

CLASSIC
PROFESSIONAL
SERIES



BASED ON CS EXECUTIVE NEW SYLLABUS 2013

ECONOMIC AND COMMERCIAL LAW

- INCLUDES ALL CONTENTS OF EACH CHAPTER IN EASY LANGUAGE
- INCLUDES MORE THAN 700 QUESTIONS OF EVERY TYPE LIKE MCQ, FILL-IN, TRU-FALSE, CASE LAW
- WRITTEN IN SUCH A WAY THAT ANY STUDENT CAN PASS, JUST BY READING THIS BOOK ONLY
- SUMMARY OF EVERY CHAPTER GIVEN AT THE END IN SUCH A WAY THAT STUDENT CAN REVISE THE WHOLE CHAPTER IN JUST 5 MINS.

CS PAWAN KUMAR BAID

जय जिनैन्द्र

ECONOMIC & COMMERCIAL LAW

By CS Pawan Kumar Baid

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Preface

This Book is written in such a way that student can grasp the syllabus by having just a single look. Language is kept simple and lengthy description is avoided. Students are advised to describe the matter in their own language after reading from this Book. Sufficient care is taken to cover each matter from the syllabus in such a way that every thing is covered, nothing is left, but still portion remain short.

Questions Asked in Earlier Exams: To make the book result oriented, question asked in last years' exams (as per old syllabus) has been referred not only at suitable places in text, but also given at the end of each study lesson. Further extra questions including multiple choice, fill-in blank, true/false have also been added to ensure more result.

Mind Chart for Quick Learning: Mind-chart technique is used to explain the whole chapter in a single view in such a way that whole syllabus can be revised in just one hour. List of important Sections has also been given at the end of each study lesson.

Ask Exam Oriented Queries: To add value, I offer my personalized service to each student who has bought this book. You can ask your query regarding exams of this subject to me at cpcsurat@yahoo.in and I will revert with answer within 10 days, even within few hours if exams are near. To ask your query you have quote the 16 digit code written herein below in your mail in which query is asked. Kindly take care that you should not change your mail id, because I will attach one code to only one mail id, however you can ask as many questions as you wish within one year of your purchase.

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Acknowledgement: I am thankful to all of my family members, friends, students and well-wishers because of whose wishes, I completed this book.

CS Pawan Kumar Baid
Surat

Compare This Book with Other Material Available in Market

Comparative Point	Book of Other Publishers	This Book
Text / note /explanation to every chapter	Yes	Yes
Question asked in last exams*	Yes	Yes*
Extra Question which were not asked in exams	Yes	Yes
Extra MCQ, fill-in, True / False	No	Yes
Separate List of Sections	No	Yes
Explanation with Mind Chart	No	Yes
Personalized query solution	No	Yes
Free Subscription to academic guidance	No	Yes
Guideline about “How to write in exams”	No	Yes

* In this Book answer of only few questions are given

TOTAL QUESTIONS IN THE BOOK

Chapter	MCQ	Fill-in	True False	Distinguish	Short Note	Case Law	Other	Total
1	15	27	15	10	11	68	10	156
2	5	6	10	4	8	--	7	40
3	10	10	18	7	18	18	8	89
4	9	16	18	13	18	--	19	93
5	6	5	6	3	6	2	8	36
6	14	10	6	9	5	12	8	64
7	3	5	4	3	5	3	9	32
8	7	10	18	7	11	10	6	69
9	6	6	3	1	4	--	5	25
10	5	6	9	3	8	--	4	35
11	2	2	2	1	--	3	6	16
12	3	2	3	3	1	4	2	18
13	5	10	4	3	3	--	--	25
14	4	5	4	--	9	1	20	43
15	2	2	3	--	1	4	8	20
Total	96	122	123	67	108	125	120	761

SYLLABUS & INDEX

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STUDY 4 - MANAGEMENT OF INTELLECTUAL PROPERTY RIGHTS

Average 20 marks' questions are asked from this Chapter

Properties are of two kind viz., tangible and intangible. Intellectual properties are those intangible properties which arise by virtue of creation of human mind and intellect. It includes rights relating to literary artistic work, invention, scientific discovery, industrial design, trademark etc.

Industrial Property includes invention of new solution to technological problems and designs i.e. aesthetic creation to present the appearance of industrial product. *Patent* grants monopoly status to its holder to regulate production, supply and price of patented product. *Trade Mark* consists of word, letter etc which distinguishes goods of one producer from similar goods of other manufacturer. *Copyright* gives the holder exclusive right to reproduce or distribute goods. Particularly it is related to print, sound, films etc. *Industrial Design* is some pattern for manufacture of product, like design of particular bike or bottle of beverage.

THE PATENTS ACT, 1970

Passed in Parliament on 19-Sept-1970	Applies to Whole of India
Contains total 163 Sections	

Some Special Word/ Terms used in this Chapter

PCT	Patent Cooperation Treaty, i.e. agreement between many Countries to make patent effective in all such agreeing countries
Anticipation	If any person has described something in his specification which the applicant has also described, it is called that claim of applicant has been anticipated (hence the claim may not be new)
Provisional Specification	Details containing particulars of patent applied. But it is not finalized yet due to lack of some information (<i>Asked in Dec 2009</i>)
Complete Specification	It contains full description of patent i.e. its name, best method of performance, name of inventor etc (<i>Asked in Dec 2009</i>)
Inventive Step	Where invention involves some technological advancement as

	compared to existing knowledge, it is inventive step.(Asked in Dec 2012)
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Invention

As per Sec 2(j) invention means any new and useful product, substance or art, process, method of manufacture or any machine, apparatus etc and includes any improvement in any of them. Sec 3 provides that following, although they may come under above definition, are not inventions (*Asked in Jun 2007, Jun 2008, Jun 2009, Dec 2011*):

- a. Invention which are frivolous or contrary to natural laws.
- b. Invention, commercial exploitation of which may be against public order or morality.
- c. Mere discovery of a scientific principle or discovery of living or non-living thing in nature.
- d. Mere discovery of new form of known substance, not resulting in increasing its efficacy or mere discovery of new use of known process.
- e. Discovery of new admixture by merely aggregating properties of other known substances.
- f. Mere re-arrangement or duplication of known devices.
- g. Method of agriculture or horticulture.
- h. Medicinal or surgical process for treatment of human or animal so as to render them free of disease or increasing their economic value.
- i. Literary, dramatic, musical or artistic work.
- j. Method of performing mental act, method of playing game

Who Can Apply for Patent (Sec 6)

Following person can apply for patent: (*Asked in Jun 2008*)

1. Any person claiming as true and first inventor
2. Any person being the assignee of person claiming to be first inventor
3. Legal representative of deceased person mentioned in 1 or 2 supra

How To Apply

A. Following points must be taken in mind

1. Sec 7 requires every application for patent should be made for one invention only. Every international application under Patent Cooperation Treaty (PCT) filed designating India, shall be deemed to be application under this Act.

2. Along with application, specification regarding patent should be filed. Where provisional specification is filed, then a complete-specification shall be filed within twelve months.
3. Where two or more applications in the name of same applicant is filed with provisional specification, the Controller may allow filing of only one complete-specification if all application relate to single invention.
4. Where application is accompanied by complete-specification, Controller may make a direction within 12 months to treat such specification as provisional.

B. Contents of Specifications (Sec 10)

(Asked in Jun 2007 and Jun 2009) All specifications whether provisional or complete, must describe the invention by stating its title and subject matter. Every complete-specification must describe following:

- a. Full description, operation and method of use.
- b. Best method of performing the invention, which claimant wants to protect.
- c. Claim of claimant
- d. Abstract of technical information.

In case application relates to biological material, the applicant shall deposit the same to the Controller and the Controller may for providing better explanation of points a and b above, deposit the material to an International Depository Authority.

