

## UNIT-3

# COPYRIGHTS

### Introduction

Every year millions of Americans create original works like books, music, research and other forms of creative expression. All these creation are Intellectual Property and all of them are protected by copyright. Writers, editors and publishers, understanding copyrights issues are essential. Especially now that the production of counterfeit [imitating] and pirated goods, including written works, has become so prevalent.

In 2005 more than \$600 billion in pirated and counterfeited goods were recognized by WCO [World Customs Organization]. Now-a-days the internet has made copying and distributing protected material easier than ever before for avoiding copying the material. So, in order to protect yourself from IP theft, it's important to know the basics about rights.

### Definition

“The legal protection given to published works forbidding anyone but the author from publishing or selling them. An author can transfer the copyright to another person or corporation, such as a publishing company.”

### What is a Copyright?

- Copyright is a form of protection provided by U.S. Law to the authors of “**Original Works of Authorship**” fixed in any tangible medium of expression.
- The manner and medium of fixation are virtually unlimited.
- Creative expression may be captured in words, number, notes, sounds, pictures or any other graphic or symbolic media.
- The subject matter of copyright is extremely broad, including literary, dramatic, musical, artistic, audiovisual and architectural works.

- Copyright protection is available for both published and unpublished works.

## **History**

- In England prompted the first insistence upon protection for publication of books
- Bookbinders and printers demanded protection from copying of books.
- Authors also began to demand protection from unauthorized copying and demanded to share in the financial rewards
- Finally, in 1710, parliament enacted the first copyright statute [Act/law], the Statute of Anne [Named after Anne, Queen of Great Britain, the Statute become the foundation for British and American Copyright Law]
- The first copyright law is enacted under the new U.S. Constitution, Protecting books maps and charts for 14 years with privilege of renewal for another 14 years
- Copy right registration is made in the U.S. district court where the author or proprietor resides.
- The first copyright entry, “The Philadelphia Spelling Book” by John Barry, is registered in U.S. District court of Pennsylvania. Protection is for 14 years with a renewal period of author 14 years.

## **Common Law Right**

- The enacted the first copyright act in 1790 and the first federal copyright registration were issued.
- Until January 1, 1978 [the effective date of the 1976 copyright Act] the U.S had a dual system of copyright protection.
- Until 1978, an author has a perpetual common law right to their unpublished works.
- Once the work was published, however, the common law perpetual copyright was extinguished and protection was afforded by virtue [quality] of the 1909 act, provide protection up to fifty-six years.
- Publication is the distribution of copies of a work to the public for sale or other transfer of ownership, by rental lease, or lending.
- The dual nature of copyright protection was complex, often led to controversy

- The 1976 act eliminated the distinction between unpublished and published works.

**For Example:** Ernest Hemingway's *A Farewell to Arms* [Published in 1929], are governed by the act in existence on the date of their publication. Hemingway's book would thus be governed by the 1909 act.

- Just as trademark rights arise from use and not from registration with PTO
- A copyright registration from the copyright office provides certain advantages to author's of work, including the following.
  - Registration establishes a public record of the copyright claim
  - Before an infringement suit may be filed in court, registration is necessary for works of U.S origin
  - If made before or within five years of publication, registration will establish Prima facie evidence in court of the validity of the copyright and of the facts stated in the certificate and
  - If registration is made within three months after publication of the work or prior to an infringement of the work, statutory damages and attorney's fee will be available to the copyright owner in court action
- Copyright protection generally lasts until seventy years from the death of the author.
- The 1976 copyright act is found at 17 U.S.C. §§101-1101 and it was amended for several times.
- In 1980, specific protection was afforded to computer programs as works entitled to copyright protection.
- Copyright Act © represents
- Another 1998 amendment to copyright law is the Digital Millennium Copyright act.

### **The United States Copyright Office:**

Register of Copyright,  
Copyrights office,  
Library of Congress,  
101 Independence Avenue SE,

Washington,  
DC 20559-6000

- The copyright office is not permitted to give legal advice and will not offer guidance on matter such as disputes, suits against possible infringers or other matters related to copyright.
- Among the more useful publications and materials are the following:
  - Forms for copyright registration
  - Circular 1, “Copyright Basics”,
  - Circular 2, “Publication on copyrights”,
  - Circular 3, “Copyright Notice”,
  - Circular 4, “Copyright Fees”
  - Circular 15, “Renewal of Copyright”
  - Circular 15a, “Duration of Copyright”; and
  - Circular 38a, “International copyright Relations of the United States”; and
  - Circular 61, “Copyright Registration for computer Programs”

**To order copyright publications, write to:**

*Library of Congress,  
Copyright Office,  
Publication section, LM-455,  
101 Independence Avenue SE,  
Washington-DC20559-6000*

- Circulars and announcements are available via facsimile
- If you do not know the document number of the items you want, you may request that a menu be faxed to you
- All the data pertaining to copyrights are available in Internet
- The copyright office provides a free electronic mailing list, “NewsNet”, that issues periodic e-mail messages on copyright issues
- Copyright office process the application via electronically

## **Originality of Material**

### **Introduction:**

- The limits of copyrightability are dictated [command] by federal statute
- According to 17 U.S.C § 102, copyright protection exists in original works [tangible medium]

Thus, there are three basic requirements for copyrightability:

1. A work must be original
2. A work must be fixed in a tangible form of expression; and
3. A work must be a work of authorship

## **Originality of Material**

- To be eligible for copyright protection
  - ★ Material must be original
  - ★ Meaning
  - ★ Independently created
  - ★ Posses a modicum of creativity
  - ★ It should not confused with novelty, worthiness or aesthetic [dealing with beauty] appeal
- “Originality” thus does not mean “first”, it merely means “independently created”,
- A slight amount of “creative spark”.

