

Industrial Design – An Imperative IP Right*

“Creative India; Innovative India: रचनात्मक भारत; अभिनव भारत”

Introduction

The contemporary era is the leading the way of inclusive development under the knowledge driven economy. Creativity and innovation have been constant in growth and development of any knowledge economy. There is an abundance of creative and innovative energies flowing in India.¹ It is an acknowledged fact that a strong and balanced legal framework encourages continuous flow of innovation and is among the bare necessities to fuel a vibrant knowledge economy. India too recognizes that the effective protection of Intellectual Property rights is essential for making optimal use of the innovative and creative capabilities of its people.

Intellectual Property Rights: Legal Regime in India

Intellectual Property rights allow the creators or owners to have the benefits from their works when these are exploited commercially. Intellectual Property rights reward creativity & human endeavour which fuel the progress of humankind. Intellectual property is classified into Patent, Industrial Design, Trade Marks, Copyright, Geographical Indications, Lay Out Designs of Integrated Circuits, Protection of Undisclosed Information/Trade Secret. These rights are statutory rights governed in accordance with the provisions of corresponding legislations.

For the protection of intellectual property, the Government of India has enacted effective IPR Laws such as:

- Copyright Act, 1957;
- Patents Act, 1970;
- Trade Marks Act, 1999
- Geographical Indications of Goods (Registration and Protection) Act, 1999;
- Designs Act, 2000;
- Semiconductor Integrated Circuits Layout-Design Act, 2000;
- Protection of Plant Varieties and Farmers’ Rights Act, 2001;
- Biological Diversity Act, 2002.

Note: It has to be noted that all these laws are applied and implemented along with their corresponding rules passed by the government time and again.

* Chittaranjan Pal, Assistant Director, The ICSI.

Views expressed in the Article is the sole expression of the Author and may not express the views of the Institute.

¹ See, National Workshop on Intellectual Property Rights, Global Indian Business Forum, 2019

National Intellectual Property Rights (IPR) Policy

Further, National Intellectual Property Rights (IPR) Policy lunched in 2016 that lays the future roadmap for IPRs in India. The Policy recognises the abundance of creative and innovative energies that flow in India, and the need to tap into and channelize these energies towards a better and brighter future for all. The National IPR Policy is a vision document that encompasses and brings to a single platform all IPRs. It views IPRs holistically, taking into account all inter-linkages and thus aims to create and exploit synergies between all forms of intellectual property (IP), concerned statutes and agencies. It sets in place an institutional mechanism for implementation, monitoring and review. It aims to incorporate and adapt global best practices to the Indian scenario.

The Policy lays down seven objectives which are as under:

- IPR Awareness : Outreach and Promotion - To create public awareness about the economic, social and cultural benefits of IPRs among all sections of society
- Generation of IPRs - To stimulate the generation of IPRs
- Legal and Legislative Framework - To have strong and effective IPR laws, which balance the interests of rights owners with larger public interest
- Administration and Management - To modernize and strengthen service-oriented IPR administration
- Commercialization of IPRs - Get value for IPRs through commercialization
- Enforcement and Adjudication- To strengthen the enforcement and adjudicatory mechanisms for combating IPR infringements
- Human Capital Development - To strengthen and expand human resources, institutions and capacities for teaching, training, research and skill building in IPRs

Industrial Design

The industrial design recognizes the creation of new and original features of new shape, configuration, surface pattern, ornamentations and composition of lines or colours applied to articles which in the finished state appeal to and is judged solely by the eye. An industrial design is the ornamental or aesthetic aspect of an article. Design, in this sense, may be three-dimensional features (shape or surface of an article), or the two-dimensional features (patterns or lines of color). Handicrafts, jewelry, vehicles, appliances - the subject of industrial designs range from fashion to industrial goods. The owner of a registered industrial design has the right to prevent third parties from making, selling or importing articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.

Legal Framework of Design

The registration and protection of industrial designs in India is administered by the office of the Controller General of Patents, Designs and Trademarks under the Designs Act, 2000 and corresponding Designs Rules, 2001. The Act and the Rules are enacted with the object of protecting new or original designs so created to be applied or applicable to particular article to be manufactured by Industrial Process or means. Sometimes purchase of articles for use is influenced not only by their practical efficiency but also by their appearance. The important purpose of design Registration is to see that the artisan, creator, originator of a design having aesthetic look is not deprived of his *bonafide* reward by others applying it to their goods.