C. Publication of Application

Usually application are not open to public for inspection, however applicant may request the Controller to publish his application before expiry of prescribed period. Controller shall publish such application unless where secrecy is required. Publication shall include date of application, number of application, name and address of applicant etc.

From this date of publication, the applicant shall have same privilege and rights as he has been granted the patent. This right is available till date of actual grant, or rejection of application. However, applicant cannot institute any proceeding for infringement.

D. Request for Examination

Application for patent cannot be examined unless applicant or any other interested person makes a request for examination. Where such request for examination has not been made within prescribed time period, application is treated to be withdrawn.

Under Sec 12, when request for examination has been made, Controller shall make reference of specification and other documents to an examiner to make a report on following:

- a. Whether application is in accordance with provisions of this Act
- b. Whether objection can be made for the applied patent
- c. Results of examination or investigation

E. Search for Anticipation

Sec 13 says that Examiner shall make investigation regarding:

- a. Whether invention has been anticipated by publication before the date of filing of complete-specification by applicant.
- b. Whether the invention is claimed in any other claim or complete-specification published on or after date of filing complete-specification by applicant.

F. Report of Examiner and Consequences

Where examiner gives adverse report which may require amendment, the Controller shall communicate the same to the applicant. Further, the Controller may either refuse the application or direct the applicant to amend the specification.

Controller can also direct to “post-date” the application if applicant makes a request for a date which cannot be more than six months.

Where Controller is of opinion that applied invention has been anticipated, he can refuse the application. However, he shall not refuse if applicant either shows his early priority date or amends his complete-specification.

Where Controller is of opinion that applied invention is already claimed in any other complete-specification, he can direct that a reference to that other complete-specification shall be inserted.

G. Potential Infringement (Sec 19)

(Asked in Dec 2011) Where Controller is of opinion that applied invention cannot be performed without potential infringement or other patent, he can make direction that a reference to that other patent shall be inserted. However, where applicant shows grounds of his claim or amends his complete-specification, Controller shall not insert such reference.

Where reference to other patent as above has been inserted, Controller can delete the reference if:

- a. That other patent is revoked
- b. Complete-specification of that other patent is amended.
- c. That other patent is invalid

H. Other Provisions

Where a person, before grant of patent, claims and shows to the satisfaction of Controller that because of some agreement, claimant is also entitled to undivided share of that patent, the controller may direct that the patent shall be proceeded in the name of claimant or in joint name of applicant and claimant. Controller gives such direction only if following conditions are satisfied:

- a. Copy of the said agreement is given to controller,
- b. Invention is identified
- c. Rights of claimant for that patent has been established

Where an application is made by joint applicants and before grant of patent, one of the applicant dies, then controller may direct the application to proceed in the name of survivor, if consent is given by legal representative of deceased applicant,.

Where applicant does not complies with all requirements of this Act within prescribed time period, application for patent is deemed to have been abandoned. Where in the course of proceeding, any document has been returned by Controller, the applicant has to re-submit those document after due compliance.

Powers of Controller

(Asked in Jun 2012) Powers of Controller can be summarized as:

1. Controller can refuse the application or require applicant to modify the application if:
 - a. Application or specification does not comply with requirement of Act or Rules
 - b. Invention is such which is not patentable
 - c. Application is made in violation of any other law
 - d. Invention has been anticipated
2. Controller can order for division of application if one application contains more than one claim for patent.
3. Controller has power to change the date of application
4. He has power to add reference of other patent in case of potential infringement etc.

Anticipation

Sec 29-34 deals with anticipation and says that existence of following situation only will not be called as anticipation:

1. Anything published before priority date of relevant specification published by applicant
2. Communication of invention to Government for investigation of the same
3. Public display of invention with permission of first and true inventor
4. Working of invention within one year before priority date of relevant specification, etc.

Opposition to Patent

(Asked in Dec 2006 and Jun 2010) As per Sec 25, after publication but before grant of patent any person may apply in writing to Controller his opposition to the patent on following grounds:

- a. The applicant has wrongfully obtained invention from him
- b. Claimed invention has been already published before priority date in any other specification or in any other document
- c. Claimed invention is published in a claim of other complete specification on or after priority date of applicant's claim.
- d. Claimed invention is publicly known or publicly used in India before priority date.
- e. Claimed invention is obvious and does not involve any inventive step.
- f. Complete-specification does not sufficiently describe the invention, or it does not disclose the source of biological material
- g. In case of convention application, the application was not made within twelve months from first application.
- h. Claimed invention is anticipated having regard to knowledge available in India or elsewhere.

Further any interested person can give notice of opposition to Controller after grant of patent and up to one year on same grounds as mentioned above.

Sec 26 provides that if opponent makes request, the controller may make direction that patent shall be proceeded in the name of opponent.

Where any notice of opposition is given under Sec 25 to Controller, then he shall notify the patentee and shall constitute an Opposition Board. This board shall conduct the examination of opposition.

Secrecy Direction

(Asked in Dec 2006) Where Central Government has notified class of an invention as secret for defence purpose, the Controller shall give direction for prohibiting publication

of any information regarding that class of patent. The Controller shall give notice of application of such patent to the Government and thereupon Government shall decide whether publication of information is prejudicial to defence of India or not. Any secrecy direction issued by Government can be reviewed periodically.

Grant of Patent

Application for patent, if it is in order and not refused and not found to be in contravention of any provision of the Act, it shall be granted under the seal of patent office with date. Where patent is not opposed or where opposition has ended in favour of applicant, Controller will grant the patent. Controller shall publish the fact that patent has been granted. Sec 47 specifies some condition subject to which patent can be granted, viz (*Asked in Jun 2007, Dec 2008 and Dec 2010*):

- a. Any machine or article of which patent has been granted can be imported by Government.
- b. Any process of which patent has been granted can be used by Government
- c. Any machine or article of which patent has been granted can be used by any person for experiment or research purpose.
- d. Sec 53 provides that term of patent shall be twenty years from the date of application, which can be renewed on payment of renewal fees (*Asked in Dec 2007, Jun 2008, Dec 2008, Jun 2010 and Jun 2011*).

Miscellaneous Provisions

Patent of Addition (Sec 54)

(*Asked in Dec 2008, Jun 2010 and Jun 2011*) Where application is made for improvement or modification of the main invention, Controller may grant the patent for improvement. However, where the application for improvement is subject to an independent patent, the Controller may revoke the patent for improvement and grant a patent of addition. Patent of addition cannot be revoked simply because it does not involve any inventive step. The patent of addition is granted for equal term to that of unexpired period of original patent.

Restoration of Lapsed Patent

(*Asked in Dec 2007 and Dec 2010*) Where patent is expired because of non payment of renewal fees, it can be restored if application is made within 18 months from date of expiry. If Controller is satisfied that failure to pay renewal fees was unintentional, he shall publish the application of restoration and thereupon any person can oppose it on the ground that:

- a. Failure to pay fees was intentional or
- b. Application for restoration has been made after undue delay.

Where patent is restored, patentee will get same rights as earlier, subject to such conditions as may be specified by Controller.

Surrender and Revocation

(Asked in Dec 2012) Where the patentee wants to surrender the patent, the Controller shall publish his offer of surrender and any interested person, thereupon, can oppose it.

Where Government is satisfied that patent relating to atomic energy has been granted, it may direct the Controller to revoke the patent.

Register of Patent

At patent office, a register of patent is kept wherein name and address of patentee is entered. Further any information regarding transmission, assignment or license of patent is also entered in the register. This register is open for inspection of public on payment of prescribed fee.

Working of Patent

(Asked in Dec 2012) Patent are granted to encourage invention and for commercial utilization in India, and not merely to enjoy monopoly. Hence it is necessary to ensure that patent granted do not impede protection of public health and are not abused by patentee. Otherwise Government can take any action in public interest.