## **Fixation of Material :(17U.S.C. § 101)**

- The copyright act protects works of authorship that are “fixed in any tangible medium of expression”.
- A work is “fixed”:
  - When it is embodied [existing in broad form]
  - Phonorecord and is sufficiently permanent
  - Stable to permit it to be perceived, reproduced or

communicated for a period of more than transitory [temporary] duration

- Thus there are two tangible categories
  - Copies: A copy is a material object from which a work can be perceived, reproduced or communicated, either directly by human perception or with the help of a machine.
  - Phonorecord: A Phonorecord is a material object in which sounds are fixed and from which the sounds can be perceived, reproduced or communicated either directly by human perception or with the help of a machine.

### **Works of Authorship: (17 U.S.C § 102)**

- The copyright act provides that copyright protection subsists [support oneself] in original works of authorship fixed in any tangible medium of expression, now known or hereafter developed, from which they can be perceived, reproduced or otherwise communicated.
- The list is preceded by the phrase that works of authorship “include” those categories, demonstrating that the listed categories are not only types of works that can be protected, but are illustrate only
  - Literary works
  - Musical works
  - Dramatic works
  - Pantomimes and choreographic works
  - Pictorial, graphic and sculptural works
  - Motion pictures and other audiovisual works
  - Sound recording and
  - Architectural works

## **Exclusions from copyright protection:**

### **Not all works are protected by copyright**

- Ideas, Methods, or System
- Blank forms, Titles, short phrases and common property
- Public domain works
- Facts
- Computing measuring devices

## **The Rights afforded by copyright law**

### **Introduction:**

- The copyright act provides that, subject to certain exceptions, the owner of a copyrights has the exclusive rights to do and to authorize any of the following:
  - To reproduce the copyrighted work in copies or phonorecords
  - To prepare derivative works based on the copyrighted work
  - To distribute copies or phonorecords of the copyrighted work to the public
  - To perform the copyrighted work publicly
  - To display the copyrighted work publicly
  - To perform the copyrighted work publicly by means of a digital audio transmission
  - Unless exemption exists, unauthorized exercise of any of these rights by another is an infringement.
  - These exclusive rights, usually referred to as a “bundle”*

### **Rights of Reproduction:**

- The most fundamental of the rights granted to copyright owners is the right to reproduce the work
- A violation of the copyright act occurs whether or not the violator profits by the reproduction
- Only the owner has the right to reproduce the work
- Secretly taping a concert, taking pictures at a performance, or

- recording all violate the owner's right to reproduce
- The suggestion of congress, in 1978 a group of authors, publishers and users established a not-for-profit entity called Copyright Clearance Center [CCC]
  - CCC grants licenses to academic, government and corporate users to copy and distribute the works
  - It collects royalty fees, which are distributed to the authors
  - Companies that photocopy articles from journals and magazines often enter into licensing arrangements with the CCC so they can make copies.

### **Rights to prepare Derivative works:**

- Section 106 of the copyright Act provides that the owner of a copyright has the exclusive right to prepare derivative works based upon the copyrighted work
- This right is often referred to as the right to adapt the original work

### **Definition:**

“A derivative work is broadly defined as a work based upon one or more preexisting works, such as a translation, dramatization, fictionalized motion pictures version, abridgment condensation or any other form in which a work may be recast, transformed, or adapted.

- a work consisting of editorial revisions, annotations, elaborations, or other modifications is also a derivative work
- New material represents original work of authorship

### **Rights of distribution and the first sale doctrine:**

- Section 106 (3) of the copyright act provides that the owner of a copyright has the exclusive right to distribute copies or phonorecords of the work to the public by sale or other transfer of ownership
- A violation of the distribution right can arise solely from the act of distribution itself
- The distributor did not make an unlawful copy or the copy being

distributed was unauthorized

- Thus, blockbuster video store can be liable for violating an owner's right to distribute
- Once the author has parted with ownership of copyrighted material, the new owner of a Lawfully made copy can treat the object as his or her own
- The new owner the right to lend the book or movie to a friend, resell the work at a garage sale, or even destroy it.
- The first sale doctrine does not apply to or limit the author's exclusive rights to prepare derivative works or rights of public performance and
- Without permission of authorship the goods are not permitted to imported into the U.S.

### **Rights to perform the work publicly**

- Section 106 [5] of the Copyright Act provided that
  - in the case of all copyrighted works other than sound recording & works of architecture, the copyright owner has the exclusive right to display the work publicly.
  - A display is "public" under the same circumstances in which a performance is "public".
  - Namely if it occurs at a place open to the public (or) at a place where a substantial number of persons outside of the normal circle of a family.

### **Copyright Ownership Issues [17 U.S.C. § 201(a)]:**

- Copyright in a work protected under the copyright act vests [provide with power and authority] in the author or authors of the work
- Issues about ownership arise when more than one person creates a work
- Ownership of a physical object is separate and distinct from ownership of the copyright embodied in the material object

- Unless copyright has been explicitly conveyed with those physical articles, the original authors generally retain all other rights associated with the works.

### **Joint Works [intent to create a unitary whole]**

- A joint work is a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole.
- One copyright exists in the created works
- Joint authors are those who “mastermind” or “super mind” the creative effort.

