

PATENT INFORMATION CENTRE - KERALA



KERALA STATE COUNCIL FOR SCIENCE, TECHNOLOGY & ENVIRONMENT

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INTRODUCTION

Intellectual Property Rights (IPR) is the key tool for the economic growth of every nation. India is blessed with assets like R&D personnel and infrastructural facilities. Scientific and Academic community need more information, orientation and facilities for protecting their intellectual properties. In order to provide IPR related services particularly to the Science & Technology community, the Department of Science and Technology (DST), Government of India had set up a Patent Facilitating Centre (PFC) at Technology Information, Forecasting and Assessment Council (TIFAC), New Delhi. As state level extension, Patent Information Centers were established at State Capitals.

PATENT INFORMATION CENTRE – KERALA

Patent Information Centre (PIC- Kerala) was established in Kerala State Council for Science, Technology and Environment (KSCSTE) in May, 2003. PIC-Kerala has been providing IPR related services to the people in the State since its inception. The Centre functions with the partial financial support from Dept. of Science & Technology, Govt. of India. PIC-Kerala aims to increase the intellectual property output of the State by IPR awareness generation and facilitation of patent filing. PIC-Kerala has been generating IPR awareness among Scientists, Researchers, Professionals, Technocrats, Industrialists, Students, Grass root Innovators, Individuals, etc, through Workshops, Seminars, Lectures, Talks, Exhibitions, Publications, etc. The Centre also provide technical assistance for filing Patents by conducting prior art patent database search free of cost and facilitate access to patent related documents.

SERVICES & SCHEMES OFFERED BY PIC-KERALA

- Technical and Financial assistance to the Govt. Organizations/Institutions, University Departments, Research & Development Institutions, Educational Institutions, Industries, Non Governmental Organizations, Professional Bodies, etc., for organizing awareness programmes on IPR.
- Facilitate the filing of Patents for the inventions emanating from Organizations, Institutions and Departments through PFC/ TIFAC, New Delhi.
- Technical assistance for the Individuals, Grass root Innovators, Private entities, etc, for filing Patents.
- In-house prior art patent database search facility (CD-Rom and Online) free of cost.
- Publication of scholarly materials on IPR.
- Supply of patent related documents (on specific request, subject to availability).
- Guidance to the inventors and creators in protecting their intellectual properties.

INTELLECTUAL PROPERTY RIGHTS (IPR)

Intellectual Property (IP) is generally defined as the 'Product of Mind'. It is a property that results from the creations of intellect in industrial, scientific, literary or artistic field. Unlike other properties, it is an intangible property. Like the rights over tangible properties, the owner has the sole right on his intellectual property and he can prevent others from using his property without prior permission. Intellectual Property Right (IPR) is the legally enforceable exclusive right granted to the owner of the intellectual property for a limited period. IPR reward creativity & human endeavor which fuel the progress of humankind.

Forms of IPR

- ★ Patents
- ★ Copyrights
- ★ Trademarks
- ★ Industrial Designs
- ★ Geographical Indications
- ★ Layout Design of Integrated Circuits
- ★ Protection of Plant Varieties & Farmers' Rights
- ★ Protection of undisclosed information/ Trade Secrets

PATENTS

1. What is a Patent?

Patents are granted for inventions. Patent is the exclusive right granted by the Government to the owner of the invention to make, use, sell, manufacture, import his patented invention and prevent others from making, using, selling, manufacturing, importing the invention, without his permission, for a period of 20 years, within the geographical boundaries of the nation which has granted Patent. Patent rights are territorial rights and they are granted in exchange of full disclosure of the invention to the Government.

2. What can be patented?

Only inventions can be patented. Invention means it should either be a new product or a new process involving an inventive step and capable of industrial application. Also, the invention shall not fall under Section 3 and 4 of Indian Patent Act, 1970, which covers the inventions which are not patentable.

3. Who can apply for a patent?

The true and first inventor or his assignee or legal representative of a deceased inventor or his assignee may make an application for patent either alone or jointly with others.

4. What rights does a Patent owner have?

A Patent owner has the right to decide who may - or may not - use the patented invention for the period in which the invention is protected. The patent owner may give permission to, or license other parties to use the invention on mutually agreed terms. The patent owner may also sell the right of the invention to someone else, who will then become the new owner of the patent. Once the Patent expires, the protection ends, and the invention will enter in to the public domain. ie: the owner no longer holds exclusive rights over his invention, which becomes available to commercial exploitation by others.

5. Why are Patents necessary?

Patents provide incentives to the inventors by offering them recognition for their creativity and material reward for their marketable inventions. These incentives encourage inventions, which assures that the quality of human life is continuously enhanced.

6. When should an application for a Patent be filed?

The patent application should be filed at the earliest possible date and should not be delayed. The application can be filed either with provisional specification or complete specification. If the invention is not completed, the applicant can file provisional specification. The application filed with provisional specification helps to claim the priority of the invention.

7. Who grants Patents?

A Patent is granted by a National Patent Office or by a Regional Office that does the work for a number of countries. Under such regional systems, an applicant requests protection for the invention in one or more countries, and each country decide as to whether to offer patent protection within its borders.

