

E- Handbook

On

Patent & Trade Mark Registration

**GOVERNMENT OF INDIA  
MINISTRY OF MICRO, SMALL, MEDIUM ENTERPRISE  
MSME-DEVELOPMENT INSTITUTE  
AYYANTHOLE P:O, THRISSUR-680003  
TEL: 0487-2360216; 2360536,  
Email - [dcdi-thrissur@dcmsme.gov.in](mailto:dcdi-thrissur@dcmsme.gov.in)**

## Intellectual Property - Introduction

The word 'intellect' refers to the creations of the mind. Intellectual Property is a type of intangible property and includes inventions, literary and artistic works, symbols, names and paintings. Intellectual Property Rights (IPRs) are the Rights granted to the creators of Intellectual Property (IP) by the Government. Most IPRs are territorial in nature. For protection of IP in any country, one has to seek protection separately under the relevant laws. There are special mechanisms in place in various territories for providing protection to different types of IPRs.

Intellectual property rights are the rights given to persons over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time.



## Laws & Rules that govern Intellectual Property Rights (IPR)

The importance of IPR was first recognized in the

1. Paris Convention for the Protection of Industrial Property (1883) &
2. Berne Convention for the Protection of Literary & Artistic Works (1886).

- Both are administered by the World Intellectual Property Organization (WIPO).
- IPRs have been outlined in Article 27 of the Universal Declaration of Human Rights.
- WTO governs IPR through Trade-Related Aspects of the Intellectual Property Rights (TRIPS).

#### World Intellectual Property Organization (WIPO)

- WIPO is one of the 15 specialized agencies of the United Nations (UN).
- WIPO was created to promote and protect intellectual property (IP) across the world by cooperating with countries as well as international organizations.
- It began operations in 1970.
- Headquarters: Geneva, Switzerland.
- WIPO currently has 193 member states.
- WIPO's activities include
  - hosting forums to discuss and shape international IP rules and policies,
  - providing global services that register and protect IP in different countries,
  - resolving trans boundary IP disputes,
  - helping connect IP systems through uniform standards and infrastructure, and
  - Serving as a general reference database on all IP matters.

#### Trade-Related Aspects of the Intellectual Property Rights (TRIPS)

- TRIPS is an international agreement on intellectual property rights.
- The Agreement covers most forms of intellectual property including
  - patents,
  - copyright,
  - trademarks,
  - geographical indications,
  - industrial designs,
  - trade secrets, &
  - Exclusionary rights over new plant varieties.
- It came into force in 1995 & is binding on all members of the World Trade Organization (WTO).

## **Benefits of IP Registration:**

- ✓ Economic benefits: IP rights enable creators to protect and monetize their creations. Third parties cannot use their creation without authorization from the creator.
- ✓ Benefits consumers and society: Provides consumers with innovative products and services.
- ✓ Innovation: Promotes Innovation, Research and Development.
- ✓ Establishes Ownership: Assures a better licensing position.
- ✓ Legal Benefits: Owners of IP can avail appropriate civil/ criminal remedies, if their rights are infringed.

## **Effects of Non-Registration**

- ✓ Difficult to obtain relief in case of infringement – Non-registered IPs have weak evidentiary value.
- ✓ Only remedies under civil law can be availed – Owners cannot obtain remedies under criminal law (except copyright which are not compulsory to register to seek remedies under criminal law).

## **Who can obtain Protection?**

Any person(s) who is a creator of an original and creative or innovative work, having principal place of business in India or if he/she does not carry out business in India, has place of service in India can obtain such protection.

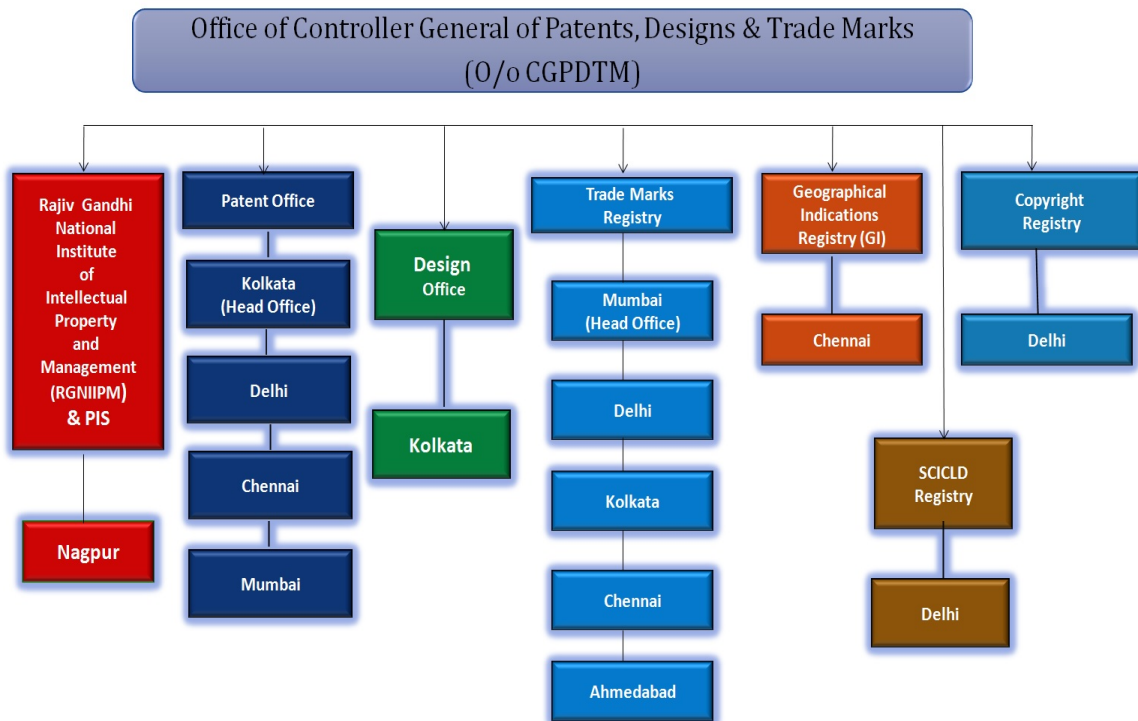
## **How is IPRs Registered or Granted in India?**

All applications for IPRs need to be filed at the appropriate IPR office in the prescribed format. The application is examined as per the statutes and the IPR is granted/ registered or refused.