### **Ownership Rights in Joint Works**

- If individual are authors of a joint work, each owns an equal undivided interest in the copyright as a tenant in common, [each has the right to use the work, prepare derivative works, display it without seeking the other coauthor’s permission].
- If profits arise out of such use, an accounting must be made so, that each author shares in the benefits or proceeds.
- The death of a coauthor, his or her rights pass to heirs who then own the rights in common  
with the other coauthor

### **Ownership in Derivative or Collective Works**

- The author of the original book has rights only to his or her work and cannot reproduce or perform the derivative work without permission.
- If a work such as a book is created by one person who intends it to be complete at the time and illustrations are later added to it by another, the work cannot be a joint work because there was no intention of the parties to create a unitary whole at the time of their creation.
- The author of the derivative work cannot create further works based on the original book without permission and cannot reproduce the original work without permission.

- Multiple ownership rights may also arise if separately copyrightable works are compiled into a collection.
- **For Example:** If essays written by Jerry Seinfeld, Ellen DeGeneres, and Paul Reiser are collected into a humor anthology by Bill Jones (with permission of the original authors), the original authors retain their exclusive rights (such as rights to reproduce, distribute, and perform) in their respective essays. No joint work is created because there was no intent at the time the separate essays were created to merge them into a unitary whole. No derivative work is created because the original works have not been transformed in any way and nothing new has been added to them. The anthology by the compiler, Bill Jones, is a collective work and pursuant to section 201(c) of the act, Jones acquires only the right to reproduce and distribute the contributions as part of the particular collective work or any revision of the collective work.

### **Works Made for Hire**

- The general rule is that the person who creates a work is the author of that work and the owner of the copyright therein, there is an exception to that principle: the copyright law defines a category of works called **works made for hire**.
- If a work is “made for hire”, the author is considered to be the employer or commissioning party and not the employee or the actual person who created the work.
- The employer or commissioning party may be a company or an individual.
- There are two types of works that are classified as works made for hire; works prepared by an employer within the scope of employment and certain categories of specially ordered or commissioned works.

### **Copyright Registration**

- A work is “created” when it is fixed in a copy or phonorecord for the first time.

Although not required to provide copyright protection for a work, registration of copyright with the Copyright Office is expensive, easy and provides several advantages, chiefly, that registration is a condition precedent for bringing an infringement suit for works of US origin.

- To register a work, the applicant must send the following three elements to the Copyright Office: a properly completed application form, a filing fee, and a deposit of the work being registered.
- Registration may be made at any time within the life of the copyright.

## **THE APPLICATION FOR COPYRIGHT REGISTRATION**

The following persons are entitled to submit an application for registration of copyright:

- the author (either the person who actually created the work or, if the work is one made for hire, the employer or commissioning party)
- the copyright claimant (either the author or a person or organization that has obtained ownership of all of the rights under the copyright originally belonging to the author, such as a transferee)
- the owner of exclusive right, such as the transferee of any of the exclusive rights of copyright ownership (for example, one who prepares a movie based on an earlier book may file an application for the newly created derivative work, the movie); and
- the duly authorized agent of the author, claimant, or owner of exclusive rights (such as an attorney, trustee, or anyone authorized to act on behalf of such parties)

### **Application Forms**

The Copyright Office provides forms for application for copyright registration.

- Each form is one 8 ½ by 11” (inches) sheet, printed front and back.
- An applicant may use photocopies of forms

- The Copyright Office receives more than 6,00,000 applications each year, each application must use a similar format to ease the burden of examination.
- The type of form used is dictated by the type of work that is the subject of copyright.
- **For example:** One form is used for literary works, while another is used for sound recording. Following are the forms used for copyright application.
  - ✓ **Form TX** (Literary works, essays, poetry, textbooks, reference works, catalogs, advertising copy, compilations of information, and computer programs)
  - ✓ **Form PA** (Pantomimes, choreographic works, operas, motion pictures and other audiovisual works, musical compositions and songs.
  - ✓ **Form VA** (Puzzles, greeting cards, jewelry designs, maps, original prints, photographs, posters, sculptures, drawings, architectural plans and blueprints.
  - ✓ **Form SR** (Sound recording)
  - ✓ **Form SE** (periodicals, newspapers magazines, newsletter, annuals and Journals. Etc.

### **Notice of copyright**

- Since March 1, 1989 (the date of adherence by the United States to the Berne Convention), use of a **notice of copyright** (usually the symbol © together with the year of first publication and copyright owner's name) is no longer mandatory, although it is recommended and offers some advantages.
- Works published before January 1, 1978, are governed by the 1909 copyright Act.
- Under that act, if a work was published under the copyright owner's authority without a proper notice of copyright, all copyright protection for that work was permanently lost in the United States.
- With regard to works published between January 1, 1978, and March 1, 1989, omission of a notice was generally excused if

the notice was omitted from a smaller number of copies, registration was made within five years of publication, and a reasonable effort was made to add the notice after discovery of its omission.

