

A. FAQ on “Intellectual Property Rights (IPR)”

1. What are various rights to protect idea?

Ans. The Intellectual Property Rights such as patents, designs or models, trademarks or copyrights can protect the materialization/ tangible form of an idea. The idea cannot be protected as such, however, when the outcome of an idea is put in a tangible form i.e Process/Product/Device ; it can be protected under Patent/or any other form of Intellectual Property Rights (IPR). The forms of IPR need to be properly judged/ assessed before protection from an Expert body. Patent Information Centre, West Bengal State Council of Science and Technology under Department of Science and Technology and Biotechnology, GoWB provides the services of IP protection for the State of West Bengal.

2. When can an idea be protected by Patents ?

Ans. As per law, only those inventions that fulfil the following three criteria of patentability can be patented:

- I. The invention must be new/ Novel.
- II. The invention must be non-obvious/having Inventive Step
- III. The invention must be useful/having Industrial Applicability

The invention should fulfil the criteria mentioned in Section 3 and 4 of the Patent Act, 1970 latest amended on 2020.

3. When can an idea be protected by Industrial Designs Registration ?

Ans. When a design adds value to a product by enhancing its aesthetic look, it can be registered as Industrial Designs. An industrial design consists of the creation of

a shape, configuration or composition of pattern or color, or combination of pattern and color in three-dimensional form containing aesthetic value. An industrial design can be a two- or three-dimensional pattern used to produce a product, industrial commodity or handicraft.

4. When can an idea be protected by Trademarks?

Ans. Trademark protection is created upon providing goods or services in conjunction with the mark. However, such use-based protection is limited to the geographic area of use. Trademarks are another form of intellectual property. A trademark can be any word, phrase, symbol, design or combination thereof that identifies the source of a company's products or services.

5. When can an idea be protected by Copyrights?

Ans. The expression of idea in form of any literary, dramatic, musical or artistic work or any other presentation can be protected by Copyrights. A copyright is a collection of rights that automatically vest to someone who creates an original work of authorship – like a literary work, song, movie or software. These rights include the right to reproduce the work, to prepare derivative works, to distribute copies, and to perform and display the work publicly.

6. Which are patentable under Indian Patent Act?

Ans. The following are not considered as inventions and are not patentable under Sections 3 and 4 of the Patents Act 1970:

- an invention which is frivolous or which claims anything obviously contrary to well-established natural laws;
- an invention whose primary or intended use or commercial exploitation is contrary to public order or morality or which causes serious prejudice to human, animal or plant life, health or the environment;
- the mere discovery of a scientific principle or the formulation of an abstract theory;
- the discovery of a living thing or a non-living substance occurring in nature;
- the mere discovery of a new form of a known substance which does not enhance the known efficacy of that substance, the mere discovery of a new property or new use for a known substance or the mere use of a known process, machine or apparatus unless the known process results in a new product or employs at least one new reactant (wherein salts, esters, ethers, polymorphs, metabolites, pure form, particle size, isomers, mixtures of isomers, complexes, combinations and other derivatives of known substance will be considered to be the same substance, unless they differ significantly in properties with regard to efficacy);
- a substance obtained by a mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substance;
- the mere arrangement, rearrangement or duplication of known devices which function independently of one another in a known way;
- a method of agriculture or horticulture;

- any process for the medicinal, surgical, curative, prophylactic, diagnostic, therapeutic or other treatment of human beings, or any process for a similar treatment of animals to render them free of disease or to increase their economic value or that of their products;
- plants and animals in whole or any part thereof other than microorganisms, including seeds, varieties and species and essentially biological processes for production or propagation of plants and animals;
- a mathematical or business method, a computer programme *per se* or algorithms;
- a literary, dramatic, musical or artistic work or any other aesthetic creation, including cinematographic works and television productions;
- a mere scheme, rule or method of performing a mental act or playing a game;
- a presentation of information;
- the topography of integrated circuits;
- an invention which, in effect, is traditional knowledge or an aggregation or duplication of known properties of traditionally known component or components; and
- inventions relating to atomic energy.