Compulsory License

1. After three years from sealing of patent, any interested person can apply to Controller from grant of compulsory license on following grounds (Sec 84):

- a. Requirement of public has not been satisfied,
- b. Patented item is not available to public at reasonable price,
- c. Patented invention is not worked in India.

Person applying for compulsory license has to state the manner in which he is interested. Controller will grant license upon such terms as he thinks fit if he is satisfied about above grounds. Before granting license Controller will consider measures taken by patentee himself for production of goods, ability of applicant and efforts by applicant to take license directly from patentee.

As regards point (a) above, requirement of public is deemed as not to have been satisfied if existing trade in India is prejudiced or demand of public is not met or patented invention is not worked up to adequate extent.

2. Where manufacture or sale of a material which is not protected by patent is wrongfully affected due to conditions imposed by patentee, the Controller can grant compulsory license to person who is using unprotected material. (Suppose, mobile is not protected but mobile charger is patented, as mobile cannot be used without its charger, Controller can give compulsory license of charger to person who want to manufacture mobile).

3. Where two or more patents are held by same patentee and demand of public is not met as regards any one of the product and if such product cannot be worked without infringement of other, then, controller can grant compulsory license. (For Example, "A" is patentee of mobile and charger, and if requirement of public is not satisfied as regards charger, then any person having license to manufacture mobile can get compulsory license of charger)

4. Where, due to national emergency or extreme urgency, Central Government is satisfied that compulsory license should be granted, then upon declaration of Government, Controller shall grant license to the persons who are applying for the same.

5. Where a country is having insufficient supply of any pharmaceutical product, Government can grant compulsory license for any such products for export to such countries.

While granting compulsory license, Controller considers following points:

- a. Reasonable royalty or other remuneration payable to patentee
- b. Invention is used to fullest extent
- c. Patented item is available to public at reasonable price
- d. License granted is non-exclusive and non-assignable.

Revocation of Patent for Non-working

If within two years from grant of compulsory license, if patented invention is not worked then Government or any interested person can apply Controller to revoke the patent. Application should state nature of interest of person making application and reasons for making application. The Controller shall give copy of the application to the patentee and patentee may oppose the same.

Controller

The Controller shall have powers of Civil Court like, to summon and enforce attendance of a witness, discovery and production of documents, receiving evidence on affidavit, review of its decision, setting aside any order, passing interim order etc.

Controller has power to amend application of patent or complete specification to correct clerical mistake if such request made to him.

International Arrangement

(Asked in Dec 2012) Sec 133 to 139 provides for recognition of patent internationally. Accordingly, convention country is that country which is signatory of any bilateral/multilateral treaty or convention. Convention country gives same rights to patentee of other countries as are available to patentee of his country.

Where any country which is notified by India to be convention country does not give citizen of India same right which available to its own national, then citizen of such country shall also not be entitle to apply for patent/license or registered as assignee in India.

Where a person makes application for patent in convention country, he can make application under this Act within 12 months.

Patent Agent

(Asked in Jun 2011) Patent agent is a person who performs the work relating to drafting of specification, making application and other related work regarding patent. Sec 126 prescribes qualification of Patent Agent like, he should be citizen of India, having degree in science or other equivalent as prescribed by Government and has passed qualifying exam conducted for this purpose. Patent agent can practice before the Controller.

Appeal & Penalties

Appeal can be made to High Court within 3 months from specified orders of the Controller. Such appeal shall be disposed off the High Court within 12 months.

Any person who fails to comply with direction of Controller, or who makes any false entry in any register maintained under this Act shall be punishable with imprisonment of 2 years or fine. Similarly if any person false claims that he has patent of any product, he shall be punishable with fine of Rs 500/.

List of Some Important Sections of The Indian Patents Act

Section	Particulars	Section	Particulars
2(c)	Convention Application	2(h)	Invention

3	What are not invention	6	Who can apply for patent
9	Provisional and Complete Specification	10	Contents of Specification
12	Examination of Application	15-20	Certain Powers of Controller
25-26	Opposition of Patent	29-34	Anticipation
35-42	Secrecy Directions	43	Grant of Patent
53	Term of Patent	54	Patent of Addition
60	Restoration of Lapsed Patent	63-64	Surrender and Revocation of Patent
83	Working of Patent	84	Compulsory License
118-124	Penalties	133-139	International Arrangement

THE TRADE MARKS ACT, 1999

Published on 30-Dec-1999	Applies to Whole of India
Contains total 159 Sections	Latest amended in year 2010

Trade mark is a mark affixed on any goods or service which distinguishes goods/service of one manufacturer from similar goods produced by other manufacturer. A trade mark affixed on any goods/service makes impression in mind of buyer that it contains a given quality.

Important Definitions

Certification Trade Mark Sec 2(1)(e)	Mark capable of distinguishing the goods/services which are certified by proprietor in respect of origin, material, quality etc from goods/services not so certified (<i>Asked in Jun 2007, Dec 2009 and Dec 2010</i>)
Trade Mark Sec 2(1)(zb)	Mark capable of represented graphically and capable of distinguishing goods/services of one person from those of others. It shows a connection between goods and person.
Well-Known Trade Mark Sec 2(1)(zg)	A mark, which is so well-known to public which regularly uses such kind of product, to indicate connection of mark and goods with its producer.
Collective Mark Sec	Mark used by member of an association of person (but not

2(1)(g)	partnership firm) (<i>Asked in Dec 2008, Dec 2009 and Dec 2011</i>)
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Procedure for Registration of Trade Mark

Government has established Trade Marks Registry under Sec 3 known as “Controller General of Patent, Design and Trade Marks”, where application for trade marks can be made. Trademark is granted for several classes of goods or services. Registration of trade mark is prima facie evidence that all requirement of this law has been duly complied with (*Asked in Jun 2010 and Jun 2012*). A register of trade mark is kept at Head Office of Trade Mark Registry.

An application for registration of any trade mark can be made under Sec 18 by the person claiming to be proprietor. Such application can be rejected for two reasons:

Absolute Grounds for Rejection

Registrar can reject the trade mark application under Sec 9 on absolute ground on following basis:

- If mark is devoid of any distinctive character, e.g. where any character of any language or any shape has not been especially designed or visible.
- Any mark which shows just kind, quality, quantity or intended purpose of any goods, e.g. trademark of any goods can't be “500 gram”
- Mark consisting of marks or indications which are customary in current language, e.g. OMG (abbreviation of Oh My God) cannot be trade mark
- However where trademark which bears distinctive character because of its use, or is well-known to public is allowed, e.g. “Sugar-free” mark shows just quality but still allowed because this product is well-known to public
- If a mark is capable to deceive or cause confusion to public, or hurt religious susceptibility, or is obscene, it will not be registered
- Mark consisting of shape of natural goods (e.g. Neem leaf) or such shape which is necessary to obtain a given technical result shall not be registered.

Relative Grounds for Rejection

Sec 11 (as amended by Trade Mark (Amendment) Act, 2010) provides that Registrar will reject the trademark application on relative grounds which are:

- Where mark is identical and affixed to similar goods or service, e.g. Lux washing powder
- Where mark is similar and affixed to identical or similar goods or service, e.g. Nirama washing powder (Original is Nirma)

- c. Where mark is identical or similar and affixed to goods which are not similar, if such mark is well-known to public e.g. Lux shoes
- d. Where mark's use is prevented by law of passing-off or copyright

However, Registrar shall not reject any application for trade mark on the grounds specified in point c and d supra, unless an objection is raised by proprietor of earlier trade mark.

Sec 14 provides that if any mark falsely suggests a connection with a living person or a person who died within 20 years prior to application of trade mark, then Registrar can demand consent of such person or his legal representative.