<b>Definition</b>	<b>Law</b>	<b>Ministry</b>	<b>Period</b>
<b>A patent is an exclusive right granted for an invention, which is a product (or) process that provides a new way of doing something or offers a new technical solution to a problem and it provides protection for the invention to the owner of the patent</b>	Patents Act, 1970 amended in 2006	DPIIT, Ministry of Commerce and Industry	20 years
<b>A trademark is a distinctive sign that identifies certain goods or services as those produced or provided by a specific person or enterprise. It may be one or a combination of words, letters, and numerals.</b>	Trademark Act 1999	DPIIT, Ministry of Commerce and Industry	10 years
<b>A Geographical Indication (GI) is signs used on goods that have a specific geographical origin and possess qualities or a reputation that are due to that place of origin.</b>	Geographical Indications of Goods (Registration and Protection Act), 1999	DPIIT, Ministry of Commerce and Industry	10 years
<b>Copyright is a legal term describing rights given to creators for their literary and artistic works. This kind of works covered by copyright includes literary works such as novels, poems, plays, reference work and computer programs; databases; films, musical compositions, and choreography; artistic works such as paintings, drawings, photographs, and sculpture; architecture; and advertisement, maps, and technical drawings.</b>	Copyrights Act 1957, amended in 2012	Copyright office, MHRD	60 years
<b>Industrial designs refer to creative activity, which results</b>	Designs Act 2000	DPIIT, Ministry	Initially design

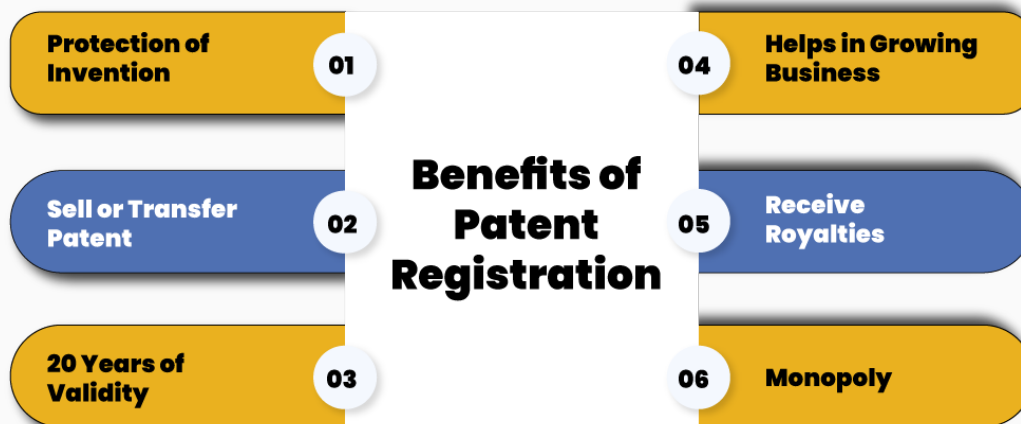
<p><b>in the ornamental or formal appearance of a product, and design right refers to a novel or original design that is accorded to the proprietor of a validly registered design.</b></p>		<p>of Commerce and Industry</p>	<p>in copy right is registered for 10 years and later extended on 5 years on renewal</p>
<p><b>Plant Variety Protection- The objective of this act is to recognize the role of farmers as cultivators and conservers and the contribution of traditional, rural, and tribal communities to the country's argo biodiversity by rewarding them for their contribution and to stimulate investment for R&amp;D for the development of new plant variety to facilitate the growth of the seed industry.</b></p>	<p>Protection of Plant Variety and Farmers rights act, 2001(PPVFR ACT)</p>	<p>Dept of Agriculture and Co-operation, Ministry of Agriculture</p>	<p>Field crops- 15 years Trees and vines- 18 years For notified varieties its 15 years from date of notification</p>
<p><b>Layout Design- Integrated circuits are commonly known as "chips" or "microchips" are the electronic circuits in which all the components (transistors, diodes, and resistors) have been assembled in a certain order on the surface of the semiconductor material (usually silicon).</b></p>	<p>Semiconductor Integrated Circuits Layout Design Act, 2000</p>	<p>Department of Information Technology Ministry of Communication and Information Technology</p>	<p>The initial term of registration is 10 years; thereafter it may be renewed from time to time.</p>

## IP Offices in India



## What is a patent?

A patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem.



## What is the term of a patent in the Indian system?

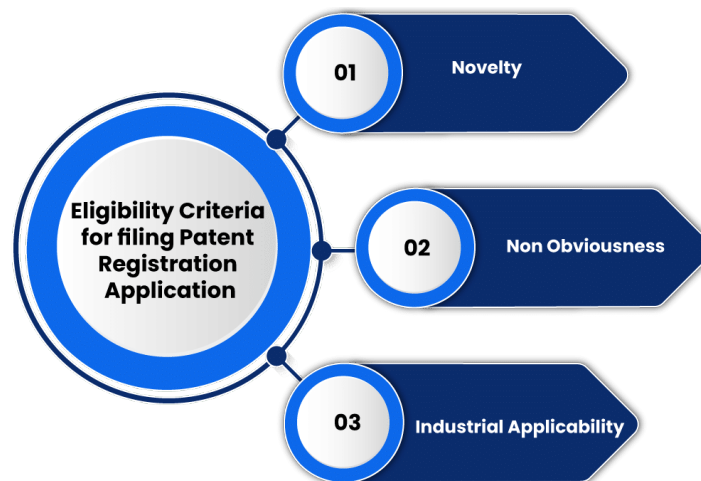
The term of every patent granted is 20 years from the date of filing of application. However, for application filed under national phase under Patent Cooperation Treaty (PCT), the term of patent will be 20 years from the international filing date accorded under PCT.

