to the grant of licences under section 84.

(3) Notwithstanding anything contained in sub-section (2), where the Controller is satisfied on consideration of the application referred to in clause (i) of sub-section (1) that it is necessary in—

(i) a circumstance of national emergency; or

(ii) a circumstance of extreme urgency; or

(iii) a case of public non-commercial use,

which may arise or is required, as the case may be, including public health crises, relating to Acquired Immuno Deficiency Syndrome, Human Immuno Deficiency Virus, tuberculosis, malaria or other epidemics, he shall not apply any procedure specified in section 87 in relation to that application for grant of licence under this section:

Provided that the Controller shall, as soon as may be practicable, inform the patentee of the patent relating to the application for such non-application of section 87.

92A. Compulsory licence for export of patented pharmaceutical products in certain exceptional circumstances.—(1) Compulsory licence shall be available for manufacture and export of patented pharmaceutical products to any country having insufficient or no manufacturing capacity in the pharmaceutical sector for the concerned product to address public health problems, provided compulsory licence has been granted by such country or such country has, by notification or otherwise, allowed importation of the patented pharmaceutical products from India.

(2) The Controller shall, on receipt of an application in the prescribed manner, grant a compulsory licence solely for manufacture and export of the concerned pharmaceutical product to such country under such terms and conditions as may be specified and published by him.

(3) The provisions of sub-sections (1) and (2) shall be without prejudice to the extent to

which pharmaceutical products produced under a compulsory license can be exported under any other provision of this Act.

Explanation.—For the purposes of this section, 'pharmaceutical products' means any patented product, or product manufactured through a patented process, of the pharmaceutical sector needed to address public health problems and shall be inclusive of ingredients necessary for their manufacture and diagnostic kits required for their use.

93. Order for licence to operate as a deed between parties concerned.—Any order for the grant of a licence under this Chapter shall operate as if it were a deed granting a licence executed by the patentee and all other necessary parties embodying the terms and conditions, if any, settled by the Controller.

94. Termination of compulsory licence.—(1) On an application made by the patentee or any other person deriving title or interest in the patent, a compulsory licence granted under section 84 may be terminated by the controller, if and when the circumstances that gave rise to the grant thereof no longer exist and such circumstances are unlikely to recur:

Provided that the holder of the compulsory licence shall have the right to object to such termination.

(2) While considering an application under section (1), the Controller shall take into account that the interest of the person who had previously been granted the licence is not unduly prejudiced.

95-98. [Omitted by the *Patents (Amendment) Act,* 2002]

CHAPTER XVII

USE OF INVENTIONS FOR PURPOSES OF GOVERNMENT AND ACQUISITION OF INVENTIONS BY CENTRAL GOVERNMENT

99. Meaning of use of invention for purposes of Government.—(1) For the purposes of this Chapter, an invention is said to be used for the purposes of Government if it is made, used, exercised or vended for the purposes of the Central Government, a State Government or a Government undertaking.

(2) [Omitted by the *Patents (Amendment) Act,* 2002]

(3) Nothing contained in this Chapter shall apply in respect of any such importation, making or using of any machine, apparatus or other article or of any such using of any process or of any such importation, using or distribution of any medicine or drug, as may be made by virtue of one or more of the conditions specified in section 47.

100. Power of Central Government to use inventions for purposes of Government.—(1) Notwithstanding anything contained in this Act, at any time after an application for a patent has been filed at the patent office or a patent has been granted, the Central Government and any person authorised in writing by it, may use the invention for the purposes of Government in accordance with the provisions of this Chapter.

(2) Where an invention has, before the priority date of the relevant claim of the complete specification, been duly recorded in a document, or tested or tried, by or on behalf of the Government or a Government undertaking, otherwise than in consequence of the communication of the invention directly or indirectly by the patentee or by a person from whom he derives title, any use of the invention by the Central Government or any person authorised in writing by it for the purposes of Government may be made free of any royalty or other remuneration to the patentee.

(3) If and so far as the invention has not been so recorded or tried or tested as aforesaid, any use of the invention made by the Central Government or any person authorised by it under sub-section (1), at any time after grant of the patent or in consequence of any such communication as aforesaid, shall be made upon terms as may be agreed upon either before or after the use, between the Central Government or any person authorised under

sub-section (1) and the patentee, or, as may in default of agreement be determined by the High Court on a reference under section 103:

Provided that in case of any such use of any patent, the patentee shall be paid not more than adequate remuneration in the circumstances of each case, taking into account the economic value of the use of the patent.

(4) The authorisation by the Central Government in respect of an invention may be given under this section, either before or after the patent is granted and either before or after the acts in respect of which such authorisation is given or done, and may be given to any person whether or not he is authorised directly or indirectly by the applicant or the patentee to make, use, exercise or vend the invention or import the machine, apparatus or other article or medicine or drug covered by such patent.

(5) Where an invention has been used by or with the authority of the Central Government for the purposes of Government under this section, then, except in case of national emergency or other circumstances of extreme urgency or for noncommercial use, the Government shall notify the patentee as soon as practicable of the fact and furnish him with such information as to the extent of the use of the invention as he may, from time to time, reasonably require; and where the invention has been used for the purposes of a Government undertaking, the Central Government may call for such information as may be necessary for this purpose from such undertaking.

(6) The right to make, use, exercise and vend an invention for the purposes of Government under sub-section (1) shall include the right to sell on noncommercial basis, the goods have been made in exercise of that right, and a purchaser of goods so sold, and a person claiming through him, shall have the power to deal with the goods as if the Central Government or the person authorised under sub-section (1) were the patentee of the invention.

(7) Where in respect of a patent which has been the subject of an authorisation under this section, there is an exclusive licensee as is referred to in sub-section (3) of section 101, or where such patent has been assigned to the patentee in consideration of royalties or other benefits determined by reference to the use of the invention (including payments by way of minimum royalty), the notice directed to be given under sub-section (5) shall also be given to such exclusive licensee or assignor, as the case may be, and the reference to the patentee in sub-section (3) shall be deemed to include a reference to such assignor or exclusive licensee.

101. Rights of third parties in respect of use of invention for purposes of Government.—(1) In relation to any use of a patented invention, or an invention in respect of which an application for a patent is pending, made for the purposes of Government—

(a) by the Central Government or any person authorised by the Central Government under section 100; or

(b) by the patentee or applicant for the patent to the order made by the Central Government,

the provisions of any licence, assignment or agreement granted or made, between the patentee or applicant for the patent (or any person who derives title for him or from whom he derives title) and any person other then the Central Government shall be of no effect so far as those provisions—

(i) restrict or regulate the use for the purposes of Government of the invention, or of any model document or information relating thereto, or

(ii) provide for the making of payments in respect of any use of the invention or of the model, document or information relating thereto for the purposes of Government ,

and the reproduction or publication of any model or document in connection with the said use for the purposes of Government shall not be deemed to be an infringement of any copyright subsisting in the model or document.

(2) Where the patent, or the right to apply for or obtain the patent, has been assigned to the patentee in consideration of royalties or other benefits determined by reference to the use of the invention then, in relation to any use of the invention made for the purposes of Government by the patentee to the order of the Central Government, sub-section (3) of section 100 shall have effect as if that use were made by virtue of an authority given under that section; and use of the invention for the purposes of Government by virtue of sub-section (3) of that section shall have effect as if the reference to the patentee included a reference to the assignor of the patent, and any sum payable by virtue of that sub-section shall be divided between the patentee and the assignor in such proportion as may be agreed upon between them or as may in default of agreement be determined by the High Court on a reference under section 103.

(3) Where by virtue of sub-section (3) of section 100, payments are required to be made by the Central Government or persons authorised under sub-section (1) of that section in respect of the use of an invention for the purposes of Government and where in respect of such patent there is an exclusive licensee authorised under his licence to use the invention for the purposes of Government, such sum shall be shared by the patentee and such licensee in such proportions, if any, as may be agreed upon between them or

as may in default of agreement be determined by the High Court on a reference under section 103 to be just, having regard to any expenditure incurred by the licensee—

(a) in developing the said invention; or

(b) in making payments to the patentees other than royalties or other benefits determined by reference to the use of the invention in consideration of the licence.

102. Acquisition of inventions and patents by the Central Government. — (1) The Central Government may, if satisfied that it is necessary that an invention which is the subject of an application for a patent or a patent should be acquired from the applicant or the patentee for a public purpose, publish a notification to that effect in the Official Gazette, and thereupon the invention or patent and all rights in respect of the invention or patent shall, by force of this section, stand transferred to and be vested in the Central Government.

(2) Notice of the acquisition shall be given to the applicant, and, where a patent has been granted, to the patentee and other persons, if any, appearing in the register as having an interest in the patent.

(3) The Central Government shall pay to the applicant, or, as the case may be, the patentee and other persons appearing on the register as having an interest in the patent such compensation as may be agreed upon between the Central Government and the applicant, or the patentee and other persons; or, as may, in default of agreement, be determined by the High Court on a reference under section 103 to be just having regard to the expenditure incurred in connection with the invention and, in the case of a patent, the term thereof, the period during which and the manner in which it has already been worked (including the profits made during such period by the patentee or by his licensee whether exclusive or otherwise) and other relevant factors.

103. Reference to High Court of disputes as to use for purposes of Government.—(1) Any dispute as to the exercise by the Central Government or a person authorised by it of the powers conferred by section 100, or as to terms for the use of an invention for the purposes of Government thereunder or as to the right of any person to receive any part of a payment made in pursuance of sub-section (3) of that section or as to the amount of compensation payable for the acquisition of an invention or a patent under section 102, may be referred to the High Court by either party to the dispute in such manner as may be prescribed by the rules of the High Court.

(2) In any proceedings under this section to which the Central Government is a party, the Central Government may,—

(a) if the patentee is a party to the proceedings, petition by way of counter-claim for revocation of the patent on any ground upon which a patent may be revoked under section 64; and

(b) whether a patentee is or is not a party to the proceedings, put in issue the validity of the patent without petitioning for its revocation.

(3) If in such proceedings as aforesaid any question arises whether an invention has been recorded, tested or tried as is mentioned in section 100, and the disclosure of any document regarding the invention, or of any evidence of the test or trial thereof, would, in the opinion of the Central Government, be prejudicial to the public interest, the disclosure may be made confidentially to the advocate of the other party or to an independent expert mutually agreed upon.

(4) In determining under this section any dispute between the Central Government and any person as to terms for the use of an invention for the purposes of Government, the High Court shall have regard to any benefit or compensation which that person or any person from whom he derives title, may have received, or may be entitled to receive, directly or indirectly in respect of the use of the invention in question for the purposes of Government.

(5) In any proceedings under this section, the High Court may at any time order the whole proceedings or any question or issue of fact arising therein to be referred to an official referee, commissioner or an arbitrator on such terms as the High Court may direct, and references to the High Court in the foregoing provisions of this section shall be construed accordingly.

(6) Where the invention claimed in a patent was made by a person who at the time it was made was in the service of the Central Government or of a State Government or was an employee of a Government undertaking and the subject-matter of the invention is certified by the relevant Government or the principal officer of the Government undertaking to be connected with the work done in the course of the normal duties of the Government servant or employee of the Government undertaking, then, notwithstanding anything contained in this section, any dispute of the nature referred to in sub-section (1) relating to the invention shall be disposed of by the Central Government conformably to the provisions of this section so far as may be applicable, but before doing so the Central Government shall give an opportunity to the patentee and such other parries as it considers have an interest in the matter to be heard.

CHAPTER XVIII

SUITS CONCERNING INFRINGEMENT OF PATENTS

104. Jurisdiction.—No suit for a declaration under section 105 or for any relief under section 106 or for infringement of a patent shall be instituted in any court inferior to a district court having jurisdiction to try the suit:

Provided that where a counter-claim for revocation of the patent is made by the defendant, the suit, along with the counter-claim, shall be transferred to the High Court for decision.

104A. Burden of proof in case of suits concerning infringement.—(1) In any suit for infringement of a patent, where the subject matter of patent is a process for obtaining a product, the court may direct the defendant to prove that the process used by him to obtain the product, identical to the product of the patented process, is different from the patented process if,—

(a) the subject matter of the patent is a process for obtaining a new product; or

(b) there is a substantial likelihood that the identical product is made by the process, and the patentee or a person deriving title or interest in the patent from him, has been unable through reasonable efforts to determine the process actually used:

Provided that the patentee or a person deriving title or interest in the patent from him first proves that the product is identical to the product directly obtained by the patented process.

(2) In considering whether a party has discharged the burden imposed upon him by sub-section (1), the court shall not require him to disclose any manufacturing or commercial secrets, if it appears to the court that it would be unreasonable to do so.

105. Power of court to make declaration as to non-infringement.— (1) Notwithstanding anything contained in section 34 of the Specific Relief Act, 1963 (47 of 1963), any person may institute a suit for a declaration that the use by him of any process, or the making, use or sale of any article by him does not,or would not, constitute an infringement of a claim of a patent against the patentee or the holder of an exclusive licence under the

patent, notwithstanding that no assertion to the contrary has been made by the patentee or the licensee,if it is shown—

(a) that the plaintiff has applied in writing to the patentee or exclusive licensee for a' written acknowledgements to the effect of the declaration claimed and has furnished him with full particulars in writing of the process or article in question; and

(b) that the patentee or licensee has refused or neglected to give such an acknowledgement.

(2) The costs of all parties in a suit for a declaration brought by virtue of this section shall, unless for special reasons the court thinks fit to order otherwise, be paid by the plaintiff.

(3) The validity of a claim of the specification of a patent shall not be called in question in a suit for a declaration brought by virtue of this section, and accordingly the making or refusal of such a declaration in the case of a patent shall not be deemed to imply that the patent is valid or invalid.

(4) A suit for a declaration may be brought by virtue of this section at any time after the publication of grant of a patent, and references in this section to the patentee shall be construed accordingly.

106. Power of court to grant relief in cases of groundless threats of infringement proceedings.—(1) Where any person (whether entitled to or interested in a patent or an application for patent or not) threatens any other person by circulars or advertisements or by communications, oral or in writing addressed to that or any other person, with proceedings for infringement of a patent, any person aggrieved thereby may bring a suit against him praying for the following reliefs, that is to say—

(a) a declaration to the effect that the threats are unjustifiable;

(b) an injunction against the continuance of the threats; and

(c) such damages, if any, as he has sustained thereby.

(2) Unless in such suit the defendant proves that the acts in respect of which the proceedings were threatened constitute or, if done, would constitute, an infringement of a patent or of rights arising from the publication of a complete specification in respect of a claim of the specification not shown by the plaintiff to be invalid the court may grant to the plaintiff all or any of the reliefs prayed for.

Explanation.—A mere notification of the existence of a patent does not constitute a threat of proceeding within the meaning of this section.

107. Defences, etc., in suits for infringement.—(1) In any suit for infringement of a patent every ground on which it may be revoked under section 64 shall be available as a ground for defence.

(2) In any suit for infringement of a patent by the making, using or importation of any machine, apparatus of other article or by the using of any process or by the importation, use or distribution or any medicine or drug, it shall be a ground for defence that such making, using, importation or distribution is in accordance with any one or more of the conditions specified in section 47.

107A. Certain acts not to be considered as infringement.—For the purposes of this Act,—

(a) any act of making, constructing, using, selling or importing a patented invention solely for uses reasonably related to the development and submission of information required under any law for the time being in force, in India, or in a country other than India, that regulates the manufacture, construction, use, sale or import of any product;

(b) importation of patented products by any person from a person who is duly authorised under the law to produce and sell or distribute the product,

shall not be considered as a infringement of patent rights.

108. Reliefs in suit for infringement.—(1) The reliefs which a court may grant in any suit for infringement include an injunction (subject to such terms, if any, as the court thinks fit) and, at the option of the plaintiff, either damages or an account of profits.

(2) The court may also order that the goods which are found to be infringing and materials and implements, the predominant use of which is in the creation of infringing goods shall be seized, forfeited or destroyed, as the court deems fit under the circumstances of the case without payment of any compensation.

109. Right of exclusive licensee to take proceedings against infringement.—(1) The holder of an exclusive licence shall have the like right as the patentee to institute a suit in respect of any infringement of the patent committed after the date of the licence, and in awarding damages or an account of profits or granting any other relief in any such suit the court shall take into consideration any loss suffered or likely to be suffered by the exclusive licensee as such or, as the case may be, the profits earned by means of the infringement so far as it constitutes an infringement of the rights of the exclusive

licensee as such.

(2) In any suit for infringement of a patent by the holder of an exclusive licence under sub-section (1), the patentee shall, unless he has joined as a plaintiff in the suit, be added as a defendant, but a patentee so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

110. Right of licensee under section 84 to take proceedings against infringement.—Any person to whom a licence has been granted under section 84 shall be entitled to call upon the patentee to take proceedings to prevent any infringement of the patent, and, if the patentee refuses or neglects to do so within two months after being so called upon, the licensee may institute proceedings for the infringement in his own name as though he were the patentee, making the patentee a defendant; but a patentee so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

111. Restriction on power of court to grant damages or account of profits for infringement.—(1) In a suit for infringement of patent, damages or an account of profits shall not be granted against the defendant who proves that at the date of the infringement he was not aware and had no reasonable grounds for believing that the patent existed.

Explanation.—A person shall not be deemed to have been aware or to have had reasonable grounds for believing that a patent exists by reason only of the application to an article of the word "patent", "patented" or any word or words expressing or implying that a patent has been obtained for the article, unless the number of the patent accompanies the word or words in question.

(2) In any suit for infringement of a patent the court may, if it trunks fit, refuse to grant any damages or an account of profits in respect of any infringement committed after a failure to pay any renewal fee with the prescribed period and before any extension of that period.

(3) Where an amendment of a specification by way of disclaimer, correction or explanation has been allowed under this Act after the publication of the specification, no damages or account of profits shall be granted in any proceeding in respect of the use of the invention before the date of the decision allowing the amendment, unless the court is satisfied that the specification as originally published was framed in good faith and with reasonable skill and knowledge.

(4) Nothing in this section shall affect the power of the court to grant an injunction in any suit for infringement of a patent.

112. Restriction on power of court to grant injunction in certain cases.— [Omitted by the *Patents (Amendment) Act,* 2002]

113. Certificate of validity of specification and costs of subsequent suits for infringement thereof.—(1) If in any proceedings before the Appellate Board or a High Court for the revocation of a patent under section 64 and section 104, as the case may be, the validity of any claim of a specification is contested and that claim is found by the Appellate Board or the High Court to be valid, the Appellate Board or the High Court may certify that the validity of that claim was contested in those proceedings and was upheld.

(2) Where any such certificate has been granted, then, if in any subsequent suit before a court for infringement of that claim of the patent or in any subsequent proceeding for revocation of the patent in so far as it relates to that claim, the patentee or other person relying on the validity of the claim obtains a final order or judgment in his favour, he shall be entitled to an order for the payment of his full costs, charges and expenses of and incidental to any such suit or proceeding properly incurred so far as they concern the claim in respect of which the certificate was granted, unless the court trying the suit or proceeding otherwise directs:

Provided that the costs as specific in this sub-section shall not be ordered when the party disputing the validity of the claim satisfies the court that he was not aware of the grant of the certificate when he raised the dispute and withdrew forthwith such defence when he became aware of such a certificate.

(3) Nothing contained in this section shall be construed as authorising the courts or the Appellate Board hearing appeals from decrees or orders in suits for infringement or petitions for revocation, as the case may be, to pass orders for costs on the scale referred to therein.

114. Relief for infringement of partially valid specification.—(1) If in proceedings for infringement of a patent it is found that any claim of the specification, being a claim in respect of which infringement is alleged, is valid, but that any other claim is invalid, the court may grant relief in respect of any valid claim which is infringed:

Provided that the court shall not grant relief except by way of injunction save in the

circumstances mentioned in sub-section (2).

(2) Where the plaintiff proves that the invalid claim was framed in good faith and with reasonable skill and knowledge, the court shall grant relief in respect of any valid claim which is infringed subject to the discretion of the court as to costs and as to the date from which damages or an account of profits should be reckoned, and in exercising such discretion the court may take into consideration the conduct of the parties in inserting such invalid claims in the specification or permitting them to remain there.

115. Scientific advisers.—(1) In any suit for infringement or in any proceeding before a court under this Act, the court may at any time, and whether or not an application has been made by any party for that purpose, appoint an independent scientific adviser, to assist the court or to inquire and report upon any such question of fact or of opinion (not involving a question of interpretation of law) as it may formulate for the purpose.

(2) The remuneration of the scientific adviser shall be fixed by the court and shall include the costs of making a report and a proper daily fee for any day on which the scientific adviser may be required to attend before the court, and such remuneration shall be defrayed out of moneys provided by Parliament by law for the purpose.

CHAPTER XIX

APPEALS TO THE APPELLATE BOARD

116. Appellate Board.—(1) Subject to the provisions of this Act, the Appellate Board established under section 83 of the Trade Marks Act, 1999 shall be the Appellate Board for the purposes of this Act and the said Appellate Board shall exercise the jurisdiction, power and authority conferred on it by or under this Act:

Provided that the Technical Member of the Appellate Board for the purposes of this Act shall have the qualifications specified in sub-section (2).

(2) A person shall not be qualified for appointment as a Technical Member for the purposes of this Act unless he—

(a) has, at least five years held the post of Controller under this Act or has exercised the functions of the Controller under this Act for at least five years; or

(b) has, for at least ten years functioned as a Registered Patent Agent and possesses a degree in engineering or technology or a masters degree in science from any University established under law for the time being in force or equivalent; or

(c) [Omitted by the *Patents (Amendment) Act,* 2005]

117. Staff of Appellate Board.—(1) The Central Government shall determine the nature and categories of the officers and other employees required to assist the Appellate Board in the discharge of its functions under this Act and provide the Appellate Board with such officers and other employees as it may think fit.

(2) The salaries and allowances and conditions of service of the officers and other employees of the Appellate Board shall be such as may be prescribed.

(3) The officers and other employees of the Appellate Board shall discharge their functions under the general superintendence of the Chairman of the Appellate Board in the manner as may be prescribed.

117A. Appeals to Appellate Board.—(1) Save as otherwise expressly provided in sub-section (2), no appeal shall lie from any decision, order or direction made or issued under this Act by the Central Government, or from any act or order of the Controller for the

purpose of giving effect to any such decision, order or direction.

(2) An appeal shall lie to the Appellate Board from any decision, order or direction of the Controller or Central Government under section 15, section 16, section 17, section 18, section 19,section 20, sub-section (4) of section 25, section 28, section 51, section 54, section 57, section 60, section 61, section 63, section 66, sub-section (3) of section 69, section 78, sub-sections (1) to (5) of section 84, section 85, section 88, section 91, section 92 and section 94.

(3) Every appeal under this section shall be in the prescribed form and shall be verified in such manner as may be prescribed and shall be accompanied by a copy of the decision, order or direction appealed against and by such fees as may be prescribed.

(4) Every appeal shall be made within three months from the date of the decision, order or direction, as the case may be, of the Controller or the Central Government or within such further time as the Appellate Board may, in accordance with the rules made by it allow.

117B. Procedure and powers of Appellate Board.—The provisions of subsections (2) to (6) of section 84, section 87, section 92, section 95 and section 96 of the Trade Marks Act, 1999 (47 of 1999) shall apply to the Appellate Board in the discharge of its functions under this Act as they apply to it in the discharge of its functions under the Trade Marks Act, 1999.

117C. Bar of jurisdiction of courts, etc.—No court or other authority shall have or, be entitled to, exercise any jurisdiction, powers or authority in relation to the matters referred to in sub-section (2) of section 117A or section 117D.

117D. Procedure for application for rectification, etc., before Appellate Board.—(1) An application for revocation of a patent before the Appellate Board under section 64 and an application for rectification of the register made to the Appellate Board under section 71 shall be in such form as may be prescribed.

(2) A certified copy of every order or judgment of the Appellate Board relating to a patent under this Act shall be communicated to the Controller by the Board and the Controller shall give effect to the order of the Board and shall, when so directed, amend the entries in, or rectify, the register in accordance with such order.

117E. Appearance of Controller in legal proceedings.—(1) The Controller shall have the right to

appear and be heard—

(a) in any legal proceedings before the Appellate Board in which the relief sought includes alteration or rectification of the register or in which any question relating to the practice of the patent office is raised;

(b) in any appeal to the Appellate Board from an order of the Controller on an application for grant of a patent—

(i) which is not opposed, and the application is either refused by the Controller or is accepted by him subject to any amendments, modifications, conditions or limitations, or

(ii) which has been opposed and the Controller considers that his appearance is necessary in the public interest,

and the Controller shall appear in any case if so directed by the Appellate Board.

(2) Unless the Appellate Board otherwise directs, the Controller may, in lieu of appearing, submit a statement in writing signed by him, giving such particulars as he thinks proper of the proceedings before him relating to the matter in issue or of the grounds of any decision given by him or of the practice of the patent office in like cases, or of other matters relevant to the issues and within his knowledge as the Controller may deem it necessary, and such statement shall be evidence in the proceeding.

117F. Costs of Controller in proceedings before Appellate Board.—In all proceedings under this Act before the Appellate Board, the costs of the Controller shall be in the discretion of the Board, but the Controller shall not be ordered to pay the costs of any of the parties.

117G. Transfer of pending proceedings to Appellate Board.—All cases of appeals against any order or decision of the Controller and all cases pertaining to revocation of patent other than on a counter-claim in a suit for infringement and rectification of register pending before any High Court, shall be transferred to the Appellate Board from such date as may be notified by the Central Government in the Official Gazette and the Appellate Board may proceed with the matter either *de novo* or from the stage it was so transferred.

117H. Power of Appellate Board to make rules.—The Appellate Board may make rules consistent with this Act as to the conduct and procedure in respect of all proceedings before it under this Act.

CHAPTER XX

PENALTIES

118. Contravention of secrecy provisions relating to certain inventions.—If any person fails to comply with any direction given under section 35 or makes or causes to be made an application for the grant of a patent in contravention of section 39 he shall be punishable with imprisonment for a' term which may extend to two years, or with fine, or with both.

119. Falsification of entries in register, etc.—If any person makes, or causes to be made, a false entry in any register kept under this Act, or a writing falsely purporting to be a copy of an entry in such a register, or produces or tenders, or causes to be produced or tendered, in evidence any such writing knowing the entry or writing to be false, he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

120. Unauthorised claim of patent rights.—If any person falsely represents that any article sold by him is patented in India or is the subject of an application for a patent in India, he shall be punishable with fine which may extend to one lakh rupees.

Explanation 1.—For the purposes of this section, a person shall be deemed to represent—

(a) that an article is patented in India if there is stamped, engraved or impressed on, or otherwise applied to, the article the word "patent" or "patented" or some other word expressing or implying that a patent for the article has been obtained in India;

(b) that an article is the subject of an application for a patent in India, if there are stamped, engraved or impressed on, or otherwise applied to, the article the words "patent applied for", "patent pending", or some other words implying that an application for a patent for the article has been made in India.

Explanation 2.—The use of words "patent", "patented", "patent applied for", "patent pending" or other words expressing or implying that an article is patented or

that a patent has been applied for shall be deemed to refer to a patent in force in India, or to a pending application for a patent in India, as the case may be, unless there is an accompanying indication that the patent has been obtained or applied for in any country outside India.

121. Wrongful use of words "patent office".—If any person uses on his place of business or any document issued by him or otherwise the words "patent office" or any other words which would reasonably lead to the belief that his place of business is, or is officially connected with, the patent office, he shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

122. Refusal or failure to supply information.—(1) If any person refuses or fails to furnish—

(a) to the Central Government any information which he is required to furnish under sub-section (5) of section 100;

(b) to the Controller any information or statement which he is required to furnish by or under section 146,

he shall be punishable with fine which may extend to ten lakh rupees.

(2) If any person, being required to furnish any such information as is referred to in sub-section (1), furnishes information or statement which is false, and which he either knows or has reason to believe to be false or does not believe to be true, he shall be punishable with imprisonment which may extend to six months, or with fine, or with both.

123. Practice by non-registered patent agents.—If any person contravenes the provisions of section 129, he shall be punishable with fine which may extend to one lakh rupees in the case of a first offence and five lakh rupees in the case of a second or subsequent offence.

124. Offences by companies.—(1) If the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such

offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) "company" means anybody corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

CHAPTER XXI

PATENT AGENTS

125. Register of patent agents.—(1) The Controller shall maintain a register to be called the register of patent agents in which shall be entered the names, addresses and other relevant particulars, as may be prescribed, of all persons qualified to have their names so entered under section 126.

(2) Notwithstanding anything contained in sub-section (1), it shall be lawful for the Controller to keep the register of patent agents in computer floppies, diskettes or any other electronic form subject to such safeguards as may be prescribed.

126. Qualifications for registration as patent agents.—(1) 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) [Omitted by the *Patents (Amendment) Act,* 2005]

(ii) has passed the qualifying examination prescribed for the purpose; or

(iii) 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 at the time of making the application for registration;

(d) he has paid such fee as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), a person who has been registered as a patent agent before the commencement of the Patents (Amendment) Act, 2005 shall be entitled to continue to be, or when required to be re-registered, as a

patent agent, on payment of the fees as may be prescribed.

127. Rights of patent agents.—Subject to the provisions contained in this Act and in any rules made thereunder, every patent agent whose name is entered in the register shall be 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.

128. Subscription and verification of certain documents by patent agents.—(1) all applications and communications to the Controller under this Act may be signed by a patent agent authorised in writing in this behalf by the person concerned.

Provided that if such person is absent from India, they may be signed and verified on his behalf by a patent agent authorised by him in writing in that behalf.

(2) [Omitted by the *Patents (Amendment) Act,* 2002]

129. Restrictions on practice as patent agents.—(1) No person, either alone or in partnership with any other person, shall practise, describe or hold himself out as a patent agent, or permit himself to be so described or held out, unless he is registered as a patent agent or, as the case may be, unless he and all his partners are so registered.

(2) No company or other body corporate shall practise, describe itself or hold itself out as patent agents or permit itself to be so described or held out.

Explanation.— For the purposes of this section, practise as a patent agent includes any of the following acts, namely:—

(a) applying for or obtaining patents in India or elsewhere;

(b) preparing specifications or other documents for the purposes of this Act or of the patent law of any other country;

(c) giving advice other than of a scientific or technical nature as to the validity of patents or their infringement.

130. Removal from register of patent agents and restoration.—(1) The Controller may remove the name of any person from the register when he is satisfied, after giving that person a reasonable opportunity of being heard and after such further inquiry, if any, as he thinks fit to make—

(i) that his name has been entered in the register by error or on account of misrepresentation or suppression of material fact;

(ii) that he has been convicted of any offence and sentenced to a term of imprisonment or has been guilty of misconduct in his professional capacity which in the opinion of the Controller renders him unfit to be kept in the register.

(2) The Controller may, on application and on sufficient cause being shown, restore to the register the name of any person removed therefrom.

131. Power of Controller to refuse to deal with certain agents.—(1) Subject to any rules made in this behalf, the Controller may refuse to recognise as agent in respect of any business under this Act—

(a) any individual whose name has been removed from, and not restored to, the register;

(b) any person who has been convicted of an offence under section 123;

(c) any person, not being registered as a patent agent, who in the opinion of the Controller is engaged wholly in acting as agent in applying for patents in India or elsewhere in the name or for the benefit of the person by whom he is employed;

(d) any company or firm, if any person whom the Controller could refuse to recognise as agent in respect of any business under this Act, is acting as a director or manager of the company or is a partner in the firm.

(2) The Controller shall refuse to recognise as agent in respect of any business under this Act any person who neither resides nor has a place of business in India.

132. Savings in respect of other persons authorised to act as agents.—Nothing in the Chapter shall be deemed to prohibit—

(a) the applicant for a patent from drafting any specification or appearing or acting before the Controller, or

(b) an advocate, not being a patent agent, from taking part in any hearing before the Controller on behalf of a party who is taking part in any proceeding under this Act.

CHAPTER XXII

INTERNATIONAL ARRANGEMENTS

133. Convention countries.—Any country, which is a signatory or party or a group of countries, union of countries or intergovernmental organisations which are signatories or parties to an international, regional or bi-lateral treaty, convention or arrangement to which India is also a signatory or party and which affords to the applicants for patents in India or to citizens of India similar privileges as are granted to their own citizens or citizens to their member countries in respect of the grant of patents and protection of patent rights shall be a convention country or convention countries for the purposes of this Act.

134. Notification as to countries not providing for reciprocity.—Where any country specified by the Central Government in this behalf by notification in the Official Gazette does not accord to citizens of India the same rights in respect of the grant of patents and the protection of patent rights as it accords to its own nationals, no national of such country shall be entitled, either solely or jointly with any other person,—

(a) to apply for the grant of a patent or be registered as the proprietor of a patent;

(b) to be registered as the assignee of the proprietor of a patent; or

(c) to apply for a licence or hold any licence under a patent granted under this Act.

135. Convention applications.—(1) Without prejudice to the provisions contained in section 6, where a person has made an application for a patent in respect of an invention in a convention country (hereinafter referred to as the "basic application"), and that person or the legal representative or assignee of that person makes an application under this Act for a patent within twelve months after the date on which the basic application was made, the priority date of a claim of the complete specification, being a claim based on matter disclosed in the basic application, is the date of making of the basic application.

***Explanation.*—**Where applications have been made for similar protection in respect of an invention in two or more convention countries, the period of twelve months

referred to in this sub-section shall be reckoned from the date on which the earlier or earliest of the said applications was made.

(2) Where applications for protection have been made in one or more convention countries in respect of two or more inventions which are cognate or of which one is a modification of another, a single convention application may, subject to the provisions contained in section 10, be made in respect of those inventions at any time within twelve months from the date of the earliest of the said applications for protection:

Provided that the fee payable on the making of any such application shall be the same as if separate applications have been made in respect of each of the said inventions, and the requirements of clause (b) of sub-section (1) of section 136 shall, in the case of any such application, apply separately to the applications for protection in respect of each of the said inventions.

(3) In case of an application filed under the Patent Cooperation Treaty designating India and claiming priority from a previously filed application in India, the provisions of sub-sections (1) and (2) shall apply as if the previously filed application were the basic application:

Provided that a request for examination under section 11B shall be made only for one of the applications filed in India.

136. Special provisions relating to convention application.—(1) Every convention application shall—

(a) be accompanied by a complete specification; and

(b) specify the date on which and the convention country in which the application for protection, or as the case may be, the first of such applications was made; and

(c) state that no application for protection in respect of the invention had been made in a convention country before that date by the applicant or by any person from whom he derives title.

(2) Subject to the provisions contained in section 10, a complete specification filed with a convention application may include claims in respect of developments of, or additions to, the invention in respect of which the application for protection was made in a convention country, being developments or additions in respect of which the applicant would be entitled under the provisions of section 6 to make a separate application for a patent.

(3) A convention application shall not be post-dated under sub-section (1) of section 17 to a date later than the date on which under the provisions of this Act the application could have been made.

137. Multiple priorities.—(1) Where two or more applications for patents in respect of inventions have been made in one or more convention countries and those inventions are so related as to constitute one invention, one application may be made by any or all of the persons referred to in sub-section (1) of section 135 within twelve months from the date on which the earlier or earliest of those applications was made, in respect of the inventions disclosed in the specifications which accompanied the basic applications.

(2) The priority date of a claim of the complete specification, being a claim based on matters disclosed in one or more of the basic applications, is the date on which that matter was first so disclosed.

(3) For the purposes of this Act, a matter shall be deemed to have been disclosed in a basic application for protection in a convention country if it was claimed or disclosed (otherwise than by way of disclaimer or acknowledgement of a prior art) in that application, or any documents submitted by the applicant for protection in support of and at the same time as that application but no account shall be taken of any disclosure effected by any such document unless a copy of the documents is filed at the patent office with the convention application or within such period as may be prescribed after the filing of that application.

138. Supplementary provisions as to convention applications.—(1) Where a convention application is made in accordance with the provisions of this Chapter, the applicant shall furnish, when required by the Controller, in addition to the complete specification, copies of the specifications or corresponding documents filed or deposited by the applicant in the patent office of the convention country as referred to in section 133 verified to the satisfaction of the Controller, within the prescribed period from the date of communication by the Controller.

(2) If any such specification or other document is in a foreign language, a translation into English of the specification or document, verified by affidavit or otherwise to the satisfaction of the Controller, shall be furnished when required by the Controller.

(3) For the purposes of this Act, the date on which an application was made in a convention country is such date as the Controller is satisfied, by certificate of the official chief or head of the patent office of the convention country or otherwise, is the date on which the application was made in that convention country.

(4) An international application filed under the Patent Co-operation Treaty designating India shall have effect of filing an application for patent under section 7, section 54 and section 135, as the case may be, and the title, description, claim and abstract and drawings, if any,

filed in the international application shall be taken as complete specification for the purposes of this Act.

(5) The filing date of application for patent and its complete specification processed by the patent office as designated office shall be the international filing date accorded under the Patent Cooperation Treaty.

(6) Amendment, if any, proposed by the applicant for an international application designating India or designating and electing India before international searching authority or preliminary examination authority shall, if the applicant so desires, be taken as an amendment made before the patent office.

139. Other provisions of Act to apply to convention applications.—Save as otherwise provided in this Chapter, all the provisions of this Act shall apply in relation to a convention application and a patent granted in pursuance thereof as they apply in relation to an ordinary application and a patent granted in pursuance thereof.

CHAPTER XXIII

MISCELLANEOUS

140. Avoidance of certain restrictive conditions.—(1) It shall not be lawful to insert—

(i) in any contract for or in relation to the sale or lease of a patented article or an article made by a patented process; or

(ii) in licence to manufacture or use a patented article; or

(iii) in a licence to work any process protected by a patent, a condition the effect of which may be—

(a) to require the purchaser, lessee, or licensee to acquire from the vendor, lessor, or licensor or his nominees, or to prohibit from acquiring or to restrict in any manner or to any extent his right to acquire from any person or to prohibit him from acquiring except from the vendor, lessor, or licensor or his nominees any article other than the patented article or an article other than that made by the patented process; or

(b) to prohibit the purchaser, lessee or licensee from using or to restrict in any manner or to any extent the right of the purchaser, lessee or licensee, to use an article other than the patented article or an article other than that made by the patented process, which is not supplied by the vendor, lessor or licensor or his nominee; or

(c) to prohibit the purchaser, lessee or licensee from using or to restrict in any manner or to any extent the right of the purchaser, lessee or licensee to use any process other than the patented process,

(d) to provide exclusive grant back, prevention to challenges to validity of Patent & Coercive package licensing,

and any such condition shall be void.

(2) A condition of the nature referred to in clause (a) or clause (b) or clause (c) of sub-section (1) shall not cease to be a condition falling within that sub-section merely by reason of the fact that the agreement containing it has been entered into separately, whether before or after the contract relating to the sale, lease or licence of the patented article or process.

(3) In proceedings against any person for the infringement of a patent, it shall be a defence to

prove that at the time of the infringement there was in force a contract relating to the patent and containing a condition declared unlawful by this section:

Provided that this sub-section shall not apply if the plaintiff is not a party to the contract and proves to the satisfaction of the court that the restrictive condition was inserted in the contract without his knowledge and consent, express or implied.

(4) Nothing in this section shall—

(a) affect a condition in a contract by which a person is prohibited from selling goods other than those of a particular person;

(b) validate a contract which, but for this section, would be invalid;

(c) affect a condition in a contract for the lease of, or licence to use a patented article, by which the lessor or licensor reserves to himself or his nominee the right to supply such new parts of the patented article as may be required or to put or keep it in repair.

(5) [Omitted by the *Patents (Amendment) Act,* 2002]

141. Determination of certain contracts.—(1) Any contract for the sale or lease of a patented article or for licence to manufacture, use or work a patented article or process, or relating to any such sale, lease or licence, may at any time after the patent or all the patents by which the article or process was protected at the time of the making of the contract has or have ceased to be in force, and notwithstanding anything to the contrary in the contract or in any other contract, be determined by the purchaser, lessee, or licensee, as the case may be, of the patent on giving three months notice in writing to the other party.

(2) The provisions of this section shall be without prejudice to any right of determining a contract exercisable apart from this section.

142. Fees.—(1) There shall be paid in respect of the grant of patents and applications therefor, and in respect of other matters in relation to the grant of patents under this Act, such fees as may be prescribed by the Central Government.

(2) Where a fee is payable in respect of the doing of an act by the Controller, the Controller shall not do that act until the fee has been paid.

(3) Where a fee is payable in respect of the filing of a document at the patent office, the fee shall be paid along with the document or within the prescribed time and the document shall be deemed not to have been filed at the office if the fee has not been paid within

such time.

(4) Where a principal patent is granted later than two years from the date of the filing of the application, the fees which have become due in the meantime may be paid within a term of three months from the date of the recording of the patent in the register or within the extended period not later than nine months from the date of recording.

143. Restrictions upon publication of specification.—Subject to the provisions of Chapter VII, an application for a patent, and any specification filed in pursuance thereof, shall not, except with the consent of the applicant, be published by the Controller before the expiration of the period prescribed under sub-section (1) of section 11A or before the same is open to public inspection in pursuance of sub-section (3) of section 11A or section 43.

144. Reports of examiners to be confidential.—The reports of examiners to the Controller under this Act shall not be open to public inspection or be published by the Controller; and such reports shall not be liable to production or inspection in any legal proceeding unless the court certifies that the production or inspection is desirable in the interests of justice, and ought to be allowed.

145. Publication of official journal.—The Controller shall publish periodically an official journal which shall contain such information as may be required to be published by or under the provisions of this Act or any rule made thereunder.

146. Power of Controller to call for information from patentees.—(1) The Controller may, at any time during the continuance of the patent, by notice in writing, require a patentee or a licensee, exclusive or otherwise, to furnish to him within two months from the date of such notice or within such further time as the Controller may allow, such information or such periodical statements as to the extent to which the patented invention has been commercially worked in India as may be specified in the notice.

(2) Without prejudice to the provisions of sub-section (1), every patentee and every licensee (whether exclusive or otherwise) shall furnish in such manner and form and at such intervals (not being less than six months) as may be prescribed statements as to the extent to which the patented invention has been worked on a commercial scale in India.

(3) The Controller may publish the information received by him under subsection (1) or sub-

section (2) in such manner as may be prescribed.

147. Evidence of entries, documents, etc.—(1) A certificate purporting to be signed by the Controller as to any entry, matter or thing which he is authorized by this Act or any rules made thereunder to make or do, shall be *prima facie* evidence of the entry having been made and of the contents thereof and of the matter or thing having been done or omitted to be done.

(2) A copy of any entry in any register or of any document kept in the patent office or of any patent, or an extract from any such register or document, purporting to be certified by the Controller and sealed with the seal of the patent office shall be admitted in evidence in all courts, and in all proceedings, without further proof or production of the original.

(3) The Controller or any other officer of the patent office shall not, in any legal proceedings to which he is not a party, be compellable to produce the register or any other document in his custody, the contents of which can be proved by the production of a certified copy issued under this Act or to appear as a witness to prove the matters therein recorded unless by order of the court made for special causes.

148. Declaration by infant, lunatic etc.—(1) If any person is, by reason of minority, lunacy or other disability, incapable of making any statement or doing anything required or permitted by or under this Act, the lawful guardian, committee or manager (if any) of the person subject to the disability, or if there be none, any person appointed by any court possessing jurisdiction in respect of his property, may make such statement or a statement as nearly corresponding thereto as circumstances permit, and do such thing in the name and on behalf of the person subject to the disability.

(2) An appointment may be made by the court for the purposes of this section upon the petition of any person acting on behalf of the person subject to the disability or of any other person interested in the making of the statement or the doing of the thing.

149. Service of notices, etc., by post.—Any notice required or authorised to be given by or under this Act, and any application or other document so authorised or required to be made or filed, may be given, made or filed by post.

150. Security for costs.—If any party by whom notice of any opposition is given under this Act or by whom application is made to the Controller for the grant of a licence under a

patent neither resides nor carries on business in India, the Controller may require him to give security for the costs of the proceedings, and in default of such security being given may treat the opposition or application as abandoned.

151. Transmission of orders of courts to Controller.—(1) Every order of the High Court or the Appellate Board on a petition for revocation, including orders granting certificates of validity of any claim, shall be transmitted by the High Court or the Appellate Board to the Controller who shall cause an entry thereof and reference thereto to be made in the register.

(2) Where in any suit for infringement of a patent or in any suit under section 106 the validity of any claim or a specification is contested and that claim is found by the court to be valid or not valid, as the case may be, the court shall transmit a copy of its judgment and decree to the Controller who shall on receipt thereof cause an entry in relation to such proceeding to be made in the prescribed manner in a supplemental record.

(3) The provisions of sub-sections (1) and (2) shall also apply to the court to which appeals are preferred against decisions of the Appellate Board or the courts, as the case may be, referred to in those sub-sections.

152. **Transmission of copies of specifications, etc., and inspection thereof.—** [Omitted by the *Patents (Amendment) Act,* 2005]

153. Information relating to patents.—A person making a request to the Controller in the prescribed manner for information relating to any such matters as may be prescribed as respects any patent specified in the request or as respects any application for a patent so specified shall be entitled, subject to the payment of the prescribed fee, to have information supplied to him accordingly.

154. Loss or destruction of patents.—If a patent is lost or destroyed, or its non-production is accounted for to the satisfaction of the Controller, the Controller may at any time, on application made in the prescribed manner and on payment of the prescribed fee, cause a duplicate thereof to be sealed and delivered to the applicant.

155. Reports of Controller to be placed before Parliament.—The Central Government shall cause to be placed before both Houses of Parliament once a year a report respecting the

execution of this Act by or under the Controller.

156. Patent to bind Government.—Subject to the other provisions contained in this Act, a patent shall have to all intents the like effect as against Government as it has against any person.

157. Right of Government to sell or use forfeited articles.—Nothing in this Act shall affect the power of the Government or of any person deriving title directly or indirectly from the Government to sell or use any articles forfeited under any law for the time being in force.

157A. Protection of security of India.—Notwithstanding anything contained in this Act, the Central Government shall—

(a) not disclose any information relating to any patentable invention or any application relating to the grant of patent under this Act, which it considers prejudicial to the interest of security of India;

(b) take any action including the revocation of any patent which it considers necessary in the interest of the security of India by issue of a notification in the Official Gazette to that effect.

***Explanation.*—**For the purposes of this section, the expression "security of India" includes any action necessary for the security of India which—

(i) relates to fissionable materials or the materials from which they are derived; or

(ii) relates to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment; or

(iii) is taken in time of war or other emergency in international relations.

158. Power of High Courts to make rules.—The High Court may make rules consistent with this Act as to the conduct and procedure in respect of all proceedings before it under this Act.

159. Power of Central Government to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) Without prejudice to the generality of the foregoing power, the Central Government may

make rules to provide for all or any of the following matters, namely:—

(i) the form and manner in which any application for a patent, any specifications or drawings and any other application or document may be filed in the patent office;

(ia) the period which the Controller may allow for filing of statement and undertaking for in respect of applications under sub-section (1), the period within which the details relating to processing of applications may be filed before the Controller and the details to be furnished by the applicant to the Controller under sub-section (2) of section 8;

(ib) the period within which a reference to the deposit of materials shall be made in the specification under sub-clause (A) of clause (ii) of the proviso to sub-section (4) of section 10;

(ic) the period for which application for patent shall not be open to the public under sub-section (1) and the manner in which the applicant may make a request to the Controller to publish his application under sub-section (2) of section 11 A;

(id) the manner of making the request for examination for an application for patent and the period within which such examination shall be made under sub-sections (1) and (3) of section 11B;

(ie) the manner in which an application for withdrawal of an application for grant of a patent shall be made and the period within which a request for examination from the date of revocation of secrecy directions shall be made under the proviso to sub-section (4) of section 11B.

(ii) the time within which any act or thing may be done under this Act, including the manner in which and the time within which any matter may be published under this Act;

(iii) the fees which may be payable under this Act and the manner and time of payment of such fees;

(iv) the matters in respect of which the examiner may make a report to the Controller;

(v) the manner in which and the period within which the Controller shall consider and dispose off a representation under sub-section (1) of section 25;

(va) the period within which the Controller is required to dispose of an application under section 39;

(vi) the form and manner in which and the time within which any notice may be given under this Act;

(vii) the provisions which may be inserted in an order for restoration of a patent for the protection of persons who may have availed themselves of the subject-matter of the patent after the patent had ceased;

(viii) the establishment of branch offices of the patent office and the regulation generally of the business of the patent office, including its branch offices;

(ix) the maintenance of the register of patents and the safeguards to be observed in the maintenance of such register in computer floppies, diskettes or any other electronic form and the matters to be entered therein;

(x) the matters in respect of which the Controller shall have powers of a civil court;

(xi) the time when and the manner in which the register and any other document open to inspection may be inspected under this Act;

(xii) the qualifications of, and the preparation of a roll of, scientific advisers for the purpose of section 115;

(xiia) the salaries and allowances and other conditions of service of the officers and other employees of the Appellate Board under subsection (2) and the manner in which the officers and other employees of the Appellate Board shall discharge their functions under subsection (3) of section 117;

(xiib) the form of making an appeal, the manner of verification and the fee payable under sub-section (3) of section 117A;

(xiic) the form in which, and the particulars to be included in the application to the Appellate Board under sub-section (1) of section 117D;

(xiii) the manner in which any compensation for acquisition by Government of an invention may be paid;

(xiv) the manner in which the register of patent agents may be maintained under sub-section (1) of section 125 and the safeguards to be observed in the maintenance of such register of patent agents on computer floppies, diskettes or any other electronic form under subsection (2) of that section; the conduct of qualifying examinations for patent agents; and matters connected with their practice and conduct, including the taking of disciplinary proceedings against patent agents for misconduct;

(xv) the regulation of the making, printing, publishing and selling of indexes to, and abridgements of, specifications and other documents in the patent office; and the inspection of indexes and abridgements and other documents;

(xvi) any other matter which has to be or may be prescribed.

(3) The power to make rules under this section shall be subject to condition of the rules being made after previous publication:

Provided that the Central Government may, if it is satisfied that the circumstances exist which render it practically not possible to comply with such condition of previous publication, dispense with such compliance.

160. Rules to be placed before Parliament.—Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

161. Special provisions with respect to certain applications deemed to have been refused under Act 2 of 1911.— [Omitted by the Patents (Amendment) Act, 2002]

162. Repeal of Act 2 of 1911 in so far as it relates to patents and savings.— (1) The Indian Patents and Designs Act, 1911, in so far as it relates to patents, is hereby repealed, that is to say, the said Act shall be amended in the manner specified in the Schedule.

(2) and (3) [Omitted by the *Patents (Amendment) Act,* 2002]

(4) The mention of particular matters in this section shall not prejudice the general application of the General Clauses Act, 1897 (10 of 1897), with respect to repeals.

(5) Notwithstanding anything contained in this Act, any suit for infringement of a patent or any proceeding for revocation of a patent, pending in any court at the commencement of this Act, may be continued and disposed of, as if this Act had not been passed.

163. Amendment of Act 43 of 1958.— [Omitted by the *Patents (Amendment) Act,* 2005]

THE SCHEDULE

[Section 162]

AMENDMENTS TO THE INDIAN PATENTS AND DESIGNS ACT, 1911

1. Long title—Omit "Inventions and".
2. Preamble—Omit "inventions and".
3. Section 1—In sub-section (1) omit "Indian Patents and".
4. Section 2—
   (a) omit clause (1);
   (b) in clause (2) omit "(as respects designs)";
   (c) for clause (3), substitute—
   (3) "controller" means the Controller General of Patents, Designs and Trade Marks appointed under sub-section (1) of section 4 of the Trade and Merchandise Marks Act, 1958 (43 of 1958);
   (d) in clause (5) for "trade mark as defined in section 478", substitute "trade mark as defined in clause (v) of sub-section (1) of section 2 of the Trade and Merchandise Marks Act, 1958 (43 of 1958)";
   (e) omit clause (6);
   (f) in clause 7, after sub-clause (ee) insert,—
   "(f) in relation to the Union territories of Dadra and Nagar Haveli and Goa, Daman and Diu, the High Court at Bombay; (g) in relation to the Union territory of Pondicherry, the High Court at Madras.";
   (g) omit clauses (8), (10) and (11);
   (h) for clause (12), substitute—
   "(12) "patent office" means the patent office referred to in section 74 of the Patents Act, 1970".
5. Omit Part I.
6. For section 51B, substitute—
   "51B, Designs to bind Government.—A registered design shall have to all intents the like effect as against Government as it has against any person and the provisions of Chapter XVII of the Patents Act, 1970, shall apply to registered designs as they apply to patents."
7. In section 54, for "The provisions of this Act", substitute "The provisions of the Patents

Act, 1970".

8. Omit sections 55 and 56.

9. Section 57—For sub-section (1), substitute—

(1) There shall be paid in respect of the registration of designs and applications therefor and in respect of other matters relating to designs under this Act such fees as may be prescribed by the Central Government.".

10. Omit section 59 A.

11. Section 61—Omit sub-section (1).

12. For section 62, substitute—

"62, Power of Controller to correct clerical errors.—The Controller may, on request in writing accompanied by the prescribed fee, correct any clerical error in the representation of a design or in the name or address of the proprietor of any design or in any other matter which is entered upon the register of designs."

13. Section 63—

(a) in sub-section (1), omit "to a patent or" and "patent or";

(b) in sub-section (2), omit "patent or" and for "patents or designs, as the case may be,", substitute "designs,";

(c) in sub-section (3), omit "patent or" whenever that expression occurs;

(d) in sub-section (4), omit "to a patent or".

14. Section 64—

(a) in sub-section (1), omit "patents or" and omit the word "either" wherever it occurs;

(b) in sub-section (5), omit clause (a).

15. Omit section 66.

16. Section 67—Omit "for a patent, or for amendment of an application or of a specification, or",

17. Section 69—In sub-section (1), omit "to grant a patent for an invention or".

18. Section 71A—Omit "or from patents, specifications and other"

19. Omit section 72.

20. Omit sections 74A and 75.

21. Section 76—

(a) in sub-section (1), omit "other";

(b) in sub-section (2), in clause (c), omit "opponent".

22. Section *77*—

(a) in sub-section (1)—

(i) in clauses (c) and (d), omit "specifications"; (ii) for clause (e), substitute—

"(e) providing for the inspection of documents in the patent office and for the manner in which they may be published;" (iii) omit clause (eee);

(b) omit sub-section (2A).

23. Omit section 78.

24. For section 78A, substitute—

"78A. Reciprocal arrangement with United Kingdom and other Commonwealth countries — (1) Any person who has applied for protection for any design in the United Kingdom or his legal representative or assignee shall, either alone or jointly with any other person, be entitled to claim that the registration of the said design under this Act shall be in priority to other applicants and shall have the same date as the date of the application in the United Kingdom:

Provided that—

(a) the application is made within six months from the application for protection in the United Kingdom; and

(b) nothing in this section shall entitle the proprietor of the design to recover damages for infringements happening prior to the actual date on which the design is registered in India.

(2) The registration of a design shall not be invalidated by reason only of the exhibition or use *of,* or the publication of a description or representation of, the design in India during the period specified in this section as that within which the application may be made.

(3) The application for the registration of a design under this section must be made in the same manner as an ordinary application under this Act.

(4) Where it is made to appear to the Central Government that the legislature of any such Commonwealth country as may be notified by the Central Government in this behalf has made satisfactory provisions for the protection of designs registered in India, the Central Government may, by notification in the Official Gazette, direct that the provisions of this section, with such variations or additions, if any, as may be set out in such notification, shall apply for the protection of designs registered in that Commonwealth country."

25. Omit sections 78B, 78C, 78D and 78E.

26. Omit the Schedule.

INTELLECTUAL PROPERTY INDIA

सत्यमेव जयते

THE PATENTS RULES, 2003

Notes and Disclaimers:

1. The e-Version incorporates all the amendments in the Patents Act, 1970 and the Patent Rules, 2003 and is updated till 01-12-2017.
2. For details of every amendment, please refer to the relevant Gazette available on website (http://www.ipindia.gov.in)
3. While every efforts has been made to ensure the correctness of the contents of e-version, any deviation(s) noted may be brought to the notice of Sh B P Singh, Deputy Controller of Patents and Designs, at "birendrap.singh@nic.in" for corrective measures. The contents of the Gazette(s) shall prevail on e-Version in case of any deviations.

CONTENTS

Sl No.	Chapters	Description
1.	Chapter I	Preliminary
2.	Chapter II	Application for Patents
3.	Chapter III	International Applications under Patent Cooperation Treaty (PCT)
4.	Chapter IV	Publication and Examination of Applications
5.	Chapter V	Exclusive Marketing Rights (Omitted)
6.	Chapter VI	Opposition Proceedings to Grant of Patents
7.	Chapter VII	Secrecy Directions
8.	Chapter VIII	Grant of Patents
9.	Chapter IX	Amendment of Application, Specification or any Document Relating Thereto
10.	Chapter X	Restoration of Patents
11.	Chapter XI	Surrender of Patents
12.	Chapter XII	Register of Patents
13.	Chapter XIII	Compulsory Licence and Revocation of Patent
14.	Chapter XIV	Scientific Advisers
15.	Chapter XV	Patent Agents
16.	Chapter XVI	Miscellaneous
		Schedules

S.O.493(E).-WHEREAS certain draft rules were published in exercise of the powers conferred by section 159 of the Patents Act, 1970 (39 of 1970) vide notification of the Government of India in Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) vide Number S.O. 1018(E) dated the 20th September, 2002, in Part II, Section 3, sub-section (ii) of the Gazette of India, (Extraordinary) dated 20th September, 2002 for inviting objections and suggestions from persons likely to be affected thereby before expiry of a period of thirty days from the date on which copies of the Gazette containing the Notification were made available to the public;

AND WHEREAS the copies of the Gazette containing the said Notification were made available to the public on 3rd October, 2002.

AND WHEREAS objections and suggestions received from the public on the said draft rules have been considered by the Central Government;

Now, THEREFORE, in exercise of the powers conferred by section 159 of the Patents Act, 1970 (39 of 1970) and in supersession of the Patents Rules, 1972 published in the Gazette of India, vide S.O. 301(E) dated 20th April, 1972 in Part II, Section 3, sub- section (ii), except as respect things done or omitted to be done before such supersession, Central Government hereby makes the following rules,
namely:—

CHAPTER I

PRELIMINARY

1. Short title and commencement.—(1) These rules may be called the Patents Rules, 2003.
(2) They shall come into force on the date on which the Patents (Amendment) Act, 2002 comes into force.

2. Definitions. — In these rules, unless the context otherwise requires,—
(a) "Act" means the Patents Act, 1970 (39 of 1970);
(b) "appropriate office" means the appropriate office of the patent office as specified in rule 4;
(c)"article" includes any substance or material, and any plant, machinery or apparatus, whether affixed to land or not;
(d)"Form" means a Form specified in the Second Schedule;

(da) "Person other than a natural person" shall include a "small entity";

(db) "Request for examination"‖ means a request for examination, including expedited examination, made under section 11B in respect of rule 24B or rule 24C;

(e) "Schedule" means Schedule to these rules;
(f) "section" means a section of the Act;

(fa) ”small entity” means, —

(i) in case of an enterprise engaged in the manufacture or production of goods, an enterprise where the investment in plant and machinery does not exceed the limit specified for a medium enterprise under clause (a) of sub-section (1) of section 7 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006); and

(ii) in case of an enterprise engaged in providing or rendering of services, an enterprise where the investment in equipment is not more than the limit specified for medium enterprises under clause (b) of sub-section (1) of Section 7 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006).

Explanation 1. — For the purpose of this clause, "enterprise" means an industrial undertaking or a business concern or any other establishment, by whatever name called, engaged in the manufacture or production of goods, in any manner, pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (65 of 1951) or engaged in providing or rendering of any service or services in such and industry.

Explanation 2. — In calculating the investment in plant and machinery, the cost of pollution control, research and development, industrial safety devices and such other things as may be specified by notification under the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006), shall be excluded.

Explanation 3. —The reference rates of foreign currency of the Reserve Bank of India shall prevail.

(fb)(i) "Startup" means

(a) an entity in India recognised as a startup by the competent authority under Startup India inititative.

(b) In case of a foreign entity, an entity fulfilling the criteria for turnover and period of incorporation/registration as per Startup India Initiative and submitting declaration to that effect.

Explanation: In calculating the turnover, reference rates of foreign currency of Reserve Bank of India shall prevail.

(g) Words and expressions used, but not defined in these rules, shall have the meanings respectively assigned to them in the Act.

3. Prescribed particulars .—Save as otherwise provided in these rules, the particulars contained in a Form are hereby prescribed as the particulars, if any, required under the relevant provision or provisions of the Act.

4. Appropriate office.—(1) The appropriate office of the patent office shall—

(i) for all the proceedings under the Act, be the head office of the patent office or the branch office, as the case may be, within whose territorial limits—

(a) the applicant or first mentioned applicant in case of joint applicants for a patent, normally resides or has his domicile or has a place of business or the place from where the invention actually originated; or

(b) the applicant for a patent or party in a proceeding if he has no place of business or domicile in India, the address for service in India given by such applicant or party is situated; and

(ii) [Omitted by Patents (Amendment) Rules, 2006]

(2)The appropriate office once decided in respect of any proceedings under the Act shall not ordinarily be changed.

(3) Notwithstanding anything contained in sub-rule (2), the Controller may transfer an application for patent so filed, to head office or, as the case may be, branch office of the Patent Office.

(4) Notwithstanding anything contained in sub-rule (1), further application referred to in section 16 of the Act, shall be filed at the appropriate office of the first mentioned application only.

(5) All further applications referred to section 16 of the Act filed in an office other than the appropriate office of the first mentioned application, before the commencement of the Patents (Amendment) Rules, 2013, shall be transferred to the appropriate office of the first mentioned application.

5. Every person, concerned in any proceedings to which the Act or these rules relate and every patentee, shall furnish to the Controller an address for service, including a postal address in India and an e-mail address, and such address for service shall be treated for all purposes connected with such proceedings or patent as the address of the person concerned in the proceedings or of the patentee. Unless such an address for service is given, the Controller shall be under no obligation either to proceed or deal with any proceeding, or patent or to send any notice that may be required to be given under the Act or these rules and the Controller may take suo motu decision in the matter:

Provided that a patent agent shall also be required to furnish to the Controller a mobile number registered in India.

6. Leaving and serving documents.—(1) Any application, notice or other document authorised or required to be filed, left, made or given at the patent office, or to the Controller or to any other person under the Act or these rules, may be tendered by hand or sent by a letter addressed to the Controller at the appropriate office or to that person through post or registered post or speed post or by electronic transmission duly authenticated. If it is sent by post or registered post or speed post or by electronic transmission duly authenticated, it shall be deemed to have been filed, left, made or given at the time when the mail containing the same would have been delivered in the ordinary course of post or registered post or speed post, or by electronic transmission duly authenticated, as the case may be. In proving such sending, it shall be sufficient to show that the mail was properly addressed and transmitted:

(1A) Notwithstanding anything contained in sub-rule (1), a patent agent shall file, leave, make or give all documents only by electronic transmission duly authenticated, including scanned copies of documents that are required to be submitted in original:

Provided that the original documents that are required to be submitted in original, shall be submitted within a period of fifteen days, failing which such documents shall be deemed not to have been filed.

(2) Any written communication addressed to a patentee at his postal address or e-mail address, as it appears on the register of patents or at his address for service given under rule 5, or to any applicant or opponent in any proceedings under the Act or these rules, at the postal address or e-mail address, appearing on the application or notice of opposition, or given for service, shall be deemed to be properly addressed.

(3)All notices and all written communications addressed to a patentee, or to any applicant or opponent in any proceedings under the Act or these rules, and all documents forwarded to the patentee or to the said applicant or opponent, shall, except when they are sent by special messenger, be sent by registered post or speed post or by electronic transmission duly authenticated.

(4)The date of a notice or a written communication addressed to a patentee or to any applicant or opponent in any proceedings under the Act and these rules shall be the date of dispatch of the said notice or written communication, by registered post or speed post or fax or electronic transmission duly authenticated, as the case may be, unless otherwise specified under the Act or these rules.

(5) In case of delay in receipt of a document or a communication sent by the patent office to a party to any proceedings under the Act or these rules, the delay in transmitting or resubmitting a document to the patent office or doing any act by the party may be condoned by the Controller if a petition for such condonation of

delay is made by the party to the Controller immediately after the receipt of the document or a communication along with a statement regarding the circumstances of the fact and evidence in support of the statement:

Provided that the delay condoned by the Controller shall not exceed the period between the date on which the party was supposed to have received the document or communication by ordinary course of mail or electronic transmission and the actual date of receipt of the same.

(6) Without prejudice to sub-rule (5) and notwithstanding anything contained in sub-rule (2) of rule 138, the Controller may condone the delay in transmitting or resubmitting a document to the patent office or performing any act by a party, if a petition for such condonation of delay is made by the party to the Controller along with a statement regarding the circumstances of the fact and evidence in support of the statement, to the satisfaction of the Controller, that the delay was due to war, revolution, civil disorder, strike, natural calamity, a general unavailability of electronic communication services or other like reason in the locality where the party resides or has place of business, and that such situation was of such severity that it disrupted the normal communication in that area and that the relevant action was taken as soon as reasonably possible not later than one month from the date when such situation had ceased to exist:

Provided that the delay condoned by the Controller shall not exceed the period for which the national emergency was in force, or six months from the expiry of the prescribed period, whichever is earlier.

(7) Any liability or burden of proof regarding the authenticity of any document filed, left, made or given under these rules, including electronically transmitted documents, shall lie only with the party filing, leaving, making or giving the document.

7.Fees.—(1)The fees payable under section 142 in respect of the grant of patents and applications therefor, and in respect of other matters for which fees are required to be payable under the Act shall be as specified in the First Schedule. Provided that ten per cent additional fee shall be payable when the applications for patent and other documents are filed through physical mode, namely, in hard copy format:

Provided further that in the case of a small entity, every document, for which a fee has been specified, shall be accompanied by Form-28.

(2) (a) The fees payable under the Act or these rules may be paid at the appropriate office either in cash or through electronic means or may be sent by bank draft or banker‘s cheque payable to the Controller of Patents and drawn on a scheduled bank at the place where the appropriate office is situated and if the draft or banker‘s cheque is sent by post, the fees shall be deemed to have been paid on the date on which the draft or banker‘s cheque has actually reached the Controller.

(b) omitted

(c) Where a fee is payable in respect of a document, the entire fee shall accompany the document.

(3) In case an application processed by a natural person is fully or partly transferred to a person other than a natural person, the difference, if any, in the scale of fee(s) between the fee(s) charged from a natural person and the fee(s) chargeable from the person other than the natural person in the same matter shall be paid by the new applicant with the request for transfer.

(3A) In case an application processed by a small entity is fully or partly transferred to a person other than a natural person (except a small entity), the difference, if any, in the scale of fee(s) between the fee(s) charged from a small entity and the fee(s) chargeable from the person other than a natural person (except a small entity) in the same matter shall be paid by the new applicant with the request for transfer.;

(3B) In case an application processed by a startup is fully or partly transferred to any person other than a natural person or a startup, the difference, if any, in the scale of fees between the fees charged from a startup and such person to whom the application is transferred, shall be paid by the new applicant along with the request for transfer:

Explanation.— Where the startup ceases to be a startup after having filed an application for patent due to lapse of more than five years from the date of its incorporation or registration or the turnover subsequently crosses the financial threshold limit as defined, no such difference in the scale of fees shall be payable.‖

(4) Fees once paid in respect of any proceeding shall not ordinarily be refunded irrespective of whether the proceeding has taken place or not:

Provided that, if the Controller is satisfied that during the online filing process, the fee was paid more than once for the same proceeding, the excess fee shall be refunded.‖

(4A) Notwithstanding anything contained in sub-rule (4), upon the withdrawal of an application in respect of which a request for examination has been filed, but before issuance of first statement of objection, the fee may be refunded to the extent prescribed in the First Schedule on a request made by the applicant in Form 29.

(5) (i) Subject to the approval of the Controller, any person may deposit money in advance and request the Controller to realise any fee payable by him from the said deposit and in such case the date of the receipt of the request to realise the fee or the date on which the request to realise the fee is deemed to have been received, whichever is earlier, shall be taken as the date of payment of the fee:

Provided that the requisite amount of money is available at the credit of the person making such request.

(ii) Subject to the approval of the Controller, any person may discontinue the deposit of money in advance and in such case the balance, if any, shall be refunded.

8. Forms.—(1) The Forms set forth in the Second Schedule with such variations as the

circumstances of each case may require shall be used for the purposes mentioned therein.

(2) Where no Form is so specified for any purpose, the applicant may use Form 30 specified in the Second Schedule.

9. Filing of documents and copies, etc. — (1) All documents and copies of the documents, except affidavits and drawings, filed with patent office, shall -

(a) be typewritten or printed in Hindi or English (unless otherwise directed or allowed by the Controller) in large and legible characters not less than 0.28 centimetre high with deep indelible ink with lines widely spaced not less than one and half spaced only upon one side of the paper;

(b) be on such paper which is flexible, strong, white, smooth, non-shiny, and durable of size A4 of approximately 29.7 centimetre by 21 centimetre with a margin of at least 4 centimetre on the top and left hand part, and 3 centimetre on the bottom and right hand part thereof;

(c) be numbered in consecutive Arabic numerals in the centre of the bottom of the sheet; and

(d) contain the numbering to every fifth line of each page of the description and each page of the claims at right half of the left margin.

(2) Any signature which is not legible or which is written in a script other than English or Hindi shall be accompanied by a transcription of the name either in Hindi or English in capital letters.

(3) In case, the application for patent discloses sequence listing of nucleotides or amino acid sequences, the sequence listing of nucleotides or amino acid sequences shall be filed in computer readable text format along with the application, and no print form of the sequence listing of nucleotides or amino acid sequences is required to be given.

(4) Additional copies of all documents shall be filed at the appropriate office as may be required by the Controller.

(5) Names and addresses of applicant and other persons shall be given in full together with their nationality and such other particulars, if any, as are necessary for their identification.

CHAPTER II

APPLICATION FOR PATENTS

10. Period within which proof of the right under section 7(2) to make the application shall be furnished.— Where, in an application for a patent made by virtue of an assignment of the right to apply for the patent for the invention, if the proof of the right to make the application is not furnished with the application, the applicant shall within a period of six months after the filing of such application furnish such proof.

Explanation.—For the purposes of this rule, the six months period in case of an application corresponding to an international application in which India is designated shall be reckoned from the actual date on which the corresponding application is filed in India.

11. Order of recording applications.—The applications filed in a year shall constitute a series identified by the year of such filing. In case of an application filed corresponding to an international application in which India is designated, such application shall constitute a series distinct from the rest of the applications identified by the year of filing of corresponding applications in India.

12. Statement and undertaking regarding foreign applications.—(1) The statement and undertaking required to be filed by an applicant for a patent under sub-section (1) of section 8 shall be made in Form 3.

(1A) The period within which the applicant shall file the statement and undertaking under sub-section (1) of section 8 shall be six months from the date of filing the application.

Explanation.—For the purpose of this rule, the period of six months in case of an application corresponding to an international application in which India is designated shall be reckoned from the actual date on which the corresponding application is filed in India.

(2) The time within which the applicant for a patent shall keep the Controller informed of the details in respect of other applications filed in any country in the undertaking to be given by him under clause (b) of sub-section (1) of section 8 shall be six months from the date of such filing.

(3) When so required by the Controller under sub-section (2) of section 8, the applicant shall furnish information relating to objections, if any, in respect of novelty and patentability of the invention and any other particulars as the Controller may require which may include claims of application allowed within six months from the date of such communication by the Controller.

13. Specifications.—(1) Every specification, whether provisional or complete, shall be made in Form 2.

(2) A specification in respect of a divisional application under section 16 shall contain specific reference to the number of the original application from which the divisional application is made.

(3) A specification in respect of a patent of addition under section 54 shall contain a specific reference to the number of the main patent, or the application for the main patent, as the case may be, and a definite statement that the invention comprises an improvement in, or a modification of, the invention claimed in the specification of the main patent granted or applied for.

(4) Where the invention requires explanation through drawings, such drawings shall be prepared in accordance with the provisions of rule 15 and shall be supplied with, and referred to in detail, in the specification, including the claims where the features illustrated in the drawings shall be followed by their respective reference signs in parentheses:

Provided that in case of a complete specification, if the applicant desires to adopt the drawings filed with the provisional specification as the drawings or part of the drawings for the complete specification, it shall be sufficient to refer to them in the complete specification as those left or filed with the provisional specification.

(5) Irrelevant or other matter, not necessary, in the opinion of the Controller, for elucidation of the invention, shall be excluded from the title, description, claims and drawings.

(6) Except in the case of an application (other than a convention application or an application filed under the Patent Cooperation Treaty designating India) which is accompanied by a complete specification, a declaration as to the inventorship of the invention shall be filed in Form 5 with the complete specification or at any time before the expiration of one month from the date of filing of the complete specification, as the Controller may allow on an application made in Form 4.

Explanation.—For the purposes of this rule, the date of filing of the complete specification with respect to an application corresponding to an international application in which India is designated shall be reckoned from the actual date on which the corresponding application is filed in India.

(7) (a) The abstract as specified under clause (d) of sub-section (4) of section 10, accompanying the specification shall commence with the title of the invention. The title of the invention shall disclose the specific features of the invention normally in not more than fifteen words.

(b) The abstract shall contain a concise summary of the matter contained in the specification and the summary shall indicate clearly the technical field to which the invention belongs, technical

advancement of the invention as compared to the existing Knowledge and principal use of the invention excluding any speculative use and where necessary, the abstract shall contain the chemical formula, which characterises the invention.

(c) The abstract may not contain more than one hundred and fifty words.

(d) If the specification contains any drawing, the applicant shall indicate on the abstract the figure, or exceptionally, the figures of the drawings which may accompany the abstract when published. Each main feature mentioned in the abstract and illustrated by a drawing shall be followed by the reference sign used in that drawing.

(e) The abstract shall be so drafted that it constitutes an efficient instrument for the purposes of searching in the particular technical field, in particular by making it possible to assess whether there is a need to consult the specification itself.

(8) The period within which reference to the deposit shall be made in the specification under sub-clause (A) of clause (ii) of sub-section (4) of section 10 shall be three months from the date of filing of the application:

Provided that in case of a request for publication under rule 24A, such reference shall be made on or before the date of filing of such request.

14. Amendments to Specifications. — (1) When amendments are made to a provisional or complete specification or any drawing accompanying it, the pages incorporating such amendments shall be retyped and submitted to form a continuous document.

(2) A marked copy clearly identifying the amendments carried out and a statement clearly indicating the portion (page number and line number) of the specification or drawing being amended along with the reason shall also be filed.

(3) Amendments shall not be made by slips pasted on, or as footnotes or by writing in the margin of any of the said documents.

(4) When a retyped page or pages incorporating amendments are submitted, the corresponding earlier page shall be deemed to have been superseded and cancelled by the applicant.‖

15. Drawings.—(1) Drawings, when furnished under section 10 by the applicants otherwise than on requisition made by the Controller, shall accompany the specifications to which they relate.

(2) No drawings or sketch, which would require a special illustration of the specification, shall appear in the specification itself.

(3) At least one copy of the drawing shall be prepared neatly and clearly on a durable paper sheet.

(4) Drawings shall be on standard A4 size sheets with a clear margin of at least 4 cm on the top and left hand and 3cm at the bottom and right hand of every sheet.

(5) Drawings shall be on a scale sufficiently large to show the inventions clearly and dimensions shall not be marked on the drawings.

(6)Drawings shall be sequentially or systematically numbered and shall bear—

(i) in the left hand top corner, the name of the applicant;

(ii) in the right hand top corner, the number of the sheets of drawings, and the consecutive number of each sheet; and

(iii) in the right hand bottom corner, the signature of the applicant or his agent.

(7) No descriptive matter shall appear on the drawings except in the flow diagrams.

16. Models.—(1) Models or samples shall be furnished under section 10 only when required by the Controller.

CHAPTER III

INTERNATIONAL APPLICATIONS UNDER PATENT COOPERATON TREATY (PCT)

17. Definitions.—In this Chapter, unless the context otherwise requires,—

(a) "Article" means an Article of the Treaty;

(aa) "Examining Authority" means the Indian International Preliminary Examining Authority referred *to* in sub-rule (1) of rule 19F;

(ab) "International Bureau" means the International Bureau of World Intellectual Property Organisation;

(ac) "Searching Authority" means the Indian International Searching Authority referred to in sub-rule (1) of rule 19A;

(b) "Treaty" or "PCT" means the Patent Cooperation Treaty.

(c) All other words and expressions used herein and not defined but defined in the PCT shall have the same meaning as assigned to them in that Treaty.

18. Appropriate office in relation to international applications. — (1) The receiving office, the designated office and the elected office for the purposes of international applications shall be the appropriate office referred to in rule 4.

(2) Notwithstanding anything contained in sub-rule (1), the Patent Office, Delhi branch shall be the appropriate office for dealing with the International Bureau and any other International Searching Authority and International Preliminary Examining Authority.

(3) An international application shall be filed at and processed by the appropriate office, referred to in sub-rule (1), in accordance with the provisions of this Chapter, the Treaty and the regulation under the Treaty.

(4) The appropriate office referred to in sub-rule (1), shall, on receipt of an international application,

(a) keep one copy of the application to be called the “home copy” in its office;

(b) transmit one copy to be called the "record copy" to the International Bureau; and

(c) transmit one copy to be called "search copy'' to the competent International Searching Authority referred to in Article 16 of the Treaty.

And simultaneously furnish complete details of such application to the Patent Office, Delhi branch.

19. International applications filed with appropriate office as receiving office.—(1) An international application shall be filed with the appropriate office in triplicate either in English or Hindi language.

(2) The fees payable in respect of an international application shall, *in* addition to the fees

specified in the regulations under the Treaty, be the fees as specified in the First Schedule and the Fifth Schedule.

(3) Where an international application has not been filed in triplicate, the appropriate office shall, upon payment of fees specified in the First Schedule, prepare the required additional copies.

(4) On receipt of a request from the applicant and on payment of the fees specified in the First Schedule, the appropriate office shall prepare a certified copy of the priority document and promptly transmit the same to the International Bureau and intimate the applicant and the Patent Office, Delhi branch.

19A. Indian International Searching Authority.—(1) The Patent Office, Delhi branch shall perform the functions of the Indian International Searching Authority under the treaty in accordance with an agreement between the Indian Patent Office and the International Bureau.

(2) The fees payable to the Searching Authority shall, in addition to the fees specified in the regulations made under the Treaty, be the fees as specified in the Fifth Schedule.

(3) The Searching Authority referred to in sub-rule (1), shall establish international search report in respect of international applications, or, as the case may be, declare in accordance with sub-rule (3) of rule 19B, in cases where India has been indicated as a competent International Searching Authority.

19B. International search report.—(1) The Searching Authority shall, on receipt of the search copy, notify the International Bureau and the applicant about the receipt of search copy with identification mark 'ISA/IN' along with the international application number and its serial number and the date of receipt of the search copy.

(2) Notwithstanding anything contained in the proviso to item (i) of sub-rule (2) of rule 24B, the Searching Authority shall, upon receipt of the search copy, refer the international application, in the order in which the search copy was received, to an examiner or any other officer appointed under sub-section (2) of Section 73 of the Act for preparing an international search report, in accordance with the provisions contained in the Treaty and the regulations under the Treaty, ordinarily within a period of one month but not exceeding two months from the date of such reference.

(3) The Searching Authority, if it considers that-

(a) the international application relates to a subject matter which the Searching Authority is not required to search and accordingly decides not to search; or

(b)the description, claims or drawings fail to comply with the requirements prescribed under the regulation under the Treaty to such an extent that a meaningful search could not be carried out,

the Authority shall so declare and notify the applicant and the International Bureau that no international search report shall be established.

(4) In a case where any situation referred to in clause (a) or clause (b) of sub-rule (3) is found to exist in connection with certain claims only, the Searching Authority shall indicate this fact in the International Search Report in respect of such claims, and for other claims, it shall establish the International Search Report.

(5) The Searching Authority, if it considers that the international application does not comply with the requirement of unity of invention, in accordance with the provisions contained in Rule 13 of the regulations under the Treaty, shall send a notice specifying the reasons for which the international application is not considered as complying with the requirement of unity of invention and inviting the applicant-

(a) to pay the additional fees specified in the Fifth Schedule, indicating the amount of fees to be paid, within a period of one month from the date of such invitation, and

(b)to pay, where applicable, the protest fee specified in the Fifth Schedule, indicating the amount of fee to be paid, within a period of one month from the date of such invitation.

(6)The Searching Authority shall establish the International Search Report on those parts of the international application which relate to the invention first mentioned in the claims ("main invention") and subject to payment of additional fee within the period specified in sub-rule (5), on those parts of the international application which relate to inventions in respect of which such additional fees were paid.

(7) Any applicant may pay the additional fees under protest, that is, accompanied by a reasoned statement to the effect that the international application complies with the requirement of unity of invention or that the amount of the required additional fees is excessive.

(8) The examination of the protest referred to in sub-rule (7) shall be carried out by a Review Committee constituted by the Controller.

(9) The Review Committee constituted under sub-rule (8) shall examine the extent to which the protest is justified and shall accordingly order for the total or partial reimbursement of the additional fee to the applicant.

(10) Where the applicant has not paid the fees for the protest in accordance with clause (b) of sub-rule (5), the protest shall be considered not to have been made and the Searching Authority shall so declare.

(11) The protest fee shall be refunded *to* the applicant where the Review Committee referred to in sub-rule (8) finds that the protest was entirely justified.

(12) Where the international application contains the disclosure of one or more nucleotide or amino acid sequences and the sequences are not furnished in computer- readable text format, the Searching Authority shall send a notice to the applicant to submit the sequence listing in computer-readable text format and pay the late furnishing fee specified in the Fifth Schedule, within a period of one month from the date of such notice and if the applicant fails to comply with the notice, the Searching Authority shall search the international

application to the extent that a meaningful search can be carried out without the sequence listing.

19C. Time limit for establishing international search report.—The Searching Authority shall establish the International Search Report and written opinion or, as the case may be, the declaration referred to in sub-rule (3) of rule 19B within a period of three months from the date of receipt of the search copy by the Searching Authority, or within a period of nine months from the date of priority, whichever expires later.

19D. Transmittal of the International Search Report and written opinion.—The Searching Authority shall transmit one copy of the International Search Report or of the declaration referred to in Article 17(2)(a) of the Treaty, and one copy of the written opinion established under Rule 43bis.1of the regulations under the Treaty, to the International Bureau and one copy to the applicant, on the same day.

19E. Confidential treatment.—All matters pertaining to international applications shall be kept confidential in accordance with the treaty and the regulations under the Treaty.

19F. Indian International Preliminary Examining Authority.—(1) The Patent Office, Delhi branch shall perform the functions of the International Preliminary Examining Authority under the Treaty in accordance with an agreement between the Indian Patent Office and the International Bureau.

(2) The Examining Authority referred to in sub-rule (1), shall establish-

(a) the International Preliminary Examination Report in respect of all international applications electing India as an International Preliminary Examining Authority;

(b) the International Preliminary Examination Report in respect of the demands filed by the nationals or residents of other countries in accordance with an agreement between Indian Patent Office and the International Bureau, upon being notified by the International Bureau;

(c) the International Preliminary Examination in respect of demands made by the nationals or residents of other countries not party to the Treaty or not bound by Chapter II of the Treaty, if the Assembly has so approves.

19G. Period for making a demand.—(1) The demand for international preliminary examination shall be made within the period specified in the Treaty or regulations under the Treaty.

(2) In case the demand is made after the expiry of the period specified in sub-rule (1), it shall be considered to have not been made and no International Preliminary Examination Report shall be prepared.

19H. Fees payable to Examining Authority.— The fees payable to the Examining Authority shall, in addition to the fees specified in the regulations under the Treaty, be the fees specified in the Fifth Schedule.

19I. Manner of making a demand.— A demand shall be made in accordance with the provisions contained in these rules, the Treaty and the regulations under the Treaty.

19J. Processing of demands for International preliminary examination.— (1) The Examining Authority, on receipt of the demand for international preliminary examination, if the Examining Authority is competent to conduct an international preliminary examination, shall assign the identification mark 'IPEA/IN' and shall notify the Applicant and the International Bureau.

(2)In case where the Examining Authority is not competent to conduct the international preliminary examination of the international application, it shall transmit the demand promptly to the International Bureau.

19K. International Preliminary Examination Report.—(1) Notwithstanding anything contained in the proviso to item (i) of sub-rule (2) of rule 24B, the Examining Authority shall refer the international application, in accordance with the provisions contained in the Treaty and the regulations under the Treaty, in the order in which the demand was received in the Examining Authority to an examiner or any other officer appointed under sub-section (2) of section 73 of the Act for preparing an International Preliminary Examination Report ordinarily within a period of three months but not exceeding four months from the date of such reference.

(2)Claims relating to inventions in respect of which no International Search Report has been established shall not be the subject of international preliminary examination.

(3) The Examining Authority, if considers that-

(a) the international application relates to a subject-matter on which the Examining Authority is not required to carry out an international preliminary examination, and, decides not to carry out such examination; or

(b) that the description, the claims, or the drawings, are so unclear, or the claims are so inadequately supported by the description, that no meaningful opinion can be formed on the questions of novelty, inventive step (non-obviousness), or industrial applicability, the Examining Authority shall not go into these questions and shall inform the applicant of this opinion and the reasons therefor.

(4) In a case where any situation referred to in clause (a) or clause (b) of sub-rule (3) is found to exist in connection with certain claims only, the Examining Authority shall indicate this fact in the International Preliminary Examination Report in respect of such claims, and for other claims, it shall establish the International Preliminary Examination Report.

(5) Where the Examining Authority finds that the international application does not comply with the requirement of unity of invention, in accordance with the provisions contained in Rule *13* of the regulations under the Treaty and chooses to invite the applicant, at his option, to restrict the claims or to pay additional fees, it shall issue a notice to the applicant:

(a) specifying at least one possibility of restriction which in the opinion of the Examining Authority, would be in compliance with the applicable requirement;

(b) specifying the reasons for which the international application is not considered as complying with the requirement of unity of invention;

(c) inviting the applicant to comply with the invitation within one month from the date of such notice;

(d) indicating the amount of the required additional fees to be paid in case the applicant so chooses; and

(e) inviting the applicant to pay, the protest fee within one month from the date of such notice, and indicate the amount to be paid, as specified in the Fifth Schedule.

(6) Any applicant may pay the additional fees under protest, that is, accompanied by a reasoned statement to the effect that the international application complies with the requirement of unity of invention or that the amount of the required additional fees is excessive.

(7) The examination of the protest referred to in sub-rule (5) shall be carried out by a Review Committee constituted by the Controller.

(8) The Review Committee constituted under sub-rule (7) shall examine the extent to which the protest is justified and shall accordingly order for the total or partial reimbursement to the applicant of the additional fee.

(9) The protest fee shall be refunded to the applicant where the Review Committee referred to in sub-rule (6) finds that the protest was entirely justified.

19L. Period for establishing international preliminary examination report and its transmission.— The period for establishing the International Preliminary Examination Report shall be:

(i) twenty eight months from the priority date; or

(ii) six months from the period specified under Rule 69.1 of the regulations under the Treaty for the start of the international preliminary examination; or

(iii) six months from the date of receipt by the Examining Authority of the translation furnished under Rule 55.2 of the regulations under the Treaty,

whichever expires last.

19M. Transmittal of the International Preliminary Examination Report.— The Examining Authority shall transmit one copy of the International Preliminary Examination Report and its annexure, if any, to the International Bureau, and one copy to the applicant, on the same day.

19N. Conditions for and extent of refund.— The fee paid by the applicant may be refunded, waived or reduced to the extent and in accordance with the conditions specified in the Treaty or the regulations under the Treaty and the agreement entered between the Indian Patent Office and the International Bureau.

20. International applications designating or designating and electing India.—(1) An application corresponding to an international application filed under Patent Cooperation Treaty may be made in Form 1 under sub-section (1A) of section 7.

Explanation.- For the purpose of this rule, "an application corresponding to an international application‖ means" an international application as filed under Patent Cooperation Treaty which includes any amendments made by the applicant under Article 19 and communicated to Designated Office under Article 20 or any amendment made under sub-clause (b) of clause (2) of Article 34 of the Treaty:

Provided that the applicant, while filing such application corresponding to an international application designating India, may delete a claim, in accordance with the provisions contained in rule 14.‖.

(2) The Patent Office shall not commence processing of an application filed corresponding to international application designating India before the expiration of the time limit prescribed under sub-rule (4) (i).

(3) An applicant in respect of an international application designating India shall, before the time limit prescribed in sub-rule (4)(i),—

(a) pay the prescribed national fee and other fees to the patent office in the manner prescribed under these rules and under the regulations made under the Treaty;

(b) and where the international application was either not filed or has not been published in English, file with the patent office, a translation of the application in English, duly verified by the applicant or the person duly authorised by him that the contents thereof are correct and complete.

(4) (i) The time limit referred to in sub-rule (2) shall be thirty one months from the priority date as referred to in Article 2(xi);

(ii) Notwithstanding anything contained in clause (i), the Patent Office may, on the express request filed in Form 18 along with the fee specified in First Schedule, process or examine the application at any time before thirty one months.

(5) The translation of the international application referred to in sub-rule (3) shall include a translation in English of,—

(i) the description;

(ii) the claims as filed;

(iii) any text matter of the drawings;

(iv) the abstract; and

(v) in case the applicant has not elected India and if the claims have been amended

under Article 19, then the amended claims together with any statement filed under the said Article;

(vi) in case the applicant has elected India and any amendments to the description, the claims and text matter of the drawings that are annexed to the international preliminary examination report.

(6) If the applicant fails to file a translation of the amended claims and annexures referred to in sub-rule (5), even after invitation from the appropriate office to do so, within a time limit as may be fixed by that office having regard to the time left for meeting the requirements, the amended claims and annexures shall be disregarded in the course of further processing the application by the appropriate office.

(7) The applicant in respect of an international application designating India shall when complying with sub-rule (3), preferably use Forms set out in the Second Schedule before the appropriate office as designated office.

21. Filing of priority document.—(1) Where the applicant in respect of an international application designating India has not complied with the requirements of paragraph (a) or paragraph (b) of rule 17.1 of the regulations under the Treaty, the applicant shall file with the patent office the priority document referred to in that rule before the expiration of the time limit referred to in sub-rule (4) of rule 20.

(2)Where priority document referred to in sub-rule (1) is not in the English language, an English translation thereof duly verified by the applicant or the person duly authorised by him shall be filed within the time limit specified in sub-rule (4) of rule 20.

(3)Where the applicant does not comply with the requirements of sub-rule (1) or sub-rule (2), the appropriate office shall invite the applicant to file the priority document or the translation thereof, as the case may be, within three months from the date of such invitation, and if the applicant fails to do so, the claim of the applicant for the priority shall be disregarded for the purposes of the Act.

22. Effect of non-compliance with certain requirements.— An international application designating India shall be deemed to be withdrawn if the applicant does not comply with the requirements of rule 20.

23. The requirements under this Chapter to be supplemental of the regulations, etc., under the Treaty.—(1) The provisions of this Chapter shall be supplemental to the PCT and the regulation and the administrative instructions made thereunder.

(2) In case of a conflict between any provisions of the rules contained in this Chapter and provisions of the Treaty and the regulations and the administrative instructions made thereunder, the provisions of the Treat and the regulations and administrative instructions made thereunder shall apply in relation to international applications.

CHAPTER IV

PUBLICATION AND EXAMINATION OF APPLICATIONS

24. Publication of application.—The period for which an application for patent shall not ordinarily be open to public under sub-section (1) of section 11A shall be eighteen months from the date of filing of application or the date of priority of the application, whichever is earlier.

Provided that the period within which the Controller shall publish the application in the journal shall ordinarily be one month from the date of expiry of said period, or one month from the date of request for publication under rule 24A.

24A. Request for publication.—A request for publication under sub-section (2) of section 11A shall be made in Form 9.

24B. Examination of application.—(1) (i) A request for examination under section 11B shall be made in Form 18 within forty-eight months from the date of priority of the application or from the date of filing of the application, whichever is earlier;

(ii)The period within which the request for examination under sub-section (3) of section 11B to be made shall be forty-eight months from the date of priority if applicable, or forty-eight months from the date of filing of the application;

(iii)The request for examination under sub-section (4) of section 11B shall be made within forty-eight months from the date of priority or from the date of filing of the application, or within six months from the date of revocation of the secrecy direction, whichever is later;

(iv) The request for examination of application as filed according to the 'Explanation' under sub-section (3) of section 16 shall be made within forty-eight months from the date of filing of the application or from the date of priority of the first mentioned application or within six months from the date of filing of the further application, whichever is later;

(v)The period for making request for examination under section 11B, of the applications filed before the 1st day of January, 2005 shall be the period specified under the section 11B before the commencement of the Patents (Amendment) Act, 2005 or the period specified under these rules, whichever expires later.

(2) (i) Where the request for examination has been filed under sub-rule (1) and application has been published under section 11A, the Controller shall refer the application, specification and other documents related thereto to the examiner and such reference shall be made in the order in which the request is filed:

Provided that in case of a further application filed under section 16, the order of reference of such further application shall be the same as that of the first mentioned application:

Provided further that in case the first mentioned application has already been referred for examination, the further application shall have to be accompanied by a request for examination, and such further application shall be published within one month and be referred to the examiner within one month from the date of such publication.

(ii) The period within which the examiner shall make the report under sub-section (2) of section 12, shall ordinarily be one month but not exceeding three months from the date of reference of the application to him by the Controller;

(iii) the period within which the Controller shall dispose off the report of the examiner shall ordinarily be one month from the date of the receipt of the such report by the Controller.

(3) A first statement of objections, along with any documents as may be required, shall be issued by the Controller to the applicant or his authorised agent within one month from the date of disposal of the report of examiner by the Controller:

Provided that where the request for examination was filed by a person interested, only an intimation of such examination may be sent to such person interested.

(4) Reply to the first statement of objections and subsequent reply, if any, shall be processed in the order in which such reply is received.

(5) The time for putting an application in order for grant under section 21 shall be six months from the date on which the first statement of objections is issued to the applicant to comply with the requirements.

(6) The time for putting an application in order for grant under section 21 as prescribed under sub-rule (5) may be further extended for a period of three months on a request in Form 4 for extension of time along with prescribed fee, made to the Controller before expiry of the period specified under sub-rule (5).‖

24C. Expedited examination of applications.—(1) An applicant may file a request for expedited examination in Form 18A along with the fee as specified in the first schedule only by electronic transmission duly authenticated within the period prescribed in rule 24B on any of the following grounds, namely:-

(a) that India has been indicated as the competent International Searching Authority or elected as an International Preliminary Examining Authority in the corresponding international application; or

(b) that the applicant is a startup.

(2) A request for examination filed under rule 24B may be converted to a request for expedited examination under sub-rule (1) of rule 24C by paying the relevant fees and submitting requisite documents as required under sub-rule (1).

(3) Except where the application has already been published under sub-section (2) of section 11A or a request for publication under rule 24A has already been filed, a request for expedited examination shall be accompanied by a request for publication under rule 24A.

(4) Where the request for expedited examination does not comply with the requirements of this rule, such a request shall be processed in accordance with the provisions contained in rule 24B, with an intimation to the applicant, and shall be deemed to have been filed on the date on which the request for expedited examination was filed.

(5)The Controller shall refer the request for expedited examination along with the application and specification and other documents to the examiner, in respect of the applications where the request for expedited examination has been received, in the order of filing of such requests.

Provided that a request for expedited examination under this rule filed by a startup shall not be questioned merely on the ground that the startup ceased to be a startup after having filed an application for patent due to the lapse of more than five years from the date of its incorporation or registration, or the turnover subsequently crossed the financial threshold limit, as defined.

(6) The period within which the examiner shall make the report under sub-section (2) of section 12, shall ordinarily be one month but not exceeding two months from the date of reference of the application to him by the Controller.

(7) The period within which the Controller shall dispose of the report of the examiner shall be one month from the date of receipt of such report by the Controller.

(8) A first statement of objections along with any document, if required, shall be issued by the Controller to the applicant or his authorised agent within fifteen days from the date of disposal of the report of examiner by the Controller.

(9) Reply to the first statement of objections and subsequent reply, if any, in respect of an application where the request for expedited examination was filed, shall be processed in the order in which such reply for such application is received.

(10) The time for putting an application in order for grant under section 21 shall be six months from the date on which the first statement of objections is issued to the applicant.

(11) The time for putting an application in order for grant under section 21, as prescribed in sub-rule (10) may be further extended for a period of three months on a request for extension made in Form 4 along with the prescribed fee, made to the Controller before the expiry of the period specified under sub-rule (10).

(12) The Controller shall dispose of the application within a period of three months from the date of receipt of the last reply to the first statement of objections or within a period of three months from the last date to put the application in order for grant under section 21 of the Act, whichever is earlier:

Provided that this time limit shall not be applicable in case of pre-grant opposition.

(13) Notwithstanding anything contained this rule, the Controller may limit the number of requests for expedited examination to be received during the year by

way of a notice to be published in the official journal.

25. Identification of published applications.—Publication of application under sub-sections (2) and (5) of section 11A shall be identified by the letter 'A' along with the number of application.

26. A request for withdrawing the application under sub-section (4) of section 11B shall be made in Form 29.

27. Inspection and supply of published documents.— After the date of publication of the application under section 11A, the application together with the complete specification and provisional specification, if any, the drawing, if any, the abstract and any other document filed in respect of the application may be inspected at the appropriate office by making a written request to the Controller on payment of the fee in that behalf and copies thereof may be obtained on payment of fees specified in the First Schedule.

28. Procedure in case of anticipation by prior publication.— (1) If the Controller is satisfied after investigation under section 13 that the invention so far as claimed in any claim of the complete specification has been published in any specification or other document referred to in clause (a) of sub-section (1) or subsection (2) of the said section, the Controller shall communicate the gist of specific objections and the basis thereof to the applicant and the applicant shall be afforded an opportunity to amend his specification.

(2) If the applicant contests any of the objections communicated to him by the Controller under sub-rule (1), or if he refiles his specification along with his observations as to whether or not the specification is to be amended, he shall be given an opportunity to be heard in the matter if he so requests:

Provided that such request shall be made on a date earlier than ten days of the final date of the period preferred to under sub-section (1) of section 21:

Provided further that a request for hearing may be allowed to be filed within such shorter period as the Controller may deem fit in the circumstances of the case.

(3) If the applicant requests for a hearing under sub-rule (2) within a period of one month from the date of communication of the gist of objections, or, the Controller, considers it desirable to do so, whether or not the applicant has refiled his application, he shall forthwith fix a date and time for hearing having regard to the period remaining for putting the application in order or to the other circumstances of the case.

(4)The applicant shall be given ten days' notice of any such hearing or such shorter notice as appears to the Controller to be reasonable in the circumstances of the case and the applicant shall, as soon as possible, notify the Controller whether he will attend the hearing.

(5) After hearing the applicant, or without a hearing if the applicant has not attended or has notified that he does not desire to be heard, the Controller may specify or permit such amendment of the specification as he thinks fit to be made and may refuse to grant the

patent unless the amendment so specified or permitted is made within such period as may be fixed.

(6) The hearing may also be held through video-conferencing or audio-visual communication devices:

Provided that such hearing shall be deemed to have taken place at the appropriate office.

Explanation.– For the purposes of this rule, the expression "communication device" shall have the same meaning as assigned to it in clause (ha) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000).

(7) In all cases of hearing, written submissions and the relevant documents, if any, shall be filed within fifteen days from the date of hearing.

28A. Procedure in relation to consideration of report of examiner under section 14.—In case the applicant contests any of the objections communicated to him, the procedure specified under rule 28 may apply.

29. Procedure in case of anticipation by prior claiming.— (1) When it is found that the invention so far as claimed in any claim of the complete specification, is claimed in any claim of any other specification falling within clause (b) of sub-section (1) of section 13, the applicant shall be so informed and shall be afforded an opportunity to amend his specification.