Registered Trade Mark

Sec 20 says that whenever an application for trade mark is filed with Registrar, he shall publish the same in prescribed manner. Any person can oppose such application within 3 months from date of advertisement.

If application has not been opposed, or if opposition have been decided in favour of applicant, trade mark is granted. Tenure of trade mark is of 10 years with a provision for renewal from time to time for further period of 10 years (*Asked in Jun 2009*).

Where trade mark is not renewed after 10 years, it can be removed by the Registrar, which can be restored within 1 year from the date of removal (*Asked in Dec 2007*)

Where a proprietor of trade mark applies for another mark which is identical or similar to earlier registered trade mark, Registrar may allow such mark to be registered as associated trade mark.

Original registration is prima facie evidence of its validity; however where a person is using mark which is similar to registered mark from prior date, owner of registered mark cannot interfere. In case of unregistered mark, owner can sue only for passing-off but not for infringement. Generally, ownership of mark is governed by priority of use. Prior sale of goods is sufficient to establish priority.

Infringement of Registered Trade Mark

(*Asked in Dec 2006, Jun 2009 and Jun 2012*) Sec 29 provides that if a person who is not registered proprietor of mark uses a mark which is identical or deceptively similar to registered trade mark, it is called infringement. Further, registered trade mark is infringed if:

- a. Mark is identical and is used in respect of similar goods/services, or
- b. Mark is similar and is used in identical or similar goods/services, or

- c. Mark is identical and is used in respect of identical goods, and

It is likely to cause confusion on the part of public. Further, following action is also called infringement;

- a. Mark is identical or similar to registered trade mark and used in respect of goods which are not similar,
- b. Using someone else's trade mark as his trade name as dealing with similar goods.
- c. Affixing someone else's trade mark to goods or packing or using such mark in business papers or advertisements.

What is Not Infringement of Trade Mark:

(Asked in Jun 2008) Where mark is used with honest business practice without taking unfair advantage, it is not deemed to be infringement. Following acts are not infringement:

- a. If trade mark is used to indicate kind, quality or quantity etc of any goods/service.
- b. If trade mark was registered subject to certain conditions.
- c. Where mark is used in such types of goods/services for which owner of that mark had impliedly consented to its use.
- d. Registered trade mark can be used in relation to parts and accessories to other goods/services.

The Supreme Court in *Mahindra & Mahindra Paper Mill V Mahindra & Mahindra Ltd* said that to determine similarity of two trade marks, nature of mark, nature of goods, extent of resemblance etc must be taken into account.

Assignment and Transmission

(Asked in Jun 2007 and Jun 2011) Sec 37 says that registered proprietor of trade mark can, at any time, assign his trade mark. The Act also provide for assignment of unregistered trade mark. In case of assignment of registered trade mark without goodwill, assignor has to obtain permission of Registrar and has to publish advertisement.

Other Provisions

Proposed Use by Company to be Formed: As a general rule, trade mark is granted only to person who is using that mark himself. However, if Registrar is satisfied that a

company is being formed and applicant will assign the trade mark to the company, he can grant the mark.

Removal of Trade Mark: Where trade mark has not been put into use within five years of its registration, it can be removed. However, the Registrar shall not remove the trade mark where special circumstances or reason are shown for its non-use.

Registered User: (Asked in Jun 2007) Owner of mark can assign the mark to a person called registered user of the mark. Registered user is not entitled to assign the mark. Registrar can demand information from owner regarding agreement by which any person was made registered user. Where registered user uses that mark in violation of agreement, Registrar can cancel registration.

Collective Mark: Collective mark, which belongs to a group or association, can be registered by Registrar. This mark is owned by an association whose members can use this mark subject to compliance of specified standard.

Certification Trade Mark: This trade mark shows that goods on which this mark affixed are certified by some competent person in respect of quality, mode or manufacture etc. Proprietor of certification trade mark does not himself deal in the goods. For example if a particular “toothpaste” is certified by “IDA” (i.e. Indian Dental Association), then IDA is a certification trade mark which is affixed on the toothpaste.

Well-Known Trade Mark: Sec 11 provides following determining factors to decide whether a trade mark is well-known or not:

- a. Recognition of that mark in relevant section of public, e.g. number of actual or potential consumer of that goods
- b. Duration and geographical area of use of such mark
- c. Record of successful enforcement of rights under such trade mark

Intellectual Property Appellate Board (IPAB): Any person aggrieved by decision of Registrar can prefer appeal to IPAB. This Board has powers of Civil Court but not bound to follow the procedures of the Code of Civil Procedure.

Offence and Penalties: Following penalty provisions are prescribed under this Act:

- a. Penalty of imprisonment of six months to three years and fine upto Rs two lakh for applying false trade mark or false trade description.
- b. Any removal or sale of cotton yarn or cotton thread which are not marked in accordance with provisions of this Act is liable to forfeited.
- c. Any person who falsely represents a trade mark to be registered trade mark is punished under this Act.

- d. In case of offence is committed by Company, every person in charge of the Company, as well as the Company shall be deemed to be liable. Where such contravention is committed with consent or with negligence on the part or director, manager or secretary, they shall also be deemed to be guilty.

Trade Mark Agent: Trade mark agent is a person who performs the work relating to trade mark before the Registrar. Sec 145 prescribes that legal practitioner or Company Secretary can act as trade mark agent.

List of Some Important Sections of the Trade Marks Act

Section	Particulars	Section	Particulars
2(1)(e) & 67-78	Certification Trade Mark	2(1)(zb)	Trade mark
2(1)(zg)	Well-known trade mark	9	Absolute Grounds of rejection
11	Relative grounds of rejection	16	Registration of associated trade mark
18	Procedure of Registration of Trade mark	21	Opposition of Application
25	Tenure of Trade mark	29	Infringement of trade mark
37	Assignment of Trade mark	61-68	Collective Trade mark
69-78	Certification trade mark	83	Appellate Board
101-121	Penalties	145	Trade mark agent

THE COPYRIGHT ACT, 1957

Published on	Applies to Whole of India
Contains total 79 Sections	Latest amended in year 2013

Important Definitions

Literary Work Sec 2(o)	Includes computer program, table, computer data base
Artistic Work Sec 2(c)	Means painting, sculpture, drawing, map or plan, engraving, photograph, architecture and others
Dramatic Work Sec	Choreographic work, scenic arrangement or acting which is

2(h)	fixed
Musical Work Sec 2(p)	Work of music, graphical notation of such work
Cinematograph Film Sec 2(f)	Work of visual recording through a process of moving image including sound recording accompanying such visual recording
Sound Recording Sec 2(xx)	Recording of sound from which such sound may be produced.

Meaning of Copyright (Sec 14)

Copyright means exclusive right to do or authorize doing of following work:

In case of Literary, dramatic or musical work	- Reproduction of work - Issuing copies of work to public - Performing work in public - Making cinematograph film or sound recording - Making translation or adaptation of work
In case of Computer Program (<i>Asked in Dec 2008</i>)	- To do any of acts specified above - To sell or to give on rent
In case of Artistic work	- Reproduction of work - Issuing copies of work to public - Communication of work in public - Including work in cinematograph film - Making adaptation of work
In case of Cinematograph film and sound recording	- Making copy of film or any image - To sell or to give on rent - Communicating the film or recording to public

Term of Copyright

(*Asked in Jun 2007, Jun 2008, Jun 2010 and Dec 2010*) For literary, dramatic, musical or artistic work, copyright is granted for life time of author plus 60 years. In case of joint authors, it will be 60 years after death of survivor. For photographs, cinematograph films, sound recording etc, term of copyright is 60 years from beginning of next calendar year. In case of broadcast reproduction right, time period is 25 years from beginning of next calendar year.