## What can be patented?

An invention relating either to a product or process that is new, involving inventive step and capable of industrial application can be patented. However, it must not fall into the categories of inventions that are non-patentable under sections 3 and 4 of the Act.

## What are the criteria of patentability?

An invention is patentable subject matter if it meets the following criteria –  
i) it should be novel. ii) It should have inventive step or it must be non-obvious  
iii) It should be capable of Industrial application. iv) It should not attract the provisions of section 3 and 4 of the Patents Act 1970.



## What types of inventions are not patentable in India?

An invention may satisfy the condition of novelty, inventiveness and usefulness but it may not qualify for a patent under the following situations:

1) An invention which is frivolous or which claims anything obviously contrary to well established natural laws;

- 2) 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;
- 3) The mere discovery of scientific principle or the formulation of an abstract theory or discovery of any living thing or non-living substance occurring in nature;
- 4) The mere discovery of a new form of a known substance which does not result in enhancement of the known efficacy of that substance or the mere discovery of any new property or new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant; Explanation: For the purposes of this clause, salts, esters, ethers, polymorphs, metabolites, pure form, particle size, isomers, mixtures of isomers, complexes, combinations and other derivatives of known substance shall be considered to be the same substance, unless they differ significantly in properties with regards to efficacy;
- 5) A substance obtained by mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substance;
- 6) The mere arrangement or re-arrangement or duplication of known devices each functioning independently of one another in a known way;
- 7) A method of agriculture or horticulture;
- 8) Any process for 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;
- 9) Plants and animals in whole or any part thereof other than microorganisms but including seeds, varieties and species and essentially biological processes for production or propagation of plants and animals;
- 10) A mathematical or business method or a computer program per se or algorithms;

- 11) A literary, dramatic, musical or artistic work or any other aesthetic creation whatsoever including cinematographic works and television productions;
- 12) A mere scheme or rule or method of performing mental act or method of playing game;
- 13) A presentation of information;
- 14) Topography of integrated circuits;
- 15) An invention which, in effect, is traditional knowledge or which is an aggregation or duplication of known properties of traditionally known component or components;
- 16) Inventions relating to atomic energy

### **When should an application for a patent be filed?**

An application for a patent can be filed at the earliest possible date and should not be delayed. An application filed with provisional specification, disclosing the essence of the nature of the invention helps to register the priority of the invention. Delay in filing an application may entail some risks such as (i) some other inventor might file a patent application on the said invention and (ii) there may be either an inadvertent publication of the invention by the inventor himself/herself or by others independently of him/her.

### **Can any invention be patented after publication or display in the public exhibition?**

Generally, an invention which has been either published or publicly displayed cannot be patented as such publication or public display leads to lack of novelty. However, under certain circumstances, the Patents Act provides a grace period of 12 months for filing of patent application from the date of its publication in a journal or its public display in an exhibition organized by the Government or disclosure before any learned society or published by applicant. The detailed conditions are provided under Chapter VI of the Act (Section 29-34).

### **How can I apply for a patent?**

A patent application can be filed with Indian Patent Office either with provisional specification or with complete specification along with fee as

prescribed in schedule I. In case the application is filled with provisional specification, then one has to file complete specification within 12 months from the date of filing of the provisional application. There is no further extension of time to file complete specification after expiry of said period.

**Is there provision for filing patent application electronically by online system?**

Yes, one can file patent applications through comprehensive online filing system at <https://ipindiaonline.gov.in/epatentfiling/goForLogin/doLogin>. More information for filing online application is available on the website of Patent Office i.e. [www.ipindia.gov.in](http://www.ipindia.gov.in)

**What is the patent filing and prosecution procedure in India?**

**Step 1:** Filing of Patent Application- The first step is the filing of patent application. Application is to be filed at the appropriate branch of the 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 application for patent can be filed. Applicant shall submit the following documents while filing the application: Form 1 - Application for the Grant of Patent. Form 2 - Provisional/Complete Specification to describe the invention. Form 3 - The Statement and Undertaking under section 8 Form 5 - Declaration of Inventor ship. Form 26 - Power of Attorney (if filed through Patent Agent/Attorney) Requisite statutory fees in the form of cheque /DD/Cash. The patent applications can also be filed electronically through the website of the patent office ([www.ipindia.nic.in](http://www.ipindia.nic.in)) up on receiving the patent application; Patent Office will issue the patent application number and date of filing, to the applicant.

**Step 2:** Publication- The patent application will be published in the official journal of Patents after the expiry of 18 months from the date of filing or date of priority of the application. However the applicant can submit request for early publication in Form 9, by paying required fees, up on which these applications will be published within one month from the date of request. The Patent Journal is available in the website of Patent Office and will be updated once in a week.

**Step 3:** Opposition- Upon publication of the patent application, any person can file pre grant opposition (based on different grounds) to the Controller of Patents against the grant of patent. However the opposition will be taken up by the patent office only after the filing of Request for Examination made by the applicant. Pre grant opposition may be filed within 3 months from the date of publication of the application.

**Step 4:** Request for Examination/Expedited Examination- The applicant or any interested person must file request for examination for getting their patent application examined by the Patent Office. Every patent application will be examined only up on the receipt of such request. The applicant has to submit the request in Form18 by paying the prescribed fee, within 48 months from the date of filing or priority; otherwise, the application shall be treated as withdrawn by the applicant. As per the Patent (Amendment) Rules 2016, an applicant may request for expedited examination of patent application on either of two grounds, first of them being indication of India as International Searching Authority (ISA) or election of India as International Preliminary Examining Authority (IPEA) in the corresponding international patent application, and second of them being eligibility of applicant as start up as defined by the said rules.

**Step 5:** Issuance of First Examination Report (FER) (changed the nomenclature to First Statement of Objections)- The Patent Office will conduct detailed examination on the patent application to check whether the invention possesses the criteria of novelty, inventiveness and industrial application and issues a First Examination Report (FER) to the applicant, which contains the gist of objections raised by the Patent Office.