(2) If the applicant's specification is otherwise in order for grant and an objection under clause (b) of sub-section (1) of section 13 is outstanding, the Controller may postpone the grant of patent and allow a period of two months for removing the objection.

30. Amendment of the complete specification in case of anticipation.—If the applicant so requests at any time, or if the Controller is satisfied that the objection has not been removed within the period referred to in sub-rule (2) of rule 29, a date for hearing the applicant shall be fixed forthwith and the applicant shall be given at least ten days' notice of the date so fixed. The applicant shall, as soon as possible, notify the Controller whether he will attend the hearing.

(2) After hearing the applicant, or without a hearing if the applicant has not attended or has notified that he does not desire to be heard, the Controller may specify or permit such amendment of the specification as will be to his satisfaction to be made and may direct that reference to such other specification, as he shall mention shall be inserted in the applicant's specification unless the amendment is made or agreed to within such period as he may fix.

31. Form of reference to another specification.—When in pursuance of rule 30, the Controller directs that a reference to another specification shall be inserted in the applicant's complete specification, such reference shall be inserted after

the claims and shall be in the following form, namely: —

"Reference has been directed, in pursuance of section 18(2) of the Patents Act, 1970, to the specification filed in pursuance of application No……"

32. Procedure in case of potential infringement.— If in consequence of an investigation made under section 13, it appears to the Controller that the applicant's invention cannot be performed without substantial risk of infringement of a claim of another patent, the applicant shall be so informed and the procedure provided in rule 29 shall, so far as may be necessary, be applicable.

33. Form of reference to another patent.— Where the Controller directs that a reference to another patent shall be inserted in the applicant's complete specification under subsection (1) of section 19, such reference shall be inserted, after the claims in the following form, namely: —

"Reference has been directed, in pursuance of section 19(1) of the Patents Act, 1970, to Patent No…… "

34. Manner in which a claim under section 20(1) shall be made.—(1) A claim under subsection (1) of section 20 shall be made in Form 6.

(2)The original assignment or agreement or an official copy or notarized copy thereof shall also be produced for the Controller's inspection and the Controller may call for such other proof of title or written consent as he may require.

35. Manner in which a request may be made under section 20(4).—(1) A request under subsection (4) of section 20 shall be made in Form 6.

(2) The request shall be accompanied by proof of death of the joint applicant and a certified copy of the probate of the will of the deceased or letters of administration in respect of his estate or any other document to prove that the person who gives the consent is the legal representative of the deceased applicant.

36. Manner of application under section 20(5).—(1) An application under sub-section (5) of section 20 shall be made in Form 6 in duplicate and shall be accompanied by a statement setting out fully the facts upon which the applicant relies and the directions which he seeks.

(2) A copy of the application and statement shall be sent by the Controller to every other joint applicant.

37. Numbering of applicant ions on the grant of patent.— On the grant of a patent, the application shall be accorded a number (called serial number) in the series of numbers accorded to patents under the Indian Patents and Designs Act, 1911 (2 of 1911), which shall be the number of the patent so granted.

38. [Omitted]

CHAPTER V (Omitted)

EXCLUSIVE MARKETING RIGHTS

Rules 39 to 54 [Omitted by Patents (Amendment) Rules, 2005]

CHAPTER VI

OPPOSITION PROCEEDINGS TO GRANT OF PATENTS

55. Opposition to the patent.— (1) Representation for opposition under sub-section (1) of section 25 shall be filed in Form 7(A) at the appropriate office with a copy to the applicant, and shall include a statement and evidence, if any, in support of the representation and a request for hearing, if so desired.

(1A) notwithstanding anything contained in sub-rule (1), no patent shall be granted before the expiry of a period of six months from the date of publication of the application under section 11A.

(2) The Controller shall consider such representation only when a request for examination of the application has been filed.

(3) On consideration of the representation if the Controller is of the opinion that application for patent shall be refused or the complete specification requires amendment, he shall give a notice to the applicant to that effect.

(4) On receiving the notice under sub-rule (3), the applicant shall, if he so desires, file his statement and evidence, if any, in support of his application within three months from the date of the notice, with a copy to the opponent.

(5) On consideration of the statement and evidence filed by the applicant, the representation including the statement and evidence filed by the opponent, submissions made by the parties, and after hearing the parties, if so requested, the Controller may either reject the representation or require the complete specification and other documents to be amended to his satisfaction before the patent is granted or refuse to grant a patent on the application, by passing a speaking order to simultaneously decide on the application and the representation ordinarily within one month from the completion of above proceedings.

(6) [omitted]

55A. Filing of notice of opposition.— The notice of opposition to be given under sub-section (2) of section 25 shall be made in Form 7 and sent to the Controller in duplicate at the appropriate office.

56. Constitution of Opposition Board and its proceeding.—(1) on receipt of notice of opposition under rule 55A, the Controller shall, by order, constitute an Opposition Board consisting of three members and nominate one of the members as the Chairman of the Board.

(2) An examiner appointed under sub-section (2) of section 73 shall be eligible to be a member of the Opposition Board.

(3) The examiner, who has dealt with the application for patent during the proceeding for grant of patent thereon shall not be eligible as member of Opposition Board as specified in sub-rule (2) for that application.

(4) The Opposition Board shall conduct the examination of the notice of opposition along with documents filed under rules 57 to 60 referred to under sub-section (3) of section 25, submit a report with reasons on each ground taken in the notice of opposition with its joint recommendation within three months from the date on which the documents were forwarded to them.

57. Filing of written statement of opposition and evidence.— The opponent shall send a written statement in duplicate setting out the nature of the opponent's interest, the facts upon which he bases his case and relief which he seeks and evidence, if any, along with notice of opposition and shall deliver to the patentee a copy of the statement and the evidence, if any.

58. Filing of reply statement and evidence.—(1) If the patentee desires to contest the opposition, he shall leave at the appropriate office a reply statement setting out fully the grounds upon which the opposition is contested and evidence, if any, in support of his case within a period of two months from the date of receipt of the copy of the written statement and Opponent's evidence, if any by him under rule 57 and deliver to the opponent a copy thereof.

(2) If the patentee does not desire to contest or leave his reply and evidence within the period as specified in sub-rule (1), the patent shall be deemed to have been revoked.

59. Filing of reply evidence by opponent.—The opponent may, within one month from the date of delivery to him of a copy or the patentee's reply statement and evidence under rule 58, leave at the appropriate office evidence in reply strictly confined to matters in the patentee's evidence and shall deliver to the patentee a copy of such evidence.

60. Further evidence to be left with the leave of the Controller.—No further evidence shall be delivered by either party except with the leave or directions of the Controller:

Provided that such leave or direction is prayed before the Controller has fixed the hearing under rule 62.

61. Copies of documents to be supplied.—(1) Copies of all documents referred to in the notice of opposition or in any statement or evidence filed in connection with the opposition and authenticated to the satisfaction of the Controller, shall be simultaneously furnished in duplicate unless the Controller otherwise directs.

(2) Where a specification or other document in a language other than English is referred to in the notice, statement or evidence, an attested translation thereof, in duplicate, in English shall be furnished along with such notice, statement or evidence, as the case may be.

62. Hearing.—(1) On the completion of the presentation of evidence, if any, and on receiving the recommendation of Opposition Board or at such other time as the Controller may think fit, he shall fix a date and time for the hearing of the opposition and shall give the parties not less than ten days' notice of such hearing and may require members of Opposition Board to be present in the hearing.

(2) If either party to the proceeding desires to be heard, he shall inform the
Controller by a notice along with the fee as specified in the First Schedule.

(3) The Controller may refuse to hear any party who has not given notice under sub-rule (2).

(4) If either party intends to rely on any publication at the hearing not already mentioned in the notice, statement or evidence, he shall give to the other party and to the Controller not less than five days' notice of his intention, together with details of such publication.

(5) After hearing the party or parties desirous of being heard, or if neither party desires to be heard, then without a hearing, and after taking into consideration the recommendation of Opposition Board, the Controller shall decide the opposition and notify his decision to the parties giving reasons therefor.

63. Determination of costs. — If the patentee notifies the Controller that he desires to withdraw the patent after notice of opposition is given, the Controller, depending on the merits of the case, may decide whether costs should be awarded to the opponent.

63A. Request made under section 26(1).—Request under section 26(1) shall be made on Form 12 within three months from the date of the order of the Controller and shall be accompanied by a statement setting out the facts upon which the petitioner relies and relief he claims.

64. & 65. [Omitted by Patents (Amendment) Rules, 2005]

66. Form of making a request under section 28(2).—A request under subsection (2) of section 28 shall be made in Form 8.

67. Form of making a claim under section 28(3).— (1) A claim under sub section (3) of section 28 shall be made in Form 8, and shall be accompanied by a statement setting out the circumstances under which the claim is made.

(2) A copy of the claim and the statement shall be sent by the Controller to every applicant for the patent (not being the claimant) and to any other person whom the Controller may consider to be interested.

68. Form of application to be made under section 28(7).— (1) An application under sub-section (7) of section 28 shall be made in Form 8 and shall be accompanied by a statement setting out the circumstances under which the application is made.

(2)A copy of the application and the statement shall be sent by the Controller to each patentee or the applicant for patent, as the case may be, and to any other person whom the Controller may consider to be interested.

69. Procedure for the hearing of claim or an application under section 28.—The procedure specified in rules 55A and 57 to 63 relating to the filing of notice of opposition, written statement, reply, statement, leaving evidence, hearing and cost shall, so far as may be, apply to the hearing of a claim or an application under section 28 as they apply to the opposition proceedings subject to the modification that reference to patentee shall be construed as the person making the claim, or an application, as the case may be.

70. Mention of inventor.—Any mention of the inventor under sub-section (1) of section 28 shall be made in the relevant documents in the following form namely:—

"The inventor of this invention/substantial part of this invention within the meaning of section 28 of the Patents Act, 1970, is…… .....of…… ".

CHAPTER VII

SECRECY DIRECTIONS

71. Permission for making patent application outside India under section 39.—(1) The request for permission for making patent application outside India shall be made in Form 25.

(2) The Controller shall dispose of the request made under sub-rule (1) within a period of twenty-one days from the date of filing of such request:

Provided that in case of inventions relating to defence or atomic energy, the period of twenty-one days shall be counted from the date of receipt of consent from the Central Government.

72. Communication of result of reconsideration under section 36(2).—(1) The result of every reconsideration under sub-section (1) of section 36 shall be communicated to the applicant for patent within fifteen days of the receipt of the notice by the Controller.

(2) *Extension of time on revocation of secrecy directions under section 38.*—The extension of time to be given for doing anything required or authorised to be done under section 38 shall not exceed the period for which directions given by the Central Government under sub-section (1) of section 35 were in force.

CHAPTER VIII

GRANT OF PATENTS

73. [Omitted by Patents (Amendment) Rules, 2005]

74. Form of patent.—(1) A patent shall be in the form as specified in the Third Schedule with such modifications as the circumstances of each case may require and shall bear the number accorded to the application under rule 37.

(2) The patent certificate shall ordinarily be issued within seven days from the date of grant of patent under section 43.

74A. Inspection of documents related to grant of patent. — After the date of publication of a grant of a patent, the application together with the complete specification and provisional specification, if any, the drawing if any, abstract and other documents related thereto may be inspected at the appropriate office by making a written request to the Controller and on payment of fee and may obtain copies on payment of fee specified in the First Schedule.

75. Amendment of patent under section 44. — An application under section 44 for the amendment of a patent shall be made in Form 10 along with substantiating evidence and be accompanied by the patent.

76. Manner of applying for direction under section 51(1). —(1)An application for directions under sub-section (1) of section 51 shall be made in Form 11 and shall be accompanied by a statement setting out the facts upon which the applicant relies.

(2) A copy of the application and of the statement shall be sent by the Controller to every other person registered as grantee or proprietor of the patent.

77. Manner of application under section 51(2). — (1) An application for directions under subsection (2) of section 51 shall be made in Form 11 and shall be accompanied by a statement setting out the facts upon which the applicant relies.

(2) A copy of the application and statement shall be sent by the Controller to the person in default.

78. Procedure for the hearing of proceedings under section 51.—The procedure specified in rules 55A and 57 to 63 relating to the filing of notice of opposition, written statement, reply statement, leaving evidence, hearing and costs shall, so far as may be, apply to the hearing of an application under section 51 as they apply to the hearing of an opposition proceeding.

79. Request under section 52(2).—(1) A request under sub-section (2) of section 52 shall be made in Form 12 within three months from the date of the order of the Appellate Board or court referred to in sub-section (1) of the said section and shall be accompanied by a statement setting out the facts upon which the petitioner relies and the relief he claims and a certified copy of the order of the Appellate Board or court.

(2) Where the Appellate Board or court has ordered the grant of patent to the applicant only for a part of the invention, the new patent granted shall be accorded a number in the same series of numbers accorded to the complete specifications accepted on the same day as the patent is granted.

80. Renewal fees under section 53.—(1) To keep a patent in force, the renewal fees specified in the First Schedule shall be payable at the expiration of the second year from the date of the patent or of any succeeding year and the same shall be remitted to the patent office before the expiration of the second or the succeeding year.

(1A) The period for payment of renewal fees so specified in sub-rule (1) may be extended to such period not being more than six months if the request for such extension of time is made in Form 4 with the fee specified in the First Schedule.

(2)While paying the renewal fee, the number and date of the patent concerned and the year in respect of which the fee is paid shall be quoted.

(3)The annual renewal fees payable in respect of two or more years may be paid in advance.

(4) The Controller shall, after making such enquiry as he may deem necessary, credit any renewal fee and issue a certificate that the fee has been paid.

CHAPTER IX

AMENDMENT OF APPLICATION, SPECIFICATION OR ANY DOCUMENT RELATING THERETO

81. Amendment of application, specification or any document relating thereto.—(1) An application under section 57 for the amendment of an application for a patent or a complete specification or any document related thereto shall be made in Form 13.

(2) If the application for amendment under sub-rule (1) relates to an application for a patent which has not been granted, the Controller shall determine whether and subject to what conditions, if any, the amendment shall be allowed.

(3) (a) If the application for amendment under sub-rule (1) is made after grant of patent and the nature of the proposed amendment is substantive, the application shall be published.

(b) Any person interested in opposing the application for amendment shall give a notice of opposition in Form 14 within three months from the date of publication of the application.

(c)The procedure specified in rules 57 to 63 relating to the filing of written statement, reply statement, leaving evidence, hearing and costs shall, so far as may be, apply to the hearing of the opposition under section 57 as they apply to the hearing of an opposition proceeding.

82. Preparation of amended specifications, etc.—Where the Controller allows the application for a patent or the complete specification or any other document to be amended, the applicant shall, if the Controller so requires and within the time to be specified by him, leave at the appropriate office an amended application or the specification or the other document, as the case may be, in accordance with the provisions of these rules.

83. Publication of the amendment allowed.— The amendments allowed after a patent has been granted, shall be published.

CHAPTER X

RESTORATION OF PATENTS

84. Restoration of patents.—(1) An application for the restoration of a patent under section 60 shall be made in Form 15.

(2)Where the Controller is satisfied that a *prima facie* case for the restoration of any patent has not been made out, he shall intimate the applicant accordingly and unless the applicant makes a request to be heard in the matter within one month from the date of such intimation, the Controller shall refuse the application.

(3)Where applicant requests for a hearing within the time allowed and the Controller, after giving the applicant such a hearing, is *prima facie* satisfied that the failure to pay the renewal fees was unintentional, he shall publish the application.

85. Opposition to restoration under section 61.—(1) At any time, within two months from the date of publication of the application under sub-rule (3) of rule 84, any person interested may give notice of opposition thereto in Form 14.

(2) A copy of the notice of opposition shall be sent by the Controller to the applicant.

(3) The procedure specified in rules 57 to 63 relating to the filing of written statement, reply statement, leaving evidence, hearing and costs shall, so far as may be, apply to the hearing of the opposition under section 60 as they apply to the hearing in the opposition proceeding.

86. Payment of unpaid renewal fees.—(1) Where the Controller decides in favour of the applicant, the applicant shall pay the unpaid renewal fees and the additional fee specified in the First Schedule, within a month from the date of the order of the Controller allowing the application for restoration.

(2)The Controller shall publish his decision.

CHAPTER XI

SURRENDER OF PATENTS

87. Surrender of Patents.—(1) The Controller shall publish the notice of an offer given under section 63.

(2) Any person interested may, within three months from the date of publication of the notice, give notice of opposition to the Controller in Form 14 in duplicate.

(3) The procedure specified in rules 57 to 63 relating to the filing of written statement, reply statement, leaving evidence, hearing and costs shall, so far as may be, apply to the hearing of the opposition under section 63 as they apply to the hearing in opposition proceeding.

(4) If the Controller accepts the patentee's offer to surrender the patent, he may direct the patentee to return the patent, and on receipt of such patent, the Controller shall by order revoke it and publish the revocation of the patent.

CHAPTER XII

REGISTER OF PATENTS

88. Register of patents under section 67.—(1) Upon the grant of a patent, the Controller shall enter in the register of patents at each appropriate office, the name, address and nationality of the grantee as the patentee thereof, the title of the invention (including the categories to which the invention relates), the date of the patent and the date of grant thereof together with the address for service of the patentee.

(2)The Controller shall also enter in the register of patents particulars regarding proceedings under the Act before the Controller or Appellate Board or the courts in respect of every patent.

(3) Where the register of patents or any part thereof is in computer floppies, diskettes or any other electronic form it shall be maintained and accessed only by the person who is duly authorised by the Controller and no entry or alteration of any entry or rectification of any entry in the said register shall be made by any person who is not so authorised by the Controller.

89. [Omitted by Patents (Amendment) Rules, 2005]

90. Registration of title and interest in patents.—(1) An application referred to in sub-section (1) or sub-section (2) of section 69 shall be made in Form 16.

(2) An application for an entry in the register of patents of any other document purporting to affect the proprietorship of the patent by the person benefiting under the document shall be made in Form 16.

91. Presentation of assignment, etc., of patent to Controller.—Every assignment and every other document giving effect to or being evidence of the transfer of a patent or affecting the proprietorship thereof or creating an interest therein as claimed in such application, shall, unless the Controller otherwise directs, be presented to him together with the application which shall be accompanied by two copies of the assignment or other document certified to be true copies by the applicant or his agent and the Controller may call for such other proof of title or written consent as he may require.

92. Registration of title or interest in a patent.—After the receipt of an application under subsection (1) or sub-section (2) of section 69, the Controller shall register the title of the person concerned or his interest in a patent, as the case may be, and an entry in the following form shall be made in the register, namely:—

"In pursuance of an application received on the ……. .

Proprietor..... Assignment ..... registered as.....

licencee ..... by virtue of ..... licence ..... Mortgagee etc. ....Mortgage deed etc.....dated .....and made between ..... of the one part and ..... of the other part."

93. Entry of Renewal fee. — Upon receipt of the payment of the prescribed renewal fee in respect of a patent, the Controller shall enter in the register of patents the fact that the fee has been paid and the date of payment of such fee and issue a certificate of renewal of the patent.

94.Alteration of address.—(1) A patentee may make a request in writing along with fee payable to the Controller for the alteration of his name, nationality, address or address for service as entered in the register of patents in respect of any patent granted to him. The Controller may require such proof of the alteration as he may think fit before acting on a request to alter the name or nationality.

(2)If the Controller allows a request made under sub-rule (1), he shall cause the entries in the register to be altered accordingly.

(3)If a patentee makes a request in writing along with fee payable for entering an additional address for service in India and if the Controller is satisfied that the request should be allowed, he shall have the additional address for service entered in the register.

95.Inspection of register of patents under section 72 and fees payable therefor.—(1) The register of patents shall be open for public inspection during office hours on payment of the fees specified therefor in the First Schedule.

(2) When register of patents or any part thereof is in computer floppies, diskettes or any other electronic form the person authorised by the Controller under sub-rule (3) of rule 88 shall provide access to the computer floppies, diskettes or other electronic form or printouts of the records thereof.

CHAPTER XIII

COMPULSORY LICENCE AND REVOCATION OF PATENT

96. Application for compulsory licence etc.—An application to the Controller for an order under section 84, section 85, section 91 or section 92 or section 92A shall be in Form 17, or Form 19, as the case may be. Except in the case of an application made by the Central Government, the application shall set out the nature of the applicant's interest and terms and conditions of the licence the applicant is willing to accept.

97. When a *prima facie* case is not made out .—(1) If, upon consideration of the evidence, the Controller is satisfied that a *prima facie* case has not been made out for the making of an order under any of the sections referred to in rule 96, he shall notify the applicant accordingly, and unless the applicant requests to be heard in the matter, within one month from the date of such notification, the Controller shall refuse the application.

(2) If the applicant requests for a hearing within the time allowed under sub-rule (1), the Controller shall, after giving the applicant an opportunity of being heard, determine whether the application may be proceeded with or whether it shall be refused.

98. Notice of opposition under section 87(2).—(1) A notice of opposition under sub-section (2) of section 87 shall be given in Form 14 and shall be sent to the Controller within two months from the date of the publication of the application under sub-section (1) of the said section.

(2) The notice of opposition referred to in sub-rule (1) shall include the terms and conditions of the licence, if any, the opponent is prepared to grant to the applicant and shall be accompanied by evidence in support of the opposition.

(3) The opponent shall serve a copy of his notice of opposition and evidence on the applicant and notify the Controller when such service has been effected.

(4) No further statement or evidence shall be delivered by either party except with the leave of or on requisition by the Controller.

(5) The Controller shall forthwith fix a date and time for the hearing of the case and shall give the parties not less than ten days' notice of such hearing.

(6) The procedure specified in sub-rules (2) to (5) of rule 62, shall, so far as may be, apply to the procedure for hearing under this rule as they apply to the hearing in opposition proceedings.

99. Manner of publication of the revocation order.—The Controller shall publish the order made by him under sub-section (3) of section 85 revoking a patent.

100. Application under section 88(4).—(1) An application under sub-section (4) of section 88 for the revision of the terms and conditions of a licence which have been settled by the Controller shall be in Form 20 and shall state the facts relied upon by the applicant and the relief he seeks and shall be accompanied by evidence in support of the application.

(2) If the Controller is satisfied that a *prima facie* case has not been made out for the revision of the terms and conditions of the licence, he may notify the applicant accordingly and unless within a month the applicant requests to be heard in the matter, the Controller may refuse the application.

(3)The Controller, after giving the applicant an opportunity of being heard, shall determine whether the application shall be proceeded with or whether the application shall be refused.

101. Procedure to be followed in case of applications under section 88(4).—(1) If the Controller allows the application to be proceeded with, he shall direct the applicant to serve copies of the application and of the evidence in support thereof upon the patentee or any other person appearing in the register to be interested in the patent or upon any other person on whom, in his opinion such copies should be so served.

(2) The applicant shall inform the Controller the date on which the service of copies of application and of the evidence on the patentee and other persons referred to in sub-rule (1) has been effected.

(3) The patentee or any other person on whom copies of the application and of the evidence have been served, may give to the Controller notice of opposition in Form 14 within one month from the date of such service. Such notice shall contain the grounds relied upon by the opponent and shall be accompanied by evidence in support of the opposition.

(4) The opponent shall serve copies of the notice of opposition and his evidence on the applicant and inform the Controller the date on which such service has been effected.

(5) No further evidence or statement shall be filed by either party except with special leave of or on requisition by the Controller.

(6) On completion of the above proceedings, the Controller shall forthwith fix a date and the time for the hearing of the case and shall give the parties not less than ten days' notice of such hearing.

(7) The procedure specified in sub-rules (2) to (5) of rule 62 shall, so far as may be, apply to the procedure for hearing under this rule as they apply to the hearing in opposition proceedings.

(8) If the Controller decides to revise the terms and conditions of licence he shall forthwith amend the licence granted to the applicant in such manner, as he may deem necessary.

102. Application for termination of compulsory licence under section 94.—(1) An

application for termination of compulsory licence under section 94(1) shall be made in Form 21 by the patentee or any other person deriving title or interest in the patent. The application shall be accompanied by the evidence in support of the application.

(2) The applicant shall serve a copy of the application and evidence on the holder of the compulsory licence and shall inform the Controller the date on which the service has been effected.

(3) The holder of the compulsory licence may file his objection along with evidence, if any, to the application within one month from the date of receipt of the application and evidence by him to the Controller and serve a copy thereof to the applicant.

(4) No further evidence or statement shall be filed by either party except with special leave of or on requisition by the Controller.

(5)On completion of the above proceedings, the Controller shall forthwith fix a date and the time for the hearing of the case and shall give the parties not less than ten days' notice of such hearing.

(6) The procedure specified in sub-rules (2) to (5) of rule 62 so far as may be, apply to the procedure for hearing under this rule as they apply to the hearing in opposition proceedings.

(7) If the Controller decides to terminate the compulsory license he shall forthwith issue an order giving terms and conditions, if any, of such termination and serve copies of the order to both the parties.

CHAPTER XIV

SCIENTIFIC ADVISERS

103. Roll of scientific advisers.—(1) The Controller shall maintain a roll of scientific advisers for the purpose of section 115. The roll shall be updated annually. The roll shall contain the names, addresses, specimen signatures and photographs of scientific advisers, their designations, information regarding their educational qualifications, the disciplines of their specialisation and their technical, practical and research experience.

(2) A person shall be qualified to have his name entered in the roll of scientific advisers, if he—

(i) holds a degree in science, engineering or technology or equivalent;

(ii) has at least fifteen years' technical, practical or research experience; and

(iii) he holds or has held a responsible post in a scientific or technical department of the Central or State Government or in any organisation.

103A. Disqualifications for inclusion in the roll of scientific advisers.— A person shall not be eligible to be included in the roll of scientific advisors, if he—

(i)has been adjudged by a competent court to be of unsound mind;

(ii) is an undischarged insolvent;

(iii) being a discharged insolvent, has not obtained from the court a certificate to the effect that his insolvency was caused by misfortune without any misconduct on his part;

(iv) has been convicted by a competent court, whether within or outside India of an offence to undergo a term of imprisonment, unless the offence of which he has been convicted has been pardoned or unless on an application made by him, the Central Government has, by order in this behalf, removed the disability; or

(v) has been guilty of professional misconduct.

104. Manner of application for inclusion in the roll of scientific advisers— Any interested person may apply to the Controller for inclusion of his name in the roll of scientific advisers by furnishing his bio-data.

105. Inclusion of the name of any other person in the roll of scientific advisers.—The Controller may, notwithstanding anything contained in rules 103 and 104, enter the name of any person in the roll of scientific advisers, if he is of the opinion after such inquiry as he deems fit, that such person should be entered in the roll of scientific advisers.

106. Power to relax.—Where the Controller is of the opinion that it is necessary or

expedient so to do, he may, by order, for reasons to be recorded in writing, relax any of the qualifications specified in sub-rule (2) of rule 103 with respect to any person, if such person is otherwise well qualified.

107. Removal of names from the roll of scientific advisers.—The Controller may remove the name of any person from the roll of scientific advisers, if—

(a) such person makes a request for such removal; or

(b) the Controller is satisfied that his name has been entered in the roll by error or on account of misrepresentation or suppression of any material fact; or

(c) such person has been convicted of an offence and sentenced to a term of imprisonment or has been guilty of misconduct in his professional capacity and the Controller is of the opinion that his name should be removed from the roll; or

(d) such person is dead:

Provided that except in the cases falling under clause (a) and (d) above, before removing the name of any person from the roll of scientific advisers under this rule, such person shall be given a reasonable opportunity of being heard.

CHAPTER XV

PATENT AGENTS

108. Particulars to be contained in the register of patent agents.— (1) The register of patent agents maintained under section 125 shall contain the name, nationality, address of the principal place of business, addresses of branch offices, if any, the qualifications, the date of registration of every registered patent agent and the details of their renewal of registration and any other particulars so specified by the Controller.

(2) Where the register of patent agents is in computer floppies, diskettes or any other electronic form, it shall be maintained and accessed only by the person who is duly authorised by the Controller and no entry or alteration of any entry or rectification of any entry in the said register shall be made by any person who is not so authorised by the Controller.

(3) (i) Copies of register of patent agents shall be maintained in each of the branch offices;

(ii) The register of patent agents shall also contain specimen signatures and photographs of the persons registered as patent agents.

109. Application for registration of patent agents.— (1) Every person who desires to be registered as a patent agent shall make an application in Form 22.

(2) The applicant shall furnish such other information as may be required by the Controller.

(3) A person desirous to appear in the qualifying examination under rule 110 shall make a request to the Controller along with the fee specified in the First Schedule after announcement of such examination and within the period as may be specified in the announcement.

110. Particulars of the qualifying examination for patent agents.— (1) The qualifying examination referred to in clause (c) (ii) of sub-section (1) of section 126 shall consist of a written test and a *viva voce* examination.

(2) The qualifying examination shall consist of the following papers and marks, namely:

Paper I —Patents Act and Rules	100
Paper II—Drafting and interpretation of patent specifications and other documents	100
Viva Voce	50

(3) A candidate shall be required to secure a minimum of fifty marks in paper I and paper II and shall be declared to have passed the examination only, if he obtains an aggregate of sixty percent of the total marks.

111. Registration of patent agents.—After a candidate passes the qualifying examination specified in rule 110 and after obtaining any further information which the Controller considers necessary he shall, on receipt of the fee specified therefor in the First Schedule, enter the candidate's name in the register of patent agents and issue to him a certificate of registration as a patent agent.

111A. Issue of duplicate certificate of patent agents.—The Controller may issue a duplicate certificate of registration as patent agent on a request made by the person so registered as patent agent along with fee specified in the First Schedule and contain a statement setting out the circumstances in which the original certificate issued under rule 111 was lost, destroyed and cannot be produced.

112. Details to be included in an application for the registration of a patent agent.—An application by a person entitled to be registered as a patent agent under sub- section (2) of section 126 shall also be made in Form 22.

113. Registration of patent agents under section 126 (2).—On receipt of an application for the registration of a person as a patent agent under rule 112, the Controller may if he is satisfied that the said person fulfils the conditions specified in sub-section (2) of section 126 enter his name in the register of patent agents.

114. Disqualifications for registration as a patent agent.—A person shall not be eligible to be registered as a patent agent, if he—

(i) has been adjudged by a competent court to be of unsound mind;

(ii) is an undischarged insolvent;

(iii) being a discharged insolvent, has not obtained from the court a certificate to the effect that his insolvency was caused by misfortune without any misconduct on his part;

(iv) has been convicted by a competent court, whether within or outside India of an offence to undergo a term of imprisonment, unless the offence of which he has been convicted has been pardoned or unless on an application made by him, the Central Government has, by order in this behalf, removed the disability;

(v) being a legal practitioner has been guilty of professional misconduct; or

(vi) being a chartered accountant, has been guilty of negligence or misconduct.

115. Payment of fees.—The continuance of a person's name in the register of patent agents shall be subject to the payment of the fees specified therefor in the First Schedule.

116. Removal of a name from the register of patent agents.—(1) The Controller may delete from the register of patent agents, the name of any patent agent—

(a) from whom a request has been received to that effect; or

(b) when he is dead; or

(c)when the Controller has removed the name of a person under subsection (1) of section 130; or

(d) if he has defaulted in the payment of fees specified in rule 115, by more than three months after they are due; or

(e) if he ceases to be a citizen of India:

Provided that except under clause (a) and (b), before removing the name of any person from the register of patent agents under this rule, such person shall be given a reasonable opportunity of being heard.

(2) The removal of the name of any person from the register of patent agents shall be published and shall be, where relevant forthwith communicated to the person concerned.

117. Restoration of name of persons removed from the register of patent agents.—(1) An application for the restoration of the name of any person removed from the register of patent agents under sub-section (2) of section 130 shall be made in Form 23 within two months from the date of such removal.

(2) If the name of a person is restored to the register of patent agents, his name shall be continued therein for a period of one year from the date on which his last annual fee became due.

(3) The restoration of a name to the register of patent agents shall be communicated to the patent agent and also published on the official website.

118. Alteration of names, etc., in the register of patent agents.—(1) A patent agent may apply for the alteration of his name, address of the principal place of business and branch offices, if any, or the qualifications entered in the register of patent agents, e-mail address, telephone number, fax number or any other particulars under sub-section (1) of section 125. On receipt of such application and the fee specified therefor in the First Schedule for such request for alteration of particulars, the Controller shall cause the necessary alterations to be made in the register of patent agents.

(2) Every alteration made in the register of patent agents shall be published.

119. Refusal to recognise as patent agent.—If the Controller is of the opinion that any person should not be recognised as a patent agent in respect of any business under the Act as provided in sub-section (1) of section 131 thereof, he shall communicate his reasons to that person and direct him to show cause why he should not refuse to recognise him as such agent, within such time as he may allow, and after considering the reply, if any, of that person and giving him an opportunity of being heard, the Controller may pass such orders as he may deem fit.

120. Publication of the names of patent agents, registered under the Act. — The names and addresses of persons registered as patent agents shall from time to time be published.

CHAPTER XVI

MISCELLANEOUS

121. Period within which copies of specification etc. are to be filed. —The period within which copies of specification or corresponding documents to be filed by the applicant under subsection (1) of section 138 shall be three months from the date of communication by the Controller.

121A. Address of Communications.—All communications in relation to any proceeding under the Act or these rules shall be addressed to the Controller at the appropriate office.

122. Correction of clerical errors.—A request for the correction of a clerical error in any document referred to in section 78 shall be accompanied by a copy of the document highlighting the corrections clearly along with the fees payable therefor as specified in the First Schedule.

123. Manner of advertisement of the proposed correction of any error. —Where the Controller requires a notice of the nature of the proposed correction to be advertised, the request and the nature of the proposed correction shall be published and the person making the request shall also serve copies of the request and the copies of the document showing the proposed corrections to such persons who, in the opinion of the Controller, may be interested.

124. Manner and time of opposition to the making of corrections.— (1) Any person interested may, at any time, within three months from the date of the advertisement of the request for correction give notice of opposition to the Controller in Form 14 in duplicate.

(2)Such notice of opposition shall be accompanied by a statement in duplicate setting out the nature of the opponent's interest, the facts on which he relies and the relief which he seeks.

(3) A copy of the notice and of the statement shall be sent by the Controller to the person making the request.

(4) The procedure specified in rules 58 to 63 relating to the filing of reply statement, leaving evidence, hearing and costs shall, so far as may be, apply to the hearing of the opposition under section 78 as they apply in the hearing of the opposition proceeding.

125. Notification of corrections.—The Controller shall notify the person making a request for the correction and the opponent, if any, of the corrections made in the relevant document.

126. Form, etc., of affidavits.—(1) The affidavits required by the Act or these rules to be filed at the patent office or furnished to the Controller shall be duly sworn to in the manner as prescribed in sub-rule (3).

(2) Affidavits shall be confined to such facts as the deponent is able, of his own knowledge, to prove except in interlocutory matters, where statements of belief of the deponent may be admitted, provided that the grounds thereof are given.

(3) Affidavits shall be sworn to as follows:—

(a) in India—before any court or person having by law authority to receive evidence, or before any officer empowered by such court as aforesaid to administer oaths or to take affidavits;

(b) in any country or place outside India—before a diplomatic or consular officer, within the meaning of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (41 of 1948) in such country or place or before a notary of the country or place, recognised by the Central Government under section 14 of the Notaries Act, 1952 (53 of 1952), or before a judge or magistrate of the country or place.

(4) Alterations and interlineations shall, before an affidavit is sworn to or affirmed be authenticated by the initials of the person before whom the affidavit is sworn to.

127. Exhibits.—Where there are exhibits to be filed in an opposition or any other proceedings, a copy or impression of each exhibit shall be supplied to the other party at his request and expense; if copies or impressions of the exhibits cannot conveniently be furnished, the originals shall be left with the Controller for inspection by the person interested by prior appointment. The exhibits in original if not already left with the Controller shall be produced at the hearing.

128. Directions not otherwise prescribed.—(1) Where for the proper prosecution or completion of any proceedings under the Act or these rules, the Controller is of the opinion that it is necessary for a party to such proceedings to perform an act, file a document or produce evidence, for which provision has not been made in the Act or these rules, he may, by notice in writing, require such party to perform the act, file the document or produce the evidence specified in such notice.

(2) Where an applicant or a party to a proceeding desires to be heard or not heard, the Controller may, at any time, require him to submit his statement in writing giving such information as the Controller may deem necessary within the time specified by him.

129. Exercise of discretionary power by the Controller.—Before exercising any discretionary power under the Act or these rules which is likely to affect an applicant for a patent or a party to a proceeding adversely, the Controller shall give such applicant or party, a hearing, after giving him or them, ten days notice of such hearing ordinarily.

129A. Adjournment of hearing.—An applicant for patent or a party to a proceeding may make a request for adjournment of the hearing with reasonable cause along with the prescribed fee prescribed in First Schedule, at least three days before the date of hearing and the Controller, if he thinks fit to do so, and upon such terms as he may direct, may adjourn the hearing and intimate the parties accordingly:

Provided that no party shall be given more than two adjournments and each adjournment shall not be for more than thirty days.

130. Application for review of decisions or setting aside of orders of the Controller.—(1) An application to the Controller for the review of his decision under clause (f) of sub-section (1) of section *77* shall be made in Form 24 within one month from the date of communication of such decision to the applicant or within such further period not exceeding one month thereafter as the Controller may on a request made in Form 4 allow and shall be accompanied by a statement setting forth the grounds on which the review is sought. Where the decision in question concerns any other person in addition to the applicant, the Controller shall forthwith transmit a copy of each of the application and the statement to the other person concerned.

(2) An application to the Controller for setting aside an order passed by him *ex parte* under clause (g) of sub-section (1) of section *77* shall be made in Form 24 within one month from the date of communication of such order to the applicant or within such further period not exceeding one month as the Controller may on a request made in Form 4 allow and shall be accompanied by a statement setting forth the grounds on which the application is based. Where the order concerns any other person in addition to the applicant, the Controller shall, forthwith transmit a copy each of the application and the statement to the other person concerned.

131. Form and manner in which statements required under section 146(2) to be furnished.— (1) The statements which shall be furnished by every patentee and every licensee under sub- section (2) of section 146 in Form 27 which shall be duly verified by the patentee or the licencee or his authorised agent.

(2)The statements referred to in sub-rule (1) shall be furnished in respect of every calendar year within three months of the end of each year.

(3) The Controller may publish the information received by him under subsection (1) or subsection (2) of section 146.

132. Form of application for the issue of a duplicate patent.—An application for the issue of a duplicate patent under section 154 shall contain a statement setting out the circumstances in which the patent was lost or destroyed or cannot be produced together with the fee as specified therefor in the First Schedule.

133. Supply of certified copies and certificates under sections 72 and 147.— (1) Certified copies of any entry in the register, or certificates of, or extracts from patents, specifications and other public documents in the patent office, or from registers and other records including records in computer floppies, diskettes or any other electronic form kept there, may be furnished by the Controller on a request therefor made to him and on payment of the fee specified therefor in the First Schedule:

Provided that certified copies shall be issued in the order in which the request is filed.

(2) Notwithstanding anything contained in sub-rule (1), certified copies shall be furnished within a period of one week if such request is made along with the fee specified therefore in the First Schedule.

134.Request for information under section 153.—(1) A request for information in respect of the following matters relating to any patent or application for patent shall be admissible, namely:—

(a) as to when a complete specification following a provisional specification has been filed or an application for patent has been deemed to have been abandoned;

(aa) as to when the information under section 8 has been filed.

(b) as to when publication of application has been made under section 11A; (c) as to when an application has been withdrawn under section 11B;

(d) as to when a request for examination has been made under section 11B;

(e) as to when the examination report has been issued under section 12;

(f) as to when an application for patent has been refused;

(g) as to when a patent has been granted;

(h) as to when a renewal fee has been paid;

(i) as to when the term of a patent has expired or shall expire;

(j) as to when an entry has been made in the register or application has been made for the making of such entry; or

(k) as to when any application is made or action taken involving an entry in the register, publication in the Official Journal or otherwise, if the nature of the application or action is specified in the request.

(2) Separate request shall be made in respect of each item of information required.

(3)The fee payable on a request to be made under section 153 shall be as set out in the First Schedule.

135. Agency.— (1) The authorisation of an agent for the purposes of the Act and these rules shall be filed in Form 26 or in the form of a power of attorney within a period of three months from the date of filing of such application or document, failing which no action shall be taken on such application or documents for further processing till such deficiency is

removed.

(2) Where any authorisation has been made under sub-rule (1), service upon the agent of any document relating to any proceeding or matter under the Act or these rules shall be deemed to be service upon the person so authorising him and all communications directed to be made to a person in respect of any proceeding or matter may be addressed to such agent, and all appearances before the Controller relating thereto may be made by or through such agent.

(3) Notwithstanding anything contained in sub-rule (1) and (2), the Controller may, if it is considered necessary, require the personal signature or presence of an applicant, opponent or party to such proceeding or matter.

136. Scale of costs.— (1) In all proceedings before the Controller, he may, subject to rule 63, award costs as he considers reasonable, having regard to all the circumstances of the case:

Provided that the amount of costs awarded in respect of any matter set forth in the Fourth Schedule shall not exceed the amount specified therein.

(2) Notwithstanding anything contained in sub-rule (1), the Controller may, in his discretion award a compensatory cost in any proceeding before him which in his opinion is false or vexatious.

137. Powers of Controller generally.—Any document for the amendment of which no special provision is made in the Act may be amended and any irregularity in procedure which in the opinion of the Controller may be obviated without detriment to the interests of any person, may be corrected if the Controller thinks fit and upon such terms as he may direct.

138. Power to extend time prescribed.— (1) Except for the time prescribed in clause (i) of sub-rule (4) of rule 20, sub-rule (6) of rule 20, rule 21, sub-rules (1), (5) and (6) of rule 24B, sub-rules (10) and (11) of rule 24C, sub-rule (4) of rule 55, sub-rule (1A) of rule 80 and sub-rules (1) and (2) of rule 130, the time prescribed by these rules for doing of any act or the taking of any proceeding thereunder may be extended by the Controller for a period of one month, if he thinks it fit to do so and upon such terms as he may direct.

(2) Any request for extension of time prescribed by these rules for the doing of any act or the taking of any proceeding thereunder shall be made before the expiry of such time prescribed in these rules.

139. **Hearing before the Controller to be in public in certain cases**.— Where the hearing before the Controller of any dispute between two or more parties relating to an application for a patent or to any matter in connection with a patent takes place after the date of the

publication of the complete specification, the hearing of the dispute shall be in public unless the Controller, after consultation with the parties to the dispute who appear in person or are represented at the hearing, otherwise directs.

"THE FIRST SCHEDULE

(See rule 7)

Table I - FEES PAYABLE

Number of entry	On what payable	Number of the relevant Form	For e-filing			For physical filing		
			Natural person(s) and/ or Startup	Small entity, alone or with natural person(s) and/ or Startup	Others, alone or with natural person(s) and/ or Startup and/ or small entity	Natural person(s) and/ or Startup	Small entity, alone or with natural person(s) and/ or Startup	Others, alone or with natural person(s) and/ or Startup and/ or small entity
1	2	3	4	5	6	7	8	9
			Rupees	Rupees	Rupees	Rupees	Rupees	Rupees
1.	On application for a patent under sections 7, 54 or 135 and rule 20(1) accompanied by provisional or complete specification—	1	1600 Multiple of 1600 in case of every multiple priority.	4000 Multiple of 4000 in case of every multiple priority.	8000 Multiple of 8000 in case of every multiple priority.	1750 Multiple of 1750 in case of every multiple priority.	4400 Multiple of 4400 in case of every multiple priority.	8800 Multiple of 8800 in case of every multiple priority.
	(i) for each sheet of specification in addition to 30, excluding sequence listing of nucleotides and/ or amino acid sequences under sub-rule (3) of rule (9);		(i) 160	(i) 400	(i) 800	(i) 180	(i) 440	(i) 880
	(ii) for each claim in addition to 10;		(ii) 320	(ii) 800	(ii) 1600	(ii) 350	(ii) 880	(ii) 1750
	(iii) for each page of sequence listing of nucleotides and/ or amino acid sequences under sub-rule (3) of rule (9).		(iii) 160 subject to a maximum of 24000	(iii) 400 subject to a maximum of 60000	(iii) 800 subject to a maximum of 120000	Not allowed	Not allowed	Not allowed
2.	On filing complete specification after provisional up to 30 pages having up to 10 claims –	2	No fee	No fee	No fee	No fee	No fee	No fee
	(i) for each sheet of specification in addition to 30, excluding sequence listing of nucleotides and/ or amino acid sequences under sub-rule (3)		(i) 160	(i) 400	(i) 800	(i) 180	(i) 440	(i) 880

	of rule (9); (ii) for each claim in addition to 10.		(ii) 320	(ii) 800	(ii) 1600	(ii) 350	(ii) 880	(ii) 1800
	(iii) for each page of sequence listing of nucleotides and/ or amino acid sequences under sub-rule (3) of rule (9).		(iii) 160 subject to a maximum of 24000	(iii) 400 subject to a maximum of 60000	(iii) 800 subject to a maximum of 120000	Not allowed	Not allowed	Not allowed
3.	On filing a statement and undertaking under section 8.	3	No fee	No fee	No fee	No fee	No fee	No fee
4.	i) On request for extension of time under sections 53(2) and 142(4), rules 13(6), 80(1A) and 130 (per month).	4	480	1200	2400	530	1300	2600
	ii) On request for extension of time under sub-rule (5) of rule 24B (per month).	4	1000	2000	4000	1100	2200	4400
	iii) On request for extension of time under sub-rule (11) of rule 24C (per month).	4	2000	5000	10000	2200	5500	11000
5.	On filing a declaration as to inventorship under sub-rule (6) of rule 13.	5	No fee	No fee	No fee	No fee	No fee	No fee
6.	On application for postdating.	-	800	2000	4000	880	2200	4400
7.	On application for deletion of reference under section 19 (2).	-	800	2000	4000	880	2200	4400
8.	(i) On claim under section 20(1); (ii) On request for direction under section 20 (4) or 20 (5).	6 6	800 800	2000 2000	4000 4000	880 880	2200 2200	4400 4400
9.	(i) On notice of opposition to grant of patent under section 25(2); (ii) On filing representation opposing grant of patent under section 25(1).	7 7A	2400 No fee	6000 No fee	12000 No fee	2600 No fee	6600 No fee	13200 No fee
10.	On giving notice that hearing before Controller shall be attended under rule 62(2).	-	1500	3800	7500	1700	4100	8300
11.	On application under sections 28(2), 28(3) or 28(7).	8	800	2000	4000	880	2200	4400
12.	Request for publication under section 11A(2) and rule 24A.	9	2500	6250	12500	2750	6900	13750

13.	Application for withdrawing the application under section 11B(4), and rules 7(4A) and 26.	29	No fee	No fee	No fee	No fee	No fee	No fee
14.	On request for examination of application for patent— (i) under section 11B and rule 24(1); (ii) under rule 20(4)(ii).	18	 4000 5600	 10000 14000	 20000 28000	 4400 6150	 11000 15400	 22000 30800
14A.	On request for expedited examination of application for patent under rule 24C.	18A	8000	25000	60000	Not allowed	Not allowed	Not allowed
14B.	Conversion of the request for examination filed under rule 24B to request for expedited examination under rule 24C.	18 A	4000	15000	40000	Not allowed	Not allowed	Not allowed
15.	On application under section 44 for amendment of patent.	10	2400	6000	12000	2650	6600	13200
16.	On application for directions under section 51(1) or 51(2).	11	2400	6000	12000	2650	6600	13200
17.	On request for grant of a patent under sections 26(1) and 52(2).	12	2400	6000	12000	2650	6600	13200
18.	On request for converting a patent of addition to an independent patent under section 55 (1).	-	2400	6000	12000	2650	6600	13200
19.	For renewal of a patent under section 53—							
(i)	before the expiration of the 2nd year from the date of patent in respect of 3rd year;	-	800	2000	4000	880	2200	4400
(ii)	before the expiration of the 3rd year in respect of the 4th year;	-	800	2000	4000	880	2200	4400
(iii)	before the expiration of the 4th year in respect of the 5th year;	-	800	2000	4000	880	2200	4400
(iv)	before the expiration of the 5th year in respect of the 6th year;	-	800	2000	4000	880	2200	4400
(v)	before the expiration of the 6th year in respect of the 7th year;	-	2400	6000	12000	2650	6600	13200
(vi)	before the expiration of the 7th year in respect of the 8th year;	-	2400	6000	12000	2650	6600	13200

(vii)	before the expiration of the 8th year in respect of the 9th year;	-	2400	6000	12000	2650	6600	13200
(viii)	before the expiration of the 9th year in respect of the 10th year;	-	2400	6000	12000	2650	6600	13200
(ix)	before the expiration of the 10th year in respect of the 11th year;	-	4800	12000	24000	5300	13200	26400
(x)	before the expiration of the 11th year in respect of the 12th year;	-	4800	12000	24000	5300	13200	26400
(xi)	before the expiration of the 12th year in respect of the 13th year;	-	4800	12000	24000	5300	13200	26400
(xii)	before the expiration of the 13th year in respect of the 14th year;	-	4800	12000	24000	5300	13200	26400
(xiii)	before the expiration of the 14th year in respect of the 15th year;	-	4800	12000	24000	5300	13200	26400
(xiv)	before the expiration of the 15th year in respect of the 16th year;	-	8000	20000	40000	8800	22000	44000
(xv)	before the expiration of the 16th year in respect of the 17th year;	-	8000	20000	40000	8800	22000	44000
(xvi)	before the expiration of the 17th year in respect of the 18th year;	-	8000	20000	40000	8800	22000	44000
(xvii)	before the expiration of the 18th year in respect of the 19th year;	-	8000	20000	40000	8800	22000	44000
(xviii)	before the expiration of the 19th year in respect of the 20th year.		8000	20000	40000	8800	22000	44000
20.	On application for amendment of application for patent or complete specification or other related documents under section 57—	13						
(i)	before grant of patent;		800	2000	4000	880	2200	4400
(ii)	after grant of patent;		1600	4000	8000	1750	4400	8800

(iii)	where amendment is for changing name or address or nationality or address for service.		320	800	1600	350	880	1750
21.	On notice of opposition to an application under sections 57(4), 61(1) and 87(2) or to surrender a patent under section 63(3) or to a request under section 78(5).	14	2400	6000	12000	2650	6600	13200
22.	On application for restoration of a patent under section 60.	15	2400	6000	12000	2650	6600	13200
23.	Additional fee for restoration under section 61(3) and rule 86(1).	—	4800	12000	24000	5300	13200	26400
24.	On notice of offer to surrender a patent under section 63.	—	1000	2500	5000	1100	2750	5500
25.	On application for the entry in the register of patents of the name of a person entitled to a patent or as a share or as a mortgage or as licensee or as otherwise or for the entry in the register of patents of notification of a document under sections 69(1) or 69(2) and rules 90(1) or 90(2).	16	1600 (In respect of each patent)	4000 (In respect of each patent)	8000 (In respect of each patent)	1750 (In respect of each patent)	4400 (In respect of each patent)	8800 (In respect of each patent)
26.	On application for alteration of an entry in the register of patents or register of patent agents under rules 94(1) or rule 118(1).	—	320	800	1600	350	880	1750
27.	On request for entry of an additional address for service in the Register of Patents under rule 94(3).	—	800	2000	4000	880	2200	4400
28.	On application for compulsory license under sections 84(1), 91(1), 92(1) and 92A.	17	2400	6000	12000	2650	6600	13200
29.	On application for revocation of a patent under section 85(1).	19	2400	6000	12000	2650	6600	13200
30.	On application for revision of terms and conditions of licence under section 88(4).	20	2400	6000	12000	2650	6600	13200

31.	On request for termination of compulsory licence under section 94.	21	2400	6000	12000	2650	6600	13200
32.	On application for registration as a patent agent under rule 109(1) or rule 112.	22	3200	Not applicable	Not applicable	3500	Not applicable	Not applicable
33.	On request for appearing in the qualifying examination under rule 109(3).	—	1600	Not applicable	Not applicable	1750	Not applicable	Not applicable
34.	For continuance of the name of a person in the register of patent agents—							
	(i) for the 1st year to be paid along with registration;	—	800	Not applicable	Not applicable	880	Not applicable	Not applicable
	(ii) for every year excluding the 1st year to be paid on the 1st April in each year.	—	800	Not applicable	Not applicable	880	Not applicable	Not applicable
35.	On application for duplicate certificate of patent agent under rule 111A.	--	1600	Not applicable	Not applicable	1750	Not applicable	Not applicable
36.	On application for restoration of the name of a person in the register of patent agents under rule 117(1).	23	1600 (Plus continuation fee under entry number 34)	Not applicable	Not applicable	1750 (Plus continuation fee under entry number 34)	Not applicable	Not applicable
37.	On a request for correction of clerical error under section 78(2).	—	800	2000	4000	880	2200	4400
38.	On application for review or setting aside the decision or order of the controller under section 77(1)(f) or 77(1)(g).	24	1600	4000	8000	1750	4400	8800
39.	On application for permission for applying patent outside India under section 39 and rule 71(1).	25	1600	4000	8000	1750	4400	8800
40.	On application for duplicate patent under section 154 and rule 132.	—	1600	4000	8000	1750	4400	8800

41.	(i) On request for certified copies under section 72 or for certificate under section 147 and rule 133(1).	—	1000 (up to 30 pages and, thereafter, 30 for each extra page)	2500 (up to 30 pages and, thereafter, 75 for each extra page)	5000 (up to 30 pages and, thereafter, 150 for each extra page)	1100 (up to 30 pages and, thereafter, 30 for each extra page)	2750 (up to 30 pages and, thereafter, 75 for each extra page)	5500 (up to 30 pages and, thereafter, 150 for each extra page)
	(ii) On request for certified copies under section 72 or for certificate under section 147 and rule 133(2).	--	2400 (up to 30 pages and thereafter, 30 for each extra page)	6000 (up to 30 pages and thereafter, 30 for each extra page)	12000 (up to 30 pages and thereafter, 30 for each extra page)	3300 (up to 30 pages and thereafter, 30 for each extra page)	6600 (up to 30 pages and thereafter, 30 for each extra page)	13200 (up to 30 pages and thereafter, 30 for each extra page)
42.	For certifying office copies, printed each.	—	800	2000	4000	880	2200	4400
43.	On request for inspection of register under section 72, inspection under rule 27 or rule 74A.	—	320	800	1600	350	880	1750
44.	On request for information under section 153 and rule 134.	—	480	1200	2400	530	1300	2650
45.	On form of authorisation of a patent agent.	26	No fee	No fee	No fee	No fee	No fee	No fee
46.	On petition not otherwise provided for.	—	1600	4000	8000	1750	4400	8800
47.	For supplying of photocopies of the documents, per page.	—	10	10	10	10	10	10
48.	Transmittal fee for International application.	—	3200	8000	16000	3500	8800	17600
49.	For preparation of certified copy of priority document and for transmission of the same to the International Bureau of World Intellectual Property Organization.	—	1000 (up to 30 pages and, thereafter, 30 for each extra page)	2500 (up to 30 pages and, thereafter, 75 for each extra page)	5000 (up to 30 pages and, thereafter, 150 for each extra page)	1100 (up to 30 pages and, thereafter, 30 for each extra page)	2750 (up to 30 pages and, thereafter, 75 for each extra page)	5500 (up to 30 pages and, thereafter, 150 for each extra page)
50.	On statement regarding working of a patented invention on a commercial scale in India under section 146(2) and rule 131(1).	27	No fee	No fee	No fee	No fee	No fee	No fee
51.	To be submitted for claiming the status of a small entity or startup	28	No fee	No fee	No fee	No fee	No fee	No fee

52.	Request for adjournment of hearing under rule 129A (for each adjournment).	-	1000	2500	5000	1100	2750	5500
53.	Miscellaneous form under rule 8(2), to be used when no other form is prescribed.	30	As applicable					

Table II - FEES REFUNDABLE

On what account fee refundable	Refund of fees
Refund of fees under sub-rule (4A) of rule 7	90% of fee paid for request for examination or request for expedited examination".

THE SECOND SCHEDULE

(*See* rule 8)

FORMS

LIST OF FORMS

Form No.	Section and rule	Title
1	2	3
1.	Sections 7, 54 and 135 and rule 20(i).	Application for grant of a patent.
2.	Section 10; rule 13.	Provisional/Complete Specification.
3.	Section 8 and rule 12.	Statement and undertaking.
4.	Sections 53(2) and 142(4), rules 13(6), 24B(4)(ii), 80(1A) and 130.	Request for extension for time.
5.	Section 10(6) and rule 13(6).	Declaration as to inventorship.
6.	Sections 20(1), 20(4), 20(5) and rules 34(1), 35(1) or 36(1).	Claim or request regarding any change in applicant for patent.
7.	Section 25(3) and rule 55A.	Notice of opposition on grant of a patent.
7A.	Section 25(1) and rule 55(1)	For filing a representation opposing grant of a patent under sub-section (1) of section 25.
8.	Sections 28(2), 28(3) or 28(7) and rules 66, 67, 68.	Request or claim regarding mention of inventor as such in a patent.
9.	Section 11A(2) and rule 24A.	Request for publication.
10.	Section 44 and rule 75.	Application for amendment of patent.
11.	Sections 51(1), 51(2) and rules 76, 77.	Application for direction of the Controller.
12.	Sections 26(1) & 52(2) and rules 63A and 79.	Request for grant of patent.
13.	Section 57 and rule 81(1).	Application for amendment of the application for patent/complete specification.

1	2	3
14.	Sections 57(4), 61(1), 63(3), 78(5) and 87(2) and rules 81(3)(b), 85(1), 87(2), 98(1), 101(3) or 124	Notice of opposition to amendment/ restoration/surrender of patent/grant of compulsory licence or revision of terms thereof or to a correction of clerical errors.
15.	Section 60 and rule 84.	Application for restoration of patents.
16.	Sections 69(1) or 69(2) and rules 90(1) and 90(2).	Application for registration of a title/ interest in a patent or share in it or registration of any document purporting to affect proprietorship of the patent.
17.	Sections 84(1), 91, 92 or 92(A) and rule 96.	Application for compulsory licence.
18.	Section 11B and rules 20(4)(ii) and 24B(1)(i).	Request for examination of application for patent.
19.	Section 85(1) and rule 96.	Application for revocation of a patent for non-working.
20.	Section 88(4) and rule 100.	Application for revision of terms and conditions of licence.
21.	Section 94, rule 102(1).	Request for termination of compulsory licence.
22.	Rules 109(1) and 112.	Application for registration of Patent Agent.
23.	Section 130(2) and rule 117(1).	Application for the restoration of the name in the register of Patent Agents.
24.	Sections 77(1)(f), 77(1)(g) and rules 130(1) and 130(2).	Application for review/setting aside controller's decision/order.
25.	Section 39 and rule 71(1).	Request for permission for making patent application outside India.
26.	Sections 127, 132 and rule 135.	Form of authorisation of a Patent Agent/ or any person in a matter or proceeding under the Act.
27.	Section 146(2) and rule 131(1).	Statement regarding the working of the Patented invention on commercial scale in India.
28.	Rules 2(fa) and 7	To be submitted by a small entity with every document for which a fee has been specified.

"29.	Section 11B(4) and rules 7(4A), 24C(5) and 26	Request for withdrawal of patent application
30.	Rule 8(2)	Miscellaneous form, to be used when no other form is prescribed.".

"**FORM 1** THE PATENTS ACT 1970 (39 of 1970) and THE PATENTS RULES, 2003 **APPLICATION FOR GRANT OF PATENT** (See section 7, 54 and 135 and sub-rule (1) of rule 20)	(FOR OFFICE USE ONLY)

	Application No.	
	Filing date:	
	Amount of Fee paid:	
	CBR No:	
	Signature:	

1. APPLICANT'S REFERENCE / IDENTIFICATION NO. (AS ALLOTTED BY OFFICE)	

2. TYPE OF APPLICATION [Please tick (✓) at the appropriate category]

Ordinary ( )		Convention ( )		PCT-NP ( )	
Divisional ( )	Patent of Addition ( )	Divisional ( )	Patent of Addition ( )	Divisional ( )	Patent of Addition ( )

3A. APPLICANT(S)

Name in Full	Nationality	Country of Residence	Address of the Applicant	
			House No.	
			Street	
			City	
			State	
			Country	
			Pin code	

3B. CATEGORY OF APPLICANT [Please tick (✓) at the appropriate category]

Natural Person ( )	Other than Natural Person		
	Small Entity ( )	Startup ( )	Others ( )

4. INVENTOR(S) [Please tick (✓) at the appropriate category]

Are all the inventor(s) same as the applicant(s) named above?	Yes ( )	No ( )

If "No", furnish the details of the inventor(s)

Name in Full	Nationality	Country of Residence	Address of the Inventor	
			House No.	
			Street	
			City	
			State	
			Country	
			Pin code	

5. TITLE OF THE INVENTION		
6. AUTHORISED REGISTERED PATENT AGENT(S)	IN/PA No.	
	Name	
	Mobile No.	
7. ADDRESS FOR SERVICE OF APPLICANT IN INDIA	Name	
	Postal Address	
	Telephone No.	
	Mobile No.	
	Fax No.	
	E-mail ID	

8. IN CASE OF APPLICATION CLAIMING PRIORITY OF APPLICATION FILED IN CONVENTION COUNTRY, PARTICULARS OF CONVENTION APPLICATION

Country	Application Number	Filing date	Name of the applicant	Title of the invention	IPC (as classified in the convention country)

9. IN CASE OF PCT NATIONAL PHASE APPLICATION, PARTICULARS OF INTERNATIONAL APPLICATION FILED UNDER PATENT CO-OPERATION TREATY (PCT)

International application number	International filing date

10. IN CASE OF DIVISIONAL APPLICATION FILED UNDER SECTION 16, PARTICULARS OF ORIGINAL (FIRST) APPLICATION

Original (first) application No.	Date of filing of original (first) application

11. IN CASE OF PATENT OF ADDITION FILED UNDER SECTION 54, PARTICULARS OF MAIN APPLICATION OR PATENT

Main application/patent No.	Date of filing of main application

12. DECLARATIONS

(i) Declaration by the inventor(s)

(**In case the applicant is an assignee**: the inventor(s) may sign herein below or the applicant may upload the assignment or enclose the assignment with this application for patent or send the assignment by post/electronic transmission duly authenticated within the prescribed period).

I/We, the above named inventor(s) is/are the true & first inventor(s) for this Invention and declare that the applicant(s) herein is/are my/our assignee or legal representative.

(a) Date
(b) Signature(s)
(c) Name(s)

(ii) Declaration by the applicant(s) in the convention country

(In case the applicant in India is different than the applicant in the convention country: the applicant in the convention country may sign herein below or applicant in India may upload the assignment from the applicant in the convention country or enclose the said assignment with this application for patent or send the assignment by post/electronic transmission duly authenticated within the prescribed period)

I/We, the applicant(s) in the convention country declare that the applicant(s) herein is/are my/our assignee or legal representative.

(a) Date
(b) Signature(s)
(c) Name(s) of the signatory

(iii) Declaration by the applicant(s)

I/We the applicant(s) hereby declare(s) that: -

- ☐ I am/ We are in possession of the above-mentioned invention.
- ☐ The provisional/complete specification relating to the invention is filed with this application.
- ☐ The invention as disclosed in the specification uses the biological material from India and the necessary permission from the competent authority shall be submitted by me/us before the grant of patent to me/us.
- ☐ There is no lawful ground of objection(s) to the grant of the Patent to me/us.
- ☐ I am/we are the true & first inventor(s).
- ☐ I am/we are the assignee or legal representative of true & first inventor(s).
- ☐ The application or each of the applications, particulars of which are given in Paragraph-8, was the first application in convention country/countries in respect of my/our invention(s).
- ☐ I/We claim the priority from the above mentioned application(s) filed in convention country/countries and state that no application for protection in respect of the invention had been made in a convention country before that date by me/us or by any person from which I/We derive the title.
- ☐ My/our application in India is based on international application under Patent Cooperation Treaty (PCT) as mentioned in Paragraph-9.
- ☐ The application is divided out of my /our application particulars of which is given in Paragraph-10 and pray that this application may be treated as deemed to have been filed on DD/MM/YYYY under section 16 of the Act.
- ☐ The said invention is an improvement in or modification of the invention particulars of which are given in Paragraph-11.

13. FOLLOWING ARE THE ATTACHMENTS WITH THE APPLICATION

(a) Form 2

Item	Details	Fee	Remarks
Complete/ provisional specification)#	No. of pages		
No. of Claim(s)	No. of claims and No. of pages		
Abstract	No. of pages		
No. of Drawing(s)	No. of drawings and No. of pages		

In case of a complete specification, if the applicant desires to adopt the drawings filed with his provisional specification as the drawings or part of the drawings for the complete specification under rule 13(4), the number of such pages filed with the provisional specification are required to be mentioned here.

(b) Complete specification (in conformation with the international application)/as amended before the International Preliminary Examination Authority (IPEA), as applicable (2 copies).
(c) Sequence listing in electronic form
(d) Drawings (in conformation with the international application)/as amended before the International Preliminary Examination Authority (IPEA), as applicable (2 copies).
(e) Priority document(s) or a request to retrieve the priority document(s) from DAS (Digital Access Service) if the applicant had already requested the office of first filing to make the priority document(s) available to DAS.
(f) Translation of priority document/Specification/International Search Report/International Preliminary Report on Patentability.
(g) Statement and Undertaking on Form 3
(h) Declaration of Inventorship on Form 5
(i) Power of Authority
(j)……..

Total fee □…….in Cash/ Banker's Cheque /Bank Draft bearing No..... Date……...on ……. Bank.

I/We hereby declare that to the best of my/our knowledge, information and belief the fact and matters slated herein are correct and I/We request that a patent may be granted to me/us for the said invention.

Dated this……day of……..20……
Signature:
Name:

To,
The Controller of Patents
The Patent Office, at……..

Note: -
* Repeat boxes in case of more than one entry.
* To be signed by the applicant(s) or by authorized registered patent agent otherwise where mentioned.
* Tick (✓)/cross (x) whichever is applicable/not applicable in declaration in paragraph-12.
* Name of the inventor and applicant should be given in full, family name in the beginning.
* Strike out the portion which is/are not applicable.
* For fee: See First Schedule";

FORM 2

THE PATENT ACT 1970
(39 of 1970)
&
The Patents Rules, 2003
PROVISIONAL/COMPLETE SPECIFICATION
(See section 10 and rule13)

1. TITLE OF THE INVENTION

2. APPLICANT (S)
(a) NAME:
(b) NATIONALITY:
(c) ADDRESS:

3. PREAMBLE TO THE DESCRIPTION

PROVISIONAL	COMPLETE
The following specification describes the invention.	The following specification particularly describes the invention and the manner in which it is to be performed.

4. DESCRIPTION (Description shall start from next page.)

5. CLAIMS (not applicable for provisional specification. Claims should start with the preamble — **"I/we claim"** on separate page)

6. DATE AND SIGNATURE (to be given at the end of last page of specification)

7. ABSTRACT OF THE INVENTION (to be given along with complete specification on separate page)

Note: -
***Repeat boxes in case of more than one entry.**
***To be signed by the applicant(s) or by authorized registered patent agent.**
***Name of the applicant should be given in full , family name in the beginning .**
***Con.plete address of the applicant should be given stating the postal index no./code, state and country.**
***Strike out the column which is/are not applicable**

FORM 3

THE PATENTS ACT, 1970

(39 of 1970)

and

THE PATENTS RULES, 2003

STATEMENT AND UNDERTAKING UNDER SECTION 8

(See section 8; Rule 12)

1. Name of the applicant(s).	I/We…… …… …… …… …… …… hereby declare:
2. Name, address and nationality of the joint applicant.	(i) that I/We have not made any application for the same/substantially the same invention outside India Or (ii) that I/We who have made this application No…….dated …..……..alone/jointly with ……., made for the same/ substantially same invention, application(s) for patent in the other countries, the particulars of which are given below:

Name of the country	Date of application	Application No.	Status of the application	Date of publication	Date of grant

3. Name and address of the assignee	(iii) that the rights in the application(s) has/have been assigned to…… …… …… …… that I/We undertake that upto the date of grant of the patent by the Controller, I/We would keep him informed in writing the details regarding corresponding applications for patents filed outside India within six months from the date of filing of such application. Dated this……day of……..20…..
4. To be signed by the applicant or his authorized registered patent agent.	Signature. …….
5. Name of the natural person who has signed.	(……).
	To The Controller of Patents, The Patent Office, at……

Note.- Strike out whichever is not applicable;

FORM 4

THE PATENTS ACT, 1970

(39 of 1970)

and

THE PATENTS RULES, 2003

REQUEST FOR EXTENSION OF TIME

[See sections 53(2), and 142 (4); rules 13(6), 24B(6), 24C(11) and 80(1A), 130]

1. Name of the applicant	I/We…….. …… …….. hereby request for extension of time for ……..months(s) under section/rule……in connection with my/our/application/Patent No…… The reasons for making the request are as follows:- …… ……. Dated this…….day of …….20….
2. To be signed by the applicant or his authorized registered patent agent	Signature (……)
3. Name of the natural person who has signed	
	To The Controller of Patents, The Patent Office, at……
Note.- For fee: See First Schedule.”;	

F O R M 5
THE PATENTS ACT, 1970
(39 of 1970)

&

The Patents Rules, 2003
DECLARATION AS TO INVENTORSHIP
[See section 10(6) and rule 13(6)]

1. NAME OF APPLICANT (S)	

hereby declare that the true and first inventor(s) of the invention disclosed in the complete specification filed in pursuance of my /our application numbered dated is/are

2. INVENTOR (S)
(a) NAME
(b) NATIONALITY
(c) ADDRESS

Dated this .....day of.....20.....

Signature: -
Name of the signatory: -

3. DECLARATION TO BE GIVEN WHEN THE APPLICATION IN INDIA IS FILED BY THE APPLICANT (S) IN THE CONVENTION COUNTRY: -

We the applicant(s) in the convention country hereby declare that our right to apply for a patent in India is by way of assignment from the true and first inventor(s).

Dated this .....day of.....20.....

Signature: -
Name of the signatory: -

4. STATEMENT (to be signed by the additional inventor(s) not mentioned in the application form)

I/We assent to the invention referred to in the above declaration, being included in the complete specification filed in pursuance of the stated application.

Dated this .....day of.....20.....

Signature of the additional inventor(s): -

Name: -

To, The Controller of Patents

The Patent Office, at.....

Note
***Repeat boxes in case of more than one entry.**
***To be signed by the applicant(s) or by authorized registered patent agent otherwise where mentioned.**
***Name of the inventor and applicant should be given in full, family name in the beginning .**
***Complete address of the inventor should be given stating the postal index no./code, state and country.**

***Strike out the column which is/ are not applicable**

FORM 6

THE PATENTS ACT, 1970

(39 of 1970)

&

The Patents Rules, 2003

CLAIM OR REQUEST REGARDING ANY CHANGE IN APPLICANT FOR PATENT

[See sections 20(1), 20(4) and 20(5); rules 34(1), 35(1) and 36(1)]

1. Repeat the columns (a) to (c) if there are more than one applicant.

2. Insert the name in full. The family or principal name in the beginning if the applicant is a natural person.

3. Insert the complete address including postal index number/code and state and/or country.

4. Insert the nationality.

5. State the name of the applicant(s) for patent.

6. Original and certified copies of the documents shall accompany the claim or request. Consent by the legal representative of the deceased joint applicant shall be filed whenever required.

7. Insert the details of the documents.

8. Complete address including postal index number/code and state along with Telephone and fax number(s).

9. To be signed by the applicant(s) or authorized registered patent agent.

10. Name of the natural person who has signed.

I/We,[1] _____

(a) [2] _____

(b) [3] _____

(c) [4] _____

hereby request that the application for patent No.....dated .....

made by[5]._____

_____

may proceed in my/our name and further request that direction of the Controller, if necessary be made in that effect

Reasons for making the above request are as follows:-

_____

_____

I furnish the following document(s) in support of my above request:[6]

(a)[7]_____

(b)[7]_____

(c)[7]_____

My/our address for service in India is:.[8]

_____

_____

Dated this ..... day of ....., 200

Signature [9] ..

(----------) [10]..

To
The Controller of Patents,
The Patent Office,
At .....

N.B.: This form is not applicable for mere change of name.

Note: (a) Strike out whichever is not applicable.

(b) For fee:-See First Schedule.

FORM 7
THE PATENTS ACT, 1970
(39 of 1970)
&
The Patents Rules, 2003
NOTICE OF OPPOSITION
[See sections 25(2) and rule 55A]

1. State names, address and nationality.

I/We,[1]..._____

_____

_____

hereby give notice of opposition to

2. State the grounds taken one after another.

patent No. .....) granted on

application No. .....dated.....

published on dated.....made

by_____

on the grounds [2].

3. Complete address including postal index number/code and state along with Telephone and fax number.

_____

_____

4. To be signed by the opponent or by his authorized registered patent agent.

My/Our address for services in India is..[3]

.....

.....

5. Name of the natural person who has signed.

Signature [4]....

(----------) [5]....

To
The Controller of Patents,
The Patent Office,
At .....

For fee : See First Schedule.

FORM 7A
THE PATENTS ACT, 1970 (39 OF 1970)
AND
THE PATENTS RULES, 2003
REPRESENTATION FOR OPPOSITION TO GRANT OF PATENT
[see rule 55]

1. State names, address and nationality. I/We,.....
.....
hereby give representation by way of opposition to the grant of patent in respect of application no.....dated..... made by..... and published on .....

2. State the grounds taken one after another. on the grounds .....
.....
.....

3. Complete address including postal index number/code and state along with telephone and fax number. My/our address for service in India is
.....
.....
.....

4. To be signed by the opponent or by his/her authorized registered patent agent. Signature

5. Name and designation of the natural person who has signed. (.....)

To
The Controller of Patents,
The Patent Office,
At .....

FORM 8

THE PATENTS ACT, 1970

(39 of 1970)

&

The Patents Rules, 2003

REQUEST OR CLAIM REGARDING MENTION OF INVENTOR AS SUCH IN A PATENT

[See sections 28(2), 28(3) and 28(7); rules 66, 67 and 68]

1. State names, address and nationality of the person making this application.

I/We,[1].....
.....
.....

hereby state/claim that the following person(s) be mentioned as inventor(s) in the patent application No. .....dated.....made by_____

2. Insert the name of the person mentioned as inventor.

_____or hereby declare that.[2]..
.....
.....

ought not to have mentioned as inventor in the application for Patent No. .....dated ..... made by .....and I/We hereby apply for a certificate to that effect.

3. Complete address including postal index number/code and state along with Telephone and fax number(s).

A Statement setting out the circumstances under which this application is made is attached together with the copy/copies thereof as required under the rules.

4. To be signed by the applicant or his authorized registered patent agent.

My/Our address for service in India is[3],
_____
_____

Dated this ..... day of 20

5. Name of the natural person who has signed.

Signature.. [4]...
(----------) [5]....

To
The Controller of Patents,
The Patent Office,
At .....

Note :- For fee : See First Schedule.

FORM 9
THE PATENTS ACT, 1970
(39 of 1970)
&
The Patents Rules, 2003
REQUEST FOR PUBLICATION
[See section 11A(2); rule 24A]

1. Name, address and nationality of the applicant(s).

I/We[1].....

.....

.....

.....

2. To be signed by the applicant or his authorized registered patent agent.

hereby request for early publication of my/our Patent application No ..... dated .....under section 11A(2) of the Act.

Dated this .....day of 20

3. Name of the natural person who has signed.

Signature .. [2]...

(----------). [3]....

To
The Controller of Patents,
The Patent Office,
At .....

Note: - For fee : See First Schedule

FORM 10
THE PATENTS ACT, 1970
(39 of 1970)
&
The Patents Rules, 2003
APPLICATION FOR AMENDMENT OF PATENT
[See section 44; rule 75]

1. Repeat the columns (a) to (c) if there are more than one applicant.

2. Insert the name in full. Family or principal name in the beginning if the applicant is a natural person.

3. Insert the complete address including postal index number/code and state and/or country.

4. Insert the nationality.

5. Complete address including postal index number/code and state along with Telephone and fax number(s).

I/We.[1]..

(a).[2]._____

(b).[3]._____

(c).[4]._____

(a).[2]._____

(b).[3]._____

(c).[4]._____

(a).[2]._____

(b).[3]._____

(c).[4]._____

hereby request that Patent No.----------

_____dated_____ _____granted to

_____

may be amended by substituting my/our name for the name of the grantee and in support to my/our request, I/We furnish the following documents :

.....

My/our address for service in India is.[5].

.....

.....

Dated this ..... day of 20

6. To be signed by the applicant(s) or his authorised registered patent agent.

7. Name of the natural person who has signed.

Signature.. 6.....

(----------).. [7]...

To
The Controller of Patents,
The Patent Office,
At.....

Note : - For fee : See First Schedule

FORM 11
THE PATENTS ACT, 1970
(39 of 1970)
&
The Patents Rules, 2003
APPLICATION FOR DIRECTION OF THE CONTROLLER
[See sections 51(1) and 51(2); rules 76 and 77]

1. State the name in full, address and nationality.

I/We[1].....

.....

.....

hereby apply for the following direction in respect

of patent No. ----------

dated.....grant to----------

---

2. Complete address including postal index number/code and state along with Telephone and fax number(s).

The reasons for making this application are as follows :

.....

.....

3. To be signed by the applicant(s) or his authorised registered patent agent.

My/Our address for service in India is:..[2].....

.....

Dated this .....day of 20

4. Name of the natural person who has signed.

Signature .. [3]...

(----------)[4]

To
The Controller of Patents,
The Patent Office,
At .....

Note: - For fee : See First Schedule

FORM 12
THE PATENTS ACT, 1970
(39 of 1970)
&
The Patents Rules, 2003
REQUEST FOR GRANT OF PATENT UNDER SECTION 26(1) & 52(2)
[See sections 26(1) & 52(2); rules 63A and 79]

1. Repeat the columns (a) to (c) if there are more than one applicant.

I/We[1].....

.....

(a).[2].....

2. Insert the name in full. Family or principal name in the beginning, if the applicant is a natural person.

.....

(b).[3].....

3. Insert the complete address including postal code and state and/or country.

.....

.....

(c).[4]. .....

hereby declare :

4. Nationality of the person.

(i) that I/We made opposition under section 25(3) before the Controller or a petition under Section 64 of the Act before the Appellate Board or High Court of [5].....

5. Name of the High Court.

.....

and the details of the patent and the opposition for the petition are given below :

6. Name, address and nationality of the true and first inventor.

Patent No. ..... dated .....Grantee / Patentee .....*Opposition*

7. Complete address including postal index number code and state along with Telephone and fax number(s).

Notice dated ---------- or Petition No. .....dated.....

(ii) that I/We have claimed to be the true and first inventor(s)/assignee(s)/legal representative(s) of [6]

8. To be signed by the applicant(s)

or his authorised registered patent agent.

.....

.....

.....

the true and first inventor of the invention for which the said patent was granted.

(iii) that by an order in the said opposition or petition the patent was revoked/the complete specification of the patent was directed to be amended by exclusion of ..... claims thereof.

(iv) that the Controller or Appellate Board or Court ordered to grant to me a patent in lieu of the said patent/part of the invention excluded by the amendment.

(v) that I/We submit a statement and certified copy of the order of the Controller or Appellate Board or Court in support of my application and request that a patent be granted to me in accordance with the order of the Appellate Board or Court.

9. Name of the natural person who has signed.

My/Our address for service in India is : .[7].

.....

.....

Dated this ..... day of 200

Signature [8]

(----------)[9] .....

To
The Controller of Patents,
The Patent Office,
At .....

Note: -(a) Strike out whichever is not applicable.
(b) For fee : See First Schedule.

FORM 13

THE PATENTS ACT, 1970

(39 of 1970)

and

THE PATENTS RULES, 2003

APPLICATION FOR AMENDMENT OF THE APPLICATION FOR PATENT/ COMPLETE SPECIFICATION/ANY DOCUMENT RELATED THERETO

[See section 57; sub-rule (1) of rule 81]

1. Name of the applicant(s).	I/We…….. …… request leave to amend the application/any document related thereto/complete specification with respect to application for patent No…….dated……as highlighted in the copy hereto annexed. My/Our reason for making this request are as follows:- …….. …….. I/We declare that no action for infringement or for the revocation of the patent in question is pending before Appellate Board or a Court. I/We declare that the facts and matters stated herein are true to the best of my/our knowledge information and belief.
2. To be signed by the applicant(s) or patentee(s) or by his authorized registered patent agent	Dated this……..day of……20…… Signature…….
3. Name of the natural person who has signed	(……)
	To The Controller of Patents, The Patent Office, at……
Note.- For fee: See First Schedule.”;	

FORM 14
THE PATENTS ACT, 1970
(39 of 1970)
&
The Patents Rules, 2003

NOTICE OF OPPOSITION TO AMENDMENT / RESTORATION / SURRENDER OF PATENT/GRANT OF COMPULSORY LICENCE OR REVISION OF TERMS THEREOF OR TO CORRECTION OF CLERICAL ERRORS

[See sections 57(4), 61(1), 63(3), 78(5) and 87(2); rules 81(3)(b), 85(1), 87(2), 98(1), 101(3) and 124]

1. State the name, address and nationality.

2. Complete address including postal index number/code and state along with Telephone and fax number(s).

3. To be signed by the opponent or his authorised registered patent agent.

4. Name of the natural person who has signed.

I/We[1].....
.....
hereby give notice of opposition: -
to the amendment of the application/specification with respect to application for Patent No. _____dated .....

OR

to the application for restoration of Patent No. .....dated.....

OR

to the offer to surrender the Patent No. .....dated.....

OR

for the grant of compulsory licence, or revocation of Patent No. ..... dated .....

OR

for the revision of the terms and conditions of licence in respect of Patent No. .....dated .....

OR

for correction of a clerical error in Patent No. .... dated ..... / Specification No. ..... dated ..... in respect of Patent No. .....dated .....or Patent application No. ..... dated .....

The grounds in which the said opposition is made are as follows:

.....
.....

My / Our address for service in India is: [2].

.....
.....

Dated this ..... day of 20

Signature . 3. ....

(----------) [4]. ....

To
The Controller of Patents,
The Patent Office,
At ....

Note: -(a) Strike out whichever is not applicable.
(b) For fee : See First Schedule.

FORM 15
THE PATENTS ACT, 1970
(39 of 1970)
&
The Patents Rules, 2003
APPLICATION FOR THE RESTORATION OF PATENT
[See section 60; rule 84]

1. Insert the name, address, *nationality of the applicant(s).*

I/We[1].....
.....
.....
hereby apply for an order of the Controller for the restoration of Patent No. .....dated .....granted to.....
.....
The circumstances which led to the failure to pay the renewal fee to pay the renewal fee for the year .....
on or before ..... are as follows:
.....
I/We declare that I/We have not assigned the patent to any other person(s) and that the facts and matters stated herein are true to the best of my/our knowledge information and belief.

Dated this ..... day of 20

2. To be signed by the applicant(s) or by his authorised registered patent agent.

Signature [2].....
(----------)[3]

3. Name of the natural person who has signed.

To
The Controller of Patents,
The Patent Office,
At ....

Note: For fee : See First Schedule.

FORM 16
THE PATENTS ACT, 1970
(39 of 1970)
&
The Patents Rules, 2003

APPLICATION FOR REGISRATION OF TITLE/INTEREST IN A PATENT OR SHARE IN IT OR REGISTRATION OF ANY DOCUMENT PURPORTING TO AFFECT PROPRIETORSHIP OF THE PATENT

[See sections 69(1), 69(2); rules 90(1) and 90(2)]

1. Insert the name, address and nationality of the applicant(s).

I/We[1].
.....
.....
hereby apply that my/our name(s) may be registered in the register of patent as a person entitled to the patent/a share in the patent/an interest in the patent details of which are specified below:

2. A description of the nature of the document, giving the date and the names, address and nationality of the parties thereto.

Patent No. .....dated.....
Grantee.....Patentee .....
and in proof thereof we transmit the accompanying[2].....
.....with a certified copy thereof.

OR

Transmit herewith an attested copy of[2]
.....
.....in respect of Patent No(s).....dated .....
granted to .....
of which the patentee is ..... as well as the original document for verification and *I/We hereby apply that a notification thereof may* be entered in the register of patents.

3. Complete address including postal code and state along with telephone and fax number(s).

My/Our address for service in India is[3].
.....
.....

4. To be signed by the applicant or his authorised registered patent agent.

Dated this .....day of 20

Signature . 4.....
(----------)[5]

5. Name of the natural person who has signed.

To
The Controller of Patents,
The Patent Office,
At .....

Note : - (a) For fee : See First Schedule.
(b) Strike out whichever is not applicable.

F O R M 17
THE PATENTS ACT, 1970
(39 of 1970)
&
The Patents Rules, 2003

APPLICATION FOR COMPULSORY LICENCE

[See sections 84(1), 91, 92(1) or 92A; rule 96]

1. Name, address and nationality of the applicant(s).

I/We.[1].....
.....
hereby apply for the grant of a compulsory licence

2. Certified copies of the documents are to be enclosed in duplicate.

under Patent No. ....dated .....
granted to .....
..... for which the patentee is
..... on the following
grounds, namely :

.....
.....

3. Complete address including postal code and state along with telephone and fax number(s).

I/We declare that the facts and matters stated herein are true to the best of my/our knowledge, information and belief.

4. To be signed by the applicant(s) or by his authorised registered patent agent.

The details of documentary evidence in support of my/our interest and the grounds stated above are given below [2].....

(a) .....
(b) .....
(c) .....

My/Our address for service in India is: [3].....
.....

Dated this ..... day of 20

Signature [4].....

5. Name of the natural person who has signed.

(----------) [5] ....

To
The Controller of Patents,
The Patent Office,
At .....

Note: For fee : See First Schedule.

F O R M 18 **THE PATENTS ACT, 1970** **(39 of 1970)** **&** **The Patents Rules, 2003** **REQUEST/EXPRESS REQUEST FOR EXAMINATION OF APPLICATION FOR PATENT** **[See section 11B and rule 20(4)(ii), 24B(1)(i)]**	**(FOR OFFICE USE ONLY)** RQ. No: Filing Date: Amount of Fee Paid: CBR No: Signature:

1. **APPLICANT (S)/OTHER INTERESTED PERSON**
(a) NAME :
(b) NATIONALITY :
(c) ADDRESS :
(d) date of publication of the application under section 11A .....

2. **Statement in case of request for examination made by the applicant(s)**

.I/We hereby request that my/our application for patent no. _____filed on _____ for the invention titled_____ shall be examined under sections 12 and 13 of the Act.

Or

I/We hereby make an express request that my/our application for patent no. _____filed on._ _____based on Patent Cooperation Treaty (PCT) application no. _____dated_____ made in country _____shall be examined under sections 12 and 13 of the Act, immediately without waiting for the expiry of 31 months as specified in rule 20(4)(ii).

3. **Statement in case of request for examination made by any other interested person**

I/We the interested person request for the examination of the application no. _____dated _____filed by the applicant _____titled_____ under sections 12 and 13 of the Act.

As an evidence of my/our interest in the application for patent following documents are submitted.

(a) _____

_____

4. **ADDRESS FOR SERVICE**

Dated this_____ day of_____ 20

Signature
Name of the signatory

To, The Controller of Patents
The Patent Office, at .....

NOTE:
***To be signed by the applicant(s) or by his authorized registered patent agent**
***Strike out the column which is/are not applicable**

*** For fee : See First Schedule**

"FORM 18 A THE PATENTS ACT,1970 and THE PATENT RULES,2003 REQUEST FOR EXPEDITED EXAMINATION OF APPLICATION FOR PATENT [See section 11B and Rule 24C]	(FOR OFFICE USE ONLY) RQ. No.: Filing Date: Amount of fee Paid: CBR no: Signature:

1. APPLICANT(s)
(A)NAME:
(B) NATIONALITY:
(C) ADDRESS:

2. I/We ----------hereby request that my/our application for patent no.----------filed on----------for ----------the---------- ----------invention titled ----------shall be examined under sections 12 and 13 of the Act.

or

I/We ----------hereby request that my/our application for patent no.----------filed on----------for ----------the---------- ----------invention titled ---------- based on Patent Cooperation Treaty (PCT) application no……..…. dated…….. made in country …….. shall be examined under sections 12 and 13 of the Act, immediately without waiting for the expiry of 31 months as specified in rule 20(4)(ii).

or

I/We hereby request that my/our request for examination bearing no.----------for application for patent no.---------- -----filed on----------for ----------the---------- ----------invention titled ----------may be converted to a request for expedited examination of patent application under rule 24C and the application shall be examined under sections 12 and 13 of the Act.

3. The applicant(s) to indicate (by ticking the appropriate box) any of the grounds applicable in case of request for expedited examination made by on any of the following grounds:

☐ that the applicant is a startup, or

☐ that India has been indicated as the competent International Searching Authority or elected as an International Preliminary Examining Authority in the corresponding international application.

ADDRESS FOR SERVICE IN INDIA:

……
……

……
……..

Dated this day of 20

Signature

Name of the signatory

To

The Controller of Patent

The Patent Office, at .....

NOTE:

To be signed by the applicant(s) or by his/ their authorized registered patent agent

"Strike out the column(s) which is/ are not applicable.";

For fee: See First Schedule.";

F O R M 19
THE PATENTS ACT, 1970
(39 of 1970)
&
The Patents Rules, 2003
APPLICATION FOR REVOCATION OF A PATENT FOR NON WORKING
[See section 85(1); rule 96.]

1. Name, address and nationality of the applicant(s).

I/We.[1].....
.....
.....
hereby apply for revocation of Patent No.....dated..... granted to .....for which the patentee/applicant for patent is.....
.....for the following reason, namely:

2. State the nature of the applicant's interest, the facts on which he relies and the grounds on which the application is made.

[2].....
.....

3. Certified copies of all the documents are to be enclosed in duplicate.

The details of documentary evidence in support of my/our interest and the reasons stated above are given below : [3].....
(a) .....
(b) .....
(c) .....

4. Complete address including postal index number/ code and state along with telephone and fax number(s).

I/We declare that the facts and matters stated herein are true to the best of my/our knowledge, information and belief.

My/Our address for service in India is.[4]
.....
.....
.....

5. To be signed by the applicant(s) or his authorized registered patent agent.

Dated this ..... day of 20

Signature . [5].....
(----------) [6]

6. Name of the natural person who has signed.

To
The Controller of Patents,
The Patent Office,
At .....

Note : (a) For fee : See First Schedule.

(b) Strike out whichever is not applicable

F O R M 20
THE PATENTS ACT, 1970
(39 of 1970)
&
The Patents Rules, 2003
APPLICATION FOR REVISION OF TERMS AND CONDITIONS OF LICENCE
[See section 88(4); rule 100]

1. Name, address and nationality of the applicant(s).

I/We[1].....
.....
.....

hereby declare :

(i) that Patent No.....dated ..... was granted to .....for which the patentee is .....

(ii) that I/We am/are holding licence under the patent, granted by the Controller by an order dated.....

2. To be signed by the applicant(s) *or by his authorised registered* patent agent.

(i) that the terms and conditions settled by the *Controller have proved to be more onerous than* originally expected and we are unable to work the invention.

3. Name of the natural person who has signed.

(iv) that the circumstances in which this application is made are set forth in the accompanying statement in duplicate.

I/ We request the Controller to revise the terms and conditions of the licence.

Dated this ..... day of..... 20

Signature [2].....

(----------) [3]

To
The Controller of Patents,
The Patent Office,
At .....

Note : (a) For fee : See First Schedule.
(b) Strike out whichever is not applicable.

F O R M 21
THE PATENTS ACT, 1970
(39 of 1970)
&
The Patents Rules, 2003
REQUEST FOR TERMINATION OF COMPULSORY LICENCE
[See section 94; rule 102(1)]

1. Name, address and nationality of the applicant(s).

2. Certified copies of the documents are to be enclosed in duplicate.

3. Complete address including postal code and state along with telephone and fax number(s).

4. To be signed by the applicant(s) or by his authorized registered patent agent.

5. Name of the natural person who has signed.

I/We[1].....
.....
hereby apply for the termination of the compulsory licence granted to
.....by the order of the Controller dated.....under Patent No
..... dated.....
granted to.....for which the patentee .....

I/we declare that I am/We are the patentee for the above mentioned patent
I/we declare that I/we derive title/interest in the patent.

I/we make the above mentioned request for termination on the following grounds, namely:
.....
.....

I/we declare that the facts and matters stated herein are true to the best of my/our knowledge, information and belief.
The details of documentary evidence in support of my/our interest and the grounds stated above are given below: [2]
(a) .....
(b) .....
(c) .....
My/our address for service in India is: [3]
.....

Dated this ..... day of..... 20

Signature . [4]
( ) [5]
To
The Controller of Patents,
The Patent Office,
At .....

Note : (a) For fee : See First Schedule. (b) Strike out whichever is not applicable.

FORM 22
THE PATENTS ACT, 1970
(39 of 1970)
&
The Patents Rules, 2003
APPLICATION FOR REGISTRATION OF PATENT AGENT
[See rules 109(1) and 112]

I beg to apply for registration as a patent agent under the Patents Act, 1970

1 Certificate testifying to the character of the applicant should be from a person not related to him and being a Gazetted Officer or any other Person whom the Controller thinks fit.

A certificate of character[1]
From.....
.....
.....
is enclosed herewith.

I hereby declare that I am not subject to any of the dis-qualifications specified in rule 114 of the Patents Rules 2003 and that the information given below is true to the best of my knowledge and belief.

Name:[2].....
.....

2 Family or principal name in the beginning.

Address/place of residence: .....
.....
.....
Principal place of business: .....
.....
.....
Address of the branch office if any:
.....
.....

3 Either original certificates and other documents or copies thereof duly attested by the Gazetted Officer or any other person whom the Controller thinks fit must be sent with the application

Father's name: .....
.....
Nationality: .....
Date and place of birth: .....
.....
Occupation: .....

Particulars of qualification for registration as patent agent.[3]

(a) .....
(b) .....
(c) .....

Dated this ..... day of .....20 .....

4 To be signed by the applicant.

Signature[4] .....

5 Name or the natural person who has signed.

(----------)[5]

To
The Controller of Patents
The Patent Office
at .....

Note: (a) For fee : See First Schedule
(b) Attach two recent passport size photographs
(c) Provide specimen signature in separate sheet

FORM 23
THE PATENTS ACT, 1970
(39 of 1970)
&
The Patents Rules, 2003
APPLICATION FOR THE RESTORATION OF THE NAME IN THE REGISTER OF PATENT AGENTS
[See section 130(2); rule 117(1)]

I, ...
hereby apply for the restoration of my name in the register of patent agent which was removed on ..... under section 130 or Rule 116. My name was originally entered in the register on .....under No .....

Dated this ..... day of ....20 .....

Signature[1] .....

(----------)[2]

To
The Controller of Patents
The Patent Office
at .....

1. To be signed by the applicant.
2. Name of the natural person who has signed.

Note: For fee: See First Schedule.

FORM 24
THE PATENTS ACT, 1970
(39 of 1970)
&
The Patents Rules, 2003
APPLICATION FOR REVIEW/SETTING ASIDE CONTROLLER'S DECISION/ORDER
[See sections 77(1)(f) and 77(1)(g) and rules 130(1) and 130(2)]

1. State the number of patent or patent application number and the relevant proceeding.

In the matter of[1] .....
.....
.....

2. Name, address and nationality of the applicant(s).

I/We[2] .....
.....
.....
.....

being the applicant(s)/opponent/party in the above matter hereby apply for the review/setting aside of the Controller's decision/order dated the ..... in the above matter.

The grounds for making the application are set forth in the accompanying statement submitted in duplicate.

Dated this ..... day of ....20 .....

3. To be signed by the applicant(s) or his authorized registered patent agent.

Signature[3] .....

4. Name of the natural person who has signed.

(----------)[4]

To
The Controller of Patents
The Patent Office
at .....

Note: For fee: See First Schedule.

FORM 25
THE PATENTS ACT, 1970
(39 of 1970)
&
The Patents Rules, 2003

REQUEST FOR PERMISSION FOR MAKING PATENT APPLICATION OUTSIDE INDIA

[See section 39 and Rule 71(1)]

1. State the title of the invention.

I am/We are in possession of an invention for[1] .....
.....
I/We have made an application for the grant of a patent for the said invention, its number being No.....of .....Dated..... .....

OR

2. Name and address of the person (s)

I/we hereby attach the brief description of the invention.

I/We intend to make application (s) alone/jointly with[2].....
.....
....

3. Name and address of the assignee

for the same/substantially same invention for patent in the following country/countries/convention countries, namely:-
.....
..... I/We declare that the rights in the application (s) has/have been assigned to [3]._____
_____

I/We request that I/We may be granted permission to make application (s) for the said invention in the said country/countries. The reasons for making this application, are as follows:-

The facts and matters stated above are true to the best of my/our knowledge, information and belief.
Dated this .....day of .....20 .....

4. To be signed by the applicant (s) or authorised patent agent.

Signature[4].....

To
The Controller of Patents
The Patent Office
at .....

Note: (a) Strike out whichever is not applicable.

(b) For fee See First Schedule.

FORM 26
THE PATENTS ACT, 1970
(39 of 1970)
&
The Patents Rules, 2003
FORM FOR AUTHORISATION OF A PATENT AGENT/OR ANY PERSON IN A MATTER OR PROCEEDING UNDER THE ACT

[See sections 127 and 132; and rule 135]

1. Insert name, address and nationality.
2. Insert the name, address and nationality of the person(s) to be authorized.
3. State the particular matter or proceeding for which the authorisation is made.

I/We[1] .....
.....
.....
hereby authorise[2] .....
.....
.....
to act on my/our behalf in connection with[3]
.....
and request that all notices, requisitions and communication relating thereto may be sent to such person at the above address unless otherwise specified.

I/We hereby revoke all previous authorisation, if any made, in respect of same matter or proceeding.

I/We hereby assent to the action already taken by the said person in the above-matter.

Dated this ..... day of ...../20 .....

4. To be signed by the person(s) making this authorisation.
5. Name of the natural person who has signed along with designation and official seal, if any.

Signature[4] .....

(----------)[5]

To
The Controller of Patents
The Patent Office
at .....

To be stamped under the Indian Stamp Act, 1899 (2 of 1899).

No Fee

FORM 27
THE PATENTS ACT, 1970
(39 of 1970)
&
The Patents Rules, 2003

Statement regarding the working of the patented invention on commercial scale in India

[See section 146(2) and rule* 131(1) *]

1. Insert name, address and nationality.

In the matter of Patent No.....of .....

I/We[1] .....
.....
.....

2. State the year to which the statement relates

The patentee (s) or licensee (s) under Patent No..... hereby furnish the following statement regarding the working of the patented invention referred to above on a commercial scale in India for the year[2].....

3. Give whatever details are available.

(i) The patented invention:
{ } Worked { } Not worked [Tick (✓)mark the relevant box]

(a) if not worked: reasons for not working and steps being taken for working of the invention.

(b) If worked: quantum and value (in Rupees), of the patented product:

i) manufactured in India

ii) imported from other countries. (give country wise details)

(ii) the licenses and sub-licenses granted during the year;

(iii) state whether public requirement has been met partly/adequately/to the fullest extent at reasonable price.

The facts and matters stated above are true to the best of my/our knowledge, information and belief.

Dated this ..... day of .....200 .....

4. To be signed by person(s) giving the statement.

Signature[4] .....

To
The Controller of Patents
The Patent Office
at .....

Note: (a) Strike out whichever is not applicable.".