Copyright Board

Government has established a Copyright Board consisting of qualified person to perform following functions:

- a. Settlement of dispute regarding term of copyright, assignment of copyright etc.
- b. Granting of compulsory license in respect of Indian work, unpublished work or translation
- c. Determination of royalty etc.

Assignment of Copyright

Assignment is transfer of whole of legal rights from assignor to assignee. Copyright owner has right to use manuscript and has exclusive right similar to that of patentee. Mere transfer of manuscript does not mean assignment. Purchaser of a copy does not acquire right to reproduce.

Assignment of present as well as future work can be made either wholly or subject to limitations. However, assignment of future work comes into effect only when work comes into existence.

Assignment should be made by an agreement in writing signed by the owner. It should specify the work, and include duration, territorial extension of assignment and remuneration. In absence of above conditions, duration is deemed for five years and territory shall be India.

License of Copyright

a. License by Owner: Owner of present or future work can grant license in writing to any person. In case of future work, where owner dies before the work comes into existence, his legal representative shall be entitled to benefit of license.

b. Compulsory License for Work Withheld from Public: Where a complaint is made to Copyright Board that the owner of any work has refused to republish the work which has been earlier published or the work has been withheld from public, then the Copyright Board can after giving the owner opportunity of being heard, direct the Registrar of Copyright to grant license to the complainant to republish the work, subject to payment of royalty to owner.

c. Compulsory License in case of Unpublished Work: Where the author of work at the time of making the work was citizen of India, it is called Indian work. In case of such Indian work, where author is dead or unknown or cannot be traced, any person may

apply to Copyright Board for license to publish such work or its translation in any language.

d. License to Publish Translation: Any person may apply to Copyright Board after seven years from its first publication for license to publish a translation of literary or dramatic work in any language. However, the Copyright Board can grant license of translation of work other than Indian work after three years for the purpose of teaching or research.

e. Termination of License: Where, after grant of license, the owner of the copyright himself publishes such work at reasonable price, license granted shall stand terminated.

Copyright Society

As a general rule, the Copyright Act prohibits any person or association to carry on business of issuing license in respect of any protected work. However, Government can grant registration to copyright society after considering following factors:

- a. Protection of interest of authors,
- b. Interest and convenience of public, and
- c. Ability of person applying for license.

However, Government cannot register more than one society to do business of same class of work.

This Copyright Society can accept exclusive authorization from owner of copyright to exercise any right in relation to the work. It can enter into agreement with foreign copyright societies too. Following are functions or power of Copyright Society:

- a. Issuing license
- b. Collecting fees for license
- c. Distribution of fees among owners of right

Registration and Infringement

Registration of copyright is not compulsory under this Act (*Asked in Jun 2011*). Claim of infringement of copyright can be made even if registration has not been done. Registrar maintains various register to register different types of copyrights. Whenever author, publisher or owner of work makes application in prescribed form along with fee, Registrar makes relevant entry in this register. Before registration, the Registrar can make appropriate inquiry. Every entry made in this register is published in official gazette.

Infringement of Copyright

(Asked in Jun 2012) Copyright gives exclusive right to owner to reproduce the work. Any unauthorized copying of the protected work constitutes infringement. Following acts are deemed as infringement if done without license:

- a. Doing anything which is exclusive right is of owner.
- b. Permitting any place to be used for unauthorized communication of work to public for profit.
- c. Sale, distribution, exhibition or import of infringed copies of the work.

However import of one copy is allowed.

Exception / What is not Infringement

- a. Fair dealing of literary, dramatic, musical or artistic work for private use or research.
- b. Fair dealing of literary, dramatic, musical or artistic work for reporting current events in any news or newspaper.
- c. Making copy of computer program by lawful purchaser to utilize the program.
- d. Reproduction of literary, dramatic, musical or artistic work for judicial proceeding.
- e. Reading or recitation of reasonable extract of work in public.
- f. Publishing work in a collection consisting largely of non-copyrighted matters intended to be used in educational institutions.
- g. Reproduction of literary, dramatic, musical or artistic work by teacher.
- h. Performance of literary, dramatic, musical or artistic work in the activities of an educational institution.
- i. Performance of literary, dramatic, musical or artistic work by amateur club to non-paying audience.
- j. Making not more than three copies for public library.
- k. Hearing recording in public in enclosed room or hall (not being hotel or commercial place) meant for common use of residents in any residential premise.
- l. Reproduction of work for research or private study.
- m. Reproduction of work published in Official Gazette, or Act or Legislature with commentary.
- n. Production of translation of Act or Legislation in any Indian language if not published by Government.
- o. Publishing a photo or painting of a work of architecture.
- p. Inclusion of any artistic work situated at public place in cinematograph film.

- q. Performance of literary, dramatic or musical work in religious ceremony or Official ceremony of Government.

Remedies for Infringement

(Asked in Dec 2006, Jun 2008 and Dec 2008) Owner of copyright has following remedies against the person who does infringement:

- a. Injunction, i.e. owner can restrain the person doing infringement to stop such infringement.
- b. He can claim for damage suffered.
- c. He can proceed to obtain possession of infringed copies.
- d. All plates or moulds used in production of infringed copies are deemed to be property of owner of copyright.

Other Provisions

Rights of Author: Author is a person who has created the work, i.e. in case of book, the writer, in case of musical work, the composer etc. Author has right to restrain a person who infringes copyright and also can claim damage. Author has such right even after he has assigned the work.

Broadcasting Organization: Broadcasting organization has reproduction right for 25 years starting from next calendar year in which broadcasting is made. Following are not deemed to be infringement of broadcasting right:

- a. Making sound/video recording for private use or for teaching/research.
- b. Fairly using the work in reporting of current events.

International Copyright: (Asked in Jun 2007, Dec 2007 and Jun 2010) Central Government can extend benefits of copyright to work published first time in foreign country. These rights are equivalent to right available to work in home country and subject to condition that the foreign country should also extend same benefit to Indian work. These benefits are given upon following conditions:

- a. Work is first published by International Organization.
- b. There is no copyright of that work in India at that time.

Central Government can extend above benefits to broadcasting organization too.

Offences and Penalties: Any person knowingly infringes any copyright is liable to imprisonment for 6 months to 3 years and fine of Rs 50,000/- to 2 lakh. Similarly any person who use infringed copy of computer program is liable to imprisonment for 7 days to 3 years and fine of Rs 50,000/- to 2 lakh.

Police officer has power to seize without warrant all copies of the work and plates/mouldings used in making infringed copies.

Appeal: Any person aggrieved by decision of Magistrate for seizure of infringed copy of the copyrighted material can prefer appeal to appellate court. Any person aggrieved by decision of Registrar of Copyright can prefer appeal to the Copyright Board within 3 months. From the order of Copyright Board, appeal lies to High Court within 3 months. Registrar of Copyright and Copyright Board shall have powers of civil court so as to issue summon, enforcing attendance of witness, receiving evidence on oath etc.

List of Some Important Sections of the Copyright Act

Section	Particulars	Section	Particulars
2(d)	Author	11	Copyright Board
14	Meaning of Copyright	18	Assignment of Copyright
22-29	Term of copyright	30-32B	License
33	Copyright Society	40-43	International Copyright
51	When copyright is infringed	52	What is not infringement

THE DESIGNS ACT, 2000

Enacted on 25-May-2000	Applies to Whole of India
Contains total 48 Sections	Controlling authority Controller General of Patent, Designs and Trade Marks

This Act was enacted by repealing the earlier Act called The Designs Act, 1911 with a view to protect industrial designs.

