



Overview of Intellectual Property Rights (IPRs)

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Received: 09-04-2022; Revised: 21-06-2022; Accepted: 26-06-2022; Published on: 15-07-2022.

ABSTRACT

Intellectual Property Right is exclusive right is granted by government of India for protection originality of work of inventor. Simple intellectual property right is intangible creation of human mind. In this intellectual Property right includes in Patent, Trademark, Trademarks, Industrial design, Layout design and Copyright oriented rights. Intellectual right is important for maintaining the quality, safety, efficacy of any Pharmaceutical product and services. It is certification authority and standard authority for certification and identification of product in would wide market. This intellectual property right is the rights given to people over the creation of their minds. They usually give the creator an exclusive right over the use of his/her creations for a certain period of time. Intellectual property refers to creations of the mind, inventions in artistic, literary, scientific and industrial field. It is important application for Protection of invention of inventor and maintaining the quality as well as standard of work of inventor. the present review describes The Basic concept in IPR, Objectives in IPR, Type of IPR (Patents, Trademarks, Copyrights And Related Rights, Geographical Indications, Industrial Designs, Trade Secrets, Layout Design For Integrated Circuits, Protection of New Plant Variety), Duration of Intellectual Property Rights, Concept Related Patents (Types of Patent, Tangible And Intangible Property, Novelty, Non-Obviousness, Utility, Anticipation, Prior Art, Global Perspective Of Patent System, Role Of International Organization, Indian Patent Act 1970, Patentability, Patent Infringement, Commercialization, Patent Licensing), Applications of IPR.

Keywords: Patent, Copyright, Trademark, Integrated Circuits, Patentability.

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DOI:
10.47583/ijpsrr.2022.v75i01.028



DOI link: <http://dx.doi.org/10.47583/ijpsrr.2022.v75i01.028>

Various forms of Intellectual Property

- Patents
- Trademarks
- Copyright
- Industrial Designs
- Geographical Indication
- Semiconductor Integrated circuit's layout – Design
- Trade secrets

Patent

Patent is a monopoly right given by the government to an inventor for a period of twenty years. Once granted, a patent gives the inventor the right to exclude others from making, using, selling, importing or offering for a sale of the inventor's invention for the duration specified in the terms of patent. After twenty years the patent falls under public domain there after anyone can use the invention without permission from patentee. Invention can be any new article, composition of matter, machine, process or any new valueaddition to the above said.

Patents are territorial rights, which means that an invention is only protected in the countries or regions where patent protection has been obtained. In other

INTRODUCTION

Intellectual property (IP) refers to any Intellectual creation of mind. Intellectual Property laws give people the right to own and profit from their artistic, scientific and technological creations for a designated period of time. Inventors are granted to a variety of intangible assets, such as ideas, business methods, inventions, musical piece, literary work, artistic works, discoveries, words, phrases, symbols, and designs.

The primary objective of an Intellectual Property Rights is to encourage inventions by promoting their protection and utilization so as to contribute to the development of Industries, which in turn contributes to the promotion of technological innovation and to the transfer and dissemination of technology.¹



words, if you have not been granted a patent with effect in a given country, your invention will not be protected in that country enabling anybody else to make, use, import or sell your invention in that country.²

Patent right can be shared whenever there are more than one patentees. Patent rights can be:

- a) Licensed or sold for a commercial consideration.
- b) A right to initiate legal proceedings against infringement.
- c) The patentee can commercially exploit its potential without fear of copying or imitation without the patentee's permission during the term of patent.

Invention refers to the technical solution to a technical problem. It may be an innovative idea or may be in the form of working model or prototype.

Innovation refers to the translation of the invention into a marketable product or process.³

Patentability Criteria

A new product or process which involves an inventive step and capable of being made or used in an industry and should meet following criteria.

- a) Novelty means the matter disclosed in the specification is neither published in India nor anywhere else where before the date of filing of patent application in India.
- b) Inventive step means the invention is not obvious to a person skilled in the art in the light of the prior publication / Document.
- c) Industrially applicable means the invention should possess utility, so that it can be made or used in an industry.