**Step 6:** Reply to the Examination Report - The applicant must give his/her response to the objections and clarifications in the First Examination Report within 6 months (further extendable to 3 months, if not meeting the deadline) from the date of issue of the FER. If the applicant is not able to submit the response within the prescribed time, the application will be deemed to be abandoned.

**Step 7:** Grant of Patent and Issuance of Certificate- If the applicant meets the objections and clarifications asked for in the FER, the Controller will grant patent and the details of the Patent will be entered in the register of Patents. Patent

Certificate will be issued to the applicant within one month from the date of grant of patent and the details of grant of patent will be published in the Patent Journal. If the applicant does not clear the objections, Patent Office will issue the second examination report and thereafter hearing will be conducted for the applicant on request. If the clarifications sought by the Patent Office are not cleared even after the hearing, the Controller General will reject the patent application. However the applicant can approach Intellectual Property Appellate Board (IPAB) against the decision of the Controller and he may further move to the High Court and finally the Supreme Court. The 2016 Amendment reduced the time for putting the application in order for grant to 6 months.

***Step 8:*** Renewal fees the duration of the Patent is 20 years from the data of filing of the application. To keep the patent in force, renewal fees should be paid before the expiration of the second year or the succeeding year from the date of filing of patent. While paying the renewal fee, the number and date of the patent concerned and the year in respect of which the fee is paid shall be quoted. Failing to pay the renewal fee within the prescribed period, will result in the lapse of Patent.

***Step 9:*** Post grant opposition upon grant of patent also, any interested person, based on different grounds, may file a post grant opposition [Section 25(2)] in Form 7 along with prescribed fee to the Controller against the grant of patent, within one year from the date of publication of grant of patent.

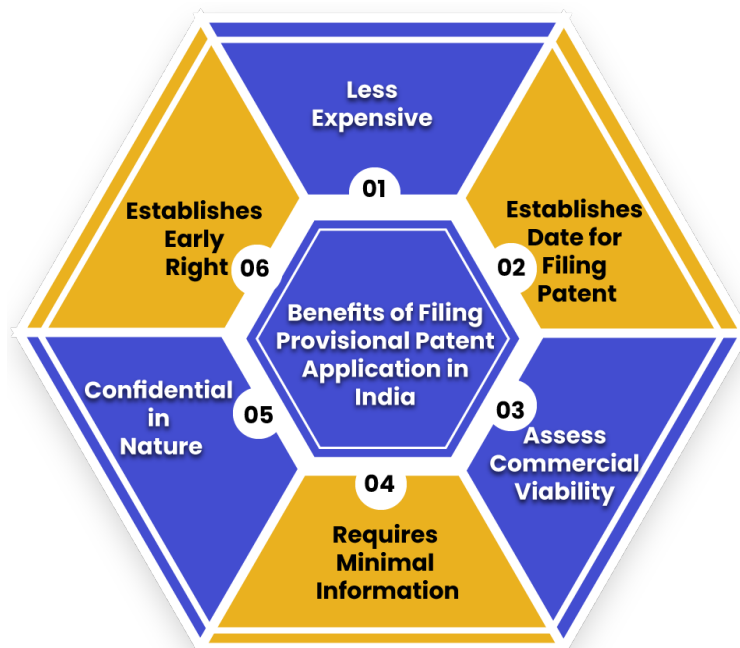
***What are the documents required for filing a patent application?***

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

- ✓ Priority document (if priority date is claimed) in convention application, when directed by the Controller.
- ✓ Declaration of Inventor ship (Form 5) where provisional specification is followed by complete specification or in case of convention/PCT national phase application.
- ✓ Power of Attorney (Form 26), if filed through Patent Agent Fee

## What is a Provisional Specification?

A provisional specification is named as provisional because it is not complete and acts as a placeholder for a later complete specification. Provisional specification describes the nature of the invention to claim the priority date of filing of the application in which only the inventive idea need to be disclosed. The inventor gets additional time of 12 months from the date of filing of provisional specification for filing complete specification, without losing the novelty and priority of his patent application. A provisional specification is a proof that the inventor had the concept and idea at the time of filing of provisional. However, a Provisional Specification must be followed by a Complete Specification within 12 months from the date of filing of the provisional application; otherwise, the application will be deemed to have been abandoned



### **Is there any fee for renewing the patent?**

Yes. The term of Patent is 20 years and the applicant has to renew the patent from the 3 year up to the 20 year by paying the renewal fee, to make it active. The applicant can pay the renewal fee year wise or he can pay in lump sum. A patent shall cease to have effect, if the renewal fee is not paid within the prescribed period.

