

Frequently Asked Questions (FAQs)

1. What is meant by Intellectual Property?

A: Intellectual Property is an intangible Property, which is created by exercise of Intellectual Faculty. It is the result of persons' Intellectual Activities. Thus Intellectual Property refers to creation of mind such as inventions, designs for industrial articles, literary and artistic work, symbols which are ultimately used in commerce. Intellectual Property rights allow the creators or owners to have the benefits from their works when these are exploited commercially. These rights are statutory rights governed in accordance with the provisions of corresponding legislations. Intellectual Property rights reward creativity & human endeavour which fuel the progress of humankind.

The intellectual property is classified into following categories i.e.

- Patent
- Industrial Design
- Trade Marks
- Copyright
- Geographical Indications
- Lay out designs of integrated circuits
- Protection of Plant Varieties and Farmers Right
- Protection of undisclosed information/Trade Secret according to TRIPs agreements.

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

A: 'Design' means only the features of shape, configuration, pattern or ornament or composition of lines or colour or combination thereof applied to any article whether two dimensional or three dimensional or in both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye, but does not include any mode or principle 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, property mark as defined u/s 479 of the Indian Penal Code, 1860 or artistic works as defined under Section 2(c) of the Copyright Act, 1957.

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

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

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

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

- Ordinarily on sale or intended to be used together.

- All having common design even though articles are different (same class). □ Same general character.

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

5. What is the object of registration of Designs?

A: Object of the Designs Act is to protect new or original designs so created to be applied or applicable to particular article to be manufactured by Industrial Process or means. Selling of articles/consumer products is also influenced by their aesthetic design. The important purpose of design Registration is to protect the right of the artisan, creator, originator of a design having aesthetic look.

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

A: 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.

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 as defined under Section 2(1)v of Trades and Merchandise Marks Act, 1958 or property mark as defined under Section 479 of The Indian Penal Code, 1860 or artistic works as defined under The Copyright Act, 1957.

7. What is an artistic work which is not subject matter of registration?

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

"Artistic works" means: -

- A painting, a sculpture, a drawing (including a diagram, map, chart or plan) on engraving or a photograph, whether or not such work possesses artistic quality.

- An work of architecture and
- Any other work of artistic craftsmanship.

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

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

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

A: First-to-file rule is applicable for registrability of design. If two or more applications relating to an identical or a similar design are filed on different dates only first application will be considered for registration of design. Further, if a design applied on an article is published before the date of filling, then the novelty the alleged design will be lost.

10. What is meant by classification of goods?

A: The applications for registration of Designs applied to articles are classified according to the latest version of International Classification System i.e., Locarno Classification published by World Intellectual Property Organization (WIPO), subject to the fulfilment of all relevant sections of the Design Act, 2000. Only one class number is to be mentioned in one particular application which is mandatory under the Rules. This classification has been made on the basis of Articles on which the design is applied.

Practical Example: If the design is applied to a toothbrush it will be classified under class 0402. Similarly if the design is applied to a calculator, it will be classified in class 18-01.

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

A: When an application for registration of a Design is in order, it is accepted and registered and then a certificate of registration is issued to the applicant. However, a separate request should be made to the Controller for obtaining a certified copy of the certificate for legal proceeding with requisite fee.

12. What is the effect of registration of design?

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

13. What is a Register of Designs?

A: The Register of Designs is a book maintained by The Patent Office as a statutory requirement. It contains the design number, class number, date of filing (in India) and

reciprocity date (if any), name and address of Proprietor and such other matters as would affect the validity of proprietorship of the design and it is open for public inspection on payment of prescribed fee & extract from register may also be obtained on request with the prescribed fee. Presently electronic register of registered designs is also made available to public through the official website of The Patent Office.

14. What is the date of registration?

A: The date of registration except in case of priority is the actual date of filing of the application in India. In case of registration of design with priority, the date of registration is the date of priority.