Inventions not patentable

- Discoveries and scientific theories
- Aesthetic creations
- Schemes rules and method for performing mental acts
- Mere discoveries of substances as they naturally occur in the world
- Inventions that may affect public order good morals or public healthy.
- Diagnostic, therapeutic and surgical methods of treatment for humans or animals
- Plants and animals other than micro organisms and essentially biological processes for the production of plants or animals
- Other than non-biological and microbiological

process and

- Computer programs⁴

Patent Specification

The Content of complete specification includes abstract, field of the invention, background of the invention, prior art of the invention, summary of the invention, detailed description of the drawing, and claims etc. Fee Rs 1000 in case of individuals and Rs 4000 in case of legal entities.

Trademark

Trademark is a unique sign or indicator used by an individual, business organization or other legal entity to identify that the products and /or services are offered to the consumers with which the trademark appears. It would have originated from a unique source of origin, in order to distinguish its products or valid for services from those of other entities.⁵

Types of marks

There are various types of marks namely

- Trademarks (marks used to distinguish certain goods as those produced by a specific enterprise),
- Service marks (Marks used to distinguish certain services as those provided by a specific enterprise),
- Collective marks (marks used to distinguish the goods or services of a person or an association of persons who is the proprietor thereof from those of others.),
- Certification marks (marks used to distinguish the goods or services that comply with a set of standards and have been certified by a certified authority) and
- Well-known marks (marks that are considered to be well-known in the market and as result benefit from stronger protection).⁶

Functions of Trademark

A trademark is essentially a product of competitive economy where more than one person competed for the manufacture of the same product which necessitated the marking of each manufactured goods by a symbol which distinguished similar goods made by others. The modern trademark has three major functions to perform. They are origin function, quality or guarantee function, investment or advertising function.

Duration of trademark

The term of trademark is ten years and it can be renewed life long for every ten years. Trademark can be a word, phrase, logo, symbol, design, image, or a combination of these elements.⁷

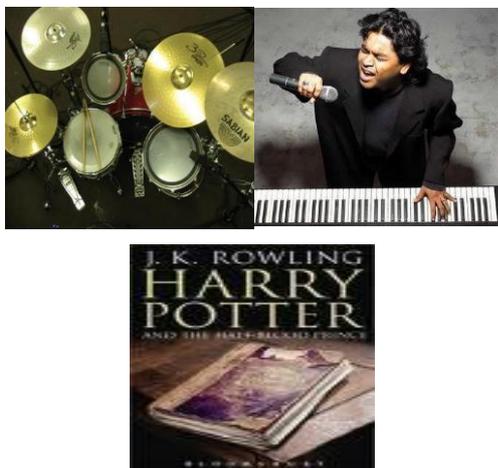
Example: Coco-Cola, IBM, AIRTEL etc.



Copyright and Related Rights

Copyrights relates to original work of literary, artistic, dramatic or musical work, Cinematographic films, Sound Recording and Software program. A related right refers to the category of rights granted to performers, phonogram producers and broadcasters.

In some countries such as United States of America and the United Kingdom, these rights are simply incorporated under copyright. Other countries such as Germany and France protect these rights under the separate category called “neighbouring rights”.



Rights of performers (eg: actors, musicians) in their performances. They include a live performance of a pre-existing artistic, dramatic or musical work, or a live recitation or reading of a pre-existing literary work. The work performed need not be previously fixed in any medium or form and may be in the public domain or protected by copyright. The performance may also be an improvised one, whether original or based on a pre-existing work.⁸

Rights of producers of sound recordings (or “phonograms”) in their recordings Example. Compact discs.

Rights of broadcasting organizations in their radio and television programs transmitted over the air and in some countries, rights in the transmission of works via cable systems.

