



Registration of Industrial Design

Introduction:-

Intellectual Property (IP) Rights are intangible legal rights which results from intellectual activity in industrial, scientific, literary & artistic fields. These rights safeguard creators and other producers of intellectual goods & services by granting them exclusive rights for a limited period. IP rights can be subject matter of trade, and as such can be owned, leased, assigned, sold, or bought. Patents, Trademarks, Copyright, and Industrial designs are the major IPs which are commonly utilized by the producers of the goods & services in India and other countries.

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

According to Sec (2d) of the Act, a design refers to the features of shape, configuration, pattern, ornamentation or composition of lines or colours applied to any article, whether in two or three dimensional (or both) forms. This may be applied by any industrial process or means (manual, mechanical or chemical) separately or by a combined process, which in the finished article appeals to and is judged solely by the eye.

Protection of Industrial Designs in India:-

The Law on Industrial Designs in India is governed by the Designs Act 2000 (the Act) and the Designs Rules 2001 (the Rules).

Object of the Designs Act:-

Is to protect new or original designs so created to be applied to particular article to be manufactured by Industrial Process. Sometimes purchase of articles for use is influenced not only by their practical efficiency but also by their appearance. The important purpose of design registration is to see that the artisan, creator, originator of a design having aesthetic look is not deprived of his bona fide reward by others applying it to their goods.

Who can apply for registration of a Design?

As per Sec (5) of the act, any person or the legal representative or the assignee can apply separately or jointly for the registration of a design. The term "person" includes firm, partnership, small entity, and a body corporate. An application may also be filed through an agent in which case a power of attorney is required to be filed.

Benefits of Design Registration

The registration of a design confers upon the registered proprietor the exclusive right to apply a design to the article in the class in which the design has been registered and is entitled for protection of his intellectual property. He can take steps against infringement, and can issue license or sell his design as legal property for a consideration or royalty.



Essential requirements for Registration:- A design should: -

- be new or original during registration - Sec 2(f), 4(a), 5(1);
- not been disclosed to the public anywhere by publication in tangible form or by use or in any other way prior to the filling date.- Sec (4(b));
- be significantly distinguishable from known designs or combination of known designs - Sec (4(c));
- not comprise or contain scandalous or obscene matter. - (Sec 4 (d));
- be applied to an article in particular class – Sec 5(3));
- not be contrary to public order or morality Sec 5(1));

Exclusion from scope of design:- Designs that are primarily of literary or artistic character are not protected under the Designs Act.

Registration:- Every application for registration of design In India undergoes examination as per the Act and Rules as amended time to time. The applications are examined in order in which the application is filed under **Section 5** and **44** of the Act.

Acceptance & Notification:- An application is accepted when all the shortcomings have been rectified. It is then notified in the Patent Office journal which is published on every Friday.- **Sec (7)**

Refusal:- In case the defects as required by the controller are not rectified, a hearing may be provided to the applicant. After hearing the decision of the controller will be communicated in writing to the applicant or his agent stating the reasons for the decision – **Sec (35) & Rule 18 (5)**

Appeal:- Any person aggrieved by the decision of the Controller refusing to register a design may appeal to the High Court. The appeal should be made within three months from the date of the Controller's decision – **Sec (36 (1))**

Abandonment:- An application which owing to any neglect or default on the part of the applicant has not been completed so as to enable registration to be affected within six months or within extended period will be treated as abandoned – **Rule 21**

Important provisions of the Design Act

Section:- 9. Certificate of Registration:-The controller shall grant a certificate of registration to the proprietor of the design when registered. In case of loss of the original certificate, or in any other case, the controller can furnish one or more copies of the certificate as he deems fit.

Section 11. Copyright on registration:- 1) When a design is registered, the registered proprietor of the design shall, subject to the provision of this Act, have copyright in the design during **ten years** from the date of registration. Upon expiry of the ten years, one request for extension with prescribed fees can be made for a period of five years. After the expiry of the extended period, the registration of the design ceases.



Section 12. Restoration of Lapsed designs:-(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) Sec (11) the proprietor of such a design or his legal representative within one year from the date on which the design ceased to have effect.

Section 22. Piracy of registered design:-

1) During the existence of copyright in any design it shall not be lawful for any person, for the purpose of sale to apply a registered design or carryout any fraudulent or obvious imitation thereof or to import or publish or expose for sale of that article, except with the licence or written consent of the registered proprietor.

2) 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**:

For relief under this sub-section shall be instituted in any court not below the court of District Judge.

3) In any suit or any other proceeding for relief under sub-section (2), every ground on which the registration of a design may be cancelled under section 19 (Decision of Controller) shall be available as a ground of defence.

4) 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.

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