## **International Copyright Law**

- Developments in technology create new industries and opportunities for reproduction and dissemination of works of authorship.
- A number of new issues have arisen relating to the growth of electronic publishing, distribution, and viewing of copyrighted works.
- Along with new and expanded markets for works comes the ever-increasing challenge of protecting works from piracy or infringement.
  - ✓ Copyright protection for computer programs
  - ✓ Copyright protection for Automated Databases
  - ✓ Copyright in the Electronic Age
  - ✓ The Digital Millennium Copyright Act

## **LAW OF PATENTS**

- The work *Patent* is a shorthand expression for “letters patent”
- A **Patent** is a grant from the U.S. government to exclude others from making, using, or selling another person’s new, nonobvious, and useful invention in the United States for the term of patent protection.
- It is protected for 20 years
- Under patent law, inventors can enjoin the making, using or selling of an infringing invention even if it was independently created.
- A Patent allows its owner to exclude others from using the owner’s invention; it does not provide any guarantee that the owner can sell the invention.
- To obtain a patent, an inventor must file an application with the PTO, same agency of the Department of Commerce that issues

trademark registration.

- The application must describe the invention with specificity.
- The application will be reviewed by a PTO examiner, and, if approved, the patent will issue.
- The U.S. Constitution provides that Congress shall have the power “to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive rights to their respective writing and discoveries”.
- Patent promote the public good in that patent protection incentivizes inventors.

### **Advantages of Patents**

- Patents promote the public good in that patent protection incentivizes inventors
- The introduction of new products and processes benefits society.
- In return for the full disclosure to the public of specifics of the invention, thus advancing science and technology, the inventor is given a limited period of time within which to exploit his or her invention and excluded others from doing so.
- Inventors are thus incentivized to create new products, and the public benefits from inventions that ultimately will fall into the public domain.

### **Rights Under Federal Law**

- Patent law derives from the Constitution.
- In 1790, pursuant to the direction provided in the Constitution, Congress passed the first patent, which in large part relied upon English Law.
- Three years later, the statute was replaced with a new act authored by *Thomas Jefferson*.
- These early acts provided the structural framework for U.S patent law and specified the four basic conditions, still existing, that an invention must satisfy to secure patent protection:
  - ✓ The invention must be a utility, design, or plant patent
  - ✓ It must be useful (or ornamental in the case of a design patent or distinctive in the case of a plant

- patent);
  - ✓ It must be novel in relation to the prior art in the field;  
and
  - ✓ It must not be obvious to a person of ordinary skill in the field.
- Revision of federal patent statutes occurred in 1836 when the Patent Office was created and again in 1870 and 1897.
  - Thereafter, in 1952, Congress enacted a new patent act, codified in title 35 of the United States Code (U.S.C), it is last major revision to federal patent statutes
  - Development of patent law has evolved primarily through federal court decisions rather than the legislature
  - In 1982, Congress created a new court, the Court of Appeals for the Federal Circuit (CAFC), to exercise exclusive jurisdiction over all cases involving patent issues and to promote uniform interpretation of the U.S. patent statutes, which until then had been interpreted in often inconsistent ways by the various federal courts of appeals throughout the nation.
  - Moreover, some inventions such as computer programs, are protectable under copyright law as well as patent law.

## **Patent Searching Process**

### **The Need for a Search:**

- Patentability requires novelty and nonobviousness.
- The patentability search, sometimes called a novelty search
- A search is recommended to determine the feasibility of obtaining a patent.
- A novelty search is somewhat limited in scope and is designed to disclose whether an application will be rejected on the basis of lack of novelty or obviousness.
- A novelty search can usually be completed for less than \$1,000.
- If an invention is intended for immediate commercial use or sale, an additional search, called an infringement search or investigation, is often conducted concurrently with the novelty search.
- This novelty search is thus more expensive

## **Searching Methods:**

- The PTO provides public search facilities for patent searching.
- Searching is free and the PTO allows searchers to review issued patents, complete with drawings.
- Searching can be done either in the main public search room or in the examiners' search areas where examiners will assist in searching. (The patent search room contains copies of all U.S. issued patents from 1790 to present as well as many foreign patents).
- The PTO employs a classification system that provides for the storage and retrieval of patent documents
- The patent examiners in the course of examining patent applications, the system is also used by searchers, and classification files are divided into subclasses.
- Most classes have approximately three hundred sub classes

## **Patent Application Process**

### **Overview of the Application Process**

- The process of preparing, filing, and shepherding a patent application through the PTO towards issuance is called "prosecution".
- An application may be filed by the inventor himself or herself or, as is more usual, by a patent attorney.
- Only 20% of all applications are filed by inventors without the assistance of attorneys.
- The application is filed with PTO, it will be assigned to one of more than 3500 patent examiners having experience in the area of technology related to the invention who will review the application and conduct a search of patent records to ensure the application complies with the statutory requirements for patents.
- The process may continue for several rounds.
- A Notice of Allowance will be sent to the applicant,

which specifies an issue fee that must be paid to the PTO in order for the patent to be granted.

- Until 2000 all patent application were maintained in confidence, but after November 2000 they were published
- It takes one to three years to prosecute a patent, and costs and fees can range from \$5000 to more than \$30000 with fee generally ranging for \$10000 to \$12000

### **Patent Practice**

- While preparing trademark and copyright applications is relatively straightforward, preparing a patent application requires skillful drafting as well as knowledge in the relevant fields, whether that is biotechnology, chemistry, mechanical engineering, physics, computers, pharmacology, electrical engineering, and so forth.
- They are divided into different groups, such as a mechanical group, a biotech group, and an electrical group.
- Many patent attorneys possess both a law degree and an advanced degree in engineering, physics, chemistry, or the like.
- To represent patent applicants before the PTO, an attorney must be registered to practice with the PTO.
- An attorney must pass the Patent Bar, which requires the attorney to demonstrate background in science or engineering.
- The examination is very difficult it is a multiple choice questions, and the pass rate tends to hover around one-third.
- A list of attorneys and agents registered to practice before the PTO is available from the Government Printing Office located in Washington, DC, Alternatively, the PTO web site (<http://www.uspto.gov/web/offices/dcom/olia/oed/roster/>)

) provides an index to the more than 18000 attorneys and agents who are licensed to practice before the PTO.