Copyright and related rights works of different categories of right holders. While copyright protects the works of the authors themselves, related rights are granted to certain categories of people or business that play an important role in performing, communicating or disseminating works to the public that may or may not be protected by copyright.⁹

Types of work protected by copyright

- Literary works (eg. Books, magazine, newspapers, technical papers, instruction manual, catalogs, tables and compilations of literary works.
- Musical works or compositions, including

compilations;

- Dramatic works includes not only plays but also for example a sales training program captured on videocassettes
- Artistic works such as cartoons, drawings, paintings, sculptures and computer artwork
- Photographic works both on paper and in digital form
- Computer programs and software
- Some types of database
- Maps, globes, charts, diagrams, plans and technical drawing;
- Advertisement, commercial prints and labels
- Cinematographic works, including motion pictures, television shows, and webcasts
- Multimedia products
- In some countries works of applied art such as artistic jewellery, wall paper and carpets.¹⁰

Authorship and ownership of Copyright: The author means in relation to

- Literary or dramatic work – author of the work
- Musical work – composer
- Artistic work – artist
- Photograph – person who takes photograph
- Cinematograph or sound recording – producer
- Computer generated work – person who creates it¹²

Ownership Means

- In case of a literary, dramatic or artistic work made by the author in the course of his employment by the proprietor of a news paper, magazine or similar periodical under a contract of service or apprenticeship – in the absence of the agreement to the contract, the proprietor is the first owner of the copyright.
- In the case of photograph taken, painting or portrait drawn or engraving or cinematograph film made for valuable consideration at the instance of any person – in the absence of any agreement to the contrary the person who commissioned it is the first owner.
- In the case of a work made in the course of the authors’ employment under a contract of service or apprenticeship – in the absence of any agreement

to the contrary, the employer is the first owner.

- In the case of any address or speech delivered in public – the person who delivered address or speech is the first owner.
- In the case of a government work in the absence of any agreement to the contrary, the governments is the first owner of the copyright.
- In the case of a work made or first published by or under the direction or control of any public undertaking – in the absence of any agreement to the contrary, the public undertaking is the first owner of the copyright.¹³

Duration of Copyright

The copyright term varies according to the nature of the work (60 years from the death of author in case of literary, dramatic, musical or artistic work & 60 years after publication of a photograph, film or sound recording).

Industrial Design

A design refers to the features of shape, configuration, pattern, ornamentation or composition of lines or colors applied to any article. A design should be new and original. The word “article” refers to any article manufactured and any substance, artificial, or partly artificial and partly natural, and includes any part of an article capable of being made and sold separately. Design office is located at Kolkata.¹⁴

As general rule Industrial Design consists of

- Three-dimensional features, such as the shape of a product,
- Two dimensional features such as ornamentation, patterns, lines or color of a product or
- A combination of one or more such feature.

Apply for Industrial Design

An applicant who created the design or if working under contract, his employer, can apply for registration. The applicant can be either an individual (e.g: a designer) or a legal entity (e.g: company). In either case, the application may be made directly or through an agent. If you are a foreign applicant you may be required to be represented by an agent duly authorized by the Intellectual Property office of that country.¹⁵

Essentials for the Registration of Design:

- The design must be new or original
- The design must be applied to particular articles.
- It must have visual appeal

- It should not have been published before filing
- The design must be significantly distinguishable from known designs
- It should not comprise or contains scandalous or obscene matter.
- It should not include a trade mark or a property mark or any artistic work.
- A design should not include any mode or principle or construction or anything which is in substance a mere mechanical device.

The Protection of industrial Designs gives value to a product, eye-catching and it makes easier to attract the customers. Industrial design shall be protected by registering at the national or regional Intellectual property offices.¹⁶

Duration of Industrial Design

An Industrial design is registered for a period of 10 years and is extendable for another 5 years if an application in Form-3 with a fee of Rs. 2,000/- is filed before the expiry of 1st year.

Geographical Indication

Geographical Indication is an indication which identifies goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin.

In case of manufactured goods one of the activities of either the production or processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be

- Explanation clarifies that GI need not be a geographical name. Alphonso, Basmati.
- Goods include goods of handicraft or of industry and also food stuff.¹⁷

Example: **Basmati rice, Darjeeling Tea, Nagpur Oranges, Kolhapuri Chappal, Thirunelveli Halwa, Kanchipuram Sarees** etc.

Apply for GI

Any association of persons or producers, or any organization/authority established by or under any law which represents the interests of the producers of the concerned goods and producer includes trader, authorized user etc.