Important Definitions

Design Sec 2(d)	Means only the features of shape, pattern or composition of line or colour applied to any article in 2D or 3D format by any manual or mechanical process which can be judged by eyes. It does not include any Trade mark or artistic work (under copyright)
Proprietor of a new or original design Sec 2(j)	Includes (1) Author of design (2) Person who get the design executed through other person and (3) Person who acquires design right from author

Some Special Word/ Terms used in this Chapter

Scandalous	Disgraceful, immoral
Obscene	Offensive to morality, corrupt
Reciprocal	Mutual, simultaneous

Application

Sec 5 provides that application for design can be made by any person who claims to be proprietor of new or original design can be made to the Controller. Application shall be made in prescribed format and shall be accompanied by four copies of representation of design and prescribed fee. This application can be sent by hand or by registered post. Application shall state the class to which such design is to be registered. The Designs Rules, 2001 prescribes classification under which application can be preferred.

On application, if any objection appears to Controller, which requires amendment in application, he may communicate list of such objections to the applicant. Applicant shall remove/solve the objections within 6 months.

Under Sec 6, Design is registered for all or any of the articles comprised in a particular class. Where design is registered for any one article coming under given a single classification, the application for same design but for any other article in same classification can be granted to the same applicant. Say 'Bottle' and 'bag' comes under same classification and if any one has obtained design under 'bottle' he himself will not be refused from obtaining same design for 'bag'.

The Controller can either grant or refuse the application. On refusal, the person aggrieved can prefer appeal to High Court.

The Controller shall grant a certificate of registration to the applicant and publish the fact of registration of the design. A register of designs is kept at the Patent Office, in which all particulars of design shall be entered. Such register is prima facie evidence of any fact regarding design.

Reciprocal Application: Any person who has applied for any design in UK or any other convention country can claim the same design in India. However, such claim shall be made within 6 months from the date of application in UK or other convention country.

Rejection

The controller shall not register the design if:

- a. It is not new or original

- b. It has been published in India or elsewhere in any format before priority date of application of applicant
- c. It is not significantly different from known design or their combination
- d. It contains scandalous or obscene matter.

Substitution

Where before registration of design:

- a. A person has applied for registration of any design, and
- b. Other person claims same design as his design due to any agreement or assignment

then the Controller can proceed to register such design in the name of claimant. However, the design should be identified to the satisfaction of the Controller and the agreement or assignment shall also be produced under which claim of the claimant has been made.

Copyright on Registration

Sec 11 provides that on registration, the registered proprietor shall have copyright in the design for 10 years. After expiry of such 10 years, the Controller can extend the period of copyright for 5 years on payment of renewal fee.

During copyright, any person may inspect the design and obtain certified copy of the design on payment of fee to Controller.

Restoration: Where renewal fee is not paid, the right is lapsed which can be restored within 1 year, from the date of expiry of original period on payment of fee. Application for restoration, as applied by applicant, shall be published by Controller.

Marking before Sale

Where design of any article is registered, a mark with the word "Registered" or "Regd" shall be affixed alongwith registration number on such article before delivery for sale of such article.

Cancellation of Registration

Any interested person can file a petition to Controller for cancellation of registration of design on following grounds:

- a. The design is already registered in India by any other person
- b. It has been published in India or elsewhere before its priority date
- c. The design is not new or original

- d. It does not come under definition of design

Petition shall be in duplicate and one copy of it shall be sent to the registered proprietor. Registered proprietor can file his counter statement within prescribed time period. Controller shall fix a date for hearing on giving 10 days notice and shall decide the matter. Any person aggrieved by decision of Controller can prefer an appeal to High Court.

Piracy of Registered Design

Following acts are deemed to be infringement of design, if done without permission of registered proprietor:

- a. Applying design or its imitation on any article in its sale
- b. Import any article for the purpose of sale
- c. Knowingly publishing any article for sale

Any person doing above act in contravention of the Act, shall be liable to pay Rs 25,000 to proprietor. Further the proprietor also have right to sue for recovery of damage or injunction in District Court.

Power and Duties of Controller

1. The Controller shall have powers of a civil court so as to call and receive evidence, taking oath, enforcing attendance of witness, discovery of documents etc.
2. Controller shall have power to get direction from Central Government in case of any doubt or difficulty in administration of this Act.
3. Controller has power to reject application on appropriate ground.

Other Provisions

1. Every register kept under this Act at Patent Office is open for inspection and any person can take certified copies of any entry in such register upon payment of prescribed fee (Sec 26).
2. Where any application for a design has been refused, then any information, drawing, photo, representation relating to such application shall not be open for inspection.
3. Any person, who is entitle to any design due to any assignment or transmission, can apply to the Controller and the Controller, thereupon, shall register him as proprietor of such design.
4. The Controller shall not disclose any information of a design if it can be prejudicial to interest of security of India.

Design Agent

All applications and other communications to the Controller shall be signed by or through a legal practitioner or agent. The agent under this Act means the Patent Agent under the Patents Act.

List of Some Important Sections of the Designs Act

Section	Particulars	Section	Particulars
2(d)	Design	2(j)	Proprietor of design
3	Appointment of Controller	4	Design which can't be registered
5	Application for registration	7	Publication of Application
8	Substitution of Application	9	Grant of design
11	Term of copyright	12	Restoration of lapsed designs
17	Inspection of register	19	Cancellation of registration
22	Piracy of registered design	43	Patent Agent to Design Agent

GEOGRAPHICAL INDICATION OF GOODS (REGISTRATION & PROTECTION) ACT, 1999

Enacted on 30-Dec-1999 but came into force on 15-Sept-2003	Applies to Whole of India
Contains total 87 Sections	Controlling authority is Controller General of Patent, Design & Trade Mark

This Act was enacted by reason of TRIPS agreement under WTO regime to register and protect some geographical indication of goods which shows that goods relates to such geographical area.

Important Definitions

Geographical Indication Sec 2(e)	Geographical indication in relation to goods, means indication which identifies goods as originated or manufactured in such territory, region or locality in India to assure a given quality, reputation or other characteristics of goods and that the manufacturing or any other similar processing takes place in such territory, region or locality. E.g. Kolhapuri Chappal, which is
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	manufactured in Kolhapur and every manufacturer of such Chappal has to follow given quality.
Deceptively Similar Sec 2(c)	So resemble as to be likely to deceive or create confusion.

Some Special Word/ Terms used in this Chapter

Homonym	A word which sounds or spells the same as another word but has different meaning, e.g. "two boys wants to play too".
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Registrar of Geographical Indications

The Controller General of Patent, Designs and Trade Marks shall be registrar under this Act. Central Government shall establish a place of registry, to be known as Geographical Indications Registry. A register shall be maintained at Head Office of Geographical Indications Registry to enter particulars of all Geographical Indications.

Registration of Geographical Indications

Geographical indications are registered u/s 8 for class of the goods as classified by the Registrar. Classifications are given in Fourth Schedule to the Geographical Indications Rules. For example pharmaceuticals, food for babies, dental wax etc comes under same classification (i.e. Class 5) and surgical, dental and medical instruments comes under same classification (i.e. class 10).

Sec 9 provides that following geographical indications shall not be registered:

- a. Use of which can create confusion
- b. Use of which can be unlawful
- c. Which contains scandalous or obscene matter
- d. Which falsely represent that goods belong to another territory

Sec 10 provides that a homonymous geographical indication can be registered if registrar is satisfied it is different from other homonymous geographical indication and shall not misled the consumer.

Procedure for Registration

Any association of persons or producers or any authority representing interest of producers of the concerned goods shall apply to the Registrar in prescribed form. Sec 11 clearly stipulates that geographical indication is not granted to only one person, rather it is granted on behalf of all manufacturers of same territory.

This application shall contain:

- a. A statement as to how the geographical indication designates the goods as originating from particular territory or region. For example, if application relates to “Mysore Silk”, the statement shall show why this silk is different from silk produced at any other city and what is connection of silk with Mysore.
- b. Class of the goods
- c. Map of the territory etc

Application is examined by the Registrar who may refuse the application or accept it absolutely or subject to modification. Registrar may withdraw the accepted application before its registration, if there was any error in application.