## **Confidentiality of Application Process and Publication of**

### **Patent Application**

- More than 200 years, all patent applications filed with the PTO were maintained in strict confidence throughout the entire application process.
- Only when the patent issued was the file wrapper open to public inspection.
- Under the American Inventors Protection Act (AIPA) of 1999, however, which took effect in November of 2000, the PTO now publishes utility and plant applications eighteen months after their filing.
- If the applicant later decides to apply for a patent in a foreign country, the applicant must provide notice of this foreign filing to the PTO within forty-five days or the application will be regarded as abandoned.
- The intent of the new law is to harmonize U.S. patent procedures with those of other countries, almost all of which publish patent applications after an initial period of confidentiality.
- The new act protects inventors from having their inventions infringed by providing that patentees can obtain reasonable royalties if others make, used, or sell the invention during the period between publication and actual grant of the patent.

### **Types of Application**

1. Provisional Application
2. Utility Application
3. Design Application
4. Plant Application
5. Continuation Application

6. PCT (Patent Cooperation Treaty) Application
7. Divisional Application

### **Preparing the Application**

- Title
- Cross-references to related applications
- Background
- Summary of invention
- Brief description of drawing
- Detailed description of the invention
- Claims

### **Patent Prosecution Flowchart**

#### **Ownership Rights**

- Patents are items of personal property and thus may be owned, sold, licensed, or devised by will.
- Applications for patent must be filed by the actual inventor of the article, process, design, or plant.
- If there is more than one inventor, the application must be signed by all inventors.
- In many instance, employees are required to sign agreements with their employers whereby they agree that any invention or discovery invented by them while on the job will belong to the employer and that they will agree to assist and cooperate in any manner, including signing applications for patents, to ensure the employer's rights are protected
- Although the oath in the patent application is signed by the individual inventor, when the application is filed, a simultaneous assignment is also filed identifying the employer as the “true” owner of the application and the invention.

## **Ownership transfer**

- As objects of intellectual property or intangible assets, **patents** and patent applications may be **transferred**.
- A transfer of patent or patent application can be the result of a financial transaction, such as an assignment, a merger, a takeover or a demerger, or the result of an operation of law, such as in an inheritance process, or in a bankruptcy.
- The rationale behind the transferability of patents and patent applications is that it enables inventors to sell their rights and to let other people manage these intellectual property assets both on the valuation and enforcement fronts. As The Economist put it,

*"Patents are transferable assets, and by the early 20th century they had made it possible to separate the person who makes an invention from the one who commercialises it. This recognised the fact that someone who is good at coming up with ideas is not necessarily the best person to bring those ideas to market."*

## **Copyright law in India**

The Copyright Act of 1957, The Copyright Rules, 1958 and the International Copyright Order, 1999 governs the copyright protection in India. It came into effect from January 1958. The Act has been amended in 1983, 1984, 1992, 1994 and 1999. Before the Act of 1957, copyright protection was governed by the Copyright Act of 1914 which was the extension of British Copyright Act, 1911.

The Copyright Act, 1957 consists of 79 sections under 15 chapters while the Copyright Rules, 1958 consists of 28 rules under 9 chapters and 2 schedules.

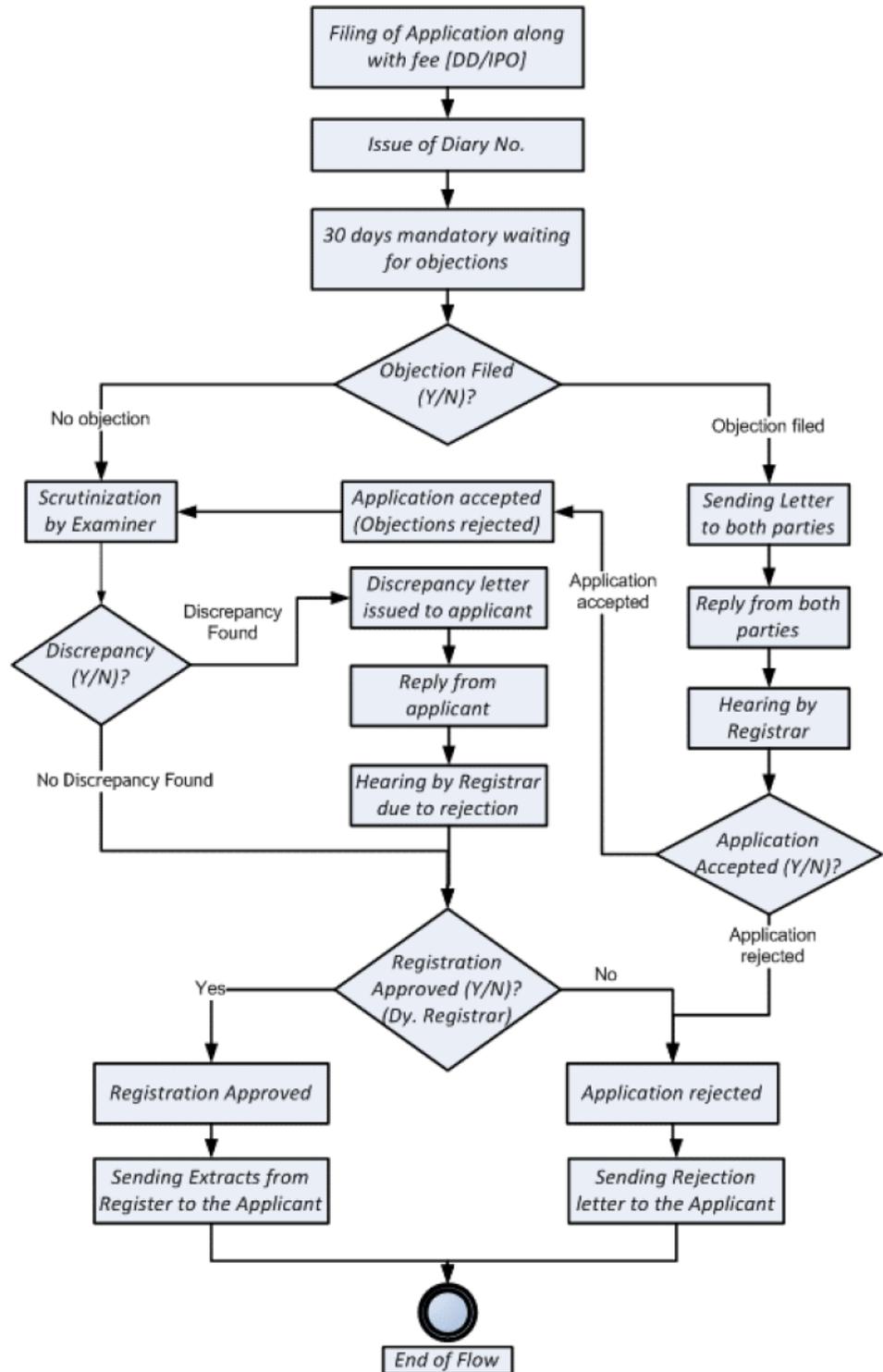
### **Classes of works for which copyright protection is available**