The main benefit of Geographical Indication is that it prevents unauthorized use of a registered Geographical Indication by others. It boosts exports of Indian



Geographical Indications by providing legal protection. It promotes economic prosperity for producers and seeking legal protection in other WTO member countries.¹⁸

Duration of GI:

The Term of Geographical indication protection is ten years.

International Treaties on Patent

India is a Member – State of World Intellectual Property Organization, an International Organization, responsible for the promotion of and the protection of Intellectual Property throughout the world. India is a member of the following International Organizations and treaties in respect of Patents¹⁹

- World trade Organization (WTO)
- World Intellectual property Organization (WIPO)
- Paris convention for the protection of Industrial Property
- Patent Co- Operation Treaty (PCT)
- Budapest Treaty²⁰

Why Intellectual Property Should be Protected

- Intellectual Property (IP) rights are valuable assets for a business possibly among the most important ones it possesses. The protection of IP can set a business apart from the competitors
- It can be sold or licensed, providing an important revenue stream, offer customers something new and different and form an essential part of the marketing or branding.
- Intellectual Property protection has become more and more important now a days.²¹
- Highly featuring scientific and technological improvement and establishing an efficient Intellectual Property system have caused the difference between developed and under-developed countries. The Intellectual Property protection is mainly formed to prevent infringement of patented invention from others
- Rapid growth in commercial income resulting from

intellectual and artistic works made a profitable sector. Now, production of musical, cinema, literature works and computer software are major industries worth of billions of -USD.

- The bosses of the major software giants like Google and Microsoft have become the richest men of the world in a very short period of time through their intellectual assets”.
- One who is not able to protect intellectual rights thereof may face enormous financial loss.
- Developed states execute International Treaties to protect inventions, original designs, trademarks, software, cinema and musical works, scientific and literature works that are subject of Intellectual Property in an International manner.
- Failure on adequate protection of Intellectual Property slows down innovation and progress.
- The goal of Intellectual Property law is to encourage intellectual production and to enable social and cultural development.
- An effective Intellectual Property protection is essential in order to promote R&D investments, appeal to foreign capital and encourage innovation.²²

How Intellectual Property Should be Protected

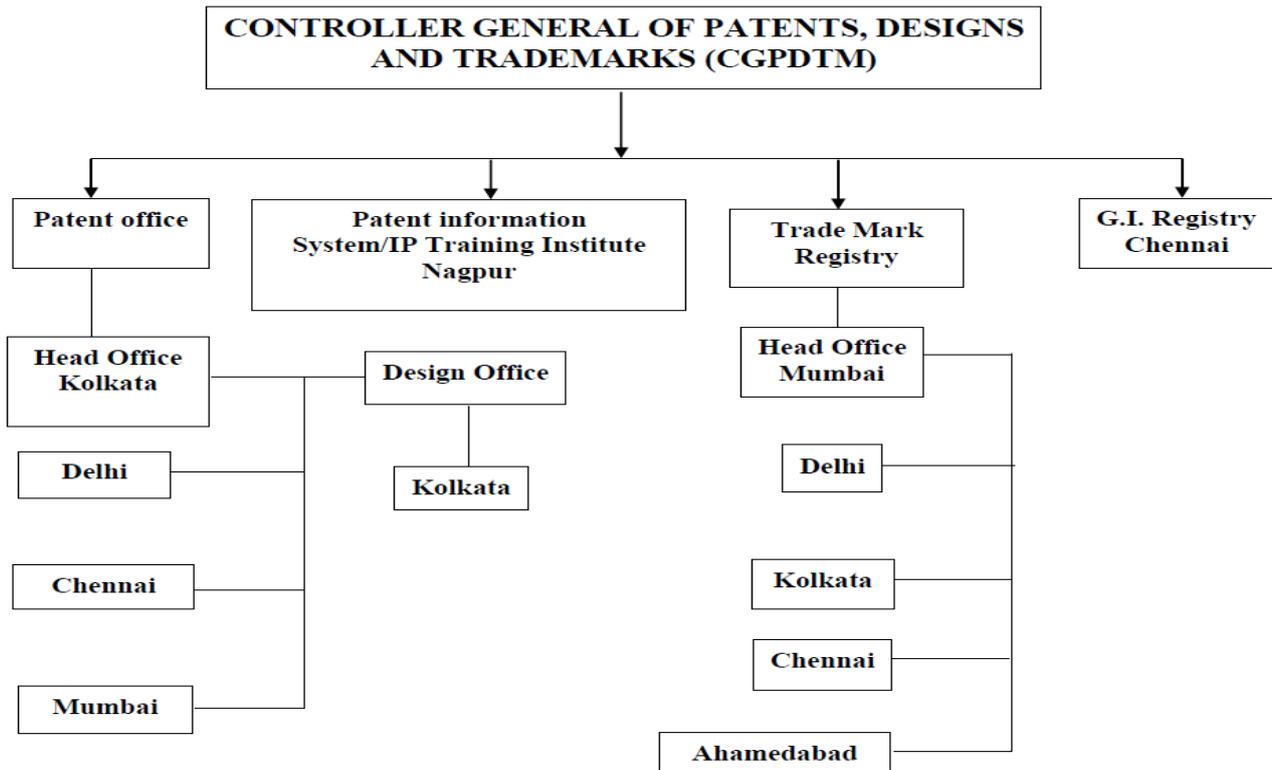
Intellectual Property can be protected by filling an application with prescribed form and fees and detailing about your inventions, at your earliest, with the respective Patent offices²³