On acceptance of application, it shall be advertised by the Registrar. Within 3 months from such advertisement, any person may oppose the application. Registrar shall send the particulars of opposition to the applicant, who shall submit his counter-statement within 2 months. Registrar can hear both the parties and can decide the matter.

Sec 15 provides for correction and amendment of the application by the applicant before or after acceptance of the application.

Sec 16 provides that where application has not been opposed, or the opposition has been decided in the favour of applicant, he shall register the geographical indication. If because of default by applicant, registration is not completed within 12 months from the date of application, Registrar can abandon the application.

Any person who claims as producer can apply to the Registrar for registration as “authorized user” of such geographical indication.

Duration, Renewal, Removal, Restoration

Sec 18 provides duration of the geographical indication to be 10 years which can be renewed for further 10 years from time to time.

Before the expiry of time period of registration, the Registrar shall give a notice to the proprietor or authorized user of the geographical indication requiring him to get the indication renewed. On failure to renew, the Registrar can remove the indication. However, Registrar shall not remove the indication within 6 months from expiry of registration.

After 6 months of expiry of registration but before 1 year, the Registrar can restore the removed indication, if application has been made in prescribed form.

Effect of Registration

Sec 20 provides that no one can sue for infringement of geographical indication which is not registered under this Act. Registered indication gives following rights:

- a. To get relief from infringement and
- b. To exclusively use the indication

Infringement of Registered Indication

Sec 22 prescribed following acts as infringement of registered indication:

- a. Use of geographical indication in design or presentation of goods in such a manner as to suggest that such goods have been originated from such area. For example, if any person selling “kesar” mango produced in Maharashtra but shows them to be “Gir Kesar Mango” (Gir kesar is registered indication).
- b. Use of geographical indication contrary to honest practice of competition which may create confusion or misleading impression on the public.
- c. Use another geographical indication to the goods which may be literary true but falsely represents its origin. For example, any person selling “Bikaneri Bhujia” made at Sholapur.

Other Provisions

1. Sec 24 prohibits assignment or transfer of the geographical indication.
2. Sec 25 prohibits registration of trade mark containing geographical indication. However, earlier registered trade mark shall not be affected by this provision.
3. Registrar shall have power to correct or alter the Register of geographical indications maintained by him.
4. Any kind of appeal against order of Registrar shall lie within 3 months to the Appellate Board
5. Any person who falsifies or falsely applies geographical indication to the goods shall be punishable with imprisonment up to two years and fine up to Rs 2 lakh.
6. All the acts to be done under this Act shall be done by legal practitioner or any other person registered as agent under this Act.
7. Government shall have power to declare any country as convention country to which India can provide same privilege as it accords to Indian citizens.

List of Some Important Sections of the Geographical Indications Act

Section	Particulars	Section	Particulars
2(a)	Authorized User	2(e)	Geographical indication
9	Prohibition on registration of	11	Application for registration

	some geographical indication		
14	Opposition of application	16	Registration of application
18	Duration, renewal, restoration of indication	20-21	Effect of registration
22	Infringement of indication	31	Appeal
84	Convention countries		

QUESTIONS AND ANSWERS

A. Choose appropriate answer out of multiple choices:

1. Jun 2009 - 3(b)(iv) A registered trade mark requires to be renewed on expiry of the period of —

- (a) 7 years
- (b) 10 years
- (c) 14 years
- (d) 5 years.

2. Intellectual properties are:

- (a) Tangible
- (b) Intangible
- (c) Both a and b
- (d) None of above

3. Which of following person can not apply for patent:

- (a) Person claiming to be true and first inventor
- (b) Person being assignee of first inventor
- (c) Legal representative of deceased inventor
- (d) Person interested in that patent

4. Where reference to other patent has been inserted in complete specification of the applicant, the Controller can delete the reference if:

- (a) Other patent is revoked
- (b) Complete specification is amended
- (c) Other patent is invalid
- (d) All of above

5. While allowing registration to a copyright society, Government shall not consider following factor:

- (a) Protection of interest of author
- (b) Prior existence of similar kind of international society
- (c) Interest and convenience of public
- (d) Ability of person applying for copyright society

6. Who can oppose grant of patent after its grant but before 1 year from its publication:

- (a) Any Interested Person
- (b) Any competitor

(c) Any Government

(d) Controller himself

7. A _____ trade mark is the mark which has become so to substantial segment of public which uses such goods in such a way that it shows a connection of mark with the goods:

(a) Certification Trade mark

(b) Well known trade mark

(c) Collective trade mark

(d) None of above

8. Which of following is deemed to be infringement of registered trade mark:

(a) Use of mark to show quality of goods

(b) Use of mark with permission of its owner

(c) Use of mark in part or accessory of goods

(d) None of above

9. Copyright for Design is granted at a time for:

(a) 5 years

(b) 10 Years

(c) 15 years

(d) 60 years (1 mark each)

Answers: 1 B 2 C 3 D 4 D 5 B 6 A 7 A 8 D 9 B

B. Rewrite following sentences after fill-in the blanks:

1. Jun 2007 - 3(b)(i) Literary, dramatic, musical or artistic works enjoy copyright protection for _____ years after the death of the author. (Repeated in Jun 2010 3(b)(v))

2. Dec 2007 - 3(b)(i) The term of a patent is _____ year(s). (Repeated in Jun 2011 3(b)(iii))

3. Dec 2007 - 3(b)(v) A trade mark which is not used for a period of _____ year(s) of its registration is liable to be removed.

4. Jun 2010 - 3(b)(iv) The term of every patent granted after the commencement of the Patents (Amendment) Act, 2002 shall be _____ year(s) from the date of filing of application for the patent.

5. Jun 2012 - 3(b)(ii) The registration of trade mark requires to be renewed for successive periods of _____.

6. Jun 2012 - 3(b)(iii) The compulsory licence in respect of a patent is granted after the expiration of _____ from the date of grant of a patent subject to certain conditions.

7. Controller can direct to post date the application if applicant of patent makes a request for a date not more than for a period of _____.

8. Where Controller is of opinion that the applied invention cannot be performed without _____ of other patent, he can make direction that a reference to that other patent shall be inserted.

9. Where Central Government has notified class of an invention as secret for _____ purpose, the Controller shall give direction for prohibiting publication of any information regarding that class of patent.

10. Trade mark consists of word, letter etc which _____ goods of one producer from similar goods of other manufacturer.

11. On surrender of patent by the patentee, the Controller publishes his offer of surrender and thereupon any _____ person can oppose the same.

12. _____ from grant of compulsory license, if patented invention is not worked then Government or any interested person can apply Controller to revoke the patent.

13. Where any notice of opposition is given to Controller, he shall notify the same to patentee and shall establish an _____.

14. Patent of addition is granted for equal term to that of _____ period of original patent.

15. Patent grants monopoly status to its holder to regulate _____, supply and _____ of patented product.

16. Lapsed design can be restored within _____ years from the date of expiry of copyright of design.
(1 mark each)

Answer 1 60 years	2 20 years	3 5 years	4 20 years	5 10
years 6 3 years	7 6 months	8 Potential infringement	9 defence	
10 Distinguishes	11 Interested	12 2 years	13 Opposition Board	
14 Unexpired	15 production, price	16. 1 year		

C. State with reason whether following statement is true or false:

1. Jun 2007 - 2(i) All 'inventions' are patentable.

2. Dec 2007 - 2(i) The Copyright Board has power to limit the user of copyright to any particular territorial area.

3. Dec 2007 - 2(vi) The term 'industrial property' is a collective name for rights referring to the commercial or industrial activities of a person.