### **Who is eligible for drafting the patent application?**

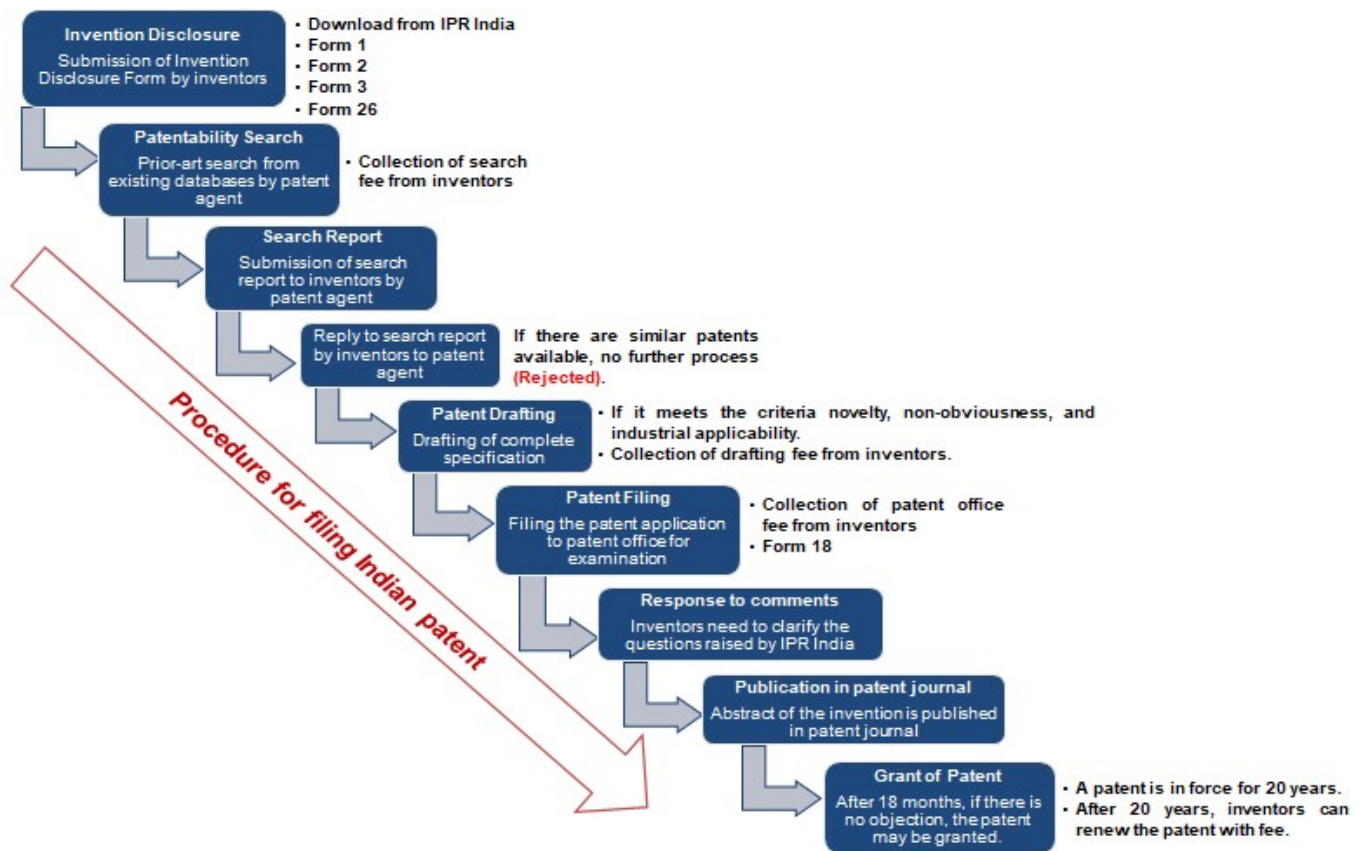
As per Indian Patent Act 1970, the applicant himself can prepare his own patent application or a registered Patent Agent can draft the Patent application on behalf of the applicant. A Patent Agent is a registered person with the Indian Patent Office who has been declared qualified the Patent Agent Exam conducted by the Patent Office. Patent Agents will have their registration number.

### **Is an Indian Patent valid in other Countries?**

No. Patent rights are territorial rights, which will be valid within the territory of the Country which has issued Patent. Hence, an Indian Patent, which is granted by the Indian Government, will be valid only in India.

### **What is Patent Co-operation Treaty (PCT)?**

Patent Laws differ from Country to Country and there is nothing like “World Patent” or “International Patent”. However, there is an international filing system known as Patent Cooperation Treaty (PCT) system. When a PCT application is filed, an inventor of a member country of PCT can simultaneously obtain priority for his/her invention in all the PCT member countries. Patent right is granted only by the particular member country thereafter entering the national phase in that country (corresponding to the International application). India joined PCT on 7 December, 1998. All activities related to PCT are coordinated by World Intellectual Property Organization (WIPO) situated in Geneva



## USEFUL WEBSITES FOR PATENT SEARCH

Ø [www.ipindia.nic.in](http://www.ipindia.nic.in) (Indian Patents)

Ø [www.uspto.gov](http://www.uspto.gov) (US Patents)

Ø [ep.espacenet.com](http://ep.espacenet.com) (European Patents)

Ø [www.wipo.int](http://www.wipo.int) (PCT applications)

Ø [www.google.com/patents](http://www.google.com/patents)

Ø [www.freepatentsonline.com](http://www.freepatentsonline.com)

Ø [www.ipos.gov.sg](http://www.ipos.gov.sg) (Singapore Patents)

Ø [www.jpo.go.jp](http://www.jpo.go.jp) (Japanese Patents)

## **Where to File the Patent Applications from Kerala?**

There are four Patent Offices in India with head office at Kolkata and having branches at New Delhi, Mumbai and Chennai. The applications from the southern states have to be filed in the Chennai branch in the following address; Controller of Patents and Designs, Patent Office, Intellectual Property Office Building, G.S.T. Road, Guindy, Chennai – 600032. Ph: 044 -22502081-84 Fax: 044 -22502066 Email: [chennai-patent@nic.in](mailto:chennai-patent@nic.in) Website: [www.ipindia.nic.in](http://www.ipindia.nic.in)

## **Can I renew my Patent after expiry?**

An expired patent cannot be renewed.

## **Does Indian Patent give protection worldwide?**

No. Patent protection is a territorial right and therefore, it is effective only within the territory of India. There is no concept of global patent. However, filing an application in India enables the applicant to file a corresponding application for same invention in convention countries or under PCT, within or before expiry of twelve months from the filing date in India. Patents should be obtained in each country where the applicant requires protection of his invention.

Relevant Forms	For Physical Filing			For E- filing			
	Natural Person and / or Startup	Small entity, alone or with Natural Person and / or Startup	Others with Natural Person and / or Startup and / or small entity	Natural Person and / or Startup	Small entity, alone or with Natural Person and / or Startup	Others with Natural Person and / or Startup and / or small entity	
<b>Filing of Patent application</b>	1,2,3,5	1750	4400	8800	1600	4000	8000
<b>Request for early publication</b>	9	2750	6900	13750	2500	6250	12500
<b>Request for Examination</b>	18	4400	11000	22000	4000	10000	20000
<b>Request for expedited examination of application for patent under rule 24C</b>	18A	Not allowed	Not allowed	Not allowed	8000	25000	60000
<b>Conversion of the request for examination filed under rule 24B to request to expedited examination under rule 24 C</b>	18A	Not allowed	Not allowed	Not allowed	4000	15000	40000
<b>Renewal</b>		880	2200	4400	800	2000	4000
<b>3<sup>rd</sup> year to 6<sup>th</sup> year</b>		2650	6600	13200	2400	6000	12000
<b>7<sup>th</sup> year to 10<sup>th</sup> year</b>		5300	13200	26400	4800	12000	24000

<b>11<sup>th</sup> year to 15<sup>th</sup> year</b>	8800	22000	44000	8000	20000	40000
<b>16<sup>th</sup> year to 20<sup>th</sup> year</b>						

*\*\*For the latest fees and forms keep visiting the IP India website, as the fee and form changes periodically\*\**

## **TRADEMARKS**

### **What is a Trademark?**

A Trademark is a distinctive sign or indicator of some kind, which is being used by an individual or an enterprise to uniquely identify the source of their products and to distinguish their products from those of its competitors. Some of the examples of Trademarks are Milma, BSNL, Indian Oil, etc.