	"FORM 28 **THE PATENTS ACT, 1970** **(39 of 1970)** **AND** **THE PATENTS RULES, 2003** **TO BE SUBMITTED BY A SMALL ENTITY / STARTUP** **[See rules 2 (fa), 2(fb) and 7]**	
1	Insert name, address and nationality.	I/We ……. ……. applicant/ patentee in respect of the patent application no. ……..or patent no…… hereby declare that I/we am/are a small entity in accordance with rule 2(fa) or a startup in accordance with rule 2(fb) and submit the following document(s) as proof:
2	Documents to be submitted	
	i. For claiming the status of a small entity:	
	A. For an Indian applicant: Evidence of registration under the Micro, Small and Medium Enterprises Act, 2006 (27 of 2006).	
	B. In case of a foreign entity: Any other document.	
	ii. For claiming the status of a startup	
	A. For an Indian applicant: Any document as evidence of eligibility, as defined in rule 2(fb).	
	B. In case of a foreign entity: Any other document.	
3	To be signed by the applicant(s) / patentee (s) / authorised registered patent agent. Name of the natural person who has signed.	The information provided herein is correct to the best of my/our knowledge and belief. Dated this …….day of ……. 20...
4	Designation and official seal, if any, of the person who has signed.	Signature ……. (Name) ……. (Designation) **……** To The Controller of Patents, The Patent Office, At…….";

"FORM 29

THE PATENTS ACT, 1970
(39 of 1970)
and
THE PATENTS RULES, 2003

REQUEST FOR WITHDRAWAL OF THE APPLICATION FOR PATENT

[See Section 11B(4) and rules 7(4A), 26]

1. Name of the applicant	I/ We——————————request that the application for patent numbered …..…… _____dated _____filed by me/us, if applicable, having the request for examination / request for expedited examination numbered……. _____dated_____, be treated as withdrawn under rule 7(4A) / 26.
2. To be signed by the applicant or his authorized registered patent agent	
3. Name of the natural person who has signed	
	Dated ----------day of----------
	Signature (_____) (Name) …….. (Designation) …… To The Controller of Patents Patent Office at _____
N.B. strike out whichever not applicable	

FORM 30

THE PATENTS ACT ,1970

(39 of 1970)

and

THE PATENTS RULES,2003

TO BE USED WHEN NO OTHER FORM IS PRESCRIBED

[See sub-rule (2) of Rule 8]

1. Name of the Applicant/Patentee/Other	I/We …….. ……			
2. Complete address including postal index number/code and State along with e-mail ID, telephone, mobile and fax number.	House No. Street	-- --	Telephone No. Mobile No.	-- ----
	City State Country	-- -- --	Fax No.	--
	Pin code	--	E-mail ID	--
3. Application No. / Patent No.				
4. Relevant section / rules				
5. Purpose of request				
6. Details of request				
7. To be signed by applicant	Signature……..			
8. Name of the natural person who has signed along with designation and official seal, if any.	(……)			
	To, The Controller of Patents, The Patent Office, at ……”.			

रजिस्ट्री सं. डी.एल.-33004 / 99 REGISTERED NO. DL-33004/99

भारत का राजपत्र
The Gazette of India

असाधारण
EXTRAORDINARY
भाग II — खण्ड 1
PART II — Section 1
प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं. 60] नई दिल्ली, बृहस्पतिवार, दिसम्बर 30, 1999 / पौष 9, 1921
No. 60] NEW DELHI, THURSDAY, DECEMBER, 30, 1999 / PAUSA 9, 1921

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 30th December, 1999/Pausa 9, 1921 (Saka)

The following Act of Parliament received the assent of the President on the 30th December, 1999, and is hereby published for general information:—

THE TRADE MARKS ACT, 1999

No. 47 OF 1999

[*30th December, 1999*]

An Act to amend and consolidate the law relating to trade marks, to provide for registration and better protection of trade marks for goods and services and for the prevention of the use of fraudulent marks.

BE it enacted by Parliament in the Fiftieth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. *(1)* This Act may be called the Trade Marks Act, 1999. Short title extent and commencement

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act, and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. (1) In this Act, unless the context otherwise requires,— Definitions and interpretation

(a) "Appellate Board" means the Appellate Board established under section 83.

(b) "assignment" means an assignment in writing by act of the parties concerned.

(c) "associated trade marks" means trade marks deemed to be or required to be, registered as associated trade marks under this Act:

(d) "Bench" means a Bench of the Appellate Board :

(e) "certificate trade mark" means a mark capable of distinguishing the goods or services in connection with which it is used in the course of trade which are certified by the proprietor of the mark in respect of origin, material, mode of manufacture of goods or performance of services quality, accuracy or other characteristics from goods or services not so certified and registrable as such under Chapter IX in respect of those goods or services in the name, as proprietor of the certification trade mark, of that person

(f) "Chairman" means the chairman of the appellate Board :

(g) "collective mark" means a trade mark distinguishing the goods or services of members of an association of persons (not being a partnership within the meaning of the Indian Partnership Act. 1932) which is the proprietor of the mark from those of others : 9 of 1932

(h) "deceptively similar" - A mark shall be deemed to be deceptively similar to another mark if it is so nearly resembles that other mark as to be likely to deceive or cause confusion:

(i) "false trade description" means--

(I) a trade description which is untrue or misleading in a material respect as regards the goods or services to which it is applied : or

(II) any alteration of a trade description as regards the good or services to which it is applied, whether by way of addition, effacement or otherwise, where that alteration makes the description untrue or misleading in a material respect: or

(III) any trade description which denotes or implies that there are contained as regards the goods to which it is applied more yards or metres than there are contained therein standard yards or standard metres: or

(IV) any marks or arrangement or combination thereof when applied--

(a) to goods in such a manner as to be likely to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose merchandise or manufacture they really are :

(b) in relation to services in such a manner as to be likely to lead persons to believe that the services are provided or rendered by some person other than the person, whose services they really are: or

(V) any false name or initials of a person applied to goods or services in such manner as if such name or initial were a trade description in any case where the name or initials -

(a) is or are not a trade mark or part of a trade mark: and

(b) is or are identical with or deceptively similar to the name or initials of a person carrying on business in connection with goods or services of the same description or both and who has not authorized the use of such name or initials : and

(c) is or are either the name or initials of a ficitious person or some person not bona fide carrying on business in connection with such goods or services

and the fact that a description is a trade mark or part of a trade mark shall not prevent such trade description being a flase trade description within the meaning of this Act

(j) "goods" means anything which is the subject of trade or manufacture :

(k) "Judicial Member" means a Member of the Appellate Board appointed as such under this Act, and includes the Chairman and Vice Chairman.

(I) "limitations" (with its grammatical variatiations) means any limitation of the exclusive right to the use of a trade mark given by the registration of a person as proprietor thereof, including limitations of that right as to mode or area of use within India or outside India:

(m) "mark" includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any combination thereof :

(n) "Member" means a Judicial Member or a Technical Member of the Appellate Board and includes the Chairman and the Vice-Chairman:

(o) "name" includes any abbreviation of a name :

(p) "notify" means to notify in the Trade Mark Journal published by the Registrar

(q) "package" includes any case box, container, covering, folder, receptacle, vessel, casket, bottle, wrapper, label, band, ticket, reel, frame, capsule, cap, lid, stopper and cork:

(r) "permitted use". in relation to a registered trade mark, means the use of trade mark

(i) by a registered user of the trade mark in relation to goods or services

(a) with which he is connected in the course of trade : and

(b) in respect of which in the trade mark remains registered for the time being : and

(c) for which he is registered as registered user and

(d) which complies with any conditions or limitation to which the registration of registered user is subject : or

(ii) by a person other than the registered proprietor and registered user in relation to goods or services.

(a) with which he is connected in the course of trade and

(b) in respect of which the trade mark remains registered for the time being : and

(c) by consent of such registered proprietor in a written agreement and

(d) which complies with any conditions or limination to which such user is subject and to which the registration of the trade mark is subject :

(s) "prescribed" means prescribed by rules made under this Act:

(t) "register" means the Register of Trade Marks referred to in sub-section (1) of section 6:

(u) :registered" (with its grammatical variations) means registered under this Act:

(v) registered proprietor". in relation to a trade mark, means the person for the time being entered in the register as propriety of the trade marks:

(w) "registered trade mark" means a trade mark which is actually on the register and remaining in force.

(x) "registered user" means a person who is for the time being registered as such under section 49:

(y) "Registrar" means the Registrar of Trade Marks referred to in section 3"

(z) "service" means service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial matters such as banking, communication, education, financing, insurance, chit funds, real estate, transport, storage, material treatment, processing, supply of electrical or other energy, boarding, loadging, entertainment, amusement, construction, repair, conveying of news or information and advertising:

(za) "trade description" means any description, statement or other indication direct or indirect

(i) as to the number, quantity, measure, gauge or weight of any goods or

(ii) as to the standard of quality of any goods or services according to a classification commonly used or recognised in the trade: or

(iii) as to fitness for the purpose, strength, performances or behaviour of any goods, being " drug" as defined in the Drugs and Cosmetics Act, 1940 or "food" as defined in the Prevention of food Adulteration act, 1954 ; or

23 of 1940
37 of 1954

(iv) as to the place or country in which or the time at which any goods or services were made, produced or provided as the case may be : or

(v) as to the name and address or other indication of the identity of the manufacturer or of the person providing the services or of the person for whom the goods are manufactured or services are provided : or

(vi) as to the mode of manufacture or producing any goods or providing services: or

(vii) as to be material of which any goods are composed : or

(viii) as to any goods being the subject of an existing patent, privilege or copyright,

and includes-

(a) any description as to the use of any mark which according to the custom of the trade is commonly taken to be an indication of any of the above matters :

(b) the description as to any imported goods contained in any bill of entry or shipping bills:

(c) any other description which is likely to be misunderstood or mistaken for all or any of the said matters:

(zb) "trade mark" means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours: and--

(i) in relation to Chapter XII (other than section 107), a registered trade mark or a mark used in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right as proprietor to use the mark: and

(ii) in relation to other provision of this Act, a mark used or proposed to be used in relation to goods or services for the purpose of indicating or so to indicate a connection in the course of trade between the goods or services as the case may be, and some person having the right, either as proprietor or by way of permitted user, to use the mark whether with or without any indication of the identity of that person , and includes a certification trade mark or collective mark:

(zc) "transmission" means transmission by operation of law, devolution on the personal representative of a deceased person and any other mode of transfer, not being assignment;

(zd) " Technical Member" means a Member who is not a Judicial Member;

(ze) "tribunal" means the Registrar or, as the case may be, the Appellate Board, before which the proceeding concerned is pending :

(zf) "Vice-Chairman" means a Vice-Chairman of the Appellate Board:

(zg) "well Known trade mark", in relation to any goods or services, means an mark which has become so to the substantial segment of the public which uses such goods or receives such services that the use of such mark in relation to other goods or services would be likely to be taken as indicating a connection in the course of trade or rendering of services between those goods or services and a person using the mark in relation to the first- mentioned goods or services.

(2) In this Act, unless the context otherwise requires, any reference—

(a) to "trade mark" shall include reference to "collective mark" or "certification" trade mark"

(b) to the use of mark shall be construed as a reference to the use of printed or other visual representation of the mark;

(c) to the use of a mark-

(i) in relation to goods, shall be construed as a reference to the use of the mark upon, or in any physical or in any other relation whatsoever, to such goods;

(ii) in relation to services, shall be construed as a reference to the use of the mark as or as part of any statement about the availability, provision or performance of such services;

(d) to the Registrar shall be construed as including a reference to any officer when discharging the functions of the Registrar in pursuance of sub-section (2) of section 3;

(e) to the Trade Mark Registry shall be construed as including a reference to any officer to the Trade Mark Registry.

(3) For the purpose of this Act, goods and services are associated with each other if it is likely that those goods might be sold or otherwise traded in and those services might be provided by the same business and so with descriptions of goods and descriptions of services.

43 of 1958

(4) For the purpose of this Act, " existing registered Trade Mark" means a trade mark registered under the Trade and Merchandise Act, 1958 immediately before the commencement of this Act.

CHAPTER II

THE REGISTER AND CONDITIONS FOR REGISTRATION

Appointment of Registrar and other officers.

3. (1) The Central Government may by notification in the Official Gazette, appoint a person to be known as the Controller- General of Patents, Designs and Trade Marks, who shall be the Registrar of Trade Marks for the purposes of this Act.

(2). The Central Government may appoint such other officers with such designations as it thinks fit for the purpose of discharging, under the superintendence and direction of the Registrar, such function of the Registrar under this Act as he may from time to time authorised them to discharge.

Power of Registrar to withdraw or transfer cases etc.

4. Without prejudice to the generality of the provisions of sub-section (2) of section 3, the Registrar may, by order in writing and for reasons to be recorded therein, withdraw any matter pending before an officer appointed under the said sub-section (2) and deal with such matter himself either *de nova* or from the stage it was so withdrawn or transfer the same to another officer so appointed who may, subject to special directions in the order of transfer, proceed with the matter either *de nova* or from the stage it was so transferred.

Trade Marks Registry and offices thereof

5. (1) For the purposes of this Act, there shall be a trade marks registry and the Trade marks Registry established under the Trade and Merchandise Marks Act, 1958 shall be the Trade Marks Registry under this Act. 43 of 1958

(2) The head office of the Trade Marks Registry shall be at such place as the Central Government may specify, and for the purpose of facilitating the registration of trade marks, there may be established at such places as the Central Government may think fit branch offices of the Trade Marks Registry.

(3) The Central Government may, by notification in the official Gazatte, define the territorial limits within which an office of the Trade Marks Registry may exercise its functions.

(4) There shall be a seal of the Trade Marks Registry

The Register of Trade Marks.

6. (1) For the purposes of this Act, a record called the Register of Trade Marks shall be kept at the head office of the Trade Marks Registry, wherein shall be entered all registered trade marks with the names, addresses and description of the proprietors, notification of assignment and transmissions, the names, addersses and descriptions of registered users, conditions, limitations and such other matter relating to registered trade marks, as may be prescribed.

(2) Notwithstanding anything contained in sub-section *(1)*, it shall be lawful for the Registrar to keep the records wholly or partly in computer floppies, diskattes or in any other electronic form subject to such safeguards as may be prescribed.

(3) Where such register is maintained wholly or partly on computer under subsection *(2)* any reference in this Act to entry in the register shall be construed as the reference to any entry as maintained on computer or in any other electronic form

(4) No notice of any trust , express or implied or constructive , shall be entered in the register and no such notice shall be receivable by the Registrar.

(5) The Register shall be kept under the control and management of the Registrar.

(6) There shall be Kept at each branch office of the Trade Marks Registry a copy of the register and such of the other documents mentioned in section 148 as the Central Government may, by notification in the Official Gazette, direct.

(7) The Register of Trade Marks , both Part A and Part B, existing at the commencement of this Act, shall be incorporated in and form part of the register under this Act.

Classification of goods and services

7. (1) The Register shall classify goods and services, as far as may be , in accordance with the international classification of goods and services for the purposes of registration of Trade Marks.

(2) Any question arising as to the class within which any goods or services falls shall be determined by the Registrar whose decision shall be final.

Publication of alphabetical index

8. (1) The Registrar may publish in the prescribed manner an alphabetical index of classification of goods and services referred to in section 7.

(2) Where any goods or services are not specified in the alphabetical index of goods and services published under sub-section *(1)*, the classification of goods or services shall be determined by the Registrar in accordance with sub-section *(2)* of section 7.

Absolute grounds for refusal of registation

9. (1) The trade marks—

(a) which are devoid of any distinctive character, that is to say, not capable of distinguishing the goods or services of one person from those of another person:

(b) which consist exclusively of marks or indications which may serve in trade to designate the kind, quality, quantity, intended purpose, values, geographical origin or the time of production of the goods or rendering of the service or other characteristics of the goods or services;

(c) which consist exclusively of marks or indications which have become customary in the current language or in the bona fide and established practices of the trade.

Shall not be registered :

Provided that a trade mark shall not be refused registration if before the date of application for registration it has acquired a distinctive character as a result of the use made of it or is a well-known trade mark.

(2) A mark shall not be registered as a trade mark if ----

(a) it is of such nature as to deceive the public or cause confusion:

(b) it contains or comprises of any matter likely to hurt the religious susceptibilities of any class or section of the citizens of India;

(c) it comprises or contains scandalous or obscene matter;

12 of 1950

(d) its use is prohibited under the Emblems and Names (Prevention of Improper Use) Act, 1950.

(3) A mark shall not be registered as a trade mark if it consists exclusively of-

(a) the shape of goods which results from the nature of the goods themselves;

or

(b) the shape of goods which is necessary to obtain a technical result; or

(c) the shape which gives substantial value to the goods.

Explanation --- For the purpose of this section, the nature of goods or services in relation to which the trade mark is used or proposed to be used shall not be a ground for refusal of registration.

Limitation as to colour

10. (1) A trade mark may be limited wholly or in part to any combination of colours and any such limitation shall be taken into consideration by the tribunal having to decide on the distinctive character of the trade mark.

(2) So far as a trade mark is registered without limitation as to colour, it shall be deemed to be registered for all colours.

Relative grounds for refusal of registration

11. (1) Save as provided in section 12, a trade mark shall not be registered if, because of —

(a) its identity with an earlier trade mark and similarity of goods or services covered by the trade mark; or

(b) its similarity to an earlier trade mark and the identity or similarity of the goods or services covered by the trade mark.

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark

(2) A trade mark which----

(a) is identical with or similar to an earlier trade mark and

(b) is to be registered for goods or services which are not similar to those for which the earlier trade mark is registered in the name of a different proprietor.

shall not be registered if or to the extent the earlier trade mark is a well-known trade mark in India and the use of the later mark without due cause would take unfair advantage of or be detrimental to the distinctive character or repute of the earlier trade mark.

(3) A trade mark shall not be registered if, or to the extend that, its use in India is liable to be prevented ---

(a) by virtue of any law in particular the law of passing off protecting an unregistered trade mark used in the course of trade: or

(b) by virtue of law of copyright.

(4) Nothing in this section shall prevent the registration of a trade mark where the proprietor of the earlier trade mark or other earlier right consents to the registration, and in such case the Registrar may register the mark under special circumstances under section 12..

Explanation--- For the purposes of this section, earlier trade mark means---

(a) a registered trade mark or convention application referred to in section 154 which has a date of application earlier than that of the trade mark in question taking account, where appropriate, of the prioprities claimed in respect of the trade marks:

(b) a trade mark which, on the date of the application for registration of the trade mark in question, or where appropriate, of the priority claimed in respect of the application, was entitled to protection as a well-known trade mark.

(5) A trade mark shall not be refused registration on the grounds specified in sub-sections *(2)* and *(3)*, unless objection on any one or more of those grounds is raised in opposition proceedings by the proprietor of the earlier trade mark.

(6) The Registrar shall, while determing whether a trade mark is a well-known trade mark, take into account any fact which he consider relevant for determining a trade mark as a well-known trade mark including--

(i) the knowledge or recognition of that trade mark in the relevant section of the public including knowledge in India obtained as a result of promotion of the trade mark:

(ii) the duration, extent and geographical area of any use of that trade mark:

(iii) the duration, extent and geographical area of any promotion of the trade mark, including advertising or publicity and presentation, at fairs or exhibition of the goods or services to which the trade mark applies,

(iv) the duration and geographical area of any registration of or any application for registration of that trade mark under this Act to the extent they reflect the use or recognition of the trade mark;

(v) the record of successful enforcement of, the rights in that trade mark, in particular, the extend to which the trade mark has been recognised as a well-known trade mark by any court or Registrar under that record

(7) The Registrar shall, while determining as to whether a trade mark is known or recognised in a relevant section of the public for the purposes of sub-section (6), take into account

(i) the number of actual or potential consumers of the goods or services

(ii) the number of persons involved in the channels of distribution of the goods or services,

(iii) the business circles dealing with the goods or services to which that trade

mark applies

(8) Where a trade mark has been determined to be well-known in at least one relevant section of the public in India by any court or Registrar, the Registrar shall consider that trade mark as a well known trade mark for registration under this Act.

(9) The Registrar shall not require as a condition for determining whether a trade mark is a well-known trade mark, any of the following, namely----

(i) that the trade mark has been used in India:

(ii) that the trade mark has been registered:

(iii) that the application for registration of the trade mark has been filed in India:

(iv) that the trade mark---

(a) is well-known in : or

(b) has been registered in; or

(c) in respect of which an application for registration has been filed in.

any jurisdiction other than India: or

(v) that the trade mark is well-known to the public at large in India.

(10) While considering an application for registration of a trade mark and opposition filed in respect thereof, the Registrar shall---

(i) protect a well-known trade mark against the identical or similar trade marks:

(ii) take into consideration the bad faith involved either of the applicant or the opponent affecting the right relating to the trade mark.

(11) Where a trade mark has been registered in good faith disclosing the material information to the Registrar or where right to a trade mark has been acquired through use in good faith before the commencement of this Act, then, nothing in this Act shall prejudice the validity of the registration of that trade mark or right to use that trade mark on the ground that such trade mark is identical with or similar to a well-known trade mark.

Registrartion in the case of honest concurrent use. etc.

(12) In the case of honest concurrent use or of other special circumstance which in the opinion of the Registrar, make it proper so to do, he may permit the registration by more than one proprietor of the trade mark which are identical or similar (whether any such trade mark is already registered or not) in respect of the same or similar goods or services, subject to such conditions and limitations, if any, as the Registrar may think fit to impose.

Prohibition of registration of names of chemical elements or internaltional non-proprietary names.

(13) No word---

(a) which is the commonly used and accepted name of any single chemical element or any single chemical compound (as distinguished form a mixture) in respect of a chemical substance preparation, or

(b) which is declared by the World Health Organisation and notified in the prescribed manner by the Registrar from time to time, as an international non-proprietary name or which is deceptively similar to such name.

Shall be registered as a trade mark and any such registration shall be deemed for the purpose of section 57 to be an entry made in the register without sufficient cause or an entry wrongly remaining on the register, as the circumstances may require.

Use of names and representa-tions of living persons or persons recently dead

(14) Where an application is made for the registration of a trade mark which falsely suggests a connection with any living person, or a person whose death took place within twenty years prior to the date of application for registration of the trademark, the Registrar may, before he proceeds with the application, require the applicant to furnish him with the

consent in writing of such living person or, as the case may be, of the legal representative of the deceased person to the connection appearing on the trade mark, and may refuse to proceed with the application unless the applicant furnishes the registrar with such consent.

Registrartion of parts of trade marks and of trade marks as a series

(15) (1) Where the proprietor of a trade mark claims to be entitled to the exclusive use of any part thereof separately, he may apply to register the whole and the part as separate trade marks.

(2) Each such separate trade mark shall satisfy all the conditions applying to and have all the incidents of, an independent trade mark.

(3) Where a person claiming to be the the proprietor of several trade marks in respect of the same or similar goods or services or description of goods or description of services which, while resembling each other in the material particulars thereof, yet differ in respect of---

(a) statement of the goods or services in relation to which they are respectively used or proposed to be used; or

(b) statement of number, price, quality or names of places; or

(c) other matter of a non-distinctive character which does not substantially affect the identity of the trade mark; or

(d) colour,

Secks to register those trade marks, they may be registered as a series in one registration.

Registrartion of trade mark as associated trade marks

(16) *(1)* Where a trade mark which is registered, or is the subject of an application for registration, in respect of any goods or services is identical with another trade mark which is registered, or is the subject of an application of an application for registration, in the name of the same proprietor in respect of the same goods or description of goods or same services or description of services or so nearly resembles it as to be likely to deceive or cause confusion if used by a person other than the proprietor, the Registrar may, at any time, require that the trade marks shall be entered on the register as associated trade marks.

(2) Where there is an identify or near resemblance of marks that are registered, or are the subject of application for registration in the name of the same proprietor, in respect of goods and in respect of services which are associated with those goods or goods of that description and with those services or services of that description, sub-section (1) shall apply as it applies as where there is an identity or near resemblance of marks that are registered, or are the subject of applications for registration in the name of the same proprietor in respect of the same goods or description of goods or same services or description of services.

(3) Where a trade mark and any part thereof, are, in accordance with the provisions of sub-section *(1)* of section 15, registered as separate trade marks in the name of the same proprietor, they shall be deemed to be, and shall be registered as, associated trade marks.

(4) All trade marks registered in accordance with the provisions of sub-section *(3)* of section 15 as a series in one registration shall be deemed to be, and shall be registered as, associated trade marks.

(5) On application made in the prescribed manner by the registered proprietor of two or more trade marks registered as associated trade marks, the Registrar may dissolve the association as respect any of them if he is satisfied that there would be no likelihood of deception or confusion being caused if that trade mark were used by any other person in relation to any of the goods or services or both in respect of which it is registered, and may amend the register accordingly.

Effect of registration of parts of a mark

(17) (1) When a trade mark consists of several matters, its registration shall confer on the proprietor exclusive right to the use of the trade mark taken as a whole.

(2) Notwithstanding any thing contained in sub-section *(1)*, when a trade mark

(a) contains any part-----

(i) which is not the subject of a separate application by the proprietor for registration as a trade mark: or

(ii) which is not separately registered by the proprietor as a trade mark : or

(b) Contain any matter which is common to the trade or is other wise of a non - distinctive character.

the registration thereof shall not confer any exclusive right in the matter forming only a part of the whole of the trade mark so registered

CHAPTER III

Procedure For And Duration Of Registration

Application for registration

18 (1) Any person claiming to be the proprietor of a trade mark used or proposed to be used by him, who is desirous of registering it , shall apply in writing to the Registrar in the prescribed manner for the registration of his trade mark

(2) A single application may be made for registration of a trade mark for different classes of goods and services and fee payable therefor shall be in respect of each such class of goods or services.

(3) Every application under sub-section *(1)* shall be filed in the office of the Trade Marks Registry within whose territorial limits the principal place of business in India of the applicant or in the case of joint applicants the principal place of business in India of the applicant whose name is first mentioned in the application as having a place of business in India, is situate :

Provided that where the applicant or any of the joint applicants does not carry on business in India, the application shall be filed in the office of the Trade Marks Registry within whose territorial limits the place mentioned in the address for services in India as disclosed in the application, is situate.

(4) Subject to the provisions of this Act, the Registrar may refuse the application or may accept it absolutely or subject to such amendments, modification, conditions or limitations, if any as he may think fit.

(5) In the case of a refusal or conditional acceptance of an application, the Registrar shall record in writing the grounds for such refusal or conditional acceptance and the materials used by him in arriving at his decision.

Withdrawal of acceptance

19. Where after the acceptance of an application for registration of a trade mark but before its registration, the Registrar is satisfied---

(a) that the application has been accepted in error: or

(b) that in the circumstances of the case the trade mark should not be registered or should be registered subject to conditions or limitations or to conditions additional to or different from the conditions or limitations subject to which the application has been accepted.

the Registrar may, after hearing the applicant if he so desires, withdraw the acceptance and proceed as if the application has not been accepted.

Advertisement of application

20. (1) When an application for registration of a trade mark has been accepted whether absolutely or subject to conditions or limitations, the Registrar shall, as soon as may be after acceptance, cause the application as accepted together with the conditions or limitations

if any, subject to which it has been accepted, to be advertised in the prescribed manner :

Provided that, the Registrar may cause the application to be advertised before acceptance if it relates to a trade mark to which sub-section *(1)* of section 9 and sub-sections *(1)* and *(2)* of section 11 apply, or in any other case where it appears to him that it is expendient by reason of any exceptional circumstances so to, do.

(2) Where-----

(a) an applicantion has been advertised before acceptance under sub-section *(1)* or

(b) after advertisement of an application---

(i) an error in the application has been corrected; or

(ii) the application has been permitted to be amended under section 22.

the Registrar may in his discretion cause the application to be advertised again or in any case falling under clause (b) may, instead of causing the application to be advertised again, notify in the prescibed manner the correction or amendment made in the application.

Opposition to registration

21. (1) Any person may, within three months from the date of the advertisement or re-advertisement of an application for registration or within such further period, not exceeding one month in the aggregate, as the Registrar, on application made to him in the prescribed manner and on payment of the prescribed fee, allows, give notive in writing in the prescribed manner to the Registrar of opposition to the registration.

(2) The Registrar shall serve a copy of the notice on the applicant for registration and, within two months from the receipt by the applicant of such copy of the notice of opposition, the applicant shall send to the Registrar, in the prescribed manner a counter statement of the grounds on which he relies for his application, and if he does not do so he shall be deemed to have abandoned his application.

(3) If the applicant sends such counter statement the Registrar shall serve a copy thereof on the person giving notice of opposition.

(4) Any evidence upon which the opponent and the applicant may rely shall be submitted in the prescribed manner and within the prescribed time to the Registrar, and the Registrar Shall give an opportunity to them to be herd, if they so desire.

(5) The register shall, after hearing the parties, if so required, and considering the evidence, decide whether and subject to what conditions or limitations, if any, the registration is to be permitted, and may take into account a ground of objection whether relied upon by the opponent or not.

(6) Where a person giving notice of opposition or an applicant sending a counter statement after receipt of a copy of such notice neither resides nor carries on business in India, the Registrar may require him to give security for the costs of proceedings before him, and in dafault of such security being duly given, may treat the opposition or application, as the case may be, as abandoned.

(7) The Registrar may, on request, permit correction of any error in, or any amendment of, a notice of opposition or a counter-statement on such terms as he thinks just.

Correction and amendment.

22. The Registrar may, on such terms as he thinks just, at anytime, whether before or after acceptance of an application for registration under section 18, permit the correction of

any error in or in connection with the application or permit an amendment of the application.

provided that if an amendment is made to a single application referred to in subsection (2) of section 18 involving division of such application into two or more applications, the date of making of the initial application shall be deemed to be the date of making of the divided applications so divided.

Registration

23. (1) Subject to the provision of section 19, when an application for registration of a trade mark has been accepted and either----

(a) the application has not been opposed and the time for notice of opposition has expired or

(b) the application has been opposed and the opposition has been decided in favour of the applicant.

the Registrar shall, unless the Central Government otherwise directs, register the said trade mark and the trade mark when registered shall be registered as of the date of the making of the said application and that date shall, subject to the provisions of section 154, be deemed to be the date of registration.

(2) On the registration of a trade mark the Registrar shall issue to the applicant a certificate in the prescribed form of the registration thereof, sealed with the seal of the Trade Marks Registry.

(3) Where registration of a trade mark is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice to the applicant in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf in the notice.

(4) The Registrar may amend the register or a certificate of registration for the purpose of correcting a clerical error or an obvious mistake.

Jointly owned trade marks

24. (1) Save as provided in sub-section (2), nothing in this Act shall authorise the registration of two or more persons who use a trade mark independently, or propose to use it, as joint proprietors there of.

(2) Where the relations between two or more persons interested in a trade mark are such that no one of them is entitled as between himself and the other or others of them to use it except---

(a) on behalf of both or all of them; or

(b) in relation to an article or service with which both or all of them are connected in the course of trade.

those persons may be registered as joint proprietors of the trade mark, and this act shall have effect in relation to any right to the use of the trade mark vested in those persons as if those rights had been vested in a single person.

Duration, renewal removal and restoration of registration

25. (1) The registration of a trade mark, after the commencement of this Act shall be for a period of ten years, but may be renewed from time to time in accordance with the provisions of this section.

(2) The Registrar shall, on application made by the registered proprietor of a trade mark in the prescribed manner and within the prescribed period and subject to payment of the prescribed fee, renew the registration of the trade mark for a period of ten years from the date of expiration of the original registration or of the last renewal of registration. as the case may be (which date is in this section referred to as the expiration of the last registration).

(3) At the prescribed time before the expiration of the last registration of a trade mark the Registrar shall send notice in the prescribed manner to the registered proprietor

of the date of expiration and the condition as to payment of fees and otherwise upon which a renewal of registration may be obtained, and, if at the expiration of the time prescribed in that behalf those conditions have not been duly complied with the Registrar may remove the trade from the register:

Provided that the Registrar shall not remove the trade mark from the register if an application is made in the prescribed form and the prescribed fee and surcharge is paid within six months from the expiration of the last registration of the trade mark and shall renew the registration of the trade mark for a period of ten years under sub-section (2)

(4) where a trade mark has been removed from the register for non-payment of the prescribed fee, the Registrar shall, after six months and within one year from the expiration of the last registration of the trade mark, on receipt of an application in the prescribed form and on payment of the prescribed fee, if satisfied that it is just so to do, restore the trade mark to the register and renew the registration of the trade mark either generally or subject to such conditions or limitations as he thinks fit to impose, for a period of ten years from the expiration of the last registration.

Effect of removal from register for failure to pay fee for renewal

26 Where a trade mark has been removed from the register for failure to pay the fee for renewal, it shall nevethless, for the purpose of any application for the registration of another trade mark during one year, next after the date of the removal, be deemed to be a trade mark already on the register, unless the tribunal is satisfied either

(a) that there has been no bona fide trade use of trade mark which has been removed during the two years immediately preceding its removal; or

(b) that no deception or confusion would be likely to arise from the use of the trademark which is the subject of the application for registration by reason of any previous use of the trade mark which has been removed.

CHAPTER IV

EFFECT OF REGISTRATION

No action for infringeent of unregistered trade mark

27. (1) No person shall be entitled to institute any proceeding to prevent, or to recover damages for, the infringement of an unregistered trade mark.

(2) Nothing in this Act shall be deemed to affect rights of action against any person for passing of goods or services as the goods of another person or as services provided by another person, or the remedies in respect thereof.

Rights confered by registration

28 (1) Subject to the other provisions of this Act, the registration of a trade mark shall, if valid, give to the registered proprietor of the trade mark the exclusive right to the use of the trade mark in relation to the goods or services in respect of which the trade mark is registered and to obtain relief in respect of infringement of trade mark in the manner provided by this Act.

(2) The exclusive right to the use of a trade mark given under sub-section (1) shall be subject to any conditions and limitations to which the registration is subject.

(3) Where two or more persons are registered proprietors of trademarks, which are identical with or nearly resemble each other, the exclusive right to the use of any of those trade marks shall not (except so far as their respective rights are subject to any conditions or limitations entered on the register) be deemed to have been acquired by any one of those persons as against any other of those persons merely by registration of the trade marks but each of those persons has otherwise the same rights as against other persons (not being registered users using by way of permitted use) as he would have if he were the sole registered proprietor.

Infringement of registered trade marks.

29 (1) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which is identical with, or deceptively similar to the trade mark in relation to goods or services in respect of which the trade mark is registered and in such manner as to render the use of the mark likely to be taken as being used as a trade mark:

Limits on effect or registered trade mark

(2) A registered trademark is infringed by a person who, not be being a registered proprietor or a person using by way of permitted use, uses in the course of trade a mark which because of --

(a) its identity with the registered trade mark and the similarity of the goods or services covered by such registered trade mark : or

(b) its similarity to the registered trade mark and the identity or similarity of the goods or services covered by such registered trade mark: or

(c) its identity with the registered trade mark and the identity of the goods or services covered by such registered trade mark.

is likely to cause confusion on the part of the pubic , or which is likely to have an association with the registered trade mark.

(3) In any case falling under clause (c) of sub-section (2), the court shall presume that its is likely to cause confusion on the part of the public.

(4) A registered trademark is infringed by a person who not being a registered Proprietor or a person using by way of permitted use, uses in the course of trade, a mark which-

(a) is identical with or similar to the registered trade mark and

(b) is used in relation to goods or services which are not similar to those for which the trade mark is registered : and

(c) the registered trade mark has a reputation in India and the use of the mark without due cause takes unfair advantage of or is detrimental to, the distinctive character or repute of the registered trade mark.

(5) A registered trademark is infringed by a person if he uses such registered trade mark, as his trade name or part of his trade name, or name of his business concern or part of the name of his business concern dealing in goods or services in respect of which the trade mark is registered.

(6) For the purposes of this section, a person uses a registered mark, if in particular he---

(a) affixes it to goods or the packaging thereof:

(b) offers or exposes goods for sale puts them on the market, or stock them for those purposes under the registered trade mark, or offers or supplies services under the registered trade mark:

(c) imports or exports goods under the mark: or

(d) uses the registered trade mark on business papers or in advertising.

(7) A registered trademark is infringed by a person who applies such registered trade mark to a material intended to be used for labelling or packaging goods, as a business paper, or for advertising goods or services, provided such person, when he applied the mark, knew or had reason to believe that the application of the mark was not duly authorised by the proprietor or a licensee.

(8) A registered trade mark is infringed by any advertising of the trade mark if such advertising---

(a) takes unfair advantage of and is contrary to honest practices in industrial or commercial matters or

(b) is detrimental to its distinctive character or

(c) is against the reputation of the trade mark.

Limits on effect of registered trade mark

(9) Where the distinctive elements of a registered trade mark consist of or include words, the trade mark maybe infringed by the spoken use of those words as well as by their visual representation and reference in this section to the use a mark shall be construed accordingly.

30 (1) Nothing in section 29 shall be construed as preventing the use of a registered trade mark by any person for the purpose of identifying goods or services as those of the proprietor provided the use---

(a) is in accordance with honest practices in industrial or commercial matters. and

(b) is not such as to take unfair advantage of or be detrimental to the distinctive character or repute of the trade mark.

(2) A registered trade mark is not infringed where--

(a) the use in relation to goods or services indicates the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services or other characteristics of goods or services.

(b) a trade mark is registered subject to any conditions or limitations, the use of the trade mark in any manner in relation to goods to be sold or otherwise traded in, in any place, or in relation to goods to be exported to any market or in relation to services for use or available or acceptance in any place or country outside india or in any other circumstances, to which, having regards to those conditions or limitations, the registration does not extend:

(c) the use by a person of a trade mark---

(i) in relation to goods connected in the course of trade with the proprietor or a registered user of the trade mark if, as to those goods or a bulk or which they form part, the registered proprietor or the registered user conforming to the permitted use has applied the trade mark and has not subsequently removed or obliterated it, or has at any time expressly or impliedly consented to the use of the trade mark; or

(ii) in relation to services to which the proprietor of such mark or of a registered user conforming to the permitted use has applied the mark, where the purpose and effect of the use of mark is to indicate, in accordance with the fact, that those services have been performed by the proprietor or a registered user of the mark:

(d) the use of a trade mark by a person in relation to goods adapted to form part of, or to be accessory to, other goods or services in relation to which the trade mark has been used without infringement of the right given by registration under this Act or might for the time being be so used, if the use of the trade mark is reasonably necessary in order to indicate that the goods or services are so adapted; and neither the purpose nor the effect of the use of the trade mark is to indicate, otherwise than in accordance with the fact, a connection in the course of trade between any person and the goods or services as the case may be:

(e) the use of a registered trade mark, being one of two or more trade marks registered under this Act which are identical or nearly resemble each other, in exercise of the right to the use of that trade mark given by registration under this Act.

(3) Where the goods bearing a registered trade mark are lawfully acquired by a person, the sale of the goods in the market or otherwise dealing in those goods by that person or by a person claiming under or through him is not infringement of a trade by reason only of----

(a) the registered trade mark having been assigned by the registered proprietor to some other person, after the acquisition of those goods: or

(b) the goods having been put on the market under the registered trade mark by the proprietor or with his consent.

(4) Sub-section (3) shall not apply where there exists legitimate reasons for the proprietor to oppose further dealings in the goods in particular, where the condition of the goods has been changed or impaired after they have been put on the market

Registration to be prima facie evidence of validity

31. (1) In all legal proceedings relating to a trade mark registered under this Act (including applications under section 57), the original registration of the trade mark and of all subsequent assignments and transmissions of the trade mark shall be prima facie evidence of the validity thereof.

(2) In all legal proceedings as aforesaid a registered trade mark shall not be held to be invalid on the ground that it was not a registrable trade mark under section 9 except upon evidence of distinctiveness and that such evidence was not submitted to the Registrar before registration, if it is proved that the trade mark had been so used by the registered proprietor or his predecessor in title as to have become distinctive at the date of registration.

Protection of registration on ground of distinctiveness in certain cases

32. Where a trade mark is registered in breach of sub-section (1) of section 9, it shall not be declared invalid if, in consequence of the use which has been made of it, it has after registration and before commencement of any legal proceedings challenging the validity of such registration acquired a distinctive character in relation to the goods or services for which it is registered.

Effect of acquiescence

33. (1) Where the proprietor of an earlier trade mark has acquiesced for a continuous period of five years in the use of a registered trade mark, being aware of that use, he shall no longer be entitled on the basis of that earlier trade mark---

(a) to apply for a declaration that the registration of the later trade mark is invalid or

(b) to oppose the use of the later trade mark in relation to the goods or services in relation to which it has been so used.

unless the registration of the later trade mark was not applied in good faith.

(2) Where sub-section (1) applies, the proprietor of the later trade mark is not entitled to oppose the use of the earlier trade mark or as the case may be the exploitation of the earlier right, notwithstanding that the earlier trade mark may no longer be invoked against his later trade mark.

Saving for vested rights.

34. Nothing in this Act shall entitle the proprietor or a registered user of registered trade mark to interfere with or restrain the use by any person of a trade mark identical with or nearly resembling it in relation to goods or services in relation to which that person or a predecessor in title of his has continuously used that trade mark from a date prior---

(a) to the use of the first-mentioned trade mark in relation to those goods or services be the proprietor or a predecessor in title of his: or

(b) to the date of registration of the first-mentioned trade mark in respect of those goods or services in the name of the proprietor of a prodecessor in title of his:

Whichever is the earlier, and the Registrar shall not refuse (on such use being proved) to register the second mentioned trade mark by reason only of the registration of the first-mentioned trade mark

Saving for use of name, address or description of goods or services

35. Nothing in this Act shall entitle the proprietor or a registered user of a registered trade mark to interface with any bonafied use by a person of his own name or that of his place of business, or of the name, or of the name of the place of business, of any of his predecessores in business, or the use by any person of any bona fide description of the character or quality of his goods or services.

Saving for words used as name or description of an article or substance or service

36. (i) The registration of a trade mark shall not be deemed to have become invalid by reason only of any use after the date of the registration of any word or words which the trade mark contains or of which it consists as the name or description of an article or substance or service :

provided that, if it is proved either----

(a) that there is a well known and established use of the said word as the name or description of the article or substance or service by a person or persons carrying on trade therein, not being use in relation to goods or services connected in the course of trade with the proprietor or a registered user of the trade mark or (in the case of a certification trade mark) in relation to goods or services certified by proprietor: or

(b) that the article or substance was formerly manufactured under a patent that a period of two years or more after the cesser of the patent has elapsed and that the said word is the only practicable name or description of the article or substance.

the provisions of sub-section (2) shall apply

(2) Where the facts mentioned in clause (a) or clause (b) of the provision to subsection (1) are proved with respect to any words then

(a) for the purposes of any proceedings under section 57 if the trade mark consists solely of such words, the registration of the trade mark, so far as regards registration in respect of the article or substance in question or of any goods of the same description , or of services or of any services of the same description, as the case requires, shall be deemed to be an entry wrongly remaining on the register:

(b) for the purposes of any other legal proceedings relating to the trade mark

(i) if the trade mark consists solely of such words, all rights of the proprietor under this Act or any other law to the use of the trade mark: or

(ii) if the trade mark contains such words and other matter, all such right of the proprietor to the use of such words.

in relation to the article or substance or to any goods of the same description or to the service or to any services of the same description, as the case requires, shall be deemed to have ceased on the date on which the use mentioned in clause (a) of the proviso to subsection (1) first became well known and established or at the expiration of the period of two years mentioned in clause (b) of the said proviso.

CHAPTER V

ASSIGNMENT AND TRANSMISSION

Power of registered proprietor to assign and give receipt.

37. The person for the time being entered in the register as proprietor of a trade mark shall, subject to the provisions of this Act and to any rights appearing from the register to be vested in any other person, have power to assign the trade mark, and to give effectual receipts for any consideration for such assignment

Assignability and transmiss-bility of registered trade marks

38. Notwithstanding any thing in anyother law to the contrary a registered trade mark shall, subject to the provisions of this Chapter, be assignable and transmissible, whether with or without the goodwill of the business concerned and in respect either of all the goods or services in respect of which the trade mark is registered or of some only of those goods or services.

Assignability and transmiss-bility of unregistered trade marks

39. An unregistered trade mark may be assigned or transmitted with or without the goodwill of the business concerned.

Restriction on assignment or transmission where multiple exclusive rights would be created

40. (1) Notwithstanding anything in section 38 and 39, a trade mark shall not be assignable or tranmissible in a case in which as a result of the assignment or transmission there would in the circumstances subsist, whether under this Act or any other law, exclusive rights in more than one of the persons concerned to the use, in relation to----

(a) same goods or services :

(b) same description of goods or services

(c) goods or services or description of goods or services which are associated with each other.

of trade marks nearly resembling each other or of identical trade mark, if having regard to the similarity of the goods and services and to the similarity of the trade marks, the use of the trade marks in exercise of those rights would be likely to deceive or cause confusion:

Provided that an assignment or transmission shall not be deemed to be invalid under this sub-section if the exclusive rights subsisting as a result thereof in the persons concerned respectively are, having regard to limitation imposed thereon, such as not to be exercisable by two or more of those persons in relation to goods to be sold, or otherwise traded in, within India otherwise than for export therefrom or in relation to goods to be exported to the same market outside India or in relation to services for use at any place in India or any place outside India in relation to services available for acceptance in India.

(2) The proprietor of a registered trade mark who proposes to assign it may submit to the Registrar in the prescribed manner a statement of case setting out the circumstances and the Registrar may issue to him a certificate stating whether, having regard to the similarity of the goods or services and of the trade marks referred to in the case, the proposed assignment would or would not be invalid under sub-section (1) and a certificate so issued shall, subject to appeal and unless it is shown that the certificate was obtained by fraud or misrepresentation, be conclusive as to the validity or invalidity under subsection (1) of the assignment in so far as such validity or invalidity depends upon the facts set out in the case, but, as regards a certificate in favour of validity, only if application for the registration under section 45 of the title of the person becoming entitled is made within six month from the date on which the certificate is issued.

Restriction on assignment or transmission where exclusive rights would be created in different parts of India.

41. Notwithstanding anything in sections 38 and 39 a trade mark shall not be assignable or transmissible in a case in which as a result of the assignment or transmission there would in the circumstances subsist, whether under this Act or any other law

(a) an exclusive right in one of the persons concerned, to the use of the trade mark limited to use in relation to goods to be sold or otherwise traded in, in any place in India, or in relation to services for use, or services available for acceptance in any place in India: and

(b) an exclusive right in another of these persons concerned, to the use of a trade mark nearly resembling the first-mentioned trade mark or of an identical trade mark in relation to-

(i) the same goods or services, or

(ii) the same description of goods or services or

(iii) services which are associated with those goods or goods of that description or goods which are associated with those services or services of that description

limited to use in relation to goods to be sold or otherwise traded in, or services for use, or available for acceptance, in any other place in India.

Provided that in any such case, on application in the prescribed manner by the proprietor of a trade mark who proposes to assign it, or by a person who claims that a registered trade mark

has been transmitted to him or to a predecessor in title of his since the commencement of this Act, the Registrar, if he is satisfied that in all the circumstances the use of the trade mark in exercise of the said right would not be contrary to the public interest may approve the assignment or transmission and an assignment or transmission so approved shall not unless it is shown that the approval was obtained by fraud or misrepresentation be deemed to be invalid under this section or section 40 if application for the registration under section 45 of the title of the person becoming entitled is made within six months from the date on which the approval is given or in the case of a transmission, was made before that date.

Conditions for assignment otherwise than in connection with the good will of a business

42. Where an assignment of a trade mark whether registered or unregistered is made otherwise than in connection with the good will of the business in which the mark has been or is used, the assignment shall not take effect unless the assignee, not later than the expiration of six months from the date of which the assignment is made or within such extended period, if any, not exceeding three months in the aggregate, as the Registrar may allow, applies to the Register for directions with respect to the advertisement of the assignment, and advertises it in such form and manner and within such period as the Registrar may direct.

Explanation- For the purposes of this section, an assignment of a trade mark of the following description shall not be deemed to be an assignment made otherwise than in connection with the goodwill of the business in which the mark is used. namely

(a) an assignment of a trade mark in respect only of some of the goods or services for which the trade mark is registered accompanied by the transfer of the goodwill of the business concerned in those goods or services only; or

(b) an assignment of a trade mark which is used in relation to goods exported from India or in relation to services for use outside india if the assignment is accompained by the transfer to the goodwill of the export business only.

Assignability and transmissibility of certification trade marks

43. A certification trade mark shall not be assignable or transmissible otherwise than with the consent of the Registrar, for which application shall be made in writing in the prescribed manner.

Assignability and transmissibility or associated trade marks

44. Associated trade marks shall be assignable and transmissible only as a whole and not separately, but, subject to the provisions of this Act, they shall, for all other purpose, be deemed to have been registered as separate trade marks.

Registration of assignments and transmissions

45. (1) Where a person becomes entitled by assignment or transmission to a registered trade mark he shall apply in the prescribed manner to the Registrar to register his title. and the Registrar shall on receipt of the application and on proof of title to his satisfaction register him as the proprietor of the trade mark in respect of the goods or services in respect of which the assignment or transmission has effect, and shall cause particulars of the assignment or tranmission to be entered on the register.

provided that where the validity of an assignment or transmission is in dispute between the parties, the Registrar may refuse to register the assignment or transmission until the rights of the parties have been determined by a competent court.

(2) Except for the purpose of an application before the Registrar under sub-section (1) or an appeal from an order thereon, or an application under section 57 or an appeal from an order thereon, a document or instrument in respect of which no entry has been made in the register in accordance with sub-section (1), shall not be admitted in evidence by the Registrar or the Appellate Board or any court in proof of title to the trade mark by assignment or transmission unless the Registrar or the Appellate Board or the Court, as the case may be, otherwise directs

CHAPTER VI

USE OF TRADE MARKS AND REGISTERED USERS

Proposed use of trade mark by company to be formed, etc.

46. (1) No application for the registration of a trade mark in respect of any goods or services shall be refused nor shall permission for such registration be withheld, on the ground only that it appears that the applicant does not use or propose to use the trade mark if the Registrar is satisfied that----

(a) a company is about to be formed and registered under the Companies Act, 1956 and that the applicant intends to assign the trade mark to that company with a view to the use thereof in relation to those goods or services by the Company, or

(b) the proprietor intends it to be used by a person, as a registered user after the registration of the trade mark

(2) The provisions of section 47 shall have effect, in relation to a trade mark registered under the powers conferred by this sub-section as if for the reference, in clause (a) of sub-section (1) of that section, to the intention on the part of an applicant for registration that a trade mark should be used by him there were substituted a reference to the intention on his part that it should be used by the company or registered user concerned.

(3) The tribunal may, in a case to which sub-section(1) applies, require the applicant to give security for the costs of any proceeding relating to any opposition or appeal, and in default of such security being duly given, may treat the application as abandoned.

(4) Where in a case to which sub-section (1) applies, a trade mark in respect of any goods or services is registered in the name of an applicant who, relies on intention to assign the trade mark to a company, then, unless within such period as may be prescribed or within such further period not exceeding six months as the Registrar may, on application being made to him in the prescribed manner, allow, the company has been registered as the proprietor of the trade mark in respect of those goods or services, the registration shall cease to have effect in respect thereof at the expiration of that period and the Registrar shall amend the register accordingly

Removal from register and imposition of limitations on ground of non use

47. (1) A registered trade mark may be taken off the register in respect of the goods or services in respect of which it is registered on application made in the prescribed manner to the registrar or the appellate Board by any person aggrieved on the ground either----

(a) that the trade mark was registered without any *bona fide* intentions on the part of the applicant for registration that it should be used in relation to those goods or service by him or, in a case to which the provisions of section 46 apply, by the company concerned or the registered user, as the case may be and that there has, in fact been no *bona fide* use of the trade mark in relation to those goods or services by any proprietor thereof for the time being up to a date three months before the date of the application or

(b) that up to a date three months before the date of the applications a continuous period of five years from the date on which the trade mark is actually entered in the register or longer had elapsed during which the trade mark was registered and during which there was no *bona fide* use thereof in relation to those goods or services by any proprietor thereof for the time being:

Provided that except where the applicant has been permitted under section 12 to register an indentical or nearly resembling trade mark in respect of the goods or services in question, or where the tribunal is of opinion that he might properly be permitted so to register such a trade mark, the tribunal may refuse an application under clause (a) or clause (b) in relation to any goods or services, if it is shown that

there has been, before the relevant date or during the relevant period, as the case may be *bona fide* use of the trade mark by any proprietor thereof for the time being in relation to

(i) goods or services of the same description : or

(ii) goods or services associated with those goods or services of that description being goods or services, as the case may be in respect of which the trade mark is registered.

(2) Where in relation to any goods or services in respect of which a trade mark is registered

(a) the circumstances referred to in clause (b) of sub-section (1) are shown to exist so far as regards non-use of the trade mark in relation to goods to be sold, or otherwise traded in a particular place in India (otherwise than for export from India) or in relation to goods to be exported to a particular market outside India: or in relation to services for use or available for acceptance in a particular place in India or for use in a particular market outside India and

(b) a person has been permitted under section 12 to register an identical or nearly resembling trade mark in respect of those goods, under a registration extending to use in relation to goods to be so sold, or otherwise traded in, or in relation to goods to be so exported, or in relation to services for use or available for acceptance in that place or for use in that country, or the tribunal is of opinion that he might properly be permitted so to register such a trade mark.

on application by that person in the prescribed manner to the Appellate Board or to the Registrar, the tribunal may impose on the registration of the first-mentioned trade mark such limitations as it thinks proper for securing that that registration shall cease to extend to such use.

(3) An applicant shall not be entitled to rely for the purpose of clause *(b)* of sub section *(1)* or for the purpose of sub-section (2) onany non-use of a trade mark which is shown to have been due to special circumstances in the trade, which includes restrictions on the use of the trade mark in India imposed by any law or regulation and not to any intention to abandon or not to use the trade mark in relation to the goods or services to which the application relates.

Registered users.

48 (1) Subject to the provisios of section 49, a person other than the registered proprietor of a trade mark may be registered as a registered user thereof in respect of any or all of the goods or services in respect of which the trade mark is registered.

(2) The permitted use of a trade mark shall be deemed to be used by the proprietor thereof, and shall be deemed not to be used by a person other than the proprietor for the purpose of section 47 or for any other purpose for which such use is material under this Act or anyother law.

Registration as registered user.

49. (1) Where it is proposed that a person should be registered as a registered user of a trade mark, the registered proprietor and the proposed registered user shall jointly apply in writing to the Registrar in the prescribed manner, and every such application shall be accompanied by----

(a) the agreement in writing or a duly authenticated copy thereof, entered into between the registered proprietor and the proposed registered user with respect to the permitted use of the trade mark; and

(b) an affidavit made by the registered proprietor or by some person authoried to the satisfaction of the Registrar to act on his behalf--

(i) giving particulars of the relationship, existing or proposed, between the registered proprietor and the proposed registered user, including particulars showing the degree of control by the proprietor over the permitted use which their relationship will confer and whether it is a term of their relationship that the proposed registered user shall be the sole registered user

or that there shall be any other restrictions as to persons for whose registration as registered users application may be made :

(ii) stating the goods or services in respect of which registration is proposed :

(iii) stating the conditions or restrictions, if any, proposed with respect to the characteristics of the goods or services, to the mode or place of permitted use, or to any other matter :

(iv) stating whether the permitted use is to be for a period or without limit of period, and, if for a period the duration thereof: and

(c) such further documents or other evidence as may be required by the Registrar or as may be prescribed.

(2) When the requirements of sub-section (1) have been complied with, the Registrar shall register the proposed registered user in respect of the goods or services as to which he is so satisfied.

(3) The Registrar shall issue, notice in the prescribed manner of the registration of a person as a registered user, to other registered users of the trade mark, if any

(4) The registrar shall, if so requested by the applicant, take steps for securing that information given for the purposes of an application under this section (other than matters entered in the register) is not disclosed to rivals in trade.

Power of Registrar for variation or cancellation of registration as registered user

50 (1) Without prejudice to the provisions of section 57, the registration of a person as registered user---

(a) may be varied by the Registrar as regards the goods or services in respect of which it has effect on the application in writing in the prescribed manner of the registered proprietor of the trade mark:

(b) may be cancelled by the Registrar on the application in writing in the prescribed manner of the registered proprietor or of the registered user or of anyother registered user of the trade mark :

(c) may be cancelled by the Registrar on the application in writing in the prescribed manner of any person on any of the following grounds, namely:---

(i) that the registered user has used the trade mark otherwise than in accordance with the agreement under clause (a) of sub section (1) of section 49 or in such way as to cause or to be likely to cause, deception or confusion :

(ii) that the proprietor or the registered user misrepresented, or failed to disclose, some fact material to the application for registration which if accurately represented or disclosed would not have justified the registration of the registered user :

(iii) that the circumstances have changed since the date of registration in such a way that at the date of such application for cancellation they would not have justified registration of the registered user :

(iv) that the registration ought not to have been effected having regard to rights vested in the applicant by virtue of a contract in the performance of which he is interested :

(d) may be cancelled by the Registrar on his own motion or on the application in writing in the prescribed manner by any person, on the ground that any stipulation in the agreement between the registered proprietor and the registered user regarding the quantity of the goods or services in relation to

which the trade mark is to be used is either not being enforced or is not being complied with:

(e) may be cancelled by the Registrar in respect of any goods or services in relation to which the trade mark is no longer registered.

(2) The registrar shall issue notice in the prescribed manner in respect of every application under this section to the registered proprietor and each registered user (not being the applicant) of the trade mark.

(3) The procedure for cancelling a registration shall be such as may be prescribed :

provided that before cancelling a registration the registered proprietor shall be given a reasonable opportunity of being heard.

Power of Registrar to call for information relating to agreement in respect of registered user

51. (1) The Registrar may, at any time during the continuance of the registration of the registered user, by notice in writing, require the registered proprietor to confirm to him within one month that the agreement filed under clause (a) of sub-section (1) of section 49 continues to be in force.

(2) If the registered proprietor fails to furnish the confirmation within one month as required under sub-section (1) the registered user shall cease to be the registered user on the day immediately after the expiry of the said period and the Registrar shall notify the same.

Right of registered user to take proceedings against infringement

52. (1) Subject to any agreement subsisting between the parties, a registered user may institute proceedings for infringement in his own name as if he were the registered proprietor making the registered proprietor a defendant and the rights and obligations of such registered use in such case being concurrent with those of the registered proprietor

(2) Notwithstanding anything contained in any other law, a registered proprietor so added as defendant shall not be liable for any cost unless he enters an appearance and takes part in the proceedings.

No right of permitted user to take proceeding against infringement

53. A person referred to in sub-clause (ii) of clause (*r*) of sub-section (1) of section 2 shall have no right to institute any proceeding for any infringement.

Registered user not to have right of assignment or transmission

54. Nothing in this Act shall confer on a registered user of a trade mark any assignable or transmissible right to the use thereof.

Explanation 1.--- The right of a registered user of a trade mark shall not be deemed to have been assigned or transmitted within the meaning of this section in the following cases, namely:--

(a) where the registered user being an individual enters into a partnership with any other person for carrying on the business concerned; but in any such case the firm may use the trade mark, if otherwise in force, only for so long as the registered user is a member of the firm :

(b) where the registered user being a firm subsequently undergoes a change in its constitution; but in any such case the reconstituted firm may use the trade mark, if otherwise in force, only for so long as any partner of the original firm at the time of its registration as registered user, continues to be a partner of the reconstituted firm.

Explanation II --- For the purpose of Explanation 1. “firm”has the same meaning as in the Indian Partnership Act, 1932

Use of one of associated or substantially identical trade marks equivalent to use of another.

55. (1) Where under the provision of this Act, use of a registered trade mark is required to be proved for any purpose, the tribunnal may, if and, so far as it shall think right. accept use of a registered associated trade mark, or of the trade mark with additions or alterations not substantially affecting its identity, as an equivalent for the use require to be proved.

(2) The use of the whole of a registered trade mark shall, for the purpose of this Act, be deemed to be also use of any trade mark being a part thereof and registered in accordance with sub-section *(1)* of section 15 in the name of the same proprietor.

(3) Notwithstanding anything in section 32, the use of part of the registered trade mark in sub-section *(2)* shall not be conclusive as to its evidence of distinctiveness for any purpose under this Act.

Use of trade mark for export trade and use when form of trade connection changes.

56. (1) The application in India of trade mark to goods to be exported from India or in relation to services for use outside India and any other act done in India in relation to goods to be so exported or services so rendered outside India which, if done in relation to goods to be sold or services provided or otherwise traded in within India would constitute use of a trade mark therein, shall be deemed to constitute use of the trade mark in relation to those goods or services for any purpose for which such use in material under this Act or any other law.

(2) The use of a registered trade mark in relation to goods or services between which and the person using the mark any form of connection in the course of trade subsists shall not be deemed to be likely to cause deception or confusion on the ground only that the mark has been or is used in relation to goods or services between which and the said person or predecessor in title of that person a different form of connection in the course of trade subsisted or subsists.

CHAPTER VII

Rectification and Correction of The Register

Power to cancel or vary registration and to rectify the register.

57. (1) On application made in the prescribed manner to the Appellate Board or to the Registrar by any person aggrieved, the tribunal may make such order as it may think fit for cancelling or varying the registration of a trade mark on the ground of any contravention, or failure to observe a condition entered on the register in relation thereto.

(2) Any person aggrieved by the absence or omision from the register of any entry or by any entry made in the register without sufficient cause, or by any entry wrongly remaining on the register, or by any error or defect in any entry in the register, may apply in the prescribed manner to the Appellant Board or to the Registrar, and the tribunal may make such order for making, expunging or varying the entry as it may think fit.

(3) The tribunal may in any proceeding under this section decide any question that may be necessary or expendient to decide in connection with the rectification of the register.

(4) The tribunal, of its own motion, may, after giving notice in the prescribed manner to the parties concerned and after giving them an opportunity of being heard, make any order referred to in sub-section (1) or sub-section (2)

(5) Any order of the Appellate Board rectifying the register shall direct that notice of the rectification shall be served upon the Registrar in the prescribed manner who shall upon receipt of such notice rectify the register accordingly

Correction of register

58. (1) The Registrar may on applicantion made in the prescribed manner by the registered proprietor:-

(a) correct any error in the name, address or description of the registered proprietor of a trade mark, or any other entry relating to the trade mark:

(b) enter any change in the name, address or description of the person

who is registered as proprietor of a trade mark:

(c) cancel the entry of a trade mark on the register:

(d) strike out any goods or classes of goods or services from those in respect of which a trade mark is registered

and may make any consequential amendment or alternation in the certificate of registration. and for the that purpose, may require the certificate of registration to be produced to him

(2) The Registrar may, on application made in the prescribed manner by a registered user of a trade mark, and after notice to the registered proprietor, correct any error, or enter any change, in the name, address or description of the registered user.

Alteration of registered trade marks.

59. (1) The Registered proprietor of a trade mark may apply in the prescribed manner to the Registrar for leave to add to or alter the trade mark in any manner not substantially affecting the identity thereof, and the Registrar may refuse leave or may grant it on such terms and subject to such limitations as he may think fit.

(2) The Registrar may cause an application under this section to be advertised in the prescribed manner in any case where it appear to him that it is expedient so to do, and where he does so, if within the prescribed time from the date of the advertisement any person gives notice to the Registrar in the prescribed manner of opposition to the application, the Registrar shall, after hearing the parties if so require, decide the matter.

(3) Where leave is granted under this section , the trademark as altered shall be advertised in the prescribed manner, unless the application has already been advertised under sub-section (2)

Adaptaion of entries in register to amended or substituted classification of goods or services

60. (1) The Register shall not make any amendment of the register which would have the effect of adding any goods or classes of goods or service to those in respect of which a trade mark is registered (whether in one or more classes) immediately before the amendment is to be made or of antedating the registration of a trade mark in respect of any goods or services :

Provided that this sub-section, shall not apply when the Registrar is satisfied that compliance there with would involve undue complexity and that the addition or antedating, as the case may be, would not affect any substantial quantity of goods or services and would not substantially prejudice the rights of any person.

(2) A proposal so to amend the register shall be brought to the notice of the registered proprietor of the trade mark affected and advertised in the prescribed manner, and may be opposed before the Registrar by any person aggrieved on the ground that the proposed amendment contravenes the provision of sub-section (1)

CHAPTER VIII

COLLECTIVE MARKS

Special provisons for collective marks

61. (1) The provisions of this Act shall apply to collective marks subject to the provisions contained in this Chapter

(2) In relation to a collective mark the reference in clause *(zb)* of sub-section *(1)* of section 2 to distinguishing the goods or services of one person from those of others shall be construed as a reference to distinguishing the goods or services of members of an association of persons which is the proprietor of the mark from those of others.

Collective mark not to be misleading as to character or significance

62. A collective mark shall not be registered if it is likely to deceive or cause confusion on the part of public in particular if it is likely to be taken to be something other than a collective mark, and in such case the Registrar may require that a mark in respect of which application is made for registration comprise some indication that it is a collective mark.

Application to be accompanied by regulations governing use of collective marks.

63. (1) An application for registration of a collective mark shall be accompanied by the regulations governing the use of such collective mark.

(2) The regulations referred to in sub-section *(1)* shall specify the persons authorised to use the mark, the conditions of membership of the association and, the conditions of use of the mark. including any sanctions against misuse and such other matters as may be prescribed.

Acceptance of application and regulations by Registrar

64. If it appears to the Registrar that the requirements for registration are satisfied he shall accept the application together with the regulations, either unconditionally or subject to such conditions including amendments of the said regulations, if any, as he may deem fit or refuse to accept it and if accepted shall notify the regulations.

Regulations to be open to inspection

65. The regulations referred to in sub-section *(1)* of section 63 shall be open to public inspection in the same way as the register as provided in section 148

Amendment of regulations

66. Any amendment of regulations referred to in sub-section *(1)* of section 63 shall not be effective unless the amended regulation are filed with the Registrar, and accepted and published by him in accordance with section 64.

Infringement proceedings by registered proprietor of collective mark

67. In a suit for infringement instituted by the registered proprietor of a collective mark as plaintiff the court shall take into account any loss suffered or likely to be suffered by authorised users and may give such directions as it thinks fit as to the extend to which the plaintiff shall hold the proceeds of any pecuniary remedy on behalf of such authorised users.

Additional grounds for removal of registration of collective mark.

68. The registration of a collective mark may also be removed from the register on the ground--

(a) that the manner in which the collective mark has been used by the proprietor or authorised user has caused it to become liable to mislead the public as a collective mark: or

(b) that the proprietor has failed to observe, or to secure the observance of the regulations governing the use of the mark.

Explanation I,--- For the purposes of this Chapter, unless the contact otherwise requires, 'authorised user' means a member of an association authorised to use the registered collective mark of the association

Explanation II,--- For the purposes of this Act, use of a collective mark by an authorised user referred to in Explanation I shall be deemed to be the use by the registered proprietor thereof.

CHAPTER IX

CERTIFICATION TRADE MARKS

Certain provisions of this Act not applicable to certification trademarks

69. The following provisions of this Act shall not apply to certification trade marks, that is to say-

(a) clauses *(a)* and *(c)* of sub - section *(1)* of section 9:

(b) sections 18, 20, and 21, except as expressely applied by this Chapter:

(c) sections 28, 29, 30, 41, 42, 47, 48, 49, 50, 52, 54 and sub-section (2) of section 56

(d) chapter XII, except section 107.

Registration of certification trade marks

70. A mark shall not be registrable as a certification trade mark in the name of a person who carries on a trade in goods of the kind certified or a trade of the provision of services of the kind certified.

Applications for registration of certification trade marks

71 (1) An application for the registration of a mark as a certification trade mark shall be made to the Registrar in the prescribed manner by the person proposed to be registered as the proprietor thereof, and accompanied by a draft of the regulations to be deposited under section 74

(2) Subject to the provisions of section 70, the provisions of sections 18, 19 and 22 shall apply in relation to an application under this section as they apply in relation to an application under section 18, subject to the modification that references therein to acceptance of an application shall be construed as references to authorisation to proceed with an application.

(3) In dealing under the said provisions with an application under this section the tribunal shall have regard to the like considerations, so far as relevant, as if the application were applications under section 18 and to any other considerations relevant to applications under this section, including the desirability of securing that a certification trademark shall comprise some indication that it is a certification trade mark.

Consideration of application for registration by Registrar

72. (1) The registrar shall consider the application made under section 71 with regard to the following matters, namely:--

(a) whether the applicant is competent to certify the goods in respect of which the mark is to be registered :

(b) whether the draft of the regulations to be filed under section 74 is satisfactory :

(c) whether in all the circumstances the registration applied for would be to the public advantage,

and may either--

(i) refuse the application or

(ii) accept the application and approve the said draft of the regulations either without modification and unconditionally or subject to any conditions or limitations, or to any amendments or modifications of the application or of the regulations, which he thinks requisite having regard to any of the said matters.

(2) Except in the case of acceptance and approval without modification and unconditionally, the Registrar shall not decide any matter under sub-section (1) without giving the applicant an opportunity of being heard.

Opposition to registration of certification trade marks

73. When an application has been accepted, the Registrar shall, as soon as may be thereafter, cause the application as accepted to be advertised in the prescribed manner, and the provisions of section 21 shall apply in relation to the registration of the mark as they apply in relation to an application under section 18.

Filing of regulations governing use of a certi fication trade mark

74. (1) There shall be filed at the Trade Marks Registry in respect of every mark registered as a certification trade mark regulations for governing the use thereof, which shall include provisions as to the cases in which the proprietor is to certify goods or services and to authorise the use of the certification trade mark and may contain any other provisions which the registrar may by general or special order, require or permit to be inserted therein (including provisions conferring a right of appeal to the Registrar against any refusal of the proprietor to certify goods or to authorise the use of the certification trade mark in accordance with the regulations); and regulations so filed shall be open to inspection in like manner as the register as provided in section 148

(2) The regulations so filed may, on the application of the registered proprietor be altered by the Registrar

(3) The Registrar may cause such application to be advertised in any case where it appears to him expedient so to do, and where he does so, if within the time specified

in the advertisement any person gives notice of opposition to the application, the Registrar shall not decide the matter without giving the parties an opportunity of being heard.

Infringement of certification trademarks

75. The right conferred by section 78 is infringed by any person who, not being the registered proprietor of the certification trade mark or a person authorised by him in that behalf under the regulations filed under section 74, using it in accordance therewith, uses in the course of trade, a mark, which is identical with or deceptively similar to the certification trade mark in relation to any goods or services in respect of which it is registered, and in such manner as to render the use of the mark likely to be taken as being a use as a trade mark.

Acts not constituting Infringement of certification trade marks

76. (1) Notwithstanding anything contained in this Act, the following acts do not constitute an infringement of the right to the use of a registered certification trade mark---

(a) where a certification trade mark is registered subject to any conditions or limitations entered on the register, the use of any such mark in any mode, in relation to goods to be sold or otherwise traded in any place, or in relation to goods to be exported to any market or in relation to services for use or available for acceptance in any place, country or territory or in any other circimstance, to which having regard to any such limitations, the registration does not extend:

(b) the use of a certification trade mark in relation to goods or services certified by the proprietor of the mark if, as to those goods or services or a bulk of which they form part, the proprietor or another in accordance with his authorisation under the relevant regulations has applied the mark and has not subsequently removed or obliterated it, or the proprietor has at any time expressely or impliedly consented to the use of the mark:

(c) the use of a certification trade mark in relation to goods or services adapted to form part of, or to be accessory to, other goods in relation to which the mark has been used without infringement of the right given as aforesaid or might for the time being be so used, if the use of mark is reasonably necessary in order to indicate that the goods or services are so adapted and neither the purpose nor the effect of the use of the mark is to indicate otherwise than in accordance with the fact that the goods or services are certified by the proprietor.

(2) Clause (b) of sub-section (1) shall not apply to the case of use consisting of the application of a certification trade mark to goods or services, notwithstanding that they are such goods or services as are mentioned in that clause if such application is contrary to the regulations referred to in that clause:

(3) Where a certification trade mark is one of two or more trade marks registered under this Act, which are identical or nearly resemble each other, the use of any of those trade marks in exercise of the right to the use of that trade mark given by registration, shall not be deemed to be an ingreingement of the right so given to the use of any other of those trade marks.

Cancellation or varying of registration of certification trade marks

77. The Registrar may, on the application in the prescribed manner of any person aggrieved and after giving the proprietor an opportunity of opposing the application, make such order as he thinks fit for expunging or varying any entry in the register to a certification grade mark, or for varying the regulations, on any of the following grounds, namely:--

(a) that the proprietor is no longer competent, in the case of any of the goods or services in respect of which the mark is registered, to certify those goods or services :

(b) that the proprietor has failed to observe any provisions of the regulations to be observed on his part :

(c) that it is no longer to the public advantage that the mark should remain registered :

(d) that it is requisite for the public advantage that if the mark remains registered, the regulations should be varied.

Rights conferred by registration of certification trade marks

78. (1) Subject to the provisions of sections 34, 35 and 76 the registration of a person as a proprietor of certification trade mark in respect of any goods or services shall if valid, give to that person the exclusive right to the use of the mark in relation to those goods or services.

(2) The exclusive right to the use of a certification trade mark given under sub-section (1) shall be subject to any conditions and limitations to which the registrations is subject.

CHAPTER X

SPECIAL PROVISIONS FOR TEXTILE GOODS

Textile goods.

79. The Central Government may prescribe classes of goods (in this chapter referred to as textile goods) to the trade marks used in relation to which the provisions of this chapter shall apply; and subject to the said provisions, the other provisions of this Act shall apply to such trade marks as they apply to trade marks used in relation to other classes of goods.

Restriction on registration of textile goods.

80. (1) In respect of textile goods being piece goods---

(a) no mark consisting of a line heading alone shall be registrable as a trade mark:

(b) a line heading shall not be deemed to be capable of distinguishing:

(c) the registration of trade mark shall not give any exclusive right to the use of a line heading

(2) In respect of any textile goods, the registration of letters or numerals, or any combination thereof, shall be subject to such conditions and restrictions as may be prescribed.

Stamping of piece goods, cotton yarn and thread

81. (1) Piece goods, such as are ordinarily sold by length or by the piece, which have been manufactured, bleached, dyed, printed or finished in premises which are a factory, as defined in the Factories Act, 1948, shall not be removed for sale from the last of such premises in which they underwent any of the said processes without having conspicuously stamped in international form of Indian numerals on each piece the length thereof in standard yards, or in standard yards and a fraction of such a yard, or in standard meters or in standard meters and a fraction of such a meter, according to the real length of the piece, and , except when the goods are sold from the factory for export from India, without being conspicuously marked on each piece with the name of the manufacturer or of the occupier of the premises in which the piece was finally processed or of the wholesale purchaser in India of the piece. 63 of 1948

(2) Cotton yarn such as is ordinarily sold in bundles, and cotton thread, namely sewing, darning, crochet or handicraft thread: which have been manufactured, bleached, dyed or finished in any premises not exempted by the rules made under section 82 shall not be removed for sale from those premises unless, in accordance with the said rules in the case of yarn

(a) the bundles are conspicuously marked with an indication of the weight of yarn in English or the metric system in each bundles; and

(b) the count of the yarn contained in the bundles and in the case of thread each unit is conspicuously marked with the length or weight of thread in the unit and in such other manner as may be required by the said rules, and

(c) except where the goods are sold from the premises for export from India, unless each bundle or unit is conspicuously marked with the name of the manufacturer or of the wholesale purchase in India of the goods.

Provided that the rules made under section 82 shall exempt all premises where the work is done by members of one family with or without the assistance of not more than ten other employees, and all premises controlled by a co-operative society where not more than twenty workers are employed in the premises

82. (1) For the purposes of this Act the Central Government may make rules—

(a) to provide, with respect to any goods which purport or are alleged to be of uniform number, quantity, measure, guage or weight, for the number of samples to be selected and tested and for the selection of the samples:

Determination of character of textile goods by sampling

(b) to provide, for the manner in which for the purposes of section 81 cotton yarn and cotton thread shall be marked with the particulars required by that section and for the exemption of certain premises used for the manufacture, bleaching dying for finishing of cotton yarn or cotton thread from the provisions of that section: and

(c) declaring what classes of goods are included in the expression "piece goods such as are ordinarily sold by length or by the piece for the purpose of section 81, of this Act or clause (n) of sub-section (2) of section 11 of the Customs Act, 1962.

(2) With respect to any goods for the selections and testing of samples of which provision is not made in any rules for the time being in force under sub-section (1), the court or officer of customs, as the case may be, having occasion to ascertain the number, quantity, measure, gauge or weight of the goods, shall, by order in writing, determine the number of samples to be selected and tested and the manner in which the samples are to be selected.

(3) The average of the results of the testing in pursuance of rules under sub-section *(1)*, or of an order under sub-section *(2)* shall be *prima facie* evidence of the number, quantity, measure, gauge or weight, as the case may be, of the goods.

(4) If a person having any claim to, or in relation to, any goods of which samples have been selected and tested in pursuance of rules under sub-section *(1)*, or of an order under sub-section (2), desires that any further samples of the goods be selected and tested, such further samples shall, on his written application and on the payment in advance by him to the court or officer of customs, as the case may be, of such sums for defraying the cost of the further selection and testing as the court or officer may from time to time require, be selected and tested to such extent as may be permitted by rules made by the Central Government in this behalf or as, in the case of goods with respect to which provision is not made in such rules, the court or officer of customs may determine in the circumstances to be reasonable, the samples being selected in the manner prescribed under sub-section *(1)*, or in sub-section *(2)*, as the case may be.

(5) The average of the results of the testing referred to in sub-section *(3)* and of the further testing under sub-section (4) shall be conclusive proof of the number, quantity, measure, gauge or weight, as the case may be, of the goods.

CHAPTER XI

APPELLATE BOARD

83. The Central Government shall, by notification in the Official Gazatte, establish an Appellate Board to be known as the Intellectual Property Appellate Board to exercise the jurisdiction, powers and authority conferred on it by or under this Act.

Establishment of Appellate Board

84. (1) The Appellate Board shall consist of a Chairman, Vice-Chairman and

Composition of Appellate Board

such number of other Members, as the Central Government may deem fit and, subject to the other provisions of this Act, the jurisdiction, powers and authority of the Appellate Board may be exercised by Benches thereof.

(2) Subject to the other provisions of this Act, a Bench shall consist of one Judicial Member and one Technical Member and shall sit at such place as the Central Government may, by notification in the Official Gazette, specify.

(3) Notwithstanding anything contained in sub-section (2), the Chairman--

(a) may, in addition to discharging the functions of the Judicial Member or Technical Member of the Bench to which he is appointed, discharge the functions of the Judicial Member or , as the case may be, the Technical Member, of any other Bench:

(b) may transfer a Member from one Bench to another bench:

(c) may authorise the Vice-Chairman, the Judical Member or the Technical Member appointed to one Bench to discharge also the functions of the Judicial Member or the Technical Member, as the case may be, of another Bench.

(4) Where any Benches are constituted, the Central Government may, from time to time, by notification make provisions as to the distribution of the business of the Appellate Board amongst the Benches and specify the matter which may be dealt with by each Bench:

(5) If any question arises as to whether any matter falls within the purview of the business allocated to a Bench the decision of the Chairman shall be final.

Explanation --- For the removal of doubts, it is hereby declared that the expression "matter" includes an appeal under section 91.

(6) If the Members of a Bench differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairman who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other members and such point or points shall be decided according to the opinion of the majority of the Members who have heard the case, including those who first heard it.

Qualifications for appointment as Chairman, Vice-Chairman or other Members

85. (1) A person shall not be qualified for appointment as the Chairman unless he---

(a) is, or has been a Judge of a High Court; or

(b) has, for at least two years, held the office of a Vice-Chairman

(2) A person shall not be qualified for appointment as the Vice-Chairman unless he----

(a) has, for at least two years, held the office of a Judical Member or a Technical Member; or

(b) has been a member of the Indian Legal Service and has held a post in Grade I of that Service or any higher post for at least five years.

(3) A person shall not be qualified for appointment as Judicial Member, unless he----

(a) has been a member of the Indian Legal Service and has held the post in Grade I of that Service for at least three years; or

(b) has, for at least ten years, held a civil judicial office.

(4) A person shall not be qualified for appointment as a Technical Member, unless he---

43 of 1958

(a) has, for at least ten years, exercised functions of a tribunal under this Act or under the Trade and Merchandise marks Act. 1958, or both, and has held a post not lower than the post of a Joint Register for at least five years : or

(b) has , for at least ten years, been an advocate of a proven specialised experience in trade mark law

(5) Subject to the provisions of sub-section (6), the Chairman, Vice-Chairman and every other Member shall be appointed by the President of India.

(6) No appointment of a person as the Chairman shall be made except after consultation with the Chief Justice of India.

Terms of office of Chairman Vice-Chariman and other Members

86. The Chairman, Vice-Chairman or other Members shall hold office as such for a term of five years from the date on which he enters upon his office or until he attains

(a) in the case of Chairman and Vice-Chairman, the age of sixty-five years: and

(b) in the case of a Member, the age of sixty-two years

whichever is earlier

Vice-Chairman or seniro-most Member to act as Chairman of discharge his function in certain circumstances

87. (1) In the event of or any vacancy in the office of the Chairman by reasons of his death, resignation or otherwise the Vice-Chairman and in his absence the senior most member shall act as Chairman until the date on which a new Chairman, appointed in accordance with the provisions of this Act to fill such vacancy enters upon his office.

(2) When the Chairman is unable to discharge his functions owing to his absence, illness or any other cause, the Vice-Chairman and in his absence the senior-most Member shall discharge the functions of the Chairman until the date on which the Chairman resumes his duty.

Salaries allowance and other terms and conditions of service of Chairman, Vice-Chairman and other Members,

88. (1) The salaries and allowances payable to, and other terms and conditions of service (including pension, gratuity and other retirement benefits), of the Chairman, Vice-Chairman and other Members shall be such as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), a person who, immediately before the date of assuming office as the Chairman, Vice-Chairman or other Member was in Service of Government, shall be deemed to have retired from service on the date on which he enters upon office as the chairman, Vice-Chairman or other Member.

Resignation and removal

89. (1) The Chairman, Vice-Chairman or any other Member may by notice in writing under his hand addressd to the President of India, resign his office:

Provided that the Chairman, Vice-Chairman or any other member shall, unless he is permitted by the President of India to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office whichever is earlier.

(2) The Chairman, Vice-Chairman or any other Member shall not be removed from his office except by an order made by the President of India on the ground of proved misbehavior or incapacity after an inquiry made by a Judge of the Supreme Court in which the Chairman, Vice-Chairman or other Member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(3) The Central Government may, by rules regulate the procedure for the investigation of misbehavior or incapacity of the Chairman, Vice-Chairman or other member referred to in sub-section (2)

Staff of Appellate Board

90. (1) The Central Government shall determine the nature and categories of the officers and other employees required to assist the Appellate Board in the discharge of its functions and provide the Appellate Board with such officers and other employees as it may think fit

(2) The salaries and allowances and conditions of service of the officers and other employees of the Appellate Board shall be such as may be prescribed.

(3) The officers and other employees of the Appellate Board shall discharge their functions under the general superintendence of the Chairman in the manner as may be prescribed.

Appeals to Appellate Board

91. (1) Any person aggrieved by an order or decision of the Registrar under this Act, or the rules made thereunder may prefer an appeal to the Appellate Board within three months from the date on which the order or decision sought to be appealed against is communicated to such person preferring the appeal.

(2) No appeal shall be admitted if it is preferred after the expiry of the period specified under sub-section (1):

Provided that an appeal maybe admitted after the expiry of the period specified therefor, if the appellant satisfies the Appellate Board that he had sufficient cause for not preferring the appeal within the specified period.

(3) An appeal to the Appellate Board shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by a copy of the order or decision appealed against and by such fees as may be prescribed.

Procedure and powers of Appellate Board

92. (1) The Appellate Board Shall not be bound by the procedure laid down in the code of civil procedure, 1908 but shall be guided by principles of natural justice and subject to the provisions of this Act and the rules made thereunder, the Appellate Board shall have powers to regulate its own procedure including the fixing of places and time of its hearing 5 of 1908

(2) The appellate Board shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure 1908 while trying a suit in respect of the following matters, namely:--- 5 of 1908

(a) receiving evidence

(b) issuing commissions for examination of witnesses:

(c) requisitioning any public record and

(d) any other matter which may be prescribed

(3) Any proceeding before the Appellate Board Shall be deemed to be a judicial proceeding within the meaning of section 193 and 228, and for the purpose of section 196, of the Indian Penal Code and the Appellate Board Shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure 1973. 45 of 1860 2 of 1974

Bar of jurisdiction of courts etc.

93. No court or other authority shall have or, be entitled to, exercise any jurisdiction, powers or authority in relation to the matters referred to in sub-section(1) of section 91.

Bar to appear before Appellate Board

94. On ceasing to hold office, the Chairman, Vice-Chairman or other Members shall not appear before the Appellate Board or the Registrar.

Conditions as to making of interim orders.

95. Notwithstanding anything contained in any other provisions of this Act or in any other law for the time being in force, no interim order (whether by way of injunction or stay or any other manner) shall be made on, or in any proceedings relating to, an appeal unless---

(a) copies of such appeal and of all documents in support of the plea for such interim order are furnished to the party against whom such appeal is made or proposed to be made ; and

(b) opportunity is given to such party to be heard in the matter.

power of chairman to transfer cases from one bench to another

96. On the application of any parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairman may transfer any case pending before one bench, for disposal, to any other bench.

Procedure for application for rectification etc. before Appellate Board

97. (1) An application for rectification of the register made to the Appellate Board under section 57 shall be in such form as may be prescribed.

(2) A certified copy of every order or judgement of the Appellate Board relating to a registered trade mark under this Act shall be communicated to the registrar by the Board and the Registrar shall give effect to the order of the Board and shall, when so directed amend the entries in, or rectify, the register in accordance with such order.

Appearance of Registrar in legal proceedings

98 (1) The registrar shall have the right to appear and be heard---

(a) in any legal proceedings before the Appellate Board in which the relief sought includes alteration or rectification of the register or in which any question relating to the practice of the Trade Marks Registry is raised:

(b) in any appeal to the Board from an order of the Registrar on an application for registration of a trade mark--

(i) which is not opposed, and the application is either refused by the Registrar or is accepted by him subject to any amendment, modification conditions or limitations, or

(ii) which has been opposed and the Registrar considers that his appearance is necessary in the public interest

and the Registrar Shall appear in any case if so directed by the Board

(2) unless the Appellate Board otherwise directs, the Register may, in lieu of appearing, submit a statement in writing signed by him, giving such particulars as he thinks proper of the proceedings before him relating to the matter in issue or of the grounds of any decision given by him affecting it or of the practice of the Trade Marks Registry in like cases, or of other matters relevant to the issues and within his knowledge as Registrar and such statement shall be evidence in the proceeding.

Costs of Registrar inproceedings before Appellate Board.

99. In all proceedings under this Act before the Appellate Board the costs of the Registrar shall be in the discretion of the Board, but the Registrar shall not be ordered to pay the costs of any of the parties.

Transfer of pending proceedings to Appellante Board

100 All cases of appeals against any order or decision of the Registrar and all cases pertaining to rectification of register, pending before any High Court, shall be transferred to the Appellate Board from the date as notified by the Central Government in the Official Gazette and the Appellate Board may proceed with the matte either *de novo* or from the stage it was so transferred.

CHAPTER XII

OFFENCES, PENALTIES AND PROCEDURE

Meaning of applying trade marks and trade descriptions

101. (1) A person shall be deemed to apply a trade mark or mark or trade description to goods or services who

(a) applies it to the goods themselves or uses it in relation to services or

(b) applies it to any package in or with which the goods are sold, or exposed for sale, or had in possession for sale or for any purpose of trade or manufacture: or

(c) places encloses or annexes any goods which are sold, or exposed for sale, or had in possession for sale or for any purpose of trade or manufacture, in or with any packaging or other thing to which a trade mark or mark or trade description has been applied or

(d) uses a trade mark or mark or trade description in any manner reasonably likely to lead to the belief that the goods or services inconnection with which it is used are designated or described by that trade mark or mark or trade description : or

(e) in relation to the goods or services uses a trade mark or trade description in any sign, advertisement, invoice, catalogue, business letter, business paper, price list or other commercial document and goods are delivered or services are rendered to a person in pursuance of a request or order made by reference to the trade mark or trade description as so used.

(2) A trade mark or mark or trade description shall be deemed to be applied to goods whether it is woven in, impressed on, or otherwise worked into, or annexed or affixed to, the goods or to any package or other thing.

Falsifying and Falsely applying trade marks

102. (1) A person shall be deemed to falsify a trade mark who, either---

(a) without the assent of the proprietor of the trade mark makes that trade mark or a deceptively similar mark: or

(b) falsifies any genuine trade mark, whether by alteration, addition, effacement or otherwise.

(2) A person shall be deemed to falsely apply to goods or services a trade mark who, without the assent of the proprietor of the trade mark--

(a) applies such trade mark or a deceptively similar mark to goods or services or any package containing goods.

(b) uses any package bearing a mark which is identical with or deceptively similar to the trade mark of such proprietor, for the purpose of packing, filling or wrapping therein any goods other than the genuine goods of the proprietor of the trade mark.

(3) Any trade mark falsified as mentioned in sub-section (1) or falsely applied as mentioned in sub-section (2) is in this Act referred to as a false trade mark

(4) In any prosecution for falsifying a trade mark or falsely applying a trade mark to goods or services the burden of proving the assent of the proprietor shall lie on the accused

Penalty for applying false trade marks trade description etc.

103. Any person who---

(a) falsifies any trade mark; or

(b) falsely applies to goods or services any trade mark: or

(c) makes, disposes of, or has in his possession any die, block, machine, plate or other instrument for the purpose of falsifying or of being used for falsifying a trade mark or

(d) applies any false trade description to goods or services or

(e) applies to any goods to which an indication of the country or place in which they were made or produced or the name and address of the manufacturer or person for whom the goods are manufactured is required to be applied under section 139, a false indication of such country, place, name or address: or

(f) tampers with, alters or effaces an indication of origin which has been applied to any goods to which it is required to be applied under section 139 or

(g) causes any of the things above mentioned in this section to be done.

shall, unless he proves that he acted, without intent to defraud, be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees.

Provided that the court may for adequate and special reasons to be mentioned in the judgement impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

Penalty for selling goods or providing services to which false trade mark or false trade description is applied

104. Any person who sells, lets for hire or exposes for sale, or hires or has in his possession for sale, goods or things or provides or hires services, to which any false tarde mark or false trade description is applied or which, being required under section 139 to have applied to them an indication of the country or place in which they were made or produced or the name and address of the manufacturer, or person for whom the goods are manufactured or services provided as the case may be are without the indications so required, shall, unless he proves---

(a) that, having taken all reasonable precautions against committing an offence against this section, he had at the time of commission of the alleged offense no reason to suspect the genuiness of the trade mark or trade description or that any offence had been committed in respect of the goods or services: or

(b) that, on demand by or on behalf of the prosecutor, he gave all the information in his power with respect to the person from whom he obtained such goods or things or services or

(c) that otherwise he had acted innocently

be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:

Provided that the court may, for adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

Enhanced penalty on second or subsequent conviction

105. Whoever having already been convicted of an offence under section 103 or section 104 is again convicted of any such offence shall be punishable for the second and for every subsequent offence, with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which any extend to two lakh rupees:

Provided that the court may, for adequate and special reason to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than one year or a fine of less than one lakh rupees :

Provided further that for the purposes of this section, no cognizance shall be taken of any conviction made before the commencement of this Act.

Penalty for removing piece goods etc. contrary to section 81

106. If any person removes or attempts to remove or causes or attempt to cause to be removed for sale from any premises referred to in section 81 or sells or exposes for sale or has in his possession for sale or for any purpose of trade or manufacture piece goods or cotton yarn or cotton thread which is not marked as required by that section, every such piece and every such bundle of yarn and all such thread and everything used for the packing thereof shall be forfeited to Government and such person shall be punishable with fine which may extend to one thousand rupees.

Penalty for falsely representating a trade mark as registered

107 (1) No person shall make any representation---

(a) with respect to a mark not being a registered trade mark, to the effect that it is a registered trade mark; or

(b) with respect to a part of registered trade mark, not being a part separately registered as a trade mark, to the effect that it is separately registered as a trade mark ; or

(c) to the effect that a registered trade mark is registered in respect of any goods or services in respect of which it is not in fact registered, or

(d) to the effect that registration of a trade mark gives an exclusive right to the use thereof in any circumstances in which, having regard to limitation entered on the register, the registration does not in fact give that right.

(2) If any person contravenes any of the provisions of sub-section (1) he shall be punishable with imprisonment for a term which may extend to three year or with fine, or with both.

(3) For the purposes of this section, the use in India in relation to a trade mark of the word " registered" or of any other expression symbol or sign referring whether expressely or impliedly to registration shall be deemed to import a reference to registration in the register, except--

(a) where that word or other expression symbol or sign is used in direct association with other words delineated in characters at least as large as those in which that word or other expressions, symbol or sign is delineated and indicating that the reference is to registration as a trade mark under the law of a country outside India being a country under the law of which the registration referred to is in fact in force : or

(b) where that other expression, symbol or sign is of itself such as to indicate that the reference is to such registration as is mentioned in clause (a) or

(c) where that word is used in relation to a mark registered as a trade mark under the law of a country outside India and in relation solely to goods to be exported to that country or in relation to services for use in that country.

Penalty for improperly describing a place of business as connected with the Trade Mark office

108. If any person uses on his place of business, or on any document issued by him or otherwise words which would reasonably lead to the belief that his place of business is , or is officially connected with the Trade Marks Office, he shall be punishable with imprisonment for a term which may extend to two years or with fine. or with both.

Penalty for falsification of entries in the register

109. If any person makes, or causes to be made, a false entry in the register or a writing falsely purporting to be a copy of an entry in the register or produces or tenders or causes to be produced or tendered, in evidence any such writing knowing the entry or writing to be false, he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

No offence in certain cases

110. The provisions of section 102, 103, 104, and 105 shall in relation to a registered trade mark or proprietor of such mark, be subject to the rights created or recognised by this Act and no act or omission shall be deemed to be an offence under the aforesaid section if---

(a) the alleged offence relates to a registered trade mark and the act or omission is permitted under this Act; and

(b) the alleged offence relates to a registered or an unregistered trade mark and the act or omission is permitted under any other law for the time being in force.

Forfeiture of goods

111. (1) Where a person is convicted of an offence under section 103 or section 104 or section 105 or is acquitted of an offence under section 103 or section 104 on proof that he acted without intent to defraud, or under section 104 on proof of the matter specified in clause (a), clause (b), or clause, (c) of that section, the court convicting or acquitting him may direct the forfeiture to Government of all goods and things by means of, or in relation to, which the offence has been committed, or but for such proof as aforesaid would have been committed.

(2) When a forfeiture is directed on a conviction and an appeal lies against the conviction an appeal shall lie against the forfeiture also.

(3) When a forfeiture is directed on acquittal and the goods or things to which the direction relates are of value exceeding fifty rupees, an appeal against the forfeiture may be preferred, within thirty days from the date of the direction, to the court in which in appealable cases appeals lie from sentences of the court which directed the forfeiture.

(4) When a forfeiture is directed on a conviction, the court, before whom the person is convicted, may order any forfeited articles to be destroyed or otherwise disposed of as the court thinks fit.

112. Where a person accused of an offence under section 103 proves--

Exemption of certain persons employed in ordinary course of business

(a) that in the ordinary courses of his business he is employed on behalf of other persons to apply trade marks or trade descriptions, or as the case may be, to make dies, blocks, machines, plates, or other instruments for making, or being used in making trade marks and

(b) that in the case which is the subject of the charge he was so employed, and was not interested in the goods or other thing by way of profit or commission dependent on the sale of such goods or providing of services, as the case may be: and

(c) that, having taken all reasonable precautions against committing the offence charged, he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade mark or trade description and

(d) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons on whose behalf the trade mark or trade description was applied.

he shall be acquitted

Procedure where invalidity of registration is pleaded by the accused

113. (1) Where the offence charged under section 103 or section 104 or section 105 is in relation to a registered trade mark and the accused pleads that the registration of the trade mark is invalid, the following procedure shall be followed :

(a) If the court is satisfied that such defence is *prima facie* tenable, it shall not proceed with the charge but shall adjourn the proceeding for three months from the date on which the plea of the accused is recorded to enable the accused to file an application before the Appellate Board under this Act for the rectification of the register on the ground that the registration is invalid.

(b) If the accused proves to the court that he has made such application within the time so limited or within such further time as the court may for sufficient cause allow, the further proceedings in the prosecution shall stand stayed till the disposal of such application for rectification.

(c) If within a period of three months or within such extended time as may be allowed by the court the accused fails to apply to the Appellate Board for rectification of the register, the court shall proceed with the case as if the registration were valid.

(2) Where before the institution of a complaint of an offence referred to in subsection (1) any application for the rectification of the register concerning the trade mark in question on the ground of invalidity of the registration thereof has already been properly made to and is pending before the tribunal, the court shall stay the further proceedings in the prosecution pending the disposal of the application aforesaid and shall determine the charge against the accused in conformity with the result of the application for rectification in so far as the complainant relies upon the registration of his mark.

Offences by companies

114 (1) If the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1) where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of, any director manager, secretary or other officer of the company such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation--- For the purposes of this section

(a) "company" means any body corporate and incudes a firm or other associations of individuals and

(b) "director" in relation to a firm means a partner in the firm

Cognizance of certain offences and the powers of police officer for search and seizure

115. (1) No court shall take cognizance of an offence under section 107 or section 108 or section 109 except on complaint in writing made by the Registrar or any officer authorised by him in writing:

Provided that in relation to clause (c) of sub-section (1) of section 107, a court shall take cognizance of an offence on the basis of a certificate issued by the Registrar to the effect that a registered trade mark has been represented as registered in respect of any goods or services in respect of which it is not in fact registered.

(2) No court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the first class shall try an offence under this Act

(3) The offences under section 103 or section 104 or section 105 shall be cognizable.

(4) Any police officer not below the rank of deputy superintendent of police or equivalent, may, if he is satisfied that any of the offences referred to in sub-section (3) has been is being, or is likely to be committed, search and seize without warrant the goods, die, block, machine, plate, other instruments or things involved in committing the offence where ever found, and all the articles so seized shall, as soon as practicable, be produced before a Judicial Magistrate of the first class or Metropolitan Magistrate as the case may be:

Provided that the police officer, before making any search and seizure, shall obtain the opinion of the Registrar on facts involved in the offence relating to trade mark and shall abide by the opinion so obtained.

(5) Any person having an interest in any article seized under sub-section (4), may within fifteen days of such seizure, make an application to the Judicial Magistrate of the first class or Metropolitan Magistrate, as the case may be, for such article being restored to him and the Magistrate after hearing the applicant and the prosecution, shall make such order on the application as he may deem fit.

Evidence of origin of goods imported by sea

116 In the case of goods brought in to India by sea, evidence of the port of shipment shall, in prosecution for an offence under this Act or under clause (b) of section 112 of the Customs Act, 1962, relating to confiscation of goods under clause (d) of section 111 and notified by the Central Government under clause (n) of sub-section (2) of section 11 of the said Act for the protection of trade marks relating to import of goods, be *prima facie* evidence of the place or country in which the goods are made or produced. 52 of 1962

Costs of defence or prosecution

117. In any prosecution under this Act the court may order such costs to be paid by the accused to the complainant, or by the complainant to the accused, as the court deems reasonable having regards to all the circumstances of the case and the conduct of the parties and the costs so awarded shall be recoverable as if they were a fine.

Limitation of prosecution

52 of 1962

118. No prosecution for an offence under this Act or under clause (b) of section 112 of the Customs Act, 1962 relating to confiscation of goods under clause (d) of section 111 and notified by the Central Government under clause (n) of sub-section (2) of section 11 of the said Act for the protection of trade marks, relating to import of goods shall be commenced after expiration of three years next after the commission of the offence charged, or two years after the discovery thereof by the prosecutor whichever expiration first-happens.

Information as to commission of offences

119. An officer of the Government whose duty it is to take part in the enforcement of the provisions of this Chapter shall not be compelled in any court to say whence he got any information as to the commission of any offence against this Act.