The inventor may either file provisional or complete specification of the invention.

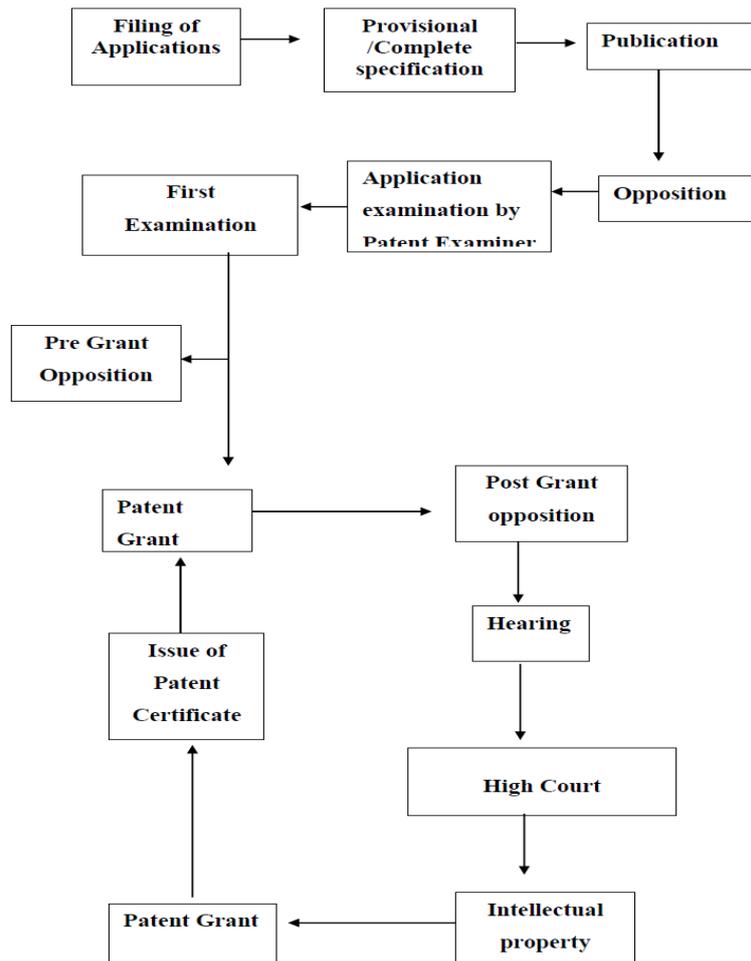
Patent Offices in India

The Patent Office, under the Department of Intellectual Policy & Promotion, Ministry of Commerce & Industry, performs the statutory duties in connection with the grant of patents for new inventions and registration of Industrial designs.²⁴ Patent Office is located at Kolkata, Mumbai, Chennai and Delhi. The inventor may make an application, either alone or jointly with another, or their assignee of the inventor or legal representative of any deceased inventor or assignee.²⁵