8. What kind of inventions can be protected?

An invention must fulfill the following conditions to be eligible for getting patent protection.

- i. The invention must be new and novel.
It shall not be published in India or elsewhere or shall not be in prior use or prior public knowledge anywhere in the world.
- ii. The invention must involve an inventive step.
Inventive step is the feature of the invention that involves technical advancement as compared to the existing knowledge or having economic significance or both that makes the invention not obvious to a person skilled in the art.
- iii. The invention must be capable of industrial application. The invention shall be capable of being made or used in the industry.
- iv. The invention shall not fall within the provisions of section 3 and 4 of Patent Act 1970.

9. Can I get Patent for my invention, which has been published or used in public?

No. One of the criteria for getting patent protection is that the invention should be novel. Novelty means the invention should not be published anywhere in the world in any language or in prior public use before the date of filing of the patent application. The novelty of the invention loses by publication or getting it used publicly. Hence such inventions cannot be patented.

10. What are the inventions which are not patentable?

Section 3 and 4 of the Patent Act covers the inventions which are not patentable. Even if an invention satisfies the criteria of novelty, inventive step and industrial application, it may not qualify for patent, if it comes under the following category.

Section 3:

- a. an invention which is frivolous or claims anything obviously contrary to well established natural laws.
- b. an invention the primary or intended use or commercial exploitation of which could be contrary to public order or morality or which causes serious prejudice to human, animal or plant life or health or to the environment.
- c. the mere discovery of a scientific principle or the formulation of an abstract theory or discovery of any living thing or non – living substances occurring in nature.
- d. the mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance or the mere discovery of any new property or new use for a known substance or of the mere use of a known process,

Explanation: For the purposes of this clause, salts, esters, ethers, polymorphs, metabolites, pure form, particle size, isomers, mixtures of isomers, complexes, combinations and other derivatives of known substance shall be considered to be the same substance, unless they differ significantly in properties with regard to efficacy.

- e. 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.
- f. the mere arrangement or re-arrangement or duplication of known devices each functioning independently of one another in a known way.
- h. a method of agriculture or horticulture.
- i. any process for the medicinal, surgical, curative, prophylactic 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.
- j. plants and animals in whole or any part thereof other than microorganisms, but including seeds, varieties and species and essentially biological processes for production or propagation of plants and animals.
- k. a mathematical or business method or a computer programme per se or algorithms.
- l. a literary, dramatic, musical or artistic work or any other aesthetic creation whatsoever including cinematographic works and television productions.
- m. a mere scheme or rule or method of performing mental act or method of playing game.
- n. a presentation of information
- o. topography of integrated circuits
- p. an invention which in effect, is traditional knowledge or which is an aggregation or duplication of known properties of traditionally known component or components.

Section 4: Inventions relating to atomic energy not patentable

No patent shall be granted in respect of an invention relating to atomic energy falling within sub section (1) of section 20 of the Atomic Energy Act, 1962.

11. What is the patent filing and prosecution procedure in India?

Step 1: Filing of Patent Application

The first step is the filing of patent application. Application is to be filed at the appropriate branch of the Patent Office under whose jurisdiction he normally resides or has his domicile or has a place of business or the place from where the invention actually originated. For the applicant, who is non-resident or has no domicile or has no place of business in India, the address for service in India or place of business of his patent agent determines the appropriate patent office where application for patent can be filed.

Applicant shall submit the following documents while filing the application:

- Form 1** - Application for the Grant of Patent.
- Form 2** - Provisional/Complete Specification to describe the invention.
- Form 3** - The Statement and Undertaking under section 8
- Form 5** - Declaration of Inventorship.

Form 26 - Power of Attorney (if filed through Patent Agent/Attorney)

Requisite statutory fees in the form of **cheque /DD/Cash**.

The patent applications can also be filed electronically through the website of the patent office (www.ipindia.nic.in)

Up on receiving the patent application, Patent Office will issue the patent application number and date of filing, to the applicant.

Step 2: Publication

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

Step 3: Opposition

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

Step 4: Request for Examination/Expedited Examination

The applicant or any interested person must file request for examination for getting their patent application examined by the Patent Office. Every patent application will be examined only up on the receipt of such request. The applicant has to submit the request in Form 18 by paying the prescribed fee, within 48 months from the date of filing or priority; otherwise, the application shall be treated as withdrawn by the applicant.

As per the Patent (Amendment) Rules 2016, an applicant may request for expedited examination of patent application on either of two grounds, first of them being indication of India as International Searching Authority (ISA) or election of India as International Preliminary Examining Authority (IPEA) in the corresponding international patent application, and second of them being eligibility of applicant as start up as defined by the said rules.

Step 5: Issuance of First Examination Report (FER) (changed the nomenclature to First Statement of Objections)

The Patent Office will conduct detailed examination on the patent application to check whether the invention possesses the criteria of novelty, inventiveness and industrial application and issues a First Examination Report (FER) to the applicant, which contains the gist of objections raised by the Patent Office.