Punishment of abetment in India of acts done out of India.

120. If any person, being within India, abets the commission, without India, of any act which, if committed in India, would, under this Act, be an offence, he may be tried for such abetment in any place in India in which he maybe found, and be punished therefor with the punishment to which he would be liable if he had himself committed in that place the act which he abetted.

Instructions of central govern ment as to permissable variation to be observed by criminal courts.

121 The Central Government may, by notification in the Official Gazette, issue instructions for the limits of variation, as regards number, quantity, measure, gauge or weight which are to be recognised by criminal courts as permissible in the case of any goods.

CHAPTER XIII

MISCELLANEOUS

Protection of action take in good faith

122 No suit or other legal proceedings shall lie against any person in respect of anything which is in good faith done or intended to be done in pursuance of this Act.

Certain persons to be public servants

45 of 1860

123. Every person appointed under this Act and every member of the Appellate Board shall be deemed to be a pubic servant within the meaning of section 21 of the Indian Penal code

Stay of proceedings where the validity of registration of the trade mark is questioned, etc.

124. (1) Where in any suit for infringement of a trade mark---

(a) the defendant pleads that registration of the plaintiff's trademark is invalid; or

(b) the defendant raises a defence under clause (e) of sub-section (2) of section 30 and the plantiff pleads the invalidity of registration of the defendant's trade mark.

the court trying the suit (hereinafter referred to as the court), shall----

(i) if any proceedings for rectification of the register in relation to the plaintiff's or defendant's trade mark are pending before the Registrar or the Appellate Board, stay the suit pending the final disposal of such proceedings;

(ii) if no such proceedings are pending and the court is satisfied that the plea regarding the invalidity of the registration of the plantiff's or defendant's trade mark is *prima facie* tenable, raise an issue regarding the same and adjourn the case for a period of three months from the date of the framing of the issue in order to enable the party concerned to apply to the Appellate Board for rectification of the register.

(2) If the party concerned proves to the court that he has made any such application as is referred to in clause (b) (ii) of sub-section (1) within the time specified therein or within such extended time as the court may for sufficient cause allow, the trial of the suit shall stand stayed until the final disposal of the rectification proceedings.

(3) If no such application as aforesaid has been made within the time so specified or within such extended time as the court may allow, the issue as to the validity of the registration of the trade mark concerned shall be deemed to have been abandoned and the court shall proceed with the suit in regard to the other issues in the case.

(4) The final order made in any rectification proceedings referred to in sub-section (1) or sub-section(2) shall be binding upon the paries and the court shall dispose of the suit conformably to such order in so far as it relates to the issue as to the validity of the registration of the trade mark.

(5) The stay of a suit for the infringement of a trade mark under this section shall not preclude the court form making any interlocutory order (including any order granting an injections, directing account to be kept, appointing a receiver or attaching any property). during the period of the stay of the suit.

Application for rectification of register to be made to Appellate Board in certain cases

125. (1) Where in a suit for infringement of a registered trade mark the validity of the registration of the plaintiff's trade mark is questioned by the defendant or where in any such suit the defendant raises a defence under clause (e) of sub-section (2) of section 30 and the plainsiff questions the validity of the registration of the defendant's trade mark, the issue as to the validity of the registration of the trade mark concerned shall be determined only on an application for the rectification of the register and notwithstanding anything contained in section 47 or section 57, such application shall be made to the Appellate Board and not to the Registrar.

(2) Subject to the provisions of sub-section (1) where an application for rectification of the register is made to the Registrar under section 47 or section 57, the Registrar may, if he thinks fit, refer the application at any stage of the proceedings to the Appellate Board.

Implied warranty on sale of marked goods

126. Where a mark or a trade mark or trade description has been applied to the goods on sale or in the contract for sale of any goods or in relation to any service, the seller shall be deemed to warrant that the mark is a genuine mark and not falsely applied, or that the trade description is not a false trade description within the meaning of this Act unless the contrary is expressed in writing signed by or on behalf of the seller and deliver at the time of the sale of goods or providing of services on contract to and accepted by the buyer.

Power of registrar

127. In all proceedings under this Act before the Registrar--

(a) the Registrar shall have all the powers of a civil court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, compelling the discovery and production of documents and issuing commissions for the examination of witnesses :

(b) the Registrar may, subject to any rules made in this behalf under section 157, make such orders as to costs as he considers reasonable, and any such order shall be executable as a decree of a civil court :

Provided that the Registrar shall have no power to award costs to or against any party on an appeal to him against a refusal of the proprietor of a certification trade mark to certify goods or provision of services or to authorise the use of the mark:

(c) the Registrar may on an application made in the prescribed manner, review his own decision,

Exercise of discretionary power by Registrar

128 Subject to the provisions of section 131, the registrar shall not exercise any discretionary or other power vested in him by this Act or the rules made thereunder adversely to a person applying for the exercise of that power without (if so required by that person within the prescribed time) giving to the person an opportunity of being heard

Evidence before Registrar

129. In any proceeding under this Act before the Registrar evidence shall be given by affidavit;

Provided that the Registrar may, if he thinks fit, take oral evidence in lieu of or in addition to, such evidence by affidavit

Death of party to a pro ceeding

130. If a person who is a party to a proceeding under this Act (not being a proceeding before the Appellate Board or a court), dies pending the proceeding the Registrar may on request and on proof to his satisfaction of the transmission of the interest of the deceased person, substitute in this proceeding his successor in interest in his place, or, if the Registrar is of opinion that the interest of the deceased person is sufficiently represented by the surviving parties, permit the proceeding to continue without the substitution of his successor in interest.

Extension of time

131. (1) If the Registrar is satisfied on application made to him in the prescribed manner and accompanied by the prescribed fee, that there is sufficient cause for extending the time for doing any act (not being a time expressly provided in this Act), whether the time so specified has expired or not, he may, subject to such conditions as he may think fit to impose, extend the time and inform the parties accordingly.

(2) Nothing in sub-section (1) shall be deemed to require the Registrar to hear the parties before disposing of an application for extension of time, and no appeal shall lie from any order of the Registrar under this section.

Abandoment

132. Where, in the opinion of the Registrar, an applicant is in default in the prosecution of an application filed under this Act or any Act relating to trade marks in force prior to the commencement of this Act, the Registrar may, by notice require the applicant to remedy the default within a time specified and after giving him, if so, desired, an opportunity of being heard, treat the application as abandoned, unless the default is remedied within the time specified in the notice.

Preliminary advice by the Registrar as to distinctiveness

133. (1) The Registrar may, on application made to him in the prescribed manner by any person who proposes to apply for the registration of a trade mark, give advice as to whether the trade mark appears to him *prima facia* to be distinctive.

(2) If on an application for the registration of a trade mark as to which the Registrar has given advice as aforesaid in the affirmative made within three months after the advice was given, the Resitrar, after further investigation or consideration, gives, notice, to the applicant of objection on the ground that the trade mark is not distinctive, the applicant shall be entiled, on giving notice of withdrawal of the application within the prescribed period, to have repaid to him any fee paid on the filing of the application.

Suit for infringement, etc., to be instituted before Distric court

134. (1) No suit---

(a) for the infringement of a registered trade mark: or

(b) relating to any right in a registered trade mark : or

(c) for passing off arising out of the use by the defendant of any trade mark which is identical with or deceptively similar to the plaintiff's trade mark, whether registered or unregistered.

shall be instituted in any court inferior to a District Court having jurisdisction to try the suit.

(2) For the purpose of clauses (a) and (b) of sub-section (1) a " District court having juridisction" shall notwithstanding anything contained in the Code of Civil Procedure,1908 or any other law for the time being in force, include a district Court within the local limites of whose jurisdiction, at the time of the institution of the suit or other proceeding the person instituting the suit or proceeding or where are more than one such persons any of them, actually and voluntarily resides or carries on business or personally works for gain.

5 of 1908

Explanation--- For the purposes of sub-section (2) " person" includes the registered proprietor and the registered user.

Relief in suits for infringement or for passing off.

135. (1) The relief which a court may grant in any suit for infringement or for passing off referred to in section134 includes injunction (subject to such terms, if any, as the court thinks fit) and at the option of the plaintiff, either damages or an account of profits, together with or without any order for the delivery up of the infringing labels and marks for destruction or erasure.

(2) the order of injunction under sub-section (1) may include an expart injunction or any interlocutory order for any of the following matters, namely:---

(a) for discovery of documents :

(b) preserving of infringing goods, documents or other evidence which are related to the subject matter of the suit:

(c) restraining the defendant from deposing of or dealing with his assets in manner which may adversely affect plaintiff's ability to recover damages, costs or other pecuniary remedies which may be finally awarded to the plaintiff

(3) Notwithstanding anything contained in sub-section (*1*), the court shall not grant relief by way of damages (other than nominal damage) or on account of profits in any case---

(a) where in a suit for infringement of a trade mark, the infringement complained of is in relation to a certification trade mark or collective mark: or

(b) where in a suit for infringement the defendant satisfies the court---

(i) that at the time he commenced to use the trade mark complained of in the suit he was unaware and had no reasonable ground for believing that the trade mark of the plaintiff was on the register or that the plaintiff was a registered user using by way of permitted use: and

(ii) that when he became aware of the existence and nature of the plaintiff's right in the trademark, he fortwith ceased to use the trade mark in relation to goods or services in respect of which it was registered; or

(c) where in a suit for passing off, the defendant satisfies the court--

(i) that at the time he commenced to use the trade mark complained of in the suit he was unaware and have no reasonable ground for believing that the trade mark of the plaintiff was in use; and

(ii) that when he became aware of the existence and nature of the plaintiff's trade mark he forthwith ceased to use the trade mark complained of.

Registered user to be impleaded in certain proceedings

136. (1) In every proceeding under Chapter VII or under section 91, every registered user of a trade mark using by way of permitted use, who is not himself an applicant in respect of any proceeding under that Chapter or section, shall be made a party to the proceeding

(2) Notwithstanding anything contained in any other law, a registered user so made a party to the proceeding shall not be liable for any costs unless he enters an appearance and takes part in the proceeding.

Evidence of entries in register, etc. and things done by the Registrar

137. (1) A copy of any entry in the register or of any document referred to in subsection (i) of section 148 purporting to be certified by the Registrar and sealed with the seal of the trade marks registry shall be admitted in evidence in all courts and in all proceedings without further proof or production of the original

(2) A certificate purporting to be under the hand of the Registrar as to any entry, matter or thing that he is authorised by this Act or the rules to make or do shall be *prima facie* evidence of the entry having been made and of the contents thereof, or of the matter or things having been done or not done.

Registrar and other officers not comm pellable to produce register etc.

138. The Registrar or any office of the Trade Marks Registry shall not, in any legal proceedings to which he is not a party be compellable to produce the register or any other document in his custody, the contents of which can be proved by the production of a certified copy issued under this Act or to appear as a witness to prove the matters therein recorded unless by order of the court made for special cause.

Power to require goods to show indication of origin

139. (1) The Central Government may, by notification in the Official Gazette, require that goods of any class specified in the notification which are made or produced beyond the limits of India and imported into the India, or which are made or produced within the limits of India, shall from such date as may be appointed by the notification not being less than three months from its issue, have applied to them an indication of the country or place in which they were made or produced or of the name and address of the manufacturer or the person for whom the goods were manufactured.

(2) the notification may specify the manner in which such indication shall be applied that is to say, whether to goods themselves or in any other manner, and the times or occasions on which the presence of the indication shall be necessary that is to say, whether on importation only, or also at the time of sale whether by wholesale or retail or both.

(3) No notification under this section shall be issued, unless application is made for its issue by persons or associations substantially representing the interest of dealers in or manufacturers, producers, or users of the goods concerned, or unless the Central Government is otherwise convinced that it is necessary in the public interest to issue the notification, with or without such inquiry, as the Central Government may consider necessary

10 of 1897

(4) The provisions of section 23 of the General Clauses Act, 1897 shall apply to the issue of a notification under this section as the apply to the making of a rule or bye-law the making of which is subject to the condition of previous publication.

(5) A notification under this section shall not apply to goods made or produced beyond the limits of India and imported into India, if in respect of those goods, the Commissioner of customs is satisfied at the time of importation that they are intended for exportation whether after transhipment in or transit thought India or otherwise.

Power to require information of imported goods bearing false trade marks

140 (1) The proprietor or a licensee of a registered grade mark may give notice in writing to the collector of Customs to prohibit the importantion of any goods if the import of the said goods constitute infringement under clause (c) of sub-section (6) of section 29.

(2) Where goods which are prohibited to be imported into India by notification of the Central Government under clause (n) of sub-section (2) of section 11 of of the Customs Act, 1962, for the protection of trade marks, and are liable to confiscation on importation under that Act, are imported into India, the Commissioner of Customs if, upon representation made to him, he has reason to believe that the trade mark complained of is used as a false trade mark, may require the importer of the goods,, or his agent, to produce any documents in his possession relating to the goods and to furnish information as to the name and address of the person by whom the goods were consigned to India and the name and address of the person to whom the goods were sent in India.

52 of 1962

(3) The importer or his agent shall, within fourteen days, comply with the requirement as aforesaid, and if he fails to do so, he shall be punishable with fine which may extend to five hundred rupees.

(4) Any information obtained from the importer of the goods or his agent under this section maybe communicated by the commissioner of Customs to the registered proprietor or registered user of the trade mark which is alleged to have been used as a false trade mark.

Certificate of validity

141. If in any legal proceeding for rectification of the register before the Appellate Board a decision is on contest given in favour of the registered proprietor of the trade mark on the issue as the to the validity of the registration of the trade mark, the Appellate Board may grant a certificate to that effect, and if such a certificate is granted, then, in any subsequent legal proceeding in which the said validity comes into question the said proprietor on obtaining a final order or judgement in his gavour affirming validity of the registration of the trade mark shall, unless the said final order or judgement for sufficient reason directs otherwise, be entitled to his full cost, charges and expenses as between legal practitioner and client.

Groundless threats of legal proceedings

142. (1) Where a person, by means of circulars, advertisements or otherwise, threatens a person with an action or proceeding for infringement of a trade mark which is registered, or alleged by the first mentioned person to be registered, or with some other like proceeding a person aggrieved may, whether the person making the threats is or is not the registered proprietor or the registered user of the trade mark bring a suit against the first mentioned person and may obtain a declaration to the effect that the threats are unjustifiable and an injunction against the continuance of the threats and may recover such damages (if any) as he has sustained, unless the first-mentioned person satisfies the court that the trade mark is registered and that the acts in respect of which the proceedings were threatened, constitute or, if done would constitute, an infringement of the trade marks.

(2) The last preceding sub-section does not apply if the registered proprietor of the trade mark, or a registered user acting in pursuance of sub-section (*1*) of section 52 with due diligene commences and prosecutes an action against the person threatened for infringement of the trade mark.

(3) Nothing in this section shall render a legal practitioner or a registered trade marks agent liable to an action under this section in respect of an act done by him in his professional capacity on behalf of a client.

(4) A suit under sub-section (*I*) shall not be instituted in any court inferior to a District Court.

Address for service

143. An address for service stated in an application or notice of opposition shall for the purposes of the application or notice of opposition be deemed to be the address of the applicant or opponent, as the case may be and all documents in relations to the application or notice of opposition may be served by leaving them at or sending them by post to the address for service of the applicant or opponent, as the case may be.

Trade usagers, etc, to be taken into consderation

144. In any proceeding relating to a trade mark, the tribunal shall admit evidence of the usages of the trade concerned and of any relevant trade mark or trade name of get up legitimately used by other person.

Agents.

145. Where, by or under this Act, any act, other than the marking of an affidavit is required to be done before the Registrar by any person, the act may, subject to the rules made in this behalf, be done instead of by that person himself by a person duly authorised in the prescribed manner, who is---

(a) a legal practitioner, or

(b) a person registered in the prescribed manner as a trademark agent, or

(c) a person in the sole and regular employment of the principal

Marks registered by an agent or representative without authority

146. If an agent or a representative of the proprietor of a registered trade mark, without authority uses or attempts to register or registers the mark in his own name, the proprietor shall be entitled to oppose the registration applied for or secure its cancellation or rectification of the register so as to bring him as the registered proprietor of the said mark by assignment in his favour.

Provided that such action shall be taken within three years of the registered proprietor of the trade mark becoming aware of the conduct of the agent or representative

Indexes

147. There shall be kept under the direction and supervision of the Registrar

(a) an index of registered trade marks:

(b) an index of trade marks in respect of which applications for registration are pending :

(c) an index of the names of the proprietors of registered trade marks: and

(d) an index of the name of registered users.

Documents open to public inspection

148. (1) Save as otherwise provided in sub-section (4) of section 49---

(a) the register and any document upon which any entry in the register is based,

(b) every notice of opposition to the registration of a trade mark application for rectification before the Registrar, counter statement thereto, and any affidavit or document filed by the parties in any proceedings before the Registrar :

(c) all regulations deposited under section 63 or section 74, and all applications under section 66 or section 77 for varying such regulations :

(d) the indexes mentioned in section 147; and

(e) such other documents as the Central Government may, by notification in the Official, Gazette, specify.

shall subject to such conditions as may be prescribed, be open to public inspection at the Trade Marks Registry

Provided that when such register is maintained wholly or partly on computer, the inspection of such register under this section shall be made by inspecting the computer printout of the relevant entry in the resigter so maintained on computer.

(2) Any person may, on an application to the Registrar and on payment of such fees as may be prescribed, obtain a certified copy of any entry in the register or any document referred to in sub-section (*1*)

Reports of Registrar to be placed before parliament

149. The Central Government shall cause to be placed before both Hoses of Parliament once a year a report respecting the execution by or under the Registrar of this Act.

Fees and surcharges

150. (*1*) There shall be paid in respect of applications and registration and other matters under this Act such fees and surcharge as may be prescribed by the Central Government.

(2) Where a fee is payable in respect of the doing of an act by the Registrar, the Registrar shall not to do act until the fee has been paid.

(3) Where a fee is payable in respect of the filing of a document at the Trade Marks Registry, the document shall be deemed not to have been filed at the registry until the fee has been paid.

Savings in respect of certain matters in Chapter XII

151. Nothing in Chapter XII shall---

(a) exempt any person from any suit or other proceeding which might, but for anything in that Chapter, be brought against him : or

(b) entitle any person to refuse to make a complete discovery, or to answer any question or interrogatory in any suit or other proceeding, but such discovery or answer shall not be admissible in evidence against such person in any such prosecution for an offence under that Chapter or against clause (h) of section 112 of the Customs Act, 1962 relating to confiscation of goods under clause (d) of section 111 of that Act and notified by the Central Government under clause (n) of sub-section (2) of section 11 thereof for the protection of trade marks relating to import of goods: or

52 of 1962

(c) be construed so as to render liable to any prosecution or punishment any servant of a master resident in India who in good faith acts in obedience to the instructions of which master, and, on demand made by or on behalf of the prosecutor, has given full information as to his master and as to the instructions which he has received from his master.

Declaration as to ownership of trde mark not registrable under the Registration Act, 1908

152. Notwithstanding anything contained in the Registration Act, 1908 no document declaring or purporting to declare the ownership or tile of a person to a trade mark other than a registered trade mark shall be registered under that Act. 16 of 1908

Government to be bound

153. The provision of this Act shall be binding on the Government.

special provisions relating to applications for registration form citizens of convention countries

154. (1) With a view to the fulfillment of a treaty, convention or arrangement with any country or country which is a member of a group of countries or union of countries of Intergovernmental Organistion outside India which affords to citizens of India similar privileges as granted to its own citizens the Central Government may, by notification in the official Gazette, declare such country or group of countries or union of countries or Inter-Governmental Organization to be a convention country or group of countries or Union of Countries or Inter-Governmental Organisations as the case may be, for the purposes of this Act.

(2) Where a person has made an application for the registration of a trade mark in a convention country or country which is a member of a group of countries or union of countries or Inter-Governmental Organisation and that person, or his legal representative or assignee, makes an application for the resigtration of the trade mark in India within six months after the date on which the application was made in the convention country or country which is a member of a group of countries union of Countries or Inter-Governmental Organisations the trade mark shall, if registered under this Act, be registered as of the date on which the application was made in the convention country or country which is member of a group of countries or union of countries or Inter-Governmental of Organisation and that date shall be deemed for the purposes of this Act to be the date of resigration.

(3) Where applications have been made for the registration of a trade mark in two or more convention countries or country which are members of group of countries or union of countries Inter-Governmental of Oganisation, the period of six months referred to in the last preceding sub-section shall be reckoned from the date on which the earlier or earliest of those application was made.

(4) Nothing in this Act shall entitle the proprietor of a trade mark to recover damages for infringement which took place prior to the date of application for registration under this Act.

Provision as to receiprocity

155. Where any country or country which is a member of a group of countries or union of countries or Inter-Governmental Organisation specified by the Central Government in this behalf by notification in the official Gazette does not accord to citizens of India the same rights in respect of the registration and protection of trade marks as it accords to its own nationals, no national of such country or country which is a member of a group of countries or union of countries or Inter-Government Organisation as the case may be, shall be entitled either solely or jointly with any other person--

(a) to apply for the registration of, or be registered as the proprietor of a trade mark:

(b) to be registered as the assignee of the proprietor of a registered trade mark : or

(c) to apply for registration or be registered as a registered user of a trade mark under section 49.

Power of Central Government to remove difficulties

156. (1) If any difficulty arises in giving effect to the provisions of this act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty.

Provided that no order shall be made under this section after the expiry of five years from the commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made. be laid before each house of parliament

Power to make rules

157. (1) The Central Government may by notification in the Official Gazette and subject to the conditions of previous publication make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:---

(i) the matters to be included in the Register of Trade Marks under subsection (1) of section 6, and the safe guards to be observed in the maintenance of records on computer floppies or diskettes or in any other electronic form under sub-section (2) of that section:

(ii) the manner of publication of alphabetical index of classification of goods and services under sub-section (*1*) of section 8:

(iii) the manner in which the Registrar may notify a word as an international non-proprietary name under section 13:

(iv) the manner of making an application for dissolution of an association under sub-section (5) of section 16:

(v) the manner of making an application for registration of a trade mark under sub-section (1) of section 18:

(vi) the manner of advertising of an application for registration under subsection (1) and the manner of notifying correction or amendment under sub section (2) of section 20:

(vii) the manner of making an application and the fee payable for such application giving notice under sub-section (1) and sending counter-statements under sub-section (2) and submission of evidence and the time therefor under subsection (4) of section 21:

(viii) the form of certificate of registration under sub-section (2), and the manner of giving notice to the applicant under sub-section (3) of section 23:

(ix) the forms of application for renewal and restoration the time within which such application is to be made and fee and surcharge if any payable with each application, under section 25 and the time within which the Registrar shall send a notice and the manner of such notice under sub-section (3) of that section

(x) the manner of submitting statement of cases under sub-section (2) of section 40:

(xi) the manner of making an application by the proprietor of trade mark under section 41:

(xii) the manner of making an application for assignment or transmission of a certification trade mark under section 43:

(xiii) the manner of making an application to the Registrar to register title under sub-section (1) of section 45:

(xiv) the manner in which and the period within which an application is to be made under sub-section (4) of section 46:

(xv) the manner of making an application under sub-section (2) of section 47:

(xvi) the manner of making an application, documents and other evidence to accompany such application under sub-section (1) and the manner in which notice is to be issued under sub-section (3) of section 49

(xvii) the manner of making an application under sub-section (1) the manner of issuing notice under sub-section (2) and the procedure for cancelling a registration under sub-section (3) of section 50:

(xviii)the manner of making application under sub-section (1) and (2) the manner of giving notice under sub-section (4) and the manner of service of notice of rectification under sub-section (5) of section 57:

(xix) the manner of making an application under section 58

(xx) the manner of making an application under sub-section (1), the manner of advertising an application time and manner of notice by which application may be opposed under sub-section (2) and (3) of section 59:

(xxi) the manner of advertisement under the sub-section (2) of section 60:

(xxii) the other matters to be specified in the regulations under sub-section (2) of section 63:

(xxiii)the manner of making an application under sub-section(1) of section 71:

(xxiv)the manner of advertising an application under section 73:

(xxv) the manner of making an application under section77:

(xxvi)the classes of goods under section 79:

(xxvii) the conditions and restrictions under sub-section(1) of section 80

(xxviii) determination of character of textile goods by sampling under section 82:

(xxix) the salaries and allowance payable to, and the other terms and conditions of service of the chairman vice-chairman and other members under sub-section (1) of section 88

(xxx) the procedure for investigation of misbehaviour or incapacity or the chairman, vice-chairman and other members under sub-section (3) of section 89:

(xxxi) the salaries and allowances and other conditions of service of the officers and other employees of the Appellate Board under sub-section (2) and the manner in which the officers and other employees of the Appellate Board shall discharge their functions under sub-section (3), of section 90:

(xxxii) the form of making an appeal, the manner of verification and the fee payable under sub-section (3) of section 91:

(xxxiii) the form in which and the particulars to be included in the application to the Appellate Board under sub-section (*1*) of section 97:

(xxxiv) the manner of making an application for review under clause (c) of section127:

(xxxv) the time within which an application is to be made to the Registrar for exercising his discretionary power under section 128:

(xxxvi) the manner of making an application and the fee payable therefor under sub-section (1) of section131:

(xxxvii) the manner of making an application under sub-section (1) and the period for withdrawal of such application under sub-section (2) of section 133:

(xxxviii) the manner of authorising any person to act and the manner of registration as a trade mark agent under section 145:

(xxxix) the conditions for inspection of documents under sub-section (1) and the fee payable for obtaining a certified copy of any entry in the register under sub-section (2) of section 148

(xl) the fees and surcharge payable for making applications and registration and other matters under section 150:

(xli) any other matter which is required to be or may be prescribed

(3) The power to make rules conferred by this section shall include the power to give retrospective effect in respect of the matters referred to inclauses (xxix) and (xxxi) of subs-section (2) from a date not earlier that the date of commencement of this Act, but no retrospective effect shall be given to any such rule so as to prejudicially affect the interests of any person to whom sub-rule may be applicable.

(4) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each house of parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if before the expiry of the session immediately following the session or the successive sessions aforesaid both Houses agree in making any modification in the rule or both houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be: so however, that any such modification or annulment shall be without prejudice to the validity of any thing previously done under that rule.

158. The enactment specified in the Schedule shall be amended in the manner specified therein. Amendments

159. (1) The Trade and Merchandise Marks Act, 1958 is hereby repealed

43 to 1958

10 of 1897

(2) Without prejudice to the provisions contained in the General Clauses Act, 1897, with respect to repeals, any notification, rule, order requirement, registration, certificate, notice, decision, determination, direction, approval, authorization, consent, application, request or thing made, issued, given or done under the Trade and Merchandise marks Act, 1958 shall, if in force at the commencement of this Act, continue to be in force and have effect as if made, issued, given or done under the corresponding provisions of this Act. Repeal and savings

43 of 1958

(3) The provision of this Act shall apply to any application for registration of a trade mark pending at the commencement of this Act and to any proceedings consequent thereon and to any registration granted in pursuance thereof.

(4) Subject to the provisions of section 100 and notwithstanding anything contained in any other provision of this Act, any legal proceeding pending in any court at the commencement of this Act maybe Continued in that court as if this Act had not been passed.

(5) Notwithstanding anything contained in this Act, where a particular use of a registered trade mark is not an infringement of a trade mark registered before the commencement of this Act, then, the continued use of that mark shall not be an infringement under this Act.

(6) Notwithstanding anything contained in sub-section (2), the date of expiration of registration of a trade mark registered before the commencement of this Act shall be the date immediately after the period of seven years for which it was registered or renewed:

Provided that the registration of a defensive trade mark referred to in section 47 of the Trade and Merchandise Marks Act, 1958 shall cease to have effect on the date immediately after the expiry of five years of such commencement or after the expiry of the period for which it was registered or renewed, whichever is earlier.

43 of 1958

रजिस्ट्री सं० डी० एल०-33004/99 REGD. NO. D. L.-33004/99

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वाणिज्य एवं उद्योग मंत्रालय,

(औद्योगिक नीति और संवर्धन विभाग)

अधिसूचना

नई दिल्ली, 6 मार्च, 2017

सा.का.नि. 199(अ).—कतिपय नियमों के प्रारुप अर्थात व्यापार चिह्न नियम 2015, व्यापार चिह्न अधिनियम, 1999 (1999 का 47) की धारा 157 की उप-धारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारत के राजपत्र असाधारण , भाग II, खण्ड 3, उपखण्ड (i), में तारीख 17 नवम्बर, 2015 को भारत के वाणिज्य और उद्योग मंत्रालय(औद्योगिक नीति और संवर्धन विभाग) की अधिसूचना सा.का.नि. 879(अ) को प्रकाशित किए गए थे और जिनमें उन सभी व्यक्तियों से जिनके उनसे प्रभावित होने की संभावना है, उस तारीख से तीस दिन की समाप्ति के पूर्व जनता को उक्त अधिसूचना उपलब्ध कराई गई थी;

और जबकि राजपत्र की प्रतियां जनता को तारीख 17 नवंबर 2015 को उपलब्ध कराई गई थी;

और जबकि अधिसूचना में उक्त प्रारुप नियम पर निर्दिष्ट समय में विभिन्न व्यक्तियों और पणधारियों से आक्षेप और सुझाव प्राप्त हुए है और आक्षेपों और सुझाव पर केन्द्रीय सरकार ने विचार कर लिया है;

अतः अब, केन्द्रीय सरकार, व्यापार चिह्न अधिनियम 1999 (1999 का 47) की धारा 157 की द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, व्यापार चिह्न नियम 2002 के उन बातों के सिवाए अधिक्रांत करते हुए अधिक्रमण किया गया है या लोप किया गया है निम्नलिखित नियम बनाती है, अर्थात-

भाग-1

अध्याय-1

प्रारंभिक

1. **संक्षिप्त नाम और प्रारम्भ.—**(1) इन नियमों का संक्षिप्त नाम व्यापार चिह्न नियम, 2017 है।

(2) ये राजपत्र में प्रकाशन की तारीख को प्रवृत्त होंगे।

2. परिभाषाएं.—(1) इन नियमों में, जब तक कि संदर्भ से अन्यथा अपेक्षित न हो-

(क) "अधिनियम" से व्यापार चिह्न अधिनियम, 1999 (1999 का 47) अभिप्रेत है;

(ख) "अभिकर्ता" से अधिनियम की धारा 145 के अधीन कार्य करने के लिए प्राधिकृत कोई व्यक्ति अभिप्रेत है;

(ग) "किसी व्यापार चिह्न के रजिस्ट्रीकरण के लिए आवेदन"के अन्तर्गत माल या सेवाओं के लिए वह व्यापार चिह्न है जो उसमें अन्तर्विष्ट है;

(घ) "व्यापार चिह्न रजिस्ट्री का समुचित कार्यालय" से नियम 4 में यथाविनिर्दिष्ट व्यापार चिह्न रजिस्ट्री का सुसंगत कार्यालय अभिप्रेत है;

(ड.) "वर्ग फीस" से किसी व्यापार चिह्न के रजिस्ट्रीकरण के लिए कोई आवेदन फाइल करने के लिए विहित फीस अभिप्रेत है;

(च) "कन्वेंशन देश" से धारा 154 की उपधारा (1) के अधीन उस रूप में घोषित कोई देश या देशों का समूह या देशों का संघ या देशों के अंदर सरकारी संगठन अभिप्रेत है;

(छ) "कन्वेंशन आवेदन" से धारा 154 के आधार पर बनाए गए किसी व्यापार चिह्न के रजिस्ट्रीकरण के लिए कोई आवेदन अभिप्रेत है;

(ज) "प्रभागीय आवेदन" से अभिप्रेत है-

(I) व्यापार चिह्न के रजिस्ट्रीकरण के लिए आवेदन जिसके वर्ग में वस्तुओं या सेवाओं के प्रभाग के लिए अनुरोध किया है; या

(II) किसी व्यापार चिह्न के रजिस्ट्रीकरण के लिए एकल आवेदन के विभाजन के लिए किया गया आवेदन जो विभाजित वस्तुओं या सेवाओं के लिए है;

(झ) "विभाजनीय फीस" से प्रथम अनुसूची की प्रविष्टि संख्या 14 के सामने विहित फीस अभिप्रेत है;

(ञ) "प्ररूप" से द्वितीय या तृतीय अनुसूची में दिया गया प्ररूप अभिप्रेत है;

(ट) "ग्राफीय निरुपण" से कागजपत्र के रूप में प्रदर्शित अथवा प्रदर्शन योग्य माल या सेवाओं के लिए किसी व्यापार चिह्न की समाकृति अभिप्रेत है और इसमें अभिकल्पित स्वरूप में किया गया प्रदर्शन भी समाविष्ट है;

(ठ) "जरनल" से महानियंत्रक, एकस्व अभिकल्प और व्यापार चिह्न के शासकीय वेबसाइट पर उपलब्ध व्यापार चिह्न जरनल अभिप्रेत है;

(ड) "अधिसूचित तारीख" से यह तारीख अभिप्रेत है जिसको ये नियम प्रवृत होते हैं;

(ढ) "पुरानी विधि" से अधिनियम के प्रारम्भ के ठीक पूर्व विद्यमान व्यापार और पण्य वस्तु चिह्न अधिनियम, 1958 और उसके अधीन बनाए गए नियम अभिप्रेत है;

(ण) "विरोध" से यथास्थिति किसी व्यापार चिह्न या सामुहिक चिह्न या प्रमाणीकरण व्यापार चिह्न के रजिस्ट्रीकरण के लिए कोई विरोध अभिप्रेत है और भारत को नामित किसी अंतरराष्ट्रीय रजिस्ट्रीकरण की संरक्षा अनुदान का विरोध और रजिस्ट्रीकृत व्यापार चिह्न में परिवर्तन का विरोध शामिल है;

(त) "भारत में कारबार का मुख्य स्थान" से नियम 3 में यथा विनिर्दिष्ट भारत में कारबार का सुसंगत स्थान अभिप्रेत है;

(थ) "प्रकाशन" से व्यापार चिह्न जरनल में प्रकाशित करना अथवा महानियंत्रक, एकस्व अभिकल्प और व्यापार चिह्न के शासकीय वेबसाइट पर उपलब्ध करना अभिप्रेत है;

(द) "रजिस्ट्रीकृत व्यापार चिह्न अभिकर्त्ता" से यह व्यापार चिह्न अभिकर्त्ता अभिप्रेत है जिसका नाम नियम 142 के अधीन रखे गए व्यापार चिह्न अभिकर्त्ता के रजिस्टर में वास्तव में प्रविष्टि है;

(ध) "नवीकरण" से यथास्थिति किसी व्यापार चिह्न या किसी प्रमाणीकरण व्यापार चिह्न या समूहिक चिह्न के रजिस्ट्रीकरण का नवीकरण अभिप्रेत है और उसके अन्तर्गत है;

(न) "अनुसूची" से इन नियमों की अनुसूची अभिप्रेत है;

(प) "धारा" से अधिनियम की कोई धारा अभिप्रेत है;

(फ) लघु उद्यम का अर्थ है:

(i) वस्तुओं के निर्माण और उत्पादन करने वाली किसी उद्यम के संदर्भ एक उद्यम जहाँ संयंत्र और मशीनरी में निवेश सूक्ष्म, लघु और मध्यम उद्यम विकास अधिनियम, 2006 (2006 का 27) की धारा 7 की उप-धारा (1) का खंड (क) के तहत मध्यम उद्यम के लिए निर्धारित सीमा से अधिक ना हो; और

(ii) सेवा उपलब्ध कराने या प्रदान करने का कार्य करने वाले किसी उद्यम के संदर्भ एक उद्यम जहाँ यंत्र निवेश सूक्ष्म, लघु और मध्यम उद्यम विकास अधिनियम, 2006 की धारा 7 की उप-धारा (1) का खंड (ख) के तहत मध्यम उद्यम के लिए निर्धारित सीमा से अधिक ना हो।

व्याख्या: "उद्यम" से उद्योग (विकास और विनियमन) अधिनियम, 1951 (1951 का 65) की प्रथम अनुसूची में निर्दिष्ट किसी उद्योग से किसी भी प्रकार संबद्ध वस्तुओं के निर्माण या उत्पादन अथवा ऐसे उद्योग में सेवा उपलब्ध कराने या प्रदान करने में संलिप्त ऐसे औद्योगिक निकाय या व्यवसाय संबद्ध या किसी अन्य प्रतिष्ठान, किसी भी नाम से ज्ञात, का अभिप्राय है।

(iii) किसी विदेशी उद्यम के संदर्भ में, एक उद्यम जो उपर्युक्त खंड (i) और (ii) में यथा उल्लिखित अपेक्षाओं को पूरा करता हो।

व्याख्या: संयंत्र और मशीनरी में निवेश की गणना करते समय भारतीय रिजर्व बैंक के विदेशी मुद्रा का संदर्भ दर लागू होगा।

(ब) "विनिर्देश" से उस माल या सेवाओं का अभिधान अभिप्रेत है जिनके संबंध में व्यापार चिह्न या व्यापार चिह्न के रजिस्ट्रीकृत उपयोगकर्ता का रजिस्ट्रीकरण किया जाता है या किए जाने की प्रस्थापना की जाती है;

(भ) "स्टार्ट-अप" का आशय है,

(i) स्टार्ट-अप इंडिया पहल के तहत सक्षम प्राधिकारी द्वारा मान्यता प्राप्त भारत की एक इकाई।

(ii) विदेशी इकाई के संदर्भ में, स्टार्ट-अप इंडिया पहल के अनुसार टर्न-ओवर और अपने निर्माण/पंजीकरण की अवधि संबंधी मानदंड पूरा करने और इस विषयक उद्घोषणा दाखिल करने वाली एक इकाई।

व्याख्या: टर्न-ओवर की गणना करते समय भारतीय रिजर्व बैंक के विदेशी मुद्रा का संदर्भ दर लागू होगा।

(म) उस सभी अन्य शब्दों और पदों के, जो इन नियमों में प्रयुक्त हैं और परिभाषित नहीं हैं किन्तु अधिनियम में या माल का भौगोलिक उपदर्शन (रजिस्ट्रीकरण और संरक्षण) अधिनियम, 1999(1999 का 48), प्रतिलिप्यधिकार अधिनियम, 1957 (1957 का 14) में परिभाषित है, वे ही अर्थ होंगे जो कि उन अधिनियमों में क्रमश: उनके हैं।

(2) इन नियमों में, अन्यथा उपदर्शित के सिवाय, किसी धारा के प्रति निर्देश अधिनियम में उस धारा के प्रति निर्देश है, किसी नियम के प्रति निर्देश उन नियमों में उस नियम के प्रति निर्देश है, किसी अनुसूची के प्रति निर्देश इन नियमों की उस अनुसूची के प्रति निर्देश है और किसी प्ररूप के प्रति निर्देश यथास्थिति, इन नियमों की द्वितीय या तृतीय अनुसूची में वर्णित उस प्ररूप के प्रति निर्देश है।

3. भारत में कारबार का मुख्य स्थान-"भारत में कारबार के मुख्य स्थान" से निम्नलिखित अभिप्रेत है-

(i) जहां कोई व्यक्ति व्यापार चिह्न से संबद्ध माल या सेवाओं का कारबार करता है वहां-

(क) जहां कारबार भारत में केवल एक ही स्थान में किया जाता है, वहां वह स्थान,

(ख) यदि कारबार भारत में एक से अधिक स्थानों पर किया जाता है तो वह स्थान, जिसका वह व्यक्ति भारत में कारबार के मुख्य स्थान के रूप में उल्लेख करें;

(ii) जहां कोई व्यक्ति किसी व्यापार चिह्न से संबद्ध माल या सेवाओं का कारबार नहीं करता है, वहां

(क) जहां वह भारत में कोई अन्य कारबार केवल एक स्थान में कर रहा है, वहां वह स्थान,

(ख) यदि वह भारत में कोई अन्य कारबार एक से अधिक स्थानों में कर रहा है, वह स्थान, जिसका वह भारत में कारबार के मुख्य स्थान के रूप में उल्लेख करें; और

(iii) जहां कोई व्यक्ति भारत में कोई कारबार नहीं करता है किन्तु उसका भारत में निवास स्थान है, वहां भारत में ऐसा निवास स्थान।

4. व्यापार चिह्न रजिस्ट्री का समुचित कार्यालय- धारा 18 के अधीन व्यापार चिह्न रजिस्ट्रीकरण के लिए या धारा 21 के अधीन विरोध की सूचना देने या धारा 47 के अधीन किसी व्यापार चिह्न को हटाने के लिए या धारा 57 के अधीन किसी व्यापार चिह्न के रजिस्ट्रीकरण को रद्द करने या उसमें परिवर्तन करने के लिए या अधिनियम या नियमों के अधीन किन्हीं अन्य कार्यवाहियों के लिए आवेदन करने के प्रयोजनों के लिए "व्यापार चिह्न रजिस्ट्री का समुचित कार्यालय"-

(अ) अधिसूचित तारीख को व्यापार चिह्न रजिस्टर में किसी व्यापार चिह्न के संबंध में रजिस्ट्री का वह कार्यालय होगा जिसकी राज्य क्षेत्रीय सीमाओं के भीतर-

(i) ऐसी तारीख को रजिस्टर में यथाप्रविष्ट व्यापार चिह्न के रजिस्ट्रकृत स्वत्वधारी का भारत में कारबार का मुख्य स्थान स्थित है,

(ii) जहां रजिस्ट्रीकृत स्वत्वधारी के भारत में कारबार के मुख्य स्थान के बारे में रजिस्टर में कोई प्रविष्टि नहीं है, वहां ऐसी तारीख को रजिस्टर में यथाप्रविष्ट भारत में तामील के लिए पते में उल्लिखित स्थान स्थित है;

(iii) यदि संयुक्त रजिस्ट्रीकृत स्वत्वधारियों के मामले में उस स्वत्वधारी का भारत में कारबार का मुख्य स्थान स्थित है जिसका नाम ऐसी तारीख को भारत में ऐसे कारबार का स्थान रखने वाले के रूप में रजिस्टर में सबसे पहले प्रविष्ट किया जाता है;

(iv) जहां संयुक्त रजिस्ट्रीकृत स्वत्वधारियों में से किसी को भी भारत में मुख्य स्थान रखने वाले के रूप में रजिस्टर में नहीं दिखाया जाता है, वहां ऐसी तारीख को रजिस्टर में यथाप्रविष्ट संयुक्त स्वत्वधारियों के भारत में तामील के लिए पते में उल्लिखित स्थान स्थित है;

(v) यदि व्यापार चिह्न के रजिस्ट्रीकृत स्वत्वधारी का या संयुक्त रजिस्ट्रीकरण की दशा में व्यापार चिह्न के संयुक्त स्वत्वधारियों में से किसी का भारत में कारबार का कोई मुख्य स्थान रजिस्टर में प्रविष्ट नहीं है और रजिस्टर में भारत में तामील के लिए कोई पता नहीं दिया गया है, तो व्यापार चिह्न रजिस्ट्री के कार्यालय का वह स्थान जहां व्यापार चिह्न के रजिस्ट्रीकरण के लिए आवेदन किया गया था, स्थित है; और

(आ) उस व्यापार चिह्न के संबंध में, जिसके लिए रजिस्ट्रीकरण कोई आवेदन अधिसूचित तारीख को लम्बित है या अधिसूचित तारीख को या उसके पश्चात् किया गया है व्यापार चिह्न रजिस्ट्री का वह कार्यालय जिसकी राज्यक्षेत्रीय सीमाओं के भीतर-

(i) आवेदक के आवेदन में प्रकट किए गए रूप में आवेदक का भारत में कारबार का मुख्य स्थान या संयुक्त आवेदकों की दशा में, उस आवेदक का भारत में कारबार का मुख्य स्थान स्थित है जिसका नाम कारबार का ऐसा स्थान रखने वाले के रूप में आवेदन में सबसे पहले उल्लिखित है;

(ii) जहां यथास्थिति, न तो आवेदक का और न संयुक्त आवेदकों में से किसी का भारत में कारबार का मुख्य स्थान है वहां आवेदन में, यथा विनिर्दिष्ट भारत में तामील के लिए पते में उल्लिखित स्थान स्थित है;

5. कारबार के मुख्य स्थान में या तामील के लिए पते में परिवर्तन के कारण समुचित कार्यालय की अधिकारिता में परिवर्तन न होना-किसी ऐसे परिवर्तन से जो-

(अ) अधिसूचित तारीख को रजिस्टर में किसी व्यापार चिह्न के संबंध में किसी रजिस्ट्रीकृत स्वत्वधारी के या संयुक्त रजिस्ट्रीकृत स्वत्वधारियों में से किसी के भारत में कारबार के मुख्य स्थानमें या भारत में तामील के लिए पते में, उस तारीख के पश्चातवर्ती किया गया है या प्रभावी किया गया है, या

(आ) किसी व्यापार चिह्न के संबंध में, जिसके रजिस्ट्रीकरण के लिए कोई आवेदन अधिसूचित तारीख को लंबित है या उस तारीख को अथवा उसके पश्चात् किया गया है रजिस्ट्रीकरण के लिए आवेदक के या रजिस्ट्रीकरण के लिए संयुक्त आवेदकों में से किसी के भारत में कारबार के मुख्य स्थान में या भारत में तामील के लिए पते में, यथास्थिति, उस तारीख को या ऐसा आवेदन फाइल करने की तारीख को किया गया या प्रभावी किया गया है, व्यापार चिह्न रजिस्ट्री के समुचित कार्यालय की अधिकारिता पर प्रभाव नहीं पड़ेगा।

6. रजिस्टर में समुचित कार्यालय की प्रविष्टि- अधिसूचित तारीख को या उसके पश्चात् रजिस्टर में किए गए प्रत्येक व्यापार चिह्न के संबंध में रजिस्ट्रार रजिस्टर में व्यापार चिह्न रजिस्ट्री के समुचित कार्यालय की प्रविष्टि कराएगा और रजिस्ट्रार इस प्रकार की गई प्रविष्टि में किसी भी समय कोई गलती ठीक कर सकेगा।

7. लंबित आवेदन और कार्यवाहियों का व्यापार चिह्न रजिस्ट्री के समुचित कार्यालयों को हस्तांतरित करना- व्यापार चिह्न के संबंध में अधिसूचित तारीख को रजिस्ट्रार के समक्ष लंबित प्रत्येक आवेदन और कार्यवाही की बाबत यह समझा जाएगा कि वह व्यापार चिह्न रजिस्ट्री के समुचित कार्यालय को हस्तांतरित करा दी गई है।

8. दस्तावेजों को छोड़ना, आदि- अधिसूचित तारीख को व्यापार चिह्न रजिस्ट्रार में किसी व्यापार चिह्न के संबंध में, जिसके रजिस्ट्रीकरण के लिए कोई आवेदन लम्बित है, अधिनियम या नियमों द्वारा प्राधिकृत या अपेक्षित सभी आवेदन रजिस्ट्री के समुचित

कार्यालय में किए जाएंगे, सूचनाओं की तामील वहां की जाएगी, विवरण या अन्य दस्तावेज वहां दिए या भेजे जाएंगे, या फीस का संदाय वहां किया जाएगा।

बशर्ते परंतु रजिस्ट्रार जरनल में अधिसूचना जारी कर व्यापार चिह्न के रजिस्ट्रीकरण के लिए आवेदन के अतिरिक्त कोई प्ररुप या दस्तावेज व्यापार चिह्न रजिस्ट्री के किसी अन्य कार्यालय में दाखिल करने की अनुमति दे।

9. नोटिसें आदि का जारी किया जाना- अधिनियम या नियमों के अधीन किसी आवेदन, विषय या कार्यवाही से संबंधित नोटिस या संसूचना अध्यक्ष या रजिस्ट्रार द्वारा प्राधिकृत किसी अन्य अधिकारी द्वारा जारी की जा सकेगी।

10. फीस- (1) अधिनियम और नियमों के अधीन आवेदनों, विरोधों, रजिस्ट्रीकरण, नवीकरण, त्वरित परीक्षा या रिपोर्टों या किन्हीं अन्य विषयों के संबंध में दी जाने वाली फीसें, वे होंगी जो कि प्रथम अनुसूची में विनिर्दिष्ट हैं।

(2)जहां किसी विषय के संबंध में नियमों के अधीन फीस दी जानी अपेक्षित है, वहां उससे संबंधित प्ररूप या आवेदन या प्रार्थना या याचिका के साथ विहित फीस होगी।

(3)फीस इलेक्ट्रोनिक माध्यम से या नकद दी जा सकेगी या व्यापार चिह्न के रजिस्ट्रार को संबोधित मनीआर्डर से या अनुसूचित बैंक द्वारा बैंक ड्राफ्ट द्वारा या उक्त बैंक पर बैंककार चेक द्वारा उस स्थान पर, जहां व्यापार चिह्न रजिस्ट्री का समुचित कार्यालय अवस्थित है, भेजी जा सकेगी और यदि वह डाक द्वारा भेजी जाती है तो उस समय संदत्त की गई समझी जाएगी जब मनीआर्डर या उचित रूप से संबोधित बैंक ड्राफ्ट या बैंककार चेक कार्यालय में प्राप्त होगा।

(4) बैंक ड्राफ्ट और बैंककार चैक रेखांकित होंगे और व्यापार चिह्न रजिस्ट्री के समुचित कार्यालय में रजिस्ट्रार को संदेय होंगे और इन्हें उस स्थान के अनुसूचित बैंक पर लिखा जाएगा जहां कि व्यापार चिह्न रजिस्ट्री का समुचित कार्यालय अवस्थित है।

(5)जहां किसी दस्तावेज के फाइल करने के संबंध में कोई फीस संदेय है और जहां दस्तावेज बिना फीस के या अपर्याप्त फीस के साथ फाइल किया जाता है, वहां यह समझा जाएगा कि ऐसा दस्तावेज इन नियमों के अधीन किन्हीं कार्यवाहियों के प्रयोजनों के लिए फाइल नहीं किया गया है।

11. प्ररूप- (1) द्वितीय और तृतीय अनुसूचियों में दिए प्ररूपों का प्रयोग उन सभी मामलों में किया जाएगा जिनमें वे लागू होते हैं और अन्य मामलों में लागू करने के लिए उन्हें रजिट्रार के निर्देशों के अनुसार उपांतरित किया जा सकेगा।

(2) कोई प्ररूप जब व्यापार चिह्न रजिस्ट्री में फाइल किया जाएगा तब उसके साथ विहित फीस होगी।

(3) इस नियम के तहत अनुसूची में यथा निर्धारित प्ररूप के उपयोग की अपेक्षा इसके प्रतिरूप के उपयोग से भी पूर्ण होती है जिसमें प्ररूप के लिए आवश्यक सभी सूचना निहित हो और ऐसे प्ररूप के उपयोग संबंधी निदेश का अनुपालन किया गया हो।

(4) रजिस्ट्रार जनता को जरनल में अथवा शासकीय वेबसाइट पर आमसूचना देने के पश्चात् ऐसे प्ररूपों को विनिर्दिष्ट कर सकेगा जो इलैक्ट्रानिक तरीके से प्रस्तुत किए जाने अपेक्षित हों। उसके पश्चात् ऐसे प्ररूपों को ऐसी रीति में पूरा किया जाएगा जो कंप्यूटर में अर्न्तवस्तु के निवेश को स्वत: ही जैसे संप्रतीक अभिज्ञान या क्रमवीक्षण द्वारा अनुज्ञात करने के लिए विनिर्दिष्ट किया जा सके।

12. दस्तावेज का आकार आदि-(1) किन्हीं अन्य ऐसे निदेशों के जो रजिस्ट्रार द्वारा दिए जाएं, अधीन रहते हुए, व्यापार चिह्नों को छोड़कर वे सभी आवेदन, सूचनाएं, विवरण या अन्य दस्तावेज, जो व्यापार चिह्न रजिस्ट्री को या वहां या रजिस्ट्रार के पास या उसको किए जाने, तामील किए जाने, छोड़े जाने या भेजे जाने या संदत्त किए जाने के लिए अधिनियम या नियमों द्वारा प्राधिकृत या अपेक्षित है, A-4 या लिगल आकार के मजबूत कागज पर केवल एक ओर गहरी अमिट स्याही में सुपाठ्य अक्षरों में अंग्रेजी और हिन्दी में टाइप किए और प्रिंट आउट किए जाएंगे और कागज में बाई ओर कम से कम 4 सेंटीमीटर का हाशिया होगा।

(2) यदि रजिस्ट्रार किसी समय अपेक्षा करता है तो दस्तावेजों की दूसरी प्रतियां, जिनके अन्तर्गत व्यापार चिह्नों की प्रतियां भी है व्यापार चिह्न रजिस्ट्री में फाइल की जाएंगी।

(3) रजिस्ट्रार जरनल में जनता को सूचित करने के पश्चात् सभी आवेदनों, सूचनाओं, विवरणों या अन्य दस्तावेजों और प्ररूपों के, जो नियमों के अधीन इलैक्ट्रानिक रीति से समरूप बनाए जाने के लिए अपेक्षित हैं, आकार में परिर्वतन कर सकेगा।

(4) रजिस्ट्रार जरनल में जनता को सूचना दिए जाने के पश्चात् आवेदनों, सूचनाओं, विवरणों और अन्य दस्तावेजों को इलैक्ट्रानिक रीति द्वारा ऐसे मार्गदर्शक सिद्धांतों और अनुदेशों के अधीन रहते हुए, जो वह जरनल में विनिर्दिष्ट करे, फाइल करने की अनुज्ञा दे सकेगा।

13. दस्तावेज पर हस्ताक्षर करना- (1) इस अधिनियम और नियम के तहत हस्ताक्षर किए जाने वाले दस्तावेज पर आवेदक या विरोधकर्ता या इस प्रयोजन के लिए सम्यक प्राधिकृत व्यक्ति द्वारा हस्ताक्षर किया जाएगा।

(2) किसी दस्तावेज पर हस्ताक्षरों के साथ हिन्दी में या हस्ताक्षर अंग्रेजी में हैं, तो बड़े अक्षरों में हस्ताक्षरकर्ता का नाम होगा।

(3) दस्तावेज ऑनलाइन फाइल करने की स्थिति में "हस्ताक्षरित" कहने में अंकीय आंगुलिक हस्ताक्षर शामिल है।

14. दस्तावेजों की तामील-(1) रूपण चिपके हुए सभी आवेदन, नोटिंसे, कथन, कागजपत्र या अन्य दस्तावेज, जो व्यापार चिह्न रजिस्ट्री को या वहां या रजिस्ट्रार या किसी अन्य व्यक्ति के पास या उसको किए जाने, तामील किए जाने, छोड़ जाने या भेजे जाने के लिए अधिनियम या नियमों द्वारा प्राधिकृत या अपेक्षित हैं, हाथ से दिए या डाक से ऐसे पत्र द्वारा भेजे जा सकेंगे जिसके लिए डाक महसूल दे दिया गया है अथवा रजिस्ट्रार द्वारा निर्दिष्ट तरीके से इलैक्ट्रानिक रूप में दाखिल किए जा सकेंगे।

(2) इस प्रकार भेजा गया कोई आवेदन या कोई दस्तावेज उस समय किया गया तामील किया गया व छोड़ दिया गया या भेज दिया गया समझा जाएगा जब वह पत्र जिसमें वह आवेदन या दस्तावेज है, डाक से साधारण अनुक्रम में परिदत्त कर दिया जाता।

(3) ऐसा भेजा जाना साबित करना पर्याप्त होगा कि पत्र पर उचित रूप से पता लिख कर उसे डाक में डाल दिया गया था।

(4) व्यापार चिह्न रजिस्ट्री के पास कोई आवेदन फाइल करने के पश्चात् कोई व्यक्ति उससे संबंधित पत्राचार करते समय निम्नलिखित विशिष्टयां देगा, अर्थात्:-

(क) आवेदन की संख्या या संख्याएं, यदि कोई हो;

(ख) फाइल करने की तारीख और स्थान:

(ग) यथास्थिति, समुचित वर्ग या कोई वर्ग, जिसके या जिनके संबंध में आवेदन किया गया हो।

(घ) संसूचना के लिए पता; और

(ड़) संबंधित अभिकर्ता का कोड, यदि कोई हो, और संबंधित स्वत्वधारी का कोड, यदि आबंटित किया गया हो।

(5) रजिस्ट्रार जरनल के माध्यम से जनता को सूचित करने के बाद इस प्रयोज्य के लिए प्रदत्त गेटवे के ऑनलाइन माध्यम से आवेदन, सूचना, कथन या अन्य दस्तावेज, अथवा उन दस्तावेजों जिनके लिए किसी फीस का संदाय अपेक्षित नहीं है, इस उद्देश्य के लिए प्राधिकृत ई-मेल के माध्यम से स्वीकार कर सकेगा।

15. आवेदकों और अन्य व्यक्तियों के पतों की विशिष्टियां-(1) आवेदकों और अन्य व्यक्तियों के पूरे नाम और पते दिए जाएंगे और उसके साथ उनकी राष्ट्रिकता, अजीविका और ऐसी अन्य विशिष्टियां होंगी जो उनकी पहचान के लिए आवश्यक है।

(2) किसी भागीदारी फर्म की दशा में, उसके प्रत्येक भागीदार के पूरे नाम और राष्ट्रीयता का कथन दिया जाएगा।

(3) कन्वेंशन देश में किसी आवेदन की दशा में और भारत में कारबार का काई मुख्य स्थान न रखने वाले व्यक्तियों की दशा में, उनके अपने देश में उनके पते भारत में तामील के लिए उनके पते के अतिरिक्त दिए जाएंगे।

(4) किसी निगम निकाय या फर्म की दशा में, यथास्थिति, निगमन देश या रजिस्ट्रीकरण की प्रकृति दी जाएगी।

16. किसी आवेदन में भारत में कारबार के मुख्य स्थान का कथन- (1) व्यापार चिह्न के रजिस्ट्रीकरण के लिए प्रत्येक आवेदन में आवेदक के भारत में कारबार के मुख्य स्थान का, यदि कोई हो, या संयुक्त आवेदकों की दशा में, संयुक्त आवेदकों में से ऐसे आवेदकों के, जिनका भारत में कारबार का मुख्य स्थान है, ऐसे कारबार के मुख्य स्थान का उल्लेख किया जाएगा।

(2) नियम 17, नियम 18, और नियम 20 के उपबंधों के अधीन रहते हुए, किसी व्यापार चिह्न के रजिस्ट्रीकरण के संबंध में किसी आवेदक को, संयुक्त आवेदकों की दशा में संयुक्त आवेदक को आवेदन में उसके द्वारा दिए गए उसके भारत में कारबार के मुख्य स्थान के पते पर कोई लिखित संसूचना संबोधित की जाती है तो वह उचित रूप से संबोधित की गई समझी जाएगी।

17. तामील के लिए पता- (1) अधिनियम और नियम के तहत किसी कार्यवाही से संबन्धित प्रत्येक आवेदक या विरोधकर्ता या अन्य व्यक्ति रजिस्ट्रार को भारत में तामील के लिए पता उपलब्ध कराएगा जिसमें भारत का एक डाक का पता और एक मान्य ई-मेल पता शामिल होगा और उस पते को उस आवेदक या विरोधकर्ता या व्यक्ति का तामील के लिए पता माना जाएगा:
परंतु कि व्यापार चिन्ह अभिकर्ता के लिए भी भारत में रजिस्ट्रीकृत एक मोबाईल नंबर देना आवश्यक होगा।

(2) यदि किसी व्यक्ति को भारत में तामील के लिए उसके द्वारा दिए गए पते पर पूर्वोक्त रूप से लिखित संसूचना सम्बोधित की जाती है तो वह उचित रूप से सम्बोधित की गई समझी जाएगी।

(3) जब तक कि उपनियम (1) में अपेक्षित रूप में भारत में तामील के लिए कोई पता नहीं दिया जाता है तब तक रजिस्ट्रार अधिनियम या नियमों के द्वारा अपेक्षित रूप में कोई सूचना भेजने के लिए बाध्य नहीं होगा और कार्यवाहियों में कोई

पश्चातवर्ती आदेश या विनिश्चिय इस आधार पर प्रश्नगत नहीं किया जाएगा कि सूचना की तामील में कोई कमी थी उसको तामील नहीं की गई थी।

18. रजिस्ट्रार द्वारा दस्तावेज संप्रेषण- (1) आवेदन या विरोध मामले या रजिस्ट्रीकृत व्यापार चिह्न से संबंधित सभी संवाद और दस्तावेज रजिस्ट्रार द्वारा संबद्ध पक्ष के पते पर पहुँचाया या डाक द्वारा भेजा जाएगा अथवा ई-मेल द्वारा प्रेषित किया जाएगा।

(2) इस प्रकार प्रेषित कोई संवाद या दस्तावेज उस पत्र के डाक की साधारण प्रक्रिया द्वारा प्रदान किए जाने अथवा ई-मेल द्वारा भेजे जाने के समय प्रदान किया गया माना जाएगा।

(3) इसे प्रदान किया हुआ प्रमाणित करने के लिए, यह प्रमाणित करना पर्याप्त होगा कि पत्र पर उपयुक्त पता लिखकर उसे डाक में दिया गया है या संबद्ध पत्र द्वारा प्रदत्त ई-मेल आईडी पर ई-मेल संप्रेषण किया गया है।

19. अधिकरण- (1) धारा 145 के प्रयोजनों के लिए किसी अभिकर्ता का प्राधिकार प्ररूप व्या. चि.-एम में निष्पादित किया जाएगा।

(2) ऐसे प्राधिकार की दशा में कार्यवाही या मामले से संबंधित किसी दस्तावेज की अभिकर्ता पर तामील, उसे इसप्रकार प्राधिकृत करने वाले व्यक्ति पर तामील समझी जाएगी; कार्यवाही या मामले की बाबत ऐसे व्यक्ति को की जाने के लिए निर्दिष्ट सभी संसूचनाएं, ऐसे अभिकर्ता को संबोधित की जाएंगी, और रजिस्ट्रार के समक्ष उससे संबंधित सभी हाजिरियां ऐसे अभिकर्ता द्वारा या उसकी मार्फत की जा सकेंगी।

(3) किसी विशिष्ट मामले में रजिस्ट्रार किसी आवेदक, विरोधकर्ता, स्वत्वधारी, रजिस्ट्रीकृत उपयोगकर्ता या अन्य व्यक्ति के व्यक्तिगत ह्स्ताक्षर या उसकी उपस्थिति की अपेक्षा कर सकेगा।

(4) अभिकर्ता द्वारा कार्यवाही से अथवा किसी अन्य कार्य से जिसके लिए वह प्राधिकृत हो प्रतिहरण के मामले में, ऐसे आवेदन या विरोध के संदर्भ में जहाँ भारत में व्यवसाय का कोई मूल स्थान उल्लिखित ना हो, आवेदक या विरोधकर्ता वैसे प्रतिहरण की तारीख से दो महीने की अवधि के भीतर भारत में सेवार्थ पता प्रदान करेगा। यदि वह उस अवधि के भीतर भारत में सेवार्थ पता प्रदान करने में असफल रहता है तो यह माना जाएगा कि उसने आवेदन या विरोध यथास्थिति का परित्याग कर दिया है।

(5) उस आवेदन या विरोध की बाबत जहाँ भारत में व्यवसाय का मूल स्थान उल्लिखित ना हो, आवेदक या विरोधकर्ता द्वारा प्राधिकार के प्रतिसंहरण के मामले में, आवेदक या विरोधकर्ता, यथास्थिति उस प्रतिसंहरण से दो महीने की अवधि के भीतर भारत में सेवार्थ पता उपलब्ध कराएगा। यदि वह उस अवधि के भीतर भारत में सेवार्थ पता प्रदान करने में असफल रहता है तो यह माना जाएगा कि उसने यथास्थिति आवेदन या विरोध का परित्याग कर दिया है।

20. माल और सेवाओं का वर्गीकरण-(1) व्यापार चिह्नों के रजिस्ट्रीकरण के प्रयोजन के लिए माल और सेवाएं उस रीति में वर्गीकृत की जाएगी जो विश्व बौद्धिक सम्पदा संगठन (वायपो) द्वारा प्रकाशित "माल और सेवाओं के अंतर्राष्ट्रीय वर्गीकरण (एनआईसीई वर्गीकरण)" की वर्तमान संस्करण में विनिर्दिष्ट है।

(2) रजिस्ट्रार, यथासाध्य, माल और सेवाओं के वर्गीकरण की वर्णक्रम अनुक्रमणिका में भारतीय मूल के माल या सेवाओं की पहचान करेगा और उन्हें सम्मिलित करेगा।

21. सुभिन्नता के बारे में रजिस्ट्रार द्वारा प्रारंभिक सलाह-(1) धारा 133 की उपधारा (1) के अधीन रजिस्ट्रार द्वारा प्रारंभिक सलाह के लिए कोई आवेदन माल या सेवाओं के संबंध में नियम 20 के उप नियम (2) के तहत रजिस्ट्रार द्वारा यथा प्रकाशित और प्रथम अनुसूची की प्रविष्टि संख्या 14 में यथा निर्दिष्ट फीस के साथ प्ररूप व्या. चि.-एम में किया जाएगा और उसके साथ व्यापार चिह्न के तीन व्यपदेशन होंगे।

22. कोई व्यक्ति रजिस्ट्रार से प्ररूप- (1) व्या. चि.-सी में तलाशी करवाने के लिए और प्रतिलिप्यधिकार अधिनियम, 1957 (1957 का 14) की धारा 45 की उपधारा (1) के अधीन इस प्रभाव का प्रमाणपत्र जारी करने के लिए निवेदन कर सकेगा कि ऐसी कलात्मक कृति के जिसे प्रतिलिप्यधिकार अधिनियम, 1957 (1957 का 14) के अधीन प्रतिलिप्यधिकार के रूप में रजिस्ट्रीकृत कराने के लिए चाहा गया है, तदरूप या इतना समरूप जिससे धोखा हो जाए, कोई व्यापार चिह्न अधिनियम, 1999 (1999 का 47) के अधीन व्यापार चिह्न के रूप में आवेदक से भिन्न किसी व्यक्ति के नाम में रजिस्ट्रीकृत नहीं किया गया है या कि आवेदक से भिन्न किसी व्यक्ति द्वारा पुन: रजिस्ट्रीकरण के लिए उस अधिनियम के अधीन कोई आवेदन नहीं किया गया है। प्रमाणपत्र सामान्यत: निवेदन की तारीख से कार्यकरण के 30 दिन के भीतर जारी किए जाएंगे;

परन्तु रजिस्ट्रार आवेदक से अपेक्षाओं के विवरण के लिए मांग कर सकेगा और यदि अपेक्षाओं का उस विवरण के ऐसे मांगे जाने की तारीख से दो मास के भीतर अनुपालना नहीं किया जाता है तो प्ररूप व्या. चि.- सी पर उस निवेदन के बारे में यह माना जा सकेगा कि उसका परित्याग कर दिया गया है।

(2) रजिस्ट्रार ऊपर वर्णित उपनियम (1) के अधीन जारी किए गए प्रमाणपत्र को सूचना देने और उन आधारों का कथन करने के पश्चात् जिन पर रजिस्ट्रार प्रमाणपत्र को रद्द करने की प्रस्थापना करता है और सुनवाई के लिए युक्तियुक्त अवसर प्रदान करने के पश्चात्, रद्द कर सकेगा।

(3) उप नियम (1) के परन्तुक या उप नियम (2) के अधीन रहते हुए, रजिस्ट्रार ऐसी तलाशी के लिए प्रथम अनुसूची में निर्दिष्ट आवेदन शुल्क के संदाय पर प्ररूप व्या. चि.- सी में प्राप्त निवेदन पर प्रतिलिप्यधिकार अधिकार, 1957 (1957 का 14) की धारा 45 की उपधारा (1) के अधीन त्वरित प्रमाणपत्र साधारणतया सात दिनों के भीतर जारी करेगा।

(4) यथास्थिति, प्ररूप व्या. चि.-सी में उस निवेदन का परित्याग करने से पूर्व मांगी गई अपेक्षाओं के विवरण की अननुपालना के लिए रजिस्ट्रार उस मामले में सुनवाई के अवसर की प्रस्थापना करेगा।

अध्याय 2
व्यापार चिह्नों के रजिस्ट्रीकरण के लिए प्रक्रिया

23. आवेदन का प्रारूप और हस्ताक्षर करना- (1) व्यापार चिह्न के रजिस्ट्रीकरण के लिए माल या सेवाओं से संबंधित आवेदन व्या.चि.-ए पर दाखिल किया जाएगा और आवेदन पर आवेदक या उसके अभिकर्ता द्वारा हस्ताक्षर किए जाएंगे।

(2) माल या सेवाओं के लिए किसी व्यापार चिह्न के रजिस्ट्रीकरण के लिए प्रत्येक आवेदन में-

(क) व्यापार चिह्न को, यदि आवश्यक हो तो, पर्याप्त सक्षमता के साथ शब्दों में वर्णित करके स्पष्ट किया जाएगा ताकि आवेदक का अधिकार अवधारित किया जा सके;

(ख) व्यापार चिह्न का ग्राफीय नमूनों में चित्रण करने में समर्थ होगा;

(ग) इसे तीन विमाओं वाले व्यापार चिह्नों के रूप में समझा जाएगा, यदि आवेदन में इस आशय का विवरण अंतर्विष्ट है;

(घ) इसे रंग समंजन वाला व्यापार चिह्न समझा जाएगा, यदि आवेदन में इस आशय का विवरण अंतर्विष्ट है;

(3) धारा 22 के परंतुक के अधीन आवेदन को विभाजित करने के लिए प्ररूप व्या.चि.-एम में संशोधन किया जाएगा।

(4) यदि वह श्रृंखला व्यापार चिह्न नहीं है तो कितने भी वर्ग या वर्गों के माल या सेवाओं के लिए केवल एक व्यापार चिह्न की बाबत एक ही आवेदन किया जाएगा।

(5) किसी वर्ग में सम्मिलित सभी माल या सेवाओं या किसी वर्ग में माल या सेवाओं के किसी वृहत किस्म की बाबत रजिस्ट्रीकरण के लिए आवेदन की दशा में रजिस्ट्रार उस आवेदन को स्वीकार करने से मना कर सकेगा अब तक कि उसका यह समाधान नहीं हो जाता है कि यह विनिर्देश उस चिह्न के उपयोग को न्यायसंगत ठहराता है जो आवेदक ने दिया है, या उसे वह देना चाहता है और यह तब जब वह रजिस्ट्रीकृत कर दिया जाता है;

परंतु व्यापार चिह्न के रजिस्ट्रीकरण के लिए आवेदन करते समय आवेदन में लिखित माल और सेवाओं के नाम, जहाँ तक संभव हो नियम 20 के उपनियम (2) के तहत रजिस्ट्रार द्वारा प्रकाशित माल और सेवाओं के वर्गीकरण के अनुरूप हो।

(6) जहां आवेदक एक से अधिक वर्गों के लिए एकल आवेदन फाइल करता है, और रजिस्ट्रार अवधारित करता है कि आवेदित माल या सेवा उन वर्ग या वर्गों के अतिरिक्त वर्ग या वर्गों के अंतर्गत आते हैं, तो वह उस आवेदक को पहले से आवेदित वर्ग या वर्गों के माल या सेवाओं के विनिर्देश तक निबंधित कर सकेगा या उपयुक्त फीस के साथ प्ररूप व्या. चि.-एम पर आवेदन दाखिल कर अतिरिक्त वर्ग या वर्गों को जोड़ने के लिए आवेदन में संशोधन कर सकेगा।

बशर्ते कि सभी माल या सेवाएँ निर्दिष्ट वर्ग के अतिरिक्त किसी वर्ग में आते हैं, रजिस्ट्रार व्या. चि. -एम प्ररूप अनुरोध दाखिल कर वर्ग के सुधार की अनुमति दे सकता है।

24. कन्वेंशन ठहराव के अधीन आवेदन-(1) जहां धारा 154 के अधीन किसी कन्वेंशन देश में सम्यक रूप से फाइल किए गए किसी व्यापार चिह्न के रजिस्ट्रीकरण के लिए किसी आवेदन के कारण पूर्विक्ता के अधिकार का दावा किया जाता है वहां रजिस्ट्री या व्यापार चिह्न कार्यालय के सक्षम प्राधिकारी द्वारा प्रमाणपत्र के लिए और उस आवेदन में चिह्न, देश या देशों में व्यापार चिह्न रजिस्ट्रीकरण के आवेदन के साथ फाइल किया जाएगा और आवेदन के फाइल करने की तारीख या तारीखों की विशिष्टियां और ऐसी अन्य विशिष्टियां, जो रजिस्ट्रार द्वारा अपेक्षित हों, सम्मिलित होंगी।

(2) जब तक कि रजिस्ट्रीकरण के लिए उस आवेदन को फाइल करने के समय ऐसा प्रमाण पत्र फाइल नहीं किया गया है आवेदन के अंतर्गत आने वाले उस आवेदन के फाइल करने की तारीख, देश, चिह्न की समाकृति और माल और सेवाओं को रजिस्ट्रार

के समाधान के लिए प्रमाणित करते हुए या सत्यापित करते हुए ऐसे आवेदन के फाइल करने के दो मास के भीतर वह फाइल किया जाएगा।

(3) आवेदन में कन्वेंशन आवेदन के फाइल करने की तारीख, उस कन्वेंशन देश का नाम, जहां यह फाइल किया गया, क्रम सं., यदि कोई हो, और ऐसा कोई विवरण जिसमें यह उपदर्शित किया गया हो कि पूर्विक्ता का दावा किया गया है, सम्मिलित होंगे:

परन्तु और कि जहां आवेदक ने उसी व्यापार चिह्न की बाबत धारा 154 के अधीन एक से अधिक पूर्विक्ता दावे फाइल किए हैं, वहां रजिस्ट्रार, कन्वेंशन देश में किए गए पूर्वतर आवेदन की तारीख को, पूर्विक्ता की तारीख के रूप में लेगा:

परन्तु यह और भी कि ऐसी पूर्विक्ता तारीख कन्वेंशन आवेदन के तहत नहीं आने वाले मालों या सेवाओं के लिए अनुमत्त नहीं होगी जो पहले निर्दिष्ट किए गए हैं,

परन्तु यह भी कि नियम 23 (1) के तहत दाखिल व्यापार चिह्न के रजिस्ट्रीकरण के आवेदन में उल्लिखित सभी मालों या सेवाओं के संदर्भ में केवल एकल पूर्विक्ता का दावा किया जाय।

25. आवेदन में उपयोगकर्ता का कथन- (1) जब तक कि व्यापार चिह्न का उपयोग करने की प्रस्थापना न की गई हों, व्यापार चिह्न को रजिस्ट्रीकृत करने के लिए आवेदन में उस कालावधि का, जिसके दौरान में और उस व्यक्ति का जिसने आवेदन में उल्लिखित माल या सेवाओं के संबंध में इसका उपयोग किया है, विवरण अंतर्विष्ट होगा।

(2) आवेदन की तारीख के पूर्व व्यापार चिह्न के उपयोग का दावा करने की स्थिति में आवेदक ऐसे उपयोग के समर्थन में सहायक दस्तावेज के साथ एक शपथ पत्र फाइल करेगा।

26. चिह्न की रुपण- (1) व्यापार चिह्न के रजिस्ट्रीकरण के लिए प्रत्येक आवेदन में और जहां कि आवेदन की अतिरिक्त प्रतियां अपेक्षित हैं, वहां अन्य प्रतियों में चिह्न की रुपण उस स्थान (8 सें.मी x 8 सें.मी.) दी जाएगी जो कि आवेदन में उस प्रयोजन के लिए नियम है,

(2) यदि आवेदन में इस प्रभाव का एक कथन शामिल है कि आवेदक चिह्न के एक सुभिन्न विशेषता के रूप में रंगों के समन्वय का दावा करने का इच्छुक है, उस आवेदन के साथ चिह्न का रंग संयोजन प्रस्तुत किया जाएगा।

(3) जहाँ आवेदन में इस प्रभाव का एक कथन शामिल है कि व्यापार चिह्न एक त्रिआयामी चिह्न है, वहां उस चिह्न की प्रस्तुति में दो आयामी ग्राफिक या फोटोग्राफिक प्रस्तुति निम्न रूप में सम्मिलित होगी, अर्थात:-

(i) प्रदत्त प्रस्तुति में व्यापार चिह्न के तीन विभिन्न दृश्य शामिल होंगे;

(ii) जहाँ रजिस्ट्रार यह समझता है कि आवेदक द्वारा प्रदत्त चिह्न की प्रस्तुति में त्रिआयामी चिह्न के विवरण पूरी तरह प्रदर्शित नहीं किए गए हैं, वह आवेदक को दो महीने के भीतर उस चिह्न के पाँच पृथक दृश्य प्रस्तुत करने और उस चिह्न को शब्दों में वर्णित करने को कहेगा;

(iii) जहाँ रजिस्ट्रार यह समझता है कि उपबंध (ii) में इंगित चिह्न के विभिन्न दृश्य और/या वर्णन अब भी त्रिआयामी चिह्न के विवरणों का पर्याप्त प्रदर्शन नहीं कर रहा है, वह आवेदक को उस व्यापार चिह्न का नमूना उपलब्ध कराने को कहेगा।

(4) (i) जहाँ व्यापार चिह्न के रजिस्ट्रकरण के लिए आवेदन में वस्तुओं के आकार या उसकी पैकिंग शामिल हो, प्रदत्त प्रस्तुति में उस चिह्न के पाँच पृथक दृश्य प्रस्तुत और उसका शाब्दिक विवरण शामिल होगा-

(ii) यदि रजिस्ट्रार यह विचार करता है कि उपबंध (i) के चिह्न के विभिन्न दृश्य और विवरण अब भी वस्तुओं के आकार या उसकी पैकिंग के विवरणों का पर्याप्त प्रदर्शन नहीं करता है तो वह आवेदक को उस वस्तु या पैकिंग, यथास्थिति का नमूना प्रस्तुत करने को कहेगा।

(5) जहाँ व्यापार चिह्न के रजिस्ट्रीकरण के लिए आवेदन में व्यापार चिह्न के रूप में ध्वनि शामिल है, उसकी प्रस्तुति MP3 फॉर्मेट में दाखिल की जाएगी जो अधिकतम तीस सेकेण्ड की होगी और वैसे माध्यम में अभिलिखित की गई होगी जिसे आसानी और स्पष्टता से सुना जा सके और उसके साथ उसके संकेतन की ग्राफीय प्रस्तुति भी होगी।

(6) यदि रजिस्ट्रार चिह्न की किसी प्रस्तुति से समाधान नहीं होता है तो वह किसी भी समय दूसरी प्रस्तुति की अपेक्षा कर सकता है जो उसे समाधान कर सके और कार्यवाही के पहले आवेदन के साथ प्रतिस्थापित हो सके।

27. व्यापार चिह्नों की श्रृंखला:- (1) जहां कि धारा 15 की उपधारा (3) के अधीन व्यापार चिह्नों के रजिस्ट्रीकरण के लिए आवेदन किया जाता है, वहां प्रत्येक व्यापार चिह्न की समाकृति की प्रतियां आवेदन के साथ नियम 26 में उपवर्णित रीति में भेजी जाएंगी। रजिस्ट्रार यदि इस बात से समाधान है कि वह चिह्न एक क्रम का अनुसरण करते हैं तो वह आवेदन पर आगे कार्यवाही करेगा।

(2) व्यापार चिह्न जनरल में आवेदन के प्रकाशन के पूर्व किसी भी समय उपनियम (1) के अधीन आवेदन करने वाला आवेदक उस अवलि के एक या अधिक चिह्नों की बाबत यथास्थिति प्रथम आवेदन या आवेदनों में उस आवेदन के विभाजन का प्ररूप व्या. चि.-एम पर निवेदन कर सकेगा और रजिस्ट्रार यदि उसका यह समाधान हो जाता है कि निवेदित विभाजन धारा 15 की उपधारा (3) के अनुरूप है उस आवेदन या आवेदनों को तदनुसार प्रभागीय फीस के भुगतान के बाद विभाजित करेगा।

28. लिप्यांतर और अनुवाद:- जहां किसी व्यापार चिह्न में एक या अधिक शब्द और/या संख्या हिन्दी या अंग्रेजी लिपि से भिन्न लिपि के हैं, आवेदक आवेदन में प्रत्येक वैसे शब्द और संख्या का सटीक लिप्यांतर और अनुवाद अंग्रेजी या हिन्दी में प्रस्तुत करेगा और यह भी बताएगा कि वह शब्द और/या संख्या किस भाषा का है।

29. जीवित व्यक्तियों या हाल ही में मृतक व्यक्तियों के नाम और रुपण- जहां कि किसी व्यक्ति का नाम या रुपण व्यापार चिह्न में दी हुई है, वहां आवेदक अपने से यह अपेक्षा रजिस्ट्रार द्वारा किये जाने पर यथास्थिति उस अवस्था में, जिसमें कि वह व्यक्ति जीवित है, ऐसे व्यक्ति की उस अवस्था में, जिसमें कि उसकी मृत्यु उस तारीख के पूर्व बीस वर्ष के अन्दर हो गई थी, जिसको कि व्यापार चिह्न के रजिस्ट्रीकरण के लिए आवेदन दिया गया था, उसके वैद्य प्रतिनिधि को इस बात के लिए लिखित सम्मति कि उसके नाम या उसकी समाकृति का ऐसा उपयोग किया जा सकता है, रजिस्ट्रार को देगा और यदि ऐसी सम्मति नहीं दी जाती तो व्यापार चिह्न के रजिस्ट्रीकरण के लिए आवेदन पर कोई कार्यवाही करने से रजिस्ट्रार इंकार कर सकेगा।

30. व्यापार चिह्न पर माल या सेवाओं का नाम या वर्णन:- (1) जहाँ किसी माल या सेवाओं का नाम या अभिवर्णन व्यापार चिह्न में दिया हुआ है, वहां रजिस्ट्रार ऐसे दिए नाम या अभिवर्णन वाले माल या सेवाओं से भिन्न किसी माल या सेवाओं के संबंध में ऐसे व्यापार चिह्न का रजिस्ट्रीकरण करने से इंकार कर सकेगा।

(2) जहाँ कि किसी माल या सेवाओं का नाम वर्णन व्यापार चिह्न में दिया हुआ है और वह नाम और वर्णन उपयोग में लाये जाने में परिवर्तित होता रहता है, वहां रजिस्ट्रार उन माल या सेवाओं और अन्य माल या सेवाओं के लिए चिह्न के रजिस्ट्रीकरण के लिए अनुज्ञा तब दे सकेगा जब कि आवेदक यह वचन दे कि नाम और अभिवर्णन में परिवर्तन उस सूरत में किया जायेगा जिसमें कि वह नामांकित या वर्णित माल या सेवाओं से भिन्न ऐसी माल या सेवाओं पर उपयोग में लाया जाता है जो कि विनिर्देश के अंतर्गत आ जाती है; इस भांति दिया गया वचन आवेदन के उस विज्ञापन में सम्मिलित किया जायेगा जो कि जनरल में धारा 20 के अधीन किया जाता है।

31. कमियाँ- जहां नियम 10 के उपनियम (2) के अधीन किसी व्यापार चिह्न के रजिस्ट्रीकरण के लिए कोई आवेदन अधिनियम या नियमों उपबंधों में से किन्हीं अपेक्षाओं को पूरा नहीं करता है वहां रजिस्ट्रार कमियों के उपचार के लिए आवेदक को उनकी सूचना भेजेगा और यदि उस सूचना की तारीख से एक मास के भीतर उसको इस प्रकार अधिसूचित किसी कमी का उपचार करने में असफल रहता है तो आवेदन को परित्यक्त समझा जाएगा।

32. आवेदन की अभिस्वीकृति - किसी माल या सेवाओं के बारे में व्यापार चिह्न के रजिस्ट्रीकरण के लिए प्रत्येक आवेदन की प्राप्ति की अभिस्वीकृत सिस्टम जनित इलेक्ट्रोनिक रसीद देकर या ऐसे रसीद को इस प्रयोजन के लिए दिए गए ई-मेल पते पर भेजकर की जाएगी।

33. परीक्षण, स्वीकृति का विरोध, सुनवाई.—(1) रजिस्ट्रार, अधिनियम के उपबंधों के अनुसार आवेदन का परीक्षण कराएगा जहाँ पंजीकृत या रजिस्ट्रीकरण के लिए आवेदित पूर्व के व्यापार चिह्न में खोज भी संचालित की जाएगी ताकि यह सुनिश्चित किया जा सके कि आवेदित व्यापार चिह्न के समरूप या छद्म रूप से समान कोई चिह्न उसी वस्तु या सेवा या समान वस्तुओं या सेवाओं के संदर्भ में अभिलिखित है या नहीं। आवेदन की स्वीकृति के पूर्व रजिस्ट्रार किसी भी समय पूर्व चिह्न के पुन: खोज सहित उस आवेदन का पुन: परीक्षण करवा सकता है, किन्तु वह ऐसा करने के लिए बाध्य नहीं है।

(2) यदि किसी व्यापार चिह्नों के रजिस्ट्रीकरण के लिए आवेदन और आवेदक द्वारा उपलब्ध कराए जाने वाले किसी साक्ष्य के प्रयोग या सुभिन्नता या किसी अन्य मामले पर विचार करते हुए, रजिस्ट्रार को आवेदन की स्वीकृति में कोई आपत्ति है। या वह उसे धारा 18 की उपधारा (4) के तहत कुछ शर्तों, संशोधनों, सुधारों या सीमाओं के अधीन उसे स्वीकार करने का प्रस्ताव करता है, जैसा उसे उपयुक्त लगे, रजिस्ट्रार वह लिखित आपत्ति या प्रस्ताव एक परीक्षण रिपोर्ट के रूप में आवेदन को प्रेषित करेगा।

(3) यदि किसी व्यापार चिह्नों के रजिस्ट्रीकरण के लिए आवेदन और आवेदक द्वारा उपलब्ध कराए जाने वाले किसी साक्ष्य के प्रयोग या सुभिन्नता या किसी अन्य मामले पर विचार करते हुए, रजिस्ट्रार आवेदन को रजिस्ट्रीकरण के लिए पूर्णतया स्वीकार करता है, तो वह इस स्वीकृति की सूचना आवेदक को प्रेषित करेगा और धारा 20 की उपधारा (1) के तहत उस आवेदन का विज्ञापन स्वीकृत रूप में करेगा।

(4) यदि, परीक्षण रिपोर्ट की स्वीकृति की तारीख से एक महीने के भीतर आवेदक उस संवाद का प्रत्युत्तर देने या सुनवाई के लिए आवेदन करने में असफल रहता है तो रजिस्ट्रार उस आवेदन को परित्यक्त मान लेगा।

(5) उपर्युक्त समय के भीतर परीक्षण रिपोर्ट का प्रत्युत्तर प्राप्त होने की स्थिति में, उस पर सम्यक विचार किया जाएगा और यदि रजिस्ट्रार पंजीकरण हेतु आवेदन स्वीकार करें तो वह इस स्वीकृति की सूचना आवेदक को देगा और उस आवेदन को धारा 20 (1) के तहत स्वीकृत रूप में विज्ञापित कराएगा।

(6) यदि परीक्षण रिपोर्ट का प्रत्युत्तर संतोषप्रद न हो या जहाँ आवेदक ने सुनवाई का अनुरोध किया हो, रजिस्ट्रार आवेदक को सुनवाई का अवसर प्रदान करेगा और नियम 115 के तहत उसका संचालन करेगा।

(7) आवेदक के सुनवाई की निश्चित तारीख को उपस्थित न होना और कार्यालय को कोई आपत्ति प्राप्त न होने की स्थिति में, रजिस्ट्रार उस आवेदन को परित्यक्त मान लेगा।

(8) जहाँ आवेदक ने परीक्षण रिपोर्ट का प्रत्युत्तर उपर्युक्त अवधि के भीतर प्रस्तुत किया है या सुनवाई में उपस्थित होकर अपना प्रतिवेदन दिया है, रजिस्ट्रार उपयुक्त आदेश पारित करेगा।

34. आवेदन का त्वरित निपटान-(1) आवेदन की शासकीय संख्या प्राप्त होने के बाद, आवेदक प्ररूप व्या.चि.- एम पर प्रथम अनुसूची में यथा निर्दिष्ट आवेदन शुल्क का भुगतान कर व्यापार चिह्न के रजिस्ट्रीकरण हेतु किए गए आवेदन के त्वरित निपटान का अनुरोध कर सकता है। वैसे आवेदन का त्वरित परीक्षण साधारणतया आवेदन दाखिल करने की तारीख से तीन महीने के भीतर किया जाएगा। उसके बाद, निम्नलिखित कार्यवाहियाँ अर्थात् परीक्षण रिपोर्ट के प्रत्युत्तर पर विचार, कारण बताओ सुनवाई की तारीख तय करना, यदि अपेक्षित हो, आवेदन का प्रकाशन और उसका विरोध, यदि कोई हो, से आवेदन का अंतिम निपटान तक का कार्य भी व्यापार चिह्न जरनलमें रजिस्ट्रार द्वारा इस संबंध में दिशानिदेश प्रकाशित कर त्वरित किया जाएगा।

(2) रजिस्ट्रार व्यापार चिह्न आवेदन के त्वरित निपटान प्रक्रिया के लिए आवेदनों की संख्या व्यापार चिह्न जरनल में इसे प्रकाशित कर सीमित कर सकता है।

35. रजिस्ट्रीकरण के लिए आवेदन का प्रत्याहरण करने की नोटिस- व्यापार चिह्न के रजिस्ट्रीकरण के लिए आवेदन का प्रत्याहरण धारा 133 की उपधारा (2) या नियम 24 के उपनियम (2) के अधीन करने की इस प्रयोजन से सूचना कि आवेदन फाइल करने के अवसर पर दी गई किसी फीस का प्रतिसंदाय करा लिया जाए नियम 33 के उपनियम (2) में वर्णित संसूचना की प्राप्ति की तारीख से एक मास के भीतर लिखित रूप में दी जाएगी।

36. रजिस्ट्रार का निर्णय - (1) नियम 33, 34 या नियम 41 के तहत रजिस्ट्रार के निर्णय की लिखित संसूचना आवेदक को दी जाएगी और यदि आवेदक ऐसे निर्णय की अपील करने का आशय रखता है, तो वह ऐसी संसूचना की प्राप्ति की तारीख से पन्द्रह दिन के भीतर प्ररूप व्या. चि.-एम पर रजिस्ट्रार से यह अपेक्षा करने वाला आवेदन कर सकेगा कि रजिस्ट्रार अपने निर्णय के आधारों का और उन सामग्रियों का जिनका उपयोग उसने अपना विनिश्चय करने के लिए किया है, लिखित कथन दे।

(2) उस दशा में जिसमें कि रजिस्ट्रार ऐसी कोई अपेक्षाएं करता है आवेदक को जिनकी बाबत कोई आपत्ति नहीं है, आवेदक उन अपेक्षाओं का अनुवर्तन रजिस्ट्रार द्वारा उपनियम (1) के अधीन लिखित कथन दिए जाने से पूर्व करेगा।

(3) जिस तारीख को लिखित कथन उपधारा (1) के अधीन आवेदक द्वारा प्राप्त होता है, वह तारीख अपील के प्रयोजन के लिए वह तारीख समझी जाएगी जिसको रजिस्ट्रार ने अपना विनिश्चय किया है।

37. आवेदन में शुद्धि और संशोधन- व्यापार चिह्न के रजिस्ट्रीकरण के लिए आवेदक, अपने आवेदन में या तत्संबंधी किसी गलती को शुद्ध करने के लिए या अपने आवेदन में कोई संशोधन करने के लिए आवेदन उसके साथ विहित फीस देकर अपने आवेदन के प्रतिग्रहण के या तो पूर्व या पश्चात् किंतु चिह्न के रजिस्ट्रीकरण से पूर्व प्ररूप व्या. चि.-एम में कर सकेगा:

परन्तु ऐसा कोई संशोधन अनुज्ञात नहीं किया जाएगा जो मूल व्यापार चिह्न को सारभूत रूप से परिवर्तन करने या माल या सेवाओं के ऐसे नए विनिर्देश को रखने का प्रभाव रखता हो जो मूल आवेदन में समाविष्ट नहीं किया गया हो।

38. स्वीकार को रजिस्ट्रार द्वारा प्रतिसंदाय कर लेना- (1) यदि रजिस्ट्रार को आवेदन के प्रतिग्रहण के संबंध में कोई आपत्ति आवेदन के प्रतिग्रहण के पश्चात् किंतु व्यापार चिह्न के रजिस्ट्रीकरण से पूर्व इस आधार पर कि वह गलती से प्रतिग्रहीत कर लिया गया है, या उस चिह्न मामले की उन अवस्थाओं में प्रतिग्रहीत नहीं किया जाना चाहिए था, या रजिस्ट्रार यह प्रस्थापना करता है कि वह चिह्न केवल उन शर्तों, मर्यादाओं, विभाजनों के अधीन भी, या उन शर्तों या मर्यादाओं के जिन पर कि आवेदन प्रतिग्रहीत किया गया है अतिरिक्त या उससे भिन्न शर्तों पर रजिस्ट्रीकृत किया जाना चाहिए, तो रजिस्ट्रार ऐसी आपत्ति की लिखित संसूचना आवेदक को देगा।

(2) आवेदक जब तक कि रजिस्ट्रार की अपेक्षाओं का अनुपालन करने की दृष्टि से अपने आवेदन को संशोधन उपनियम (1) में वर्णित संसूचना की प्राप्ति की तारीख से तीस दिन के भीतर या सुनवाई के लिए आवेदन नहीं कर देता है, आवेदन के प्रतिग्रहण की बाबत यह समझा जायेगा कि रजिस्ट्रार ने उसे प्रत्यहृत कर लिया है और आवेदन की बाबत ऐसी कार्यवाही की जायेगी मानो कि उसे प्रतिग्रहीत नहीं किया गया हो।

(3) जहां कि रजिस्ट्रार को आवेदक उपनियम (2) में उल्लिखित कालावधि के भीतर यह सूचित करता है कि मेरी यह इच्छा है कि मेरी सुनवाई हो तो आवेदक को रजिस्ट्रार उस तारीख की नोटिस देगा जिसको रजिस्ट्रार उसकी सुनवाई करेगा। जब तक कि आवेदक इससे अल्पकाल वाली सूचना के लिए सम्मत न हो जाये, ऐसी सुनवाई की तारीख सूचना की तारीख से कम से कम पंद्रह दिन बाद की रखी जाएगी। आवेदक यह कथन कर सकेगा कि वह अपनी व वैयक्तिक सुनवाई कराना नहीं चाहता और वह वे बातें पेश कर सकेगा जिन्हें कि वह वांछनीय समझता है।

(4) रजिस्ट्रार आवेदक की सुनवाई के पश्चात् या यदि आवेदक ने कोई बातें उसके समक्ष लिखित रूप में पेश की है तो उन पर विचार करने के पश्चात् ऐसे आदेश दे सकेगा जैसे कि वह ठीक समझता है।

आवेदन का विज्ञापन

39. विज्ञापन की रीति-(1) व्यापार चिह्न के रजिस्ट्रीकरण के लिए प्रत्येक आवेदन की बाबत धारा 20 की उपधारा (1) में यह अपेक्षा की जाती है कि उसे विज्ञापित किया जाए या उस धारा की उपधारा (2) द्वारा उसे पुन: विज्ञापित किया जाए उसे जरनल में विज्ञापित किया जाएगा।

40. आवेदन में शुद्धि या संशोधन करने की अधिसूचना- रजिस्ट्रार इस आवेदन की दशा में जिसे धारा 20 की उपधारा (2) का खंड (ख) लागू है, उस सूरत में जिसमें कि वह ऐसा विनिश्चय करता है, आवेदन को पुन: विज्ञापित कराने के बजाय आवेदन की संख्या, वह वर्ग जिसमें वह किया गया है, आवेदक का नाम और उसके कारबार का भारत में मुख्य स्थान का पता, यदि कोई हो, या जहां आवेदन का कोई कारबार का भारत में मुख्य स्थान नहीं है वहां भारत में तामील के लिए उसका पता, उस जरनल की संख्या जिसमें यह विज्ञापित किया गया है और आवेदन में की गई शुद्धि या संशोधन उपवर्णित करने वाली अधिसूचना जरनल में दे सकेगा:

परंतु व्यापार चिह्न या माल और/या सेवाओं की बाबत विज्ञापन में त्रुटि (छोटी वर्तनी भूलों के अतिरिक्त) या श्रेणी या व्यापार चिह्न के उपयोग का कथन के संदर्भ में या किसी अन्य संदर्भ में जिसे रजिस्ट्रार ठीक समझे, वह पूर्व के विज्ञापन को निरस्त करते हुए उस व्यापार चिह्न का पुन: विज्ञापन करेगा।

41. चिह्न के विज्ञापन की विशिष्टियां देने के लिए रजिस्ट्रार से निवेदन- प्ररूप व्या. चि.-एम में कोई व्यक्ति रजिस्ट्रार से यह निवेदन कर सकेगा कि रजिस्ट्रार उस जरनल की संख्या, तारीख की जानकादी दे जिसमें प्ररूप में विनिर्दिष्ट उस व्यापार चिह्न का विज्ञापन हुआ था जिसका रजिस्ट्रीकरण चाहा गया है और रजिस्ट्रार निवेदन करने वाले व्यक्ति को ऐसी विशिष्टियां देगा।

रजिस्ट्रीकरण का विरोध

42. विरोध की नोटिस- (1) व्यापार चिह्न के रजिस्ट्रीकरण के विरोध की नोटिस धारा 21 की उपधारा (1) के अधीन, नियम 43 में यथा निर्दिष्ट विवरणों के साथ, व्यापार चिह्न के रजिस्ट्रीकरण के लिए आवेदन विज्ञापित या पुनर्विज्ञापित करने वाले व्यापार चिह्न जरनल के प्रकाशन की तारीख चार मास के अंदर प्ररूप व्या.चि.-ओ में दी जाएगी।

(2) जहां विरोध की नोटिस माल और सेवाओं के विभिन्न वर्गों के व्यापार चिह्न के रजिस्ट्रीकरण के लिए किसी एकल आवेदन की बाबत फाइल किया गया है, वहां प्रत्येक ऐसे वर्ग की बाबत उस पर फीस दी जाएगी जिसके सबंध में व विरोध फाइल किया जाता है।

(3) जहां कोई विरोध किसी एकल आवेदन की बाबत में केवल किसी विशिष्ट वर्ग या वर्गों के लिए धारा 18 की उपधारा (2) के अधीन फाइल किया जाता है वहां शेष वर्ग या वर्गों के आवेदन पर रजिस्ट्रीकरण के लिए आगे की कार्यवाही तब तक नहीं होगी जब तक कि आवेदक द्वारा प्रभागीय फीस के साथ आवेदन के विभाजन के लिए कोई निवेदन प्ररूप व्या.चि.-एम में नहीं किया जाता है।

(4) जहां किसी व्यापार चिह्न के रजिस्ट्रीकरण के लिए किसी एकल आवेदन की बाबत किसी वर्ग या वर्गों में विरोध की सूचना फाइल नहीं की जाती है वहां ऐसे वर्ग या वर्गों की बाबत ऐसा आवेदन धारा 19 और धारा 23 की उपधारा (1) के अध्याधीन होगा, उस आवेदन पर उस वर्ग या वर्गों में आवेदन के विभाजन के पश्चात् जिसकी बाबत कोई विरोध लंबित नहीं है रजिस्ट्रीकरण के लिए आगे कार्यवाही की जाएगी।

(5) विरोध की नोटिस की एक प्रति समुचित कार्यालय द्वारा उसकी प्राप्ति के तीन मास के भीतर आवेदकों को रजिस्ट्रार द्वारा तामील कराई जाएगी।

परंतु जहाँ आवेदक ने शासकीय वेबसाइट पर इलेक्ट्रॉनुक रुप में उपलब्ध विरोध की सूचना की प्रति के आधार पर प्रति-कथन पहले ही दाखिल कर दिया है, उस आवेदक को विरोध की सूचना की प्रति प्रेषित करने की आवश्यकता नहीं होगी।