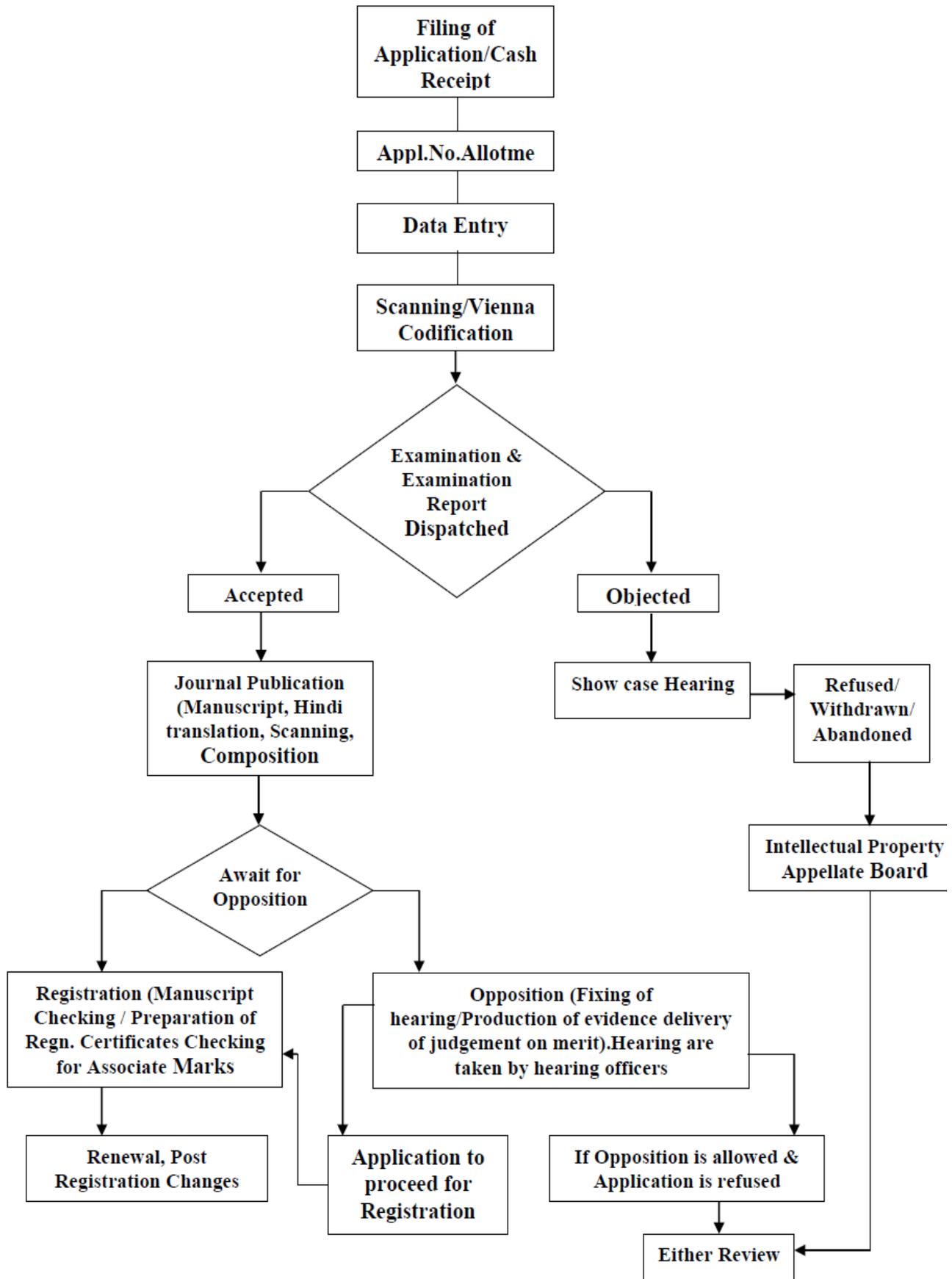
The Structure of the Intellectual Property Offices of INDIA is as under.²⁶