Indian Copyright Act affords separate and exclusive copyright protection to the following 7 classes of work:

1. Original Literary Work
2. Original Dramatic Work
3. Original Musical Work
4. Original Artistic Work
5. Cinematograph Films
6. Sound recording
7. Computer Programme

Copyright will not subsist in any cinematograph film if a substantial part of the film is an infringement of the copyright in any other work or in any sound recording made in respect of a literary, dramatic or musical work, if in making the sound recording, copyright in such work has been infringed. In case of work of architecture, copyright will subsist only in the artistic character and design and will not extend to processes or methods of construction

# Copyright Registration Workflow



## **Copyright Board**

The Copyright Board, a quasi-judicial body, was constituted in September 1958. The jurisdiction of the Copyright Board extends to the whole of India. The Board is entrusted with the task of adjudication of disputes pertaining to copyright registration, assignment of copyright, grant of Licenses in respect of works withheld from public, unpublished Indian works, production and publication of translations and works for certain specified purposes. It also hears cases in other miscellaneous matters instituted before it under the Copyright Act, 1957. The meetings of the Board are held in five different zones of the country. This facilitates administration of justice to authors, creators and owners of intellectual property including IP attorney's near their place of location or occupation.

## **Powers of the Copyright Board**

The Copyright Board consists of a Chairman and two or more, but not exceeding fourteen, other members for adjudicating certain kinds of copyright cases. The Chairman of the Board is of the level of a judge of a High Court. The Board has the power to:

- i. hear appeals against the orders of the Registrar of Copyright;
- ii. hear applications for rectification of entries in the Register of copyrights;
- iii. adjudicate upon disputes on assignment of copyright;
- iv. grant compulsory licences to publish or republish works (in certain circumstances);
- v. grant compulsory licence to produce and publish a translation of a literary or dramatic work in any language after a period of seven years from the first publication of the work;
- vi. hear and decide disputes as to whether a work has been published or about the date of publication or about the term of copyright of a work in another country;

vii. fix rates of royalties in respect of sound recordings under the cover-version provision; and

viii. fix the resale share right in original copies of a painting, a sculpture or a drawing and of original manuscripts of a literary or dramatic or musical work.

### **Copyright Enforcement Advisory Council**

The Government has set up on November 6, 1991 a Copyright Enforcement Advisory Council (CEAC) to review the progress of enforcement of Copyright Act periodically and to advise the Government regarding measures for improving the enforcement of the Act

### **Patent System In India**

The Patent System in India is governed by the Patents Act, 1970 as amended by the Patents (Amendment) Act, 2005 and the Patents Rules, 2003, as amended by the Patents (Amendment) Rules 2006 effective from 05-05-2006.

### **Administration**

Patent system in India is administered under the superintendence of the Controller General of Patents, Designs, Trademarks and Geographical Indications.

The Office of the Controller General functions under the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry. There are four patent offices in India. The Head Office is located at Kolkata and other Patent Offices are located at Delhi, Mumbai and Chennai.

The Controller General delegates his powers to Sr. Joint Controller, Joint Controllers, Deputy Controllers and Assistant Controllers. Examiners of patents in each office discharge their duties according to the direction of the Controllers.

The Patent Information system (PIS) at Nagpur has been functioning as patent information base for the users. The PIS maintains a comprehensive collection of

patent specification and patent related literature, on a world-wide basis and provides technological information contained in patent or patent related literature through search services and patent copy supply services to various users of R&D establishments, Government offices, private industries, business, inventors and other users within India.