43. विरोध की सूचना की अपेक्षाएं- (1) विरोध की नोटिस में निम्नलिखित होगा:-

(क) उस आवेदन की बाबत जिसके विरुद्ध विरोध दर्ज किया जाता है-

(i) उस आवेदन की आवेदन संख्या जिसके विरुद्ध विरोध दर्ज किया जाता है;

(ii) उस व्यापार चिह्न के आवेदन में सूचीबद्ध उन माल या सेवाओं का उपदर्शन जिसके विरुद्ध विरोध दर्ज किया जाता है; और

(iii) व्यापार चिह्न के आवेदक का नाम।

(ख) उस पूर्वत्तर चिह्न या पूर्वत्तर अधिकार की बाबत जिस पर विरोध आधारित है-

(i) जहां विरोध किसी पूर्वत्तर चिह्न पर आधारित है वहां उस प्रभाव का वर्णन और पूर्वत्तर चिह्न की प्रास्थिति का कोई उपदर्शन;

(ii) जहां उपलब्ध ही पूर्वत्तर चिह्न की आवेदन संख्या या रजिस्ट्रीकरण संख्या और फाइल करने की तारीख जिसके अंतर्गत पूर्वत्तर चिह्न की तारीख भी है;

(iii) जहां विरोध किसी पूर्वत्तर चिह्न पर आधारित है जिसके बारे में अभिकथन है कि वह धारा 11 की उपधारा (2) के अर्थान्तर्गत एक सुविख्यात व्यापार चिह्न है, वहां उस आशय का उपदर्शन और उस देश या देशों का उपदर्शन जिसमें पूर्वत्तर चिह्न को सुविख्यात रूप से मान्यता दी गई है;

(iv) जहां विरोध किसी ऐसे पूर्वत्तर व्यापार चिह्न पर आधारित है जिसकी अधिनियम की धारा 11 की उपधारा (2) के पैरा (ख) के अर्थान्तर्गत एक प्रतिष्ठा है वहां उस आशय का उपदर्शन और यह उपदर्शन कि वह पूर्वत्तर चिह्न रजिस्ट्रीकृत है या उपयोजित है अथवा नहीं;

(v) विरोधी के चिह्न की समाकृति और जहां समुचित हो उस चिह्न या पूर्वत्तर अधिकार का एक अभिवर्णन; और

(vi) जहां उन माल या सेवाओं जिनकी बाबत पूर्वत्तर चिह्न रजिस्ट्रीकृत किया गया है या उपयोजित किया गया है या जिसकी बाबत पूर्वत्तर चिह्न धारा 11 की उपधारा (2) के अर्थान्तर्गत सुविख्यात है या उस धारा के अर्थान्तर्गत उसकी एक प्रतिष्ठा है वहां वह विरोधी उन सभी माल या सेवाओं को उपदर्शित करते समय जिसके लिए पूर्वत्तर चिह्न संरक्षित है उन माल या सेवाओं को भी उपदर्शित करेगा जिन पर विरोध आधारित है।

(ग) विरोध करने वाले पक्षकार की बाबत-

(i) जहां विरोध पूर्वत्तर चिह्न के या पूर्वत्तर अधिकार के स्वत्वधारी द्वारा दर्ज किया जाता है वहां उसका नाम और पता तथा यह उपदर्शन कि वह ऐसे चिह्न या अधिकार का स्वत्वधारी है;

(ii) जहां विरोध अनुज्ञप्तिधारी द्वारा किसी रजिस्ट्रीकृत उपयोक्ता न होने के कारण रजिस्ट्रीकृत किया जाता है वहां अनुज्ञप्तिधारी का नाम और उसका पता तथा ऐसा कोई उपदर्शन कि यह विरोध दर्ज करने के लिए प्राधिकृत किया गया है;

(iii) जहां विरोध किसी व्यापार चिह्न के रजिस्ट्रीकृत स्वत्वधारी के उस हक उत्तराधिकरी द्वारा दर्ज किया जाता है जिसका नए स्वत्वधारी के रूप में रजिस्ट्रीकरण नहीं किया गया है उस आशय का उपदर्शन विरोध करनेवाले पक्षकार का नाम और पता ओर उस तारीख का उपदर्शन जिसको नए स्वत्वधारी के रजिस्ट्रीकरण के लिए आवेदन उस समुचित कार्यालय द्वारा प्राप्त किया गया था या जहां वह जानकारी उपलब्ध नहीं है वहां उस समुचित कार्यालय को वह आवेदन भेजा गया था; और

(iv) जहां विरोध करने वाले पक्षकार का कारबार का भारत में कोई स्थान नहीं है वहां विरोधकर्ताओं का नाम और भारत में उसकी तामील करने का पता।

(घ) वे आधार जिन पर विरोध आधारित है:-

(2) विरोध की सूचना को विरोधी या उसके द्वारा प्राधिकृत अभिकर्ता द्वारा अधोभाग पर सत्यापित किया जाएगा।

(3) सत्यापित करने वाला व्यक्ति विरोध की सूचना के संख्यांकित पैराओ के प्रतिनिर्देश से जो वह अपने स्वयं के ज्ञान से और जो यह प्राप्त सूचना के आधार पर और उसे सत्य मान कर सत्यापित करता है, विनिर्दिष्ट रूप से कथन करेगा।

(4) सत्यापन, उसे सत्यापित कने वाले व्यक्ति द्वारा हस्ताक्षरित किया जाएगा और जिस तारीख को वह हस्ताक्षरित किया गया था और जिस स्थान पर वह हस्ताक्षरित किया गया था कथन करेगा।

44. प्रतिकथन- (1) धारा 21 की उपधारा (2) की अपेक्षानुसार प्रतिकथन रजिस्ट्रार से विरोध की सूचना की प्रति के आवेदक द्वारा प्राप्त होने से दो मास के भीतर प्ररूप व्या.चि.-ओ में भेजा जाएगा और उसमें यह भी वर्णित होगा कि विरोध की सूचना में अभिकथित वे तथ्य यदि कोई हो, कौन से हैं जिन्हें आवेदक ने स्वीकार कर लिया है रजिस्ट्रार प्रतिकथन की एक प्रति की तामील उसकी प्राप्ति की तारीख से सामान्यत: दो मास के भीतर विरोधी पर कराएगा।

(2) प्रतिकथन को उसी रीति में सत्यापित किया जाएगा जो नियम 43 के उपनियम (2), (3) और (4) में वर्णित है।

45. विरोध के समर्थन में साक्ष्य- (1) प्रतिकथन की प्रति की तामील जिस दिन करा दी हो उससे दो महीने के भीतर विरोध या तो रजिस्ट्रार के पास ऐसा साक्ष्य शपथ पत्र द्वारा देगा जैसा कि वह अपने विरोध के समर्थन में देना चाहता है या रजिस्ट्रार को और आवेदक को यह लिखित प्रज्ञापन देगा कि मैं अपने विरोध के समर्थन में साक्ष्य नहीं देना चाहता हूँ, किंतु मेरा यह आशय है कि विरोध की सूचना में कथित तथ्यों का मैं सहारा लूंगा। वह आवेदक को ऐसे किसी साक्ष्य, प्रतिदर्श सहित यदि कोई हो, की प्रतियां देगा जिन्हें उसने रजिस्ट्रार के पास इस उपनियम के अधीन दिया है और ऐसी प्रतियां देने की लिखित में रजिस्ट्रार को सूचना देगा। प्रतिकथन की प्रति की तामील जिस दिन करा दी हो उससे दो महीने के भीतर या उसके पश्चात् कुल मिलाकर एक मास से अनधिक की ऐसी आगे की अवधि के भीतर जो निवदेन पर रजिस्ट्रार अनुज्ञात करे, विरोध या तो रजिस्ट्रार के पास ऐसा साक्ष्य शपथ पत्र द्वारा देगा जैसा कि वह अपने विरोध के समर्थन में देना चाहता है या रजिस्ट्रार को और आवेदक को यह लिखित प्रज्ञापन देगा कि मैं अपने विरोध के समर्थन में साक्ष्य नहीं देना चाहता हूँ, किंतु मेरा यह आशय है कि विरोध की सूचना में कथित तथ्यों का मैं सहारा लूंगा। वह आवेदक को ऐसे किसी साक्ष्य, प्रतिदर्श सहित यदि कोई हो, की प्रतियां देगा जिन्हें उसने रजिस्ट्रार के पास इस उपनियम के अधीन दिया है और ऐसी प्रतियां देने की लिखित में रजिस्ट्रार को सूचना देगा।

(2) यदि विरोधी उपनियम (1) के अधीन उसमें वर्णित समय के भीतर कोई कार्यवाही नहीं करता है, तो यह समझ जाएगा कि विरोधी ने अपने विरोध का परित्याग कर दिया है।

46. आवेदन के समर्थन में साक्ष्य-(1) आवेदक रजिस्ट्रार के पास शपथ पत्र के रूप में ऐसा साक्ष्य विरोध के समर्थन में शपथ पत्रों की प्रतियों अपने को मिलने से या अपने को यह प्रज्ञापना मिलने से कि विरोधी अपने विरोध के समर्थन में कोई साक्ष्य नहीं देना चाहता दो मास के भीतर देगा जैसा कि वह अपने आवेदन के समर्थन में देना चाहता है और उसकी प्रतियां वह विरोधी को देगा या रजिस्ट्रार को और विरोधी को वह यह प्रज्ञापना देगा कि मैं कोई साक्ष्य नहीं देना चाहता, किंतु मेरा यह आशय है कि प्रतिकथन में कथित तथ्यों का और/या प्रश्नास्पद आवेदन के संबंध में अपने द्वारा पेश कर दिए गए साक्ष्य का सहारा लूंगा। उस अवस्था में जिसमें आवेदक आवेदन के संबंध में कोई साक्ष्य प्रस्तुत करता है या अपने द्वारा पेश किये जा चुके किसी साक्ष्य का सहारा लेता है, वह उसकी प्रतियां प्रतिदर्श सहित यदि कोई हो के साथ विरोधी को देगा। आवेदक रजिस्ट्रार के पास शपथ पत्र के रूप में ऐसा साक्ष्य विरोध के समर्थन में शपथ पत्रों की प्रतियों अपने को मिलने से या अपने को यह प्रज्ञापना मिलने से कि विरोधी अपने विरोध के समर्थन में कोई साक्ष्य नहीं देना चाहता दो मास के भीतर या उसके पश्चात् कुल मिलाकर एक मास से अनधिक की ऐसी और अवधि के भीतर जो निवेदन पर रजिस्ट्रार अनुज्ञात करे देगा जैसा कि वह अपने आवेदन के समर्थन में देना चाहता है और उसकी प्रतियां वह विरोधी को देगा या रजिस्ट्रार को और विरोधी को वह यह प्रज्ञापना देगा कि मैं कोई साक्ष्य नहीं देना चाहता, किंतु मेरा यह आशय है कि प्रतिकथन में कथित तथ्यों का और/या प्रश्नास्पद आवेदन के संबंध में अपने द्वारा पेश कर दिए गए साक्ष्य का सहारा लूंगा। उस अवस्था में जिसमें आवेदक आवेदन के संबंध में कोई साक्ष्य प्रस्तुत करता है या अपने द्वारा पेश किये जा चुके किसी साक्ष्य का सहारा लेता है, वह उसकी प्रतियां प्रतिदर्श सहित यदि कोई हो के साथ विरोधी को देगा और इसकी सूचना लिखित रूप में रजिस्ट्रार को देगा।

(2) यदि आवेदक उपनियम (1) में वर्णित समय के भीतर कोई कार्यवाही नहीं करता है तो यह माना जाएगा कि उसने आवेदन का परित्याग कर दिया है।

47. विरोधी द्वारा दिए गए उत्तर में साक्ष्य-विरोध द्वारा आवेदक के शपथपत्र की प्रतियां प्राप्त करने से एक मास के भीतर विरोधी उत्तर में शपथ पत्र द्वारा रजिस्ट्रार को साक्ष्य देगा और आवेदक को उसकी प्रतियां,प्रतिदर्श सहित यदि कोई हो, के साथ परिदत्त करेगा।

48. अधिक साक्ष्य- किसी की ओर से कोई और साक्ष्य नहीं दिया जाएगा, किन्तु रजिस्ट्रार के समक्ष किन्हीं कार्यवाहियों में वह किसी भी समय, यदि उचित समझे, तो वह आवेदक को या विरोधी को ऐसे निबंधनों और खर्चे पर या जिसे वह अन्यथा ठीक समझे कोई साक्ष्य देने की इजाजत दे सकेगा।

49. दस्तावेजों का अनुवाद- जहां कि हिंदी या अंग्रेजी से भिन्न भाषा वाली किसी दस्तावेज के प्रति निर्देश विरोध की सूचना में प्रतिकथन में या विरोधी कार्यवाहियों में फाइल किए गए शपथ-पत्र में किया गया है वहां हिंदी या अंग्रेजी में उसे अभिप्रमाणित अनुवाद रजिस्ट्रार को उपलब्ध कराएगा और उसकी एक प्रति विरोधी पक्ष को देगा।

50. सुनवाई और विनिश्चय-(1) साक्ष्य के पूरा होने पर रजिस्ट्रार इस बात की सूचना पक्षकारों को देगा कि प्रथम बार सुनवाई कब होगी। सुनवाई की तारीख प्रथम सूचना की तारीख से कम से कम एक मास के बाद की होगी।

(2) सुनवाई का स्थगन - किसी कार्यवाही के पक्षकार प्ररूप व्या. चि. -एम पर विहित फीस के साथ सुनवाई स्थगन का अनुरोध युक्तिसंगत कारण देते हुए सुनवाई की तारीख से कम-से-कम तीन दिन पहले करेगा और रजिस्ट्रार, यदि ऐसा करना उचित समझे, उयाए ऐसी शर्तों पर जैसा वो निदेश दे, सुनवाई स्थगित करेगा और पक्षकारों को इसकी सूचना देगा:

परंतु किसी पक्षकार को दो से अधिक स्थगन नहीं दिया जाएगा और प्रत्येक स्थगन तीस दिन से अधिक का नहीं होगा।

(3) यदि आवेदक सुनवाई की स्थगित तारीख पर उपस्थित नहीं है तो आवेदन का परित्याग किया जाना समझा जाएगा।

(4) यदि विरोधी सुनवाई की स्थगित तारीख पर उपस्थित नहीं है तो अभियोजन के अभाव में विरोध को रद्द कर दिया जाएगा और आवेदन पर धारा 19 के अध्यधीन रजिस्ट्रीकरण की कार्यवाही की जाएगी।

(5) रजिस्ट्रार लिखित बहस पर विचार करेगा, यदि कार्यवाही के किसी पक्षकार द्वारा दाखिल हो।

(6) रजिस्ट्रार का निर्णय लिखित रूप में पक्षकारों को उनके प्रदत्त तामील के पते पर प्रेषित किया जाएगा।

51. खर्चों के लिए प्रतिभूति- खर्चों के लिए जो प्रतिभूति रजिस्ट्रार धारा 21 की उपधारा (6) के अधीन अपेक्षित रूप में वह इतनी किसी रकम की नियत की जा सकेगी जितनी कि रजिस्ट्रार ठीक समझे और विरोध विषयक कार्यवाहियां के किसी प्रक्रम में यह रकम रजिस्ट्रार द्वारा बढ़ाई जा सकेगी।

रजिस्ट्रीकरण अननुपालन की नोटिस

52. सूचना देने के लिए प्रक्रिया-आवेदक को जो सूचना देने की रजिस्ट्रार से अपेक्षा धारा 23 की उपधारा (3) द्वारा की गई है वह आवेदक को उसके तामील के पते पर प्ररूप ओ-1 में भेजी जाएगी। सूचनाएं रजिस्ट्रीकरण पूरा करने के लिए सूचना की तारीख से इक्कीस दिन का समय या एक मास से अनधिक की ऐसा और समय जो रजिस्ट्रार द्वारा प्ररूप व्या.चि.-एम में किए गए अनुरोध पर अनुज्ञात किया जाए, विनिर्दिष्टि होगा।

रजिस्ट्रीकरण

53. रजिस्टर में प्रविष्टि- (1) जहाँ जरनल में विज्ञापित या पुनःर्विज्ञापित आवेदन के विरोध की कोई सूचना धारा 21 की उपधारा (1) में विनिर्दिष्ट अवधि के भीतर फाइल नहीं की जाती है या जहाँ कोई विरोध फाइल किया जाता है और वह खारिज कर दिया जाता है वहाँ रजिस्ट्रार धारा 23 की उपधारा (1) या धारा 19 के उपबंधों के अधीन रहते हुए व्यापार चिह्न की रजिस्टर में प्रविष्टि करेगा।

(2) व्यापार चिह्न की जो प्रविष्टि रजिस्टर में है उसमें आवेदन के फाइल करने की तारीख, रजिस्ट्रीकरण की वास्तविक तारीख, वे माल या सेवाएं और वर्ग या वर्गों जिनकी बाबत व्यापार चिह्न रजिस्ट्रीकृत किया गया है और धारा 6 की उपधारा (1) द्वारा अपेक्षित सभी विशिष्टियां, जिनके अंतर्गत निम्नलिखित विशिष्टियां हैं:-

(क) व्यापार चिह्न के स्वत्वधारी के कारबार का भारत में मुख्य स्थान, का यदि कोई हो, पता या संयुक्त स्वामित्व वाले व्यापार चिह्न के ऐसे संयुक्त स्वत्वधारियों के कारबार का भारत में मुख्य स्थान का पता जिनके कारबार का भारत में मुख्य स्थान है।

(ख) जहाँ व्यापार चिह्न के स्वत्वधारी के कारबार का कोई स्थान भारत में नहीं है, वहां उसके अपने स्वदेश वाले पते के साथ भारत में तामील के लिए उसका यह पता जो कि रजिस्ट्रीकरण के लिए आवेदन में प्रविष्ट है।

(ग) संयुक्त स्वामित्व वाले व्यापार चिह्न के मामले में, उस दशा में जिसमें कि संयुक्त स्वत्वधारियों में से किसी के भी किसी कारबार का भारत में मुख्य स्थान नहीं है, वहां संयुक्त स्वत्वधारियों में से प्रत्येक के अपने स्वदेश वाले पते के साथ भारत में तामील के लिए उनका वह पता, जो कि आवेदन में दिया गया है।

(घ) स्वत्वधारी के या संयुक्त स्वामित्व वाले व्यापार चिह्न की अवस्था में व्यापार चिह्न के संयुक्त स्वत्वधारियों के व्यापार, कारबार, वृद्धि, उपजीविका की विशिष्टियां, या अन्य वर्णन जो कि रजिस्ट्रीकरण के लिए आवेदन में प्रविष्ट हैं।

(ड़) रजिस्ट्रीकरण के विषय या रजिस्ट्रीकरण द्वारा प्रदत्त अधिकारों को प्रभावित करने वाली विशिष्टियाँ, और

(च) कन्वेंशन आवेदन की तारीख यदि कोई हो, धारा 154 के अधीन, की गई किसी कन्वेंशन देश के आवेदकों की आवेदन के अनुसरण में प्रदान की जाएगी।

(छ) जहाँ वह चिह्न सामूहिक या प्रमाणीकरण चिह्न है, वह तथ्य

(ज) जहाँ कोई पूर्वत्तर व्यापार चिह्न या अन्य पूर्वत्तर अधिकार के स्वत्वधारी की सहमति से धारा 11 की उपधारा (4) के अनुसरण में वह चिह्न रजिस्ट्रीकृत किया जाता है वहाँ वह तथ्य

(झ) उस व्यापार चिह्न से संबंधित चिह्न रजिस्ट्री का समुचित कार्यालय विनिर्दिष्ट होंगी।

(3) रजिस्ट्रार समय-समय पर कम्प्यूटर विशेषज्ञों से विचार विमर्श करते हुए शासकीय अभिलेख इलैक्ट्रानिक रूप में रखने के लिए दिशा निर्देश बनाएगा।

54. सम्बद्ध व्यापार चिह्न-(1) जहाँ कि व्यापार चिह्न किन्हीं अन्य चिह्नों से सम्बद्ध होने के रूप में रजिस्ट्रीकृत किया गया है, वहाँ रजिस्ट्रार प्रथम वर्णित चिह्न के संबंध में उन चिह्नों की रजिस्ट्रीकरण संख्याएं रजिस्टर में लिखेगा, जिनके साथ वह सम्बद्ध है और ऐसे चिह्नों में से प्रत्येक के संबंध में रजिस्टर में उसके साथ सम्बद्ध चिह्न होने के नाते प्रथम वर्णित चिह्न की रजिस्ट्रीकरण संख्या भी लिखेगा।

(2) सम्बद्ध व्यापार चिह्नों के रूप में रजिस्ट्रीकृत व्यापार चिह्नों में से किसी का सहबद्धता भंग करने के लिए धारा 16 की उपधारा (5) के अधीन आवेदन प्ररूप व्या.चि.-पी में किया जायेगा और आवेदन के आधारों का कथन उसमें किया जाएगा।

55. रजिस्ट्रीकरण के पूर्व आवेदक की मृत्यु- आवेदन की तारीख के पश्चात् और व्यापार चिह्न के रजिस्टर में प्रविष्ट किये जाने के पूर्व यदि व्यापार चिह्न के रजिस्ट्रीकरण के किसी आवेदक की मृत्यु हो जाती है, तो रजिस्ट्रार अनुरोध किए जाने पर प्ररूप व्या.चि.-एम पर आवेदक की मृत्यु के सबूत पर और मृत व्यक्ति के हित के संप्रेषित की सबूत पर आवेदन में ऐसे मृतक के उत्तराधिकारी के नाम को रखेगा और तत्पश्चात् यथासंशोधित आवेदन पर कार्यवाही की जायेगी।

56. रजिस्ट्रीकरण का प्रमाणपत्र-(1) व्यापार चिह्न के रजिस्ट्रीकरण का यह प्रमाण-पत्र को रजिस्ट्रार द्वारा धारा 23 की उपधारा (2) के अधीन दिया जाता है प्ररूप आरजी-2 में व्यापार चिह्न शामिल करेगा। उस पर व्यापार चिह्न रजिस्ट्री का मुहर लगा होगा।

(2) रजिस्ट्रीकरण के जिस प्रमाण-पत्र के प्रति निर्देश उपनियम (1) में किया गया है उसका उपयोग विधि कार्यवाहियों में या विदेश में रजिस्ट्रीकरण अभिप्राप्त करने के लिए नहीं किया जायेगा। इन प्रयोजनों के लिए धारा 137 के तहत जारी प्रमाण पत्र का प्रयोग किया जाएगा।

(3) रजिस्ट्रीकरण के प्रमाण-पत्र की दूसरी प्रति या अतिरिक्त प्रतियां रजिस्ट्रार विहित फीस सहित प्ररूप व्या.चि.-एम में अपने से निवेदन रजिस्ट्रीकृत स्वत्वधारी द्वारा किये जाने पर दे सकेगा:

परंतु कि ऐसी कोई प्रतिलिपि या रजिस्ट्रीकरण प्रमाणपत्र की प्रति जारी नहीं किया जाएगा जहाँ रजिस्ट्रीकरण के नवीकरण और रजिस्ट्रीकृत व्यापार चिह्न के प्रत्यावर्तन के लिए समय सीमा की समाप्ति के बाद अनुरोध प्राप्त हुआ हो।

अध्याय-3
रजिस्ट्रीकरण का नवीकरण का प्रत्यावर्तन

57. रजिस्ट्रीकरण का नवीकरण-(1) व्यापार चिह्न के रजिस्ट्रीकरण के नवीकरण के लिए आवेदन प्ररूप व्या.चि.-आर में किया जाएगा और यह व्यापार चिह्न के अंतिम रजिस्ट्रीकरण के अवसान से पूर्व एक वर्ष के भीतर किसी समय किया जा सकेगा।

(2) विहित समय के भीतर दाखिल व्यापारचिह्न के रजिस्ट्रीकरण के नवीकरण का अनुरोध अनुमत्त होगा यदि व्यापारचिह्न हटाया या निरस्त न कर दिया गया हो या अधिनियम और नियम के किसी उपबंध या न्यायालय अथवा रजिस्ट्रार के किसी आदेश के तहत नवीकरण से अन्यथा न हो।

58. रजिस्टर से व्यापार चिह्न के हटाने से पूर्व नोटिस-(1) यदि विहित प्ररूप पर निर्धारित फीस के साथ रजिस्ट्रीकरण के नवीकरण हेतु कोई आवेदन प्राप्त न हो तो रजिस्ट्रार व्यापारचिह्न के रजिस्ट्रीकरण के अवसान से अधिकतम छः मास पहले प्ररूप आर जी-3 पर एक नोटिस तामील के पते पर भेजकर रजिस्ट्रीकृत स्वत्वधारी को अवसान की आगत तारीख और शर्तें, यदि कोई हो, जिसके अधीन रजिस्ट्रीकरण का नवीकरण प्राप्त किया जा सकता है, की सूचना देगा।

(2) जहां किसी चिह्न की दशा में जिसका रजिस्ट्रीकरण (रजिस्ट्रीकरण के लिए आवेदन की तारीख के प्रति निर्देश से) नवीकरण के लिए शोध्य हो जाता है वह चिह्न उस तारीख से पूर्व जिसकी नवीकरण होना नियम है छह मास के भीतर किसी भी समय रजिस्ट्रीकृत हो जाता है रजिस्ट्रीकरण की वास्तविक तारीख के पश्चात् छह मास के भीतर नवीकरण फीस के संदाय पर नवीकृत किया जा सकेगा और जहां उस अवधि के भीतर नवीकरण फीस का संदाय नहीं किया जाता है वहां रजिस्ट्रार नियम 60 के अधीन रहते हुए उस चिह्न को रजिस्टर से हटा देगा।

(3) जहां ऐसे चिह्न की दशा में जिसका रजिस्ट्रीकरण (रजिस्ट्रीकरण के लिए आवेदन की तारीख के प्रति निर्देश से) नवीकरण के लिए शोध्य हो जाता है वह चिह्न नवीकरण की तारीख के पश्चात् रजिस्ट्रीकृत किया जाता है यहां रजिस्ट्रीकरण की वास्तविक तारीख के छह मास के भीतर नवीकरण फीस के संदाय पर रजिस्ट्रीकरण नवीकृत किया जा सकेगा और जहां उस अवधि

के भीतर नवीकरण फीस का संदाय नहीं किया जाता है वहां रजिस्ट्रार नियम 60 के अधीन रहते हुए उस चिह्न को रजिस्टर से हटा देगा।

(4) सामूहिक चिह्न या प्रमाणीकरण व्यापार चिह्न के रजिस्ट्रीकरण का नवीकरण प्ररूप व्या. चि.-आर में होगा और उसके साथ वह फीस होगी जो प्रथम अनुसूची में विनिर्दिष्ट है।

59. रजिस्टर से व्यापार चिह्न हटाने का विज्ञापन- यदि व्यापार चिह्न के अंतिम रजिस्ट्रीकरण के अवसान पर नवीकरण फीस नहीं दी गई है, तो रजिस्ट्रार रजिस्टर से व्यापार चिह्न को हटा सकेगा और तत्क्षण इस तथ्य को जनरल में विज्ञापित कर सकेगाः

परन्तु रजिस्ट्रार व्यापार चिह्न को रजिस्टर से नहीं हटाएगा यदि अधिभार के संदाय के लिए कोई आवेदन धारा 25 की उपधारा (3) के परन्तुक के अधीन प्ररूप व्या.चि.-आर में व्यापार चिह्न के रजिस्ट्रीकरण के अवसान से छह मास के भीतर कर दिया जाता है।

60. प्रत्यावर्तन और रजिस्ट्रीकरण का नवीकरण-रजिस्टर में व्यापार चिह्न का प्रत्यावर्तन और इसके रजिस्ट्रीकरण के नवीकरण का आवेदन धारा 25 की उपधारा (4) के अधीन विहित फीस सहित प्ररूप व्या.चि-आर में व्यापार चिह्न के रजिस्ट्रीकरण के अवसान के एक वर्ष के भीतर किया जाएगा। रजिस्ट्रार ऐसे प्रत्यावर्तन और नवीकरण के लिए अनुरोध पर विचार करते समय ऐसे अन्य व्यक्तियों के हितों को ध्यान में रखेगा, जो प्रभावित है।

61. नवीकरण और प्रत्यावर्तन की नोटिस और विज्ञापन- रजिस्ट्रीकरण के नवीकरण या प्रत्यावर्तन और नवीकरण पर, उक्त आशय की एक सूचना रजिस्ट्रीकृत स्वत्वधारी को और प्रत्येक रजिस्ट्रीकृत उपयोक्ता को भेजी जाएगी और नवीकरण या प्रत्यावर्तन और नवीकरण जरनल में विज्ञापित किया जाएगा।

अध्याय-4

मैड्रिड प्रोटोकाल के अधीन अंतरराष्ट्रीय रजिस्ट्रीकरण के माध्यम से व्यापार चिह्न के संरक्षण से संबंधित उपबंध

62. परिभाषाएं-(1) इस अध्याय के प्रयोजन के लिए जब तक कि संदर्भ से अन्यथा अपेक्षित न हो;-

(क) "अनुच्छेद" से मैड्रिड प्रोटोकाल को निर्दिष्ट अनुच्छेद अभिप्रेत है;

(ख) "इलेक्ट्रानिक रूप" का वही अर्थ होगा जो उसका सूचना प्रौद्योगिकी अधिनियम, 2000 (2000 का 21) की धारा 2 उपधारा (1) के खंड (द) में समनुदेशित है;

(2) अधिनियम के अध्याय 4क के अधीन अंतरराष्ट्रीय आवेदन या अंतरराष्ट्रीय रजिस्ट्रीकरण के संदर्भ में प्रयुक्त शब्द और अभिव्यक्तियां किन्तु जो परिभाषित नहीं हैं का वही अर्थ होगा जो क्रमश: उनका मैड्रिड प्रोटोकाल या सामान्य विनियमों में है;

63. भाषा- कोई अंतरराष्ट्रीय आवेदन या उससे संबंधित अंतरराष्ट्रीय ब्यूरो को कोई संसूचना या अंतरराष्ट्रीय रजिस्ट्रीकरण के परिणामस्वरूप भारत को संरक्षण के लिए सलाह के माध्यम से विस्तार की अधिसूचना अंग्रेजी में होगी।

64. सूचना या नोटिसें आदि का जारी करना और उनके प्रत्युत्तर- धारा 36घ के अधीन अंतरराष्ट्रीय आवेदन और अंतरराष्ट्रीय रजिस्ट्रीकरण जहां भारत को धारा 36ड़ के अधीन पदनामित किया गया है दोनों से संबंधित कोई सूचना या संसूचना रजिस्ट्रार द्वारा केवल इलैक्ट्रानिक रूप में जारी की जाएगी और उसका कोई प्रत्युत्तर भी केवल उसी रूप में अभिप्राप्त किया जाएगा।

65. अंतरराष्ट्रीय आवेदन जिनके संबंध में भारत मूल देश है- भारत से प्रारंभ होने वाले अंतरराष्ट्रीय आवेदन या सामान्य विनियमों के अनुसार उनसे संबंधित कोई संसूचना अंतरराष्ट्रीय व्यापार चिह्न आवेदन प्रणाली के माध्यम के इलैक्ट्रानिक रूप से फाइल की जाएगी।

66. अंतरराष्ट्रीय आवेदन, जिनके संबंध में भारत मूल देश है, का सत्यापन और प्रमाणन-(1) जहां अंतरराष्ट्रीय ब्यूरो को पारेषण के लिए धारा 36घ के अधीन अंतरराष्ट्रीय आवेदन फाइल किया जाता है वहां रजिस्ट्रार पहली अनुसूची की प्रविष्टि सं. 23 में विनिर्दिष्ट फीस के संदाय के अधीन रहते हुए अंतराष्ट्रीय ब्यूरो द्वारा यथा उपलब्ध कराए गए अनुसार प्ररूप डड(2)ड़ में अंतर्वस्तु को प्रमाणित करेगा।

(2) जहां अंतरराष्ट्रीय आवेदन अपेक्षाओं को पूरा करता है, वहां रजिस्ट्रार अंतरराष्ट्रीय आवेदन में उस तारीख को जिसको आवेदन अभिप्राप्त किया गया था उपदर्शित करते हुए उसे प्रमाणित करेगा; और उक्त आवेदन की प्राप्ति की तारीख से दो मास के भीतर अंतरराष्ट्रीय ब्यूरो को अग्रेषित करेगा।

(3) जहां अंतरराष्ट्रीय आवेदन अपेक्षाओं को पूरा करता है, वहां रजिस्ट्रार उसे अंतरराष्ट्रीय ब्यूरो को अग्रेषित नहीं करेगा और आवेदक से सूचना द्वारा उसमें यथाविनिर्दिष्ट अपेक्षाओं को पूरा करने की अपेक्षा करेगा और उस सूचना में विनिर्दिष्ट अवधि के भीतर ऐसे अनुपालना को पूरा करने के पश्चात् ही अंतरराष्ट्रीय आवेदन को अग्रेषित करेगा।

67. संभलाई (हैंडलिंग) फीस- रजिस्ट्रार को अंतरराष्ट्रीय आवेदन को प्रमाणित और अंतरराष्ट्रीय ब्यूरो को पारेषित करने के लिए, पहली अनुसूची में यथाविनिर्दिष्ट प्रहस्तन फीस संदेय होगी और ऐसी फीस का संदाय आवेदन के साथ इलैक्ट्रानिक रूप से भारतीय रुपए में किया जाएगा।

68. अंतरराष्ट्रीय रजिस्ट्रीकरण, जिनके संबंध में भारत को नामनिर्दिष्ट किया गया है, के अभिलेखों को रखने की रीति-(1) अंतरराष्ट्रीय ब्यूरो से भारत को नामनिर्दिष्ट करने के रजिस्ट्रीकरण के संबंध में सलाह की प्राप्ति पर और ऐसे अंतरराष्ट्रीय रजिस्ट्रीकरण के परिणामस्वरूप संरक्षण विस्तार की अधिसूचना पर रजिस्ट्रार उसकी सभी विशिष्टियों को इलैक्ट्रानिक रूप से "अंतरराष्ट्रीय रजिस्ट्रीकरण की विशिष्टियों का अभिलेख" नामक अभिलेख में दर्ज करेगा। अंतरराष्ट्रीय ब्यूरो से जैसे और जब प्राप्त विशिष्टियों में किसी परिवर्तन को उक्त अभिलेख में दर्ज किया जाएगा।

(2) ऐसे अभिलेख में की गई कोई प्रविष्टि जहां तक वह भारत को नामनिर्दिष्ट पक्षकार के रूप में लागू होती है का वही प्रभाव होगा मानो कि वह रजिस्ट्रार द्वारा व्यापार चिह्न के रजिस्टर में दर्ज की गई थी।

69. धारा 36 ड. के अधीन आवेदन की जांच- (1) नियम 68 में निर्दिष्ट सलाह की सधारणतया ऐसी सलाह की प्राप्ति से दो मास के भीतर जांच की जाएगी।

(2) जहां रजिस्ट्रार यह पाता है कि कोई चिह्न जो भारत में नामनिर्दिष्ट अंतरराष्ट्रीय रजिस्ट्रीकरण की विषयवस्तु है का संरक्षण नहीं किया जा सकता है, तो वह मैड्रिड प्रोटोकाल के अनुच्छेद 5 के अधीन लागू इंकार की अवधि के अवसान से पूर्व अंतरराष्ट्रीय ब्यूरो को अनंतिम इंकार से अधिसूचित करेगा।

(3) जहां संरक्षण से इंकार करने का कोई आधार नहीं है वहां रजिस्ट्रार अधिनियम की धारा 20 के अधीन अंतरराष्ट्रीय रजिस्ट्रीकरण से संबंधित विशिष्टियों को, साधारणतया सलाह की प्राप्ति की तारीख से छह मास की अवधि के भीतर व्यापार चिह्न पत्र में, एक पृथक भाग में विज्ञापित करेगा।

(4) जहां अधिनियम की धारा 21 के अधीन कोई विरोध फाइल किया जाता है वहां रजिस्ट्रार अंतरराष्ट्रीय ब्यूरो को इस तथ्य को एक अनंतिम इंकार के रूप में प्रोटोकाल और सामान्य विनियमों के अनुसार विरोध के आधार से अधिसूचित करेगा।

(5) अंतरराष्ट्रीय रजिस्ट्रीकरण का उस पर किसी विरोध की प्राप्ति पर व्यापार चिह्न नियम के नियम 41 से नियम 51 में अंतर्विष्ट उपबंधों के अनुसार प्रसंस्करण किया जाएगा।

(6) जहां उपनियम (1) से उपनियम (5) के अधीन वर्णित प्रकिया को पूरा कर लिया गया है और रजिस्ट्रार ने सभी मालों और सेवाओं के लिए जिनके लिए संरक्षण का अनुरोध किया गया है, को चिह्न के संरक्षण से इंकार की पुष्टि करने का विनिश्चय कर लिया है, रजिस्ट्रार अंतरराष्ट्रीय ब्यूरो को इस प्रभाव का एक विवरण भेजेगा।

(7) जहां अनंतिम इंकार का पूर्णत: या भागत: प्रतिसंहृरण कर लिया गया है, रजिस्ट्रार अंतरराष्ट्रीय ब्यूरो को इस प्रभाव का एक विवरण कि अनंतिम इंकार का प्रतिसंहृरण कर लिया गया है (क) उन सभी मालों और सेवाओं के लिए चिह्न का संरक्षण प्रदान किया गया है जिनके लिए संरक्षण का अनुरोध किया गया था; या (ख) शर्तों या सीमाओं जिनके अधीन माल या सेवाओं की बाबत संरक्षण प्रदान किया गया है, को उपदर्शित करते हुए एक विवरण भेजेगा।

(8) जहां संरक्षण से इंकार करने का कोई आधार नहीं है वहां रजिस्ट्रार अंतरराष्ट्रीय ब्यूरो को इस प्रभाव से सूचित करेगा कि भारत में चिह्न को संरक्षण प्रदान कर दिया गया है।

(9) जहां भारत में किसी चिह्न के संरक्षण को प्रभावित करने के लिए और विनिश्चय है, रजिस्ट्रार इस प्रभाव का अंतरराष्ट्रीय ब्यूरो को एक विवरण भेजेगा।

70. संरक्षण का अविधिमान्यकरण- किसी अंतरराष्ट्रीय रजिस्ट्रीकरण के फलस्वरूप किसी संरक्षण का अधिनियम के अधीन भारत में विधिक कार्यवाहियों के फलस्वरूप प्रभाव समाप्त हो गया है, या उसमें परिवर्तन आ गया है, रजिस्ट्रार तदनुसार अंतरराष्ट्रीय ब्यूरो को अधिसूचित करेगा।

71. अंतरराष्ट्रीय रजिस्ट्रीकरण के रद्दकरण का प्रभाव- जहां उद्गम कार्यालय के अनुरोध पर किसी अंतरराष्ट्रीय रजिस्ट्रीकरण को रद्द कर दिया गया है प्रोटोकाल के अनुच्छेद 9 के उपबंध अंतरराष्ट्रीय रजिस्ट्रीकरण को जहां तक वह भारत में नामनिर्दिष्ट हुआ है नौ गुना लागू होंगे।

72. सामूहिक और प्रमाणन चिह्न- जहां कोई अंतरराष्ट्रीय रजिस्ट्रीकरण भारत को सामूहिक चिह्न या प्रमाणन चिह्न के संबंध में नामनिर्दिष्ट करता है, ऐसे सामूहिक चिह्न या प्रमाणन चिह्न के शासित करने वाले विनियम प्रत्यक्षत: उस अंतरराष्ट्रीय रजिस्ट्रीकरण के धारक द्वारा रजिस्ट्रार को अंतरराष्ट्रीय ब्यूरो की सलाह की तारीख से एक मास के भीतर प्रस्तुत किए जाएंगे।

73. अंतरराष्ट्रीय रजिस्ट्रीकरण का प्रतिस्थापन- जहां कोई अंतरराष्ट्रीय रजिस्ट्रीकरण भारत में धारा 36ड. की उपधारा (6) के अधीन धृत रजिस्ट्रीकरण को प्रतिस्थापित करता हुआ प्रतीत होता है, तो रजिस्ट्रार अंतरराष्ट्रीय रजिस्ट्रीकरण के धारक के अनुरोध पर अंतरराष्ट्रीय रजिस्ट्रीकरण पर ध्यान देगा और धारा 6 की उपधारा (1) के अधीन अनुरक्षित रजिस्टर में अपेक्षित प्रविष्टि करेगा। तत्पश्चात् रजिस्ट्रार सामान्य विनियमों के नियम 21 के अधीन तदनुसार अंतरराष्ट्रीय ब्यूरो को अधिसूचित करेगा।

74. इस अधिनियम के उपबंधों के अधीन रहते हुए मैड्रिड प्रोटोकाल, सामान्य विनियम और प्रशासनिक अनुदेश भारत से आरंभ होने वाले अंतरराष्ट्रीय आवेदनों के संबंध में और अंतरराष्ट्रीय रजिस्ट्रीकरणों जहां भारत को नामनिर्दिष्ट किया गया है, को लागू होंगे।

अध्याय-5
समनुदेशन और पारेषण

75. समनुदेशन और पारेषण की प्रविष्टि करने के लिए आवेदन- जो व्यक्ति रजिस्ट्रीकृत व्यापार चिह्न का हकदार समनुदेशन या पारेषण द्वारा बन जाता उस व्यक्ति के हक को रजिस्ट्रीकृत व्यापार चिह्न का हक को रजिस्ट्रीकृत करने के लिए आवेदन प्ररूप व्या.चि.-पी किया जाता है।

76. आवेदन के साथ मामला-(1) नियम 75 के अधीन अपने हक के लिए रजिस्ट्रीकरण के लिए प्ररूप व्या.चि.-23 और व्या.चि.-24 पर अनुरोध के साथ आवेदन करते समय मूल दस्तावेज, मूल लिखत या विलेख, यथास्थिति सम्यक मुहर लगाते हुए दाखिल किया हो जिसमें व्यापार चिह्न के हक का हस्तांतरण और उस अनुरोध के समर्थन में कथन शामिल हो।

(2) साधारणतया रजिस्ट्रार नियम 75 के अधीन किए गए आवेदन का निपटान आवेदन करने की तारीख से तीन मास के भीतर करेगा और इससे आवेदक को संसूचित करेगा।

77. हक का सबूत- जब किसी प्रस्तुत कथन या दस्तावेज की सत्यता के बारे में तर्कपूर्ण संदेह हो, तो रजिस्ट्रार, रजिस्ट्रीकरण व्यापार चिह्न के स्वत्वधारी के रूप में रजिस्ट्रीकृत किये जाने के लिए आवेदन करने वाले व्यक्ति से अपने हक का ऐसा सबूत या अतिरिक्त सबूत देने के लिए कहेगा, जो रजिस्ट्रार को उपयुक्त लगता हो।

78. लिखतों का परिबध्द- यदि रजिस्ट्रार की यह राय है कि किसी व्यक्ति के हक की सिद्धि में पेश की गई कोई लिखत उचित या पर्याप्त मुद्रांक पर नहीं हैं, तो रजिस्ट्रार उसे परिबद्ध कर लेगा और उससे ऐसी रीति में बरतेगा जैसी कि भारतीय स्टांप अधिनियम, 1899 (1899 का 2) के अध्याय 4 में उपबंधित है।

79. भारत से बाहर धन के पारेषण के संबंध में समनुदेशन.- यदि भारत से बाहर धन के पारेषण का विनियमन करने वाली कोई विधि प्रवृत्त है तो जो व्यक्ति व्यापार चिह्न के लिए हकदार ऐसे पारेषण करने वाले समनुदेशन द्वारा हो जाता है उसके हक का रजिस्ट्रीकरण रजिस्ट्रार ऐसा पारेषण करने के लिए उस प्राधिकारी की अनुज्ञा जो ऐसी विधि में उल्लिखित है, पेश किये जाने पर करने के सिवाय न करेगा।

80. व्यापार चिह्न का जो समनुदेशन उस कारबार के गुडविल बिना किया जाता है उसका विज्ञापन करने के वास्ते रजिस्ट्रार के निदेश के लिए आवेदन-(1) धारा 42 के अधीन निदेशों के लिए आवेदन प्ररूप व्या.चि.-पी में किया जायेगा और उसमें वह तारीख दी जायेगी जिसको समनुदेशन किया गया था। आवेदन में उस अवस्था में, जिसमें कि यह रजिस्ट्रीकृत व्यापार चिह्न है, रजिस्ट्रीकरण की विशिष्टियाँ दी जायेंगी और उस अवस्था में जिसमें कि वह अनरजिस्ट्रीकृत चिह्न के, जो कि उसके साथ समनुदिष्टि किया गया है, उपयोग सहित उसकी विशिष्टियाँ दी जायेंगी। रजिस्ट्रार कोई साक्ष्य या और जानकारी मांग सकेगा और यदि विभिन्न बातों के संबंध में उसका समाधान हो जाता है, तो वह समनुदेशन का विज्ञापन करने विषयक लिखित में निदेश देगा।

(2) जब तक किस रजिस्ट्रार का अनुमोदन धारा 41 के अधीन अभिप्राप्त नहीं कर लिया जाता है और रजिस्ट्रार के अनुमोदन विषयक अधिसूचना को प्रकट करने वाला निर्देश आवेदन में नहीं दे दिया जाता, रजिस्ट्रार ऐसे आवेदन पर विचार करने से इंकार उस मामले में कर सकेगा जिसके संबंध में वह धारा लागू है।

(3) उस कालावधि बढाने के लिए, जिसके अंदर यह आवेदन जो उपनियम (1) में वर्णित है, अनुरोध किया जायेगा यह अनुरोध प्ररूप व्या.चि.-पी में किया जाएगा।

81. गुडविल के बिना समनुदेशन के प्रविष्टि करने के लिए आवेदन- किन्हीं माल या सेवाओं के संबंध में व्यापार चिह्न के समनुदेशन संबंधी आवेदन जो नियम 75 के अधीन किया जाता है उसमें यह कथत होगा कि-

(क) क्या उस व्यापार चिह्न का उपयोग उन माल या सेवाओं में होने वाले किसी कारबार में किया जा चुका था या किया गया था, और

(ख) क्या समनुदेशन उस कारबार की गुडविल के संबंध में अन्यथा किया गया है,

और यदि दोनों परिस्थितियां विद्यमान है, तो समनुदेशन का विज्ञापन करने के लिए जो निर्देश नियम 80 के अधीन आवेदन करने पर प्राप्त किये गये हैं, उनकी एक प्रति और विज्ञापन की प्रतियों सहित सबूत या अन्यथा जैसी कि अपेक्षा रजिस्ट्रार करे, आवेदक व्यापार चिह्न रजिस्ट्री में यह बात संदर्शित करने के लिए पेश कर देगा कि रजिस्ट्रार के निदेशों की पूर्ति की जा चुकी है और यदि रजिस्ट्रार का समाधान इस बात में नहीं होता है कि निदेशों की पूर्ति हो गई है, तो वह आवेदन के संबंध में कार्यवाही नहीं करेगा।

82. पृथक रजिस्ट्रीकरण- जहाँ कि नियम 75 के अधीन आवेदन के अनुसारण में और रजिस्ट्रीकरण के माल या सेवाओं के विभाजन और पृथक्करण या स्थानों अथवा बाजारों के विभाजन और पृथक्करण के फलस्वरूप विभिन्न व्यक्ति व्यापार चिह्न के तत्पश्चात् स्वत्वधारियों के रूप में एक ही रजिस्ट्रीकरण संख्या के अधीन पृथकत: रजिस्ट्रीकृत हो जाते हैं, तो उन विभिन्न व्यक्तियों के नामों में परिणामत: हुए पृथक रजिस्ट्रीकरणों में से प्रत्येक रजिस्ट्रीकरण की बाबत इस अधिनियमके सभी प्रयोजनों के लिए यह समझा जायेगा कि वह पृथक रजिस्ट्रीकरण है।

83. कुछ समनुदेशनों और पारेषणों के लिए रजिस्ट्रार का प्रमाण-पत्र या अनुमोदन- कोई व्यक्ति जो धारा 40 की उपधारा (2) के अधीन रजिस्ट्रार का प्रमाण-पत्र या धारा 41 के अधीन उसके अनुमोदन की अधिसूचना प्राप्त करना चाहता है, वह अपने आवेदन के साथ मामले का कथन, जिसमें वे परिस्थितियाँ उपवर्णित हैं, प्ररूप व्या. चि.-पी में दो प्रतियों में और समनुदेशन या पारेषण को प्रभावित करने वाली कोई लिखत या प्रस्थापित लिखत भी रजिस्ट्रार को भेजेगा। रजिस्ट्रार कोई साक्ष्य या और जानकारी, जिसे वह आवश्यक समझता है, मांग सकेगा और मामले का कथन उस दशा में जिसमें कि उसमें सभी सुसंगत परिस्थितियों को सम्मिलित करने की अपेक्षा की गई है, संशोधित किया जायेगा ओर यदि यह अपेक्षा की जाये, तो उसे शपथपत्र द्वारा सत्यापित करेगा। रजिस्ट्रार आवेदक को उस दशा में, जिसमें कि उससे ऐसी अपेक्षा की गई है और किसी अन्य व्यक्ति की, जिसकी बाबत रजिस्ट्रार का यह विचार है कि वह अन्तरण में, हित रखता है, सुनने के पश्चात् मामले पर विचार करेगा और यथास्थिति उसका प्रमाण-पत्र या उस मामले के अनुमोदन या अननुमोदन की लिखत में अधिसूचना आवेदक को देगा और ऐसे अन्य व्यक्ति को भी इतिला तदनुसार देगा। जहाँ कि मामले का कथन संशोधित किया जाता है, वहाँ उसके अंतिम रूप वाली तीन प्रतियाँ व्यापार चिह्न रजिस्ट्री में पेश कर दी जाएगी। रजिस्ट्रार मामले के कथन के अंतिम रूप वाली एक प्रति प्रमाणपत्र या अधिसूचना में अपनी मुद्रा लगाकर जोड़ देंगे।

84. समनुदेशन की विशिष्टियों का रजिस्टर में प्रविष्ट करना- जहां रजिस्ट्रार इस अधिनियम के अधीन किसी व्यापार चिह्न के समनुदेशन को अनुज्ञात कर चुका है वहां रजिस्टर में समनुदेशन को निम्नलिखित विशिष्टियों की प्रविष्टि की जायेगी, अर्थात्:-

(i) समनुदेशितों का नाम और पता;

(ii) समनुदेशन की तारीख;

(iii) जहां समनुदेशन उस चिह्न में किसी अधिकार की बाबत है वहां समनुदेशित अधिकार का वर्णन;

(iv) वह आधार जिसके अधीन समनुदेशन किया गया है; और

(v) वह तारीख जिसको रजिस्टर में प्रविष्टि की जाती है।

85. धारा 46 के अधीन किसी कंपनी के लिए समनुदेशन का रजिस्ट्रीकरण- धारा 46 की उपधारा (4) के प्रयोजनों के लिए वह कालावधि जिसमें किसी कंपनी को नियम 75 के अधीन किए गए आवेदन पर किसी रजिस्ट्रीकृत व्यापार चिह्न के पश्चातवर्ती स्वत्वधारी के रूप में रजिस्ट्रीकृत किया जा सकेगा, व्यापार चिह्न के रजिस्ट्रीकरण के जनरल में विज्ञापन की तारीख से छह मास होगी या छह मास के अनधिक इतनी और कालावधि होगी जितनी कि रजिस्ट्रार उस कालावधि के पूर्व या दौरान जितनी कालावधि तक कि यह वृद्धि समनुज्ञात की जा सकती है, किसी समय यथास्थिति हक के रजिस्ट्रीकरण के लिए आवेदक द्वारा या रजिस्ट्रीकृत स्वत्वधारी द्वारा किए गए प्ररूप व्या. चि.-पी में आवेदन पर अनुज्ञात करें।

अध्याय-6
रजिस्ट्रीकृत उपयोक्ता

86. रजिस्ट्रीकृत उपयोक्ता के रूप में रजिस्ट्रीकरण के लिए आवेदन- (1) रजिस्ट्रीकृत व्यापार चिह्न के रजिस्ट्रीकृत उपयोक्ता के रूप में धारा 49 की उपधारा (1) के अधीन किसी व्यक्ति का रजिस्ट्रीकरण करने के लिए जो आवेदन रजिस्ट्रार को किया जाता है वह उस व्यक्ति और व्यापार चिह्न के रजिस्ट्रीकृत स्वत्वधारी द्वारा संयुक्तत: प्ररूप व्या. चि.-यू में किया जायेगा और उसके साथ होगा।

(2) रजिस्ट्रीकृत स्वत्वधारी और प्रस्तावित उपयोक्ता ऐसे अन्य दस्तावेजें भी पेश और फाइल करेंगे और ऐसा अपर साक्ष्य और जानकारी भी देंगे जैसे कि रजिस्ट्रार उस निमित्त अपेक्षित करे।

(3) जब तक कि कोई आवेदन धारा 49 की उपधारा (1) के खंड (क) में निर्दिष्ट करार की तारीख से छह मास के भीतर फाइल नहीं किया जाए, वह ग्रहण नहीं किया जाएगा।

(4) जहां रजिस्ट्रकृत उपयोक्ता के रूप में रजिस्ट्रीकरण के लिए एक से अधिक आवेदन उसी करार के अंतर्गत आने वाले व्यापार चिह्नों की बाबत उसी रजिस्ट्रीकृत स्वत्वधारी और उसी प्रस्थापित रजिस्ट्रीकृत उपयोक्ता द्वारा की जाती है वहां धारा 49 की उप धारा (1) में वर्णित दस्तावेज किसी एक आवेदन के साथ फाइल किए जा सकेंगे और अन्य आवेदन या आवेदनों में दिए गए ऐसे दस्तावेजों के प्रति निर्देश किया जाएगा।

87. रजिस्ट्रार द्वारा विचार- धारा 49 की उपधारा (2) के अधीन रजिस्ट्रार यदि उसका यह समाधान हो जाता है कि आवेदन और उसके साथ के दस्तावेज अधिनियम और नियमों के सुसंगत उपबंधों का अनुपालन करते हैं तो उन मालों या सेवाओं की बाबत जिसके संबंध में वह इस प्रकार संतुष्ट हो जाता है, प्रस्तावित रजिस्ट्रीकृत उपयोक्ता को रजिस्ट्रीकृत करेगा।

88. आवेदन के इंकार के पूर्व सुनवाई या प्रतिबंधित करना - (1) रजिस्ट्रार संबद्ध पक्षों को सुनवाई का अवसर देने के बाद, ऐसे शर्त (शर्तों) के साथ, यदि कोई हो, जिसे वह उपयुक्त समझे, आवेदन को स्वीकार या अस्वीकार कर सकेगा और उस आदेश की सूचना लिखित रूप में पक्षकारों को देगा।

89. रजिस्टर में प्रविष्टि- (1) जहां रजिस्ट्रार धारा 49 की उपधारा (2) के अधीन रजिस्ट्रीकृत उपयोक्ता के रूप में रजिस्ट्रीकरण के लिए किसी आवेदन को प्रतिग्रहण करता है वहां वह रजिस्ट्रीकृत उपयोक्ता के रूप में प्रस्तावित रजिस्ट्रीकृत उपयोक्ता को रजिस्ट्रीकृत करेगा और उसे जरनल में प्रकाशित करेगा।

(2) रजिस्ट्रीकृत उपयोक्ता विषयक जो प्रविष्टि रजिस्टर में है उसमें वह तारीख दी गई होगी जिसको रजिस्ट्रीकृत उपयोक्ता के रजिस्ट्रीकरण के लिए आवेदन किया गया था और उस तारीख की बाबत यह समझा जायेगा कि वह रजिस्ट्रीकृत उपयोक्ता के रूप में उस व्यक्ति के रजिस्ट्रीकरण की वह तारीख है जो कि प्रविष्टि में वर्णित है धारा 49 की उपधारा (1) के खंड (ख) के उपखंड (i) से उपखंड (iv) में वर्णित विशिष्टियों और कथनों के अतिरिक्त रजिस्ट्रीकृत उपयोक्ता के नाम का वर्णन और उसके कारबार के भारत में स्थान का और यदि वह भारत में कारबार नहीं करता है, तो भारत में उसकी तामील के लिए उसका पता भी उस प्रविष्टि में दिया होगा।

90. रजिस्ट्रीकरण से भारत के बाहर धन का पारेषण करने के लिए प्राधिकार विविक्षित नहीं है- किसी व्यापार चिह्न के रजिस्ट्रीकृत उपयोक्ता के रूप में रजिस्ट्रीकरण से उस करार का अनुमोदन विविक्षित नहीं समझा जायेगा जहां तक उसका संबंध किसी धन के पारेषण से है जो भारत से बाहर किसी स्थान के लिए उक्त व्यापार चिह्न के उपयोग के लिए प्रतिफल के रूप में हो।

91. रजिस्ट्रीकृत उपयोक्ता के रूप में रजिस्ट्रीकरण की संसूचना- रजिस्ट्रीकरण उपयोक्ता के रजिस्ट्रीकरण की लिखित सूचना रजिस्ट्रार व्यापार चिह्न के रजिस्ट्रीकृत स्वत्वधारी की रजिस्ट्रीकृत उपयोक्ता को और रजिस्ट्रीकृत उपयोक्ता को और प्रत्येक अन्य ऐसे रजिस्ट्रीकृत उपयोक्ता को जिसका नाम उसी व्यापार चिह्न के बारे में प्रविष्ट किया गया है, भेजेगा और रजिस्ट्रार में ऐसी प्रविष्टि के तीन मास के भीतर जनरल में भी उसी अंत:स्थापित किया जाएगा।

92. प्रविष्टि में परिवर्तन कराने के लिए रजिस्ट्रीकृत स्वत्वधारी का आवेदन- (1) धारा 50 की उपधारा (1) के खंड (क) के अधीन रजिस्ट्रीकृत उपयोक्ता के रजिस्ट्रीकरण के रद्दकरण के लिए आवेदन यथास्थिति प्ररूप व्या. चि.-यू में होगा।

93. रजिस्ट्रीकरण उपयोक्ता के रजिस्ट्रकरण का रद्दकरण- (1) धारा 50 की उपधारा (1) के खंड (ख) से खंड (घ) तक के अधीन रजिस्ट्रीकृत उपयोक्ता के रजिस्ट्रीकरण के रद्दकरण के लिए आवेदन यथास्थिति प्ररूप व्या. चि.-यू या प्ररूप व्या. चि.-यू में होगा और जिन आधारों पर यह किया गया है उसका कथन इसके साथ होगा।

(2) धारा 49 की उपधारा (1) के खंड (ख) के पैरा (iv) के अनुसार एक कालावधि के लिए रजिस्ट्रीकृत उपयोक्ता के रजिस्ट्ररकरण की दशा मंे रजिस्ट्रार रजिस्ट्रीकृत उपयोक्ता की प्रविष्टि को उस कालावधि के अंत पर रद्द कर देगा जहां कि कुछ या सब माल या सेवाएं उनमें से छोड़ दी जाती है जिनके बारे में व्यापार चिह्न कर रजिस्ट्रीकरण हुआ है वहां रजिस्ट्रार व्यापार चिह्न के उन रजिस्ट्रीकृत उपयोगों के वृत्तों से, जिनमें कि वे समाविष्ट हैं, उन्हें छोड़ देगा। इस उपनियम के अधीन जिन रजिस्ट्रीकृत उपयोक्ताओं का अनुज्ञात उपयोग उससे प्रभावित होता है उनका और उसी व्यापार चिह्न के रजिस्ट्रीकृत स्वत्वधारियों का प्रत्येक छोड़ा जाना या अपखंडन रजिस्ट्रार अधिसूचित करेगा।

94. रजिस्ट्रीकृत उपयोक्ता की बाबत जानकारी मांगने की रजिस्ट्रार की शक्ति-(1) रजिस्ट्रार, किसी भी समय लिखित में सूचना द्वारा रजिस्ट्रीकृत स्वत्वधारी से यह अपेक्षा कर सकेगा वह उसे 51 की उपधारा (2) के अधीन जानकारी प्रस्तुत करे और उस धारा की उपधारा (2) के अनुसार कार्रवाई करें।

95. प्रविष्टी को परिवर्तित करने या रजिस्ट्रीकरण को रद्द करने के आवेदन के संबंध में प्रक्रिया-

(1) रजिस्ट्रार, व्यापार रजिस्ट्रीकृत स्वत्वधारी और प्रत्येक रजिस्ट्रीकृत उपयोक्ता को (जो किसी भी दशा में आवेदक नहीं है) धारा 50 के अधीन लिखित में आवेदनों को अधिसूचित करेगा।

(2) उपनियम (1) के अधीन अधिसूचित कोई व्यक्ति को कार्यवाहियों में भाग लेने का आशय रखता है वह रजिस्ट्रार को उस आशय की सूचना ऐसी अधिसूचना की प्राप्ति के एक मास के भीतर प्ररूप व्या.चि.-यू में देगा और उसके साथ अपने भाग लेने के आधारों का कथन भेजेगा। तदुपरि रजिस्ट्रार ऐसी सूचना और कथन की प्रतियों को तामील अन्य पक्षकार, अर्थात् आवेदक पर रजिस्ट्रीकृत स्वत्वधारी पर, उस रजिस्ट्रीकृत उपयोक्ता पर, जिसका रजिस्ट्रीकरण प्रश्नास्पद है कार्यवाही को विषयवस्तु है और अन्य किसी रजिस्ट्रीकृत उपयोक्ता या अनुज्ञाप्राप्त उपयोक्ता जो भाग लेता है, करेगा या करायेगा।

(3) धारा 50 के अधीन किए गए किसी आवेदन की दशा में आवेदन और उपनियम (1) के अधीन अधिसूचित कोई व्यक्ति ऐसे समय या समयों के भीतर जैसा या जैसे कि रजिस्ट्रार नियत करें, अपने मामले के समर्थन में साक्ष्य पेश कर सकेगा और रजिस्ट्रार पक्षकारों को सुने जाने का अवसर देने के पश्चात् आवेदन को प्रतिग्रहीत कर सकेगा या नामंजूर कर सकेगा या ऐसी किन्हीं शर्तों पर संशोधन, या रूपभेदों सहित या मर्यादाओं के अंतर्गत उसे प्रतिग्रहीत कर सकेगा जिन्हें यह अधिसूचित करना ठीक समझता है और तदनुसार वह पक्षकारों को लिखित में इत्तिला देगा।

(4) धारा 50 की उपधारा (1) के खंड (क) के अधीन किसी रजिस्ट्रीकरण में परिवर्तन करने के लिए या रजिस्ट्रीकरण का रद्दकरण धारा 50 की उपधारा (1) के खंड (ग) की मद (i) से (iv) तक में वर्णित आधारों में से किसी पर किए गए आवेदन पर रजिस्ट्रार प्ररूप व्या. चि.-यू में की किसी सूचना और फाइल किए गए मामले के कथन सहित विचार करेगा और आवेदन का निपटारा करेगा और तदनुसार पक्षकारों को लिखित इत्तिला भी देगा।

96. रजिस्ट्रीकरण उपयोक्ता आवेदन- धारा 58 की उपधारा (2) के अधीन आवेदन व्यापार चिह्न के रजिस्ट्रीकृत उपयोक्ता द्वारा या प्राधिकृत उपयोक्ता द्वारा उसकी ओर से विधिवत प्राधिकृत किसी व्यक्ति द्वारा प्ररूप व्या. चि.-पी में दिया जायेगा और ऐसा साक्ष्य देने की अपेक्षा रजिस्ट्रार कर सकेगा जैसा कि उन परिस्थितियों में ठीक समझता है जिनमें आवेदन किया गया है।

अध्याय-7

रजिस्टर का परिशोधन तथा संशोधन, रजिस्टर का परिवर्तन या परिशोधन

97. व्यापार चिह्न में परिशोधन या उसे रजिस्टर से हटाने के लिए आवेदन- रजिस्टर में व्यापार चिह्न से संबोधित किसी प्रविष्टि के करने, विलुप्त करने या परिवर्तन करने के लिए धारा 47, 57, 68, या 77 के अधीन जो आवेदन रजिस्ट्रार को किया जाता है वह यथास्थिति प्ररूप व्या. चि.-ओ में किया जायेगा और आवेदक के हित का स्वरूप, वे तथ्य जिन पर उसका मामला धारित है, और वह अनुतोष जिसे वह चाहता है, को पूर्णतया उपवर्णित करने वाला एक कथन उसके साथ होगा। जहां कि आवेदन ऐसे व्यक्ति द्वारा किया जाता है जो कि प्रश्नास्पद व्यापार चिह्न का रजिस्ट्रीकृत स्वत्वधारी नहीं है, वहां वह आवेदन और पूर्वोक्त कथन व्यापार चिह्न रजिस्ट्री में दिया जाएगा। उस अवस्था में, जिसमें कि रजिस्ट्रीकृत उपयोक्ता है ऐसे आवेदन ओर कथन के साथ उनकी उतनी अतिरिक्त प्रतियां होंगी जितनी रजिस्ट्रीकृत उपयोक्ता है। प्रत्येक आवेदन और कथन की एक-एक प्रति रजिस्ट्रार द्वारा एक मास के भीतर रजिस्ट्रीकृत स्वत्वधारी और रजिस्ट्रीकृत उपयोक्ताओं और ऐसे किसी अन्य व्यक्ति को जिसके बारे में रजिस्ट्रार को यह प्रतीत होता हे कि उसका व्यापार चिह्न में हित है, साधारणत: एक मास के भीतर भेजेगा। आवेदन उसी रीति में सत्यापित किया जाएगा जो विरोध की सूचना के सत्यापन के लिए नियम 43 के उपनियम (ग) के खंड (i) के अधीन विहित है।

98. अतिरिक्त प्रक्रिया -नियम- 97 में वर्णित आवेदन की प्रति रजिस्ट्रीकृत स्वत्वधारी द्वारा प्राप्ति से दो मास के भीतर या कुल मिलाकर एक मास में अनधिक की ऐसी और अवधि के भीतर वह रजिस्ट्रार को प्ररूप व्या.चि.-ओ में उन आधारों का एक प्रतिकथन भेजेगा जिस पर आवेदन के बारे में प्रति विरोध किया गया है और यदि वह ऐसा करता है कि जो रजिस्ट्रार प्रतिकथन की एक प्रति की तामील आवेदन करने वाले व्यक्ति पर उसकी प्राप्ति के एक मास के भीतर करेगा। नियम 97 में उल्लिखित आवेदन की प्राप्ति की तारीख से तीन महीने की अवधि के भीतर यदि कोई प्रतिकथन फाइल नहीं किया जाता तो संशोधन हेतु आवेदक नियम 45(1) के प्रावधानों के तहत संशोधन हेतु अपने आवेदन के समर्थन में साक्ष्य फाइल करेगा। नियम 46 से नियम 51 तक के उपबंध इस आवेदन विषयक और कार्यवाहियों के संबंध में उसके पश्चात् यथा-परिवर्तित रूप में लागू हो।

99. पक्षकारों द्वारा मध्यक्षेप-रजिस्ट्रीकृत स्वत्वधारी से भिन्न कोई व्यक्ति जो व्यापार चिह्न के संबंध में अपने हित, जिसके बारे में नियम 99 के अधीन आवेदन किया गया है, वह मध्यक्षेप करने के लिए इजाजत के लिए अपने हित का स्वरूप का कथन करके प्ररूप व्या. चि.-ओ में आवेदन कर सकेगा और रजिस्ट्रार संबद्ध पक्षकारों की सुनवाई करने के पश्चात् (यदि ऐसा अपेक्षित हो) ऐसी शर्तों

और निबंधनों पर दे जैसी कि वह लागत की सुरक्षा के लिए अधिरोपित करना ठीक समझे ऐसी इजाजत देने से इंकार कर सकेगा या ऐसी इजाजत दे सकेगा।

100. रजिस्ट्रार द्वारा स्वप्रेरणा से रजिस्टर का परिशोधन-(1) रजिस्ट्रार ऐसी सूचना की धारा 57 की उपधारा (4) के अधीन देनी अपेक्षित है, रजिस्ट्रीकृत स्वत्वधारी को प्रत्येक रजिस्ट्रीकृत उपयोक्ता को, यदि कोई हो, और किसी अन्य व्यक्ति को, जिसकी बाबत यह प्रतीत होता है कि व्यापार चिह्न में उसका कोई हित है, लिखित रूप में भेजी जाएगी और इसमें उन आधारों का कथन करेगा जिन पर रजिस्ट्रार रजिस्टर का परिशोधन करने की प्रस्थापना करता है और उसमें ऐसी सूचना की तारीख से अन्यून एक मास का वह समय भी विनिर्दिष्ट किया जाएगा जिसके भीतर सुनवाई के लिए आवेदन किया जाएगा:

परंतु की रजिस्ट्रीकृत स्वत्वधारी को कोई सूचना न भेजी गयी हो, रजिस्ट्रीकृत स्वत्वधारी ने लिखित रूप में रजिस्ट्रीकरण के निरस्तीकरण हेतु अनुरोध या सहमति दी हो; और तदनुरूप रजिस्टर संशोधित किया जाएगा।

(2) जब कि पूर्वोक्त सूचना में विनिर्दिष्ट समय के भीतर, कोई व्यक्ति जिसे इस प्रकार अधिसूचित किया गया है, रजिस्ट्रार को उन तथ्यों को देते हुए, जिन पर वह सूचना में कथित आधारों को पूरा करने के लिए भरोसा करता है, लिखित में कथन नहीं भेजता है, या सुनवाई किए जाने के लिए आवेदन नहीं करता है, तो यह समझा जाएगा कि वह कार्यवाहियों में भाग नहीं लेना चाहता और रजिस्ट्रार तदनुसार कार्रवाई कर सकेगा।

(3) यदि रजिस्ट्रार रजिस्टर का परिशोधन करने या विनिश्चय करता है तो वह अपना विनिश्चय रजिस्ट्रीकृत स्वत्वधारी को और प्रत्येक रजिस्ट्रीकृत या अनुज्ञात उपयोक्ता को यदि कोई हो लिखित रूप में संसूचित करेगा।

रजिस्टर में परिवर्तन या शुद्धियां

101. रजिस्टर में पते का परिवर्तन-(1) व्यापार चिह्न का वह रजिस्ट्रीकृत स्वत्वधारी या रजिस्ट्रीकृत उपयोक्ता, जिसके यथास्थिति कारबार का भारत में मुख्य स्थान का या स्वदेश का पता या भारत में तामील का पता, यथास्थिति इस भांति परिवर्तित हो गया है, जिससे कि रजिस्टर में की प्रविष्टि अशुद्ध हो गई है, रजिस्ट्रार से यह निवेदन प्ररूप व्या. चि.-पी में तत्क्षण करेगा कि रजिस्टर में पते को समुचित रूप से बदल दे और यदि रजिस्ट्रार का समाधान इस बाबत हो जाता है तो वह रजिस्टर में तदनुसार परिवर्तित कर देगा।

(2) व्यापार चिह्न का रजिस्ट्रीकृत स्वत्वधारी या रजिस्ट्रीकृत अथवा अनुज्ञात उपयोक्ता जिसके कारबार का भारत में मुख्य स्थान का पता जिसके स्वदेश का पता या भारत में जिसकी तामील का पता लोक प्राधिकारी द्वारा ऐसे बदल दिया गया है कि परिवर्तित पते से भी वही परिसर अभिहित है जो कि रजिस्टर में प्रविष्ट है, रजिस्ट्रार से व्या. चि.-पी में पूर्वोक्त निवेदन करेगा और यदि वह ऐसा करता है, तो वह उसके साथ उक्त प्राधिकारी द्वारा दिए गए परिवर्तन का प्रमाणपत्र देगा। यदि रजिस्ट्रार का समाधान मामले में तथ्यों के संबंध में हो जाता है, तो वह रजिस्टर में तदनुसार परिवर्तन करेगा, किंतु प्ररूपों पर दी जाने वाली कोई फीस नियम 10 के उपनियम (2) या नियम 11 के उपनियम (2) के उपबंधों के होते हुए भी नहीं मांगेगा।

(3) (i) जहां कि रजिस्ट्रीकृत स्वत्वधारी उपनियम (1), (2) के अधीन निवेदन करता है वहां यदि कोई रजिस्ट्रीकृत उपयोक्ता है या है तो वह निवेदन कि प्रति तामील उस या उन पर करेगा और तदनुसार रजिस्ट्रार को इत्तिला देगा।

(ii) जहां कि पूर्वोक्त निवेदन रजिस्ट्रीकृत उपयोक्ता द्वारा किया जाता है वहां वह निवेदन की प्रति की तामील रजिस्ट्रीकृत स्वत्वधारी और प्रत्येक अन्य रजिस्ट्रीकृत उपयोक्ताओं पर यदि कोई हो, करेगा और रजिस्ट्रार को इत्तिला देगा कि उससे यह बात कर दी है।

(4) व्यक्ति को जो पता व्यापार चिह्न के एक से अधिक रजिस्ट्रीकृत उपयोक्ता के भारत में तामील के लिए पते के रूप में लिखा हुआ है, उसे परिवर्तित कराने के मामले में रजिस्ट्रार प्ररूप व्या. चि.- पी में जिसे मामले के लिए उपयोज्य करने के लिए संशोधित कर लिया गया है उस व्यक्ति का वह आवेदन जो उस पते की बाबत है यह सिद्ध किए जाने पर कि उक्त पता आवेदक का पता है और उस दशा में जिसमें कि रजिस्ट्रार का समाधान हो जाता है कि वैसा करना ठीक होगा, आवेदक के पते की प्रविष्टियों में समुचित परिवर्तन उन विभिन्न रजिस्ट्ररकरणों में, जिनकी विशिष्टियां प्ररूप में दी जायेगी उसे तामील के पते के रूप में करने के वास्ते ले सकेगा और तदनुसार प्रविष्टियों में परिवर्तन कर सकेगा।

(5) इस नियम के अधीन प्ररूप व्या. चि.-पी किए जाने वाले आवेदन यथास्थिति रजिस्ट्रीकृत स्वत्वधारी या रजिस्ट्रीकृत उपयोक्ता अथवा ऐसे आवेदन के प्रयोजन के लिए उसके द्वारा प्राधिकृत अभिकर्ता द्वारा हस्ताक्षरित होंगे।

(6) जहां कि धारा 58 की उपधारा (1) के अधीन आवेदन शुद्धि तबदीली रद्दकरण या माल या सेवाओं को काट देने के प्रयोजन से या ज्ञापन की प्रविष्टि कराने की दृष्टि से रजिस्टर में परिवर्तन करने के लिए किया गया है, वहां रजिस्ट्रार आवेदक से

अपेक्षा कर सकेगा कि आवेदक शपथ पत्र द्वारा या अन्यथा ऐसा साक्ष्य जैसा कि रजिस्ट्रार ठीक समझता है उन परिस्थितियों के बारे में जिन परिस्थितियों में आवेदन किया गया है। ऐसा आवेदन प्ररूप व्या. चि.-पी में किया जाएगा और उसकी एक प्रति की तामील प्रश्नास्पद व्यापार चिह्न के रजिस्ट्रीकरण के अधीन रजिस्ट्रीकृत उपयोक्ता या उपयोक्ताओं पर और ऐसे किसी अन्य व्यक्ति पर जिसकी बाबत रजिस्टर से यह प्रतीत होता है कि वह व्यापार चिह्न में हित रखने वाला है, आवेदक द्वारा की जाएगी।

102. रजिस्टर व्यापार चिह्न में परिवर्तन- जहां कि कोई व्यक्ति धारा 59 के अधीन अपने रजिस्ट्रीकृत व्यापार चिह्न का परिवर्तन या परिवर्तन करने की इजाजत के लिए आवेदन करता है, वहां वह अपना आवेदन प्ररूप व्या.चि.-पी में लिखित रूप में करेगा और उस चिह्न की दो प्रतियां देगा जैसा कि वह ऐसा परिवर्धित किए जाने या परिवर्तित किए जाने के पश्चात् प्रतीत होगा। आवेदन और इस भांति संशोधित या परिवर्तित चिह्न की प्रति तामील आवेदक प्रत्येक रजिस्ट्रीकृत उपयोक्ता पर, यदि कोई से, कराएगा।

103. निर्णय आदि के पूर्व विज्ञापन- (1) रजिस्ट्रार नियम 102 के अधीन आवेदन पर विचार करेगा और यदि उसे यह बात समीचीत प्रतीत हो, तो आवेदन पर निर्णय करने के पूर्व उसे जरनलमें विज्ञापित कराएगा।

(2) उपनियम (1) के अधीन विज्ञापन की तारीख से तीन मास के भीतर कोई व्यक्ति आवेदन का विरोध करने की सूचना प्ररूप व्या.चि.-पी में दे सकेगा। सूचना की एक प्रति रजिस्ट्रार रजिस्ट्रीकृत स्वत्वधारी को और प्रत्येक रजिस्ट्रीकृत या अनुज्ञात उपयोक्ता को यदि कोई हो, ततक्षण भेजेगा और रजिस्ट्रीकृत स्वत्वधारी अपने को ऐसी प्रतियों के मिलने से दो मास के भीतर उन आधारों वाला एक प्रतिकथन जिन पर विरोध का प्रतिविरोध किया गया है, रजिस्ट्रार को प्ररूप व्या. चि.-ओ में भेजेगा। यदि रजिस्ट्रीकृत स्वत्वधारी ऐसा प्रतिकथन भेजता है तो रजिस्ट्रार उसकी एक प्रति तामील विरोध की सूचना देने वाले व्यक्ति पर एक मास के भीतर करायेगा और विरोध पर होने वाली और कार्यवाहियों के संबंध में नियम 45 से लेकर नियम 51 तक के उपबंध यथापरिवर्तित रूप में लागू होंगे:

परंतु कि जहाँ रजिस्ट्रीकृत स्वत्वधारी ऐसा प्रतिकथन निर्धारित समय के भीतर देने में असफल रहता है तो उस आवेदन को परित्यक्त हुआ सा मान लिया जाएगा।

(3) यदि उपनियम (2) में विनिर्दिष्ट समय के भीतर कोई विरोध नहीं किया जाता है तो रजिस्ट्रार आवेदक को उस दशा में सुनने के पश्चात् जिसमें कि आवेदक ऐसी इच्छा प्रकट करता है, आवेदक को मंजूर या नामंजूर कर सकेगा और आवेदक को अपने विनिश्चय को लिखित संसचूना देगा।

104. विनिश्चय, विज्ञापन, अधिसूचना- यदि रजिस्ट्रार आवेदन को मंजूर करने का विनिश्चय करता है तो यह रजिस्टर में चिह्न परिवर्तित करेगा और जनरल में एक अधिसूचना प्रकाशित कर चिह्न परिवर्तित कर दिया गया है।

105. विद्यमान रजिस्ट्रीकरण की बाबत माल का पुनर्वर्गीकरण-(1) माल और सेवाओं के अंतर्राष्ट्रीय वर्गीकरण (एनआईसीई वर्गीकरण) का संशोधन होने पर, व्यापार चिह्न का रजिस्ट्रीकृत स्वत्वधारी प्ररूप व्या. चि.-पी में आवेदन रजिस्ट्रार से अपने व्यापार चिह्न विषयक विनिर्देश का संपरिवर्तन करने के वास्ते कर सकेगा कि वह विनिर्देश संशोधित वर्गीकरण के अनुरूप हो जाए।

(2) रजिस्ट्रार माल और सेवाओं के अंतर्राष्ट्रीय वर्गीकरण (एनआईसीई वर्गीकरण) के अनुसरण में माल और सेवाओं के विवरण या वर्गीकरण यथास्थिति में संशोधन करेगा।

(3) यदि अनुमोदित हो तो माल और सेवाओं का वर्णन या वर्गीकरण में संशोधन जरनल में विज्ञापित किया जाएगा और उसके बाद उस रजिस्ट्रीकरण से संबंधित रजिस्ट्री की प्रविष्टि तदनुरूप संशोधित की जाएगी।

अध्याय-8
प्रकीर्ण

106. भौगोलिक उपदर्शन का विरोध करने वाले व्यापार चिह्न के रजिस्ट्रीकरण से इंकार करना और उसका अविधिमान्यताकरण- रजिस्ट्रीकृत व्यापार चिह्न से इंकार करने या उसको अविधिमान्य करने के लिए अनुरोध हितबद्ध पक्षकार द्वारा रजिस्ट्रार को मामले के कथन के साथ और एक शपथपत्र के साथ, व्या.चि.-सी में किया जा सकेगा जिसमें-

(क) ऐसा माल या मालों के वर्ग या वर्गों की बाबत ऐसा भौगोलिक उपदर्शन अंतर्विष्ट या समाविष्ट होगा, जो किसी देश के राज्यक्षेत्र में या उस देश के किसी प्रदेश या स्थान में उत्पादित नहीं होते हैं, जिसमें ऐसे भौगोलिक उपदर्शन उपदर्शित होते हैं, यदि ऐसे मालों के लिए व्यापार चिह्न में ऐसे भौगोलिक उपदर्शन का उपयोग ऐसी प्रकृति का है, जो व्यक्तियों की वास्तविक उत्पादन के स्थान के बारे में ऐसे माल या माल के वर्ग या वर्गों के बारे में संदेह पैदा करता है या भ्रमित करता है।

(ख) माल का भौगोलिक उपदर्शन (रजिस्ट्रीकरण और संरक्षण) अधिनियम, 1999 (1999 का 48) की धारा 22 की उपधारा (2) के अधीन अधिसूचित माल या माल के वर्ग या वर्गों की पहचान करने वाले भौगोलिक उपदर्शन अंतर्विष्ट या समाविष्ट हैं।

107. धारा 18 की उपधारा (2) के अधीन एकल आवेदन- (1) जहां माल या सेवाओं की विभिन्न वर्गों के लिए किसी व्यापार चिह्न के रजिस्ट्रीकरण के लिए आवेदन धारा 18 की उपधारा (2) के अधीन किया जाता है वहां उसमें अंतर्विष्ट माल या सेवाओं के विनिर्देश में न्यूनतम संख्या के साथ प्रारम्भ होने वाले लगातार संख्यांत्मक क्रम में उन वर्गों को और माल या सेवाओं के प्रत्येक वर्ग के अधीन सूची जो उस वर्ग के लिए समुचित हो उपवर्णित होगी।

(2) धारा 18 की उपधारा (2) के अधीन फाइल किए गए आवेदनों को जब विज्ञापित करने के लिए आदेश दिया जाता है तब जनरल के पृथक खंड में उनको प्रकाशित किया जाएगा।

(3) रजिस्ट्रार धारा 18 की उपधारा (2) के अधीन किसी ऐसे आवेदन की बाबत जिस पर रजिस्ट्रीकरण के लिए कार्यवाही की जा चुकी है, रजिस्ट्रीकरण का एकल प्रमाण पत्र जारी करेगा।

108. प्रभागीय आवेदन- (1) जहां किसी एकल लंबित आवेदन के विभाजन के लिए धारा 22 के परन्तुक के अधीन प्ररूप व्या. चि.-एम में कोई आवेदन किया जाता है, रजिस्ट्रार प्रभागीय फीस के भुगतान पर उस आवेदन को दो या अधिक पृथक आवेदनों में विभाजित करेगा।

(2) आवेदन के विभाजन के मामले में रजिस्ट्रार प्रत्येक प्रभागीय आवेदन को रजिस्ट्रीकरण के लिए प्रारंभिक आवेदन के समान फाइल करने की तारीख के साथ पृथक आवेदन मानेगा।

(3) प्रभाग के समय पर मूल आवेदन के संबंध में आवेदक द्वारा किसी कार्य के लिए कोई समय सीमा प्रभाग की तारीख का विचार किए बिना विभाजन द्वारा सृजित प्रत्येक नए पृथक आवेदन को लागू होगी।

(4) आवेदन के विभाजन के मामले में जहां रजिस्ट्रार यथास्थिति अतिरिक्त पृथक नए क्रम संख्या या संख्यांक समनुदेशित करेगा और उसमें मूल आवेदन के साथ प्रतिनिर्देश करेगा।

(5) संदेह के निवारण के लिए यह स्पष्ट किया जाता है कि जब किसी एकल आवेदन को विभाजित किया जाता है कोई नया रजिस्ट्रीकरण नहीं किया जाता है। इसके विपरीत जो आवेदन पहले से ही फाइल किया जाता है उसको पृथक-पृथक फाइलों में केवल पृथक किया जाता है या विभाजित किया जाता है।

109. समय का विस्तार-(1) धारा 131 के अधीन ऐसे समय के बढ़ाने के लिए जो अधिनियम में अभिव्यक्ति रूपेण उपबंधित या नियम 86 या नियम 87 के उपनियम (3) द्वारा विहित समय नहीं है, या जो ऐसा समय नहीं है जिसके विस्तार के लिए नियमों में उपबंध किया गया है) आवेदन प्ररूप व्या. चि.-एम में किया जायेगा।

(2) उप नियम (1) के अधीन किए गए आवदन पर रजिस्ट्रार, यदि समाधान होता है कि परिस्थितियाँ ऐसी हैं जिससे आवेदित समय विस्तार न्यायसंगत है, तो वह उस नियम के उपबंध के अधीन जहाँ अधिकतम समय विस्तार निर्धारित है और ऐसी शर्तों के अधीन जिसे अधिरोपित करना वह उचित समझता है, समय विस्तार कर सकता है और तदनुरूप पक्षकारों को सूचित कर सकता है और विस्तार का अनुमोदन किया जा सकता है भले ही कार्य करने या उस कार्यवाही को करने का समय पहले ही समाप्त हो चुका है जिसके लिए आवेदन किया गया है।

110. रजिस्ट्रार की वैवेकिक शक्ति का प्रयोग- कोई व्यक्ति जिसने रजिस्ट्रार की वैवेकिक या अन्य शक्ति के प्रयोग के लिए आवेदन किया है और धारा 128 के तहत सुनवाई की अपेक्षा रखता है, वह रजिस्ट्रार को अपने सुने जाने के आशय की लिखित सूचना, इस मामले का समाधान करने के पहले ऐसे व्यक्ति को रजिस्ट्रार द्वारा दिए नोटिस की तारीख से एक महीने के भीतर देगा। इस सूचना, यदि कोई हो, के प्राप्त होने पर रजिस्ट्रार सुनवाई की तारीख निश्चित करेगा जो 21 दिनों से कम का न हो और इसकी सूचना देगा।

111. विनिश्चय की संसूचना- अधिनियम या नियमों द्वारा जो कोई वैवेकिक शक्ति रजिस्ट्रार को दी गई है उसके प्रयोग में किया गया रजिस्ट्रार का विनिश्चय उस व्यक्ति को सूचित किया जाएगा जिस पर प्रभाव पड़ता है।

112. प्रक्रिया विषयक अनियमिताओं का संशोधन और शुध्दिकरण-(1) व्यापार चिह्न के किसी दस्तावेज में या रेखाचित्र या अन्य समाकृति में संशोधन किया जा सकेगा और प्रक्रिया में हुई ऐसी किसी अनियमितता का, जो रजिस्ट्रार की यह राय में किसी व्यक्ति के हितों को हानि पहुंचाए बिना दूर की जा सकेगी।

(2) रजिस्ट्रार किसी आवेदन या व्यापार चिह्न की समाकृति को या किसी अन्य दस्तावेज को अधिनियम को यथारूप अपेक्षाओं के अनुरूप करने के लिए उसे संशोधित करने की या परिवर्धित करने की अपेक्षा कर सकेगा।

113. अन्यथा विहित न किए गए निदेश- जहां कि रजिस्ट्रार की यह राय है कि अधिनियम या नियमों के अधीन किन्हीं कार्यवाहियों के उचित अभियोजन या उनकी समाप्ति के लिए यह बात किसी व्यक्ति के लिए आवश्यक है कि वह ऐसा कार्य करे, ऐसी दस्तावेज फाइल करे या ऐसा साक्ष्य पेश करे जिसके विषय में कोई उपबंध अधिनियम या नियमों में नहीं हुआ है, तो रजिस्ट्रार लिखित सूचना द्वारा उस व्यक्ति से यह अपेक्षा कर सकेगा कि वह व्यक्ति सूचना में विनिर्दिष्ट कार्य करे, दस्तावेज फाइल करे या साक्ष्य पेश करे।

114. धारा 115(4) के अधीन रजिस्ट्रार की राय-(1) जहां धारा 115 की उपधारा (4) के परन्तुक के अधीन उसकी राय के लिए रजिस्ट्रार को कोई मामला निर्देशित कर दिया गया है वहां ऐसी राय को निर्देशित करने वाले प्राधिकारी को ऐसी लिखित संसूचना की प्राप्ति के कार्यकरण के सात दिन के भीतर सील बंद लिफाफे में अग्रेषित कर दिया जाएगा और रजिस्ट्रार इस प्रकार निर्देशित मामले में पूर्ण गोपनीयता सुनिश्चित करेगा।

(2) इस नियम के अधीन राय, रजिस्ट्रार या अधिनियम की धारा 3 की उपधारा (2) के अधीन इस प्रयोजन के लिए विशिष्ट रूप से प्राधिकृत किसी अधिकारी द्वारा दी जाएगी और अभिहित प्राधिकारी का नाम जनरल में प्रकाशित किया जाएगा।

115. सुनवाई-(1) अधिनियम और नियम के अधीन किसी कार्यवाही के संबंध में सुनवाई, यदि कोई हो, अधिसूचित तारीख और समय और उपयुक्त कार्यालय के भौगोलिक क्षेत्राधिकार के भीतर उस स्थान पर आयोजित की जाएगी जैसा रजिस्ट्रार को उपयुक्त लगे:

परन्तु कि वह सुनवाई वीडियो- कनफेरेंसिंग या किसी अन्य श्रवण-दृश्य संचार यंत्र के माध्यम से भी की जा सकती है।

स्पष्टीकरण– *इन नियम के लिए "संचार युक्ति " अभिव्यक्ति का वही अर्थ है जो सूचना प्रोद्योगिकी अधिनियम, 2000 की 2 की धारा 2 की उप धारा (ii) के खंड (जक) में समनुदेशित है।*

(2) रजिस्ट्रार की शक्तियों का प्रयोग करने वाले जिस पदाधिकारी ने अधिनियम या नियमों के अधीन किसी मामले को सुन लिया है और उस पर आदेश बाद में देने के लिए उसे अपने पास रख लिया है, जहां कि उसकी बदली एक रजिस्ट्रीकरण कार्यालय से दूसरी रजिस्ट्रीकरण कार्यालय को हो जाती है या उस पर आदेश देने या विनिश्चय करने से पूर्व वह दूसरी नियुक्ति पर वापिस चला जाता है वहां यदि रजिस्ट्रार ऐसा निदेश देता है तो वह वैसे ही आदेश दे सकेगा या विनिश्चय कर सकेगा जैसे कि वह उस अवस्था में देता या करता जिसमें कि वह उस रजिस्ट्रीकरण कार्यालय पदाधिकारी बना रहता जहां कि मामले कि सुनवाई हुई थी।

रजिस्ट्रार द्वारा खर्चों का दिलवाना

116. जिन मामलों में प्रतिविरोध नहीं किया गया है, उनमें खर्च- (1) जहाँ विरोध की सूचना दाखिल करने से पहले विरोधकर्ता द्वारा आवेदक को युक्तिसंगत नोटिस दिया गया है और आवेदक विरोध का प्रतिविरोध करने में असफल रहता है तो रजिस्ट्रार चौथी अनुसूची में यथा निर्दिष्ट लागत अधिरोपित कर सकता है।

(2) जहाँ विरोध फाइल किया गया हो और आवेदक द्वारा प्रति कथन फाइल करने के बाद विरोधकर्ता कार्यवाही का प्रतिविरोध करने में असफल रहता है तो रजिस्ट्रार चौथी अनुसूची में यथा निर्दिष्ट लागत अधिरोपित कर सकता है।

117. नियम 119 का अपवाद- नियम 116 में किसी बात के होते हुए भी प्रथम अनुसूची की प्रविष्टयाँ 10, और 11 के अधीन विनिर्दिष्ट फीस और कार्यवाही में दिए गए शपथपत्रों पर लगे और चिपकाए गए सभी मुद्रांकों लेखें हुआ खर्चा जयाज के अनुसार होगा।

118. खर्चों का मापमान- चौथी अनुसूची में उसके लिए अनुज्ञेय रकम से अनधिक ऐसे खर्चे रजिस्ट्रार, अपने समक्ष वाली सभी कार्यवाहियों में उस अवस्था के सिवाय जिसमें कि अधिनियम द्वारा अन्यथा अभिव्यक्त रूपेण उपबंधित है नियम 116 और 117 के उपबंधों के अधीन रहते हुए दिलवाएगा जिसे वह मामले की सभी परिस्थितियों पर विचार करके युक्तियुक्त समझता है।

रजिस्ट्रार द्वारा विनिश्चय का पुनर्विलोकन

119. रजिस्ट्रार के विनिश्चय के पुनर्विलोकन के लिए आवेदन- रजिस्ट्रार के विनिश्चय का पुनर्विलोकन करने के लिए धारा 127 के उप खण्ड (ग) के अधीन उससे आवेदन ऐसे विनिश्चय की तारीख से एक मास के अंदर या तत्पश्चात एक मास से अनधिक इतनी अपर कालावधि के अंदर, जितनी कि रजिस्ट्रार अपने से की गई प्रार्थना पर समनुज्ञात करे, प्ररूप व्या. चि.-एम में दिया जायेगा, और उन आधारों वाला, जिन पर पुनर्विलोकन चाहा गया है, एक कथन उसके साथ होगा। जहां कि प्रश्नास्पद विनिश्चय आवेदक के अलावा किसी अन्य व्यक्ति से भी समपृक्त है, वहां ऐसे आवेदन और कथन की तीन प्रतियां दी जाएंगी और रजिस्ट्रार आवेदन और कथन की एक-एक प्रति अन्य समपृक्त व्यक्ति को तत्क्षण भेजेगा। रजिस्ट्रार, पक्षकारों को सुने जाने का अवसर देने के पश्चात् आवेदन को या तो नामंजूर कर देगा या बिना शर्त के या ऐसी किन्हीं शर्तों या मर्यादाओं के अधीन जैसी कि वह ठीक समझता है, उसे मंजूर कर लेगा।

शपथ पत्र

120. शपथ पत्रों के प्ररूप आदि-(1) अधिनियम और नियमों के अधीन जिन शपथ पत्रों की बाबत यह अपेक्षित है कि वे व्यापार चिह्न रजिस्ट्री में फाइल किए जाए या रजिस्ट्रार को दिए जाएं, वे उस सूरत में के सिवाय, जिसमें कि द्वितीय अनुसूची में अन्यथा उपबंधित हैं, उस बात या बातों वाले शीर्षक से होंगे, जिससे या जिनसे कि वे संबद्ध है उत्तम पुरुष में लिखे होंगे क्रमवार संख्या वाले पैरों में विभाजित होंगे और प्रत्येक पैरा यावत्साध्य एक बात तक परिसीमित होगा और प्रत्येक शपथ पत्र में उसे करने वाले व्यक्ति का अभिवर्णन और उसका सही निवास स्थान दिया होगा, उसे फाइल करने वाले व्यक्ति का नाम और पता उसमें दिया होगा और उसमें यह भी कथित होगा कि किसी ओर से वह फाइल किया गया है।

(2) जहां कि दो या दो से अधिक व्यक्ति शपथ पत्र में सम्मिलित होते हैं वहां उनमें से प्रत्येक पृथक्त: ऐसे तथ्यों का अभिलक्ष्य देगा जो उसके निजि ज्ञान में हैं और वे तथ्य पृथक-पृथक पैरों में दिए जाएंगे।

(3) शपथ पत्र- (क) भारत में ऐसे किसी न्यायालय के या व्यक्ति के समक्ष, जिसे न्यायालय द्वारा शपथ दिलाने के लिए या रजिस्ट्रार के समक्ष या लेख्य प्रमाणक के समक्ष शपथ पत्र कराए जाएंगे;

(ख) भारत के बाहर किसी देश या स्थान में राजनयिक और कौसिलीय आफिसर (शपथ और फीस) अधिनियम, 1948 (1948 का 41) के अर्थ में ऐसे देश या स्थान के राजनयिक या वाणिज्य कौसिलीय आफिसर के समक्ष या देश या स्थान के लेख्य प्रमाणक के समक्ष या किसी न्यायाधीश या मजिस्ट्रेट के समक्ष, किए जाएंगे।

(4) जिस व्यक्ति के सामने शपथ पत्र किया जाएगा, वह उस तारीख को, जिस पर, और उस स्थान को, जहां शपथ पत्र किया गया है, लिख देगा और यदि उसकी अपनी मुद्रा है, तो उसे उस पर लगाएगा या उस कार्यालय की मुद्रा लगाएगा जिससे वह संलग्न है और उसके अंत में अपना नाम और अभिवर्णन देकर हस्ताक्षर करेगा।

(5) परिवर्तन और पंक्तियों के बीच लिखी बातों को इससे पूर्व कि शपथ पत्र शपथ लेकर या प्रतिज्ञान करके किया जाए, उस व्यक्ति के आद्याक्षरों द्वारा अभिप्रमाणित किया जाएगा, जिसके समक्ष शपथ पत्र किया गया है।

(6) अधिनियम या नियमों के अधीन वाली किन्हीं कार्यवाहियों के संबंध में जो शपथ पत्र रजिस्ट्रार के समक्ष फाइल किया जाता है वैसा प्रत्येक शपथ पत्र तत्समय प्रवृत्त विधि के अनुसार लगने वाले मुद्रांक पर होगा।

जनता द्वारा दस्तावेजों का निरीक्षण

121. दस्तावेजों का निरीक्षण- धारा 148 की उपधारा (1) में वर्णित दस्तावेज निरीक्षण के लिए व्यापार चिह्न रजिस्ट्री के उपयुक्त कार्यालय में रजिस्ट्रार द्वारा यथा नियत समय पर सभी कार्य दिवसों में प्रथम अनुसूची में उल्लिखित फीस के भुगतान पर उपलब्ध होंगे।

प्रमाणपत्र

122. दस्तावेजों की प्रमाणित प्रतियां- रजिस्टर में किसी प्रविष्टि की प्रमाणित प्रतियां या धारा 148 की उपधारा (1) में निर्दिष्ट किसी दस्तावेज की या रजिस्ट्रार के किसी विनिश्चय या आदेश की प्रमाणित प्रतियां या धारा 23 की उपधारा (2) के अधीन वाले प्रमाण पत्र से भिन्न प्रमाण पत्र जो कि ऐसी किसी प्रविष्टि बात या चीज से सम्बद्ध है जिसे कि रजिस्ट्रार, अधिनियम या नियमों द्वारा करने के लिए प्राधिकृत या अपेक्षित है, रजिस्ट्रार विहित फीस सहित उसके लिए किसी व्यक्ति द्वारा प्ररूप व्या.चि.-एम में किए गए अनुरोध के साथ प्रथम अनुसूचि में उल्लिखित फीस के भुगतान पर दे सकेगा,

परंतु रजिस्ट्रार उपर्युक्त वर्णित प्रमाणित प्रतियों को उसकी विनिर्दिष्ट फीस के संदाय पर उस आशय के लिए प्राप्त प्ररूप व्या.चि.-एम में आवेदन पर सात कार्य दिवस के भीतर शीघ्रता से दे देगा।

स्पष्टीकरण: रजिस्ट्रार के पास आंगुलिक रूप में उपलब्ध किसी अभिलेख की सत्यापित प्रति उस अभिलेख की सम्यक सत्यापित प्रति होगी।

123. अंतर्राष्ट्रीय अस्वत्वधारी नामों को अधिसूचित करने की रजिस्ट्रार की शक्ति- रजिस्ट्रार धारा 13 की उपधारा (ख) में निर्दिष्ट अंतर्राष्ट्रीय अस्वत्वधारी नामों के रूप में विश्व स्वास्थ्य संगठन द्वारा जो शब्द घोषित किए जाते हैं उन्हें जरनल में समय-समय पर प्रकाशित कर सकेगा।