Apex Court Ruling on Design Act

In the case of *Bharat Glass Tube Limited vs. Gopal Glass Works Limited*², Supreme Court of India observed that:

5. *"It may be mentioned here that in 1911 the Designs Act was passed by the then British Government in India. But with the advancement of science and technology and the number of registration of the design having increased in India, the Act of 1911 was amended wholesale by the Parliament and this new Act known as Designs Act, 2000 came to be introduced in the Parliament and the same was passed as such. The statement of objects and reasons read as under:*

"STATEMENT OF OBJECTS AND REASONS Since the enactment of the Designs Act, 1911 considerable progress has been made in the field of science and technology. The legal system of the protection of industrial designs requires to be made more efficient in order to ensure effective protection to registered designs. It is also required to promote design activity in order to promote the design element in an article of production. The proposed Design Bill is essentially aimed to balance these interests. It is also intended to ensure that the law does not unnecessarily extent protection beyond what is necessary to create the required incentive for design activity while removing impediments to the free use of available designs."

6. *In fact, the sole purpose of this Act is protection of the intellectual property right of the original design for a period of ten years or whatever further period extendable. The object behind this enactment is to benefit the person for his research and labour put in by him to evolve the new and original design. This is the sole aim of enacting this Act. It has also laid down that if design is not new or original or published previously then such design should not be registered. It further lays down that if it 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 then such design will not be registered or if it is found that it is not significantly distinguishable from known designs or combination of known designs, then such designs shall not be registered. It also provides that registration can be cancelled under section 19 of the Act if proper application is filed before the competent authority i.e. the Controller that the design has been previously registered in India or published in India or in any other country prior to the date of registration, or that the design is not a new or original design or that the design is not registerable under this Act or that it is not a design as defined in clause (d) of section 2. The Controller after hearing both the parties if satisfied that the design is not new or original or that it has already been registered or if it is not registerable, cancel such registration and aggrieved against that order, appeal shall lie to the High Court. These prohibitions have been engrafted so as to protect the original person who has designed a new one by virtue of his own efforts by researching for a long time. The new and original design when registered is for a period of ten years. Such original design which is new and which has not been available in the country or has not been previously registered or has not been published in India or in any other country prior to the date of registration shall be protected for a period of ten years. Therefore, it is in the nature of protection of the intellectual property right. This was the purpose as is evident from the statement of objects and reasons and from various provisions of the Act..... "*

Essential Requirements for the Registration of 'Design'

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

² Appeal (civil) 3185 of 2008 Judgement dated 1 May, 2008,

- The design should relate to features of shape, configuration, pattern or ornamentation applied or applicable to an article.
- The design should be applied or applicable to any article by any industrial process.
- The features of the design in the finished article should appeal to and are judged solely by the eye. This implies that the design must appear and should be visible on the finished article, for which it is meant.
- Any mode or principle of construction or operation or anything which is in substance a mere mechanical device, would not be a registrable design. For instance a key having its novelty only in the shape of its corrugation or bent at the portion intended to engage with levers inside the lock associated with, cannot be registered as a design under the Act.
- The design should not include any Trade Mark or property mark or artistic works as defined under the Copyright Act, 1957.

Duration of the Registration of a Design

The duration of the registration of a design is initially ten years from the date of registration, but in cases where claim to priority has been allowed the duration is ten years from the priority date. This initial period of registration may be extended by further period of 5 years on an application made to the Controller before the expiry of the said initial period of ten years.

Benefits of Registration

Thus Design, as an Intellectual Property refers to creation of mind such as designs for industrial articles, which are ultimately used in commerce. It is the result of persons Intellectual Activities. Once a design is registered, it gives the legal right to bring an action against those persons (natural/legal entity) who infringe the design right, in the Court not lower than District Court in order to stop such exploitation and to claim any damage to which the registered proprietor is legally entitled. However, it may please be noted that if the design is not registered under the Designs Act, 2000 there will be no legal right to take any action against the infringer under the provisions of the Designs Act, 2000.

The owner of a registered industrial design has the right to prevent third parties from making, selling or importing articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.

Source:

1. National Intellectual Property Rights (IPR) Policy
2. ipindia.nic.in