Step 6: Reply to the Examination Report

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

Step 7: Grant of Patent and Issuance of Certificate

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

Step 8: Renewal fees

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

Step 9: Post grant opposition

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

12. What are the documents required for filing a patent application?

- Application form for filing patent (Form 1) in duplicate.
- Provisional or Complete specification (Form 2) in duplicate. If the provisional specification is filed, it must be followed by complete specification within 12 months.
- Drawings in duplicate (if necessary).
- Abstract of the invention in duplicate.
- Information & Undertaking listing the number, filing date & current status of each foreign patent application (Form 3) in duplicate.
- Priority document (if priority date is claimed) in convention application, when directed by the Controller.
- Declaration of Inventorship (Form 5) where provisional specification is followed by complete specification or in case of convention/PCT national phase application.
- Power of Attorney (Form 26), if filed through Patent Agent.
- Fee

13. What is a Provisional Specification?

A provisional specification is named as provisional because it is not complete and acts as a placeholder for a later complete specification. Provisional specification describes the nature of the invention to claim the priority date of filing of the application in which only the inventive idea need to be disclosed. The inventor gets additional time of 12 months from the date of filing of provisional specification for filing complete

specification, without losing the novelty and priority of his patent application. A provisional specification is a proof that the inventor had the concept and idea at the time of filing of provisional. However, a Provisional Specification must be followed by a Complete Specification within 12 months from the date of filing of the provisional application; otherwise, the application will be deemed to have been abandoned.

14. What is the Term of Patent in India?

In India, the term of Patent is 20 years from the date of filing the Patent application.

15. What is the legislation covering Patents in India?

Patent Act 1970 (Amended in 1999, 2002 & March 2005)

16. Is there any fee for renewing the patent?

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

17. Who is eligible for drafting the patent application?

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

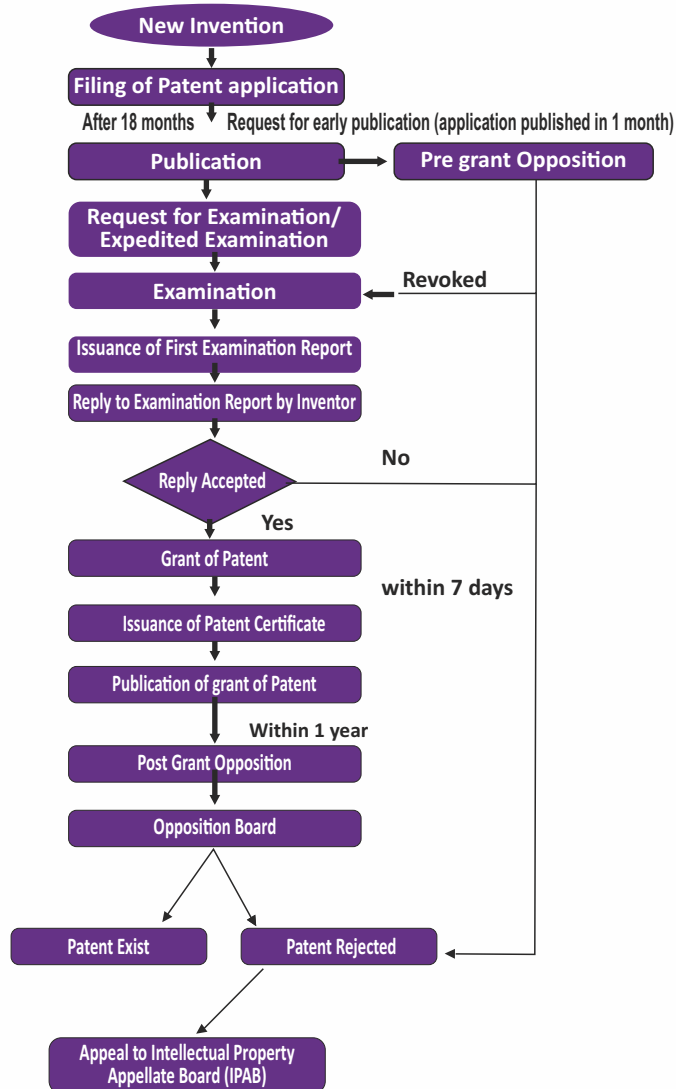
18. Is an Indian Patent valid in other Countries?

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

19. What is Patent Co-operation Treaty (PCT)?

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

PATENT FILING PROCEDURES IN INDIA



USEFUL INFORMATION TO INVENTORS TO PROTECT INVENTION

- Maintain records of your research work methodically.
- Do not publish your invention before filing the patent application. Even an oral description may cause your invention loses its novelty.
- File Patent application as early as possible. You may even file application with provisional specification.
- Conduct patent search before filing the patent application to judge the patentability of your invention.
- After the patent is granted, pay renewal fee regularly to keep your Patent alive.
- Ensure maximum commercial exploitation of the right within the tenure of Patents.

USEFUL WEBSITES FOR PATENT SEARCH

- www.ipindia.nic.in (Indian Patents)
- www.uspto.gov (US Patents)
- ep.espacenet.com (European Patents)
- www.wipo.int (PCT applications)
- www.google.com/patents
- www.freepatentsonline.com
- www.ipos.gov.sg (Singapore Patents)
- www.jpo.go.jp (Japanese Patents)

WHERE TO FILE THE PATENT APPLICATIONS FROM KERALA?