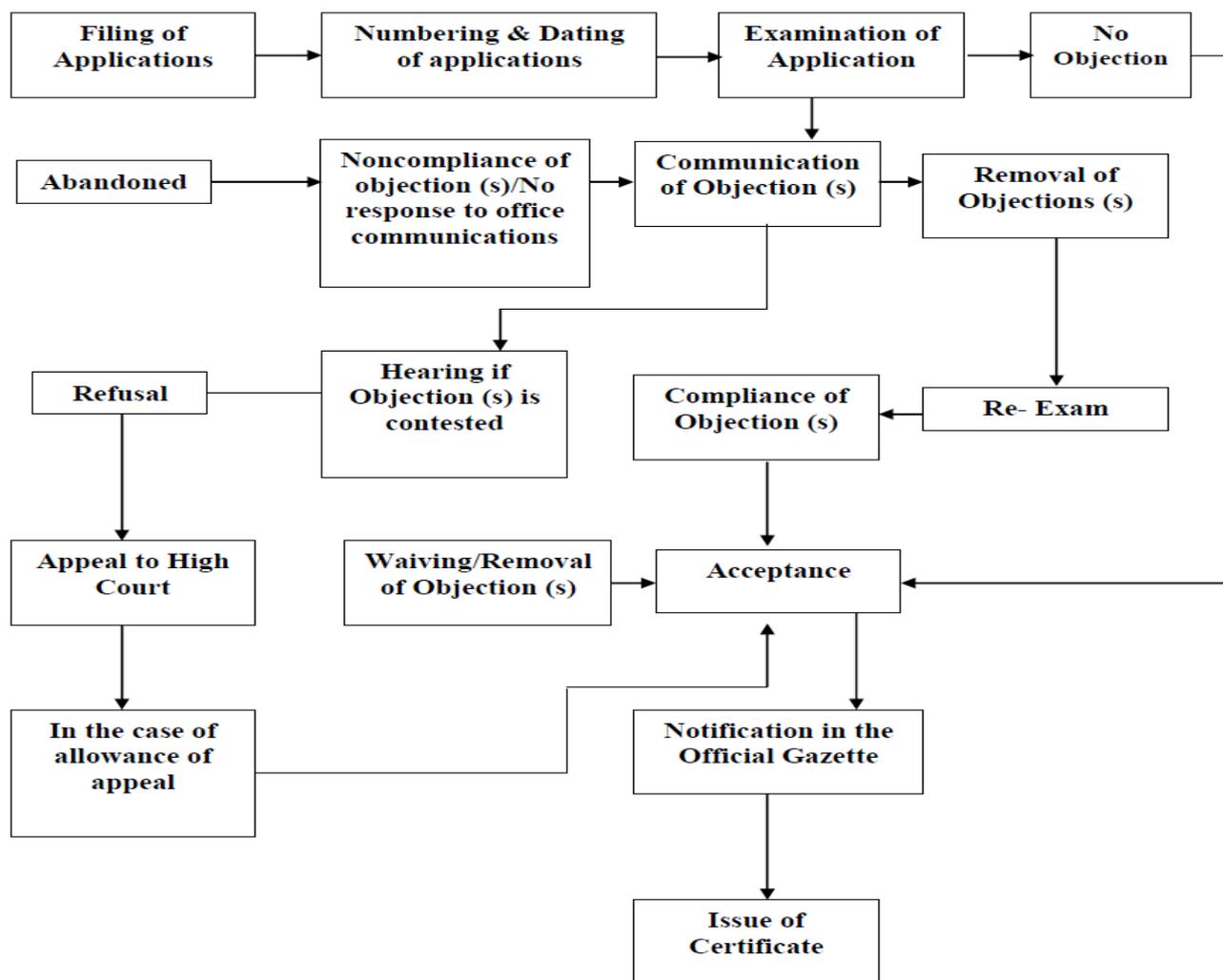


Flow chart of patent garneting system



Flow Chart of Trademark Application Filing up to Acceptance



Flow Chart of Design Application Procedure**REFERENCES**

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Source of Support: The author(s) received no financial support for the research, authorship, and/or publication of this article.

Conflict of Interest: The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

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