### **Hierarchy of Officers in Patent office**

- Controller General of Patents, Designs, Trademarks & GI
- Examiners of Patents & Designs
- Assistant Controller of Patents & Designs
- Deputy Controller of Patents & Designs
- Joint Controller of Patents & Designs
- Senior Joint Controller of Patents & Designs

### **Jurisdiction of Patent offices in India**

An applicant or first mentioned applicant in case of joint applicants can file application for patent at the appropriate Patent Office under whose jurisdiction he normally resides or has his domicile or has a place of business or the place from where the invention actually originated. For the applicant, who is non-resident or has no domicile or has no place of business in India, the address for service in India or place of business of his patent agent determines the appropriate patent office where applications for patent can be filed

Office	Territorial Jurisdiction
<b>Patent Office Branch, Mumbai</b>	The States of Maharashtra, Gujarat, Madhya Pradesh, Goa and Chhattisgarh and the Union Territories of Daman and Diu & Dadra and Nagar Haveli
<b>Patent Office Branch, Chennai</b>	The States of Andhra Pradesh, Karnataka, Kerala, Tamil Nadu and the Union Territories of Pondicherry and Lakshadweep.
<b>Patent Office Branch, New Delhi</b>	The States of Haryana, Himachal Pradesh, Jammu and Kashmir, Punjab, Rajasthan, Uttar Pradesh, Uttaranchal, Delhi and the Union Territory of Chandigarh.
<b>Patent Office, Kolkata</b>	The rest of India.

**General precautions for an applicant of a patent:**

The first to file system is employed, in which, among persons having filed the same invention, first one is granted a patent, therefore, a patent application should be filed promptly after conceiving the invention. It is common experience that through ignorance of patent law, inventors act unknowingly and jeopardize the chance of obtaining patents for their inventions.

The most common of these indiscretions is to publish their inventions in newspapers or scientific and technical journals, before applying for patents. Publication of an invention, even by the inventor himself, would (except under certain rare circumstances) constitute a bar for the subsequent patenting of it. Similarly, the use of the invention in Public, or the commercial use of the invention, prior to the date of filing patent application would be a fatal objection to

the grant of a patent for such invention, thereafter. There is, however, no objection to the secret working of the invention by way of reasonable trial or experiment, or to the disclosure of the invention to others, confidentially.

Another mistake, which is frequently made by the inventors, is to wait until their inventions are fully developed for commercial working, before applying for patents. It is, therefore, advisable to apply for a patent as soon as the inventor's idea of the nature of the invention has taken a definite shape.

It is permissible to file an application for a patent accompanied by a "Provisional Specification" describing the invention. The application may, therefore, be made even before the full details of working of the invention are developed. The filing of an application for a patent disclosing the invention would secure priority date of the invention, and thereby, enable the inventor to work out the practical details of the invention and to file complete specification within 12 months from the date of filing of provisional specification.

### **What is not patentable?**

The following are Non-Patentable inventions within the meaning of Section 3 of Patents Act, 1970 -

- (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 to public order or morality or which causes serious prejudice to human, animal or plant life or health or to the environment; (For e.g. process of making brown sugar will not be patented.)
- (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);
- (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 mere 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;

(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) a method of agriculture or horticulture; (For e.g. the method of terrace farming cannot be patented.)

(h) 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; (For e.g. any new technique of hand surgery is not patentable)

(i) 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;

(j) a mathematical or business method or a computer programme per se or algorithms;

(k) a literary, dramatic, musical or artistic work or any other aesthetic creation what soever including cinematographic works and television productions;

(l) a mere scheme or rule or method of performing mental act or method of playing game; (m) a presentation of information;

(n) topography of integrated circuits;

(o) an invention which in effect, is traditional knowledge or which is an aggregation or duplication of known properties of traditionally known component or components.

(p) Inventions relating to atomic energy and the inventions prejudicial to the interest of security of India.

### **Appropriate office for filing an application & for other Proceedings**

Application is required to be filed according to the territorial limits where the applicant or the first mentioned applicant in case of joint applicants, for a patent normally resides or has domicile or has a place of business or the place from where the invention actually originated. If the applicant for the patent or party in a proceeding having no business place or domicile in India,

the appropriate office will be according to the address for service in India given by the applicant or party in a proceeding . The appropriate office once decided in respect of any proceedings under the Act shall not ordinarily be changed. The four patent offices are located at Kolkatta, Mumbai, Delhi & Chennai.

From 20th July, 2007 the Indian Patent Office has put in place an online filing system for patent application.

### **Publication and Examination of Patent Applications**

#### **Publication:**

All the applications for patent, except the applications prejudicial to the defence of India or abandoned due to non-filing of complete specification within 12 months after filing the provisional or withdrawn within 15 months of filing the application, are published in the Patent Office Journal just after 18 months from the date of filing of the application or the date of priority whichever is earlier. The publication includes the particulars of the date of the application, application number, name and address of the applicant along with the abstract. The applications for patent are not open for public inspection before publication. After the date of publication of the application, as stated above, the complete specification along with provisional

and drawing, if any, abstract , application on any form or on plain paper and any correspondence between the office and applicant may be inspected at the appropriate office by making a written request to the Controller in the prescribed manner and on the payment of prescribed fee.

### **Request for examination**

An application for patent will not be examined if no request is made by the applicant or by any other interested person in Form-18 with prescribed fee of Rs.2,500/- or Rs.10,000/- for natural person and other than natural person respectively, within a period of 48 months from the date of priority of the application or from the date of filing of the application, whichever is earlier. Where no request for examination of the application for patent has been filed within the prescribed period, the aforesaid application will be treated as withdrawn and, thereafter, application cannot be revived.