There are four Patent Offices in India with head office at Kolkata and having branches at New Delhi, Mumbai and Chennai. The applications from the southern states have to be filed in the Chennai branch in the following address;

Controller of Patents and Designs,
Patent Office, Intellectual Property Office Building,
G.S.T. Road, Guindy, Chennai – 600032.

Ph: 044 -22502081-84 Fax: 044 -22502066 Email: chennai-patent@nic.in Website: www.ipindia.nic.in

Fee Schedule:

	Relevant Forms	For Physical filing (Rs.)			For e - filing (Rs.)		
		Natural Person(s) and/ or Startup	Small entity, alone or with natural person(s) and/ or Startup	Others, alone or with natural person(s) and/ or Startup and/ or small entity	Natural Person(s) and/ or Startup	Small entity, alone or with natural person(s) and/ or Startup	Others, alone or with natural person(s) and/ or Startup and/ or small entity
Filing of Patent application	1,2,3,5	1750	4400	8800	1600	4000	8000
Request for Early publication	9	2750	6900	13750	2500	6250	12500
Request for Examination	18	4400	11000	22000	4000	10000	20000
Request for expedited examination of application for patent under rule 24C	18A	Not allowed	Not allowed	Not allowed	8000	25000	60000
Conversion of the request for examination filed under rule 24B to request for expedited examination under rule 24C.	18A	Not allowed	Not allowed	Not allowed	4000	15000	40000
Renewal							
3 rd year to 6 th year (per year)		880	2200	4400	800	2000	4000
7 th year to 10 th year (per year)		2650	6600	13200	2400	6000	12000
11 th year to 15 th year (per year)		5300	13200	26400	4800	12000	24000
16 th year to 20 th year (per year)		8800	22000	44000	8000	20000	40000

The fees may be paid either in cash or through electronic means or may be sent by bank draft/bankers cheque, payable to the Controller of Patents.

For the latest fees and forms, please refer the website www.ipindia.nic.in, as the fee structure keep on changing periodically.

COPYRIGHTS

1. What is Copyright?

Copyright is the exclusive right granted to the owner of a literary, artistic or scientific work to use it or authorize others to use it for its reproduction, public performance, translation and adaptation. Copyrights do not protect ideas; it protects the expression of ideas.

2. What does Copyright cover? What can be protected under Copyright?

- i. Literary, Dramatic and Musical work. Computer programs/ software's are covered within the definition of literary work.
- ii. Artistic works (Drawings, Paintings, etc).
- iii. Cinematographic films which include sound track and video films.
- iv. Record - any disc, tape, perforated roll or other device.

3. What is the term of Copyright protection?

- a. For literary works, the term is lifetime of the author plus 60 years.
- b. For cinematography films, records, photographs, posthumous publications, anonymous publication, works of government and international agencies, the term is 60 years from the beginning of the calendar year following the year in which the work was published.
- c. For broadcasting, the term is 25 years from the beginning of the calendar year following the year in which the broadcast was made.

4. Can names be protected by Copyright?

No. Copyright does not protect the names or titles by themselves, combinations of short words, slogans, short phrases, plots or factual information.

5. Is it necessary to register a work to claim Copyright?

No, Acquisition of Copyright is automatic and it does not require any formality. Copyright comes into existence as soon as a work is created and no formality is required to be completed for acquiring Copyright. However, certificate of registration of Copyright and the entries made therein serve as prima facie evidence in a court of law with reference to dispute relating to the ownership of Copyright.

6. Who can apply for Copyright?

Any individual who is an author or owner of the work or his assignee or legal heir can file the application for Copyright. There is facility for e-filing the application through the website of Copyright Office (www.copyright.gov.in)

7. Who is an owner of the Copyright?

In the case of a literary, dramatic or artistic work made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical, the said proprietor shall, in the absence of any agreement to the contrary be the first owner of the Copyright in the work in so far as the Copyright relates to the publication of the work in any newspaper, magazine or similar periodical, or to the reproduction of the work for the purpose of its being so published, but in all other respects the author shall be the first owner of the Copyright in the work. In the case of a photograph taken, or a painting or portrait drawn, or an engraving or a cinematographic film made, for valuable consideration at the instance of any person, such person shall, in the absence of any agreement to the contrary, be the first owner of the Copyright.

In the case of a work made in the course of the author's employment under a contract of service or apprenticeship, the employer shall, in the absence of any agreement to the contrary, be the first owner of the Copyright.

In the case of a Government work, Government shall, in the absence of any agreement to the contrary, be the first owner of the Copyright.

When a cinematographic film producer commissions a composer of music or a lyricist for a reward for the purpose of making his cinematographic film, he becomes the first owner of the Copyright therein.

8. Does performer get any right under Copyright Act? Who all are considered as performers?

Yes. Where any performer appears or engages in any performance, he shall have a special right to be known as the “performer's right” in relation to such performance. The performer's right shall subsist until fifty years from the beginning of the calendar year next following the year in which the performance is made. The performer has the right to claim to be identified as the performer of his performance and shall be entitled for royalties in case of making performance for commercial use “Performer” includes an actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, a person delivering a lecture or any other person who makes a performance.