### **What does a Trademark do?**

A Trademark provides protection to the owner of the mark by ensuring exclusive right to use it to identify the goods or services, or to authorize others to use it in return for payment. Trademark protection is enforced by the courts, which in most systems have the authority to block Trademark infringement. In a larger sense, Trademarks promote initiative and enterprise worldwide by rewarding the owners of Trademarks with recognition and financial profit. Trademark protection also hinders the efforts of unfair competitors, such as counterfeiters, to use similar distinctive signs to market inferior or different products or services.



## What kind of Trademarks can be registered?

Trademarks may be for one or a combination of words, letters, and numerals. It may consist of drawings, symbols, three – dimensional signs such as the shape and packaging of goods, audible signs such as music or vocal sounds, fragrances, or colors used as distinguishing features. There are several categories of Trademarks. Service marks are the marks which are used to identify the services of one enterprise from that of others. Services include Banking, Insurance, Transportation, Education, Research Institutions, etc. Examples are Indian Railways, State Bank of India, CSIR, LIC, etc. Collective marks are owned by an association whose members use them to identify themselves with a level of quality and other requirements set by the association. Examples of such associations would be those representing accountants, engineers, or architects.

Certification marks are given for compliance with defined standards, but are not confined to any membership. They may be granted to anyone who can certify that the products involved meet certain established standards. The internationally accepted “ISO 9000” quality standards are an example of such widely recognized certifications.

### **How is a Trademark registered?**

An application for registration of a trademark must be filed with the appropriate National or Regional Trademark Office. The application must contain a clear reproduction of the sign filed for registration, including any colors, forms or three-dimensional features. The application must also contain a list of goods or services to which the sign would apply.

### **What are the conditions for registering Trademarks?**

For a mark to get registered, it must fulfill two conditions. First, the mark must be distinctive, so that consumers can distinguish it from other trademarks and products. Second, the mark must not be deceptive. It means the mark should not mislead, deceive the customers or violate public order or morality.

### **How to select a Trademark?**

It is better to select a mark, which is easy to pronounce, remember, spell and recognize. The best trademarks are the coined words or invented words. Avoid using dictionary words for the mark. Choosing geographical names indicating the origin of the goods and laudatory words, which describe the quality of the goods (best, perfect, super, quality, etc.), as brand names are also not appropriate.

Entry No	On what payable	Amount in INR.		Corresponding Number	Form
		For filing	Physical For E-filing		
1	Application for registration of a trademark /collective Marks / Certification Mark / Series of trademark for specification of goods or services included in one or more than one classes.			<u>TM-A</u>	
	Where the applicant is an Individual / Startup/Small Enterprise	5,000	4,500		
	In all other cases (Note: Fee is for each class and for each mark )	10,000	9,000		
	For renewal of registration of a trademark under section 25 for each class	10,000	9,000	<u>TM-R</u>	
	Application for renewal with surcharge of registration of a Trademarks under section 25 (3) for each class	5,000	Plus renewal fee applicable under entry 3	4,500	Plus renewal fee applicable under entry 3
	Application for renewal with surcharge/ restoration and renewal of a Trademarks under section 25 (3), 25 (4) for each class	10,000	Plus renewal fee applicable under entry 3	9,000	Plus renewal fee applicable under entry 3