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

A: 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 on Form-3 accompanied by prescribed fees to the Controller before the expiry of the said initial period of ten years. The proprietor of a design may make application for such extension even as soon as the design is registered.

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

A: A registration of design will cease to be effective on non-payment of extension fee for further term of five years if the same is not paid before the expiry of original period of 10 years. However, lapsed designs may be restored provided the following conditions are satisfied:

Application for restoration in Form-4 with prescribed fees is filed within one year from the date of lapse stating the ground for such non-payment of extension fee with sufficient reasons.

If the application for restoration is allowed the proprietor is required to pay the prescribed extension fee and requisite additional fee and finally the lapsed registration is restored.

17. Can stamps, Labels etc. be considered an article for the purpose of registration of Design?

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

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

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

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

A: For ascertaining whether registration subsists in respect of a design, a request should be made to the Controller of Designs. If the Design number is known, the request should be made on Form 6, otherwise on Form 7 (along with figures/views of concerned design), together with prescribed fees. Each such request should be confined to information in respect of a single design.

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

A: 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, before the Court not lower than District Court in order to stop such exploitation and to claim any damage to which the registered proprietor is legally entitled. However, it may please be noted that if the design is not registered under the Designs Act, 2000 there will be no legal right to take any action against the infringer under the provisions of the Designs Act, 2000.

The Patent Office does not become involved with any issue relating to enforcement of right accrued by registration. Similarly The Patent Office does not involve itself with any issue relating to exploitation or commercialization of the registered design.

21. What is piracy of a Design?

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

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

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

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

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

24. Can the Registration of a Design be cancelled?

A: The registration of a design may be cancelled at any time after the registration of design on a petition by person interested for cancellation in form 8 with prescribed fee to the Controller of Designs on the following grounds:

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

25. How to get information on registration of design?

A: After registration of designs the best view of the article along with other bibliographic data will be notified in the Official Journal of The Patent Office, which is being published on every Friday at the official website of The Patent Office.

26. Whether substitution of a design application before registration is possible?

A: Yes, substitution of a design application is possible at any time before a design has been registered 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. For the said purpose, an application on Form-2 with prescribed fees along with the original assignment or agreement or other document affecting right, title or interest in the application or an official or notarially certified copy thereof should be furnished for the Controller's inspection.

27. Whether it is possible to transfer the right of ownership of a registered design?

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

28. What is meant by priority claim?

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

29. Can the name, address of applicant or address for service be amended after filing but before registration of a design?

A: Yes, name, address of applicant or address for service can be amended after filing but before registration of design by making a request to the Controller of Designs for such amendment

under rule 46 with prescribed fees along with supporting documents, provided the said change is not made by way of change of ownership.

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

A: Name and address of the registered proprietor, or address for service can be altered in the register of designs provided this alteration is not made by way of change of ownership through conveyance i.e. deed of assignment, transmission, licence agreement or by any operation of law. Application in form-22 with prescribed fee of should be filed to the Controller of Designs with all necessary documents in support of the application as required.

31. Are the registered designs open for public inspection?

A: Yes, registered designs are open for public inspection only after publication in the official journal on payment of prescribed fee on a request in Form-5.

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

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

33. Is there any fees relaxation for MSME and Start-up for filling of Design application & other proceedings as per the Design Act, 2000.

A: Yes, the fees relaxation is available for MSME and Start-up in filling of Design application & other proceedings as per the Design Act, 2000. For details of fees structures, the First and the Fourth Schedules of The Designs (amendment), Rules, 2021 may be referred.

34. Whether a Start-up can avail the benefit under the SIPP scheme of the DPIIT.

A: Yes, a Start-up may avail the benefits under the SIPP scheme wherein, if any Start-up is availing the service of an empanelled facilitator for filing and processing of Design application, it has to bear only the statutory filing fees and the professional charges of the facilitator shall be reimbursed to the facilitator by The Patent Office. The list of facilitators in respect of Designs as empanelled by The Patent Office is available at the official website of The Patent Office. Presently, the benefits under the SIPP scheme are available up to 31-032026.