9. Whether Computer Programs can be registered Copyrights?

Yes. As per the Copyright Act, Computer Programs can be registered as a literary work. Literary work includes Computer Programmes, Tables, Databases, etc. However, source code has to be submitted along with the application for registration of Copyrights for Computer Programmes/Softwares.

10. Can websites be protected under Copyright?

Yes. A website contains several works such as literary works, artistic works (photographs etc.), sound recordings, video clips, cinematograph films, broadcastings and computer software too. Therefore, separate application has to be filed for registration of all these works.

11. Where to apply for Copyright and its fee?

	Forms	Fee (Rs.)	Where to apply?
Literary, Dramatic, Musical or Artistic Work	Form XIV	500	Registrar of Copyrights, Boudhik Sampada Bhawan Plot No.32, Sector 14, Dwarka, New Delhi-110075 Telephone No. : +91-11-25300200, Email : copyright@nic.in Website : http://copyright.gov.in Fee can be paid by Postal Oder /Demand Draft/Online Payment payable to the “Registrar of Copyrights, New Delhi”:
Cinematographic Film		5000	
Sound Recording		2000	

For the latest fees and forms, please refer the website www.copyright.gov.in, as the fee structure keep on changing periodically.

12. What are the forms required for registering Copyright?

Application for Copyright registration has to be made in Form XIV. It shall be accompanied by Statement of Particulars and Statement of Further Particulars in triplicate. If the work is published, three copies of the work shall be sent along with the application and if it is unpublished, a copy of the manuscript also has to be sent along with the application. When a work has been registered as unpublished and subsequently published, the applicant may apply for changes in particulars entered in the Register of Copyright in Form V with prescribed fee.

13. Who grants the Copyright?

The Copyright Office under the immediate control of a Registrar of Copyrights appointed by the Central Government grants the Copyright.

14. What is the legislation covering Copyrights in India?

Copyright Act, 1957 as amended in 1983, 1984, 1992, 1994, 1999 and 2012

TRADEMARKS

1. What is a Trademark?

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

2. What does a Trademark do?

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

3. What kind of Trademarks can be registered?

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

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

4. How is a Trademark registered?

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

5. What are the conditions for registering Trademarks?

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

6. How to select a Trademark?

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

7. Where to apply for trademarks from Kerala and its fee?

	Forms	For E-filing (Rs.)		For Physical filing (Rs.)		Where to apply?
		Individual / Startup/Small Enterprise	In all other cases	Individual / Startup/Small Enterprise	In all other cases	
Registration of a trademark/ Collective Mark / Certification Mark / Series of trademark for specification of goods or services included in one or more than one classes. (Fee is for each class and each mark)	TM – A	4,500	9000	5,000	10000	The Registrar of Trademarks, Trademark Registry, Intellectual Property Building, GST Road, Guindy, Chennai 600032 Email: tmrchennai@nic.in - Tele: 044- 22502044 Fax : 044- 22502046
Renewal of registration of a trademark	TM - R	9000		10000		

For the latest fees and forms, please refer the website www.ipindia.nic.in, as the fee structure keep on changing periodically.

8. Can I register a trademark before starting a business?

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

9. Is the registration of trademark mandatory in India?

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

10. What is the legislation covering Trademarks in India?

The Trade Marks Act, 1999 (last amended in 2010)

11. What is the term of protection of trademarks?

The term of protection of trademark shall be initially for a period of 10 years. It can be renewed indefinitely every ten years by paying the renewal fee.

INDUSTRIAL DESIGNS

1. What is Industrial Design?

An Industrial Design is the protection offered for the ornamental or aesthetic aspect of an article. The design may consist of three-dimensional features, such as the shape or surface of an article, or of two-dimensional features, such as pattern, lines, color. An Industrial Design is preliminary of an aesthetic nature, and does not protect any technical features of the article to which it is applied.

2. What are the essential requirements for the registration of design under the Designs Act 2000?

- I. The Design should be new or original, not previously published or used in any Country before the date of application for registration. The novelty may reside in the application of a known shape or pattern to new subject matter. However, if the design for which application is made does not involve any real mental activity for conception, then registration may not be considered.
- II. The Design should relate to features of shape, configuration, pattern or ornamentation applied or applicable to an article. Thus, designs of industrial plans, layouts and installations are not registrable under the Act.
- III. The Design should be applied or applicable to any article by any industrial process. Normally, designs of artistic nature like painting, sculptures and the like which are not produced in bulk by any industrial process are excluded from registration under the Act. Paintings and sculptures are the subject matter of copyright.
- IV. The features of the designs in the finished article should appeal to and are judged solely by the eye. This implies that the design must appear and should be visible on the finished article, for which it is meant. Thus, any design in the inside arrangement of a box, money purse or almira may not be considered for showing such articles in the open state, as those articles are generally put in the market in the closed state.

V. Any mode or principle of construction or operation or anything, which, in substance is a mere mechanical device, would not qualify for registrable design.

VI. The Design should not include any Trademark or property mark or artistic works.

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

No. Because once the alleged Design is removed, only a piece of paper, metal or like material remains and the article referred ceases to exist. Article must have its existence independent of the Designs applied to it. The Design as applied to an article should be integral with the article itself.