## **Can I register a trademark before starting a business?**

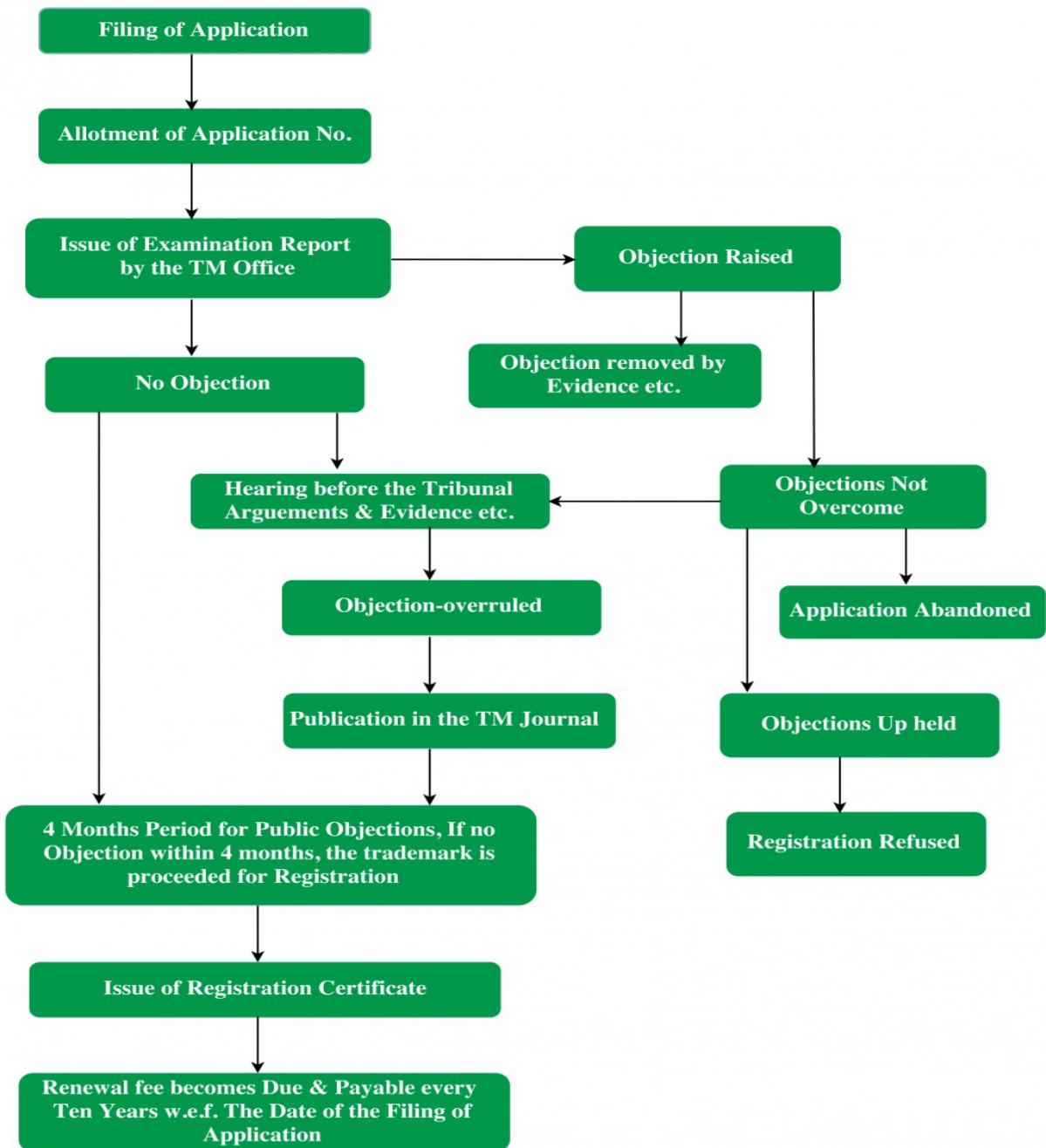
Yes, you can register a trademark before your business start up as propose to use mark.

## **Is the registration of trademark mandatory in India?**

No, but it is advisable to do so. No person shall be entitled to institute any proceeding to prevent, or to recover damages for, the infringement of an unregistered trademark. Only the proprietor of a registered trademark can use the symbol ® in India. Using the symbol ® unless the mark has been registered is unlawful in India. Using symbol TM with trademark simply means that one claims to be the proprietor of the trademark. There is no prohibition on the use of the symbol TM in India

### **1) Step By Step Procedure to Register A Trademark**

The process to get a trademark registered involves *filing of the trademark registration application, examination of the trademark, publication or advertisement of the trademark, opposition (objections) if raised/ found, registration of the trademark and renewal of the trademark after every 10 years.*



### *Procedure for Trademark Registration in India*

#### *Step 1: To search for a trademark*

The applicant must be careful while choosing his/ her trademark. Since, there are already tons of different types of trademarks available, once a trademark is chosen, it is essential to carry out a public search on the trademarks database which is available with the Trade Marks Registry to make sure that the trademark

is unique and that there is no other trademark which is either similar or identical to his/ her trademark.

The trademark search discloses all the types of trademarks that are already available in the market, either registered or unregistered. The search further tells whether the applied trademark has a competition for the same trademark.

Search Link- <https://ipindiaonline.gov.in/tmrpublicsearch/frmmain.aspx>

### ***Step 2: To file the trademark application***

The application for registration of the trademark can either be filed in a single- class or a multi- class totally depending on the goods and services the business pertains to.

The registration application is Form *TM-A* (<https://ipindia.gov.in/writereaddata/Portal/Images/pdf/FORM-TM-A.pdf>) which can be either filed online through the official IP India website or physically at the Trade Marks Office which depends on the jurisdiction of the trademark.

The application for trademark registration has to be supported with multiple documents with complete details of the trademark for which the registration is sought. Moreover, in case the applicant is claiming prior use in the trademark, then a user affidavit has to be filed supporting the usage along with the evidence of its prior usage.

### ***Step 3: Examination of the trademark application by the government authority***

Post the filing of the trademark application, a mandatory examination report is issued by the Examiner after an extensive examination of the trademark application in consonance with the guidelines of the Trade Marks Act, 1999.

The examination report by the authority may or may not disclose some objections which can be either, absolute, relative or procedural. This examination report by the Trademark Authority is issued within a period of 30 days of having filed the registration application.

A reply to the examination report is required to be filed within a period of 30 days after receiving the report asserting the arguments and evidence against any objections to waive them off.

#### ***Step 4: Post- examination***

After the filing of the reply to the examination report, the Examiner (Trademark Authority) may appoint a hearing if the Examiner is not entirely satisfied by the reply filed or in case the objections are not met. After the said hearing, the Examiner may accept the mark and subsequently forward the application for publication in the journal or reject the said application if any objection still persists.

#### ***Step 5: Advertisement of the trademark***

Once the registration application has been accepted, the said trademark is advertised and also published in the *Trade Marks Journal* for a period of 4 months. The aim behind the publication and advertisement is to invite the general public to filing an opposition against the registration of the mark.

The Trade Marks Journal is available on the official Registry website which gets updated every Monday of the week- <https://ipindia.gov.in/journal-tm.htm>

#### ***Step 6: Opposition from general public***

Post the advertisement and publication of the trademark in the journal, any aggrieved person can file a notice to oppose against the registration of the advertised/ published trademark. This notice to oppose the trademark has to be filed vide *Form TM- O* within 4 months of the mark ® ™ publication in the Trademark Journal. In case the applied for trademark is opposed/ objected, then the due process of law has to be followed which includes filing the counter-statement application, evidence as well as hearing in order to get the trademark registered.

### ***Step 7: Registration of the trademark***

The final step towards the entire procedure is registration where the application proceeds to registration after conquering the objection and/ or the opposition against the said registration of trademark.

Besides this, in case there has been no objection against the registration of the trademark during the advertisement/ publication period of 4 months, then the trademark is issued an auto-generated registration certificate within 1 week <sup>TM</sup> ® time. Once the registration complete, it is valid for a period of 10 years after which it would be required to be renewed within a prescribed time period.