सुज्ञात व्यापार चिह्न

124. रजिस्ट्रार द्वारा सुज्ञात व्यापार चिह्न का निर्धारण- (1) कोई व्यक्ति प्ररूप व्या.चि.-एम में किए गए आवेदन और प्रथम अनुसूचि में उल्लिखित फीस के भुगतान के बाद रजिस्ट्रार के समक्ष किसी व्यापार चिह्न को सुज्ञात निर्धारित करने का अनुरोध कर

सकता है। ऐसे अनुरोध के साथ संदर्भ का कथन सभी साक्ष्य और दस्तावेज सहित होने चाहिए जिसे आवेदक अपने दावे के समर्थन में सहायक समझे।

(2) व्यापार चिह्न को सुज्ञात निर्धारित करने से पहले रजिस्ट्रार धारा 11 की उपधारा (6)से उपधारा (9) तक के उपबंधों का अवधारित लेगा।

(3) अवधारण के प्रयोजन के लिए रजिस्ट्रार ऐसे दस्तावेज की माँग कर सकेगा जो उसे उपयुक्त लगे।

(4) व्यापार चिह्न को सुज्ञात रूप में निर्धारित करने के पहले रजिस्ट्रार साधारण जनता से आपत्तियाँ आमंत्रित करेगा जो ऐसी आपत्तियों के आमंत्रण की तारीख से तीस दिनों के भीतर दाखिल किया जाएगा।

(5) व्यापार चिह्न के सुज्ञात चिह्न के रूप में निर्धारित होने की स्थिति में उसे व्यापार चिह्न जरनल में प्रकाशित किया जाएगा और रजिस्ट्रार द्वारा सुज्ञात व्यापार चिह्न की सूची में शामिल किया जाएगा।

(6) रजिस्ट्रार, किसी भी समय, यदि यह पाता है कि व्यापार चिह्न भूलवश या गैर इरादतन रूप से सुज्ञात व्यापार चिह्न की सूची में शामिल हो गया है तो वह संबद्ध पक्षकारों को सुनवाई का पर्याप्त अवसर देने के बाद उसे सूची से हटा देगा।

बौद्धिक संपदा अपीलीय बोर्ड को अपील

125. अपील के लिए समय- अधिनियम या शर्तों के अधीन रजिस्ट्रार के किसी विनिश्चिय से बौद्धिक सम्पदा अपील बोर्ड को अपील ऐसे विनिश्चिय की तारीख से तीन मास के भीतर की जाएगी।

126. रजिस्ट्रार को तामील- अधिनियम के अधीन बौद्धिक सम्पदा अपील बोर्ड को किए प्रत्येक आवेदन की एक प्रति की तामील रजिस्ट्रार पर की जाएगी।

वैधता का प्रमाण पत्र

127. विधिमान्यता के प्रमाण पत्र का ध्यान लिया जाना- (1) जहां कि बौद्धिक सम्पदा अपील बोर्ड ने रजिस्ट्रीकृत व्यापार चिह्न की विधि मान्यता के संबंध में, प्रमाण धारा 141 में यथा उपबंधित रूप में दिया है, वहां उसका रजिस्ट्रीकृत स्वत्वधारी रजिस्ट्रार से प्ररूप व्या.चि.-47 में यह निवेदन कर सकेगा कि रजिस्टर में की प्रविष्टि में यह टिप्पण बढ़ाया जाए कि विधि मान्यता का प्रमाणपत्र, जिसकी विशिष्टियां निवेदन में दी जाएंगी, कार्यवाहियों के दौरान अनुदत्त किया गया है। प्रमाण पत्र की जो प्रति राजकीय रूप से प्रमाणित है वह इस निवेदन के साथ भेजी जाएगी और रजिस्ट्रार रजिस्टर में उस आशय का एक टिप्पण अभिलिखित करेगा और उस टिप्पण को जरनल में प्रकाशित करेगा।

प्रदर्श लौटना और अभिलेखों को नष्ट करना

128. प्रदर्श लौटाना-(1) जहां कि अधिनियम या नियमों के अधीन किसी मामले में या कार्यवाही में पेश किए गए प्रदर्श की व्यापार चिह्न रजिस्ट्री कार्यालय में आगे के लिए आवश्यकता नहीं रहती वहां रजिस्ट्रार संबद्ध पक्षकार को समाहृत कर सकेगा कि प्रदर्श रजिस्ट्रार द्वारा विनिर्दिष्ट समय के भीतर वापिस ले जाएं और यदि पक्षकार वैसा करने में असफल रहता है तो ऐसे प्रदर्श नष्ट कर दिए जाएंगे।

(2) जहां अधिसूचित तारीख के पूर्व कोई प्रदर्श किसी कार्यवाही में पेश किए जा चुके हैं वहां रजिस्ट्रार उस दशा में, जिसमें कि उसका यह समाधान हो जाता है कि उनका लंबे समय तक रखा जाना आवश्यक नहीं है रजिस्ट्रार संबद्ध पक्षकार से अपेक्षा कर सकेगा कि वह उसके द्वारा विनिर्दिष्ट समय के भीतर प्रदर्श को वापिस ले जायं और यदि पक्षकार वैसा करने में असफल रहता है तो ऐसे प्रदर्श नष्ट कर दिए जाएंगे।

129. अभिलेखों का नष्ट किया जाना- जहां कि व्यापार चिह्न के रजिस्ट्रीकरण के लिए आवेदन प्रत्याहृत/परित्यक्त या खारिज कर दिया जाता है या कोई व्यापार चिह्न रजिस्टर से हटा दिया जाता है या विरोध या परिशोधन कार्यवाही में उस विषय को समाप्त कर दिया गया है और बौद्धिक सम्पदा अपील बोर्ड के समक्ष कोई अपील लंबित नहीं है वहां रजिस्ट्रार यथास्थिति आवेदन के प्रत्याहृत या परित्यक्त या खारिज किए जाने के पश्चात् या रजिस्टर से व्यापार चिह्न के हटाए जाने के पश्चात् या विरोध या परिशोधन कार्यवाही के बंद हो जाने के पश्चात् एक वर्ष की समाप्ति पर आवेदन, विरोध या परिशोधन या उस संबद्ध व्यापार चिह्न से संबंधित सब अभिलेखों को या उनमें से किसी को नष्ट करा देगा।

भाग-2

सामूहिक चिह्नों के लिए विशेष उपबंध

130. सामूहिक चिह्नों को लागू होने वाले नियम- इन नियमों के भाग 1, भाग 4 और भाग 7 के उपबंध सामूहिक चिह्नों को, वहां तक जहां तक कि उनके लागू होने का संबंध है, केवल इस भाग के उपबंधों के अधीन रहते हुए ही लागू होंगे।

131. रजिस्ट्रीकरण के लिए आवेदन और तत्संबंधी कार्यवाहियां- (1) माल और सेवाओं के लिए सामूहिक चिह्न के रजिस्ट्रीकरण के लिए धारा 63 की उपधारा (1) के अधीन आवेदन रजिस्ट्रार से प्ररूप व्या.चि.-ए पर प्रारूप विनियमन के साथ दाखिल किया जाएगा।

(2) माल और सेवाओं के लिए व्यापार चिह्न के रजिस्ट्रीकरण के लिए आवेदन का प्रतिग्रहण करने विषयक जो निर्देश नियमों के भाग 1 में हैं उनके स्थान में वहां जहां तक कि सामूहिक चिह्न के संबंध में उनके लागू होने का प्रश्न है वे निर्देश रख दिए जाएंगे जो कि आवेदन के संबंध कार्यवाही करने के प्राधिकार विषयक हैं।

(3) सामूहिक चिह्न के रजिस्ट्रीकरण के लिए आवेदक का यदि कोई भारत में का पता है तो उन सब प्रयोजनों के लिए जिनके लिए ऐसा पता इन नियमों द्वारा अपेक्षित है, यह समझा जाएगा कि वह पता उसके कारबार का भारत में के मुख्य स्थान का पता है।

(4) सामूहिक चिह्नों को शासित करने वाले विनियमों में अन्य बातों के साथ-साथ निम्नलिखित विनिर्दिष्ट होगा:--

(क) व्यक्तियों के संगम का नाम और उनके अपने कार्यालय के पते;

(ख) संगम के उद्देश्य;

(ग) सदस्यों के ब्यौरे;

(घ) सदस्यता के लिए शर्तें और उस समूह से प्रत्येक सदस्य का संबंध ;

(ङ) चिह्न का उपयोग करने के लिए प्राधिकृत व्यक्ति और सामूहिक चिह्न के प्रयोग पर आवेदक के निमंत्रण की प्रकृति;

(च) सामूहिक चिह्न के उपयोग को शासित करने वाली शर्तें जिसके अंतर्गत मंजूरियां भी हैं;

(छ) सामूहिक चिह्न के उपयोग के विरुद्ध अपीलों के लिए व्यवहार में लाई जाने वाली प्रक्रिया;

(ज) ऐसी अन्य विशिष्टियां जो रजिस्ट्रार द्वारा मांगी जाएं।

132. आवेदन के साथ मामले - आवेदक अपने आवेदन के साथ उन आधारों वाला जिसका वह अपने आवेदन के समर्थन में सहारा लेता है मामले का कथन रजिस्ट्रार को भेजेगा। ऐसे मामलों का विवरण दो प्रतियों में प्रस्तुत किया जाएगा।

133. परीक्षा,सुनवाई, विरोध, रजिस्ट्रीकरण और नवीकरण-(1) व्यापार चिह्न के परीक्षा, सुनवाई, विरोध, रजिस्ट्रीकरण और नवीकरण से संबंधित उपबंध अपने आप सामूहिक व्यापार चिह्न के लिए लागू होंगे।

134. सामूहिक चिह्नों और उनके नवीकरण से संबंधित विनियमों का संशोधन-(क) धारा 66 के अधीन विनियम के किसी संशोधन के लिए सामूहिक चिह्नों के रजिस्ट्रकृत स्वत्वधारी द्वारा आवेदन प्ररूप व्या. चि.-एम में किया जाएगा और जहां रजिस्ट्रार ऐसे कोई संशोधन को अभिगृहीत करता है वहां वह ऐसे आवेदन को जरनल में विज्ञापित करेगा और मामले में आगे कार्यवाहियां नियम 42 से लेकर नियम 51 द्वारा शासित होंगी।

(ख) सामूहिक चिह्न समय-समय पर नवीकृत किए जा सकेंगे और नियम 58 से लेकर नियम 62 के उपबंध नवीकरण के लिए ऐसे निवेदन की बाबत यथा परिवर्तित लागू होंगे।

135. सामूहिक चिह्न का हटाया जाना- सामूहिक चिह्न के हटाए जाने के लिए आवेदन धारा प्ररूप व्या.चि.-ओ में किया जाएगा और उन आधारों की विशिष्टियां होंगी जिन पर आवेदन दिया जाता है। इन नियमों के नियम 97 से 100 तक के उपबंध मामले में आगे कार्यवाहियों के लिए यथा आवश्यक परिवर्तन सहित लागू होंगे।

भाग-3

प्रमाणीकरण व्यापार चिह्नों के लिए विशेष उपबंध

136. प्रमाणीकरण व्यापार चिह्नों पर लागू होने के लिए नियम-इन नियमों के भाग 1 के उपबंध प्रमाणीकरण व्यापार चिह्नों को, वहां तक जहां तक कि उनके लागू होने का संबंध है, केवल इस भाग के उपबंधों के अधीन रहते हुए ही लागू होंगे।

137. रजिस्ट्रीकरण के लिए आवेदन और तत्संबंधी कार्यवाहियां-(1) प्रमाणीकरण व्यापार चिह्नों के माल और सेवाओं के रजिस्ट्रीकरण के लिए आवेदन धारा 71 की उपधारा (1) के अधीन रजिस्ट्रार के प्ररूप व्या. चि.-ए में प्रारूप विनियमन के साथ किया जाएगा।

(2) व्यापार चिह्न के रजिस्ट्रीकरण के लिए आवेदन का प्रतिग्रहण करने विषयक जो निर्देश नियमों के भाग 1 में हैं उनके स्थान में वहां तक यहां तक कि प्रमाणीकरण व्यापार चिह्न के संबंध में उनके लागू होंगे वे निर्देश रख दिए जाएंगे जो कि आवेदन के संबंध में कार्यवाही करने के प्राधिकार विषयक हैं।

(3) प्रमाणीकरण व्यापार चिह्न के रजिस्ट्रीकरण के लिए आवेदक का यदि कोई भारत में का पता है तो उन सभी प्रयोजनों के लिए जिनके लिए ऐसा पता इन नियमों द्वारा अपेक्षित है, यह समझा जाएगा कि वह पता उसके कारबार के भारत में के मुख्य स्थान का पता है।

(4) प्रमाणीकरण व्यापार चिह्न को शासित करने वाले विनियमों में अन्य बातों के साथ-साथ निम्नलिखित विनिर्दिष्ट होगा:-

(क) आवेदक का वर्णन;

(ख) आवेदक के कारबार की प्रकृति;

(ग) तकनीकी मानव शक्ति समर्थन जैसी अवसंरचना की विशिष्टियां;

(घ) प्रमाणन स्कीम की प्रशासित करने की आवेदकों की क्षमता;

(ङ) आवेदकों की वित्तीय व्यवस्था;

(च) आवेदक से वचनबद्धता कि यदि वे विनियमों में अधिकथित अपेक्षाओं का पूरा करते हैं तो पक्षकारों के साथ कोई भेदभाव नहीं किया जाएगा;

(छ) चिह्न के लक्षण प्रमाणित माल में या प्रमाणित सेवा प्रदान करने के संबंध में संकेत देगा;

(ज) भारत में चिह्न के उपयोग की निगरानी करने की रीति; और।

(झ) ऐसी अन्य सुसंगत विशिष्टियां जो रजिस्ट्रार द्वारा मांगी जाएं।

138. आवेदन के साथ मामले का कथन- आवेदक अपने आवेदन के साथ आधारों वाला, जिनका वह अपने आवेदन के समर्थन में सहारा लेता है, मामले का कथन रजिस्ट्रार को भेजेगा।

139. परीक्षा, सुनवाई, विरोध, रजिस्ट्रीकरण और नवीकरण- व्यापार चिह्न के परीक्षा, सुनवाई, विरोध, रजिस्ट्रीकरण और नवीकरण से संबंधित उपबंध अपने आप प्रमाणीकरण व्यापार चिह्न के लिए लागू होंगे।

140. प्रमाणीकरण व्यापार चिह्न का रद्दकरण या परिवर्धन- प्रमाणीकरण व्यापार चिह्न के रजिस्ट्रीकरण के उपखंडन या परिवर्तन के लिए आवेदन धारा 77 में वर्णित आधारों में से किसी पर प्ररूप व्या.चि. -ओ में किया जाएगा और उसमें उन आधारों की विशिष्टियां जिन पर आवेदन किया गया है, उपवर्णित होगी। नियम 97 से नियम 100 तक के उपबंध आवश्यक परिवर्तन सहित मामले की कार्यवाहियों में लागू होंगे।

141. निक्षेपित विनियमों का परिवर्तन और प्रमाणीकरण व्यापार चिह्नों के समनुदेशन और संप्रदान के वास्तवे रजिस्ट्रार की सम्मति- (1) निक्षेपित विनियम के परिवर्तन के लिए धारा 74 की उपधारा (2) के अधीन प्रमाणीकरण व्यापार चिह्न के रजिस्ट्रीकृत स्वत्वधारी द्वारा आवेदन प्ररूप व्या. चि.- एम में किया जाएगा और जहां रजिस्ट्रार ऐसे परिवर्तन की आज्ञा देने का विनिश्चय करता है वहां यह आवेदन जनरल में विज्ञापित किया जाएगा और मामले में आगे कार्यवाहियां नियम 42 से लेकर नियम 51 द्वारा शासित होंगी।

(2) धारा 43 के अधीन प्रमाणीकरण व्यापार चिह्न के समनुदेशन और संप्रदान के लिए रजिस्ट्रार की सम्मति के लिए आवेदन प्ररूप व्या. चि.-पी में किया जाएगा।

भाग-4
व्यापार चिह्न के अभिकर्ताओं का रजिस्ट्रीकरण

142. व्यापार चिह्न अभिकर्ताओं का रजिस्टर- व्यापार चिह्नों के अभिकर्ताओं का एक रजिस्टर रखेगा जिसमें प्रत्येक रजिस्ट्रीकृत व्यापार चिह्न के अभिकर्ता का नाम, निवास स्थान का पता, कारबार का मुख्य स्थान का पता, राष्ट्रिकता, अर्हताएं और रजिस्ट्रीकरण की तारीख प्रविष्ट की जाएगी।

143. विद्यमान रजिस्ट्रीकृत व्यापार चिह्न अभिकर्ताओं, आचार संहिता आदि रजिस्ट्रीकरण-(1) नियम 144 में किसी बात के होते हुए भी प्रत्येक व्यक्ति जिसका नाम पुरानी विधि के अधीन रखे जाने वाले व्यापार चिह्न अभिकर्ता रजिस्टर में लिखा है, यह समझा जाएगा कि वह इन नियमों के अधीन व्यापार चिह्न अभिकर्ता के रूप में रजिस्ट्रीकृत है।

(2) रजिस्ट्रार, रजिस्ट्रीकृत व्यापार चिह्न अभिकर्ता को उस रूप में कार्य करने के लिए प्राधिकृत करते हुए एक आचार संहिता जरनल में प्रकाशित कर सकेगा।

144. रजिस्ट्रीकरण के लिए अर्हताएं- नियम 145 के उपबंधों के अधीन एक व्यक्ति व्यापार चिह्न अभिकर्ता के रूप में रजिस्ट्रीकृत होने के अर्ह होगा यदि वह -

(i) भारत का नागरिक है;

(ii) 21 वर्ष से कम आयु का नहीं है;

(iii) भारत के किसी विश्वविद्यालय का स्नातक है या समतुल्य अर्हता रखता है; और नियम 148 में विहित परीक्षा में उत्तीर्ण हो चुका है या अधिवक्ता अधिनियम, 1961 (1961 का 25) के अर्थान्तर्गत एक अधिवक्ता है या भारतीय कंपनी सेक्रेटरी संस्थान का एक सदस्य है,

(iv) रजिस्ट्रार द्वारा व्यापार चिह्न अभिकर्ता के रूप में रजिस्ट्रीकृत किए जाने के लिए योग्य और उचित व्यक्ति समझा जाता है।

145. वह व्यक्ति जिसका रजिस्ट्रीकरण विवर्जित है- यदि कोई व्यक्ति-

(i) सक्षम न्यायालय द्वारा विकृत चित्त का न्यायनिर्णीत कर दिया गया है, तो;

(ii) अनन्मुक्त दिवालिया है, तो;

(iii) उन्मुक्त दिवालिया होते हुए उसने न्यायालय से या उचित फोरम जैसा की लागू हो इस आशय का प्रमाणपत्र अभिप्राप्त नहीं किया है कि अपनी ओर से कोई अवचार किए बिना वह दुर्भाग्यवश दिवालिया हो गया था;

(iv) भारत के अन्दर या बाहर सक्षम, न्यायालय या उचित फोरम द्वारा जैसा की लागू हो, ऐसे अपराध के लिए सिद्ध दोष ठहराया गया है जो कि निर्वासन या कारावास से दंडनीय है तो जब तक कि वह जिस अपराध के लिए सिद्ध दोष हुआ है उसके लिए उसे क्षमा नहीं मिल गई या जब तक कि केन्द्रीय सरकार ने उस किए गए आवेदन पर उसकी निर्योग्यता इस निमित्त आदेश द्वारा हटा नहीं दी है,

(v) विधि व्यवसायी होते हुए वृत्ति संबंधी अवचार का दोषी भारत में किसी उच्च न्यायालय द्वारा ,

(vi) चार्टर प्राप्त लेखापाल होते हुए उपेक्षा या अवचार का दोषी उच्च न्यायालय द्वारा ठहराया गया है तो या

(vii) रजिस्ट्रीकृत व्यापार चिह्न अभिकर्ता होते हुए वृत्तिक अवचार का दोषी रजिस्ट्रार द्वारा ठहराया गया है तो वह व्यापार चिह्न अभिकर्ता के रूप में रजिस्ट्रीकृत किए जाने के लिए पात्र नहीं होगा।

146. आवेदन करने की रीति- इस भाग के उपबंधों के अधीन सभी आवेदन डुप्लीकेट प्रतियों में किए जायेंगे, और उस व्यापार चिह्न रजिस्ट्री को भेजे या उसमें उपस्थित किए जायेंगे जिसकी क्षेत्रीय सीमाओं के भीतर आवेदक के कारबार का मुख्य स्थान अवस्थित है।

147. व्यापार चिह्न अभिकर्ता के रूप में रजिस्ट्रीकरण के लिए आवेदन-(1) व्यापार चिह्न अभिकर्ता के रूप में अपना रजिस्ट्रीकरण चाहने वाला प्रत्येक व्यक्ति प्ररूप व्या. चि.-जी में आवेदन करेगा।

(2) लिखित परीक्षा के लिए और साक्षात्कार के लिए अर्हक अंक क्रमश: पचहत्तर प्रतिशत और पच्चीस प्रतिशत होंगे और अभ्यर्थी को उस दशा में ही उत्तीर्ण घोषित किया जाएगा यदि वह कुल अंकों का साठ प्रतिशत कुल मिलाकर प्राप्त कर लेता है।

148. आवेदन पर प्रक्रिया और अर्हक अपेक्षाएं- (1) रजिस्ट्रार, व्यापार चिह्न अभिकर्ता के रूप में किसी व्यक्ति के रजिस्ट्रीकरण के लिए आवेदन की प्राप्ति पर, यदि रजिस्ट्रार का यह समाधान हो जाता है कि आवेदक विहित अर्हताएं पूरी करता है, ऐसी तारीख नियत करेगा जिस पर अभ्यर्थी व्यापार चिह्न विधि और प्रणाली विषयक परीक्षा के लिए रजिस्ट्रार के समक्ष उपस्थित होगा।

(2) परीक्षा के लिए अर्हक अंक रजिस्ट्रार द्वारा विज्ञापित किया जाएगा।

149. रजिस्ट्रीकरण का प्रमाणपत्र- किसी अभ्यर्थी के परीक्षा उत्तीर्ण करने और रजिस्ट्रार द्वारा वांछित अन्य सूचना प्रदान करने के बाद रजिस्ट्रार उस अभ्यर्थी का नामांकन रजिस्ट्रीकृत व्यापार चिह्न अभिकर्ता के रूप में विहित फीस के भुगतान के बाद करेगा और प्ररूप आर जी – 4 पर एक प्रमाणपत्र जारी करेगा।

150. व्यापार चिह्न के अभिकर्ताओं के रजिस्टर में नाम बना रहना- व्यापार चिह्न अभिकर्ताओं के रजिस्टर में व्यक्ति के नाम बने रहने की यह शर्त होगी कि वह प्रथम अनुसूची में विहित फीस देता रहे।

151. व्यापार चिह्न अभिकर्ताओं के रजिस्टर से अभिकर्ता का नाम हटाया जाना- (1) रजिस्ट्रार ऐसे किसी रजिस्ट्रीकृत व्यापार चिह्न अभिकर्ता के नाम को व्यापार चिह्न अभिकर्ताओं के रजिस्टर से हटा सकेगा।

(क) जिससे इस आशय की अनुरोध मिला है, या

(ख) जिससे उस तारीख से, जिस पर वार्षिक फीस शोध्य होती है, तीन मास की समाप्ति पर वार्षिक फीस प्राप्त नहीं हुई है।

(2) रजिस्ट्रार रजिस्ट्रीकृत व्यापार चिह्नों के ऐसे अभिकर्ता का नाम व्यापार चिह्न के अभिकर्ताओं के रजिस्टर से हटा देगा।

(क) जिसकी बाबत यह पाया जाता है कि वह अपने रजिस्ट्रीकरण के समय नियम 151 के खण्ड (i) से लेकर खंड (vii) तक में कथित निर्योग्यताओं में से किसी के अधीन है या तत्पश्चात् हो गया है; या

(ख) जिसकी बाबत रजिस्ट्रार ने इस कारण कि उसने अपनी वृत्तिक हैसियत में उपेक्षापूर्ण अवचारपूर्ण, या बेईमानी का कोई काम किया है, यह घोषित किया है कि वह व्यक्ति रजिस्टर में बने रहने के लिए अयोग्य और अनुचित व्यक्ति है;

(ग) रजिस्टर में दुर्व्यपदेशन या तात्विक तथ्य को छुपाने के कारण प्रविष्ट कर दिया गया है:

परन्तु खंड (ख) और खंड (ग) के अधीन ऐसी घोषणा करने के पूर्व रजिस्ट्रार संबंद्ध व्यक्ति को यह हेतु

संदर्शित करने के लिए समाहृत करेगी कि उसके रजिस्ट्रीकरण को अपखंडित क्यों न कर दिया जाए और वह ऐसी अपर जांच भी, यदि कोई हो, करेगा, जैसा कि वह आवश्यक समझता है।

(3) रजिस्टर व्यापार चिह्न अभिकर्ताओं के रजिस्टर में से ऐसे किसी रजिस्ट्रीकृत व्यापार चिह्न अभिकर्ता का नाम हटा देगा जो मर चुका है।

(4) वह बात कि व्यापार चिह्न अभिकर्ताओं के रजिस्टर में से किसी व्यक्ति का नाम हटा दिया गया है जरनल में अधिसूचित की जाएगी और जहां भी संभव हो उसकी संसूचना संबद्ध व्यक्ति को दी जाएगी।

152. कतिपय अभिकर्ताओं के साथ व्यवहार करने से इंकार करने की रजिस्ट्रार की शक्ति-

(1) रजिस्ट्रार-

(क) किसी ऐसे व्यक्ति को जिसका नाम रजिस्टर से हटा दिया गया है और रजिस्टर में प्रत्यावर्तित नहीं किया गया है मान्यता देने से इंकार कर सकेगा;

(ख) किसी ऐसे व्यक्ति की जो व्यापार चिह्न अभिकर्ता के रूप में रजिस्ट्रीकृत नहीं है और जो रजिस्ट्रार की राय में उस व्यक्ति के नाम में या उसके फायदे के लिए जिसने उसे नियोजित कर रखा है भारत में या अन्यंत्र व्यापार चिह्न के लिए लगाए जाने में अभिकर्ता के रूप में पूर्णत: या मुख्यत: कार्य करने में लगा हुआ है मान्यता देने से इंकार कर सकेगा;

(ग) किसी ऐसी कंपनी या फर्म और यदि किसी व्यक्ति जिसको इन नियमों के अधीन किसी कारबार की बाबत अभिकर्ता के रूप में रजिस्ट्रार ने मान्यता देने से इंकार कर दिया है, वह कंपनी के निदेशक या प्रबंधक के रूप में कार्य कर रहा है या वह फर्म में कोई भागीदार है, मान्यता देने से इंकार कर सकेगा।

(2) रजिस्ट्रार किसी ऐसे व्यक्ति जो न तो भारत में निवास करता है और न ही भारत में उसके कारबार का स्थान है को भी इस नियम के अधीन किसी कारबार की बाबत अभिकर्ता के रूप में मान्यता देने से इंकार कर सकेगा।

153. हटाये गए नामों का प्रत्यावर्तन-(1) जिस व्यक्ति का नाम नियम 151 के उपनियम (1) के खंड (ख) के अधीन हटाया जा चुका है, व्यापार चिह्न अभिकर्ताओं के रजिस्टर में से उसका नाम हटाये जाने की तारीख से छ: मास के भीतर उस व्यक्ति से प्रथम अनुसूची में विनिर्दिष्ट फीस सहित आवेदन प्ररूप व्या. चि. -जी में प्राप्त होने पर उसका नाम रजिस्ट्रार, व्यापार चिह्न अभिकर्ताओं के रजिस्टर में प्रत्यावर्तित कर सकेगा और उस तारीख से, जिसको उसी अंतिम वार्षिक फीस शोध्य हुई थी, एक वर्ष की कालावधि के लिए उसका नाम रजिस्टर में रहने दे सकेगा:

परन्तु रजिस्ट्रार प्रत्यावर्तन फीस के साथ अतिरिक्त फीस के भुगतान पर अभिकर्ता का नाम छ: महीने की अवधि के बाद भी किन्तु तीन वर्षों की अवधि के भीतर प्रत्यावर्तित कर सकेगा।

(2) व्यापार चिह्न अभिकर्ताओं के रजिस्टर में नाम का प्रत्यावर्तन जनरल में अधिसूचित किया जाएगा और संसूचना संबद्ध व्यक्ति को दी जाएगी।

154. व्यापार चिह्न अभिकर्ताओं के रजिस्टर में परिवर्तन- (1) रजिस्ट्रीकृत व्यापार चिह्न का अभिकर्ता व्यापार चिह्न अभिकर्ताओं के रजिस्टर में प्रविष्ट अपने नाम, निवास स्थान के पते, कारबार के मुख्य स्थान के पते, या अर्हताओं में परिवर्तन के लिए आवेदन प्ररूप व्या. चि. अ.-3 में कर सकेगा। ऐसे आवेदन और उस निमित्त विहित फीस की प्राप्ति कर रजिस्ट्रार व्यापार चिह्न अभिकर्ताओं के रजिस्टर में आवश्यक परिवर्तन करायेगी।

(2) व्यापार चिह्न अभिकर्ताओं के रजिस्टर में किया गया प्रत्येक परिवर्तन जनरल में अधिसूचित किया जाएगा।

155. व्यापार चिह्न अभिकर्ताओं के रजिस्टर का प्रकाशन- रजिस्ट्रार व्यापार चिह्न अभिकर्ताओं को रजिस्टर में सामान्यतया अभिकर्ताओं की सूची समय-समय पर जनरल में प्रकाशित करेगा और कम से कम दो वर्ष में एक बार उसके पते के साथ जो रजिस्टर में प्रविष्ट है रजिस्ट्रीकृत व्यापार चिह्न के अभिकर्ताओं के उपनाम की प्रविष्टियां वर्णानुक्रम अनुसार व्यवस्थित होंगी और उसकी प्रतियां विक्रय के लिए रखी जा सकेंगी।

156. अपील- इन नियमों के भाग-4 के अधीन व्यापार चिह्न अभिकर्ताओं के रजिस्ट्रीकरण या हटाए जाने के संबंध में रजिस्ट्रार के किसी आदेश या विनिश्चय से अपील बौद्धिक संपदा अपील बोर्ड में होगी और अपील बोर्ड का विनिश्चय अंतिम होगा और आबद्धकर होगा।

भाग-5
व्यापार चिह्न रजिस्ट्री की भाषा

157. व्यापार चिह्न रजिस्ट्री की भाषा:- (1) (क) व्यापार चिह्न रजिस्ट्री की भाषा अंग्रेजी होगी:

परन्तु कार्यवाही के पक्षकार, व्यापार चिह्न रजिस्ट्री के समक्ष में हिन्दी में प्ररूपित दस्तावेजों को फाइल कर सकते हैं, यदि उन्होंने ऐसी वांछा की हो:

परन्तु यह और कि-

(क) रजिस्ट्रार अधिकरण की कार्यवाहियों में हिन्दी के प्रयोग की अनुज्ञा देता है और ऐसी कार्यवाहियों में सुनवाई को वह स्वविवेकानुसार अभिवाचनों और फाइल किए जाने वाले दस्तावेजों के अंग्रेजी अनुवाद के लिए निदेश दे सकेगा।

(ख) राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 2 के खंड (च) में यथापरिभाषित "क" क्षेत्र में स्थित व्यापार चिह्न रजिस्ट्री के कार्यालय के बारे में रजिस्ट्रार स्वविवेकानुसार अंतिम आदेश हिन्दी या अंग्रेजी में दे सकेगा।

(2) पैरा (1) में अंतर्विष्ट किसी बात के होते हुए भी, जहां अंतिम आदेश हिन्दी में किया जाता है वहां उसका अधिप्रमाणित अंग्रेजी अनुवाद साथ ही साथ तैयार किया जाएगा और अभिलेख में रखा जाएगा।

भाग-6
निरसन

158. निरसन- व्यापार चिह्न नियम, 2002 नियमों के प्रवृत्त होने के पहले ऐसे नियम के अधीन की गई किसी कार्यवाही के प्रतिकूल प्रभाव के बिना निरसित किया जाता है।

प्रथम अनुसूची

(नियम 11 देखिए)

फीस

प्रविष्टि संख्या	किस पर देय	रकम भारतीय रूपए में		तत्सम्बन्धी प्ररूप संख्या
		भौतिक रूप से फाईलिंग के लिए	ई-फाईलिंग के लिए	
(1)	(2)	(3)	(4)	(5)
1	एक वर्ग अथवा एक वर्ग से अधिक में शामिल वस्तुओं और सेवाओं के विनिर्देश हेतु व्यापार चिह्न/सम्मिलित चिह्न/प्रमाणन चिह्न/व्यापार चिह्न के अनुक्रम के रजिस्ट्रीकरण के लिए आवेदन।			टी एम-ए
	जहाँ आवेदक एक व्यक्ति/स्टार्ट-अप/लघु उद्यम हो	5,000	4,500	
	सभी अन्य मामले में	10,000	9,000	
	(टिप्पणी: फीस केवल एक वर्ग और एक चिह्न के लिए है.)			
2	धारा 21(1), 64, 66 या 73 के तहत विरोध की सूचना पर या धारा 47 से 57, 68, 77 के अधीन रजिस्टर के परिशोधन हेतु आवेदन या नियम 99, 103, 135, 140 के तहत आवेदन, वस्तुओं के भौगोलिक उपदर्शन (विनियमन और संरक्षा) अधिनियम, 1999 की धारा 25 के तहत व्यापारचिह्न या उससे संबन्धित प्रतिकथन को अमान्य करने हेतु आवेदन पर।	3,000	2,700	टी एम- ओ

	(टिप्पणी: विरोध किए प्रत्येक वर्ग या दाखिल प्रतिकथन के लिए फीस)			
3	प्रत्येक वर्ग के लिए धारा 25 के तहत व्यापारचिह्न के रजिस्ट्रीकरण के नवीकरण हेतु	10,000	9,000	टी एम- आर
4	धारा 25 (3) के तहत प्रत्येक वर्ग के लिए व्यापार चिह्न के रजिस्ट्रीकरण का अधिभार के साथ नवीकरण	5,000 प्रविष्टि 3 के तहत लागू नवीकरण फीस के साथ	4,500 प्रविष्टि 3 के तहत लागू नवीकरण फीस के साथ	
5	धारा 25 (3), 25 (4) के तहत प्रत्येक वर्ग के लिए व्यापार चिह्न के प्रत्यावर्तन और नवीकरण का अधिभार के साथ नवीकरण हेतु आवेदन	10,000 प्रविष्टि 3 के तहत लागू नवीकरण फीस के साथ	9,000 प्रविष्टि 3 के तहत लागू नवीकरण फीस के साथ	
6	धारा 45 के तहत प्रत्येक व्यापारचिह्न के हस्तांतरण या समनुदेसन के मामले में अनुवर्ती स्वत्वधारी रजिस्टर करने हेतु आवेदन	10,000	9,000	टी एम - पी
7	इन आवेदनों के लिए : धारा 40 (2) के तहत रजिस्ट्रार का प्रमाणपत्र, या धारा 41 के तहत रजिस्ट्रार के अनुमोदन के लिए, या धारा 42 के तहत बिना साख के समनुदेसन के विज्ञापन के लिए रजिस्ट्रार का निदेश, या धारा 59 (1) के तहत प्रत्येक व्यापारचिह्न के लिए रजिस्ट्रीकृत व्यापारचिह्न में कुछ जोड़ना या बदलना, या धारा 60 के तहत प्रत्येक व्यापारचिह्न के लिए विनिर्देश का बदलाव।	3,000	2,700	
8	इन आवेदनों के लिए: धारा 42 के तहत बिना साख के समनुदेसन के विज्ञापन के निदेश के लिए आवेदन करने का समय विस्तार, या धारा 46 (4) के तहत अनुवर्ती स्वत्वधारी के रूप में किसी कंपनी के रजिस्ट्रीकरण के लिए समय विस्तार, या धारा 43 के तहत प्रमाणन व्यापारचिह्न के समनुदेसन या पारेषण के लिए रजिस्ट्रार की सहमति, या धारा 58 के तहत प्रत्येक व्यापार चिह्न के लिए किसी रजिस्ट्रीकृत स्वत्वधारी या व्यापार चिह्न के किसी रजिस्ट्रीकृत उपयोक्ता के नाम और/या विवरण में परिवर्तन।	2,000	1,800	
9	इन आवेदनों के लिए: धारा 16 (5) के तहत व्यापारचिह्न के बीच संबंध का विघटन, या धारा 58 के तहत प्रत्येक व्यापार चिह्न के लिए रजिस्ट्रीकृत स्वत्वधारी के पते या भारत में सेवार्थ पते में परिवर्तन, या धारा 58 के तहत प्रत्येक व्यापारचिह्न के लिए रजिस्टर में कोई प्रविष्टि या उसके किसी भाग को निरस्त करने का अनुरोध।	1,000	900	
10	धारा 49 के तहत वस्तुओं और सेवाओं के संदर्भ में रजिस्ट्रीकृत व्यापारचिह्न के रजिस्ट्रीकृत उपयोक्ता का आवेदन या धारा 50 की उप-धारा (1) के खंड (क) के तहत एक व्यापारचिह्न के रजिस्ट्रीकृत उपयोक्ता की प्रविष्टि में बदलाव के लिए आवेदन जहाँ व्यापारचिह्न उसमें से प्रत्येक के संदर्भ में एक ही रजिस्ट्रीकृत उपयोक्ता के अधीन आते हैं या धारा 50 की उप-धारा (1) के खंड (ख), (ग) या (घ) के तहत एक व्यापारचिह्न के रजिस्ट्रीकृत उपयोक्ता की प्रविष्टि निरस्त करने के लिए आवेदन पर या नियम 95 (2) के तहत एक व्यापारचिह्न के रजिस्ट्रीकृत उपयोक्ता की प्रविष्टि में बदलाव या निरस्तिकरण के लिए एक कार्यवाही में हस्तक्षेप के	5,000	4,500	टी एम-यू

	इरादे की सूचना (टिप्पणी : लागू फीस केवल प्रत्येक चिह्न के लिए है)			
11	नियम 22 (1) के तहत प्रमाणपत्र खोजने और जारी करने के लिए अनुरोध	10,000	9,000	टी एम -सी
12	नियम 22 (3) केडबल्यू तहत त्वरित खोज और प्रमाणपत्र जारी करने का अनुरोध	अमान्य	40,000	
13	इन आवेदनों के लिए : समय विस्तार, या सत्यापित प्रति, या द्वितीयक रजिस्ट्रीकरण प्रमाणपत्र, या दस्तावेज़ की जांच, या रजिस्ट्रार के विज्ञापन का विवरण, या रजिस्ट्रार के निर्णय का आधार मांगना, या नियम 127 के तहत वैद्यता के प्रमाणपत्र के नोट को रजिस्टर में लिखना और विज्ञापित करना, या व्यापारचिह्न आवेदन में संशोधन, या नियम 41 के तहत रजिस्ट्रार को व्यापारचिह्न के विज्ञापन का विवरण।	1,000	900	टी एम - एम
14	इन आवेदनों के लिए : धारा 66 के तहत संकलित व्यापारचिह्न के विनियमन का साक्ष्य या धारा 74 (2) के तहत प्रमाणन व्यापारचिह्न के विनियमन में बदलाव, या रजिस्ट्रार का प्राथमिक सुझाव मांगना, या आवेदन के विभाजन के लिए।	2,000	1800	
15	इन आवेदनों के लिए: रजिस्ट्रार के निर्णय की समीक्षा, या किसी विवादित कार्यवाही के वादकालीन मामले के लिए रजिस्ट्रार का आदेश प्राप्त करने ले लिए याचिका (अन्यथा अधिभारित नहीं), या कोई अन्य मामले जिसे अन्य टी एम प्ररूप में शामिल नहीं किया गया हो।	3,000	2,700	
16	रजिस्ट्रार के त्वरित प्रमाणपत्र के लिए अनुरोध पर (अधिनियम की धारा 23 (2) के टहता प्रमाणपत्र के अतिरिक्त) या नियम 122 के प्रावधान के तहत दस्तावेज़ की स्त्यपित प्रतियाँ (टिप्पणी : प्रत्येक रजिस्ट्रीकृत व्यापारचिह्न या प्रत्येक दस्तावेज़ संदर्भ में प्रविष्टि के लिए)	5,000	4,500	
17	नियम 34 के तहत व्यापारचिह्न के रजिस्ट्रीकरण के लिए आवेदन के त्वरित प्रक्रिया के लिए आवेदन			
	जहाँ आवेदक एक व्यक्ति/ स्टार्ट-अप/ लघु उद्यम हो	अमान्य	30,000	
	अन्य सभी मामलों में	अमान्य	40,000	
	(टिप्पणी: फीस केवल एक वर्ग और एक चिह्न के लिए है.)			
18	किसी व्यापारचिह्न को सुज्ञात व्यापारचिह्न की सूची में शामिल करने का अनुरोध (टिप्पणी : लागू फीस केवल एक चिह्न के लिए है।)	अमान्य	1,00,000	
19	नियम 147 & 149 के तहत किसी व्यक्ति का व्यापारचिह्न एजेंट के रूप में रजिस्ट्रीकरण के लिए आवेदन।	5,000	4,500	टी एम- जी
20	नियम 150 के तहत व्यापारचिह्न एजेंट के रजिस्टर में किसी व्यक्ति का नाम प्रत्येक पाँच वर्ष के लिए जारी रखने के लिए जिसका भुगतान परवर्ती वित्तीय वर्ष के प्रथम दिन को या उससे पूर्व किया जाना होगा।	10,000	9,000	
21	रजिस्ट्रीकरण हटाने की तारीख से 3 वर्षों के भीतर नियम 153 के तहत व्यापारचिह्न एजेंट के रजिस्टर में किसी व्यक्ति का नाम प्रत्यावर्तित करने के आवेदन पर।	5,000 प्रविष्टि संख्या 20 में यथा उल्लिखित	4,500 प्रविष्टि संख्या 20 में यथा	

		निरंतरता फीस के साथ	उल्लिखित निरंतरता फीस के साथ	
22	नियम 154 के तहत व्यापारचिह्न एजेंट के रजिस्टर में किसी प्रविष्टि में बदलाव करने के लिए आवेदन पर।	1,000	900	
23	MM2(E) के साथ अंतरराष्ट्रीय आवेदन के प्रमाणन और अंतरराष्ट्रीय ब्यूरो में पारेषण हेतु संचालन प्रभार	अमान्य	5,000	--

द्वितीय अनुसूची

प्ररूप

प्ररूप सं.	अधिनियम और नियम की धारा और नियम	वह शीर्षक जिसके लिए प्ररूप का उपयोग किया जाना है	प्रथम अनुसूची की प्रविष्टि संख्या
1	2	3	4
टी एम-ए	धारा 15, 15(3), 18(1), 18(2), 63(1), 71, 71(1), 154(2).	धारा 18 (1) या 18 (2) के तहत एक अथवा एक से अधिक वर्ग में शामिल वस्तुओं और सेवाओं के विनिर्देश हेतु व्यापार चिह्न के रजिस्ट्रीकरण के लिए आवेदन, या धारा 63 (1) के तहत एक अथवा एक से अधिक वर्ग में शामिल वस्तुओं और सेवाओं के विनिर्देश हेतु संकलित चिह्न के रजिस्ट्रीकरण के लिए आवेदन, या धारा 71 (1) के तहत एक अथवा एक से अधिक वर्ग में शामिल वस्तुओं और सेवाओं के विनिर्देश हेतु प्रमाणन चिह्न के रजिस्ट्रीकरण के लिए आवेदन, या धारा 15 (3) के तहत एक अथवा एक से अधिक वर्ग में शामिल वस्तुओं और सेवाओं के विनिर्देश हेतु व्यापार चिह्न का अनुक्रम के रूप में रजिस्ट्रीकरण के लिए आवेदन।	1
टी एम-एम	धारा 18(4), 22, प्रावधान 22, 23(2), 43, 58, 66, 74(2), 127(ग), 131, 133(1), 137, 148(2), नियम: 23, 36, 36(1), 41, 56(3), 108, 109, 122, 124,127.	व्यापार चिह्न आवेदन में संशोधन हेतु अनुरोध, या निर्णय का आधार प्राप्त करना, या रजिस्ट्रार का प्राथमिक सुझाव प्राप्त करना, या संकलित व्यापारचिह्न के विनियमन का साक्ष्य के लिए आवेदन, या प्रमाणन व्यापारचिह्न के विनियमन में परिवर्तन, या सत्यापित प्रति के लिए अनुरोध, या द्वितीयक रजिस्ट्रीकरण प्रमाणपत्र, या समय विस्तार, रजिस्ट्रार के निर्णय की समीक्षा हेतु अनुरोध, या दस्तावेज़ की जांच, या विज्ञापन के विवरण के लिए रजिस्ट्रार का अनुरोध, या रजिस्ट्रार के निर्णय की समीक्षा, या किसी विवादित कार्यवाही के वादकालीन मामले के लिए रजिस्ट्रार का आदेश प्राप्त करने ले लिए याचिका (अन्यथा अधिभारित नहीं), या एक चिह्न को सुज्ञात व्यापारचिह्न की सूची में शामिल करने का अनुरोध, या कोई अन्य मामले जिसे अन्य टी एम प्ररूप में शामिल नहीं किया गया हो।	13, 14, 15, 16, 17, 18
टी एम- आर	धारा : 25, धारा 25(3), 25(4) के प्रावधान	व्यापारचिह्न के नवीकरण हेतु आवेदन, या अधिभार सहित नवीकरण हेतु अनुरोध, या व्यापार चिह्न के प्रत्यावर्तन हेतु अनुरोध।	3,4,5
टी एम-सी	नियम 22(1), नियम 22(5)	खोज प्रमाणपत्र अनुरोध हेतु आवेदन	11, 12

टी एम-ओ	वस्तुओं के भौगोलिक उपदर्शन (विनियमन और संरक्षा) अधिनियम, 1999 की धारा 21, 21(1), 47-57, 59, 64, 66, 68, 73, 77 और 25 नियम : 99, 105, 130, 136.	धारा 21(1), 64, 66 या 73 के तहत विरोध की नोटिस पर, धारा 47 से 57, 68, 77, के तहत रजिस्टर के परिशोधन हेतु आवेदन, नियम 99, 135, 140, के तहत आवेदन, या वस्तुओं के भौगोलिक उपदर्शन (विनियमन और संरक्षा) अधिनियम, 1999 की धारा 25 के तहत किसी व्यापारचिह्न और उससे संबन्धित प्रतिकथन को अमान्य करने का आवेदन।	2
टी एम-पी	धारा 16 (5), 40(2), 41, 42, 43, 45, 58, 59, 60 नियम 75, 80, 83, 85,	रजिस्टर में अनुवर्ती स्वत्वधारी को रजिस्ट्रीकृत स्वत्वधारी के रूप में स्थापित करने का अनुरोध, या रजिस्ट्रीकृत स्वत्वधारी या रजिस्ट्रीकृत उपयोक्ता के विवरण में संशोधन का अनुरोध, या रजिस्ट्रीकृत व्यापारचिह्न के संशोधन का अनुरोध, या वस्तु या सेवाओं के विनिर्देश में संशोधन हेतु अनुरोध, या वस्तुओं के परिवर्तन हेतु अनुरोध, या व्यापारचिह्न के संघटन के विघटन हेतु अनुरोध।	6, 7, 8, 9
टी एम-यू	धारा 49, 50, 50(1)(क), 50(1)(ख), 50(1)(ग) or (घ). नियम : 95.	रजिस्ट्रीकृत उपयोक्ता की प्रविष्टि हेतु आवेदन, या रजिस्ट्रीकृत उपयोक्ता के विवरण में संशोधन का अनुरोध, या रजिस्ट्रीकृत उपयोक्ता के निरस्तीकरण या बदलाव हेतु आवेदन, या तीसरे पक्ष द्वारा कार्यवाही में हस्तक्षेप के लिए आवेदन।	10
टी एम-जी	नियम 147, 153, 154.	व्यापारचिह्न एजेंट के रजिस्ट्रीकरण का आवेदन, या व्यापारचिह्न एजेंट के रूप में निरंतरता का अनुरोध, या रजिस्टर में व्यापारचिह्न एजेंट के नाम का प्रत्यावर्तन, या रजिस्टर में व्यापारचिह्न एजेंट के विवरण संबंधी परिवर्तन।	19,20,21,22

<u>प्ररूप का सूची</u>

प्ररूप व्या.चि.-ए

व्यापार चिह्न अधिनियम, 1999

व्यापार चिह्न के रजिस्ट्रीकरण के लिए आवेदन

[सुसंगत सूचना प्रत्येक शीर्ष के समक्ष रंगीन खाने में अवश्य भरी जाय]

1	आवेदन की प्रकृति	
	[(क) आवेदक निम्नलिखित प्रवर्गों में से किसी एक का चयन करें-	
	1. मानक व्यापार चिह्न *2.*सामूहिक चिह्न *3.*प्रमाणीकरण चिह्न *4.*श्रेणी चिह्न	
	यहाँ मानक चिह्न से साधारण व्यापार चिह्न के रजिस्ट्रीकरण के लिए किसी आवेदन से अभिप्रेत है जो सामूहिक या प्रमाणीकरण व्यापार चिह्न अथवा चिह्नों की श्रृंखला ना हो।	
	(ख) सामूहिक चिह्न या प्रमाणीकरण चिह्न के संदर्भ में प्ररूप व्या.चि.-एम के साथ प्रारूप विनियमन अवश्य दाखिल किया जाएगा।]	
2	आवेदक का स्वरुप दर्ज करे (चुने और निर्दिष्ट करें) स्टार्टअप / लघु उद्यम के मामले में अपेक्षित प्रमाण पत्र प्रदान किया जाना चाहिए।	(व्यक्तिगत / स्टार्टअप / लघु उद्यम / अन्य)
	प्रदत्त फीस	(स्मुचित फीस के लिए प्रथम अनुसूची देंखें)
3	आवेदक	
	नाम:*	
	व्यापार नाम	
	पता:*	

		(राज्य) (देश)
	[भारत में व्यवसाय का आवेदक का मुख्य पता ही पते के रूप में दर्शाया जाएगा]	
	सेवार्थ पता:	
		(राज्य) (देश)
	[(क) अन्यथा विशिष्ट रूप से वर्णित ना होने पर आवेदक का पता वही होगा जो भारत में व्यवसाय के मुख्य स्थान के रूप में आवेदक का सेवार्थ पता है।	
	(ख) यदि आवेदक भारत में कारबार ना करता हो तब भी भारत में सेवार्थ पता अवश्य दिया जाएगा।]	
	मोबाइल न.:	
	ई-मेल का पता:*	
	आवेदक की प्रकृति	
	[*आवेदक निम्नलिखित श्रेणियों में से किसी एक का चयन करें-*	
	1.वैयक्तिक, 2.भागीदारी फर्म, 3.प्राइवेट लिमिटेड/लिमिटेड कंपनी सहित निगमन निकाय 4.सीमित देयता साझेदारी, 5.सोसायटी, 6. न्यास 7. सरकारी विभाग, 8. कानूनी संगठन, 9. व्यक्तियों का संगम 10. हिन्दू अविभाजित कुटुम्ब]	
3	आवेदक के अभिकर्त्ता (यदि कोई हो)	
	नाम:	
	पता	
	अभिकर्त्ता को प्राधिकार देने की स्थिति में अभिकर्त्ता का पता आवेदक के सेवार्थ पता के रूप में उल्लेख किया जाय।	
	मोबाइल न.*:	
	ई-मेल का पता*:	
	आवेदक की प्रकृति	
	*[*आवेदक निम्नलिखित श्रेणियों में से किसी एक का चयन करें-	
	*1.*रजिस्ट्रीकृत व्यापार चिह्न अभिकर्त्ता, *2.*अधिवक्ता, *3.*मान्यता प्राप्त एटॉर्नी]	
	रजिस्ट्रीकरण संख्याः	
	अभिकर्त्ता को प्राधिकार दिए जाने की स्थिति में अभिकर्त्ता का पता आवेदक के सेवार्थ पते के रूप में उल्लिखित होगा।	
4	व्यापार चिह्न	(व्यापार चिह्न का यहाँ उल्लेख करें)
	चिह्न का प्रवर्ग	
	*[*आवेदक निम्नलिखित श्रेणियों में से किसी एक का चयन करें-	
	*1.*शब्द चिह्न *(*इसमें एक शब्द, अक्षर, संख्या या मानक रूप में लिखित सभी कुछ शामिल है), *2.*युक्ति चिह्न *(*इसमें लेबल, स्टीकर, मोनोग्राम, लोगो या शब्द चिह्न के अतिरिक्त कोई अन्य ज्यामितीय आकृति शामिल है), *3.*रंग *(*जब यंत्र के साथ या उसके बिना रंगों के संयोजन में पार्थक्य का दावा किया गया हो), *4.*त्रिआयामी व्यापार चिह्न *(*इसमें वस्तुओं के आकार या पैकेजिंग शामिल है),*5.* ध्वनि	
	चिह्न का वर्णन	
	[(क) चिह्न का वर्णन नियम *28* के अनुसार अवश्य दी जाय।	
	(ख) श्वेत और श्याम के अतिरिक्त किसी अन्य निर्दिष्ट रंग समन्वय में प्रस्तुत व्यापार चिह्न के संदर्भ में यह माना जाएगा कि चिह्न का पार्थक्य का दावा उस रंग समन्वय में ही किया गया है और तदनुसार आवेदन पर विचार किया जाएगा।	
	(ग) रंग चिह्न के संदर्भ में विवरण इस प्रकार होगा जैसे "इस व्यापार चिह्न में बैगनी, हरे और पीले रंग की तीन खड़ी पट्टियाँ शामिल हैं जो मकानों और दरवाजों के सामने चिह्न की प्रदर्शित प्रस्तुति के अनुसार लगायी गई है।"	
	(घ) ध्वनि चिह्न के संदर्भ में निर्दिष्ट संगीत धुन की प्रस्तुति व्यापार चिह्न के लिए प्रदत्त स्थान पर अवश्य की जानी चाहिए। आवेदक को वह ध्वनि *MP3* में भी दाखिल करनी होगी।]	

5	हिन्दी या अंग्रेजी से भिन्न अन्य भाषा में चिह्न	
	भाषा	
	रोमन लिपि में चिह्न का लिप्यंतरण	
	[चिह्न के हिन्दी या अंग्रेजी के अलावा किस अन्य भाषा में होने की स्थिति में उस चिह्न का लिप्यंतरण रोमन लिपि में अवश्य उपलब्ध करायी जाएगी।	
	चिह्न का अंग्रेजी में अनुवाद	
	[चिह्न के हिन्दी या अंग्रेजी के अलावा किस अन्य भाषा में होने की स्थिति में उस चिह्न का अंग्रेजी अनुवाद अवश्य उपलब्ध करायी जाएगी।	
6	व्यापार चिह्न के प्रयोग की शर्त या सीमा, यदि कोई हो	
7	माल और/या सेवा का वर्ग	माल और सेवा का विवरण
8	चिह्न के प्रयोग संबंधी कथन	[ ] प्रयोग हेतु प्रस्तावित
		[ ] चिह्न का प्रयोग आवेदक या उसके पूर्ववर्ती द्वारा प्रयोग किया जा रहा है जिसका शीर्षक है
		आवेदन में उल्लिखित माल और सेवा के संदर्भ में .. .. से
	[(क) आवेदक को उपर्युक्त में से किसी एक का चयन करना होगा	
	(ख) प्रयोग की तारीख (दिन/माह/वर्ष) रूप में की जाएगी और आवेदन में वर्णित सभी मदों को इंगित करेगी।	
	(ग) आवेदन की तारीख से पूर्व व्यापार चिह्न के प्रयोग का दावा करने की स्थिति में आवेदक एक शपथ पत्र दाखिल कर वैसे प्रयोग का सत्यापन करेगा और सहायक दस्तावेज दाखिल करेगा।	
	(घ) चिह्न के प्रयोग संबंधी एक बार दिया गया कथन अंतिम होगा।]	
9	प्रायिकता दावा, यदि कोई हो	
	से प्रायिकता दावा	(दिन/माह/वर्ष)
	कन्वेंशन देश या संगठन में दाखिल आवेदन के आधार पर प्रायिकता दावा	देश या संगठन का नाम
	प्रायिकता आवेदन संख्या	
	[प्रायिकता का दावा आवेदन में उल्लिखित सभी वस्तुओं और सेवाओं के लिए अवश्य किया जएगा]	
10	कोई अन्य महत्वपूर्ण सूचना या कथन	
	[आवेदक यहाँ अपने आवेदन से संबंधित कोई अन्य सूचना या कथन प्रदान कर सकता है]	
11	सत्यापन	मैं सत्यापित करता हूं कि ऊपर वर्णित तथ्य मेरे सर्वोत्तम ज्ञान और विश्वास के आधार पर सत्य हैं।
12	आवेदन दाखिल करने वाले व्यक्ति का ब्यौरा	
	हस्ताक्षर	
	नाम	
	प्राधिकार	

प्ररूप व्या. चि.-एम

व्यापार चिह्न अधिनियम, 1999

व्यापार चिह्न अधिनियम के अधीन व्यापार चिह्न आवेदन/विरोध/संशोधन के संदर्भ में विविध कार्यवाही हेतु आवेदन/अनुरोध

यह प्ररूप तीन भागों अर्थात क, ख, और ग में विभाजित है।

भाग क और ग को भरना अनिवार्य है। भाग ख को पुनः कई उपश्रेणियों में विभाजित किया गया है और इसका अपेक्षानुरूप चयन आवेदक द्वारा किया जाएगा और उसी अनुसार इसे भरा जाएगा।

[(क) एक प्ररूप केवल एक अनुरोध के लिए है। पृथक अनुरोधों के लिए पृथक अनुरोध दाखिल किया जाएगा।एक प्ररूप में एक से अधिक अनुरोध का दावा करने की स्थिति में प्रथम स्वीकृत होगा और शेष अनुरोध पर विचार नहीं किया जाएगा।

भाग क

[आवेदक का विवरण]

1	फीस	(उपयुक्त फीस के लिए प्रथम अनुसूची देखें)	
	आवेदक या रजिस्ट्रीकृत स्वत्वधारी/विरोधकर्ता/आवेदन/अनुरोध करने वाला तृतीय पक्ष		
	[(*क) उपर्युक्त में से किसी एक का चयन अवश्य करना होगा जिनकी तरफ से आवेदन/अनुरोध दाखिल किया जा रहा है*		
	(*ख)* "*आवेदक" या "* रजिस्ट्रीकृत *स्वत्वधारी" से वह व्यक्ति अभिप्रेत है जिसका उल्लेख संदर्भित आवेदन या* रजिस्ट्रीकृत *व्यापार चिह्न के संदर्भ में टीएमआर अभिलिखित है। "विरोधकर्ता" से उस विरोधकर्ता का से अभिप्रेत है जिसका संदर्भ विरोध कार्यवाही में हो अथवा एक आवेदक जो किसी और के व्यापार चिह्न के रजिस्ट्रीकरण को बदलने या निरस्त करने की इच्छा से संशोधन हेतु अनुरोध करता है। "तृतीय पक्ष" से उस व्यक्ति का आशय है जो संदर्भित आवेदन/विरोध/संशोधन का कोई पक्षकार ना हो।]*		
	नाम:*		
	व्यापार नाम		
	पता:*		
		(राज्य) (देश)	
	सेवार्थ पता:		
		(राज्य) (देश)	
	[(*क) अन्यथा विशिष्ट रूप से वर्णित ना होने पर आवेदक का पता वही होगा जो भारत में व्यवसाय के मुख्य स्थान के रूप में आवेदक का सेवार्थ पता है।*		
	(*ख) यदि आवेदक भारत में व्यवसाय ना करता हो तब भी भारत में सेवार्थ पता अवश्य दिया जाएगा।]*		
	मोबाइल न.:		
	ई-मेल का पता:*		
2	आवेदक या रजिस्ट्रीकृत स्वत्वधारी/विरोधकर्ता/तृतीय पक्ष के अभिकर्त्ता हो, (यदि कोई हो)		
	नाम:		
	पता		
	मोबाइल न.:		
	ई-मेल का पता:		
	अभिकर्त्ता की प्रकृति		
	[*आवेदक निम्नलिखित श्रेणियों में से किसी एक का चयन करें-*		
	1. *रजिस्ट्रीकृत व्यापार चिह्न अभिकर्त्ता*, 2. *अधिवक्ता*, 3. *मान्यता प्राप्त एटॉर्नी]*		
	रजिस्ट्रीकरण संख्याः		
	[अभिकर्त्ता को प्राधिकार दिए जाने की स्थिति में अभिकर्त्ता का पता आवेदक के सेवार्थ पते के रूप में उल्लिखित होगा।]		
3	के मामले में अनुरोध/आवेदन		
	आवेदन/विरोध/संशोधन संख्या	संदर्भ संख्या	
	[उपर्युक्त में से एक का चयन अवश्य किया जाय]		
	अतिरिक्त संदर्भ, यदि अपेक्षित हो		
	भाग ख: अनुरोध का प्रयोजन [आवेदन स्तंभ को भरने के अनुसार चिह्नित करना होगा]		

क	लिपिकीय त्रुटि में सुधार या नियम 37 में संशोधन हेतु		
	सुधार का ब्यौरा		
ख	नियम 36 के तहत रजिस्ट्रार के निर्णय के आधार का कथन		
	सुनवाई की तारीख		
	आदेश संख्या और तारीख		
ग	नियम 122 के अधीन रजिस्ट्रार के प्रमाणपत्र या दस्तावेज की सत्यापित प्रति के लिए		
	यदि अनुरोध त्वरित प्रमाणपत्र के लिए है	हाँ या ना	
	[त्वरित प्रमाणपत्र के लिए अनुरोध की स्थिति में फीस साधारणतया सामान्य अनुरोध का पाँच गुणा होगा]		
	अपेक्षित सत्यापित प्रति के विवरण		
	अपेक्षित दस्तावेज की प्रतियों की संख्या		
घ	नियम 41 के अधीन व्यापार चिह्न के विज्ञापन के विवरण हेतु		
ङ	रजिस्ट्रार के विनिश्चिय के पुनर्विलोकन ले लिए अनुरोध		
	सुनवाई तारीख		
	आदेश संख्या और तारीख		
	*[*संबद्ध आवेदनों की संख्या/रजिस्ट्रीकृत व्यापार चिह्न संख्या और फीस रुपए में यहाँ लिखा जाए *]*		
च	नियम 109 के अधीन समय विस्तार हेतु अनुरोध		
	समय अवधि के विस्तार का कारण	अनुरोध किए गए समय विस्तार की अवधि	
छ	धारा 133 के अधीन व्यापार चिह्न के सुभिन्न के बारे में प्रारंभिक सुझाव	यहाँ चिह्न लिखे/चिपकाए जाये	
ज	नियम 34 के अधीन किसी आवेदन के त्वरित परीक्षण का अनुरोध		
	त्वरित परीक्षण हेतु कारण बताना		
झ	नियम 108 के अधीन आवेदन का विभाजन		
	विभाजित किए जाने वाले वर्ग		
	विभाजित किए जाने वाले व्यापार चिह्न (श्रृंखला चिह्न के संदर्भ में)		
ञ	नियम 56 (3) के अधीन द्वितीयक रजिस्ट्रीकरण प्रमाण पत्र हेतु अनुरोध		
ट	सुज्ञात व्यापार चिह्न रजिस्ट्रीकरण प्रमाण पत्र की सूची में व्यापार चिह्न को शामिल करने हेतु अनुरोध	चिह्न की प्रस्तुति (यहाँ चिपकाए)	फीस रुपए में
	क्या अनुरोध किया गया चिह्न व्यापार चिह्न रजिस्ट्री, भारत में रजिस्ट्रीकृत है -यदि हाँ (उसका विवरण)		
ठ	नियम 121 के अधीन दस्तावेज़ की जांच का अनुरोध	प्रयोजन	फीस रुपए में
ड	धारा 66 के अधीन समेकित व्यापार चिह्न या प्रमाणन व्यापारचिह्न के उपयोग के प्रशासन के विनियमन में संशोधन	प्रयोजन	फीस रुपए में
ढ	नियम 127 के अधीन रजिस्टर में प्रविष्टि और वैधता के प्रमाणपत्र के नोट विज्ञापित करने का अनुरोध	प्रयोजन	फीस रुपए में
ण	किसी विवादित कार्यवाही में अंतर्वादीय मामले के लिए रजिस्ट्रार का आदेश प्रपट करने के लिए (जो अन्य प्रकार से भारित न हो) याचिका पर	प्रयोजन	फीस रुपए में
त	उपर्युक्त के अतिरिक्त अन्य उद्देश्यों के लिए प्रकीर्ण फीस के भुगतान के लिए	प्रयोजन	फीस रुपए में
थ	समेकित व्यापारचिह्न या प्रमाणन व्यापारचिह्न के उपयोग के प्रशासन का विनियमन		
	प्रारूप विनियमन की प्रति संलग्न की जानी चाहिए।		
द	नियम 19 के अधीन अभिकर्त्ता का प्राधिकार दाखिल करने के लिए		
	[अटर्नी की प्रति अवश्य संलग्न की जाय]		
भाग ग [आवेदन/अनुरोध करने वाले व्यक्ति का विवरण और संलग्न दस्तावेज़ का विवरण]			
क	आवेदन दाखिल करने वाले व्यक्ति का ब्यौरा		
	हस्ताक्षर		
	नाम		

	प्राधिकार	
5	संलग्न दस्तावेज की सूची (यदि कोई हो)	

प्ररूप व्या.चि.-आर

व्यापार चिह्न अधिनियम, 1999

व्यापार चिह्न के रजिस्ट्रीकरण के नवीकरण/प्रत्यावर्तन
अथवा नवीकरण के लिए अधिभार के भुगतान हेतु आवेदन

सुसंगत सूचना प्रत्येक शीर्ष के समक्ष रंगीन खाने में अवश्य भरी जाय]			
1	आवेदक		
	*[*यहाँ आवेदक से उस व्यक्ति से अभिप्रेत है जो जिसकी ओर से अनुरोध दाखिल किया गया है। वह साधारणतया उस चिह्न का रजिस्ट्रीकृत स्वत्वधारी होगा।]		
	फीस	(उपयुक्त फीस के लिए प्रथम अनुसूची देंखें)	
	नाम:*		
	व्यापार नाम		
	पता:*		
		(राज्य) (देश)	
	सेवार्थ पता:		
		(राज्य) (देश)	
	[(क) अन्यथा विशिष्ट रूप से वर्णित ना होने पर आवेदक का पता वही होगा जो भारत में व्यवसाय के मुख्य स्थान के रूप में आवेदक का सेवार्थ पता है।		
	(ख) यदि आवेदक भारत में व्यवसाय ना करता हो तब भी भारत में सेवार्थ पता अवश्य दिया जाएगा।]		
	मोबाइल न.:		
	ई-मेल का पता:*		
2	आवेदक के अभिकर्त्ता (यदि कोई हो)		
	नाम:		
	पता		
	मोबाइल न.:		
	ई-मेल का पता:		
	अभिकर्त्ता की प्रकृति		
	*[*आवेदक निम्नलिखित श्रेणियों में से किसी एक का चयन करें-		
	*1.*रजिस्ट्रीकृत व्यापार चिह्न अभिकर्त्ता, *2.*अधिवक्ता, *3.*मान्यता प्राप्त एटॉर्नी]		
	रजिस्ट्रेशन नं.		
	अभिकर्त्ता को प्राधिकार दिए जाने की स्थिति में अभिकर्त्ता का पता आवेदक के सेवार्थ पते के रूप में उल्लिखित होगा।		
3	व्यापार चिह्न प्रकार		
	[(क)आवेदक निम्नलिखित श्रेणियों में से किसी एक का चयन करें-		
	1. मानक व्यापार चिह्न *2.*सामूहिक चिह्न *3.*प्रमाणीकरण चिह्न *4.*श्रेणी चिह्न		
	(ख) यहाँ मानक चिह्न से सामान्य व्यापार चिह्न के रजिस्ट्रीकरण हेतु किसी आवेदन का आशय है जो सामूहिक या प्रमाणीकरण व्यापार चिह्न अथवा चिह्नों की श्रृंखला ना हो।		
4	व्यापार चिह्न संख्या:		
5	वर्ग		
	(बहुवर्ग के संदर्भ में वर्गों की संख्या का उल्लेख होगा)		
6	के लिए भुगतान (नीचे से चयन करें)		
	व्यापार चिह्न के अंतिम रजिस्ट्रीकरण की समाप्ति के पूर्व नवीकरण		

	अंतिम रजिस्ट्रीकरण की समाप्ति के बाद 6 महीने के भीतर यदि नवीकरण दाखिल हो	
	रजिस्टर से हटाए गए व्यापार चिह्न के रजिस्ट्रीकरण का प्रत्यावर्तन और नवीकरण	
7	आवेदन दाखिल करने वाले व्यक्ति का ब्यौरा	
	हस्ताक्षर	
	नाम	
	प्राधिकार	
8	संलग्न दस्तावेज की सूची	

प्ररुप. चि.-सी

व्यापार चिह्न अधिनियम, 1999

प्रतिलिप्यधिकार अधिनियम, 1957 की धारा 45(1) के अधीन खोज और प्रमाण पत्र हेतु आवेदन

[संगत सूचना प्रत्येक शीर्ष के समक्ष रंगीन खाने में अवश्य भरी जाय]

1	आवेदक	
	प्रदत्त फीस	(उपयुक्त फीस के लिए प्रथम अनुसूची देंखें)
	नाम:*	
	व्यापार नाम	
	पता:*	
		(राज्य) (देश)
	[यदि आवेदक भारत में व्यवसाय ना करता हो तब भी भारत में सेवार्थ पता अवश्य दिया जाएगा।]	
	सेवार्थ पता:	
		(राज्य) (देश)
	[(क) अन्यथा विशिष्ट रूप से वर्णित ना होने पर आवेदक का पता वही होगा जो भारत में व्यवसाय के मुख्य स्थान के रूप में आवेदक का सेवार्थ पता है।	
	(ख) यदि आवेदक भारत में व्यवसाय ना करता हो तब भी भारत में सेवार्थ पता अवश्य दिया जाएगा।]	
	मोबाइल न.:	
	ई-मेल का पता:*	
	आवेदक की प्रकृति	
	[आवेदक निम्नलिखित श्रेणियों में से किसी एक का चयन करें-	
	1. प्रकृत व्यक्ति-एकल स्वत्वधारी, 2. प्रकृत व्यक्ति – भागीदारी 2. फर्म, 3.प्राइवेट लिमिटेड/लिमिटेड कंपनी सहित निकाय-इनकारपोरेट, 4.सीमित देयता साझेदारी, 5.सोसायटी, 6. न्यास, 7. सरकारी विभाग, 8. कानूनी संगठन, 9. कोई अन्य]	
2	आवेदक के अभिकर्त्ता (यदि कोई हो)	
	नाम:	
	पता	
	मोबाइल न.:	
	ई-मेल का पता:	
	अभिकर्त्ता की प्रकृति	
	[आवेदक निम्नलिखित श्रेणियों में से किसी एक का चयन करें-	
	*1.*रजिस्ट्रीकृत व्यापार चिह्न अभिकर्त्ता, *2.*अधिवक्ता, *3.*मान्यता प्राप्त एटॉर्नी]	
	रजिस्ट्रेशन नं.	
	अभिकर्त्ता को प्राधिकार दिए जाने की स्थिति में अभिकर्त्ता का पता आवेदक के सेवार्थ पते के रूप में उल्लिखित होगा।	
3	त्वरित (हाँ/ना)	
	चित्र/लेबल के लिए जगह	
4	आवेदन दाखिल करने वाले व्यक्ति का ब्यौरा	

	हस्ताक्षर	
	नाम	
	प्राधिकार	
5	संलग्न दस्तावेज की सूची	

प्ररूप व्या.चि.-ओ

व्यापार चिह्न अधिनियम, 1999

माल के भौगोलिक उपदर्शन (विनियमन और संरक्षा) अधिनियम, 1999 के अधीन व्यापार चिह्न को अस्वीकृत या अमान्य करने हेतु रजिस्टर/प्रति कथन में संशोधन के लिए विरोध/आवेदन की सूचना

[संगत सूचना प्रत्येक शीर्ष के समक्ष रंगीन खाने में अवश्य भरी जाय]

1	आवेदक या रजिस्ट्रीकृत स्वत्वधारी/विरोधकर्ता/आवेदन/अनुरोध करने वाला तृतीय पक्ष	
	[*(क) उपर्युक्त में से किसी एक का चयन अवश्य करना होगा जिनकी तरफ से आवेदन/अनुरोध दाखिल किया जा रहा है*	
	(ख) "आवेदक" या " रजिस्ट्रीकृत *स्वत्वधारी" वह व्यक्ति अभिप्रेत है जिसका उल्लेख संदर्भित आवेदन या* रजिस्ट्रीकृत *व्यापार चिह्न के संदर्भ में टीएमआर अभिलिखित में है। "विरोधकर्ता" से उस विरोधकर्ता का आशय है जिसका संदर्भ विरोध कार्यवाही में हो अथवा एक आवेदक जो किसी और के व्यापार चिह्न के* रजिस्ट्रीकरण *को बदलने या निरस्त करने की इच्छा से संशोधन हेतु अनुरोध करता है। "तृतीय पक्ष" से उस व्यक्ति से अभिप्रेत है जो संदर्भित आवेदन/विरोध/संशोधन का कोई पक्षकार ना हो।]*	
	फीस	(उपयुक्त फीस के लिए प्रथम अनुसूची देंखें)
	नाम:*	
	व्यापार नाम	
	पता:*	
		(राज्य) (देश)
	सेवार्थ पता:	
		(राज्य) (देश)
	मोबाइल न.:	
	ई-मेल का पता:*	
	[*(क) अन्यथा विशिष्ट रूप से वर्णित ना होने पर आवेदक का पता वही होगा जो भारत में व्यवसाय के मुख्य स्थान के रूप में आवेदक का सेवार्थ पता है।*	
	(ख) यदि आवेदक भारत में व्यवसाय ना करता हो तब भी भारत में सेवार्थ पता अवश्य दिया जाएगा।]	
	मोबाइल न.:	
	ई-मेल का पता:*	
2	आवेदक या रजिस्ट्रीकृत स्वत्वधारी/विरोधकर्ता/तृतीय पक्ष के अभिकर्त्ता जैसा भी संदर्भ हो, (यदि कोई हो)	
	नाम*:	
	पता	
	मोबाइल न.*:	
	ई-मेल का पता*:	
	अभिकर्त्ता की प्रकृति	
	[*आवेदक निम्नलिखित श्रेणियों में से किसी एक का चयन करें-*	
	1. *रजिस्ट्रीकृत व्यापार चिह्न अभिकर्त्ता*, 2. *अधिवक्ता*, 3. *मान्यता प्राप्त एटॉर्नी]*	
	रजिस्ट्रीकरण संख्याः	
	अभिकर्त्ता को प्राधिकार दिए जाने की स्थिति में अभिकर्त्ता का पता आवेदक के सेवार्थ पते के रूप में उल्लिखित होगा।	

3	प्रयोजन इस स्तंभ को तीन उपश्रेणियों मे विभाजित किया गया है और इसका चयन आवेदक द्वारा अपेक्षानुरूप किया जाएगा और इसी प्रकार से भरा जाएगा।		
क	विरोध/संशोधन दाखिल करने के लिए		
	आवेदन/रजिस्ट्रीकृत व्यापार चिह्न संख्या		वर्ग
	व्यापार चिह्न		
	प्रकाशित आवेदन की जरनल संख्या		
	[*जरनल प्रकाशन की एक प्रति संलग्न करें*]		
	विरोध /संशोधनका आधार		
	[*विरोध का आधार/संशोधन के लिए आवेदन का विस्तृत विवरण दिया जाय और विरोधकर्ता/संशोधन हेतु आवेदनकर्ता द्वारा सत्यापित हो तथा वह संलग्न किया जाय*]		
ख	के मामले में(प्रतिकथन फाइल करने के लिए)		
	विरोध/संशोधन संख्या		वर्ग
	आवेदन/रजिस्ट्रीकृत व्यापार चिह्न संख्या		
	प्रतिकथन का ब्यौरा		
	[*प्रतिकथन का विस्तृत विवरण दिया जाय और विरोधकर्ता/संशोधन हेतु आवेदनकर्ता द्वारा सत्यापित हो तथा वह संलग्न किया जाय*]		
ग	भौगोलिक उपदर्शन अधिनियम, 1999 की धारा 25(क)(ख) के तहत व्यापार चिह्न को इंकार या अमान्य करने हेतु अनुरोध		
	आवेदन/रजिस्ट्रीकृत व्यापार चिह्न संख्या		वर्ग
	संदर्भ का कथन	*[संदर्भ के कथन का विस्तृत विवरण दिया जाय और आवेदनकर्ता द्वारा सत्यापित हो तथा इसके समर्थन में आवेदक का शपथ पत्र संलग्न किया जाय]*	
4	आवेदन दाखिल करने वाले व्यक्ति का ब्यौरा		
	हस्ताक्षर		
	नाम		
	प्राधिकार		
5	संल्गन दस्तावेज की सूची, यदि कोई हो		

प्ररूप व्या.चि.-पी

व्यापार चिह्न अधिनियम, 1999

व्यापार चिह्न में रजिस्ट्रीकरण के बाद परिवर्तन के लिए आवेदन

यह प्ररूप तीन भागों अर्थात क, ख, और ग में विभाजित है।

भाग क और ग को भरना अनिवार्य है।

भाग ख को पुनः कई उपश्रेणियों में विभाजित किया गया है और इसका अपेक्षानुरूप चयन आवेदक द्वारा किया जाएगा और उसी अनुसार इसे भरा जाएगा।

[टिप्पण : एक प्ररूप केवल एक अनुरोध के लिए है। पृथक अनुरोधों के लिए पृथक अनुरोध दाखिल किया जाएगा।एक प्ररूप में एक से अधिक अनुरोध का दावा करने की स्थिति में प्रथम स्वीकृत होगा और शेष अनुरोध पर विचार नहीं किया जाएगा।

*[(क)*एक प्ररूप केवल एक परिवर्तन के अनुरोध के लिए है। पृथक परिवर्तनों के लिए पृथक अनुरोध दाखिल किया जाएगा

(ख) संगत सूचना प्रत्येक शीर्ष के समक्ष रंगीन खाने में अवश्य भरी जाय]

	भाग क [आवेदक का विवरण]	
	[*यहाँ आवेदक से उस व्यक्ति से अभिप्रेत है जो जिसकी ओर से अनुरोध प्रस्तुत किया गया है। वह साधारणतया उस चिह्न का रजिस्ट्रीकृत स्वत्वधारी या किसी समनुदेशन या हस्तांतरण के कारण चिह्न केपरवर्ती स्वत्वधारी होने का दावा करने वाला व्यक्ति होगा।*]	
	फीस	(उपयुक्त फीस के लिए प्रथम अनुसूची देंखें)
	नाम:*	
	व्यापार नाम	
	पता:*	
		(राज्य) (देश)

	सेवार्थ पता:	
		(राज्य) (देश)
	[(*क) अन्यथा विशिष्ट रूप से वर्णित ना होने पर आवेदक का पता वही होगा जो भारत में व्यवसाय के मुख्य स्थान के रूप में आवेदक का सेवार्थ पता है।*	
	(ख) यदि आवेदक भारत में व्यवसाय ना करता हो तब भी भारत में सेवार्थ पता अवश्य दिया जाएगा।]	
	मोबाइल न.:	
	ई-मेल का पता:*	
2	आवेदक के अभिकर्त्ता (यदि कोई हो)	
	नाम*:	
	पता* *[अभिकर्त्ता को प्राधिकार दिए जाने की स्थिति में अभिकर्त्ता का पता आवेदक के सेवार्थ पते के रूप में उल्लिखित होगा।]*	
	मोबाइल न.*:	
	ई-मेल का पता*:	
	अभिकर्त्ता की प्रकृति	
	[आवेदक निम्नलिखित श्रेणियों में से किसी एक का चयन करें- *1.*रजिस्ट्रीकृत व्यापार चिह्न अभिकर्त्ता, *2.*अधिवक्ता, *3.*मान्यता प्राप्त एटॉर्नी]	
3	व्यापार चिह्न के रजिस्ट्रीकरण के संशोधन के लिए विस्तृत अनुरोध/आवेदन	
	रजिस्ट्रीकृत व्यापार चिह्न संख्या:	
	[*एक से अधिक व्यापार चिह्न के लिए अनुरोध किए जाने की स्थिति में प्रथम व्यापार चिह्न संख्या लिखी जाएगी]*	
	अतिरिक्त संख्या, यदि कोई हो	
	चिह्न के प्रकार	
	[*(क)आवेदक निम्नलिखित श्रेणियों में से किसी एक का चयन करें-*	
	1. *मानक व्यापार चिह्न* 2.*सामूहिक चिह्न* 3.*प्रमाणीकरण चिह्न* 4.*श्रेणी चिह्न*	
	यहाँ मानक चिह्न से सामान्य व्यापार चिह्न के रजिस्ट्रीकरण हेतु किसी आवेदन का आशय है जो सामूहिक या प्रमाणीकरण व्यापार चिह्न अथवा चिह्नों की श्रृंखला ना हो।	
	भाग ख: अनुरोध का प्रयोजन [आवेदन स्तंभ को भरने के अनुसार चिह्नित करना होगा]	
क	स्वत्वधारी/ रजिस्ट्रीकृत उपयोक्ता के विवरण में संशोधन हेतु अनुरोध [एक आवेदन में एक ही अनुरोध किया जा सकता है]	
	में संशोधन का अनुरोध किया गया	
	स्वत्वधारी/ रजिस्ट्रीकृत उपयोक्ता का नाम:	
	[*इस खंड का प्रयोग केवल तब ही किया जाएगा जब समनुदेशन या हस्तांतरण द्वारा चिह्न की स्वत्वधारिता में कोई परिवर्तन ना हो]*	
	पता:	
	सेवा का पता:	
	अभिकर्त्ता/एटॉर्नी का विवरण:	
	[*उपर्युक्त में से किसी एक का चयन किया जाय और उनके सम्मुख स्तंभ में अनुरोध किए गए परिवर्तन का स्पष्ट उल्लेख हो]*	
ख	व्यापार चिह्न में संशोधन	*प्रस्तावित व्यापार चिह्न की प्रविष्टि करें या चिपकाए*
	रजिस्टर से माल या सेवाओं को हटाना	*[अनुरोध किए गए परिवर्तन का स्पष्ट उल्लेख हो]*
	माल और सेवाओं के निर्देश का संपरिवर्तन	*[अनुरोध किए गए परिवर्तन का स्पष्ट उल्लेख हो]*
ग	रजिस्ट्रीकरण का निरस्तीकरण	*[अनुरोध किए गए पंजीकरण के निरस्तीकरण का स्पष्ट उल्लेख हो]*
घ	एक रजिस्ट्रीकृत व्यापार चिह्न और अन्य व्यापार चिह्न के बीच संगम का विघटन	

	रजिस्ट्रीकृत व्यापार संख्या	[वह व्यापार चिह्न संख्या लिखे जिसका संबंध संदर्भित रजिस्ट्रीकृत व्यापार चिह्न से है जिसके विघटन का अनुरोध किया गया है]
ङ	रजिस्ट्रीकृत व्यापार चिह्न के समनुदेशन या हस्तांतरण	
	समनुदेशन	
	समनुदेशन विलेख या हस्तांतरण की तारीख अधिग्रहण की तारीख से अवधि के भीतर दाखिल अनुरोध	
		6 महीने के भीतर
		12 महीने के भीतर
		12 महीने के बाद
		[उपर्युक्त में से किसी एक का चयन अवश्य किया जाय]
च	भारत के विभिन्न भाग के लिए विभिन्न लोगों को समनुदेशन	
	प्रस्तावित समनुदेशी का नाम	
	प्रस्तावित समनुदेशी का पता	
	[(*क) यदि एक से अधिक समनुदेशी हों तो समनुदेशियों के विवरण उनके सम्मुख खाने में किया जाय]*	
	[(*ख) कृपया प्रस्तावित समनुदेशी के साथ क्षेत्र निर्दिष्ट किया जाय]*	
छ	धारा 40(2) के अधीन रजिस्ट्रार का प्रमाण पत्र	
	प्रमाण पत्र हेतु अनुरोध	
	[धारा *40(2)* के अनुसार अनुरोध के विवरण का उल्लेख यहाँ किया जाएगा और समनुदेशन की प्रति के साथ संदर्भ का कथन अवश्य दाखिल किया जाय]	
ज	धारा 41 के अधीन रजिस्ट्रार का अनुमोदन	
	अनुमोदन हेतु अनुरोध	
	[धारा *41* के अनुसार अनुरोध के विवरण का उल्लेख यहाँ किया जाएगा और समनुदेशन या हस्तांतरण की प्रति के साथ संदर्भ का कथन अवश्य दाखिल किया जाय]	
झ	व्यापार चिह्न की साख के बिना समनुदेशन के विज्ञापन हेतु रजिस्ट्रार के निर्देश के लिए धारा 42 के अधीन आवेदन	
	निर्देश हेतु अनुरोध	
	[धारा 42 के अनुसार अनुरोध के विवरण का उल्लेख यहाँ किया जाएगा और समनुदेशन या हस्तांतरण की प्रति के साथ संदर्भ का कथन अवश्य दाखिल किया जाय]	
ञ	समनुदेशन के लिए रजिस्ट्रार की सहमति या प्रमाणन व्यापारचिह्न के पारेषण के लिए आवेदन	
	प्रस्तावित समनुदेशन का प्रारूप विलेख और संदर्भ के कथन हलफनामे के साथ दाखिल किया जाय	
ट	व्यापार चिह्न की साख के बिना समनुदेशन के विज्ञापन हेतु रजिस्ट्रार के निर्देश के लिए धारा 42 के अधीन समय के विस्तार हेतु आवेदन	
	समय विस्तार हेतु आवेदन	
	[धारा 42 के अनुसार विवरण का उल्लेख यहाँ अवश्य किया जाय]	
	अधिग्रहण या विघटन की तारीख से अवधि के भीतर दाखिल आवेदन	
		1 माह से अधिक नहीं
		2 माह से अधिक नहीं
		3 माह से अधिक नहीं
ठ	कंपनी को व्यापार चिह्न के परवर्ती स्वत्वधारी के रूप में रजिस्ट्रीकृत करने के लिए धारा 46(4) के तहत समय विस्तार हेतु आवेदन	
	समय विस्तार हेतु आवेदन	
	[धारा 46(4) के अनुसार विवरण का उल्लेख यहाँ अवश्य किया जाय]	
	अवधि के भीतर दाखिल आवेदन	
		दो माह से अधिक नहीं
		चार माह से अधिक नहीं
		छः माह से अधिक नहीं
		[उपर्युक्त में से किसी एक का चयन करें]

	भाग ग [आवेदन/अनुरोध करने वाले व्यक्ति और दस्तावेज़ का ब्यौरा दाखिल किया जाता है]	
क	हस्ताक्षर	
	नाम	
	प्राधिकार	
ख	संलग्न दस्तावेज की सूची	

प्ररूप व्या.चि.-यू

व्यापार चिह्न अधिनियम, 1999

निरस्तीकरण/बदलाव की कार्रवाई में हस्तक्षेप के प्रयोज्य की नोटिस और रजिस्ट्रीकृत उपयोक्ता के बदलाव/ रजिस्ट्रीकृत उपयोक्ता के निरस्तीकरण रजिस्ट्रीकरण हेतु आवेदन

यह प्ररूप तीन भागों अर्थात क, ख, और ग में विभाजित है।

भाग क और ग को भरना अनिवार्य है।

भाग ख को पुनः कई उपश्रेणियों में विभाजित किया गया है और इसका अपेक्षानुरूप चयन आवेदक द्वारा किया जाएगा और उसी अनुसार इसे भरा जाएगा।

[टीप्पण : एक प्ररूप केवल एक अनुरोध के लिए है। पृथक अनुरोधों के लिए पृथक अनुरोध दाखिल किया जाएगा।एक प्ररूप में एक से अधिक अनुरोध का दावा करने की स्थिति में प्रथम स्वीकृत होगा और शेष अनुरोध पर विचार नहीं किया जाएगा।

*[(*क)एक प्ररूप केवल एक परिवर्तन के अनुरोध के लिए है। पृथक परिवर्तनों के लिए पृथक अनुरोध दाखिल किया जाएगा

*(*ख) संगत सूचना प्रत्येक शीर्ष के समक्ष रंगीन खाने में अवश्य भरी जाय]

	भाग क [आवेदक का विवरण]	
	संदर्भ रजिस्ट्रीकरण की प्रकृति	
	[(*क) आवेदक निम्नलिखित श्रेणियों में से किसी एक का चयन करें-*	
	1. *मानक व्यापार चिह्न* 2. *सामूहिक चिह्न* 3. *प्रमाणीकरण चिह्न* 4. *श्रेणी चिह्न*	
	(*ख) सामूहिक चिह्न या प्रमाणीकरण चिह्न के संदर्भ में प्ररूप व्या.चि.-एम के साथ प्रारूप विनियमन अवश्य दाखिल किया जाएगा।]*	
	प्रदत्त फीस	(उपयुक्त फीस के लिए प्रथम अनुसूची देंखें)
1	आवेदक का विवरण	
क	रजिस्ट्रीकृत स्वत्वधारी का नाम:*	
	व्यापार नाम:	
	पता:*	
		(राज्य) (देश)
	मोबाइल न.:	
	ई-मेल का पता:*	
	रजिस्ट्रीकृत स्वत्वधारी का सेवार्थ पता	
		(राज्य) (देश)
ख	प्रस्तावित रजिस्ट्रीकृत उपयोक्ता का नाम*:	
	प्रस्तावित उपयोक्ता की प्रवृत्ति	
	[*आवेदक निम्नलिखित श्रेणियों में से किसी एक का चयन करें-*	
	1. *प्रकृत व्यक्ति-एकल स्वत्वधारी*, 2. *प्रकृत व्यक्ति – भागीदारी फर्म*, 3. *प्राइवेट लिमिटेड/लिमिटेड कंपनी सहित बॉडी-इंकॉर्पोरेट*, 4. *सीमित देयता साझेदारी*, 5. *सोसायटी*, 6. *न्यास*, 7. *सरकारी विभाग*, 8. *कानूनी संगठन*, 9. *कोई अन्य]*	
ख	व्यापार नाम:	
	पता:*	
		(राज्य) (देश)
	मोबाइल न.:	
	ई-मेल का पता:*	
	रजिस्ट्रीकृत स्वत्वधारी का सेवार्थ पता	
		(राज्य) (देश)

ग	हस्तक्षेपकर्ता का नाम:*	
	व्यापार नाम:	
	पता:*	
		(राज्य) (देश)
	मोबाइल न.:	
	ई-मेल का पता:*	
[यह पता भारत में आवेदक के प्रमुख व्यवसाय का पता होना चाहिए] *[(क) जबतक कि अन्यथा स्पष्ट उल्लिखित न हो, आवेदक का पता ही उसका सेवार्थ पता होगा जिसका भारत में मुख्य व्यवसाय स्थान हो।* *(ख) यदि आवेदक भारत में व्यवसाय नहीं करता हो तो उसका भारत में सेवार्थ पता अवश्य दिया जाय।]*		
2	आवेदक के अभिकर्त्ता (यदि कोई हो)	
क	रजिस्ट्रीकृत स्वत्वधारी के अभिकर्ता	
	नाम:	
	पता:	
	मोबाइल न.*:	
	ई-मेल का पता*:	
	अभिकर्त्ता की प्रकृति	
ख	प्रस्तावित रजिस्ट्रीकृत उपयोक्ता के अभिकर्ता	
	नाम:	
	पता:	
	मोबाइल न.*:	
	ई-मेल का पता*:	
	अभिकर्त्ता की प्रकृति	
	[आवेदक निम्नलिखित श्रेणियों में से किसी एक का चयन करें- *1.*रजिस्ट्रीकृत व्यापार चिह्न अभिकर्त्ता, *2.*अधिवक्ता, *3.*मान्यता प्राप्त एटॉर्नी]	
	रजिस्ट्रेशन नं. जिसके संदर्भ में अनुरोध किया गया है	
	वर्ग:	
	भाग ख: अनुरोध का प्रयोजन [आवेदन स्तंभ को भरने के अनुसार चिह्नित करना होगा]	
क	रजिस्ट्रीकृत उपयोक्ता के रजिस्ट्रीकरण हेतु अनुरोध	
	माल और सेवा का विवरण	
	अवधि	.....से.....तक
	शर्त यदि कोई हो	
ख	माल/सेवा या शर्त/बाधा से संबंधित रजिस्ट्रीकृत उपयोक्ता के रजिस्ट्रीकरण में बदलाव हेतु	
	अनुरोध किए बदलाव का विवरण	
ग	रजिस्ट्रीकृत उपयोक्ता के रजिस्ट्रीकरण का निरस्तीकरण	
	निरस्तीकरण का आधार	
		आधार का कथा व्या. चि.-यू के साथ संलग्न करना होगा।
घ	रजिस्ट्रीकृत उपयोक्ता के रजिस्ट्रीकरण के संबंध में अंतर या निरस्तीकरण की कार्यवाही में हस्तक्षेप करने के इरादे का नोटिस	
	कार्यवाही में हस्तक्षेप करने का आधार	
	भाग ग [आवेदन/अनुरोध करने वाले व्यक्ति और दस्तावेज़ का ब्यौरा दाखिल किया जाता है]	
	आवेदक (आवेदकों) का ब्यौरा	
	हस्ताक्षर	
	नाम	
	प्राधिकार	
	संलग्न दस्तावेज की सूची	

प्ररूप व्या. चि.-जी

व्यापार चिह्न अधिनियम, 1999

व्यापार चिह्न अभिकर्त्ता रजिस्ट्रीकरण/नवीकरण/प्रत्यावर्तन/परिवर्तन

संगत सूचना प्रत्येक शीर्ष के समक्ष रंगीन खाने में अवश्य भरी जाय]		
	भाग क [आवेदक का विवरण]	
	प्रदत्त फीस	(उपयुक्त फीस के लिए प्रथम अनुसूची देखें)
	उपनाम से शुरू करते हुए पूरा नाम	
	पिता/पति का नाम *	
	आवास का पता*	
		(राज्य) (देश)
	व्यवसाय का मूल स्थान	
		(राज्य) (देश)
	राष्ट्रीयता*	
	मोबाइल न.*:	
	ई-मेल का पता*:	
	भाग ख: अनुरोध का प्रयोजन [आवेदन कॉलम को भरने के अनुसार चिह्नित करना होगा]	
क	व्यापार चिह्न अभिकर्ता के रूप में रजिस्ट्रीकरण का आवेदन	
	जन्म स्थान और तारीख	
	व्यवसाय का पूर्ण विवरण	
	व्यापार चिह्न अभिकर्त्ता के रूप में रजिस्ट्रीकरण हेतु अर्हता का विवरण	
	क्या किसी समय व्यापार चिह्न अभिकर्त्ता के रजिस्टर से हटाए गए और यदि ऐसा हो तो उसका विवरण दें	
ख	व्यापार चिह्न अभिकर्त्ता के रजिस्टर में किसी व्यक्ति के नाम के नवीकरण/प्रत्यावर्तन हेतु आवेदन	
	व्यापार चिह्न अभिकर्त्ता संख्या	
	नाम:	
	पता	
	मोबाइल न.:	
	ई-मेल का पता:	
i	निरंतरता की अवधि	.....से.....तक
ii	पिछले रजिस्ट्रीकरण की समाप्ती की तारीख	
	वह अवधि जिसके बाद प्रत्यावर्तन या निरंतरता का अनुरोध दाखिल किया गया [निम्न उल्लिखित से उपयुक्त चयन करें] • *छः माह के बाद लेकिन हटाने की तारीख से एक वर्ष के भीतर* • *एक वर्ष के बाद लेकिन हटाने की तारीख से दो वर्ष के भीतर* • *दो वर्ष के बाद लेकिन हटाने की तारीख से तीन वर्ष के भीतर*	
ग	व्यापार चिह्न अभिकर्त्ता के रजिस्टर में परिवर्तन हेतु आवेदन	
	व्यापार चिह्न अभिकर्त्ता संख्या:	
	नाम:	
	विवरण इस प्रकार बदले जाएं	
	नाम:	
	निवास स्थान का पता	
	व्यवसाय के मूल स्थान का पता	
	शैक्षणिक योग्यता	
	मोबाइल न.:	

	ई-मेल का पता:	
	भाग ग [आवेदन/अनुरोध करने वाले व्यक्ति और दस्तावेज़ का ब्यौरा दाखिल किया जाता है]	
	हस्ताक्षर	
	नाम	
	प्राधिकार	
	संलग्न दस्तावेज की सूची	

तृतीय अनुसूची
रजिस्ट्रार के उपयोग के लिए प्ररूप
प्ररूपों की सूची

प्ररूप सं.	धारा	शीर्षक
आर जी-1	23(3)	रजिस्ट्रीकरण के पूरा न होने की नोटिस
आर जी-1	23(2)	व्यापार चिह्न के रजिस्ट्रीकरण का प्रमाणपत्र
आर जी-1	25(3)	अंतिम रजिस्ट्रीकरण के अवसान की सूचना
आर जी-1	नियम 149	व्यापार चिह्न अभिकर्त्ता के रूप में किसी व्यक्ति के रजिस्ट्रीकरण का प्रमाणपत्र

प्ररूप आर जी-1
भारत सरकार व्यापार चिह्न रजिस्ट्री व्यापार चिह्न अधिनियम, 1999
रजिस्ट्रीकरण के पूरा न होने की सूचना धारा 23(3) नियम 52

सं.----------

व्यापार चिह्न अधिनियम, 1999 की धारा 23(3) द्वारा यथा अपेक्षित सूचना दी जाती है, कि उस व्यापार चिह्न का रजिस्ट्रीकरण, जिसकी, बाबत----------20---------- को उपरोक्तानुसार संख्याकित आवेदन किया गया था, आवेदक की चूक के कारण पूरा नहीं हुआ है। यदि इस सूचना की तारीख से इक्कीस दिन के भीतर रजिस्ट्रीकरण पूरा नहीं कर दिया जाता, तो आवेदन को परित्यक्त मान लिया जाएगा।

इस आवेदन से संबंधित सभी संसूचनाएं भारत में निम्नलिखित पते पर भेजी जा सकेगी:-

तारीख----------20---------

रजिस्ट्रार, व्यापार चिह्न

सेवा में,

प्ररूप आर जी-2
भारत सरकार व्यापार चिह्न रजिस्ट्री व्यापार चिह्न अधिनियम, 1999
व्यापार चिह्न के रजिस्ट्रीकरण का प्रमाणपत्र (धारा 23(2), नियम 56(1))

व्यापार चिह्न सं.----------

तारीख----------

प्रमाणित किया जाता है कि व्यापार चिह्न जिसकी समाकृति इसके साथ संलग्न है---------- की बाबत---------- तारीख---------- के सं. के अधीन ---------- वर्ग में ---------- के नाम में रजिस्ट्रार में रजिस्ट्रीकृत किया गया है। तारीख----------20---------- को मेरे निदेशानुसार मुद्रांकित किया गया।

रजिस्ट्रार, व्यापार चिह्न

रजिस्ट्रीकरण, ऊपर उल्लिखित पहली तारीख से 10 वर्ष के लिए है और तब इसे 10 वर्ष की अवधि के लिए और उसके पश्चात् प्रत्येक 10 वर्ष की अवधि की समाप्ति के पश्चात् भी नवीकरण किया जा सकेगा [व्यापार चिह्न अधिनियम, 1999 की धारा 25 और व्यापार चिह्न नियम, 2017 के नियम 57 से 61 देखें]

यह प्रमाणपत्र विधिक कार्यवाही में या विदेश में रजिस्ट्रीकरण अभिप्राप्ति के उपयोग के लिए नहीं है।

टिप्पण- इस व्यापार चिह्न के स्वामित्व में कोई परिवर्तन, या भारत में कारबार के प्रधान स्थान के पता या सेवा के लिए पते में परिवर्तन होने पर तुरंत परिवर्तन को रजिस्टर करने के लिए आवेदन किया जाना चाहिए।

प्ररूप आर जी-3

भारत सरकार व्यापार चिह्न रजिस्ट्री व्यापार चिह्न अधिनियम, 1999

व्यापार चिह्न के रजिस्ट्रीकरण का प्रमाणपत्र (धारा 23(2), नियम 58(1))

रजिस्ट्रीकृत व्यापार चिह्न सं.----------

वर्ग ----------

व्यापार चिह्न अधिनियम, 1999 की धारा 25(3) द्वारा यथा अपेक्षित सूचना दी जाती है, कि पूर्वोक्त व्यापार चिह्न का रजिस्ट्रीकरण ---------- को समाप्त होगा और यह कि तारीख ---------- को यह उससे पहले ---------- रुपए की विहित फीस सहित संलग्न व्या.चि.-12 पर आवेदन के व्यापार चिह्न रजिस्ट्री में प्राप्त होने पर 10 वर्ष की और अवधि के लिए रजिस्ट्रीकरण का नवीकरण किया जा सकेगा।

तारीख----------20---------

रजिस्ट्रार, व्यापार चिह्न

प्ररूप आर जी-4

भारत सरकार व्यापार चिह्न रजिस्ट्री व्यापार चिह्न अधिनियम, 1999

व्यापार चिह्न अभिकर्त्ता के रूप में रजिस्ट्रीकरण का प्रमाणपत्र (नियम 149)

सं.----------

प्रमाणित किया जाता है कि ---------- के ----------को तारीख ---------- 20---------को, व्यापार चिह्न नियम, 2017 के नियम 149 के अधीन रखे गए व्यापार चिह्न अभिकर्त्ताओं के रजिस्टर में रजिस्ट्रीकरण किया गया था।

रजिस्ट्रार, व्यापार चिह्न

चौथी अनुसूची

प्रविष्टि संख्या	यह मामला जिसके लिए खर्च अधिनिर्णीत किया जाना है	राशि (रुपए में)
1	एक दिन की ऐसी सुनवाई के लिए जिसके अन्तर्गत साक्षियों से परीक्षा की जाती है	1,000
2	जहां साक्षियों से कोई परीक्षा नहीं हुई है वहां एक दिन की सुनवाई के लिए	500
3	किसी पक्षकार की याचना पर सुनवाई का स्थगन मंजूर करने के लिए	1,000 रुपए और उस दिन जिनकी परीक्षा होनी थी उन्हे पुन: आहूत करने का खर्च।
4	शपथपत्र से विवादित विषय निकाल देने के लिए	5,000
5	यदि युक्तिसंगत नोटिस के बाद विरोध दाखिल करने पर आवेदक द्वारा विरोध कार्यवाही का विरोध नहीं करने के लिए	10,000
6	विरोध कार्यवाही में प्रतिकथन दाखिल करने के बाद विरोधकर्ता द्वारा विरोध कार्यवाही का विरोध नहीं करने के लिए	10,000
7	साक्षियों की हाजिरी के लिए जीवन निर्वाह भत्ता यात्रा भत्ता	1,000 रुपए (निम्नलिखित टिप्पण देखिए) प्रत्येक तरफ का प्रथम वर्ग या द्वितीय वर्ग का रेलगाड़ी या स्टीमर का भाड़ा और यदि रेलगाड़ी या स्टीमर वहां न चलता हो तो साक्षी के ओहदे या हैसियत के हिसाब में 50 रुपए या 20 रुपए प्रति किलोमीटर होगा।
टिप्पण- साक्षियों के लिए जीवन निर्वाह भत्ते और यात्रा भत्ते की दरों में परिवर्तन उपर्युक्त निर्दिष्ट अधिकतम राशि के अध्यधीन साक्षियों की हैसियत के अनुसार होगा।		

रजिस्ट्रार के समक्ष नियम 118 की कार्यवाहियों में अनुमत्त परिमाण लागत

[सं. 8/16/2015-आईपीआर-IV-पार्ट-I]

राजीव अग्रवाल, संयुक्त सचिव

MINISTRY OF COMMERCE AND INDUSTRY

(Department of Industrial Policy and Promotion)

NOTIFICATION

New Delhi, the 6th March, 2017

G.S.R. 199(E).—Whereas a draft of certain rules, namely, the Trade Marks Rules, 2015 were published as required under sub-section (4) of section 157 of Trade Marks Act, 1999 (47 of 1999), *vide* notification of the Government of India in the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) number G.S.R. 879 (E) dated, the 17th November, 2015, in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), inviting objections and suggestions from all persons likely to be affected thereby, before the expiry of a period of thirty days from the date on which copies of the Gazette containing the said notification were made available to the public;

And whereas copies of the Gazette were made available to the public on the 17th November, 2015;

And whereas, objections and suggestions have been received from various persons and stakeholders within the specified period in respect of the draft rules contained in the said notification and all the objections and suggestions have been duly consulted by the Central Government Now, therefore, in exercise of the powers conferred by section 157 of the Trade Marks Act, 1999 (47 of 1999), the Central Government hereby makes the following rules in supersession of the to replace Trade Marks Rules, 2002, except as respect things done or omitted to be done before such supersession, namely:-

PART I
CHAPTER I
PRELIMINARY

1. Short title and commencement. — (1) These rules may be called the Trade Marks Rules, 2017.

(2) They shall come into force on date of publication in the official Gazette.