4. What is the term of Design protection?

The term of protection for Industrial Design shall be initially for a period of 10 years. It can be renewed for a period of 5 more years by paying the renewal fee. Thus the maximum term of protection for the Design will be 15 years.

5. Where to apply for design registration from Kerala and its fee?

	Forms	Fee (Rs.)			Where to apply?
		Natural person	Small entity	Others except small entity	
Registration of Design	Form 1	1000/-	2000/-	4000/-	The Controller of Patents and Designs, The Patent Office (Designs Wing), Intellectual Property Office Building, CP-2 Sector V, Salt Lake City, Kolkata-700091 Phone No. 033-23671944, 23671987 Fax : 033-23671988, Email: - kolkata-patent@nic.in , controllerdesign.ipo@nic.in
Renewal	Form 3	2000/ -	4000/ -	8000/ -	Application for registering Industrial Design can also be filed in Patent Office, Chennai. They will forward it to the Designs Wing, Kolkata.

For the latest fees and forms, please refer the website www.ipindia.nic.in, as the fee structure keeps on changing periodically.

GEOGRAPHICAL INDICATIONS

1. What is a Geographical Indication?

A Geographical Indication is a sign used on goods that have a specific geographical origin and possess qualities or reputation that are due to that place of origin. Most commonly, a Geographical Indication consists of the name of the place of origin of goods. Agricultural products typically have qualities that derive from their place of production and are influenced by specific local factors such as climate and soil. Whether a sign functions as a Geographical Indication is a matter of national law and consumer perception. Geographical indications may be used for a wide variety of

agricultural products. Some of the Geographical Indications are Darjeeling Tea, Kancheepuram Silk, Alphonso Mango, Mysore Sandal Soap, Aranmula Kannadi, Navara Rice, Pokkali Rice, etc.

2. Can Geographical Indications used only for agricultural products?

The use of Geographical Indications is not limited to agricultural products. The goods can be handicrafts (Balaramapuram Sarees and Fine Cotton Fabrics), manufactured (Aranmula Kannadi), foodstuff (Hyderabadi Haleem), etc. Whether manufactured or natural, the characteristics of the goods should be attributable to its geographical origin.

3. Who can apply for the registration of a Geographical Indication?

Any association of persons or producers or any organization or authority established by or under any law representing the interest of the producers of the concerned goods, who are desirous of registering Geographical Indication in relation to such goods can apply for GI registration. Any person claiming to be the producer of the goods in respect of which a GI has been registered may apply in writing to the Registrar for registering him as an authorized user of GI. The authorized user has the exclusive right to use the registered GI and all the authorized users will have equal rights.

4. Why do Geographical Indications need protection?

Geographical Indications is a sign used to identify the goods originating from a region. It is a quality link between the product and its originating area. Many of them have acquired valuable reputations, which if not adequately protected, may be misrepresented by dishonest commercial operators. False use of Geographical Indications by unauthorized parties is detrimental to consumers and legitimate producers. The consumers are deceived and led into believing to buy a genuine product with specific qualities and characteristics, while they in fact get a worthless imitation. The producers suffer damage because valuable business is taken away from them and the established reputation for their products is damaged.

5. What is the difference between a Geographical Indication and a Trademark?

A Trademark is a sign used by an enterprise to distinguish their goods and services from those of other enterprises. It gives the owner the right to exclude others from using the Trademark. A Geographical Indication tells consumers that a product is produced in a certain place and has certain characteristics that are due to that place of production. It may be used by all producers who make their products in the place designated by a Geographical Indication and whose products share typical qualities. Another difference is that a trademark can be owned by an individual, but geographical indication will be granted to an association of persons.

6. How is a Geographical Indication protected?

Geographical Indications are protected in accordance with national laws and under a wide range of concepts, such as laws against unfair competition, consumer protection laws, special laws for the protection of Geographical Indications or appellations of origin. In essence, unauthorized parties may not use geographical indications if such use is likely to mislead the public as to the true origin of the product. Applicable sanctions range from court injunctions preventing the unauthorized use to the payment of damages and fines or, in serious cases, imprisonment.

7. What is the legislation covering Geographical Indications in India?

The Geographical Indication of Goods (Registration and Protection) Act, 1999.

8. What is the term of GI protection?

The registration of GI shall be initially for a period of ten years, but may be renewed from time to time for an unlimited period by paying renewal fees.

9. Can GI rights be transferred as other forms of IPR?

No. GI shall not be a subject matter of assignment, transmission, licensing, pledge, mortgage or such other agreement. However, when an authorized user dies, his right devolves on his successor in title.

10. Where to apply for GI registration and its fee?

	Forms	Fee (Rs.)	Where to apply?
Registration of Goods	Form GI -1	5000/-	The Registrar of Geographical Indications, GI Registry, Intellectual Property Office Building, G.S.T. Road, Guindy, Chennai - 600032, Phone: 044-22502091/ 92, Fax: 044-22502090 Email: gir-ipo@nic.in
Registration of an Authorized User	Form GI- 3	500/-	
Renewal of GI	Form GI- 4	3000/-	
Renewal of an authorized user	Form GI- 3	1000/-	

For the latest fees and forms, please refer the website www.ipindia.nic.in, as the fee structure keeps on changing periodically.