4. Jun 2008 - 2(v) The term of copyright in published literary works and cinematograph films is 60 years.

5. Jun 2008 - 2(vi) A patent is granted for a definite period.

6. Dec 2008 - 1(v) Grant of patent confers on the patentee to commercially exploit his invention without any conditions.

7. Dec 2008 - 1(vi) A copyright owner possesses the individual right of exclusive enjoyment similar to that of a patentee of an invention as also right to dispose of the manuscript.

8. Dec 2009 - 2(vi) A trade mark may not distinguish the goods of one manufacturer or trader from similar goods of other manufacturers or traders .

9. Jun 2010 - 2(ii) In all legal proceedings relating to trade mark registered under the Trade Marks Act, 1999, the original registration and all subsequent assignments and transmissions thereof shall be *prima facie* evidence of its validity.

10. Dec 2010 - 2(iv) Patents are granted merely to enable the patentees to enjoy a monopoly for the importation of the patented article.

11. Jun 2011 - 2(ii) No action for the infringement of copyright can be brought unless the copyright is registered.

12. Jun 2012 - 2(vi) Registration of a trade mark under the Trade Marks Act, 1999 is a *prima facie* evidence of the validity of registration in all legal proceedings.

13. Dec 2012 - 2(vi) The author of a literary work has no moral rights after the assignment of the copyright.

14. Registered user of trade mark has right to assign the same.

15. In case of death of owner, his representative shall be entitled to benefit of license for copyright.

16. Government can register more than one society to do business of same class of copyright work.

17. Without registration, no rights are available under Copyright Act.

18. Person resident in India can make an application outside India for a patent by permission of Controller. (3 mark each)

Answer: 1 F (Act defines what are not invention) 2 T 3 T

4 F (It is life time *plus* 60 years) 5 T 6 F 7 T 8 F 9 T 10 F

11 F 12 T 13 F 14 F 15 T 16 T 17 F 18 T

D. Distinguish between:

1. Jun 2007 - 3(a)(ii) 'Intellectual property' and 'industrial property'. *(Repeated in Jun 2010 3(a)(i))*
2. Jun 2008 - 3(a)(iii) 'Invention' and 'patentable invention' under the Patents Act, 1970. *(Repeated in Jun 2009 3(a)(iii) and Dec 2011 3(a)(iii))*
3. Dec 2008 - 3(a)(ii) 'Registered proprietor of a trade mark' and 'registered user of a trade mark' under the Trade Marks Act, 1999.
4. Dec 2009 - 3(a)(i) 'Certification trade marks' and 'collective trade marks'.
5. Dec 2009 - 3(a)(iii) 'Provisional specification' and 'complete specification' under the Patents Act, 1970.
6. Jun 2010 - 3(a)(iii) 'Patent' and 'patent of addition'. *(Repeated in Jun 2011 3(a)(iv))*
7. Dec 2010 - 3(a)(ii) 'Trade mark' and 'certification trade mark'.
8. Jun 2011 - 3(a)(ii) Registered proprietor of trade mark and registered user of trade mark
9. Jun 2012 - 3(a)(iv) 'Infringement of trade mark' and 'passing off'.
10. Dec 2012 - 3(a)(ii) 'Surrender of a patent' and 'revocation of a patent' under the Patents Act, 1970.
11. Dec 2012 - 3(a)(iii) 'Assignment of a trade mark' and 'transmission of a trade mark' under the Trade Marks Act, 1999.
12. 'Design' and 'Trade mark'
13. 'Design' and 'Copyright' *(5 marks each)*

E. Write short notes on:

1. Dec 2006 1(v) Secrecy of certain inventions
2. Jun 2007 - 1(iv) Contents of complete specification *(Repeated in Jun 2009 1(vi))*
3. Jun 2007 - 1(v) International copyright
4. Jun 2007 - 1(vii) Registered user.
5. Jun 2007 - (vii) A certification trade mark is a 'trade mark' under the Trade Marks Act, 1999.
6. Dec 2007 - 1(i) Company Secretary as patent agent
7. Jun 2008 - 1(ii) Element of 'novelty' in an invention

8. Dec 2008 - 2(i) Term of patent. *(Repeated in Jun 2010 1(iii) and in Jun 2012 1(v))*

9. Dec 2008 - 2(ii) Collective trade marks.

10. Dec 2008 - 2(iv) Remedies against infringement of copyright.

11. Jun 2010 - 1(vi) International copyright.

12. Dec 2010 - 1(iv) Restoration of lapsed patents

13. Dec 2010 - 1(v) Term of copyright

14. Jun 2011 - 1(v) Patent Agent

15. Dec 2011 - 1(iii) Collective trade mark

16. Dec 2011 - 1(vi) Potential infringement of a patent

17. Dec 2012 - 1(v) Inventive step

18. Dec 2012 - 1(vii) General principles applicable to working of patented invention.

(3 marks each)

F. Answer following

1. Dec 2006 - 4(a) Mention the provisions of the Trade Marks Act, 1999 regarding infringement of registered trade marks.

2. Dec 2006 - 4(b) Elaborate the powers of copyright owner in the event of infringement of his rights under the Copyright Act, 1957.

3. Dec 2006 - 4(c) State any five important grounds on which the grant of patent can be opposed under the Patents Act, 1970. *(Repeated in Jun 2010 5(a))*

4. Jun 2007 - 5(iii) Mention the conditions subject to which a patent is granted under the Patents Act, 1970.

5. Jun 2007 - 6(ii) Discuss the provisions of the Trade Marks Act, 1999 regarding assignment and transmission of registered trade marks. *(Repeated in Jun 2011 4(c))*

6. Dec 2007 - 5(ii) Explain the provisions of the Patents Act, 1970 regarding restoration of lapsed patents.

7. Dec 2007 - 5(iv) What are the requisites for conferring copyright protection to works of international organisations ?

8. Jun 2008 - 5(ii) Name the persons who can make an application for the sealing of patent under the Patents Act, 1970.

9. Jun 2008 - 5(iii) Mention the remedies for infringement of copyrights under the Copyright Act, 1957.

10. Jun 2008 - 5(iv) What are the acts which do not amount to infringement of a trade mark under the Trade Marks Act, 1999 ?

11. Dec 2008 - 5(a) Mention the rights considered as intellectual property by the Convention establishing World Intellectual Property Organisation, 1967.

12. Dec 2008 - 5(b) What are the provisions of the Patents Act, 1970 regarding patents of addition?

13. Dec 2008 - 6(iv) What is meant by 'copyright' in the case of a computer programme ? When is a copyright infringed under the Copyright Act, 1957 ?

14. Jun 2009 - 4. (a) What are the circumstances under which a registered trade mark is deemed to be infringed under the Trade Marks Act, 1999.

15. Dec 2009 - 4(c) Do the following acts constitute infringement of copyright under the Copyright Act, 1957 :

(i) Making or publishing of a painting, drawing, engraving or photograph of a work of architecture.

(ii) Reproduction of a literary, dramatic, musical or artistic work in the form of a cinematograph film.

(iii) Reconstruction of a building or structure in accordance with the architectural drawings or plans by reference to which the building or structure was originally constructed.

(iv) Making of any sound recording or visual recording for the private use of the person making such recording, or solely for the purposes of bona fide teaching or research.

(v) Making translation of a literary work. (1 mark each)

16. Jun 2012 - 5(c) Discuss the provisions of the Copyright Act, 1957 relating to infringement of a copyright.

17. Jun 2012 - 5. (a) Explain the powers of the Controller in respect of an application for a patent which has substantial risk of infringement.

18. Dec 2012 - 5(b) Does a patent obtained in India give protection worldwide ? Is it possible to file an international application in India under the Patent Cooperation Treaty (PCT) ?

19. What are grounds on which application for design can be rejected? (5 marks each)

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