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

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

36. Copyright in Designs

Copyright means the exclusive right to apply a design to any article in any class in which the design is registered.

37. Which classification system is used in India?

India follows the Locarno Classification for filing and registration of a design patent application comprising 32 classes, numbered 1 to 31 and an additional class 99 to include articles not falling under the aforesaid 31 classes.

38. Type of Applications

Ordinary application. An ordinary application does not claim priority.

b. Reciprocity application.

A reciprocity application claims priority of an application filed previously in a convention country. Such an application shall be filed in India 12 within six months from the date of filing in a convention country. This period of six months is not extendable.

39. Where to apply

An application for registration of a Design shall be addressed to the Controller of Designs, The Patent Office, CP-2, Sector-V, Salt Lake, Kolkata - 700091. (E-mail: controllerdesign.ipo@nic.in)

40. E-filing

E-filing facility for filing of Design Applications and all the subsequent documents will be made available shortly.

41. Substantive examination

Substantive examination is carried out to determine whether the design under consideration is: a. a design under the Act? b. new or original? c. prejudicial to public order or morality? d. prejudicial to the security of India?

42. Period of protection

a. The proprietor shall have copyright in the design for ten years from the date of registration.
b. This period of ten years can be extended by five years if the registered proprietor applies for an extension in the prescribed manner.

43. How to file an application for industrial design? A ten step guide

Step 1 Finding out whether any registration already exists

The Designs office can assist you to search whether the design has been previously registered. If the registration number is known, Form No.-6 should be filed along with the prescribed fees. If the representation of the article or the specimen of the article is filed Form No.-7 along with the prescribed fees is required.

Step 2 Preparing a representation of the design

A representation is the exact representation of the article on which the design has been applied. It should be prepared on white A4 size paper of durable quality. Do not prepare it on cardboard or mount it on other paper. Indicate details of the design and applicant clearly.

Step 3 Identifying the class of design

Designs are required to be categorized in separate classes in order to provide for systematic registration. An internationally accepted classification of Industrial Designs based upon the

function of the article is required. The class and sub-class should be mentioned in the application. There are 32 classes and most of the classes are further divided into sub-classes.

Step 4 Providing a statement of novelty

A statement of novelty should be included on the representation of a design as per the Act in order to specify the claim. This will enable speedier examination and provide a more specific protection. The claim will protect the overall visual appearance of the design as described in the representation of drawing.

Step 5 Including a disclaimer

If the ornamental pattern on an article is likely to be confused with a trade mark, suggests any mechanical action or contains words, letters, numerals, etc., a disclaimer should be included in the representation.

Step 6 Claiming a priority date

If you have applied for protection of the design in convention countries or countries which are members of inter-governmental organizations, you can claim registration of the design citing a priority date in India. This is the date of filing of the application in any of such countries provided the application is made in India within six months.

Step 7 Determining the fee to be paid

Applications are to be accompanied by the required fee through cheque or draft payable at Kolkata or in cash (if filed in Design Office, Kolkata).

Step 8 Ensuring all enclosures are attached

File an application only after ensuring that all enclosures and fee in the required numbers are attached. Applications can be filed in either the Design Office in Kolkata or the branch offices of the Patent office in Delhi, Mumbai or Chennai.

Step 9 Complying with objections (if any)

If the Design Office seeks additional information or clarifications after preliminary examination, please ensure that these are provided promptly. This will help the office to take up your application for early examination.

Step 10 Providing full details

While filing an application make sure that all contact details and addresses are clearly and legibly filled in. This will enable the office to keep in touch with you and convey decisions.

44. Application Filing Mode

Available through both online [Intellectual Property India \(ipindia.gov.in\)](http://ipindia.gov.in) and offline modes

45. Indian Design Searching Database link.

[DESIGN SEARCH \(ipindia.gov.in\)](http://DESIGN_SEARCH(ipindia.gov.in))