Some GI registered products from Kerala

- ☞ Aranmula Kannadi
- ☞ Navara Rice
- ☞ Palakkadan Matta Rice
- ☞ Payyannur Pavithra Ring
- ☞ Malabar Pepper
- ☞ Alleppey Coir
- ☞ Pokkali Rice
- ☞ Vazhakkulam Pineapple
- ☞ Balaramapuram Sarees and Fine Cotton Fabrics
- ☞ Kasaragod Sarees
- ☞ Maddalam of Palakkad
- ☞ Screw Pine Craft of Kerala
- ☞ Chendamangalam Dhoties & Set Mundu
- ☞ Central Travancore Jaggery
- ☞ Kuthampully Sarees
- ☞ Chengalikodan Nendran Banana

PROTECTION OF NEW PLANT VARIETIES & FARMERS' RIGHTS

1. Is there any Act for protecting a new plant variety in India?

In order to provide for the establishment of an effective system for the protection of plant varieties, the rights of farmers and plant breeders and to encourage the development of new varieties of plants, it has been considered necessary to recognize and to protect the rights of the farmers in respect of their contributions made at any time in conserving, improving and making available plant genetic resources for the development of new plant varieties. The Govt. of India enacted "The Protection of Plant Varieties and Farmers' Rights (PPV&FR) Act, 2001" adopting sui generis system. To implement the provisions of the Act the Department of Agriculture and Cooperation, Ministry of Agriculture established the Protection of Plant Varieties and Farmers' Rights Authority on 11th November 2005.

2. What kind of varieties is registrable under the protection of plant varieties Act?

- I. A new variety, if it conforms to the criteria of novelty, distinctiveness, uniformity and stability.
- II. An extant variety, if it conforms to criteria of distinctiveness, uniformity and stability.

3. What are the rights conferred by the PPVFR Act?

Rights under the PPVFR Act, 2001 are

Breeders' rights: Breeders will have exclusive rights to produce, sell, market, distribute, import or export the protected variety. Breeder can appoint agent/ licensee and may exercise for civil remedy in case of infringement of rights.

Researchers' rights: Researcher can use any of the registered variety under the Act for conducting experiment or research.

This includes the use of a variety as an initial source of variety for the purpose of developing another variety but repeated use needs prior permission of the registered breeder.

Farmers' rights:

- A farmer who has evolved or developed a new variety is entitled for registration and protection in like manner as a breeder of a variety;
- Farmers variety can also be registered as an extant variety;
- A farmer can save, use, sow, re-sow, exchange, share or sell his farm produce including seed of a variety protected under the PPV&FR Act, 2001 in the same manner as he was entitled before the coming into force of this Act provided farmer shall not be entitled to sell branded seed of a variety protected under the PPV&FR Act, 2001;
- Farmers are eligible for recognition and rewards for the conservation of Plant Genetic Resources of land races and wild relatives of economic plants;
- There is also a provision for compensation to the farmers for non-performance of variety under Section 39 (2) of the Act, 2001; and
- Farmer shall not be liable to pay any fee in any proceeding before the Authority or Registrar or the Tribunal or the High Court under the Act.

4. How is an “Extant Variety” defined in PPVFR Act, 2001?

An “Extant Variety” means a variety, which is–

- (i) notified under section 5 of the Seeds Act, 1966 (54 of 1966); or
- (ii) a farmers' variety; or
- (iii) a variety about which there is common knowledge; or
- (iv) any other variety which is in the public domain.

5. What is the term of plant variety protection?

- (i) In the case of trees and vines, eighteen years from the date of registration of the variety.
- (ii) In the case of extant varieties, fifteen years from the date of the notification of that variety by the Central Government under section 5 of the seeds act, 1966.
- (iii) In the other cases, fifteen years from the date of registration of the variety. Initially, the certification of registration shall be valid for nine years in the case of trees and vines and six years in the case of other crops and may be revived and renewed for the remaining period on payment of fees as may be fixed by the rules.

6. Where to apply for registering plant varieties and its fee?

	Forms	Fee (Rs.)		Where to apply?
		Individual	Legal Entity	
Registration of new variety	Form 1	7000/-	10,000/- (Educational) 50,000/- (Commercial)	The Registrar, Protection of Plant Varieties and Farmers' Rights Authority, Ministry of Agriculture & Farmers Welfare, Department of Agriculture, Co-operation & Farmers Welfare, NASC Complex, DPS Marg, Opp- Todapur Village, New Delhi-110 012 Tel: +91-11-25840777 Fax: +91-11-25840478 email: rg-ppvfra@nic.in web : www.plantauthority.gov.in
Registration of an extant variety notified under section 5 of the Seeds Act, 1966	Form 1	2000/-		
Registration of an extant variety about which there is common knowledge	Form 1	7000/-	10,000/- (Educational) 50,000/- (Commercial)	
Farmers' Variety		No fee		

For the latest fees and forms, please refer the website www.plantauthority.gov.in, as the fee structure keeps on changing periodically.