### **Examination**

Application for patent, where request has been made by the applicant or by any other interested person, will be taken up for examination, according to the serial number of the requests received on Form 18. A First Examination Report (FER) stating the objections/requirements is communicated to the applicant or his agent according to the address for service ordinarily within six (06) months from the date of request for examination or date of publication whichever is later. Application or complete specification should be amended in order to meet the objections/requirements within a period of 12 months from the date of First Examination Report (FER). No further extension of time is available in this regard. If all the objections are not complied with within the period of 12 months, the application shall be deemed to have been abandoned. When all the requirements are met the patent is granted, after 6 months from the date of publication, the letter

patent is issued, entry is made in the register of patents and it is notified in the Patent Office, Journal.

### **Withdrawal of patent application**

The application for patent can be withdrawn at least 3 (Three) months before the first publication which will be 18 (Eighteen) months from the date of filing or date of priority whichever is earlier. The application can also be withdrawn at any time before the grant of the patent. The application withdrawn after the date of publication cannot be filed again as it is already laid open for public inspection. However, application withdrawn before the publication can be filed again provided it is not opened to public otherwise.

### **Grant of Patent**

When all the requirements are met or in case of opposition under section 25(1), if the opposition is decided in favour of the applicant, the patent is granted, after 6 months from the date of publication under section 11 A, the letter patent is issued, entry is made in the register of patents and it is notified in the Patent Office, Journal, thereafter opening the application, specification and other related documents for public inspection on payment of prescribed fee.

### **Term and Date of Patent**

Term of every patent will be 20 years from the date of filing of patent application, irrespective of whether it is filed with provisional or complete specification. Date of patent is the date on which the application for patent is filed. The term of patent in case of International applications filed under the Patent Cooperation Treaty designating India, will be 20 years from the International filing date accorded under the Patent Cooperation Treaty. A patent will have cease to effect on the expiration of the period prescribed for the payment of any renewal fee, if that fee is not paid within the prescribed period.

### **Renewal and restoration**

To keep the patent in force, Renewal fee is to be paid every year. The first renewal fee is payable for the third year and must be paid before the expiration of the second year from the date of patent. If the patent has not been granted within two years the renewal fees may be accumulated and paid immediately after the patent is granted, or within three months of its record in Register of Patents or within extended period of 9 months, by paying extension fees of six month on Form 4, from the date of record. If the renewal fee is not paid within the prescribed time, the patent will cease to have effect. However, provision to restore the patent is possible provided application is made within eighteen months from the date of cessation. Renewal fee is counted from the date of filing of the Patent application. Six month's grace time is available with extension fee for payment of renewal fee. No renewal fees is payable on Patents of Addition, unless the original patent is revoked and if the Patent of Addition is converted into an independent patent; renewal fee, then, becomes payable for the remainder of the term of the main patent. Application for restoration of a patent that lapses due to non-payment of renewal fees must be made within 18 months of lapse. The application is to be filed in the appropriate office according to the jurisdiction.

### **What are the documents required for filing a Patent application?**

- 1) Application form in duplicate (Form 1).
- 2) Provisional or complete specification in duplicate. If the provisional specification is filed, it must be followed by the complete specification within 12 months. (Form 2).
- 3) Drawing in duplicate (if necessary).
- 4) Abstract of the invention in duplicate.
- 5) Information & undertaking listing the number, filing date & current status of each foreign patent application in duplicate (Form 3).

6) Priority document (if priority date is claimed) in convention application, when directed by the Controller.

7) Declaration of inventorship where provisional specification is followed by complete specification or in case of convention/PCT national phase application (Form 5).

8) Power of attorney (if filed through Patent Agent).

9) Fee (to be paid in cash/by cheque/by demand draft) (Schedule I).

(The cheque or demand draft should be payable to the "Controller of Patents" drawn on any schedule bank at a place where the appropriate office is situated).

### **E-filing of Patent applications**

#### **What is e-Filing?**

E-filing is a service provided by the Intellectual Property Office, India in order to enable customers to apply for a patent on-line allowing from the User's browser for the User to:

- Complete an electronic application form
- Provide the associated attachments
- Complete the necessary payment details.

#### **Procedure for e-filing**

1. Acquire Class 3 Digital Signatures either from (n) Code Solutions, Tata Consultancy Services (TCS) & Safe Script.
2. New users (Applicants, Agents or Attorneys), can complete online registration by providing Digital Signature details to get a User ID and Password for using the e-Filing System of Indian Patent Office (IPO).
3. Secure Login into the system with created User Id and the Password.
4. Download the Client Software for preparing Patent Application Offline with required documents and Digitally Sign it for uploading on IPO Server.
5. Fill Patent Application offline and generate an XML file using Client Software.
6. After creating application (XML) file offline, Digitally Sign the XML file (Max. file size permitted 5MB) for uploading on to the IPO Server.

7. Login into e-Patent portal (<http://ipindia.gov.in>) for uploading Application XML file on IPO Server.
8. Upload & Submit Digitally Signed XML file to IPO Server.
9. Process Application for EFT (Electronic Fund Transfer) using State Bank of India(SBI) & Axis Bank Payment Gateways.
10. Review Application Status on e-Patent Portal.
11. On successful EFT acknowledgement details would be displayed/ generated.
12. Print Acknowledgement. Click on "Print" to generate printout of acknowledgement.