7. What are the term periods of these protections ?

Ans: The terms of protection of Patents, trademarks, Industrial designs, and Copyrights are 20 years, 10 years to as long as renewed, 15 years and lifetime of author plus 60 years respectively in india.

8. What is the cost of filing an application for Patents, Industrial Designs and Trademarks and Copyrights as an Individual?

Ans: The following are the Fees for filing as an Individual:

Patent application : Rs,1600/-

Industrial Design application : Rs. 1000/-

Trademarks: Rs 4500/- per Class

Copyrights: Rs.500/- per work

Source: www.ipindia.nic.in. For Institution, please see Fees Schedule www.ipindia.nic.in

9. What is the significance of novelty search before filing a patent application?

Ans: A patent search consists of looking through hundreds of issued patents and published patent applications, commonly referred to as “prior art.”

Conducting a patent search can save you time and from investing unnecessary money into an invention by learning if it already exists or not. After a thorough patent search, it will be determined if a patent will infringe on the rights of other patents or can invalidate a competing patent. A patent search can also assist with improving an idea by helping inventor understand what else is out there. When we research other available patents, we're able to gauge the uniqueness and usefulness of our invention and adjust accordingly, if needed.

10. What facilities are the available for a Startup incase of Intellectual Property Rights?

Ans. The Government of India has started the “Scheme for facilitating Start-Ups Intellectual Property Protection (SIPP)” to nurture their innovation and creativity and promote awareness and encourage IPR protection amongst Start-Ups. The Scheme envisages to nurture and mentor innovative and emerging technologies among Start-Ups and assist them in protecting and commercialize it by providing them access to high -quality IP services and resources. For detail information please visit www.ipindia.nic.in. For start-up registered company, Govt. of India provides the professional fees to Start up facilitator attorney for filing Intellectual Property Rights for Start- up Companies.

11. I have isolated a microorganism from Sunderban region capable of heavy metal sequestering. What kind of IP protection can I get for my research?

Ans: Any living or non living things isolated from nature is not patentable under section 3c of Indian Patent Act. However, any formulation or device invented using the same may be patentable or if the method of isolation of the microorganism is novel it may be patentable.

12. What are the criteria of patentability of an invention in India?

Ans: The invention should be novel, has inventive merit and is capable of industrial application to become patentable also it should not fall under the non patentable invention mentioned in section 3 and 4 of the Indian Patent Act.

13. I have already published my invention, can I get a patent for the same?

Ans: Yes, the invention can still be eligible for patent provided the application of patent is made within 12 months from the date of such publication.

14. Can literary work be patented?

Ans: No, literary or artistic work are protected under Copyright.

15. Is computer software patentable?

Ans: Computer software *per se* is not patentable in India. However, any device with such software embedded in it may be patentable.

16. I have developed a new hybrid variety of rice. Can I get a patent for the same?

Ans: Plant varieties are not patentable in India under Section 3j of Indian Patent Act. However it can be protected under Plant Variety Protection & Farmers Right Act.

17. Is there any means to protect the goodwill of a handloom being misused by powerlooms?

Ans: Traditional handloom, which owns its distinctive reputation to a particular geographical location, can be protected under Geographical Indication Act and action can be taken against any perpetrator wrongfully using the name, if such name is registered as Geographical Indication.

18. I wish to file a trademark for my company. How do I ensure that the name is unique?

Ans: A trademark search can be done for the proposed trademark through Trademark database of Indian Trademark office.

19.I have designed equipment for mopping the floor. Should I go for patent protection of Design registration?

Ans: If the new design is merely for aesthetic appeal it may be protected by Design Registration but if the said design has a functional utility it may be protected by Patent.

20.I am the producer of Santipur Saree, manufacturing the same in Santipur area. How can I benefit from the G.I registration status of Santipur saree?

Ans: An authentic practitioner of an item registered as Geographical Indication may apply to register themselves as authorized user for the same Geographical Indication to the Indian Geographical Indication Registry. On being registered so, they will be allowed to market their product as GI registered product.