### **Documents required for a trademark registration**

A trademark registration is a significant procedure via which a brand/ business can be safeguarded from undesired use as well as infringement.

*Note: In the course of the registration of the trademark application procedure, it is not mandatory to submit original documents. Scanned copies of the original documents suffice the requirement.*

### ***Documents required in Individual & Sole proprietorship***

Any person (applicant) whether an Indian National or a Foreign National can very conveniently register a trademark in India. Since there is no necessity to form a legal entity or a business entity to get a trademark registered. Besides this, the documents needed to get a trademark registered in the name of a proprietorship are identical to that of an individual as under:

- Copy of the proposed logo, ideally in black and white (which is optional). However, in case the logo is not provided, the trademark application can be filed for the word.
- Duly signed Form- 48. This form is an authorization from the applicant to a Trademark Attorney to file the trademark registration application on his/ her behalf.

- Copy of the identity proof of the individual applicant or the proprietor which may include: passport, Aadhaar card, PAN card, etc.
- Copy of the address proof of the individual applicant or the proprietor which may include latest electricity bill, phone bill, etc.

***Documents required in partnership / LLP / company - Small Enterprises or Start-ups***

Now, to fall under the category of a small enterprise, the individual applicant is required to have to provide the Udyam Registration (UR) certificate. Also, in addition to the UR, the following mentioned details are required.

Partnership / Company / LLP

In the event of a partnership firm or an LLP, the entrepreneur/ applicant is required to submit the following documents:

- Scanned copy of the logo (optional)
- Duly signed Form- 48
- Udyam Registration Certificate
- Partnership Deed or the Incorporation Certificate
- Copy of identity proof of signatory/ applicant
- Copy of address proof of signatory/ applicant

***Documents required for other applicants in a trademark registration***

All other applicants, including companies that do not have Udyam registration will have to submit the following documents to obtain trademark registration in India.

- Scanned copy of the logo (optional)
- Duly signed Form- 48
- Partnership Deed or the Incorporation Certificate
- Copy of identity proof of signatory/ applicant
- Copy of address proof of signatory/ applicant

## Ministry of MSME is providing reimbursement for Patent, Trademarks, GI and Industrial Design under MSME Innovative Scheme

S. No.	Item	Maximum Financial Assistance
1.	Foreign Patent	Rs. 5.00 lakh
2.	Domestic Patent	Rs. 1.00 lakh
3.	GI Registration	Rs. 2.00 lakh
4.	Design Registration	Rs. 0.15 lakh
5.	Trademark	Rs. 0.10 lakh

To apply click- <https://innovative.msme.gov.in/Home/IprIndex>

### Important Links

- ❖ DIPP Nodal point for all IPR policy issues: <http://dipp.nic.in/>
- ❖ CGPTDM office: For filing of IP applications/ to obtain real time status of all IP applications/ checking grants/ registration of IPRs: [www.ipindia.nic.in](http://www.ipindia.nic.in)
- ❖ Copyright office: For information related to filling and status of copyright applications: <http://copyright.gov.in>
- ❖ Startup India: For information regarding startups: [http:// startupindia.gov.in](http://startupindia.gov.in)
- ❖ Protection of Plant Varieties and Farmers' Rights Authority: For filing/ registration of plant variety applications: [http:// plantauthority.gov.in](http://plantauthority.gov.in)
- ❖ TIFAC: For information on filing of Indian/ foreign patents, patent search facilities: [www.tifac.org.in](http://www.tifac.org.in)
- ❖ Ministry of Electronics and Information Technology: Providing IP Facilitation Support to DeitY Societies and Grantee Institutions, Financial Support to Startups and SMEs for International Patent Filing through SIP-EIT Scheme, Creation of IPR Awareness through Financial Support to Industry Bodies and Academia, Providing IPR Related Services including Prior Art Search: <http://meity.gov.in/content/ipr-promotion>

- ❖ Semiconductor Integrated Circuits Layout Design Registry (SICLDR): For information related to filling and status of Semiconductor Integrated Circuit Layout Designs applications: <http://sicldr.gov.in>
- ❖ List of Trademark Agents: <https://ipindia.gov.in/trade-mark-agents.htm>
- ❖ List of Facilitators for Trademarks under SIPP Scheme: <https://ipindia.gov.in/Facilitators-TMR.htm>
- ❖ Details of Nodal Offices for legal certificate: [https://www.ipindia.gov.in/writereaddata/Portal/Images/pdf/Nodal\\_Officers\\_for\\_legal\\_certificate.pdf](https://www.ipindia.gov.in/writereaddata/Portal/Images/pdf/Nodal_Officers_for_legal_certificate.pdf)
- ❖ Trademark Status- <https://ipindiaonline.gov.in/eregister/eregister.aspx>
- ❖ Track Legal Certificate Requests- <https://ipindiaonline.gov.in/eregister/LC/viewlegalcertdetails.aspx>
- ❖ Online Correction request- <http://ipindiaservices.gov.in/tmrCorrectionRequest/frmLogin.aspx>
- ❖ Manual on Trademark- [https://ipindia.gov.in/writereaddata/Portal/IPOGuidelinesManuals/1\\_32\\_1\\_tmr-draft-manual.pdf](https://ipindia.gov.in/writereaddata/Portal/IPOGuidelinesManuals/1_32_1_tmr-draft-manual.pdf)
- ❖ Trademark Registry contact details- <https://ipindia.gov.in/contact-us-tmr.htm>

This initiative has been taken by MSME-Development and Facilitation Office (DFO), Thrissur Ministry of MSME; Government of India to create public awareness about economic, social and cultural benefits of IPRs among MSME fraternity. The information contained in this booklet is not legal advice and is for informational and/or educational purposes only. MSME-DFO makes every effort to ensure and provide most accurate information; however, it is not possible to be accurate at all the times so, MSME-DFO does not guarantee, and makes no warranties as to, the accuracy, accessibility, integrity and timeliness of any information.

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