2. Definitions. – (1) In these rules, unless the context otherwise requires, **—**

(a) "Act" means the Trade Marks Act, 1999 (47 of 1999);

(b) "agent" means a person authorised to act as such under section 145 of the Act;

(c) "application for registration of a trademark" includes the trademark for goods or services contained in it;

(d) "appropriate office of the Trade Marks Registry" means the relevant office of the Trade Marks Registry as specified in rule 4;

(e) "class fee" means the fee prescribed for the filing of an application for registration of a trademark in a particular class;

(f) "convention country" means a country or group of countries or union of countries or Inter-Governmental organisations of countries declared as such under sub-section (1) of section 154;

(g) "convention application" means an application for registration of a trademark made by virtue of section 154;

(h) "divisional application" means-

(i) an application containing a request for the division of goods or services in a class for the registration of a trade mark; or

(ii) a divided application made by the division of a single application for the registration of a trade mark for separate classes of goods or services;

(i) "divisional fee" means fee prescribed against entry no. 14 in the First Schedule;

(j) "Form" means a form set forth in either the Second or the Third Schedule;

(k) "graphical representation" means the representation of a trademark for goods or services represented or capable of being represented in paper form and includes representation in digitised form;

(l) "Journal" means the trademarks Journal made available at official website of Controller General of Patents, Designs and Trade Marks;

(m) "notified date" means the date on which these rules come into force;

(n) "old law" means the Trade and Merchandise Marks Act, 1958 and rules made there under existing immediately before the commencement of the Act;

(o) "opposition" means an opposition to the registration of a trademark or a collective trademark or a certification trademark, as the case may be and includes an opposition to grant of protection to an international registration designating India and opposition to alteration of registered trademark;

(p) "principal place of business in India" means the relevant place in India as specified in rule 3;

(q) "publish" means published in the trademarks Journal made available on the official website of Controller General of Patents, Designs and Trademarks;

(r) "registered trademark agent" means a trademark agent whose name is actually on the register of trademarks agents maintained under rule 142;

(s) "renewal" means and includes renewal of registration of a trademark, certification trademark or collective trademark, as the case may be;

(t) "schedule" means a Schedule to the rules;

(u) "section" means a section of the Act;

(v) Small Enterprise means:

(i) in case of an enterprise engaged in the manufacture or production of goods, an enterprise where the investment in plant and machinery does not exceed the limit specified for a medium enterprise under clause (a) of sub-section (1) of section 7 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006); and

(ii) In case of an enterprise engaged in providing or rendering of services, an enterprise where the investment in equipment is not more than the limit specified for a medium enterprise under clause (b) of sub-section (1) of section 7 of the Micro, Small and Medium Enterprises Development Act, 2006.

Explanation: "enterprise" means an industrial undertakings or a business concern or any other establishment, by whatever name called, engaged in the manufacture or production of goods in any manner pertain to any industry specified in the first schedule to the Industries (Development and Regulation) Act, 1951 (65 of 1951) or engages in providing or rendering or any services or services in such an industry.

(iii) In case of a foreign enterprise, an enterprise which fulfills the requirements as mentioned in clauses (i) and (ii) above.

Explanation: In calculating the investment in the plant and machinery, reference rates of foreign currency of Reserve Bank of India shall prevail.

(w) "specification" means the designation of goods or services in respect of which a trademark or a registered user of a trademark is registered or proposed to be registered;

(x) "Startup" means

(i) an entity in India recognised as a startup by the competent authority under Startup India initiative,

(ii) In case of a foreign entity, an entity fulfilling the criteria for turnover and period of incorporation / registration as per Startup India Initiative and submitting declaration to that effect.

Explanation: In calculating the turnover, reference rates of foreign currency of Reserve Bank of India shall prevail.

(y) All other words and expressions used but not defined in these rules but defined in the Act or in the Geographical Indications of Goods (Registration and Protection) Act, 1999 (48 of 1999), the Copyright Act, 1957 (14 of 1957) shall have the meanings assigned to them in those Acts.

(2) In these rules, except as otherwise indicated, a reference to a section is a reference to that section in the Act, a reference to a rule is a reference to that rule in these rules, a reference to a Schedule is a reference to that Schedule to

these rules and a reference to a Form is a reference to that Form contained in the Second Schedule or the Third Schedule, as the case may be, to these rules.

3. Principal place of business in India.— "Principal place of business in India" means—

(i) where a person carries on business in the goods or services concerned in a trademark —

(a) if the business is carried on in India at only one place, that place;

(b) if the business is carried on in India at more places than one, the place mentioned by him as the principal place of business in India;

(ii) where a person is not carrying on a business in the goods or services concerned in a trademark—

(a) if he is carrying on any other business in India at only one place, that place;

(b) if he is carrying on any other business in India at more places than one, the place mentioned by him as the principal place of business in India; and

(iii) where a person does not carry on any business in India but has a place of residence in India, then such place of residence in India.

4. Appropriate office of the Trade Marks Registry.— The appropriate office of the Trade Marks Registry for the purposes of making an application for registration of a trademark under section 18 or for giving notice of opposition under section 21 or for making an application for removal of a trademark under section 47 or cancelling or varying the registration of a trademark under section 57 or for any other proceedings under the Act and the rules shall be —

A. in relation to a trademark on the Register of Trade Marks at the notified date, the office of the Trade Marks Registry within whose territorial limits—

(i) the principal place of business in India of the registered proprietor of the trademark as entered in the register at such date is situate;

(ii) where there is no entry in the register as to the principal place of business in India of the registered proprietor, the place mentioned in the address for service in India as entered in the register at such date is situate;

(iii) in the case of jointly registered proprietors, the principal place of business in India of the proprietor whose name is entered first in the register as having such place of business in India at such date is situate;

(iv) where none of the jointly registered proprietors is shown in the register as having a principal place of business in India, the place mentioned in the address for service in India of the joint proprietors as entered in the register at such date, is situate;

(v) if no principal place of business in India of the registered proprietor of the trademark or in the case of joint registration, of any of the joint proprietors of the trademark, is entered in the register, and the register does not contain any address for service in India, the place of the office of the Trade Marks Registry where the application for registration of the trademark was made, is situate, and

B. in relation to a trademark for which an application for registration is pending at the notified date or is made on or after the notified date, the office of the Trade Marks Registry within whose territorial limits—

(i) the principal place of business in India of the applicant as disclosed in the application or, in the case of joint applicants, the principal place of business in India of the applicant whose name is first mentioned in the application, as having such place of business is situate;

(ii) where neither the applicant nor any of the joint applicants, as the case may be, has a principal place of business in India, the place mentioned in the address for service in India as specified in the application is situate.

5. Jurisdiction of appropriate office not altered by change in the principal place of business or address for service.— No change in the principal place of business in India or in the address for service in India, as the case may be,—

A. of a registered proprietor or of any of the jointly registered proprietors in relation to any trademark on the register at the notified date, made or effected subsequent to that date; or

B. of an applicant for registration or of any of the joint applicants for registration in relation to any trademark for which an application for registration is either pending at the notified date or is made on or after that date, made or effected subsequent to that date or to the date of filing of such application, as the case may be,

shall affect the jurisdiction of the appropriate office of the Trade Marks Registry.

6. Entry of the appropriate office in the Register. — In respect of every trademark on the register at the notified date or registered thereafter the Registrar shall cause to be entered in the register, the appropriate office of the Trade Marks Registry and the Registrar may, at any time, correct any error in the entry so made.

7. Transfer of pending applications and proceedings to appropriate offices of the Trade Marks Registry. — Every application and proceeding pending before the Registrar at the notified date in relation to a trademark shall be deemed to have been transferred to the appropriate office of the Trade Marks Registry.

8. Leaving of documents, etc.— All applications, notices, statements or other documents or any fees authorised or required by the Act or the rules to be made, served, left or sent or paid at or to the Trade Marks Registry in relation to a trademark on the Register of trademarks on the notified date or for which an application for registration is pending on, or is made on or after the notified date, shall be made, served, left or sent or paid to the appropriate office of the Trade Marks Registry:

Provided that the Registrar may, by notification in the journal, permit the filing of certain forms or documents, other than the application for the registration of a trademark in any other office of the Trade Marks Registry.

9. Issue of notices etc.—Any notice or communication relating to an application, matter or proceeding under the Act or the rules may be issued by the Head of Office or any other officer authorised by the Registrar.

10. Fees. — (1) The fees to be paid in respect of applications, oppositions, registration, renewal, expedited processing of application or any other matters under the Act and the rules shall be those as specified in the First Schedule.

(2) Where in respect of any matter, a fee is required to be paid under the rules, the form or the application or the request of the petition thereof, it shall be accompanied by the prescribed fee.

(3) Fees may be paid electronically or in cash or sent by money order addressed to the Registrar or by a bank draft issued or by a banker's cheque drawn on a scheduled bank at the place where the appropriate office of the Trade Marks Registry is situated and if sent through post shall be deemed to have been paid at the time when the money order or the properly addressed bank draft or banker's cheque is received in the office.

(4) Bank drafts and banker's cheque shall be crossed and made payable to the Registrar at the appropriate office of the Trade Marks Registry and they shall be drawn on a scheduled bank at the place where the appropriate office of the Trade Marks Registry is situate.

(5) Where a fee is payable in respect of filing of a document and where the document is filed without fee or with insufficient fee, such document shall be deemed not to have been filed for the purposes of any proceedings under these rules.

11. Forms. — (1) The Forms set forth in the Second and the Third Schedules shall be used in all cases to which they are applicable and may be modified as directed by the Registrar to meet other cases.

(2) Any Form, when filed at the Trade Marks Registry, shall be accompanied by the prescribed fee.

(3) A requirement under this rule to use a Form as set forth in the Schedule shall be satisfied by the use of a replica of that Form containing all the information required by the Form as set forth and complies with any direction as to the use of such a Form.

(4) The Registrar may after informing the public in the Journal or through public notice on official website specify such Forms as are required to be submitted in electronic mode. Thereafter, such Forms shall be completed in such manner as may be laid down by the Registrar so as to permit an automated input of the content into a computer by character recognition or scanning.

12. Size, etc of documents.— (1) Subject to any other directions that may be given by the Registrar, all applications, notices, statements, or other documents except trademarks, authorised or required by the Act or the rules made thereunder, served, left or sent, at or to the Trade Marks Registry or with or to the Registrar shall be typewritten and printed in Hindi or in English in legible characters with deep permanent ink upon strong paper of A-4 or legal size on one side only, and shall have on the left hand side thereof a margin of not less than four centimeters.

(2) Duplicate documents including copies of trademark shall be filed at the Trade Marks Registry if at any time required by the Registrar.

(3) The Registrar may after informing the public in the Journal alter the size, of all such applications, notices, statements or other document and forms required under the rules to make it compatible in electronic mode.

(4) The Registrar may, after informing the public in the Journal, permit the filing of applications, statements, notices or other documents by electronic mode subject to such guidelines and instructions as he may specify in the Journal.

13. Signing of documents. — (1) Any document required to be signed under the Act and the Rules shall be signed by the applicant or opponent or by a person duly authorised for the purpose.

(2) Signatures to any documents shall be accompanied by the name of the signatory in Hindi or in capital letters, in English.

(3) In case of online filing of the document, the expression 'Signing' includes digital signature.

14. Service of documents. — (1) All applications, notices, statements, papers having representations affixed thereto, or other documents authorised or required by the Act or the rules made thereunder, served, left or sent, at or to the Trade Marks Registry or with or to the Registrar or any other person may be delivered by hand or sent through the post by a prepaid letter or may be submitted electronically in the manner as laid down by the Registrar.

(2) An application or any document so sent shall be deemed to have been made, served, left or sent at the time when the letter containing the same would be delivered in the ordinary course of post.

(3) In proving such sending, it shall be sufficient to prove that the letter was properly addressed and put into the post.

(4) After the filing of an application in the Trade Marks Registry, any person while making any correspondence relating thereto shall furnish the following particulars, namely:—

(a) the application number or numbers, if any;

(b) the date and place of filing;

(c) the appropriate class or classes, as the case may be, in relation to which the application is filed;

(d) an address for communication; and

(e) the concerned agent's code, if any, and the concerned Proprietor's code, if allotted.

(5) The Registrar after informing the public in the Journal may accept applications, notices, statements, or other documents online through the gateway provided for this purpose, or in case of documents not requiring the payment of a fee, through e-mail to a designated email address for the purpose.

15. Particulars of address etc. of applicants and other persons.— (1) Names and addresses of the applicants and other persons shall be given in full, together with their nationality, and such other particulars as may be necessary for identification.

(2) In the case of a partnership firm, the full name and nationality of every partner thereof shall be given.

(3) In the case of an application from a convention country and persons having no principal place of business in India, their addresses in their home country shall be given in addition to their address for service in India.

(4) In the case of a body corporate or firm, the country of incorporation or the nature of registration, if any, as the case may be, shall be given.

16. Statement of principal place of business in India in the application. — (1) Every application for registration of a trademark shall state the principal place of business in India, if any, of the applicant or in the case of joint applicants, of such of the joint applicants, a principal place of business in India and the same shall be the address of the applicant.

(2) Subject to the provisions of rules 17, 18 and 20, any written communication addressed to an applicant or in the case of joint applicants to a joint applicant, in connection with the registration of a trademark, at the address of his principal place of business in India given by him in the application shall be deemed to be properly addressed.

17. Address for service.— (1) Every applicant or opponent or any person concerned in any proceeding under the Act or rules shall furnish to the Registrar an address for service in India comprising of a postal address in India and a valid e-mail address and such address shall be treated as the address for service of such applicant or opponent or person:

Provided that a trademark agent shall also be required to furnish a mobile number registered in India.

(2) Any written communication addressed to a person as aforesaid at an address for service in India given by him shall be deemed to be properly addressed.

(3) Unless an address for service in India as required in sub-rule (1) is given, the Registrar shall be under no obligation to send any notice that may be required by the Act or the rules and no subsequent order or decision in the proceedings shall be called in question on the ground of any lack or non-service of notice.

18. Service of Documents by the Registrar. — (1) All communications and documents in relation to application or opposition matter or registered trademark may be served by the Registrar by leaving them at, or sending them by post to the address for service of the party concerned or by email communication.

(2) Any communication or document so sent shall be deemed to have been served, at the time when the letter containing the same would be delivered in the ordinary course of post or at the time of sending the email.

(3) To prove such service, it shall be sufficient to prove that the letter was properly addressed and put into the post or the email communication was sent to the email id provided by the party concerned.

19. Agency.— (1) The authorisation of an agent for the purpose of section 145 shall be executed in Form TM-M.

(2) In the case of such authorisation, service upon the agent of any document relating to the proceeding or matter shall be deemed to be service upon the person so authorising him; all communications directed to be made to such person in respect of the proceeding or matter may be addressed to such agent, and all appearances before Registrar relating thereto may be made by or through such agent.

(3) In any particular case, the Registrar may require the personal signature or presence of an applicant, opponent, proprietor, registered user or other person.

(4) In case of withdrawal by the agent from the proceedings or from doing any act for which he has been authorised, in respect of an application or opposition wherein no principle place of business in India is mentioned, the applicant or opponent shall, within a period of two months from the date of such withdrawal, provide an address for service in India. If he fails to provide address for service in India within such period, he shall be deemed to have abandoned the application or opposition, as the case may be.

(5) In case of revocation of authorisation by the applicant or opponent in respect of an application or opposition wherein no principle place of business in India is mentioned, the applicant or opponent, as the case may be, shall provide the address for service in India within a period of two months from such revocation. If he fails to provide address for service in India within such period, he shall be deemed to have abandoned the application or opposition, as the case may be.

20. Classification of goods and service— (1) Classification of goods and service for the purpose of registration of trademark, the goods and services shall be classified as per current edition of "the International Classification of goods and services (NICE classification)" published by the World Intellectual Property Organization (WIPO).

(2) The Registrar shall publish a class wise and an alphabetical index of such goods and services, including goods and services of Indian origin.

21. Preliminary advice by Registrar as to distinctiveness. — An application for preliminary advice by the Registrar under sub-section (1) of Section 133 shall be made in Form TM-M in respect of any goods or services comprised as published by the Registrar under sub-rule (2) of rule 20, along with the fees specified in entry number 14 of the First Schedule and accompanied by one representation of the trademark.

22. Request to Registrar for Search.— (1) Any person may request the Registrar, in Form TM-C to cause a search to be made and for issue of certificate under sub-section (1) of section 45 of Copyright Act, 1957 (14 of 1957) to the effect that no trademark identical with or deceptively similar to such artistic work, as sought to be registered as copyright under the Copyright Act, 1957 (14 of 1957) has been registered as a trademark under the Trade Marks Act, 1999 (47 of 1999) in the name of, or that no application has been made under that Act for such re-registration by any person other than the applicant. The certificate shall ordinarily be issued within thirty working days of the date of request:

Provided, the Registrar may call for a statement of requirements from the applicant and if the requirements are not complied with within two months from the date of such calling of the statement, the request on Form TM-C shall be treated as abandoned.

(2) The Registrar may cancel the certificate issued under sub-rule (1) after giving notice and stating the grounds on which the Registrar proposes to cancel the certificate and after providing reasonable opportunity of being heard.

(3) Subject to proviso of sub-rule (1) or sub-rule (2), the Registrar shall ordinarily within seven working days issue an expedited search certificate under sub-section (1) of section 45 of the Copyright Act, 1957 (14 of 1957) on a request received in Form TM-C on payment of fee specified in First Schedule.

(4) Before abandoning the request in Form TM-C, as the case may be, for non-compliance of the statement of requirements when called for, the Registrar shall provide an opportunity of being heard in the matter.

CHAPTER II

PROCEDURE FOR REGISTRATION OF TRADEMARKS APPLICATION

23. Form and signing of application.— (1) An application for the registration of a trademark in respect of specification of goods or services shall be made in TM-A and shall be signed by the applicant or his agent.

(2) An application for the registration of a trademark, for goods or services shall—

(a) explain with sufficient precision, a description by words, of the trademark, if necessary, to determine the right of the applicant;

(b) be able to depict the graphical representation of the trademark;

(c) be considered as a three dimensional trademark only if the application contains a statement to that effect;

(d) be considered as a trademark consisting of a combination of colours only if the application contains a statement to that effect.

(3) An amendment to divide an application under proviso to section 22 shall be made in Form TM-M.

(4) An application, not being a series trademark shall be in respect of one trademark only, for as many class or classes of goods or services as may be made.

(5) In the case of an application for registration in respect of all the goods or services included in a class or of a large variety of goods or services in a class, the Registrar may refuse to accept the application unless he is satisfied that the specification is justified by the use of the trademark which the applicant has made or intends to make if and when it is registered:

Provided that while making an application for registration of a trademarks, the names of goods and services stated in the application shall, as far as may be, correspond to those given in the classification of the goods and services published by the registrar under sub-rule (2) of rule 20.

(6) Where an applicant files a single application and the Registrar determines that the goods or services applied for fall in class or classes in addition to those applied for, the applicant shall restrict the specification of goods or services to the class or classes already applied for or amend the application to add additional class or classes by filing an application on Form TM-M and by payment of the appropriate fee:

Provided that in case all the goods or services fall in a class other than the class specified, the registrar may permit the correction of class by filing the request on Form TM-M.

24. Application under convention arrangement. – (1) Where a right to priority is claimed by reason of an application for registration of a trademark duly filed in a convention country under section 154, a certificate by the Registrar or competent authority of that Trade Marks Office shall be submitted with the application for registration of trademark and it shall include the particulars of the trademark, the country or countries and the date or dates of filing of application and such other relevant particulars as may be required by the Registrar.

(2) Unless such certificate has been filed at the time of the filing of the application for registration, there shall be filed, within two months of the filing of such application certifying or verifying to the satisfaction of the Registrar, the date of the filing of the application, the country or countries, the representation of the trademark, and the goods or services covered by the application.

(3) The application shall include a statement indicating the filing date of the filing in the convention application, the name of the convention country where it was filed, the serial number, if any and a statement indicating that priority is claimed:

Provided that where the applicant files more priority claims than one under section 154 in respect of the same trademark, the Registrar shall take the date of the earlier application in a convention country, as the priority date:

Provided further that such priority date shall not be allowed for the goods and services not covered in the convention application:

Provided also that only a single priority shall be claimed in respect of all the goods or services mentioned in the application for registration of a trademark filed under rule 23(1).

25. Statement of user in applications.— (1) An application to register a trademark shall, unless the trademark is proposed to be used, contain a statement of the period during which, and the person by whom it has been used in respect of all the goods or services mentioned in the application.

(2) In case, the use of the trademark is claimed prior to the date of application, the applicant shall file an affidavit testifying to such use along with supporting documents.

26. Representation of trademark. — (1) Every application for the registration of a trademark, and where additional copies of the application are required, every such copy, shall contain a clear and legible representation of the trademark of size not exceeding 8 cm x 8 cm.

(2) Where an application contains a statement to the effect that the applicant wishes to claim combination of colours as a distinctive feature of the trademark, the application shall be accompanied with reproduction of the trademark in that combination of colours.

(3) Where the application contains a statement to the effect that the trademark is a three dimensional trademark, the reproduction of the trademark shall consist of a two dimensional graphic or photographic reproduction as follows, namely:—

(i) the reproduction furnished shall consist of three different view of the trademark;

(ii) where, the Registrar considers that the reproduction of the trademark furnished by the applicant does not sufficiently show the particulars of the three dimensional trademark, he may call upon the applicant to furnish within two months, up to five further different views of the trademark and a description by words of the trademark;

(iii) where the Registrar considers the different views or description of the trademark referred to in clause (ii), still do not sufficiently show the particulars of the three dimensional trademark, he may call upon the applicant to furnish a specimen of the trademark.

(4) (i) Where an application for the registration of a trademark consists of shape of goods or its packaging, the reproduction furnished shall consist of at least five different views of the trademark and a description by word of the trademark.

(ii) If the Registrar considers the different views or description of the trademark referred to in clause (i) do not sufficiently show the particulars of the shape of goods or its packaging, he may call upon the applicant to furnish a specimen of the goods or packaging, as the case may be.

(5) Where an application for the registration of a trademark consists of a sound as a trademark, the reproduction of the same shall be submitted in the MP3 format not exceeding thirty seconds' length recorded on a medium which allows for easy and clearly audible replaying accompanied with a graphical representation of its notations.

(6) If the Registrar is not satisfied with any representation of a trademark, he may at any time require another representation satisfactory to him to be substituted before proceedings with the application.

27. Series Trademarks. – (1) Where an application is made for the registration of trademarks as a series under sub-section (3) of section 15, copies of representation of each trademark of the series shall accompany the application in the manner set forth in rule 26. The Registrar, if satisfied that the trademarks constitute a series, shall proceed further with the applications.

(2) At any time before the publication of the application in the Journal, the applicant applying under sub-rule (1) may request in Form TM-M, for the division of the application into separate application or applications, as the case may be, in respect of one or more trademarks in that series and the Registrar shall, if he is satisfied that the division requested conforms with sub-section (3) of section 15, divide the application or applications accordingly on payment of divisional fees.

28. Transliteration and translation. — Where a trademark contains one or more words or numbers in scripts other than Hindi or English, the applicant shall provide in the application, a precise transliteration and translation of each such word and number in English or in Hindi and state the language to which the word(s) or number(s) belong.

29. Names and representations of living persons or persons recently dead.— Where the name or representation of any person appears on a trademark, the applicant shall, if the Registrar so requires, furnish him with the consent in writing of such person in case he is living or, in case his death took place within twenty years prior to the date of the application for registration of the trademark, of his legal representative, as the case may be, to the use of the name or representation and in default of such consent the Registrar may refuse to proceed with the application for registration of the trademark.

30. Name or description of goods or services on a trademark. — (1) Where the name or description of any goods or services appears on a trademark, the Registrar may refuse to register such trademark in respect of any goods or services other than the goods or services so named or described.

(2) Where the name or description of any goods or services appear on a trademark, which name or description in use varies, the Registrar may permit the registration of the trademark for those and other goods or services on the applicant giving an undertaking that the name or description will be varied when the trademark is used upon goods or services covered by the specification other than the named or described goods or services. The undertaking so given shall be included in the advertisement of the application in the Journal under section 20.

31. Deficiencies. – Subject to sub-rule (2) of rule 10, where an application for registration of a trademark does not satisfy the requirement of any of the provisions of the Act or rules, the Registrar shall send notice thereof to the applicant to remedy the deficiencies and if within one month of the date of the notice, the applicant fails to remedy any deficiency so notified to him, the application shall be treated as abandoned.

32. Acknowledgement of the Application. — Every application for the registration of a trademark in respect of any goods or services shall be acknowledged by giving a system generated electronic receipt or sending such receipt to the e-mail address provided for the purpose.

33. Examination, Objection to acceptance, hearing.— (1) The Registrar shall cause the application to be examined as per provisions of the Act, wherein a search shall also be conducted amongst the earlier trademarks, registered or applied for registration, for the purpose of ascertaining whether there are on record in respect of the same goods or services or similar goods or services any trademark identical with or deceptively similar to the trademark applied for. The Registrar may cause the re-examination of the application including re-search of earlier trademarks at any time before the acceptance of the application but shall not be bound to do so.

(2) If, on consideration of the application for registration of a trademark and any evidence of use or of distinctiveness or of any other matter which the applicant may or may be required to furnish, the Registrar has any objection to the acceptance of the application or proposes to accept it subject to such conditions, amendments, modifications or limitations as he may think fit to impose under sub-section (4) of section 18, the Registrar shall communicate such objection or proposal in writing to the applicant in the form of an examination report.

(3) If, on consideration of the application for registration of a trademark and any evidence of use or of distinctiveness or of any other matter which the applicant may or may be required to furnish, the Registrar accepts the application for registration absolutely, he shall communicate such acceptance to the applicant and cause the application to be advertised as accepted under sub-section (1) of section 20.

(4) If, within one month from the date of receipt of the examination report, the applicant fails to respond to the communication, the Registrar may treat the application as abandoned.

(5) In case the response to the examination report is received within the aforesaid time, the same shall be duly considered and if the Registrar accepts the application for registration, he shall communicate such acceptance to the applicant and cause the application to be advertised as accepted under sub-section (1) of section 20.

(6) If the response to the examination report is not satisfactory or where the applicant has requested for hearing, the registrar shall provide an opportunity of hearing to the applicant and the same shall be conducted as per rule 115.

(7) In case the applicant fails to appear at the scheduled date of hearing and no reply to the office objection has been submitted by the applicant, the Registrar may treat the application as abandoned.

(8) Where the applicant has submitted his reply to the examination report within the aforesaid period or has appeared in the hearing and made his submissions, the Registrar shall pass an appropriate order.

34. Expedited Processing of Application- (1) The applicant may, after the receipt of the official number of the application, request for expedited processing of application made for the registration of a trademark in Form TM-M on payment of fee as specified in First Schedule. Such an application shall be examined expeditiously and ordinarily within three months from the date of submission of the application. Thereafter, the following proceedings viz. the consideration of response to the examination report, scheduling of show cause hearing, if required, the publication of the application and the opposition thereto, if any, till final disposal of the application shall also be dealt with expeditiously subject to such guidelines as may be published in this regard by the Registrar in the trademarks Journal.

(2) The Registrar may limit the number of applications for expedited processing of trademark applications by publishing the same in the trademarks Journal.

35. Notice of withdrawal of application for registration.— A notice of withdrawal of an application for the registration of a trademark under sub-section (2) of section 133, for the purpose of obtaining repayment of any fee paid on the filing of the application, shall be given in writing within one month from the date of the receipt of communication mentioned in sub-rule (2) of rule 33.

36. Decision of Registrar.— (1) The decision of the Registrar under rules 33, 34 or 41 shall be communicated to the applicant in writing at his address of service and if the applicant intends to appeal from such decision he may within thirty days from the date of such communication apply in Form TM-M to the Registrar requiring him to state in writing the grounds of, and the materials used by him in arriving at, his decision.

(2) In a case where the Registrar makes any requirements to which the applicant does not object the applicant shall comply the said requirement before the Registrar issues a statement in writing under sub-rule (1).

(3) The date when the statement in writing under sub-rule (1) is received by the applicant, shall be deemed to be the date of the Registrar's decision for the purpose of appeal.

37. Correction and amendment of application.— An applicant for registration of a trademark may, whether before or after acceptance of his application but before the registration of the trademark, apply in Form TM-M accompanied by the prescribed fee for the correction of any error in or in connection with his application or any amendment of his application:

Provided, no such amendment shall be permitted which shall have the effect of substantially altering the trademark applied for or substitute a new specification of goods or services not included in the application as filed.

38. Withdrawal of acceptance by the Registrar.— (1) If, after the acceptance of an application but before the registration of the trademark, the Registrar has any objection to the acceptance of the application on the ground that it was accepted in error, or that the trademark ought not to have been accepted in the circumstances of the case, or proposes that the trademark should be registered only subject to conditions, limitations, divisions or to conditions additional to or different from the conditions, or limitations, subject to which the application has been accepted, the Registrar shall communicate such objection in writing to the applicant.

(2) Unless within thirty days from the date of receipt of the communication mentioned in sub-rule (1), the applicant amends his application to comply with the requirements of the Registrar or applies for a hearing, the acceptance of the application shall be deemed to be withdrawn by the Registrar, and the application shall proceed as if it had not been accepted.

(3) Where the applicant intimates the Registrar within the period mentioned in sub-rule (2) that he desires to be heard, the Registrar shall give notice to the applicant of a date when he will hear him. Such appointment shall be for a date at least fifteen days after the date of the notice, unless the applicant consents to a shorter notice. The applicant may state that he does not desire to be heard and submit such submissions, as he may consider desirable.

(4) The Registrar may, after hearing the applicant, on considering the submissions, if any, of the applicant, pass such orders as he may deem fit.

Advertisement of Application

39. Manner of Advertisement.— (1) Every application for the registration of a trademark required to be advertised by sub-section (1) of section 20 or to be re-advertised by sub-section (2) of that section shall be advertised in the Journal.

40. Notification of correction or amendment of application.— In the case of an application to which clause (b) of sub-section (2) of section 20 applies, the Registrar may, if he so decides, instead of causing the application to be advertised again, insert in the Journal a notification setting out the number of the application, the class or classes in which it was made, the name and address of the principal place of business in India, if any, of the applicant or where the applicant has no principal place of business in India, his address for service in India, the Journal number in which it was advertised and the correction or amendment made in the application:

Provided that in case of any error in the advertisement in respect of the trademark or specification of goods or services except for any trivial spelling mistake or class or statement of use of the trademark or in any other case as the Registrar thinks fit, the Registrar may advertise the trademark again cancelling the earlier advertisement.

41. Request to Registrar for particulars of advertisement of a trademark.— Any person may request the Registrar in Form TM-M to be informed of the number, and date of the Journal in which a trademark which is sought to

be registered specified in the Form was advertised and the Registrar shall furnish such particulars to the person making the request.

Opposition to Registration

42. Notice of Opposition. — (1) A notice of opposition to the registration of a trademark under sub-section (1) of section 21, with such particulars as specified in Rule 43, shall be filed in form TM-O within four months from the date of publication of the trademark journal in which the application for registration of the trademark was advertised or re advertised.

(2) Where a notice of opposition has been filed in respect of a single application for the registration of a trademark for different classes of goods and services, it shall bear the fee in respect of each class in relation to which the opposition is filed.

(3) Where an opposition is filed only for a particular class or classes in respect of a single application made under sub-section (2) of section 18, the application for remaining class or classes shall not proceed to registration until a request in Form TM-M for division of the application together with the divisional fee is made by the applicant.

(4) Where in respect of a single application for the registration of a trademark no notice of opposition is filed in a class or classes, the application in respect of such class or classes shall, subject to section 19 and sub-section (1) of section 23, proceed to registration after the division of the application in the class or classes in respect of which an opposition is pending.

(5) A copy of notice of opposition shall be ordinarily served by the Registrar to the applicants within three months of the receipt of the same by the appropriate office:

Provided that where the applicant has already filed the counter statement on the basis of the copy of notice of opposition made available in the electronic records on the official website, the requirement of service of copy of the notice of opposition to the applicant shall be dispensed with.

43. Requirements of Notice of Opposition.— (1) A notice of opposition shall contain,—

(a). in respect of an application against which opposition is entered—

(i) the application number against which opposition is entered;

(ii) an indication of the goods or services listed in the trademark application against which opposition is entered; and

(iii) the name of the applicant for the trademark.

(b). in respect of the earlier trademark or the earlier right on which the opposition is based,—

(i) where the opposition is based on an earlier trademark, a statement to that effect and an indication of the status of earlier trademark;

(ii) where available, the application number or registration number and the filing date, including the priority date of the earlier trademark;

(iii) where the opposition is based on an earlier trademark which is alleged to be a well-known trademark within the meaning of sub-section 2 of section 11, an indication to that effect and an indication of the country or countries in which the earlier trademark is recognised to be well known;

(iv) where the opposition is based on an earlier trademark having a reputation within the meaning of paragraph (b) of sub-clause (2) of section 11 of the Act, an indication to that effect and an indication of whether the earlier trademark is registered or applied for;

(v) a representation of the trademark of the opponent and where appropriate, a description of the trademark or earlier right; and

(vi) Where the goods or services in respect of which earlier trademark has been registered or applied for or in respect of which the earlier trademark is well known within the meaning of sub-section (2) of section 11 or has a reputation within the meaning of that section, the opponent shall when indicating all the goods or services for which the earlier trademark is protected, also indicate those goods or services on which the opposition is based.

(c). in respect of the opposing party—

(i) where the opposition is entered by the proprietor of the earlier trademark or of the earlier right, his name and address and an indication that he is the proprietor of such trademark or right;

(ii) where opposition is entered by a licensee not being a registered user, the name of the licensee and his address and an indication that he has been authorised to enter the opposition;

(iii) where the opposition is entered by the successor in title to the registered proprietor of a trademark who has not yet been registered as new proprietor, an indication to that effect, the name and address of the opposing party and an indication of the date on which the application for registration of the new proprietor was received by the appropriate office or, where this information is not available, was sent to the appropriate office; and

(iv) where the opposing party has no place of business in India, the name of the opponents and his address for service in India.

(d). The grounds on which the opposition is based.

(2) A notice of opposition shall be verified at the foot by the opponent or by his duly authorised agent.

(3) The person verifying shall state specifically by reference to the numbered paragraphs of the notice of opposition, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(4) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

44. Counterstatement.— (1) The counterstatement required by sub-section (2) of section 21 shall be sent on Form TM-O within two months from the receipt by the applicant of the copy of the notice of opposition from the Registrar and shall set out what facts, if any, alleged in the notice of opposition, are admitted by the applicant. A copy of the counterstatement shall be ordinarily served by the Registrar to the opponent within two months from the date of receipt of the same.

(2) The counterstatement shall be verified in the manner as provided in sub-rules (2), (3) and (4) of rule 43.

45. Evidence in support of opposition.— (1) Within two months from service of a copy of the counterstatement, the opponent shall either leave with the Registrar, such evidence by way of affidavit as he may desire to adduce in support of his opposition or shall intimate to the Registrar and to the applicant in writing that he does not desire to adduce evidence in support of his opposition but intends to rely on the facts stated in the notice of opposition. He shall deliver to the applicant copies of any evidence including exhibits, if any, that he leaves with the Registrar under this sub-rule and intimate the Registrar in writing of such delivery.

(2) If an opponent takes no action under sub-rule (1) within the time mentioned therein, he shall be deemed to have abandoned his opposition.

46. Evidence in support of application.— (1) Within two months on the receipt by the applicant of the copies of affidavits in support of opposition or of the intimation that the opponent does not desire to adduce any evidence in support of his opposition, the applicant shall leave with the Registrar such evidence by way of affidavit as he desires to adduce in support of his application and shall deliver to the opponent copies thereof or shall intimate to the Registrar and the opponent that he does not desire to adduce any evidence but intends to rely on the facts stated in the counterstatement and or on the evidence already left by him in connection with the application in question. In case the applicant adduces any evidence or relies on any evidence already left by him in connection with the application, he shall deliver to the opponent copies of the same, including exhibits, if any, and shall intimate the Registrar in writing of such delivery.

(2) If an applicant takes no action under sub-rule (1) within the time mentioned therein, he shall be deemed to have abandoned his application.

47. Evidence in reply by opponent. — Within one month from the receipt by the opponent of the copies of the applicant's affidavit the opponent may leave with the Registrar evidence by affidavit in reply and shall deliver to the applicant copies of the same including exhibits, if any, and shall intimate the Registrar in writing of such delivery.

48. Further evidence.— No further evidence shall be left on either side, but in any proceedings before the Registrar, he may at any time, if he thinks fit, give leave to either the applicant or the opponent to leave any evidence upon such terms as to costs or otherwise as he may think fit.

49. Translation of documents.—Where a document is in a language other than Hindi or English and is referred to in the notice of opposition, counterstatement or an affidavit filed in an opposition proceeding, an attested translation thereof in Hindi or English shall be submitted before the registrar and a copy thereof shall be provided to opposite party.

50. Hearing and decision. — (1) The Registrar, after the closure of the evidence, shall give notice to the parties of the first date of hearing. The date of hearing shall be for a date at least one month after the date of the first notice.

(2) A party to a proceeding may make a request for adjournment of the hearing with reasonable cause in Form TM-M accompanied by the prescribed fee, at least three days before the date of hearing and the Registrar, if he thinks fit to do so, and upon such terms as he may direct, may adjourn the hearing and intimate the parties accordingly:

Provided that no party shall be given more than two adjournments and each adjournment shall not be for more than thirty days.

(3) If the applicant is not present at the adjourned date of hearing and at the time mentioned in the notice, the application may be treated as abandoned.

(4) If the opponent is not present at the adjourned date of hearing and at time mentioned in the notice, the opposition may be dismissed for want of prosecution and the application may proceed to registration subject to section 19.

(5) The Registrar shall consider written arguments if submitted by a party to the proceeding.

(6) The decision of the Registrar shall be communicated to the parties in writing at the address given for service.

51. Security for costs.—The security for costs which the Registrar may require under sub-section (6) of section 21 may be fixed at any amount which he may consider proper, and such amount may be further enhanced by him at any stage in the opposition proceedings.

Notice of Non-Completion of Registration

52. Procedure for giving notice. —The notice which the Registrar is required by sub-section (3) of section 23 to give to an applicant, shall be sent in Form RG-1 to the applicant at the address for service. The notice shall specify twenty one days time from the date thereof or such further time not exceeding one month as the Registrar may allow on a request made in form TM-M for completion of the registration.

Registration

53. Entry in the Register.— (1) Where no notice of opposition to an application advertised or re-advertised in the Journal is filed within the period specified in sub-section (1) of section 21, or where an opposition is filed and it is dismissed, the Registrar shall, subject to the provisions of sub-section (1) of section 23 or section 19, enter the trademark on the register.

(2) The entry of a trademark in the register shall specify the date of filing of application, the actual date of the registration, the goods or services and the class or classes in respect of which it is registered, and all particulars required by sub-section (1) of section 6 including—

(a) the address of the principal place of business in India, if any, of the proprietor of the trademark or in the case of a jointly owned trademark, of such of the joint proprietors of the trademark as have a principal place of business in India;

(b) where the proprietor of the trademark has no place of business in India, his address for service in India as entered in the application for registration together with his address in his home country;

(c) in the case of a jointly owned trademark, where none of the joint proprietors has a principal place of business in India, the address for service in India as given in the application together with the address of each of the joint proprietors in his home country;

(d) the particulars of the trade, business, profession, occupation or other description of the proprietor or, in the case of a jointly owned trademark, of the joint proprietors of the trademark as entered in the application for registration;

(e) particulars affecting the scope of the registration or the rights conferred by the registration;

(f) the convention application date, if any, to be accorded pursuant to an application from applicants of a convention country made under section 154;

(g) where the trademark is a collective or certification trademark, that fact;

(h) where the trademark is registered pursuant to sub-section 4 of section 11 with the consent of the proprietor of an earlier trademark or other earlier right, that fact; and

(i) the appropriate office of the Trade Marks Registry in relation to the trademark.

(3) The Registrar may from time to time, in consultation with computer experts, formulate guidelines for keeping official records in electronic form.

54. Associated trademarks.— (1) Where a trademark is registered as associated with any other trademarks, the Registrar shall note in the register in connection with the first mentioned trademark the registration numbers of the trademarks with which it is associated and shall also note in the register in connection with each of the associated trademarks, the registration number of the first mentioned trademark as being a trademark associated therewith.

(2) An application under sub-section (5) of section 16 to dissolve the association as respects any of the trademarks registered as associated trademarks shall be made in Form TM-P and shall include statement of the grounds of the application.

55. Death of applicant before registration.— In case of death of any applicant for the registration of a trademark after the date of his application and before the trademark has been entered in the register, the Registrar may, on request on form TM-M and on proof of the applicant's death and on proof of the transmission of the interest of the deceased person, substitute in the application, the name of successor in interest in place of the name of such deceased applicant, and the application may proceed thereafter as so amended.

56. Certificate of registration.— (1) The certificate of registration to be issued by the Registrar under sub-section 2 of section 23 shall be on Form RG-2 and shall include the trademark. It shall bear the seal of the Trade Marks Registry.

(2) The certificate of registration referred to in sub-rule (1) shall not be used in legal proceedings or for obtaining registration abroad. The certificate issued under section 137 shall be used for these purposes.

(3) The Registrar may issue duplicate or further copies of the certificate of registration on request by the registered proprietor in Form TM-M accompanied by the prescribed fee:

Provided that, no such duplicate or copy of certification of registration shall be issued where such request is received after the expiry of time limit for renewal of registration and restoration of registered trademark.

CHAPTER III

RENEWAL OF REGISTRATION AND RESTORATION

57. Renewal of registration. — (1) An application for the renewal of the registration of a trademark shall be made in Form TM-R along with the fee as prescribed in the first schedule and may be made at any time not more than one year before the expiration of the last registration of the trademark.

(2) A request for renewal of registration of the trademark filed within prescribed time shall be allowed unless the trademark has been removed or cancelled or is otherwise not renewable under any of the provisions of the Act and rules or by any order of the competent court or the Registrar.

58. Notice before removal of trademark from register.— (1) In case no application for renewal of the registration in the prescribed form together with the specified fee has been received, the Registrar shall send, not more than six months before the expiration of registration of the trademark, a notice in Form RG-3 at the address of service informing the registered proprietor of the approaching date of expiration and the conditions, if any, subject to which the renewal of the registration may be obtained.

(2) Where, in the case of a trademark the registration of which (by reference to the date of application for registration) becomes due for renewal, the trademark is registered at any time within six months before the date on which renewal is due, the registration may be renewed by the payment of the renewal fee within six months after the actual date of registration and where the renewal fee is not paid within that period, the Registrar shall subject to rule 60, remove the trademark from the register.

(3) Where, in the case of a trademark the registration of which (by reference to the date of application for registration) becomes due for renewal, the trademark is registered after the date of renewal, the registration may be renewed by the payment of the renewal fee within six months of the actual date of registration and where the renewal fee is not paid within that period the Registrar shall, subject to rule 60, remove the trademark from the register.

(4) The renewal of registration of a collective trademark or a certification trademark shall be in Form TM-R along with the prescribed fee as specified in the First Schedule.

59. Advertisement of removal of trademark from the register.— If at the expiration of registration of a trademark, the renewal fees has not been paid, the Registrar may remove the trademark from the register and advertise the fact forthwith in the Journal:

Provided that the Registrar shall not remove the trademark from the register if an application for payment of surcharge is made under proviso to sub-section(3) of section 25 in Form TM-R within six months from the expiration of the registration of the trademark.

60. Restoration and renewal of registration.— An application for the restoration of a trademark to the register and renewal of its registration under sub-section (4) of section 25, shall be made in Form TM-R within one year from the expiration of the registration of the trademark accompanied by the prescribed fee. The Registrar shall, while considering the request for such restoration and renewal have regard to the interest of other affected persons.

61. Notice and advertisement of renewal and restoration. — Upon the renewal or restoration and renewal of registration, a notice to that effect shall be sent to the registered proprietor and every registered user and the renewal or restoration and renewal shall be advertised in the Journal.

CHAPTER IV

SPECIAL PROVISIONS RELATING TO PROTECTION OF TRADEMARKS THROUGH THE INTERNATIONAL REGISTRATION UNDER MADRID PROTOCOL

62. Definitions.— (1) For the purpose of this Chapter, unless the context otherwise requires,—

(a) 'Article' means article referred to in Madrid Protocol;

(b) "electronic form" shall have the meaning as is assigned to it in clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);

(2) Words and expressions used in these rules, in the context of international application or international registration under Chapter IVA of the Act, but not defined shall have the same meaning and respectively assigned to them in the Madrid Protocol or the Common Regulations.

63. Language.— An International Application or any communication relating thereto for transmission to International Bureau or any advice by way of notification of extension of protection to India resulting from the international registration shall be in English.

64. Issue of notices or communications etc. and response thereto.— Any notice or communication relating to both an international application under section 36D and international registration where India has been designated, under section 36E, shall be issued by the Registrar only in electronic form, and any response thereto shall also be received likewise.

65. International application in respect of which India is the country of origin.—International application originating from India, or any communication relating thereto in accordance with the Common Regulations shall be filed electronically through the Trade Marks International Application System.

66. Verification and Certification of international application in respect of which India is the country of origin.— (1) Where an international application is filed under section 36D for transmission to the International Bureau, the Registrar shall certify the contents of the application in Form MM2(E) as provided by International Bureau subject to the payment of fees as specified in Entry Number 23 of the First Schedule.

(2) Where the international application complies with the requirements, the Registrar shall so certify in the international application indicating also the date on which the said international application was received; and shall forward the same to the International Bureau within two months from the date of receipt of the said application.

(3) Where the international application does not meet the requirements, the Registrar shall not forward it to the International Bureau, and shall require the applicant by notice to comply with the requirement as specified therein, and shall forward the International Application only after such compliance within the period specified in the notice.

67. Handling fee.— A handling fee as specified in First Schedule shall be payable to the Registrar for certification and transmittal of international application to the International Bureau and such fee shall be paid in Indian rupees electronically along with the application.

68. Manner of keeping the record of international registrations where India has been designated.— (1) On receipt of advice from the International Bureau about an international registration designating India and notification about the extension of protection resulting from such international registration, the Registrar shall enter all the particulars thereof electronically in a record called the 'Record of Particulars of International Registration'. Any change in the particulars as and when received from the International Bureau shall be entered in the said record.

(2) Any entry made in such record shall, to the extent that it applies to India as a designated contracting party, have the same effect as if it had been recorded by the Registrar in the Register of trademarks.

69. Examination of application under section 36E. — (1) The advice referred to in rule 68 shall be examined ordinarily within two months from the date of receipt of such advice.

(2) Where, the Registrar finds that the trademark which is the subject of an international registration designating India, cannot be protected, he shall, before the expiry of refusal period applicable under article 5 of the Madrid Protocol, notify to the International Bureau a provisional refusal of protection.

(3) Where there are no grounds for refusal to grant protection, the Registrar shall advertise the particulars concerning international registration under section 20 of the Act in a separate part of the trademarks Journal ordinarily within a period of six months from the date of receipt of advice.

(4) Where an opposition is filed under section 21 of the Act, the Registrar shall, notify that fact to the International Bureau as a provisional refusal based on the opposition in accordance with the Protocol and Common Regulation.

(5) The international registration, on receipt of an opposition thereto, shall be processed in accordance with the provisions contained in rules 42 to 51.

(6) Where the procedure mentioned under sub-rules (1) to (5) have been completed with and the Registrar has decided to confirm such refusal of protection of the trademark for all the goods or services for which the protection has been requested, the Registrar shall send to the International Bureau a statement to that effect.

(7) Where, the provisional refusal has been either totally or partially withdrawn, the Registrar shall send to the International Bureau

(a) a statement to the effect that the provisional refusal is withdrawn and the protection of the trademark is granted for all the goods or services for which the protection has been requested; or

(b) a statement indicating conditions or limitations subject to which, and the goods or services in respect of which the protection is granted.

(8) Where there is no ground to refuse protection, the Registrar shall notify the International Bureau to the effect that protection is granted to the trademark in India.

(9) Where there is further decision affecting the protection of trademark in India, the Registrar shall send further statement to the International Bureau to that effect.

70. Invalidation of protection.— Where the protection resulting from an international registration has ceased to have effect, or varied, in India, as a result of legal proceedings under the Act, the Registrar shall notify the International Bureau accordingly.

71. Effect of cancellation of international registration.— Where an international registration is cancelled at the request of office of origin, the provisions of article 9 *quinquies* of the Protocol shall apply to such international registration in so far as it designates India.

72. Collective and Certification Trademarks.— Where an international registration designating India is in respect of a collective trademark or a certification trademark, the regulations governing the use of such collective trademark or certification trademark shall be submitted directly, by the holder of that international registration to the registrar within the period of one month from the date of advice by the International Bureau.

73. Replacement of national registration.— Where an international registration is deemed to replace the registration held in India under sub-section (6) of section 36E of the Act, the registrar shall, upon request of the holder of international registration take note of the international registration and make necessary entry in the Register maintained under sub-section (1) of section 6 of the Act. Thereafter, the Registrar shall notify the International Bureau accordingly under rule 21 of the Common Regulations.

74. Subject to provisions of the Act, the provisions of the Madrid Protocol, Common Regulations and Administrative Instructions shall apply in relation to international applications originating from India and international registrations where India has been designated.

CHAPTER V

ASSIGNMENT AND TRANSMISSION

75. Application for entry of assignment or transmission.— An application to register the title of a person who becomes entitled by assignment or transmission to a registered trademark shall be made in Form TM-P.

76. Case accompanying application.— (1) A person applying for registration of his title under rule 75, shall, along with his request in form TM-P, file duly certified copy of original document, instrument or deed, as the case may be, purporting to transfer the title in the trademark and a statement of case in support of his request.

(2) The Registrar shall dispose of an application made under rule 75 ordinarily within three month from the date of application and intimate the same to the applicant.

77. Proof of title. — The Registrar may, where there is a reasonable doubt about the veracity of any statement or any document furnished, call upon any person who applies to be registered as proprietor of a registered trademark to furnish such proof or additional proof of title as the Registrar thinks fit.

78. Impounding of Instruments.— If in the opinion of the Registrar any instrument produced in proof of title of a person is not properly or sufficiently stamped, the Registrar shall impound and deal with it in the manner provided by Chapter IV of the Indian Stamp Act, 1899 (2 of 1899).

79. Assignments involving transmission of moneys outside India. — If there is in force any law regulating the transmission of moneys outside India, the Registrar shall not register the title of a person who becomes entitled to a trademark by an assignment which involves such transmission except on production of the permission of the authority specified in such law for such transmission.

80. Application for Registrar's direction as to advertisement of an assignment of a trademark without goodwill of the business. — (1) An application for directions under section 42 shall be made in Form TM-P and shall state the date on which the assignment was made. The application shall give particulars of the registration in the case of a registered trademark, and in the case of an unregistered trademark shall show the trademark and give particulars including user of the unregistered trademark that has been assigned therewith. The Registrar may call for any evidence or further information and if he is satisfied with regard to the various matters he shall issue directions in writing with respect to the advertisement of the assignment.

(2) The Registrar may refuse to consider such an application in a case to which section 41 applies, unless his approval has been obtained under the said section and a reference identifying the Registrar's notification of approval is included in the application.

(3) A request for an extension of the period within which the application mentioned in sub-rule (1) shall be made shall be in Form TM-P

81. Application for entry of assignment without goodwill.— An application under rule 75 relating to an assignment of a trademark in respect of any goods or services shall state—

(a) whether the trademark had been or was used in the business in any of those goods or services, and

(b) whether the assignment was made otherwise than in connection with the goodwill of that business,

and if both those circumstances subsisted, then the applicant shall leave at the Trade Marks Registry a copy of the directions to advertise the assignment, obtained upon application under rule 80, and such proof, including copies of advertisements or otherwise, as the Registrar may require, to show that his directions have been fulfilled and if the Registrar is not satisfied that the directions have been fulfilled, he shall not proceed with the application.

82. Separate registration.— Where pursuant to an application under rule 75, and as the result of a division and separation of the goods or services of a registration or a division and separation of places or markets, different persons become registered separately under the same registration number as subsequent proprietors of a trademark, each of the resulting separate registrations in the names of those different persons shall be deemed to be a separate registration for all the purposes of the Act.

83. Registrar's certificate or approval as to certain assignment and transmissions.— Any person who desires to obtain the Registrar's certificate under sub-section 2 of section 40 or his notification of approval under section 41 shall send to the Registrar with his application in Form TM-P, a statement of case in duplicate setting out the circumstances and a copy of any instrument or proposed instrument effecting the assignment or transmission. The Registrar may call for any evidence or further information that he may consider necessary and the statement of case shall be amended if required to include all the relevant circumstances and shall, if required, be verified by an affidavit. The Registrar, after hearing (if so required) the applicant and any other person whom the Registrar may consider to be interested in the transfer, shall consider the matter and issue a certificate thereon or a notification in writing of approval or disapproval thereof, as the case may be, to the applicant and shall also inform such other person accordingly. Where a statement of case is amended, three copies thereof in its final form shall be left at the Trade Marks Registry. The Registrar shall seal a copy of the statement of case in its final form to the certificate or notification.

84. Entry in register, of particulars of assignment.— Where the Registrar has allowed the assignment of a trademark under this Act, there shall be entered in the register the following particulars of assignment, namely:—

(i) the name and address of the assignee;

(ii) the date of the assignment;

(iii) where the assignment is in respect of any right in the trademark, a description of the right assigned;

(iv) the basis under which the assignment is made; and

(v) the date on which the entry is made in the register.

85. Registration of assignment to a company under section 46.— For the purposes of sub-section (4) of section 46, the period within which a company may be registered as the subsequent proprietor of a registered trademark upon application made under rule 75 shall be six months from the date of advertisement in the Journal of the registration of the trademark or such further period not exceeding six months as the Registrar may allow on application being made in Form TM-P by the applicant for registration of title or the registered proprietor, as the case may be, at any time before or during the period for which the extension can be allowed.

CHAPTER VI

REGISTERED USER

86. Application for registration as registered user. — (1) An application to the Registrar for the registration under section 49, of a person as a registered user of a registered trademark, shall be made jointly by that person and the registered proprietor of the trademark in Form TM-U and shall be accompanied by the documents, evidence and details as required in sub-section (1) of section 49.

(2) The registered proprietor and the proposed registered user shall also produce and file such other documents and furnish such other evidence and information as may be required in that behalf by the Registrar.

(3) No application shall be entertained unless the same has been filed within six months from the date of the agreement referred to in clause (a) of sub-section (1) of section 49.

(4) Where more than one application for registration as registered user is made by the same registered proprietor and the same proposed registered user in respect of trademarks covered by the same agreement, the documents mentioned in sub section (1) of section 49 may be filed with any one of the applications and a cross reference to such documents given in the other application or applications.

87. Consideration by the Registrar.— The Registrar under sub-section (2) of section 49, shall, if satisfied that the application and the accompanying documents comply with the relevant provisions of the Act and the rules, register the proposed registered user in respect of the goods or services as to which he is so satisfied.

88. Hearing before refusing an application or to accept it conditionally. — The Registrar may, after giving an opportunity of hearing to the parties concerned, either refuse the application or accept the same with such condition(s), if any, as he may think fit and shall communicate such order in writing to the parties.

89. Entry in the register. — (1) Where the Registrar under sub-section (2) of section 49 accepts an application for registration as registered user; he shall register the proposed registered user as registered user and publish the same in the Journal.

(2) The entry of a registered user in the register shall state the date on which the application for registration of registered user was made, which date shall be deemed to be the date of registration as registered user of the person mentioned in the entry. The entry shall also state, in addition to the particulars and statements mentioned in paragraphs (i) to (iv) of sub-clause (b) of clause (1) of section 49, the name, description and principal place of business in India of the registered user and if he does not carry on business in India his address for service in India.

90. Registration not to imply authorisation to transmit money outside India.— The registration as registered user of a trademark shall not be deemed to imply an approval, of the agreement in so far as it relates to the transmission of any money, as consideration for the use of the said trademark, to any place outside India.

91. Communication of registration as registered user. — Communication in writing of the registration of a registered user shall be sent by the Registrar to the registered proprietor of the trademark, to the registered user and to every other registered user whose name is entered in relation to the same trademark and shall also be inserted in the Journal within three months of such entry in the register.

92. Registered proprietor's application to vary entry. — An application by the registered proprietor of a trademark for the variation of the registration of a registered user of that trademark under clause (a) of sub-section (1) of

section 50 shall be made in Form TM-U and where the registered user has given consent to such variation, a copy of such consent in writing shall also be filed.

93. Cancellation of registration of registered user. — (1) An application for the cancellation of the registration of a registered user under sub-clause (b) to sub-clause (d) of sub-section (1) of section 50 shall be made in Form TM-U.

(2) In case of the registration of a registered user for a period, in accordance with paragraph (iv) of sub-clause (b) of sub-section (1) of section 49, the Registrar shall cancel the entry of the registered user at the end of that period. Where some or all the goods or services are omitted from those in respect of which a trademark is registered, the Registrar shall at the same time omit them from those specifications of registered users of the trademark in which they are comprised. The Registrar shall notify every cancellation or omission under this sub-rule to the registered users whose permitted use is affected thereby and to the registered proprietor of the trademark.

94. Power of the Registrar to call for information with respect to registered user.— The Registrar may at any time, by notice in writing, require the registered proprietor to furnish him information under sub-section (1) of section 51 and take action in accordance with sub-section (2) of that section.

95. Procedure on application to vary entry or cancel registration.— (1) The Registrar shall notify in writing applications under section 50 to the registered proprietor and each registered user (not being the applicant in either case) of the trademark.

(2) Any person notified under sub-rule (1) who intends to intervene in the proceedings, shall within one month of the receipt of such notification give notice to the Registrar in Form TM-U to the effect and shall send therewith a statement of the grounds of his intervention. The Registrar shall thereupon serve or cause to be served copies of such notice and statement on the other parties, namely, the applicant, the registered proprietor, the registered user whose registration is the subject matter of the proceeding in question and any other registered user who intervenes.

(3) In the case of any application made under section 50, the applicant and any person notified under sub-rule (1), may, within such time or times as the Registrar may appoint, leave evidence in support of his case, and the Registrar after giving the parties an opportunity of being heard, may accept or refuse the application or accept it subject to any conditions, amendments, modifications or limitations he may think right to impose and shall inform the parties in writing accordingly.

(4) In the case of an application for varying any registration under paragraph (a) of sub-section (1) of section 50 or cancelling any registration on any of the grounds mentioned in items (i) to (iv) of sub-clause (c) of sub-section (1) of section 50, the Registrar shall consider the application together with any notice in Form TM-U and statement of case filed and shall dispose of the application and also inform the parties in writing accordingly.

96. Registered user's application. — An Application under sub-section (2) of section 58 shall be made in Form TM-P by a registered user of a trademark or by a person duly authorised by the registered user in that behalf; and the Registrar may require such evidence as he may think fit as to the circumstances in which the application is made.

CHAPTER VII

RECTIFICATION AND CORRECTION OF REGISTER ALTERATION OR RECTIFICATION OF REGISTER

97. Application to rectify or remove a trademark from the register.— An application to the Registrar under Section 47, 57, 68 or 77 for the making, expunging or varying of any entry relating to a trademark or a collective trademark or certification trademark in the register shall be made in Form TM-O, as the case may be, and shall be accompanied by statement in setting out fully the nature of the applicant's interest, the facts upon which he bases his case and the relief which he seeks. Where the application is made by a person who is not the registered proprietor of the trademark in question, the application and the statement aforesaid shall be left at the Trade Marks Registry. In case there are registered users, such application and statements shall be accompanied by as many copies thereof as there are registered users. A copy each of the application and statement shall be ordinarily transmitted within one month by the Registrar to the registered proprietor and to each of the registered user and to any other person who appears from the register to have an interest in the trademark. The application shall be verified in the manner prescribed under clause (i) of sub-rule (c) of rule 43 for verification of a notice of opposition.

98. Further procedure. — Within two months from the receipt by a registered proprietor of the copy of the application mentioned in rule 97 or within such further period not exceeding one month in the aggregate, he shall send to the Registrar on Form TM-O a counterstatement of the grounds on which the application is contested and if he does so, the Registrar shall serve a copy of the counterstatement on the person making the application within one month of the receipt of the same. In case no counter statement has been filed within the period of three months from the date of receipt of the application mentioned in rule 97, the applicant for rectification shall file evidence in support of his application for

rectification under the provisions of rules 45 (1). The provision under rule 46 to 51 shall thereafter apply *mutatis mutandis* to the further proceedings on the application.

99. Intervention by third parties.— Any person, other than the registered proprietor, alleging interest in a registered trademark in respect of which an application is made under rule 97 may apply on Form TM-O for leave to intervene, stating the nature of his interest, and the Registrar may refuse or grant such leave after hearing (if so required) the parties concerned, upon such conditions and terms including undertakings or conditions as to security for cost as he may deem fit to impose.

100. Rectification of the register by the Registrar of his own motion.— (1) The Notice, which the Registrar is required to issue under sub-section (4) of section 57, shall be sent in writing to the registered proprietor, to each registered user, if any, and to any other person who appears from the register to have any interest in the trademark, and shall state the grounds on which the Registrar proposes to rectify the register and shall also specify the time, not being less than one month from the date of such notice, within which an application for a hearing shall be made:

Provided that no notice shall be required to be sent to the registered proprietor, in case the registered proprietor has requested or agreed in writing for cancellation of the registration; and thereupon register shall be rectified accordingly.

(2) Unless within the time specified in the notice aforesaid, any person so notified sends to the Registrar a statement in writing setting out fully the facts upon which he relies to meet the grounds stated in the notice or applies for a hearing, he may be treated as not desiring to take part in the proceedings and the Registrar may act accordingly.

(3) If the Registrar decides to rectify the register he shall communicate his decision in writing to the registered proprietor and to each registered user, if any.

Alteration or Correction in Register

101. Alteration of address in register.— (1) A registered proprietor or a registered user of a trademark, the address of whose principal place of business in India or whose address in his home country as the case may be or address for service in India, is changed so that the entry in the register is rendered incorrect, shall forthwith request the Registrar in Form TM-P to make the appropriate alteration of the address in the register, and the Registrar shall alter the register accordingly if he is satisfied in the matter.

(2) A registered proprietor or a registered user of a trademark the address of whose principal place of business in India or whose address for service in India is altered by a public authority, so that the changed address designates the same premises as entered in the register, may make the aforesaid request to the Registrar on Form TM-P or as the case may be, and if he does so he shall leave therewith a certificate of the alteration given by the said authority. If the Registrar is satisfied, as to the facts of the case, he shall alter the register accordingly but shall not require any fees to be paid on the forms, notwithstanding the provisions of sub-rule (2) of rule 10 or sub-rule (2) of rule 11.

(3) (i) Where a registered proprietor makes a request under sub-rule (1) or (2), he shall serve a copy of the request on the registered user or users, if any, and inform the Registrar accordingly.

(ii) where the request aforesaid is made by a registered user, he shall serve a copy thereof on the registered proprietor and every other registered users, if any, and inform the Registrar that he had done so.

(4) In case of the alteration of the address of a person entered in the register as the address for service in India of more than one registered proprietor or registered user of trademarks, the Registrar may, on proof that the said address is the address of the applicant and if satisfied that it is just to do so, accept an application from the person in Form TM-P so as to suit the case, for the appropriate alteration of the entries of his address as the address for service in the several registrations, particulars of which shall be given in the Form and may alter the entries accordingly.

(5) All applications under this rule on Form TM-P shall be signed by the registered proprietor or the registered user, as the case may be, or by an agent authorised by him.

(6) Where an application has been made under sub-section (1) of section 58 for the alteration of the register by correction, change, cancellation or striking out of goods or services or for the entry of a memorandum, the Registrar may require the applicant to furnish such evidence by affidavit or otherwise as the Registrar may think fit, as to the circumstances in which the application is made. Such application shall be made in Form TM-P and a copy thereof shall be served by the applicant on the registered user or users, if any, under the registration of the trademark in question and to any other person who appears from the register to have an interest in the trademark.

102. Alteration of registered trademark.— Where a person applies under section 59 for leave to add to or alter his registered trademark, he shall make the application in writing in Form TM-P and shall furnish copy of the trademark as it will appear when so added to or altered. A copy of the application and of the trademark so amended or altered shall be served by the applicant on every registered user, if any.

103. Advertisement before decision and opposition etc. — (1) The Registrar shall consider the application made under rule 102 and shall, if it appears to him expedient, publish the application in the Journal before deciding it.

(2) Within three months from the date of advertisement under sub-rule (1), any person may give notice of opposition to the application in Form TM-O. A copy of the notice shall be transmitted forthwith by the Registrar to the registered proprietor and each registered user, if any, and within two months from the receipt by the registered proprietor of such copies he shall sent to the Registrar in Form TM-O a counter statement of the grounds on which the opposition is contested. If the registered proprietor sends such a counterstatement, the Registrar shall ordinarily serve a copy thereof on the person giving notice of opposition within one month and the provisions of rules 45 to 51 shall apply *mutatis mutandis* to the further proceedings on the opposition:

Provided that where the registered proprietor fails to file the counter statement within the specified time, the application shall be deemed to have been abandoned.

(3) If there is no opposition, within the time specified in sub-rule (2), the Registrar shall, after hearing the applicant if he so desires, allow or refuse the application and shall communicate his decision in writing to the applicant.

104. Decision, Advertisement, Notification.— If the Registrar decides to allow the application he shall alter the trademark in the register accordingly and publish in the Journal a notification that the trademark has been altered along with trademark as altered.

Re-classification of Goods in Respect of Existing Registration

105. Re-classification in respect of existing registration.— (1) On the amendment in international classification of goods and services (NICE Classification), the registered proprietor of a trademark may apply to the Registrar in Form TM-P for the conversion of the specification of goods and services relating to the trademark, so as to bring that specification into conformity with the amended classification.

(2) The Registrar may, thereupon, amend the description of goods and services or the classification as the case may be in accordance with international classification of goods and services (NICE Classification).

(3) The amendment in the specification of goods or services or in the classification if approved shall be advertised in the Journal; thereafter the entry in the register in respect of that registration shall be modified accordingly.

CHAPTER VIII

MISCELLANEOUS

106. Refusal or invalidation of registration of a trademark conflicting with a geographical indication.— A request in Form TM-O, may be made to the Registrar for the refusal or invalidation of a registered trademark by an interested party along with a statement of case together with an affidavit and which—

(a) contains or consists of a geographical indication with respect to goods or class or classes of goods not originating in the territory of a country, or a region or locality in that territory which such geographical indication indicates, if the use of such geographical indication in the trademark for such goods, is of such nature as to confuse or mislead the persons as to the true place of origin of such goods or class or classes of goods;

(b) contains or consists of geographical indication identifying goods or class or classes of goods notified under sub-section (2) of section 22 of the Geographical Indications of Goods (Registration and Protection) Act, 1999 (48 of 1999).

107. Single application under sub-section (2) of section 18.— (1) Where an application for the registration of a trademark for different classes of goods or services is made under sub-section (2) of section 18, the specification of goods or services contained in it shall set out the classes in consecutive numerical order beginning with the lowest number and indicate in each class the goods or services appropriate to that class.

(2) Applications filed under sub-section (2) of section 18 when ordered to be advertised shall be published in a separate section of the Journal.

(3) The Registrar shall issue a single certificate of registration in respect of an application made under sub-section (2) of section 18, which has proceeded to registration.

108. Divisional Application. — (1) Where an application is made in Form TM-M under proviso to section 22 for the division of a single pending application, the registrar may, on payment of a divisional fee, divide such application into two or more separate applications.

(2) In case of division of application, The Registrar shall treat each divisional application as a separate application for registration with the same filing date as the initial application.

(3) Any time limit for any action by the applicant in relation to the initial application at the time of division shall be applicable to each new separate application created by division irrespective of the date of the division.

(4) In case of division of application, the Registrar shall assign an additional separate new serial number or numbers, as the case may be, and it shall be cross-referenced with the initial application.

(5) For the removal of doubt, it is clarified that no new registration shall be effected when a single application is divided. On the contrary, application already filed shall be merely separated or divided into individual files.

109. Extension of time— (1) An application for extension of time under section 131 (not being a time expressly provided in the Act or prescribed by rule 85 or by sub-rule (3) of rule 86 or a time for the extension of which provision is made in the rules) shall be made in Form TM-M.

(2) Upon an application made under sub-rule (1) the Registrar, if satisfied that the circumstances are such as to justify the extension of the time applied for, may, subject to the provisions of the rules where a maximum time limit is prescribed and subject to such conditions as he may think fit to impose, extend the time not exceeding one month and communicate the parties accordingly and the extension may be granted though the time for doing the act or taking the proceeding for which it is applied for has already expired.

110. Exercise of discretionary power of Registrar.— Any person who has applied for the exercise of discretionary or other power of the Registrar and requires a hearing under section 128, shall inform the Registrar in writing of his intention to be heard within one month from the date of notice which the registrar shall give to such person before determining the matter. Upon the receipt of such information, if any, the Registrar shall appoint a date of hearing of not less than twenty one days and give notice thereof.

111. Communication of decision.— The decision of the Registrar in the exercise of any discretionary power given to him by the Act or the rules shall be communicated to the person affected.

112. Amendments and correction of irregularity in procedure.— (1) Any document or drawing or other representation of a trade mark may be amended, and any irregularity in procedure which, in the opinion of the Registrar, may be obviated without detriment to the interests of any person, may be corrected.

(2) The Registrar may require the amendment of any application or representation of a trade mark or any other document or the addition of any matter thereto in order to bring it in accordance with the formal requirements of the Act.

113. Directions not otherwise prescribed.— Where in the opinion of the Registrar, it is necessary for the proper prosecution or completion of any proceedings under the Act or rules for a person to perform an act, file a document or produce evidence, which is not provided for by the Act or the rules, the Registrar may by notice in writing require the person to perform the act, file the document or produce the evidence, specified in the notice.

114. Opinion of the Registrar under section 115(4).— (1) Where a matter has been referred to the Registrar for his opinion under proviso to sub-section (4) of section 115 such opinion shall be forwarded under a sealed cover within seven working days of the receipt of such written intimation to the referring authority and the Registrar shall ensure complete confidentiality in the matter so referred.

(2) The opinion under this rule shall be given by the Registrar or an officer specially authorised for this purpose under sub-section (2) of section 3 and the name of the designated officer shall be published in the journal.

Hearings

115. Hearings.— (1) the hearing if any, in relation to any proceeding under the Act and rules may be held at the notified date and time and at such place within the territorial jurisdiction of the appropriate office as the Registrar may think fit:

Provide that the hearing may also be held through video- conferencing or through any other audio-visual communication devices and in such cases the hearing shall be deemed to have taken place at the appropriate office.

Explanation - *For the purposes of this rule, the expression "communication device" has the same meaning as assigned to it in clause (ha) of sub section (ii) of section 2 of the Information Technology Act,2000 (21 of 2000).*

(2) Where an officer exercising the powers of the Registrar who has heard any matter under the Act or the rules, has reserved orders therein, is transferred from one office of the Registry to another or reverts to another appointment before passing an order or rendering decision therein, he may, if the Registrar so directs, pass the order or render the decision as if he had continued to be the officer in the office of the Trade Marks Registry where the matter was heard.

Awards of Costs by Registrar

116. Costs in uncontested cases.— (1) Where a reasonable notice has been given to an applicant by the opponent before filing the notice of opposition and the applicant fails to contest the opposition, the Registrar may impose such costs on the applicant as may be specified in Forth Schedule.

(2) Where an opposition has been filed and the opponent fails to contest the proceedings after the applicant has filed counter statement, the Registrar may impose such costs on the opponent as may be specified in Forth Schedule.

117. Exception to rule 116. — Notwithstanding anything in rule 116, costs in respect of fees specified under entries, 10 and 11 of the First Schedule and of all stamps used on and affixed to affidavits used in the proceedings shall follow the event.

118. Scale of costs.— Subject to the provisions of rules 116 and 117, in all proceedings before the Registrar, he may, save as otherwise expressly provided by the Act, award such costs, not exceeding the amount admissible thereof under the Forth Schedule, as he considers reasonable having regard to all the circumstances of the case.

Review of Decisions of the Registrar

119. Application for review of Registrar's decision.— An application to the Registrar for the review of his decision under sub-section (c) of section 127 shall be made in Form TM-M within one month from the date of such decision or within such further period not exceeding one month thereafter as the Registrar may on request allow, and shall be accompanied by a statement setting forth the grounds on which the review is sought. Where the decision in question concerns any other person in addition to the applicant, such application and statement shall be left in triplicate and the Registrar shall forthwith transmit a copy each of the application and statement to the other person concerned. The Registrar may, after giving the parties an opportunity of being heard, reject or grant the application, either unconditionally or subject to any conditions or limitations, as he thinks fit.

Affidavit

120. Form, etc; of Affidavits.— (1) The Affidavits required by the Act and the rules to be filed at the Trade Marks Registry or furnished to the Registrar, unless otherwise provided in the Second Schedule, shall be headed in the matter or matters to which they relate, shall be drawn up in the first person, and shall be divided into paragraphs consecutively numbered; and each paragraph shall, as far as practicable, be confined to one subject. Every affidavit shall state the description and the true place of abode of the person making the same and shall bear the name and address of the person filing it and shall state on whose behalf it is filed.

(2) Where two or more persons join in an affidavit, each of them shall depose separately to such facts which are within his personal knowledge and those facts shall be stated in separate paragraphs.

(3) **Affidavits** – (a) In India, before any court or before any officer empowered such to administer oaths or to take affidavits or before the Registrar or before the Notary Public.

(b) In any country or place outside India, before a diplomatic or consular officer, within the meaning of the Diplomatic and Consular Officers (Oaths and Fee) Act, 1948 (41 of 1948), of such country or place or before a notary public or before a Judge or Magistrate, of the country or place.

(4) The person before whom an affidavit is taken shall state the date on which and the place where the same is taken and shall affix his seal, if any, or the seal of the office to which he is attached thereto and sign his name and description at the end thereof.

(5) Alterations and interlineations shall, before an affidavit is sworn or affirmed, be authenticated by the initials of the person before whom the affidavit is taken.

(6) Every affidavit filed before the Registrar in connection with any of the proceedings under the Act or the rules shall be duly stamped under the law for the time being in force.

Inspection of Documents by Public

121. Inspection of documents.— The documents mentioned in sub-section (1) of section 148 shall be available for inspection at the appropriate office of the Trade Mark Registry on payment of the fee mentioned in First Schedule on all working days and at such times as may be fixed by the Registrar.

Certificates

122. Certified copies of documents.— The Registrar may, on request being made in Form TM-M along with fees mentioned in First Schedule, furnish certified copies of any entry in the register or of any documents referred to in sub-section (1) of section 148 or of any decision or order of the Registrar, or of a certificate other than a certificate under sub-

section (2) of section 23 as to any entry, matter or thing which he is authorised or required by the Act or the rules to make.

Provided that the Registrar may furnish an expedited certified copies of the documents aforementioned within seven working days on a request in Form TM-M received to that effect on payment fees as specified in First Schedule.

Explanation: A certified copy of any record available digitally with the Registrar shall be a duly certified copy of that record.

123. Power of Registrar to notify International Non-proprietary names. — The Registrar shall from time to time publish in the Journal, the words which are declared by the World Health Organisation as international non-proprietary names referred to in sub-section (b) of section 13.

Well-Known Trademarks

124. Determination of Well Known Trademark by Registrar. — (1) Any person may, on an application in Form TM-M and after payment of fee as mentioned in First schedule, request the Registrar for determination of a trademark as well-known. Such request shall be accompanied by a statement of case along with all the evidence and documents relied by the applicant in support of his claim.

(2) The Registrar shall, while determining the trademark as well-known take in to account the provisions of sub section (6) to (9) of section 11.

(3) For the purpose of determination, the Registrar may call such documents as he thinks fit.

(4) Before determining a trademark as well-known, the Registrar may invite objections from the general public to be filed within thirty days from the date of invitation of such objection.

(5) In case the trademark is determined as well-known, the same shall be published in the trademark Journal and included in the list of well-known trademarks maintained by the Registrar.

(6) The Registrar may, at any time, if it is found that a trademark has been erroneously or inadvertently included or is no longer justified to be in the list of well-known trademarks, remove the same from the list after providing due opportunity of hearing to the concerned party.

Appeal to the Intellectual Property Appellate Board

125. Time for appeal. — An appeal to the Intellectual Property Appellate Board from any decision of the Registrar under the Act or the rules shall be made within three months from the date of such decision.

126. Service to the Registrar. — A copy of every application to Intellectual Property Appellate Board under the Act shall be served on the Registrar.

Certificate of Validity

127. Certificate of validity to be noted. — Where the Intellectual Property Appellate Board has certified as provided in section 141 with regard to the validity of a registered trademark the registered proprietor thereof may request the Registrar in Form TM-M to add to the entry in the register a note that the certificate of validity has been granted in the course of the proceedings, particulars of which shall be given in the request. An officially certified copy of the certificate shall be sent with the request, and the Registrar shall record a note to that effect in the register and publish the note in the Journal.

Return of Exhibits and Destruction of Records

128. Return of exhibits.— (1) Where the exhibits produced in any matter or proceeding under the Act or the rules are no longer required in the Trade Marks Registry, the Registrar may call upon the party concerned to take back the exhibits within a time specified by him and if the party fails to do so, such exhibits shall be destroyed.

(2) Where, before the notified date any exhibits have been produced in any proceeding, the Registrar may, if satisfied that it is no longer necessary to retain them call upon the party concerned to take back the exhibits within a time specified by him and if the party fails to do so, such exhibit shall be destroyed.

129. Destruction of records.— Where an application for the registration of a trademark has been withdrawn or abandoned or refused or a trademark has been removed from the register or in an opposition or rectification proceeding the matter has been concluded and no appeal is pending before the Intellectual Property Appellate Board, the Registrar may, at the expiration of one years after the application is withdrawn or is abandoned or is refused or after the trademark is removed from the register or the opposition or rectification proceeding is closed, as the case may be, destroy all or any of the records relating to the application, opposition or rectification or the trademark concerned.

PART II

SPECIAL PROVISIONS FOR COLLECTIVE TRADEMARKS

130. Rules to apply to collective trademarks.— The provisions of Part I, Part IV, and VII of these rules shall, in their application to collective trademarks, apply only subject to the provisions of this Part.

131. Application for registration and proceedings relating thereto.— (1) An application for the registration of a collective trademark for goods or services under sub-section (1) of section 63 shall be made to the Registrar in Form. TM-A along with the draft regulations.

(2) References in Part I of the rules to the acceptance of an application for the registration of a trademark for goods or services, shall, in their application to collective trademark, be substituted by references to authorisation to proceed with the application.

(3) The address in India, if any, of an applicant to register a collective trademark shall be deemed to be the address of his principal place of business in India for all the purposes for which such an address is required by the rules.

(4) The regulations governing collective trademarks shall specify, *inter alia*—

(a) the name of the association of persons and their respective office addresses;

(b) the object of the association;

(c) the details of members;

(d) the conditions for membership and relation of each member with the group;

(e) the persons authorised to use the trademark and the nature of control the applicant exercise over the use of the collective trademark;

(f) the conditions governing use of the collective trademark, including sanctions;

(g) the procedure for dealing with appeals against the use of the collective trademark;

(h) such other relevant particulars as may be called for by the Registrar.

132. Case accompanying application.— The applicant shall submit to the Registrar along with his application a statement of case setting out the grounds on which he relies in support of his application. Such statement of case shall be furnished in duplicate.

133. Examination, Hearing, Opposition, Registration, and Renewal. — The provisions related to examination, hearing, opposition, registration and renewal of trademarks shall apply mutatis mutandis in respect of collective trademarks.

134. Amendment of regulations relating to collective trademarks and renewal.— (a) An application by the registered proprietor of a collective trademark for any amendment to the regulation under Section 66 shall be made in Form TM-M and where the Registrar accepts any such amendment he shall advertise, such application in the Journal and further proceedings in the matter shall be governed by rules 42 to 51.

(b) A collective trademark may be renewed from time to time and the provision of rule 57 to 61 shall apply *mutatis mutandis* in respect of such request for renewal.

135. Removal of collective trademark.— An application for removal of a collective trademark from the register shall be made in Form TM-O and shall set forth particulars of the grounds on which the application is made. The provisions of rule 97 to 100 of these rules shall apply mutatis mutandis for further proceeding in the matter.

PART III

SPECIAL PROVISION FOR CERTIFICATION TRADEMARKS

136. Rules to apply to certification Trademarks.— The provisions of Part I of these rules shall, in their application to certification Trade Marks, apply only subject to the provisions of this Part.

137. Application for registration and proceedings relating thereto. — (1) An application for the registration of a certification trademarks for goods or services under sub-section (1) of section 71 shall be made to the Registrar in Form TM-A along with the draft regulations.

(2) References in Part I of the rules to the acceptance of an application for the registration of a trademark, shall, in their application to certification trademark, be substituted by references to authorisation to proceed with the application.

(3) The address in India, if any, of an applicant to register a certification trademark shall be deemed to be the address of his principal place of business in India for all the purposes for which such an address is required by the rules.

(4) The regulation governing a certification trademark shall specify, *inter alia*—

(a) a description of the applicant;

(b) the nature of the applicant's business;

(c) the particulars of infrastructure like Research and Development, technical manpower support;

(d) the applicant's competence to administer the certification scheme;

(e) the applicant's financial arrangement;

(f) an undertaking from the applicant that there will be no discrimination of any party if they meet the requirements set down in the regulations;

(g) the characteristic, which the trademark will indicate in the certified goods or in relation to the rendering of certified services;

(h) the manner of monitoring the use of the trademark in India; and

(i) such other relevant particulars as may be called for by the Registrar.

138. Statement of case accompanying application.— The applicant shall submit to the Registrar along with his application a statement of case setting out the grounds on which he relies in support of his application.

139. Examination, Hearing, Opposition, Registration, and Renewal.— The provisions related to examination, hearing, opposition, registration and renewal of trademarks shall apply *mutatis mutandis* in respect of certification trademarks.

140. Cancellation or variation of registration of certification trademark.— An application for cancellation or variation of registration of a certification trademark on any of the grounds mentioned in section 77 shall be made in Form TM-O and shall set forth particulars of the grounds on which the application is made. The provisions of rule 97 to 100 shall apply *mutatis mutandis* to further proceedings in the matter.

141. Alteration of deposited regulations and consent of the Registrar for assignment or transmission of certification Trademarks.— (1) An application by the registered proprietor of a certification trademark under sub-section (2) of section 74 to alter the deposited regulation shall be made in Form TM-M and where the Registrar decides to permit such alteration it shall be advertised in the Journal and further proceeding in the matter shall be governed by rules 42 to 51.

(2) An application for the consent of the Registrar to the assignment or transmission of a certification trademark under section 43 shall be made in Form TM-P.

PART IV

REGISTRATION OF TRADEMARKS AGENTS

142. Register of Trademarks Agents.— The Registrar of Trade Marks shall maintain a Register of trademarks agents wherein shall be entered the name, address of the place of residence, address of the principal place of business, the nationality, qualifications and date of registration of every registered trademarks agent.

143. Registration of existing registered trademarks agents, code of conduct, etc.— (1) Notwithstanding anything contained in rule 144, every person whose name has been entered in the register of trademarks agents maintained under the old law shall be deemed to be registered as a trademarks agent under these rules.

(2) The Registrar may publish in the Journal a code of conduct for the registered trademarks agent authorising them to act as such.

144. Qualifications for registration.— Subject to the provisions of rule 145, a person shall be qualified to be registered as a trademarks agent if he—

(i) is a citizen of India,

(ii) is not less than 21 years of age;

(iii) is a graduate of any university in India or possesses an equivalent qualification and has passed the examination prescribed in rule 148 or is an Advocate within the meaning of the Advocates Act, 1961 (25 of 1961) or is a member of the Institute of Company Secretaries of India;

(iv) is considered by the Registrar as a fit and proper person to be registered as a trademark agent.

145. Persons debarred from registration.— A person shall not be eligible for registration as a trademarks agent if he—

(i) has been adjudged by a competent Court to be of unsound mind;

(ii) is an undischarged insolvent;

(iii) being a discharged insolvent has not obtained from the court or the appropriate forum as the case may, a certificate to the effect that his insolvency was caused by misfortune without any misconduct on his part;

(iv) has been convicted by a competent court or the appropriate forum as the case may, whether within or outside India of an offence punishable with transportation or imprisonment, unless the offence of which he has been convicted has been pardoned or unless on an application made by him, the Central Government by order in this behalf, has removed the disability;

(v) being a legal practitioner has been held guilty of professional misconduct by any High Court in India;

(vi) being a chartered accountant, has been held guilty of negligence or misconduct by a High Court; or

(vii) being a registered trademarks agent has been held guilty of professional misconduct by the Registrar.

146. Manner of making application.— All applications under the provisions of this Part shall be made in duplicate and shall be sent to or submitted at that office of the Trade Marks Registry within whose territorial limits the principal place of business of the applicant is situate.

147. Application for registration as a trademarks agent.— (1) Every person desiring to be registered as a trademarks agent shall make an application in Form TM-G.

(2) The applicant shall furnish such further information bearing on his application as may be required of him at any time by the Registrar.

148. Procedure on application and qualifying requirements. — (1) On receipt of an application for the registration of a person as a trademarks agent, the Registrar, if satisfied that the applicant fulfils the prescribed qualifications, shall appoint a date in due course on which the candidate will appear for examination in Trade Marks Law and practice.

(2) The qualifying marks for the examination shall be as advertised by the Registrar.

149. Certificate of registration. — If the Registrar considers the applicant eligible and qualified under rule 144 for registration as a trademark agent, he shall enroll the candidate as a registered trademark agent after payment of prescribed fee and shall issue a certificate in Form RG-4 and the registration shall subsist till end of the financial year of the registration.

150. Continuance of the name in the register of Trade Marks Agents. — The continuance of a person's name in the register of trademarks agents shall be subject to his payment of the fees prescribed in First Schedule.

151. Removal of agent's name from the register of Trade Marks agents.— (1) The Registrar shall remove from the register of trademarks agents the name of any registered trademarks agent-

(a) from whom' a request has been received to that effect; or

(b) from whom the annual fee has not been received on the expiry of three months from the date on which it became due.

(2) The Registrar shall remove from the register of trademarks agents, the name of any registered trademarks agent—

(a) who is found to have been subject at the time of his registration, or thereafter has become subject, to any of the disabilities stated in clauses (i) to(vii) of rule 145;or

(b) whom the Registrar has declared not to be a fit and proper person to remain in the Register by reason of any act of negligence, misconduct or dishonesty committed in his professional capacity;

(c) whose name has been entered in the register by an error or on account of misrepresentation or suppression of material fact:

Provided that before making such declaration under clauses (b) and (c) the Registrar shall call upon the person concerned to show-cause why his registration should not be cancelled and shall make such further enquiry, if any, as may be consider necessary.

(3) The Registrar shall remove from the register of trademarks agents the name of any registered trademarks agent who is dead.

(4) The removal of the name of any person from the register of trademarks agents shall be notified in the Journal and shall, wherever possible, be communicated to the person concerned.

152. Power of Registrar to refuse to deal with certain agents.— (1) The Registrar may refuse to recognise—

(a) any individual whose name has been removed from, and not restored to the register;

(b) any person, not being registered as a trademarks agent, who in the opinion of the Registrar is engaged wholly or mainly in acting as agent in applying for trademarks in India or elsewhere in the name or for the benefit of the person by whom he is employed;

(c) any company or firm, if any person whom the Registrar could refuse to recognise as agent in respect of any business under these rules, is acting as a director or manager of the company or is a partner in the firm.

(2) The Registrar shall refuse to recognise as agent in respect of any business under this rule any person who neither resides nor has a place of business in India.

153. Restoration of removed names.— (1) The registrar may, on an application made in Form TM-G with fee as specified in the First Schedule, within three years from the date of removal of the name of a person from the Register of trademarks agents, whose name has been removed under clause (b) of sub-rule (1) of rule 151, restore his name to the register of Trade Marks agents.

(2) The restoration of a name to the register of trademarks agent shall be notified in the Journal and shall be communicated to the person concerned.

154. Alteration in the register of Trademarks Agents.— (1) A registered trademarks agent may apply in Form TM-G for alteration of his name, address of the place of residence, address of the principal place of business or qualifications entered in the register of trademarks agents. On receipt of such application and the fee prescribed in that behalf, the Registrar shall cause the necessary alteration to be made in the register of trademarks agents.

(2) Every alteration made in the register of trademarks agents shall be notified in the Journal.

155. Publication of the register of trademarks agents.— The Registrar shall ordinarily publish the list of agents in the register of trademarks agents from time to time, and at least once in two years together with their addresses as entered in the register.

156. Appeal.— An appeal shall lie to Intellectual Property Appellate Board from any order or decision of the Registrar in regard to the registration or removal of trademarks agents under Part IV of these rules, and the decision of the Appellate Board shall be final and binding.

Part V

Language of the Trade Marks Registry

157. Language of the Trade Marks Registry. — (1) The language of the Trade Marks Registry shall be English:

Provided that the parties to a proceedings before the Trade Marks Registry may file documents drawn up in Hindi, if they so desire:

Provided further that that where-

(a) the Registrar permits the use of Hindi in the proceedings of the Tribunal and hearing in such proceedings, he may in his discretion direct English translation of pleadings and documents to be filed;

(b) the Trade Marks Registry located in "Region A" as defined in clause (f) of rule 2 of the Official Languages (Use for Official Purposes of the Union) Rules, 1976, the Registrar may, in his discretion, make final orders either in Hindi or in English.

(2) Notwithstanding anything contained in paragraph (1), where a final order is made in Hindi, an authenticated English translation thereof shall simultaneously be prepared and kept on record.

PART VI

REPEAL

158. Repeal.— The Trade Marks Rules, 2002, are hereby repealed without prejudice to anything done under such rules before the coming into force of these rules.

THE FIRST SCHEDULE
(See Rule 11)
FEES

Entry No.	**On what payable**	**Amount in INR.**		**Corresponding Form Number**
		For Physical filing	For E-filing	
(1)	**(2)**	**(3)**	**(4)**	**(5)**
1	Application for registration of a trademark /collective Marks / Certification Mark / Series of trademark for specification of goods or services included in one or more than one classes.			TM-A
	Where the applicant is an Individual / Startup / Small Enterprise	5,000	4,500	
	In all other cases	10,000	9,000	
	(Note: Fee is for each class and for each mark)			
2	On a notice of opposition under section 21(1), 64, 66 or 73 or application for rectification of register under section 47 to 57, 68, 77 or application under rule 99, 103, 135,140 or On application under section 25 of Geographical Indication of Goods (Regulations and Protection) Act, 1999 to invalidate a trademark or counter statement related thereto. ***(Note: Fee is for each class opposed or counterstatement filed***)	3,000	2,700	TM-O
3	For renewal of registration of a trademark under section 25 for each class	10,000	9,000	TM-R
4	Application for renewal with surcharge of registration of a Trademarks under section 25 (3) for each class	5,000 Plus renewal fee applicable under entry 3	4,500 Plus renewal fee applicable under entry 3	
5	Application for renewal with surcharge/ restoration and renewal of a Trademarks under section 25 (3), 25 (4) for each class	10,000 Plus renewal fee applicable under entry 3	9,000 Plus renewal fee applicable under entry 3	
6	On application under section 45 to register a subsequent proprietor in case of assignment or transfer for each trademark	10,000	9,000	TM-P
7	On application for: Certificate of the Registrar under section 40 (2), or For approval of the Registrar under section 41, or Direction of the Registrar for advertisement of Assignment without goodwill under section 42, or Add or alter a registered trademark under section 59 (1) for each trademark, or Conversion of specification under Section 60 for each trademark.	3,000	2,700	
8	On application for: Extension of time for applying for direction under section 42 for advertisement of assignment without goodwill, or Extension of time for registering a company as subsequent	2,000	1,800	

	proprietor of trademarks under section 46(4), or Consent of Registrar to the assignment or transmission of a certification trademark under section 43, or Change a name and / or description of a registered proprietor or a registered user of a trademark under section 58 for each trademark.			
9	On application for: Dissolution of association between trademarks under section 16(5), or Change in address or address for service in India of Registered Proprietors under section 58 for each trademark, or Request for cancellation of an entry in the register or part thereof under section 58 for each trademark.	1,000	900	
10	Application under section 49 to a registered user of a registered trademark in respect of goods or services Or On application under clause (a) of sub-section (1) of section 50 to vary the entry of a registered user of one trademark where the trademarks are covered by the same registered user in respect of each of them Or On application under clause (b), (c) or (d) of sub-section (1) of section 50 for cancellation of entry of a registered user of one trademark Or On notice under rule 95 (2) of intention to intervene in one proceeding for the variation or cancellation of entries of a registered user of a trademark ***(Note: applicable fee is for each mark)***	5,000	4,500	TM-U
11	Request for search and issue of certificate under rule 22(1)	10,000	9,000	TM-C
12	Request for an expedited search and issuance of certificate under rule 22 (3)	Not allowed	30,000	
13	On application for: Extension of time, or Certified copy, or Duplicate Registration Certificate, or inspection of document, or Particulars of advertisement to registrar, or seeking grounds of decision of Registrar, or Enter in the register and advertise a note of certificate of validity under rule 127, Amendment in trademark application, or Particulars of advertisement of a trademark to Registrar under rule 41.	1000	900	TM-M
14	On application for: Deposition of regulation of collective trademark under section 66 or alteration of regulation of certification trademark under section 74 (2), or Seeking Registrar preliminary advice, or	2,000	1,800	

	For division of an application.			
15	On application for: Review of Registrar's decision, or Petition (not otherwise charged) for obtaining Registrar's order for any interlocutory matter in a contesting proceeding, or Any other matters not covered in other TM forms.	3,000	2,700	
16	On request for an expedited certificate of the Registrar (other than a certificate under section 23(2) of the Act) or certified copies of the documents under proviso to rule 122 ***(Note: for entry in respect of each registered trademark or for each document)***	5,000	4,500	
17	On application under rule 34 for expedited process of an application for the registration of a trademark			
	Where the applicant is an Individual / Startup / Small Enterprise	Not allowed	20,000	
	In all other cases	Not allowed	40,000	
	(Note: fee is for each class and for each mark)			
18	Request to include a trademark in the list of well- known trademark ***(Note: applicable fee is for one mark only.)***	Not allowed	1,00,000	
19	On application for registration of a person as a trademark agent under rule 147 & 149.	5,000	4,500	TM-G
20	For continuance of the name of a person in the Register of a trademark Agents under rule 150 for every Five year to be paid on or before 1st day of succeeding financial year.	10,000	9,000	
21	On application for restoration of the name of a person to the Register of trademarks agents under rule 153 within 3 years from the date of removal of registration.	5,000 Plus continuation fee as mentioned in entry number 20	4,500 Plus continuation fee as mentioned in entry number 20	
22	On application for an alteration of any entry in the Register of trademarks Agent under rule 154	1,000	900	
23	Handling fee for certification and transmission of international application to International Bureau with MM2(E)	Not allowed	5,000	--

THE SECOND SCHEDULE
FORMS

Form No.	Section and Rules of the Act & Rules	Title for which form may be used	Entry number of first Schedule
1	2	3	4
TM-A	Sections 15, 15(3), 18(1), 18(2), 63(1), 71, 71(1), 154(2).	Application for registration of a trademark for specification of goods or services included in one or more than one classes under section 18 (1) or 18 (2), or Application for registration of collective Marks for specification of goods or services included in one or	1

		more than one classes under section 63 (1), or Application for registration of Certificate Marks for specification of goods or services included in one or more than one classes under section 71 (1), or Application for registration of trademark as series for specification of goods or services included in one or more than one classes under section 15 (3).	
TM-M	Sections 18(4), 22, proviso to 22, 23(2), 43, 58, 66, 74(2), 127(c), 131, 133(1), 137, 148(2), Rules: 23, 36, 36(1), 41, 56(3), 108, 109, 122, 124,127.	Request for amendment in trademark application, or Seeking grounds of decision, or Seeking Registrar preliminary advice, or Application for deposition of regulation of collective trademark, or Alteration of regulation of certification trademark, or Request for Certified copy, or Duplicate Registration Certificate, or Extension of time, Request to review of decision to registrar, or Inspection of document, or Request to registrar for particulars of advertisement, or Review of Registrar's decision, or Petition (not otherwise charged) for obtaining Registrar's order for any interlocutory matter in a contesting proceeding, or Request to inclusion of a mark in list of well-known trademarks, or Any other matters not covered in other TM forms.	13, 14, 15, 16, 17, 18
TM-R	Section: 25, Proviso to Section 25(3), 25(4).	Application of Renewal of a Trademarks, or Request for Renewal with surcharge, or Request for restoration of a trademark.	3, 4, 5
TM-C	rule 22(1), rule 22(3)	Application for Search certificate request	11, 12
TM-O	Sections 21, 21(1), 47-57, 59, 64, 66, 68, 73, 77 and 25 of Geographical Indication of Goods (Regulation and Protection) Act, 1999 Rules: 99, 105, 130, 136.	On a notice of opposition under section 21(1), 64, 66 or 73, Application for rectification of register under section 47 to 57, 68, 77, Application under rule 99, 135, 140, or Application under section 25 of Geographical Indication of Goods (Regulations and Protection) Act, 1999 to invalidate a trademark or counter statement related thereto.	2
TM-P	Sec. 16 (5), 40(2), 41, 42, 43, 45, 58, 59, 60 Rules 75, 80, 83, 85,	Request to replace subsequent proprietor as registered proprietor on register, or Request to amend the details of registered proprietors or registered users, or Request to amendment of registered trademarks, or Request for amendment in specification of goods or services, or Request for conversion of goods, or Request for dissolution of association between trademarks.	6, 7, 8, 9
TM-U	Sections 49, 50, 50(1)(a), 50(1)(b), 50(1)(c) or (d). Rule: 95.	Application for recordal of registered users, or Request for amendment in details of registered user, or Application for cancellation or variation of registered user, or Application to intervene in the proceedings by third party.	10
TM-G	Rules 147, 153, 154.	Application of registration of a Trademark Agent, or Request for continuation as a Trademark agent, or Restoration of the Trademark agent name in register, or Alteration related to details of Trademarks Agents in the register.	19, 20, 21, 22

List of Forms

FORM TM-A
The Trade Marks Act, 1999
Application for registration of a trademark
[The relevant information must be filled up in coloured box against the respective head]

1.	**NATURE OF THE APPLICATION:**	
	[(a) The applicant must choose either of the following categories-	
	1. Standard trademark, 2. Collective Mark, 3. Certification Mark, 4. Series Marks	
	Standard trademark here means an application for registration of a trademark not being a Collective or Certification trademark or Series of marks	
	(b) In case of Collective Mark or Certification Mark the draft regulations with form TM-M must be submitted.]	
2.	**Whether application filed as (**Please choose and specify**)** In case of startup/ Small Enterprise, requisite certificate should be provided.	(Individual / startup / Small Enterprise/others)
	FEE:	(See First Schedule for Appropriate Fee)
3.	**APPLICANT**	
	Name: *	
	Trading as:	
	Address:*	
		(State) (Country)
	[This address should be the address of the applicant's principal place of business in India]	
	Address for service:	
		(State) (Country)
	[(a) Unless otherwise specifically stated, the applicant's address shall be the address for service of the applicant who has principal place of business in India.	
	(b) The address for service in India must be provided, in case the applicant does not carry business in India]	
	Mobile No.:	
	E-mail address*:	
	Nature of the applicant:	
	[The applicant must choose either of the following categories- *1. Individual, 2. Partnership Firm, 3. Body-incorporate including Private Limited/limited Company, 4. Limited Liability Partnership, 5. Society 6. Trust 7. Government Department 8. Statutory Organization. 9. Association of persons 10. Hindu Undivided Family*	
4.	**APPLICANT'S AGENT (if any):**	
	Name*:	
	Address*:	
	[In case of authorization of agent, the address of the agent may be mentioned as the applicant's address for service]	
	Mobile No.* :	
	E-mail address*:	
	Nature of the Agent:	
	[The applicant must choose either of the following categories-	
	1. Registered Trade Marks Agent, 2. Advocate 3. Constituted Attorney]	
	Registration No.:	
5.	**TRADEMARK:**	(trademark to be mentioned here)
	Category of mark:	
	[The applicant must choose either of the following categories-	
	*1. **Word mark** (it includes one or more words, letters, numerals or anything written in standard character), 2. **Device mark** (it includes any label, sticker, monogram, logo or any geometrical figure other than word mark), 3. **Colour** (when the distinctiveness is claimed in the combination of colours with or without device), 4. **Three dimensional trademark** (it includes shape or packaging of goods), 4. **Sound***	
	Description of the mark:	
	[(a) Description of mark must be provided in terms of Rule 26.	
	(b) In case of trademarks submitted in specific combination of colours other than black and white, it shall be presumed that the distinctiveness of the mark is claimed in that combination of colours and application will be considered accordingly.	

	(c) In case of colour marks the description may be like "The trade mark consists of three vertical stripes in the colours PURPLE, GREEN and YELLOW applied to the fascias of buildings and to doors as shown in the representation of the mark."	
	(d) In case of sound marks representation of specific musical notes must be submitted at the place provided for the trademark. The applicant is also required to submit sound clipping in MP3]	
6.	**IF MARK IN A LANGUAGE OTHER THAN HINDI OR ENGLISH:**	
	Language:	
	Transliteration of the mark in roman script:	
	[Transliteration of the mark in roman script must be provided in case the mark is in a language other than Hindi or English	
	Translation of the mark in English:	
	[Translation of the mark in English must be provided in case the mark is in a language other than Hindi or English	
7.	**Conditions or Limitations** to use the trademark, if any	
8.	**CLASS OF GOODS OR SERVICE:**	**DESCRIPTION OF GOODS AND SERVICE:**
9.	**STATEMENT AS TO USE OF MARK:**	[ ] Proposed to be used
		[ ] The mark is used by the applicant or its predecessor in title Since…… ……. in respect of all the goods and/or service mentioned in the application.
	[(a) The applicant must select either of the above	
	(b) The date of use must be given in the format (DD/MM/YYYY) and shall refer to all items mentioned in the application.	
	(c) In case the use of the Trade Mark is claimed prior to the date of application, the applicant shall file an affidavit testifying to such use along with supporting documents	
	(d) The statement as to use of the mark once made shall be final]	
10.	**PRIORITY CLAIM, IF ANY:**	
	Priority claimed since	DD/MM/YYYY
	Priority claim based on application filed in the **Convention Country or organization**	Name of the country or organization
	Priority Application No.	
	[The priority must be claimed in respect of all goods and services mentioned in the application]	
11.	**ANY OTHER IMPORTANT INFORMATION OR STATEMENT:**	
	[Applicant may provide here any other information or statement in relation to his application]	
12.	**VERIFICATION:**	I hereby verify that above mentioned facts are true and correct to best of my knowledge and belief.
13.	**DETAIL OF THE PERSON SUBMITTING THE APPLICATION:**	
	Signature:	
	Name:	
	Authority:	

FORM TM-M
The Trade Marks Act, 1999
Application/Request for any miscellaneous function in respect of a trademark Application/ Opposition/Rectification under the Trade Marks Act

This form is divided into three Parts i.e. A, B & C.
Part A and C are required to be filled compulsorily.
Part B is further divided into several subcategories and the same is required to be chosen by the applicant as per requirement and be filled accordingly.
[Note: One form is meant for one request only. Different forms should be submitted for different requests. In case more than one request is claimed in one form the first one will be entertained and rest of the requests will be ignored.]

	PART A **[applicants details]**		
1	**FEE**	(See First Schedule for Appropriate Fee)	
	Applicant or Registered Proprietor/Opponent/Third Party Making the Application/Request		
	[(a) Anyone from the above, must be chosen on whose behalf the application/request is being submitted.		
	(b) 'Applicant' or 'Registered Proprietor' here means the person who is recorded as such in TMR records in respect of the referred application or registered trademark. The 'Opponent' here means the Opponent in the referred opposition proceeding or an Applicant for Rectification desiring to cancel or vary the registration of the trademark of someone else. 'Third Party' means the person who is not a party to the application/opposition/Rectification referred to.]		
	Name: *		
	Trading as		
	Address:*		
		(State)	(Country)
	Address for service:		
		(State)	(Country)
	[(a) Unless otherwise specifically stated, the applicant's/opponent's/third party's address shall be the address for service of the applicant who has principal place of business in India.		
	(b) The address for service in India must be provided, in case the above person does not carry on business in India]		
	Mobile No :		
	E-mail address: *		
2	**Agent of the applicant or registered proprietor/opponent/third party, as the case may be, (if any)**		
	Name:		
	address		
	Mobile No:		
	E-mail address:		
	Nature of the Agent		
	[One of the following categories must be chosen -		
	1. Registered Trade Marks Agent, 2. Advocate 3. Constituted Attorney]		
	Registration No.		
	[In case of authorisation of agent, the address of the agent may be mentioned as the address for service of the Applicant or Registered Proprietor/Opponent/Third Party as the case may be.]		
3	**REQUEST/ APPLICATION IN THE MATTER OF**		
	Application / Opposition/ Rectification No	Reference No	
	[Anyone of the above must be chosen]		
	Additional Reference, if required		
	PART B: **PURPOSE OF REQUEST** **[*application column required to be ticked as filled in*]**		
a	**For correction of clerical error or for amendment under rule 37**		
	Details of corrections		
b	**Statement of grounds of Registrar's decision under rule 36**		
	Hearing Date		
	Order No. and date		
c	**For certificate of the Registrar or certified copy of a document under rule 122**		
	If request is for EXPEDITED certificate	YES or NO	
	[In case of request for expedited certificate, the fee will be ordinarily five times of normal request]		
	Details of certified copy required		
	No of copies of document required		
d	**For particulars of advertisement of a trade mark under rule 41**		
e	**Request for Review of Registrar's decision**		
	Hearing Date		
	Order No. and date		
	[Number of associated applications/registered trademark numbers and fee in Rs are to be entered here]		
f	**Request for extension of time under rule 109**		
	Reason for extension of time period	period of extension of time requested	

g	**Preliminary Advice about the distinctiveness of the trademark, U/S 133**	mark to be entered/pasted here	
h	**Request of expedited examination of an application under rule 34**		
	Declaration of reason for expedited examination		
i	**Division of an Application under rule 108**		
	Class to be divided		
	Trademark(s) (in case of series marks) to be divided		
j	**Request for duplicate Registration Certificate under rule 56 (3)**		
k	**Request for Inclusion of Trademark in the list of Well- Known Trademarks Registration Certificate under rule 124**	Representation of the Mark (paste here)	Fee in Rs.
	Is requested mark is registered with Trademark Registry, India – if Yes (details there off		
l	**Request for the inspection of the document under rule 121**	Purpose	Fee in Rs
m	**Amendment of regulation for governing the use of a collective trademark or a certification trademarks under section 66**	Purpose	Fee in Rs
n	**A request to enter in the register and advertise a note of certificate of validity, under rule 127**	Purpose	Fee in Rs
o	**On Petition (not otherwise charged) for obtaining Registrar's order for any interlocutory matter in a contesting proceeding**	Purpose	Fee in Rs
p	**For payment of Misc. fee(s) for other purpose(s) apart from above**	Purpose	Fee in Rs
q	**Regulation for governing the use of a collective trademark or a certification trademarks**		
	Copy of the draft regulation should be attached		
r	**For submitting Authorization of Agent under rule 19**		
	[The copy of the Power of Attorney must be attached]		
	PART C **[details of the person making application/request and details of documents submitted]**		
a	**DETAILS OF THE PERSON SUBMITTING THE APPLICATION**		
	Signature		
	Name		
	Authority		
b	**LIST OF DOCUMENTS ATTACHED, IF ANY**		

FORM TM-R
The Trade Marks Act, 1999
Application for Renewal/Restoration of registration of a trademark or for payment of surcharge towards the renewal

[The relevant information must be filled up in colored box against the respective head]			
1	**APPLICANT**		
	[The Applicant here means the person on whose behalf the request is being submitted. He will ordinarily be the registered proprietor of the mark]		
	FEE:	(See First Schedule for Appropriate Fee) As per requirement mentioned in column 6	
	Name: *		
	Trading as		
	Address:*		
		(State) (Country)	
	Address for service:		
		(State) (Country)	
	Mobile No.:		
	E-mail address*:		
	[(a) Unless otherwise specifically stated, the applicant's address shall be the address for service of the applicant who has principal place of business in India.		
	(b) The address for service in India must be provided, in case the applicant does not carry business in India]		
	Mobile No :		
	E-mail address: *		
2	**APPLICANT'S AGENT (if any)**		

	Name*:	
	Address*:	
	Mobile No* :	
	E-mail address*:	
	Nature of the Agent*	
	[The applicant must choose either of the following categories-	
	1. Registered Trade Marks Agent 2. Advocate 3. Constituted Attorney]	
	Registration No.:	
	[In case of authorisation of agent, the address of the agent may be mentioned as the applicant's address for service]	
3	**TRADE MARK TYPE:**	
	[(a) one of the following categories must be chosen- *1. Standard trademark, 2. Collective Mark, 3. Certification Mark, 4. Series Marks* *(b) 'Standard mark' here refers to registration of a normal trademark not being Collective or Certification trademarks or Series of marks]*	
4	**Trade Mark No:**	
5	**Class(es)**	
	(In case of multiclass number of classes to be mentioned)	
6	**Payment for (Select from below)**	
	Renewal before expiry of last registration of trade mark	
	Renewal if filed within 6 months after expiry of last registration.	
	Restoration and renewal of registration of the trade mark removed from the register	
7	**DETAIL OF THE PERSON SUBMITTING THE APPLICATION**	
	Signature:	
	Name:	
	Authority:	
8	**List of Documents attached:**	

FORM TM-C
The Trade Marks Act, 1999
Application for Search and certificate under section 45(1) of the Copyright Act, 1957
[The relevant information must be filled up in coloured box against the respective head]

1	**APPLICANT**	
	FEE:	(See First Schedule for Appropriate Fee)
	Name:*	
	trading as:	
	Address:*	
		(State) (Country)
	[This address should be the address of the applicant's principal place of business in India]	
	Address for service:	
		(State) (Country)
	[(a) Unless otherwise specifically stated, the applicant's address shall be the address for service of the applicant who has principal place of business in India. *(b) The address for service in India must be provided, in case the applicant does not carry business in India]*	
	Mobile No :	
	E-mail address: *	
	Nature of the applicant	
	[The applicant must choose either of the following categories- *1. Natural person-Single Proprietor, 2. Natural person-Partnership Firm, 3. Body-incorporate including Private Limited/limited Company, 4. Limited Liability Partnership, 5. Society 6. Trust 7. Government Department 8. Statutory Organization. 9. any other]*	
2	**APPLICANT'S AGENT (if any)**	
	Name:	
	address	
	Mobile No :	
	E-mail address:	
	Nature of the Agent	

	[The applicant must choose either of the following categories- *1. Registered Trade Marks Agent, 2. Advocate 3. Constituted Attorney]*	
	Registration No	
	[In case of authorisation of agent, the address of the agent may be mentioned as the applicant's address for service	
3	Expedited (Y/N)	
	space of label/image	
4	**DETAIL OF THE PERSON SUBMITTING THE APPLICATION**	
	Signature	
	Name	
	Authority	
5	**DETAILS OF DOCUMENTS ATTACHED**	

FORM TM-O
The Trade Marks Act, 1999
Opposition/Application for Rectification of the Register/Counter statement / Refusal or invalidation of a trademark under Geographical Indication of Goods (Regulation and Protection) Act, 1999
[The relevant information must be filled up in coloured box against the respective head]

[*In case of off line filing, the form should be fined in duplicate***]**

1	**Applicant or Registered Proprietor/Opponent /Third Party Making The Application/Request**		
	[(a) Anyone from the above, must be chosen on whose behalf the Notice/Application/Request is being submitted.		
	(b) 'Applicant' or 'Registered Proprietor' here means the person who is recorded as such in TMR records in respect of the referred application or registered trademark. The 'Opponent' here means the Opponent in the referred opposition proceeding or an Applicant for Rectification desiring to cancel or vary the registration of the trademark of someone else. 'Third Party' means the person who is not a party to the application/opposition/Rectification referred to.]		
	FEE	(See First Schedule for Appropriate Fee)	
	Name*		
	trading as:		
	Address:*		
		(State)	(Country)
	Address for service:		
		(State)	(Country)
	Mobile No :		
	E-mail address*:		
	[(a) Unless otherwise specifically stated, the applicant's/opponent's/third party's address shall be the address for service of the applicant who has principal place of business in India.		
	(b) The address for service in India must be provided, in case the applicant/opponent/third party as the case may be, does not carry on business in India]		
	Mobile No :		
	E-mail address: *		
2	**AGENT OF THE APPLICANT OR REGISTERED PROPRIETOR/OPPONENT/THIRD PARTY, AS THE CASE MAY BE, (if any)**		
	Name*:		
	Address*:		
	Mobile No* :		
	E-mail address*:		
	Nature of the Agent:		
	[The applicant must choose either of the following categories-		
	1. Registered Trade Marks Agent, 2. Advocate 3. Constituted Attorney]		
	Registration No.		
	[In case of authorisation of agent, the address of the agent may be mentioned as the address for service of the applicant/opponent/third party as the case may be]		
3	**PURPOSE** *This column is divided in three subcategories and the same is required to be chosen by the applicant as per requirement and be filled accordingly.*		
a	**In the matter of filing opposition/rectification**		
	Application/Registered Trade Mark No.		Class(es)

	Trade Mark		
	Application published in Journal No.		
	[The copy of the journal publication needs to be attached]		
	GROUNDS OF OPPOSITION/RECTIFICATION		
	[Grounds of Opposition/Application for Rectification needs to be drafted in detail and verified by the Opponent/Applicant for Rectification and the same should be attached]		
b	**IN THE MATTER OF (for filing Counter Statement)**		
	Opposition/Rectification No.		Class(es)
	Application/Registered Trade Mark No.		
	Details of Counter statement		
	[Counter Statement needs to be drafted in detail and verified by the Applicant/Registered Proprietor for Rectification and the same needs to be attached]		
c	**Request to refuse or invalidate a trade mark u/s 25(a) (b) of GI Act, 1999**		
	Application/Registered Trade Mark No		Class(es)
	STATEMENT OF CASE	*[Statement of Case needs to be drafted in detail and verified by the Applicant; and an affidavit of the applicant in support, needs to be attached.]*	
4	**DETAIL OF THE PERSON SUBMITTING THE APPLICATION**		
	Signature		
	Name		
	Authority		
5	**LIST OF DOCUMENTS ATTACHED, IF ANY**		

FORM TM-P
The Trade Marks Act, 1999
Application for Post registration changes in the trademarks

This form is divided into three Parts i.e. A, B & C.
Part A and C are required to be filled compulsorily.
Part B is further divided into several subcategories and the same is required to be chosen by the applicant as per requirement and be filled accordingly.
[Note: One form is meant for one request only. Different forms should be submitted for different requests. In case more than one request is claimed in one form the first one will be entertained and rest of the requests will be ignored.]
[(a) One form is meant for request of one change only. Different forms should be filed up for different changes
(b) The relevant information must be filled up in colored box against the respective head.]

	PART A **[application details]**		
1	*[The Applicant here means the person on whose behalf the request is being submitted. He will ordinarily be the registered proprietor of the mark or a person claiming to be subsequent proprietor of the mark by virtue of any assignment or transmission]*		
	FEE	(See First Schedule for Appropriate Fee)	
	Name: *		
	trading as:		
	Address:*		
		(State)	(Country)
	Address for service*:		
		(State)	(Country)
	[(a) Unless otherwise specifically stated, the applicant's address shall be the address for service of the applicant who has principal place of business in India.		
	(b) The address for service in India must be provided, in case the applicant does not carry business in India]		
	Mobile No :		
	E-mail address: *		
2	**APPLICANT'S AGENT (if any)**		
	Name*:		
	Address*: *[In case of authorization of agent, the address of the*		

	agent may be mentioned as the applicant's address for service]	
	Mobile No*:	
	E-mail address*:	
	Nature of the Agent	
	[The applicant must choose either of the following categories- *1. Registered Trade Marks Agent, 2. Advocate 3. Constituted Attorney]*	
3	**REQUEST/ APPLICATION FOR AMENDMENTS IN THE DETAILS OF REGISTRATION OF A TRADEMARK**	
	Registered TM No(s).	
	[In case of request made for more than one trademarks, the first trademark number should be written.]	
	Additional Nos., if any:	
	Reason for amendment:	
	TYPE OF MARK	
	[(a) The applicant must choose either of the following categories-	
	1. Standard trademark, 2. Collective Mark, 3. Certification Mark, 4. Series Marks	
	Standard mark' here means an application for registration of a normal trademark not being Collective or Certification trademarks or Series of marks]	
	PART B: **PURPOSE OF REQUEST** **[*application column required to be ticked as filled in*]**	
a	**Request for Amendment In Proprietor / Registered users detail** **[single request can be made under one application]**	
	Amendment Requested In	
	Proprietor Name / Registered user name : *[This block should be used only when there is no change in the proprietorship of the mark by virtue of assignment or transmission]*	
	Address:	
	Address For Service:	
	Agent/Attorney Details:	
	[Any of the above may be chosen and the change requested should be clearly mentioned against relevant column.]	
b	Amendment In the Trademark	*Enter or paste proposed trade mark here*
	Striking Out Goods or Services from the Register	*[Change requested should be clearly mentioned here.]*
	Conversion of Specification of Goods and Services	*[change requested should be clearly mentioned here]*
c	Cancellation of the Registration	*[Cancellation of the registration requested should be clearly mentioned here.]*
d	Dissolution of the association between a registered trademarks and other trademarks	
	Registered trademark No(s)	*[Enter the trade marks numbers whose association with the referred registered trademark is requested to be dissolved]*
e	**Assignment or Transmission of Registered trademark(s)**	
	Assignment	*Applicant must mentioned as assignment is **with goodwill** or **without goodwill***
	Date of assignment deed or the date of transmission	
f	**Assignment to different people for different parts of India**	
	Name of proposed assignee	
	Address of proposed assignee	
	[(a) Add details of assignees if there are more than one assignees, against relevant row.]	
	[(b) Please mention the region specifically with the proposed assignee]	
g	**Certificate of the Registrar under section 40 (2)**	
	Request for the certificate under rule 83	
	[The details of the request in terms of Section 40(2) must be mentioned here and the statement of case with copy of the assignment must be submitted.]	
h	**Approval of the Registrar under section 41**	
	Request for the approval	
	[The details of the request in terms of Section 41 must be mentioned here and the statement of case with copy of the assignment or transmission must be submitted.]	

i	**Application under Section 42 for direction of the Registrar for advertisement of assignment without goodwill of a trademark**	
	Request for the direction	
	[The details of the request in terms of Section 42 must be mentioned here and the statement of case with copy of the assignment or transmission must be submitted.]	
j	**Application for the consent of the registrar to the assignment or transmission of certification trademark**	
	Draft deed of proposed assignment and statement of case be along with affidavit submitted	
k	**Application for extension of time under Section 42 for direction of the Registrar for advertisement of assignment without goodwill of a trademark**	
	Application for extension of time	
	[The details in terms of Section 42 must be mentioned here.]	
	Application submitted within the period from the date of acquisition or devolution	Not exceeding one month
		Not exceeding two month
		Not exceeding three month
l	**Application for extension of time under Section 46 (4) for registering a company as subsequent proprietor of a trademark**	
	Application for extension of time	
	[The details in terms of Section 46(4) must be mentioned here.]	
	Application submitted within the period	Not exceeding two months
		Not exceeding four months
		Not exceeding six month
	[Any one of the above should be selected]	
	PART C **[details of the person making application/request and details of document is submitted]**	
a	**Signature**	
	Name	
	Authority	
b	**List of documents attached**	

FORM TM-U
The Trade Marks Act, 1999
Application for registration of Registered User/Variation of Registered User/Cancellation of Registered Users and Notice of intention to intervene in proceeding in cancellation/variation

This form is divided into three Parts i.e. A, B & C. Part A and C are required to be filled compulsorily. Part B is further divided in several subcategories and the same is required to be chosen by the applicant as per requirement and be filled accordingly. *[Note: One form is meant for one request only. Different forms should be submitted for different requests. In case more than one request is claimed in one form the first one will be entertained and rest of the requests will be ignored.]* *[(a) One form is meant for request of one change only. Different forms should be filed up for different changes* *(b) The relevant information must be filled up in colored box against the respective head.]*		
	PART A **[application details]**	
	nature of the referred Registration	
	[(a) The applicant must choose either of the following categories- *1. Standard trademark, 2. Collective Mark, 3. Certification Mark, 4. Series Marks* *(b) In case of Collective Mark or Certification Mark the draft regulations with form TM-M must be submitted.]*	
	FEE	(See First Schedule for Appropriate Fee)
1	**Details of Applicants**	
a	**Name of the Registered Proprietor*:**	
	trading as:	
	Address*:	
		(State) (Country)
	Mobile No:	
	E-mail address:*	
	Address for service of the Registered Proprietor:	

		(State) (Country)
b	**Name of the proposed Registered User*:**	
	Nature of the proposed user	
	[The applicant must choose either of the following categories- *1. Individual, 2. Partnership Firm, 3. Body-incorporate including Private Limited/limited Company, 4. Limited Liability Partnership, 5. Society 6. Trust 7. Government Department 8. Statutory Organization. 9. Association of persons 10. Hindu Undivided Family*	
	trading as*:	
	Address:*	
		(State) (Country)
	Mobile No :	
	E-mail address: *	
	Address for service of the Proposed Registered user:	
		(State) (Country)
c	**Name of the intervener**	
	trading as:	
	Address:*	
		(State) (Country)
	Mobile No:	
	E-mail address: *	
[This address should be the address of the applicant's principal place of business in India] *[(a) Unless otherwise specifically stated, the applicant's address shall be the address for service of the applicant who has principal place of business in India.* *(b) The address for service in India must be provided, in case the applicant does not carry business in India]*		
2	**Applicant's agent (if any)**	
a	**Registered Proprietor's Agents**	
	Name:	
	Address:	
	Mobile No* :	
	E-mail address*:	
	Nature of the Agent	
b	**Proposed Registered User's agent**	
	Name:	
	Address:	
	Mobile No* :	
	E-mail address*:	
	Nature of the Agent	
	[The applicant must choose either of the following categories- Registered Trade Marks Agent, 2. Advocate 3. Constituted Attorney]	
3	**Registered trademark No(s). in respect of which the request is made**	
	Class(es):	
	PART B: **PURPOSE OF REQUEST** **[*appropriate column required to be ticked and filled in*]**	
a	**Request For Registration of Registered User**	
	Description of goods and services	
	Period	From_____ to _____
	Condition if any	
b	**For variation of the registration of registered user with regard to goods/service or the condition/restriction**	
	Details of variation requested	
c	**Cancellation of the registration of registered user**	
	Grounds for cancellation	*Statement of ground required to be submitted as attachment with TM-U**

d	**Notice of intention to intervene in proceedings for variation or cancellation in regard to registration of registered user**	
	Ground for intervention in proceeding	
	PART C **[details of the person making application/request and details of document is submitted]**	
	DETAIL OF THE Applicant(s)	
	Signature	
	Name	
	Authority	
	Details of documents attached	

FORM TM-G
The Trade Marks Act, 1999
Trade Marks Agent Registration/Renewal/Restoration/Alteration

[The relevant information must be filled up in colored box against the respective head]		
	PART A **[applicants details]**	
	FEE	(See First Schedule for Appropriate Fee)
	Name in full beginning with surname (in capital letters)*	
	Father's /Husband's Name*	
	Address of residence*	
		(State) (Country)
	Principle place of business*	
		(State) (Country)
	Nationality*	
	Mobile No*:	
	E-mail address:*	
	PART B: **PURPOSE OF REQUEST** **[*appropriate column required to be ticked and filled accordingly*]**	
a	**Application for Registration as Trademark Agent**	
	Date of Place of Birth	
	Occupation in full	
	Particulars of qualification for registration as a trade mark agent	
	Whether at any time removed from the Register of Trade Marks Agents and if so the details thereof	
b	**Application for continuation/restoration of the name of a person in the Register of Trade Marks Agents**	
	Trade Mark Agent No.	
	Name:	
	address	
	Mobile No :	
	E-mail address:	
i	**Period for Continuation:**	From_____ to _____
ii	**Date of expiration of last registration:**	
	Years after which request for restoration and continuation is filed	
c	**Application for alteration in the Register of Trade Marks Agents**	
	Trade Mark Agent No.:	
	Name:	
	Details to be altered in and as	
	Name:	
	Address of place of residence	
	Address of principle place of business	
	Educational Qualification	
	Mobile No:	
	E-mail address:	

	PART C [details of the person making application/request and details of document is submitted]	
	Signature	
	Name	
	Authority	
	List of documents attached	

THE THIRD SCHEDULE
Forms to be used by the Registrar
LIST OF FORMS

Form No.	Section	Title
RG-1	23(3)	Notice of non-completion of registration
RG-2	23(2)	Certificate of registration of trade mark
RG-3	25(3)	Notice of expiration of last registration.
RG-4	Rule 149	Certificate of registration of a person as a trademarks Agent

FORM RG-1
GOVERNMENT OF INDIA,
TRADE MARKS REGISTRY,
Trade Marks Act, 1999

Notice of non-completion of registration Section 23(3) Rule 52.

Application No .....

Notice is hereby given as required by section 23(3) of the Trade Marks Act,1999 , that the registration of the trademark, in respect of which application numbered as above was made on the ..... day of ..... 20 ..... has not been completed by reason of default on the part of the applicant.

Unless the default is rectified within twenty-one days from the date of this notice, the application will be treated as abandoned.

All communications relating to this application may be sent to the following address in India:-

Dated this.....day of ..... 20 ..... Registrar of Trade Marks

To,

_____

FORM RG-2

GOVERNMENT OF INDIA,

TRADE MARKS REGISTRY,

Trade Marks Act, 1999

Certificate of registration of trademark [section 23(2), rule 56(1)]

Trade Mark No.....

Date.....

Certified that the trademark, of which a representation appears here, has been registered in the register in the name of .....in Class(es)..... under No.....as of the date ..... in respect of .....

Sealed at my direction this:. .....day of .....20.....

Registrar of Trade marks.

Registration is for 10 years from the date first above-mentioned and may then be renewed for a period of 10 years, and also at the expiration of each period of 10 years thereafter. (See section 25 of the Trade Marks Act, 1999 and Rules 57 to 61 of the Trade Marks Rules, 2017).

This certificate is not for use in legal proceedings or for obtaining registration abroad.

Note- *Upon any change of ownership of this trade mark, or change in address of the principal place of business or address for service in India, application should AT ONCE be made to register the change.*

FORM RG-3

GOVERNMENT OF INDIA,

TRADE MARKS REGISTRY,

Trade Marks Act, 1999

Notice of expiration of registration of trademark [section 23(2); rule 58 (1)]

Registered Trade Mark No.....

Class.....

Notice is hereby given as required in section 25(3) of the Trade Marks Act, 1999 that the registration of the aforesaid trade mark will expire on..... and that the registration can be renewed for a further period of 10 years on receipt in the Trade Marks Registry of an application on the enclosed Form TM-12 accompanied by the prescribed fee of Rs..... on or before the said date.....

Dated this..... day of 20

Registrar of Trade marks.

To,

_____

FORM RG-4

GOVERNMENT OF INDIA,

TRADE MARKS REGISTRY,

Trade Marks Act, 1999

Certificate of registration as Trade Marks Agent (rule 149)

No.....

This is to certify that.....

..... of .....

was registered on this .....day of ..... 20 ..... in the Register of Trade Marks Agents maintained under rule 149 of the Trade Marks Rules, 2017.

Registrar of Trade Marks

THE FORTH SCHEDULE

Entry No.	Matter in respect of which costs to be awarded	Amount (In Rupees)
1	For one day's hearing involving examination of witnesses	1,000
2	For one day's hearing when there is no examination of witnesses	500
3	For adjournment of hearing granted on the petition of any party	Rs. 1000 plus cost for re- summoning were due to be examined on the day
4	For striking out scandalous matter from an affidavit.	5,000
5	For not contesting the Opposition proceeding by the applicant if opposition filed after reasonable notice	10,000
6	For not contesting the Opposition proceeding by the opponent after filing of the Counter statement in the opposition proceedings	10,000
7	For attendance of witnesses Subsistence allowance Travelling allowance	1000 (see note below) The fare by rail or steamer for the first class or the second class each way and if there is no rail or steamer communication Rs. 50 or Rs. 20 per km. depending upon the rank and status of the witness.
Note: the rates of subsistence allowance and travelling allowance for witness shall vary according to the status of the witness subject to the maximum prescribed above		

Scale costs allowable of in rule 118 proceedings before the Registrar

[F. No. 8/16/2015-IPR-IV-Pt. I]

RAJIV AGGARWAL, Jt. Secy.

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SARVESH KUMAR SRIVASTAVA Digitally signed by SARVESH KUMAR SRIVASTAVA Date: 2017.03.10 18:14:35 +05'30'

MODULE I

INTRODUCTION TO THE TRIPS AGREEMENT

A. INTRODUCTION

1. General

This chapter provides an overview of the TRIPS Agreement. It first explains the historical and legal background of the Agreement and its place in the World Trade Organization (WTO). It then turns to the general provisions and basic principles, as well as other provisions and institutional arrangements, that apply to all the categories of intellectual property rights covered by TRIPS. Modules II to VII then discuss each of these categories in more detail.

However, in order to understand the TRIPS Agreement it is important to first review the background to the intellectual property (IP) system: what the main forms of intellectual property rights are, why these "rights" are recognized, and how they are protected. These questions have been at the core of IP policy discussions since the adoption of the earliest IP laws, and continue to spark active debate. This chapter attempts neither to summarize various relevant legal and economic theories, nor to survey the range of views presented in the debate, but merely highlights some of the general concepts and approaches.

Intellectual property rights can be characterized as rights given to persons over the creations of their minds. They usually take the form of a limited "exclusive right" granted under national law to a creator over the use of the creation for a certain period of time. Such a right allows the creator to exclude others from using the creation in certain ways without the creator's authorization. The right holder can then extract economic value from the intellectual property rights by using them directly or by authorizing others to do so.

Intellectual property rights are territorial rights, which means that they are valid only in the jurisdiction where they have been registered or otherwise acquired.

Intellectual property rights are customarily clustered into two categories: copyright and industrial property.

Copyright can usefully be divided into two main areas:

1. Copyright (or "authors' rights" in some systems) refers to the rights of authors of literary and artistic works (such as books and other writings, musical compositions, paintings, sculptures, computer programs and films). Authors, or those who derive the right from authors (such as publishers), have the right to determine how their works are used for a minimum period of time after the death of the author.

2. Copyright in a wider sense also includes related rights (sometimes called "neighbouring rights"), especially the rights of performers (e.g. actors, singers and musicians) over their performances, producers over phonograms (sound recordings), and broadcasting organizations over broadcasts. These rights are also limited in time.

Industrial property can be divided into two fields:

1. The first is the protection of distinctive signs, in particular trademarks (which distinguish the goods or services of one undertaking from those of other undertakings) and geographical indications (which identify a good as originating in a place where a given characteristic of the good is essentially attributable to its geographical origin). Trademark protection may last indefinitely, provided the sign in question continues to

be distinctive; use of the trademark is also often a requirement. A geographical indication can also be protected indefinitely, provided it continues to identify the geographical origin.

2. Other types of industrial property are protected primarily to recognize and stimulate technological innovation and industrial design, and to provide the legal framework for the creation of new technologies and products. In this category fall inventions (protected by patents; although, in a number of countries, innovations that could embody lesser technical progress than patentable inventions may be protected by utility models), industrial designs and trade secrets. The protection is usually given for a finite term (now typically 20 years in the case of patents), although trade secrets can be protected as long as they remain secret. Industrial property also includes legal means to suppress acts of unfair competition.

The intellectual property (IP) system is a tool of public policy: generally it is intended to promote economic, social and cultural progress by stimulating creative work and technological innovation. More specifically, the main social purpose of protection of copyright and related rights is to encourage and reward creative work. It gives an opportunity for authors and artists to earn their living from creative work. Other than serving as an incentive to authors, copyright essentially provides an economic foundation for cultural industries and the market for cultural products once the rights are licensed or assigned to publishers and producers. Similarly, patents and certain other industrial property rights are designed to provide protection for innovations resulting from investment in research and development, thus giving the incentive and means to finance applied research and development.

These standard policy objectives are supported by the economic theory that suggests that works and information resulting from creative work and innovation have characteristics of public goods in the sense that they are "non-excludable" and "non-rivalrous" in consumption – in other words, once created, absent specific measures, none can be excluded from "consuming" them. In addition, one's use of a work or an invention does not deprive another of its use and it can be freely used by anyone (unless there are specific legal constraints), unlike physical property such as land that can be fenced off. Therefore, in the absence of IP protection, it is difficult for creators to extract economic value from or "appropriate" the financial returns from their work, or indeed to influence how they are utilized. Thus, from the society's perspective, there is a risk of "market failure", that is, underinvestment in socially beneficial creative and innovative work. The IP system also allows market-driven decentralized decision making, where products are created and technology developed in response to demand. The IP system offers a range of options, but does not preclude the need for other forms of financing mechanisms, in particular in areas where the market alone may not provide adequate incentives (for example, contemporary concert music or cures for neglected diseases).

Another objective of IP protection is the transfer and dissemination of technology. A well-functioning IP regime should, other things being equal, facilitate the direct and indirect transfer of technology, by means such as foreign direct investment (FDI), trade, and licensing. The legal titles provided by the IP system are used to define and structure the distinct rights and responsibilities in technology partnerships, such as research cooperation or technology sharing or transfer arrangements. One of the purposes of the patent system is to disseminate technological information by requiring inventors to disclose new technology in their patent applications rather than attempt to keep it secret, so that new technology can become part of the common pool of knowledge of mankind and be freely used once patents expire. Improved information technology tools that facilitate for example the availability of patent information on the Internet means that this "teaching" function of the patent system is becoming increasingly more effective and accessible in practice compared to earlier days.

Trademarks, geographical indications and other distinctive signs are protected so as to inform consumers and prevent consumer deception. In addition, these forms of IP help to ensure fair competition among producers. They provide an incentive for companies to invest in their reputation through the provision of quality products and services. An equally important objective is to enable consumers to make informed choices between various goods and services.

Reflecting their role as tools of public policy, intellectual property rights are not absolute and unlimited, but are generally subject to a number of limitations and exceptions that aim to balance the legitimate interests of right holders and users. These limitations and exceptions, together with carefully defined scope of protectable subject-matter and a limited term of protection, are intended to maintain an appropriate balance between competing public policy interests so that the system as a whole can be effective in meeting its stated objectives.

2. Historical and legal background to TRIPS

The World Trade Organization (WTO) is the legal and institutional foundation for the administration and development of trade relations among its 157 Members, at the multilateral level. It aims to provide fair and stable conditions for the conduct of international trade with a view to encouraging trade and investment that raises living standards worldwide. It is the successor of the former General Agreement on Tariffs and Trade (GATT 1947), a multilateral trade agreement that was concluded that year. Further trade liberalization was pursued under the auspices of the GATT through "trade rounds" aiming at further tariff cuts and strengthened rules. The Uruguay Round was the eighth round of trade negotiations and by far the most comprehensive. These negotiations were launched in 1986 and completed in 1994.

The main results from the Uruguay Round included a further major reduction of customs tariffs worldwide, and the liberalization of, and development of better rules governing trade in textiles and agriculture – two areas previously largely excluded from the GATT. The trading system was also extended into new areas of trade relations not previously dealt with, notably trade in services and intellectual property. This reflected the growing economic importance of these two areas and their increased share of international trade. Furthermore, the results included the development of a reinforced and integrated dispute settlement system, which is applicable to any agreements covered by the WTO. The Uruguay Round also resulted in the creation of a new organization – the WTO – to administer the agreements. The Marrakesh Agreement Establishing the World Trade Organization ("the WTO Agreement") entered into force on 1 January 1995. The "GATT" now refers to an updated agreement on trade in goods, dubbed "GATT 1994" to distinguish it from the earlier GATT, which is only one of a number of agreements annexed to the WTO Agreement.

GATT 1947 included several provisions that made reference to intellectual property rights. For instance, GATT 1947 confirmed that Contracting Parties could have rules on intellectual property rights provided that they were consistent with principles of non-discrimination. Article III:4 requires treatment for imported products that is no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements; this includes IP laws. More specifically, Article XX(d) allows a general exception to the application of GATT obligations with respect to compliance with laws and regulations that are not inconsistent with GATT provisions, including those that deal with patents, trademarks and copyrights and the prevention of deceptive practices. Additionally, Article IX:6 contains a positive obligation on Contracting Parties to cooperate with each other to prevent the use of trade names in a manner that would misrepresent the true origin of a product, or that would be to the detriment of distinctive regional or geographical names of products protected in other parties' territories by national legislation.

In the Tokyo Round of multilateral trade negotiations (1973 to 1979), the one immediately preceding the Uruguay Round, there was a proposal to negotiate rules on trade in counterfeit goods resulting in a draft Agreement on Measures to Discourage the Importation of Counterfeit Goods. However, negotiators did not reach agreement and this subject was not included in the results of the Tokyo Round results when it concluded in 1979. Instead, in 1982, pursuant to a work programme agreed by trade ministers[1], a revised version of a draft agreement on trade in counterfeit goods was submitted. This draft was referred to a group of experts in 1984, which submitted its report a year later. The group met six times in 1985. It produced a report on Trade in Counterfeit Goods that recommended that joint action was probably needed, but could not decide on the appropriate forum. It left it to the GATT Council to make a decision.

During the early 1980s, negotiators worked on a negotiating mandate for a new Round, including on aspects of intellectual property. Trade ministers met at Punta del Este, Uruguay, in September 1986, and adopted a decision on future trade negotiations, which included the following mandate under the title "Trade-related aspects of intellectual property rights, including trade in counterfeit goods":

> In order to reduce the distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade, the negotiations shall aim to clarify GATT provisions and elaborate as appropriate new rules and disciplines.
>
> Negotiations shall aim to develop a multilateral framework of principles, rules and disciplines dealing with international trade in counterfeit goods, taking into account work already undertaken in the GATT.
>
> These negotiations shall be without prejudice to other complementary initiatives that may be taken in the World Intellectual Property Organization and elsewhere to deal with these matters.

A negotiating group on "trade-related aspects of intellectual property rights", or TRIPS, was formed to pursue this mandate. From 1986 to April 1989, the negotiating group mainly discussed whether there was a mandate to negotiate rules on intellectual property rights in general, or only on their trade-related aspects. For the developing countries, such "trade-related aspects" only included trade in counterfeit goods or anti-competitive practices in relation to intellectual property rights. However, in the mid-term review of the overall Uruguay Round negotiations, undertaken in April 1989, a decision was adopted that gave the negotiating group on TRIPS a full mandate.[2] This decision is the basis for the current structure of the TRIPS Agreement.

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[1] "The CONTRACTING PARTIES instruct the Council to examine the question of counterfeit goods with a view to determining the appropriateness of joint action in the GATT framework on the trade aspects of commercial counterfeiting and, if such joint action is found to be appropriate, the modalities for such action, having full regard to the competence of other international organizations. For the purposes of such examination, the CONTRACTING PARTIES request the Director-General to hold consultations with the Director-General of WIPO in order to clarify the legal and institutional aspects involved."

[2] The following is an extract from the mandate:
"3. Ministers agree that the outcome of the negotiations is not prejudged and that these negotiations are without prejudice to the views of participants concerning the institutional aspects of the international

Between the spring of 1989 and the spring of 1990, several detailed proposals were submitted by all the major players: the European Communities, Japan, the United States, Switzerland, and a group of 14 developing countries (Argentina, Brazil, Chile, China, Colombia, Cuba, Egypt, India, Nigeria, Pakistan, Peru, Tanzania, Uruguay and Zimbabwe). A composite text, based on these submissions, was prepared by the Chairman of the Negotiating Group in June 1990. From then until the end of the Brussels ministerial meeting in December 1990, detailed negotiations were conducted on every aspect of this text. There were six Chairman's drafts of the agreement between July and November 1990. A revised TRIPS text was then sent to the Brussels Ministerial Conference (MTN.TNC/W/35/Rev.1). There was commonly agreed language for large parts of the agreement, but differences continued on the forum for lodging the agreement and on dispute settlement, as well as on some 25 other outstanding issues, mainly relating to some provisions on patents and undisclosed information, copyright, geographical indications and transition periods. Work continued at Brussels until a sudden breakdown of negotiations in the overall Round due to the failure to reach an understanding on agriculture.

Between 1991 and 1993, progress was made on the patent provisions, particularly in autumn 1991 – including on the scope and timing of rights, exceptions from patentability, compulsory licensing/government use, exhaustion of rights, term of protection, protection of test data, transition periods, and the protection of existing subject matter. The question of forum was resolved with the decision to encapsulate the results of the negotiations within a Single Undertaking, which would also establish a new organization, the Multilateral Trade Organization (MTO)/WTO. A Draft Final Act (MTN.TNC/W/FA) was released by the then Director-General of GATT, Arthur Dunkel, on 20 December 1991, and came to be known as the Dunkel Text. Only two changes were made to TRIPS provisions between the 1991 Draft Final Act and the 1993 Final Act: first, introducing the text on the moratorium on so-called "non-violation complaints" in dispute settlement cases (Article 64.2-3); and, second, to limit the scope of compulsory licensing of semi-conductor technology (Article 31(c)).

3. Place of TRIPS in the World Trade Organization

The TRIPS Agreement is Annex 1C of the Marrakesh Agreement Establishing the World Trade Organization ("WTO Agreement") of 15 April 1994, which entered into force on 1 January 1995. The TRIPS Agreement is an integral Part of the WTO Agreement, and is binding on each Member of the WTO from the date the WTO Agreement becomes effective for that country.

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implementation of the results of the negotiations in this area, which is to be decided pursuant to the final paragraph of the Punta del Este Declaration.

4. Ministers agree that negotiations on this subject shall continue in the Uruguay Round and shall encompass the following issues:

(a) the applicability of the basic principles of the GATT and of relevant international intellectual property agreements or conventions;

(b) the provision of adequate standards and principles concerning the availability, scope and use of trade-related intellectual property rights;

(c) the provision of effective and appropriate means for the enforcement of trade-related intellectual property rights, taking into account differences in national legal systems;

(d) the provision of effective and expeditious procedures for the multilateral prevention and settlement of disputes between governments, including the applicability of GATT procedures;

(e) transitional arrangements aiming at the fullest participation in the results of the negotiations.

5. Ministers agree that in the negotiations consideration will be given to concerns raised by participants related to the underlying public policy objectives of their national systems for the protection of intellectual property, including developmental and technological objectives.

6. In respect of 4(d) above, Ministers emphasise the importance of reducing tensions in this area by reaching strengthened commitments to resolve disputes on trade-related intellectual property issues through multilateral procedures."

However, the TRIPS Agreement gave original WTO Members transition periods, which differed according to their stages of development, to bring themselves into compliance with its rules (see Section D1 of this module for transition periods.). The Agreement is administered by the Council for TRIPS, which reports to the WTO General Council. The place of the TRIPS Council in the WTO can be seen from Figure 1.

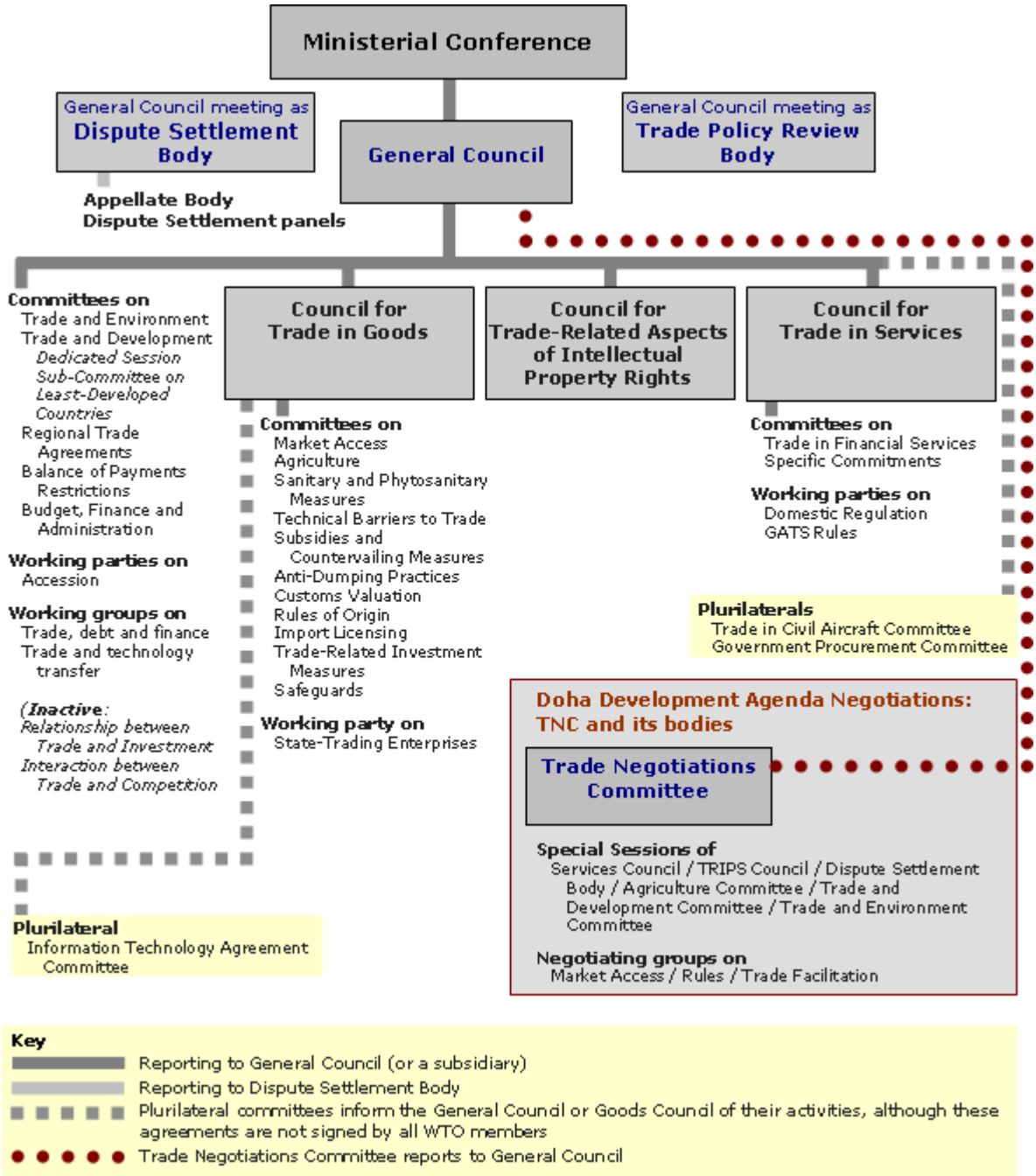


Figure I.1: WTO organizational structure

The Ministerial Conference is the highest decision-making body in the WTO. Its sessions must take place at least once every two years, during which sessions all matters under the WTO agreements may be addressed. The General Council constitutes the second tier in the WTO Structure. It comprises representatives from all Member countries, usually Ambassadors/Permanent Representatives based in Geneva. It meets some five times in a year. It may adopt decisions on behalf of the Ministerial Conference when the Conference is not in session. The General Council has authority over the Trade Negotiations Committee, which is currently charged with the negotiations mandated by the Doha Development Agenda. The General Council also meets as the Trade Policy Review Body, with its own Chairperson, to carry out trade policy reviews as mandated by the Trade Policy Review Mechanism (Annex 3 of the WTO Agreement), and the Dispute Settlement Body, with its own Chairperson to administer the rules in the Understanding on Rules and Procedures Governing the Settlement of Disputes.

The Council for TRIPS is one of the three sectoral (i.e. subject area) Councils operating under the General Council, the other two being the Council for Trade in Goods and the Council for Trade in Services. It is the body, open to all Members of the WTO, responsible for the administration of the TRIPS Agreement and in particular for monitoring the operation of the Agreement. The Council meets in Geneva formally three to four times a year as well as informally as necessary.

The WTO Agreement serves as an umbrella agreement for the TRIPS Agreement and the other trade agreements annexed to it. It includes provisions on the structure and operation of the WTO. Section E of this module explores some of these institutional aspects, namely the cross-cutting decision-making and amendment procedures in the WTO Agreement, and discusses the work of the Council for TRIPS.

4. Overview of TRIPS provisions

The TRIPS Agreement is a comprehensive multilateral agreement on intellectual property. It deals with each of the main categories of intellectual property rights, establishes standards of protection as well as rules on administration and enforcement of intellectual property rights, and provides for the application of the WTO dispute settlement mechanism to resolve disputes between Members concerning compliance with its standards. The following is a brief introduction to the various parts of the Agreement.

(a) General Provisions and basic Principles

Part I of the TRIPS Agreement sets out general provisions and basic principles of the Agreement, such as national treatment and most-favoured-nation treatment, and exhaustion of intellectual property rights. These general provisions and basic principles are discussed in Section B of this chapter.

(b) Standards concerning the availability, scope and use of intellectual property rights

Part II of the Agreement sets out the minimum standards of IP protection to be provided by each Member in the following fields:

(1) copyright and related rights (i.e. the rights of performers, producers of sound recordings and broadcasting organizations);

(2) trademarks, including service marks;

(3) geographical indications;

(4) industrial designs;

(5) patents, including the protection of new varieties of plants;

(6) the layout-designs of integrated circuits; and

(7) undisclosed information, including trade secrets and test data.

Part II also contains provisions on the control of anti-competitive practices in contractual licences. These areas of intellectual property and control of anti-competitive practices will be discussed in Modules II to VI.

In respect of each of these fields of intellectual property, the main elements of protection are defined:

- the subject-matter eligible for protection;
- the scope of rights to be conferred;
- permissible exceptions to those rights; and,
- where applicable, the minimum duration of protection.

The TRIPS Agreement sets these standards firstly by requiring compliance with the substantive obligations of the main conventions of the World Intellectual Property Organization (WIPO), the Paris Convention and the Berne Convention in their most recent versions. With the exception of the provisions of the Berne Convention on moral rights, all the main substantive provisions of these two conventions are incorporated by reference and thus become obligations between WTO Members under the TRIPS Agreement, separately from the obligations they mostly have to one another directly under those conventions. The relevant provisions are to be found in Articles 2.1 and 9.1, which relate, respectively, to the Paris Convention and to the Berne Convention.

The TRIPS Agreement then adds a substantial number of additional obligations on matters where the pre-existing conventions were silent or were seen as being inadequate. The TRIPS Agreement is thus sometimes referred to as a "Berne-plus" and "Paris-plus" agreement. As explained later in Module II, the TRIPS provisions on related rights contain certain references to the Rome Convention. The Section on the protection of layout-designs of integrated circuits, explained in Module VI, incorporates most of the substantive provisions of the Treaty on Intellectual Property in Respect of Integrated Circuits (IPIC Treaty). Article 2.2 of the TRIPS Agreement contains a safeguard clause, according to which the provisions of the Agreement cannot be understood to derogate from the existing obligations that Members may have to each other under the Paris Convention, the Berne Convention, the Rome Convention or the IPIC Treaty.[3]

[3] Unless otherwise indicated, "Paris Convention" refers to the Paris Convention for the Protection of Industrial Property (the Stockholm Act of 14 July 1967); "Berne Convention" refers to the Berne Convention for the Protection of Literary and Artistic Works (the Paris Act of 24 July 1971); "Rome Convention" refers to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, adopted at Rome on 26 October 1961; and the IPIC Treaty to the Treaty on Intellectual Property in Respect of Integrated Circuits, adopted at Washington on 26 May 1989.

(c) Enforcement

Part III of the TRIPS Agreement deals with domestic procedures and remedies for the enforcement of intellectual property rights. The Agreement lays down certain general principles applicable to IP enforcement procedures. In addition, it contains provisions on civil and administrative procedures and remedies, provisional measures, special requirements related to border measures and criminal procedures. These provisions specify, in a certain amount of detail, the procedures and remedies that must be available so that right holders can effectively enforce their rights and also provide for safeguards against the abuse of such procedures and remedies as barriers to legitimate trade. These provisions are discussed in Module VII.

(d) Certain Other Matters

Part IV of the Agreement contains general rules on procedures related to the acquisition and maintenance of intellectual property rights, particularly concerning how applications for IP protection are administered and the kind of appeals or reviews that should be available. These rules are explained below in Section III of this module.

Part V of the Agreement deals with dispute prevention and settlement. The Agreement makes disputes between Members about the respect of obligations contained in it, whether in the field of substantive standards or in the field of enforcement, subject to the WTO's dispute settlement procedures. Dispute prevention and settlement are discussed in Module VIII.

Part VI of the Agreement contains provisions on transition periods, transfer of technology and technical cooperation. Part VII deals with institutional arrangements and certain cross-cutting matters such as the protection of existing subject matter. These two Parts are covered below in Section D of this chapter.

B. GENERAL PROVISIONS AND BASIC PRINCIPLES OF THE TRIPS AGREEMENT

1. Objectives and principles

The general goals of the TRIPS Agreement are set out in its Preamble, and include reducing distortions and impediments to international trade, promoting effective and adequate protection of intellectual property rights, and ensuring that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade. The Preamble is largely drawn from the Uruguay Round mandates given to the negotiators of the TRIPS Agreement in the 1986 Punta del Este Declaration (reproduced on p.6) and in the April 1988 mid-term review decision (relevant extract in footnote 2).

The general goals contained in the Preamble of the Agreement should be read in conjunction with Article 7, entitled "Objectives". Article 7 reflects the search for a balanced approach to IP protection in the societal interest, taking into account the interests of both producers and users. IP protection is expected to contribute not only to the promotion of technological innovation, but also to the transfer and dissemination of technology in a way that benefits both its producers and users and that respects a balance of rights and obligations, with the overall goal of promoting social and economic welfare.

Article 8, entitled "Principles", recognizes the rights of Members to adopt measures for public health and other public interest reasons and to prevent the abuse of intellectual property rights, provided that such measures are consistent with the provisions of the TRIPS Agreement.

The Preamble and Articles 7 and 8 express the general goals, objectives and principles of the Agreement. As recognized by WTO dispute settlement panels, they are to be borne in mind when the substantive rules of the Agreement are being examined. The 2001 Doha Declaration on the TRIPS Agreement and Public Health provides (in paragraph 5(a)) that "[i]n applying the customary rules of interpretation of public international law, each provision of the TRIPS Agreement shall be read in the light of the object and purpose of the Agreement as expressed, in particular, in its objectives and principles".

2. Minimum standards agreement

As discussed above, the TRIPS Agreement sets out minimum standards of protection to be provided by each Member. Article 1.1 makes it clear that Members may, but are not obliged to, implement in their law more extensive protection than required by the Agreement, provided that such protection does not contravene its provisions. For example, Members may provide for longer terms of protection than that mandated by the TRIPS Agreement but they are not required to do so; however, they cannot do this in a way that conflicts with TRIPS provisions. For instance, in light of the principle of non-discrimination, longer protection could not be made available only to nationals of one country.

Article 1.1 further clarifies that Members are free to determine the appropriate method of implementing the provisions of the TRIPS Agreement within their own legal system and practice.

Given the long history of international cooperation on intellectual property matters, the national laws in this area are often fairly similar. However, to establish how the law applies in any concrete practical situation, the applicable national law will have to be consulted.

3. Beneficiaries

As in the main pre-existing IP conventions, the basic obligation on each Member is to accord the treatment in regard to the protection of IP provided for under the Agreement to right holders and users of other Members. Article 1.3 defines who these persons are. They are referred to as "nationals" but include persons, natural or legal, who have a close attachment to a Member without necessarily having the nationality of that other Member. The criteria for determining which persons must thus benefit from the treatment provided for under the Agreement are those laid down for this purpose in the pre-existing IP conventions of WIPO referred to in the Agreement, applied of course with respect to all WTO Members whether or not they are party to those conventions. The following clarifies who the beneficiaries are for industrial property rights and for copyright and related rights, as the rules differ slightly between these categories.

(a) Industrial property

Pursuant to Articles 2 and 3 of the Paris Convention, protection is granted in the case of industrial property to natural or legal persons who:

- are nationals of a Member;
- are domiciled in a Member; or
- have real and effective industrial or commercial establishments in a Member.

Pursuant to Article 5 of the IPIC, similar criteria for determining eligible beneficiaries are applied in relation to layout-designs of integrated circuits.

(b) Copyright

Pursuant to Articles 3 and 4 of the Berne Convention, protection is granted to authors of literary or artistic works who:

- are nationals of a Member;
- have their habitual residence in a Member;
- have their works first (or simultaneously) published in a Member;
- are authors of cinematographic works the maker of which has his headquarters or habitual residence in a Member; or
- are authors of works of architecture erected in a Member or of other artistic works incorporated in a building or other structure located in a Member.

(c) Performers

Pursuant to Article 4 of the Rome Convention, protection is granted to performers whose:

- performance takes place in another Member;
- performance is incorporated in a phonogram as defined below; or
- performance is covered by a broadcast as defined below.

(d) Producers of phonograms

Pursuant to Article 5 of the Rome Convention, protection is granted to producers of phonograms:

- If the producer is a national of another Member;
- if the first fixation of sound (i.e. recording) was made in another Member; or
- if the phonogram was first published in another Member.

In accordance with the provisions of Article 5(3) of the Rome Convention as incorporated into the TRIPS Agreement, a Member may declare that it does not apply either the criterion of fixation or that of publication. The criterion of nationality, however, may not be excluded.

(e) Broadcasting organizations

Pursuant to Article 6 of the Rome Convention, protection is granted to broadcasting organizations:

- whose headquarters are situated in another Member; or
- when the broadcast was transmitted from a transmitter in another Member.

In accordance with the provisions of Article 6(2) of the Rome Convention as incorporated into the TRIPS Agreement, a Member may declare that it will protect broadcasts only if both relevant conditions are met, i.e., that the headquarters of the broadcasting organization are situated in another Member and the broadcast was transmitted from a transmitter situated in the same Member.

4. National treatment and most-favoured-nation treatment

A key principle in the WTO is that of non-discrimination. It applies to trade in goods, trade in services and intellectual property rights. It has two components: national treatment, and most-favoured-nation (MFN) treatment. As regards intellectual property rights, the fundamental rules on national and MFN treatment of foreign nationals can be found in Articles 3 to 5 of the TRIPS Agreement. These rules are common to all categories of IP covered by the Agreement. These obligations cover not only the substantive standards of protection but also matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as those matters affecting the use of intellectual property rights specifically addressed in the Agreement. While the national treatment clause forbids discrimination between a Member's own nationals and the nationals of other Members, the MFN treatment clause forbids discrimination between the nationals of other Members.

Article 3 of the TRIPS Agreement on national treatment requires each Member to accord to the nationals of other Members treatment no less favourable than that it accords to its own nationals with regard to the protection of intellectual property. With respect to the national treatment obligation, the exceptions allowed under the four pre-existing WIPO treaties (Paris, Berne, Rome and IPIC) are also allowed under TRIPS.

An important exception to national treatment is the so-called "comparison of terms" for copyright protection allowed under Article 7(8) of the Berne Convention as incorporated into the TRIPS Agreement. If a Member provides a term of protection in excess of the minimum term required by the TRIPS Agreement, it does not need to protect a work for a duration that exceeds the term fixed in the country of origin of that work. In other words, the additional term can be made available to foreigners on the basis of "material reciprocity". For example if Member A provides its own nationals with a copyright term of 70 years, instead of 50 years as required by Article 12 of the TRIPS Agreement, while Member B provides for 50 years, Member A need not protect works from Member B for more than 50 years.

With respect to performers, producers of phonograms (sound recordings such as CDs) and broadcasting organizations, the national treatment obligation applies only with respect to rights provided under the TRIPS Agreement. Therefore, the obligation is confined to the protection provided in the Agreement, and does not cover other rights that holders of related rights may have under domestic laws or other international agreements.

Exceptions can be allowed to the national treatment principle for judicial and administrative procedures – for instance, foreign applicants for IP protection may be required to provide an address for service or a local agent in that jurisdiction. But Article 3.2 of the Agreement requires that such exceptions be necessary to secure compliance with laws and regulations which are consistent with the TRIPS Agreement and that such practices not be applied so as to constitute a disguised restriction on trade.

While the pre-existing multilateral IP conventions also provide for national treatment, they do not contain obligations on MFN treatment. In these conventions, national treatment is an across-the-board obligation with relatively minor exceptions. Given that the same treatment has to be given to nationals of other convention members as to a member's own nationals, it

would normally follow that the same treatment would be given to the nationals of each of the other members. This leaves little scope for discrimination between the nationals of other members of those conventions. However, during the TRIPS negotiations, suggestions for the incorporation of an MFN provision into the Agreement were made since some countries had agreed to give, as a result of bilateral negotiations, more favourable protection to intellectual property rights of the nationals of one or more of their trading partners than they gave to their own nationals. As a result, MFN treatment was incorporated into the Agreement.

Article 4 on MFN treatment requires that, with regard to the protection of intellectual property, any advantage, favour, privilege or immunity granted by a Member to the nationals of any other Member shall be accorded immediately and unconditionally to the nationals of all other Members. For example, if Member A decides to recognize and enforce the patents granted in Member B from a certain date in the past irrespective of whether the inventions covered meet the novelty criterion or not, Member A must extend the same advantage to nationals of other Members.

Where exceptions to national treatment allow material reciprocity, a consequential exception to MFN treatment is permitted under Article 4(b) and 4(c). Limited exceptions to MFN are also allowed under Article 4(a) concerning international agreements on judicial assistance or law enforcement of a general nature.

Furthermore, Article 4(d) exempts from this obligation advantages deriving from international agreements related to the protection of IP that entered into force prior to the entry into force of the WTO Agreement, i.e. before 1 January 1995. This is subject to the conditions that such agreements are notified to the Council for TRIPS and do not constitute an arbitrary or unjustifiable discrimination against nationals of other Members. On the other hand, there is no such exemption for advantages deriving from international agreements that entail higher standards than required by the TRIPS Agreement that enter into force after 1 January 1995 – this means that any such higher standards must be available to nationals of all WTO Members.

In addition, Article 5 of the TRIPS Agreement provides that national and MFN treatment obligations do not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights. This Article recognizes that certain WIPO agreements, such as the Patent Cooperation Treaty, the Madrid Agreement Concerning the International Registration of Marks and the Protocol to that Agreement, and the Hague Agreement Concerning the International Registration of Industrial Designs, provide for a system of international applications only open to persons that are nationals or residents of signatory countries or have a real and effective industrial or commercial establishment in those countries. The exception in this Article only applies in respect of procedures relating to the acquisition and maintenance of rights, not to the substantive standards of protection themselves. The exception contained in Article 5 is not limited to pre-existing WIPO agreements.

5. Exhaustion

The term "exhaustion" refers to the generally accepted principle in IP law that a right owner's exclusive right to control the distribution of a protected item lapses after the first act of distribution. In many countries, once the item has been put on the market by or with the consent of the right owner, the exclusive distribution right is "exhausted" (which is why the principle is referred to in some jurisdictions as the "first-sale doctrine") and further circulation of that item can no longer be controlled by the right holder. In simple terms, exhaustion describes the fact that once one has legitimately obtained an item incorporating protected IP, for instance a copyright-protected DVD or a patented mobile phone, one is then free to further sell, transfer

or otherwise distribute it without further authorization from the right holder. This entitlement does not, of course, affect any other exclusive rights the right holder may enjoy, for example, the right to authorize activities such as reproduction or communication to the public – so the entitlement to distribute a legitimately purchased CD does not in itself extend to an entitlement to make reproductions or public performances of the recorded music.

While it is generally accepted that intellectual property rights are exhausted within the jurisdiction where the first sale took place, are such rights exhausted when the first sale takes place outside the jurisdiction in question? The answer to this depends on whether a country applies a regime of national or international exhaustion and thereby prevents or allows so-called parallel importation.

National exhaustion means that right owners' distribution rights are only considered exhausted once they put the protected item on the market in that country. Distribution rights would not be considered exhausted with regard to protected items that were only put on the market in another country, so that right holders can still control the sale or import of such items into the first country. For example, in a country with a national exhaustion regime for copyright and related rights, right holders can prevent the importation into that country of DVDs which they have sold in other countries. Thus, parallel imports of products first sold on other markets are illegal in a country with a national exhaustion regime.

In contrast, if a country has an international exhaustion regime, this means that the right owner's distribution right in that country is exhausted regardless of where the first act of distribution took place. Thus, right holders cannot use intellectual property rights to prevent the importation and sale of DVDs that they have sold in another country. Therefore, in countries with an international exhaustion regime, parallel imports are legal. A country may, in principle, adopt different exhaustion regimes for different categories of intellectual property rights.

Note that the products imported as parallel imports are not counterfeit or pirated goods, but genuine original products that have been sold in other countries with the authorization of the right holder; they do not infringe intellectual property rights in the country of origin.

An alternative approach is taken in some free trade areas or customs unions, namely regional exhaustion: in this case, the right holder's intellectual property rights are exhausted once the first sale takes place anywhere within the specified region.

It is generally understood that national exhaustion favours market segmentation as well as differential pricing, product differentiation and differing release dates, whereas international exhaustion facilitates parallel importation of the same product sold at lower prices in other countries.

During the Uruguay Round negotiations, Members negotiated a text that left them considerable discretion as to how to regulate the question of exhaustion. Article 6 provides that, for the purposes of dispute settlement under the TRIPS Agreement, nothing in the Agreement shall be used to address the issue of the exhaustion of intellectual property rights, provided that the national and MFN treatment obligations are complied with. This proviso was clarified in the 2001 Ministerial Declaration on the TRIPS Agreement and Public Health. It confirmed that the effect of the TRIPS provisions relevant to exhaustion of intellectual property rights was to leave each Member free to establish its own regime for exhaustion without challenge, subject to the MFN and national treatment provisions of Articles 3 and 4. This Declaration will be discussed further in Module IX.

C. PROCEDURES FOR THE ACQUISITION AND MAINTENANCE OF INTELLECTUAL PROPERTY RIGHTS

The TRIPS Agreement does not deal in detail with procedural questions concerning the acquisition and maintenance of intellectual property rights. However, Part IV contains general rules on these matters. The essential goal is to ensure that unnecessary procedural difficulties in acquiring or maintaining intellectual property rights are not employed to impair the protection required by the Agreement. Certain more specific rules are to be found in the sections of Part II dealing with individual categories of intellectual property rights and in the provisions of the Paris Convention and the IPIC Treaty, which are incorporated by reference into the TRIPS Agreement.

Part IV consists of a single article, Article 62. It allows Members to require, as a condition of the acquisition or maintenance of rights related to trademarks, geographical indications, industrial designs, patents and layout-designs, compliance with reasonable procedures and formalities (paragraph 1).

Where the acquisition of an intellectual property right is subject to the right being granted or registered, the procedures must permit the granting or registration of the right within a reasonable period of time so as to avoid unwarranted curtailment of the period of protection (paragraph 2).

Paragraph 4 of Article 62 requires that procedures concerning the acquisition or maintenance of intellectual property rights and, where a Member's law provides for such procedures, administrative revocation and *inter partes* procedures such as opposition, revocation and cancellation, must be governed by the general principles concerning decisions and review set out in paragraphs 2 and 3 of Article 41 of the Agreement. These general principles require that procedures be fair and equitable. They are discussed further in Module VII.

Final administrative decisions in such procedures must generally be subject to review by a judicial or quasi-judicial authority (paragraph 5 of Article 62).

D. TRANSITIONAL ARRANGEMENTS AND OTHER MATTERS

1. Transition periods

The TRIPS Agreement gave all Members transition periods so that they can meet their obligations under it. The transition periods, which depend on the level of development of the country concerned, are contained in Articles 65 and 66. Except for LDC Members, these transition periods have already expired.

(a) Developed countries and non-discrimination (all Members)

Developed country Members have had to comply with all of the provisions of the TRIPS Agreement since 1 January 1996. Moreover, all Members, including those availing themselves of the longer transition periods, have had to comply with the national and MFN treatment obligations since 1 January 1996 (Article 65.1).

(b) Developing countries and economies in transition

For developing countries, the general transition period was five years, i.e. until 1 January 2000 (Article 65.2). The same transition period was available for countries in transition from a centrally-planned into a market economy, provided they met certain conditions (Article 65.3).

The TRIPS Agreement provided special transition rules in the situation where a developing country did not provide product patent protection in a given area of technology on 1 January 2000. This provision was especially relevant to pharmaceutical and agricultural chemical inventions. According to Article 65.4, a developing country could delay the application of the TRIPS obligations on product patents to such areas of technology until 1 January 2005.

However, in the situation where a country did not provide patent protection for pharmaceutical and agricultural chemical products commensurate with the TRIPS provisions on scope of patentable subject matter as of January 1995, some additional transitional arrangements apply. In accordance with the "mail-box" provision contained in Article 70.8, the country concerned is required to provide a means by which patent applications for such inventions can be filed. These applications do not need to be examined for their patentability until the country starts applying product patent protection in that area. However, when that time comes, the application has to be examined by reference to the prior art that had been disclosed when the application was first filed (i.e. the invention has to be assessed whether it was "new" as of that earliest date). If the application is successful, product patent protection would then have to be granted for the remainder of the patent term counted from the filing date of the application.

If a product that is the subject of such a mailbox patent application in a Member obtains marketing approval before the decision on the grant of the patent is taken, there is an obligation under Article 70.9 to grant exclusive marketing rights for a period of up to five years or until the patent is granted or rejected, whichever is shorter. This is subject to a number of conditions: subsequent to the entry into force of the WTO Agreement, a patent application must have been filed, a patent granted and marketing approval obtained in another Member for the product in question.

These provisions were addressed in reports adopted by the Dispute Settlement Body in cases *India – Patents I* and *II* (DS50 and 79).

(c) Least developed countries

The TRIPS Agreement contains a number of specific provisions for least developed countries, reflecting the recognition in the Preamble of their "special needs ... in respect of maximum flexibility in the domestic implementation of laws and regulations in order to enable them to create a sound and viable technological base". For the purposes of determining the LDC status of a country, the WTO uses the United Nations list of least-developed countries.

Article 66.1 originally provided LDC Members a transition period until 1 January 2006, with an extension upon a duly motivated request.

Pursuant to the Doha Declaration on the TRIPS Agreement and Public Health, the TRIPS Council decided in 2002 to extend the transition period for least-developed countries for certain obligations with respect to pharmaceutical products until 1 January 2016. This Decision can be found in document IP/C/25. Supplementing this Decision, the General Council adopted a waiver for the same period in respect of the obligations of LDC Members under Article 70.9 concerning so-called exclusive marketing rights. Thus, LDC Members availing themselves of the extended transition period are required to provide a "mail-box" if they do not already provide patent protection for pharmaceutical products, but the obligations in respect of exclusive marketing rights for such products have been waived until 1 January 2016. This decision can be found in document WT/L/478.

In 2005, upon a request of least-developed countries, the TRIPS Council extended the transition period for least-developed countries for the application of all other provisions of the TRIPS Agreement, except for Articles 3-5 on non-discrimination, until 1 July 2013. It also set up a process to help them implement TRIPS within their national IP regimes. The Council called on least-developed countries to identify their priority needs for technical and financial cooperation, which developed countries are to help to effectively address. It also called for the WTO to enhance its cooperation with WIPO and other relevant international organizations. Furthermore, the decision provides that LDC Members will ensure that any changes in their laws, regulations and practice made during the additional transition period do not result in a lesser degree of consistency with the provisions of the TRIPS Agreement. It is without prejudice to the earlier extension with respect to pharmaceutical products and to the right of LDC Members to seek further extensions. This Decision is contained in document IP/C/40. Technical cooperation for least-developed countries is further discussed in Module X.

(d) Acceding Countries

Any transition periods for acceding countries are set out in their protocols of accession. Apart from LDCs that join the WTO, newly acceded countries have generally agreed to apply all relevant provisions of the TRIPS Agreement as of the date of entry into force of their membership in the WTO.

2. Protection of existing subject matter

(a) Application of the rules

An important aspect of the transition arrangements under the TRIPS Agreement are the provisions relating to the treatment of subject matter existing at the time that a Member starts applying the provisions of the Agreement (e.g. already existing works, inventions or distinctive signs). These rules are contained in Article 70.

As provided in Article 70.2, the rules of the TRIPS Agreement generally apply to subject matter existing on the date of the application of the Agreement for the Member in question (i.e. at the end of the relevant transition period) and which is protected in that Member on that date, or which is still capable of meeting the criteria for protection (e.g. undisclosed information or distinctive signs not yet protected as trademarks). The interpretation of Article 70.2 was addressed in reports adopted by the Dispute Settlement Body on *Canada – Patent Term* (DS170).

(b) Additional requirements in respect of pre-existing works and phonograms

In respect of copyright and the rights of producers of phonograms (sound recordings) and performers in existing phonograms, there is an additional requirement to comply with Article 18 of the Berne Convention, not only in respect of the rights of authors but also in respect of the rights of performers and producers of phonograms in phonograms (Articles 9.1, 14.6 and 70.2 of the TRIPS Agreement). Article 18 of the Berne Convention includes the so-called rule of retroactivity, according to which the Agreement applies to all works which have not fallen into the public domain either in the country of origin or the country where protection is claimed through the expiry of a term of protection. The provisions of Article 18 allow some transitional flexibility where a country is, as a result, taking subject matter out of the public domain and putting it under protection, to safeguard the interests of persons who have in good faith already taken steps on the basis of the material in the public domain (for example, a film producer that has already invested in the making of a film using a work that is brought under copyright). The application of Article 18 of the Berne Convention to the rights of producers of

phonograms and performers in existing phonograms was addressed in two dispute settlement complaints on Japan – Measures Concerning Sound Recordings (DS28 and 42). Both cases were settled bilaterally without panel reports.

3. Transfer of technology

Article 7 of the TRIPS Agreement recognizes that the protection and enforcement of intellectual property rights should contribute to the transfer and dissemination of technology (see A.4(a) above).

Article 66.2 of the TRIPS Agreement requires developed country Members to provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to LDC Members in order to enable them to create a sound and viable technological base.

In 2003, pursuant to instructions given by ministers at the Doha ministerial meeting, the Council adopted a decision on "Implementation of Article 66.2 of the TRIPS Agreement" that put in place a mechanism for ensuring the monitoring and full implementation of the obligations in question. Under this Decision, developed county Members shall submit annually reports on actions taken or planned in pursuance of their commitments under Article 66.2. To this end, they are to provide new detailed reports every third year and, in the intervening years, provide updates to their most recent reports. These submissions are reviewed by the Council at its end-of-year meeting each year. The review meetings are intended to provide Members an opportunity to, *inter alia*, discuss the effectiveness of the incentives provided in promoting and encouraging technology transfer to least-developed country Members in order to enable them to create a sound and viable technological base.

The precise nature of such incentives has not been further elaborated upon in the TRIPS Agreement. The annual reports submitted by developed countries to the TRIPS Council contain examples of available incentives. The subject of technology transfer is discussed further in Module X.

The Council Decision on technology transfer referred to above can be found in document IP/C/28. Annual reports submitted pursuant to it are available on the WTO Documents Online database. Further information on how to access these reports can be found in the Appendix 1.

Transfer of technology to LDC Members is also addressed in the 2003 Decision on Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health and the 2005 Protocol Amending the TRIPS Agreement. This is discussed further in Module IX.

4. Technical cooperation

Article 67 of the TRIPS Agreement requires developed country Members to provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in favour of developing and least-developed country Members. According to this provision, the objective of such cooperation is to facilitate the implementation of the Agreement. The Article specifies that such assistance shall include assistance in the preparation of laws and regulations on the protection and enforcement of intellectual property rights as well as on the prevention of their abuse, and support regarding the establishment or reinforcement of domestic offices and agencies relevant to these matters, including the training of personnel.

In order to ensure that information on available assistance is readily accessible and to facilitate the monitoring of compliance with the obligation of Article 67, developed country Members present descriptions of their relevant technical and financial cooperation programmes and update them annually. For the sake of transparency, intergovernmental organizations, such as WIPO and the World Health Organization (WHO), have also presented, upon the invitation of the Council, information on their activities. The information from developed country Members, intergovernmental organizations and the WTO Secretariat on their technical cooperation activities in the area of TRIPS is available on the WTO Documents Online database.

The TRIPS Council has agreed that each developed country Member should notify a contact point for technical cooperation on TRIPS, in particular for the exchange of information between donors and recipients of technical assistance. These notifications are made available on the WTO Documents Online database. Further information on how to access the reports and other information referred to above can be found in Appendix 1.

5. Security exceptions

In line with other WTO Agreements, Article 73 stipulates that the TRIPS Agreement cannot be construed to require a Member to furnish information or to take action against essential security interests, nor to prevent action in pursuance of obligations under the United Nations Charter for the maintenance of international peace and security.

E. INSTITUTIONAL ARRANGEMENTS

The WTO Agreement serves as an umbrella agreement for the TRIPS Agreement and the other trade agreements annexed to it. It includes provisions on the establishment, scope, functions and structure of the WTO. It defines the WTO relationship with other organizations, its secretariat, budget and contributions, legal status, and decision-making and amendment procedures. Additionally, it presents information on the definition of original Members, accession, non-application, acceptance, entry into force and deposit, denunciation and final provisions. The sub-section below focuses on the decision-making procedures as regulated in the WTO Agreement. The following sub-section discusses the work of the Council for TRIPS.

1. Decision-making procedures

The cross-cutting rules on decision-making and amendment procedures are contained in the WTO Agreement. It provides that the Ministerial Conference has the authority to take decisions on all matters under any of the multilateral trade agreements, including the TRIPS Agreement, if so requested by a Member, in accordance with the specific requirements for decision-making in the WTO Agreement and in the relevant multilateral trade agreement (Article IV:1). In the intervals between meetings of the Ministerial Conference, its functions are conducted by the General Council (Article IV:2). Given this, a reference to the Ministerial Conference/General Council is used below where appropriate.

According to the general rules on decision-making, the WTO continues the practice of decision-making by consensus (Article IX:1). Where a decision cannot be arrived at by consensus, the Article provides for the possibility of deciding a matter by voting. In these circumstances, decisions concerning authoritative interpretations and waivers can be taken by specific qualified majorities that differ as indicated below. Similarly, decisions to submit a proposed amendment to the Members for acceptance is to be taken by consensus, failing which there is the possibility of deciding it by qualified majority (Article X). In the absence of specific rules, decisions of the Ministerial Conference and the General Council can be taken by

a majority of the votes cast but, as of the date of writing, all decisions in the WTO have been agreed by consensus. The practice has been that where a body has failed to reach consensus on a matter, it has held further consultations with a view to seeking consensus.

The rules on authoritative interpretations are set out in Article IX:2 of the WTO Agreement. It provides that the Ministerial Conference and the General Council have the exclusive authority to adopt interpretations of the WTO Agreement and of the multilateral trade agreement; this authority must be exercised on the basis of a recommendation by the Council overseeing the functioning of the relevant agreement, i.e. in case of the TRIPS Agreement on the basis of a recommendation by the TRIPS Council. If a decision concerning interpretation cannot be arrived at by consensus, the decision by the Ministerial Conference or the General Council to adopt an interpretation requires a three-fourths majority of WTO Members. This procedure cannot be used in a manner that would undermine the amendment provisions set out in Article X. In other words, the validity of an authoritative interpretation that goes so far as to effectively amend provisions of WTO agreements could be challenged on this basis.

To date, no such formal interpretation of the TRIPS Agreement or any other multilateral trade agreement has been adopted.

It should be noted that, for the purposes of resolving a specific dispute, dispute settlement panels and the Appellate Body may need to clarify the provisions of the TRIPS Agreement, but without adding to or diminishing the rights and obligations in the Agreement. The outcome of a dispute does not bind other Members, although the clarifications made in dispute settlement are widely referred to for guidance on understanding the relevant provisions of the TRIPS Agreement. For discussion of the dispute settlement system, see Module VIII.

Paragraphs 3 and 4 of Article IX of the WTO Agreement provide the Ministerial Conference/General Council with authority to waive an obligation imposed on a Member by the WTO Agreement or any of the multilateral trade agreements, including the TRIPS Agreement. It may exercise this authority "in exceptional circumstances". A request for a waiver must be submitted initially to the Council overseeing the relevant agreement; thus a request for a waiver concerning the TRIPS Agreement must be submitted initially to the TRIPS Council. After the relevant Council has considered a draft waiver, it forwards it to the Ministerial Conference/General Council for consideration pursuant to the practice of decision-making by consensus. If the latter does not reach consensus, any decision to grant a waiver requires a three-fourths majority of the Members. The usual practice is that once the relevant sectoral Council has approved a draft waiver by consensus, the General Council adopts it by consensus without further substantive discussion. Any waiver granted for a period of more than one year is to be reviewed by the Ministerial Conference not later than one year after it is granted, and thereafter annually until the waiver terminates. In each review, the Ministerial Conference/General Council is to examine whether the exceptional circumstances justifying the waiver still exist and whether the terms and conditions attached to the waiver have been met. The Ministerial Conference/General Council, on the basis of the annual review, may extend, modify or terminate the waiver.

By May 2011, 208 decisions on waivers had been taken under Article IX of the WTO Agreement. Most of them concern the Harmonized Commodity Description and Coding System (usually referred to as the "Harmonized System") and regional trade agreements. Two of them have concerned the TRIPS Agreement. One of them supplements a TRIPS Council decision to extend least developed countries' transition period for certain obligations with respect to pharmaceutical products by waiving the obligations concerning so-called exclusive marketing rights (see section D1(c) of this module). The other waiver provides additional flexibility for access to medicines by establishing a system that enables production and export of

pharmaceutical products under compulsory licence to meet the needs of countries with inadequate domestic manufacturing capacity (the so-called Paragraph 6 System, see Module IX).

The procedure for amending the multilateral trade agreements, including the TRIPS Agreement, is laid down in Article X of the WTO Agreement. The TRIPS Council can initiate the procedure for amendment of the TRIPS Agreement by submitting to the Ministerial Conference a proposal to amend the Agreement. Also any Member may submit to the Ministerial Conference/General Council a proposal to amend the TRIPS Agreement. The Ministerial Conference/General Council then decides whether to submit the proposed amendment to the WTO Members for acceptance. As mentioned above, the WTO continues the practice of decision-making by consensus, although Article X:1 also foresees the possibility of voting if consensus is not reached. Individual Members then separately notify their formal acceptance of an agreed amendment. The amendment enters into force once two-thirds of Members have notified their acceptance. If the amendment alters the rights and obligations of Members, then it only enters into force for those Members that have accepted it; otherwise, it comes into effect for all Members after two-thirds have accepted it.

The process for amending WTO agreements has to date been used only once – the amendment to the TRIPS Agreement that makes the waiver decision providing the Paragraph 6 System referred to above a permanent part of the Agreement (see Module IX). Following a recommendation by the TRIPS Council, the decision on the amendment was taken by the General Council acting with the authority of the Ministerial Conference.

A specific amendment scenario is set out in Article 71.2 of the TRIPS Agreement – it refers to amendments "merely serving the purpose of adjusting to higher levels of protection of intellectual property rights achieved, and in force, in other multilateral agreements and accepted under those agreements by all Members of the WTO." The TRIPS Council may refer consensus proposals for such amendments to the Ministerial Conference, which may adopt the amendment without any further acceptance process. This provision has not been used so far.

2. The work of the Council for TRIPS

The main forum for work on the TRIPS Agreement is the Council for TRIPS ("TRIPS Council") itself, which was created by the WTO Agreement to "oversee the functioning" of the TRIPS Agreement. The basic provision on the role of the TRIPS Council is contained in Article 68 of the TRIPS Agreement. It should be read together with the provisions of the WTO Agreement concerning the structure and operation of the WTO.

In its regular sessions, the TRIPS Council mostly serves as a forum for discussion between governments of WTO Members on key issues – this work is often facilitated by the collection of information about the comparative approaches taken by Members in their national laws and policies through the notification process and through more specific surveys and questionnaires. Some of the main functions and working methods of the TRIPS Council in regular session are described below and in Appendix 1.

Currently, the TRIPS Council also meets in special sessions. The Trade Negotiations Committee was set up by the Doha Ministerial Declaration, which in turn assigned it to create subsidiary negotiating bodies to handle negotiations for different topics, among them the special sessions of the TRIPS Council. These special sessions serve as a forum for negotiations on the establishment of a multilateral system for notification and registration of geographical indications for wines and spirits, as mandated by the Doha Ministerial Declaration and Article 23.4 of the TRIPS Agreement (see Module X).

The regular and special sessions of the TRIPS Council are both open to all WTO Member governments. They are convened under separate chairs, but their meetings are usually held back-to-back.

Beyond the TRIPS Council, other mechanisms can be used to promote dialogue between WTO Members, such as the consultations on TRIPS implementation issues that have been convened directly by the Director-General of the WTO, in line with a mandate given by the Hong Kong Ministerial Declaration (see Module X).

In addition, the Trade Policy Review Mechanism undertakes regular reviews of the trade policies of WTO Members, and this process regularly looks at IP policies as one of a wide range of policy fields covered.

(a) Notifications

The TRIPS Agreement obliges Members to make certain notifications to the Council for TRIPS. These notifications facilitate the Council's work of monitoring the operation of the Agreement and promote the transparency of Members' laws and policies on intellectual property protection. In addition, Members wishing to avail themselves of certain flexibilities provided in the Agreement that relate to the substantive obligations have to notify the Council.

Article 63.2 of the TRIPS Agreement requires Members to notify the laws and regulations by which they give effect to the Agreement's provisions. The Article specifies that the purpose is to assist the TRIPS Council in its review of the operation of the Agreement. The Council has agreed that laws and regulations should be notified without delay as of the time that the corresponding substantive TRIPS obligation has effect. Any subsequent amendments should also be notified without delay. Given the difficulty of examining laws and legal procedures relevant to many of the enforcement obligations in the TRIPS Agreement – especially since much relevant material is often found in general civil and criminal law, not in IP legislation – Members have undertaken, in addition to notifying legislative texts, to provide information on how they are meeting these obligations by responding to a Checklist of Issues on Enforcement (document IP/C/5).

As seen in B.3. above, Articles 1.3 and 3.1 allow Members to avail themselves of certain options in regard to the definition of beneficiary persons and national treatment, provided that notifications are made to the Council for TRIPS.

As seen in B.4. above, Article 4 on MFN treatment provides that, with regard to the protection of intellectual property, any advantage, favour, privilege or immunity granted by a Member to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of all other Members. There are certain exceptions to this obligation. According to sub-paragraph (d) of that Article, exempted from this obligation is any advantage, favour, privilege or immunity accorded by a Member deriving from international agreements related to the protection of intellectual property which entered into force prior to the entry into force of the WTO Agreement, provided that such agreements are notified to the Council for TRIPS and do not constitute an arbitrary or unjustifiable discrimination against nationals of other Members.

As seen in D.4. above, Article 69 of the Agreement requires Members to establish and notify contact points in their administrations for the purposes of cooperation with each other aimed at the elimination of trade in infringing goods.

A number of notification provisions of the Berne and Rome Conventions are incorporated by reference into the TRIPS Agreement but without being explicitly referred to in it. A Member wishing to make such notifications has to make them to the Council for TRIPS, even if the Member in question had already made a notification under the Berne or the Rome Convention in regard to the same issue.

All of the notifications referred to above are circulated in the IP/N –series of documents, which are available at the WTO Documents Online database. The easiest way to access this documentation is through the WTO TRIPS transparency toolkit webpage, which provides access to various notifications and other reports from Members, and related formats, guidelines and background materials.[4] Notified laws and regulations are also available on the WIPO Lex search facility for national laws and treaties on intellectual property, which can be accessed through the WIPO GOLD online database.[5]

Appendix 1 contains a more detailed guide to TRIPS notifications. Notifications pursuant to Article 6*ter* of the Paris Convention as incorporated into the TRIPS Agreement will be discussed below.

(b) Review of national laws and regulations

A key mechanism for monitoring implementation of the TRIPS Agreement is the examination of each Member's national legislation by other Members, in particular at the end of its transition period. The notifications made pursuant to Article 63.2 discussed above form the basis for these reviews. The procedures for these reviews provide for written questions and replies prior to the review meeting, with follow-up questions and replies during the course of the meeting. At subsequent meetings of the Council, an opportunity is given to follow up points emerging from the review session that delegations consider to have not been adequately addressed. The records of these reviews are circulated in the IP/Q–Y series of documents, which are available on the WTO Documents Online database.

(c) Forum for consultations

The TRIPS Council constitutes a forum for consultations on any problems relating to the TRIPS Agreement arising between countries, as well as for clarifying or interpreting provisions of the Agreement. Members occasionally bring such issues before the Council for the purposes of sharing information, clarification or discussion. To the extent they involve differences between Members, the aim is, whenever possible, to resolve them without the need for formal recourse to dispute settlement.

(d) Forum for further negotiation or review

The WTO constitutes a forum for negotiations among its Members concerning their multilateral trade relations in the area of intellectual property, as in other areas covered by the WTO Agreement. Certain specific areas of further work are called for in the text of the TRIPS Agreement. These areas include:

- the negotiation of a multilateral system of notification and registration of geographical indications for wines;
- the review of Article 27.3(b) (which concerns the option to exclude from patentability certain plant and animal inventions); and

[4] From the WTO homepage, follow the links "trade topics" and "intellectual property". Form this TRIPS gateway page, follow the link "Notifications – members' transparency toolkit".

[5] WIPO Gold can be accessed at http://www.wipo.int/wipogold/en/.

- the examination of the applicability to TRIPS of non-violation complaints under the dispute settlement process.

Apart from these specific reviews that will be discussed in Module X, Article 71.1 includes a provision for a general review of the implementation of the Agreement in the year 2000, and each two years after that date. The Council may also undertake reviews "in the light of any relevant new developments which might warrant modification or amendment" of the Agreement. In effect, these review provisions have led to a regular item appearing on the agenda of the TRIPS Council since 2000. No proposals on issues to be taken up under this item are being pursued. The Doha Declaration mentions the Article 71.1 review in the context of the TRIPS Council's broader work programme, and refers to work on the issues of the relationship between the TRIPS Agreement and the Convention on Biological Diversity, the protection of traditional knowledge (TK) and folklore, and other relevant new developments raised by Members pursuant to Article 71.1 (paragraph 19 of WT/MIN(01)/DEC/1).

The Doha Ministerial Declaration and the Declaration on the TRIPS Agreement and Public Health, both adopted in 2001, and certain subsequent ministerial declarations have given specific tasks to the Council's regular and special sessions. Past and ongoing work on such matters will be discussed in the subsequent modules in the context of the substantive area concerned.

(e) Cooperation with the World Intellectual Property Organization

To facilitate the implementation of the TRIPS Agreement, the WTO concluded with WIPO an agreement on cooperation between the two organizations, which came into force on 1 January 1996. As explicitly set out in the Preamble to the TRIPS Agreement, the WTO aims to establish a mutually supportive relationship with WIPO. The Agreement provides for cooperation in three main areas, namely (1) notification of, access to and translation of national laws and regulations; (2) implementation of procedures for the protection of national emblems; and (3) technical cooperation.

As regards notification of, access to and translation of national laws and regulations, the WTO Secretariat transmits to the WIPO Secretariat copies of the laws and regulations it has received from Members under Article 63.2 of the TRIPS Agreement.[6] The International Bureau of WIPO places such laws and regulations in its collection and makes them available to the public through the WIPO Lex search facility, which can be accessed through the WIPO GOLD on-line database.[7] In 2010, the two organizations established a WIPO-WTO Common Portal that allows countries to simultaneously electronically submit texts of IP laws and regulations to the two organizations. WIPO also makes available to developing countries assistance for translation of their laws and regulations.

As regards the implementation of procedures for the protection of national emblems under Article 6*ter* of the Paris Convention for the purposes of the TRIPS Agreement, the cooperation agreement provides that the procedures relating to communication of emblems and transmittal of objections under the TRIPS Agreement shall be administered by the WIPO Secretariat in accordance with the procedures it applies under Article 6*ter* of the Paris Convention. Article 6*ter* of the Paris Convention, as incorporated into the TRIPS Agreement, provides for the communication of emblems and of objections thereto among Members. The

[6] Parties to the Paris and Berne Conventions are required to notify their relevant laws to the WIPO Secretariat. The Assemblies of the Paris and Berne Unions have decided that the requirements under these conventions to communicate national laws to the WIPO Secretariat can be fulfilled by communication of such laws through the WTO Secretariat.

[7] WIPO Gold can be accessed at http://www.wipo.int/wipogold/en/.

TRIPS Council has decided to recognize that their communication through the WIPO Secretariat would be considered as communications for the purposes of the TRIPS Agreement.

As regards technical cooperation, the agreement provides that the WIPO and WTO Secretariats enhance cooperation in their legal-technical assistance and technical cooperation activities relating to the TRIPS Agreement for developing countries, so as to maximize the usefulness of those activities and ensure their mutually supportive nature. The assistance they make available to the members of their own organization will be made available also to the members of the other organization.

An example of this cooperation is the WIPO-WTO Joint Initiative on Technical Cooperation for Least-Developed Countries that was launched in 2001. It is aimed at helping LDC Members of the WTO comply with their obligations under the TRIPS Agreement and make best use of the IP system for their economic, social and cultural development. It is open to other LDCs as well. The TRIPS Council Decision on the extension of LDCs' transition period discussed above calls upon the WTO to seek to enhance its cooperation with WIPO and other relevant international organizations. The two organizations also run a number of annual joint technical cooperation activities, notably the Colloquium for University Teachers of Intellectual Property and the Advanced Course on Intellectual Property for government officials.