LAYOUT DESIGN OF INTEGRATED CIRCUITS

1. What does Semiconductor Integrated Circuits (IC) Layout Design Act, 2000 cover?

It provides protection for Semiconductor IC Layout Designs. Layout design includes a layout of transistors and other circuitry elements and includes lead wires connecting such elements and expressed in any manner in a semiconductor IC. Semiconductor IC is a product having transistors and other circuitry elements, which are inseparably formed on a semiconductor material or an insulating material or inside the semiconductor material and designed to perform an electronic circuitry function.

2. What is not registrable as IC Layout Design?

An IC Layout Design is not registrable if it is

- Not original;
- Commercially exploited anywhere in India or in a convention Country;
- Inherently not distinctive;
- Inherently not capable of being distinguishable from any other registered layout design.

Note: Design not exploited commercially for more than 2 years from date of registration of application shall be treated as commercially exploited for the purpose of this Act.

3. What is the term of an IC Layout Design protection?

The term of protection shall be 10 years from the date of filing.

4. Where to apply for IC Layout design registration and its fee?

	Forms	Fess (in Rs.)	Where to apply?
Registration of IC Layout Design	Form LD-1	5000/-	The Registrar, Semiconductor Integrated Circuit Layout Design Registry, Design Registry, Boudhik Sampada Bhawan, Plot No. 32, Sector-14, Dwarka, New Delhi – 1100075 Tel: +91-11-25301207 Email : birendrap.singh@nic.in

PROTECTION OF UNDISCLOSED INFORMATION/ TRADE SECRETS

A trade secret is any business information which provides an enterprise a competitive edge. A trade secret may refer to a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a design, device or a compilation of data or information relating to the business. An owner of the trade secret seeks to protect trade secret information from the competitors by instituting special procedures for handling it, as well as technological and legal security measures. Measures for protecting trade secrets include restricting the access to the information, maintaining non-disclosure agreements (NDA) among the employees etc. There is no specific legislation in India to protect trade secrets and confidential information. One of the most famous examples of a trade secret is the formula for Coca-Cola. The formula, also referred to by the code name “Merchandise 7X,” is known to only a few people and kept in the vault of a bank in Atlanta, Georgia. The individuals who know the secret formula have signed non-disclosure agreements, and it is rumored that they are not allowed to travel together. Trade secrets are very different from other forms of IP. While patents require you to fully disclose your information in the complete specification, trade secrets require you to actively keep the information secret. Trade secret protection can potentially last longer than that of patents (20 years) provided the secret holders keep/safeguard the information as a secret.

ACHIEVEMENTS OF PIC–KERALA SO FAR

- Organized 350 IPR awareness Seminars/Workshops/Talks/Lectures/Exhibitions throughout the State.
- Processed 731 applications for Patent Facilitation.
- Facilitated the filing of more than 30 Patents.
- Established 8 IPR Cells in 8 Universities in the State.
- Established 13 IPR Cells in 13 Engineering Colleges in the State.
- Established IPR Cell in District Industries Centre, Trivandrum.
- Brought out the Institutional IPR Policy of KSCSTE.
- Brought out an exclusive website for PIC-Kerala (www.patentcentre.kerala.gov.in)
- Appointed Official Patent Attorney for KSCSTE.
- Published quarterly Newsletter on IPR.
- Published biannual Journal on Traditional Knowledge and Folk Practices jointly with JNTBGRI.
- Published Brochures, Booklets and Pamphlets on IPR.

DO'S & DON'T'S IN IPR

Do's	Dont's
File Patent for new inventions.	Don't publish the invention or publicly use it before filing Patent, as it destroys the novelty of the invention
Provisional patent application should be filed as soon as possible.	Do not delay in filing Patent. Don't wait for full development of the invention, as there is chance for copying your invention by others and protecting it before you do.
Study the existing patent documents in the area of your invention to identify its R&D potential.	Do not reinvent the wheel.
Conduct thorough patent search before filing patent.	Do not file Patent without ensuring that the invention is worth getting Patent, as expenses are involved in patent filing.
Patent is a techno legal document. Prefer consulting a registered Patent Attorney. Discuss with the Attorney about the invention thoroughly.	Do not hide any information from the Attorney regarding the invention. On complete disclosure only, the Patent Attorney can draft the patent application, to get maximum protection
Maintain all records of the invention signed and in proper order	Do not display invention in public or discuss with anybody (colleagues, well wishers, industry, media) without signing contract of confidentiality
Once you get Patent, maintain your rights for Patent for its life by paying renewal fee.	Do not forget to pay the renewal fees as it will lead to the abandonment of Patent.
Commercialize the patented invention either yourself or through licensing/assignment	Don't be satisfied with the Patent Certificate as commercialization of the patented invention is compulsory.

MYTHS & FACTS ABOUT IPR

Myths	Facts
Patenting is a recent phenomenon	<ul style="list-style-type: none"> ➤ 1st US Patent granted to Samuel Hopkins on 31.07.1790 for his new process of making potash. ➤ 1st Indian Patent – An efficient punkah pulling machine by George De Penning in the year 1856.
Only R&D Institutions/Industries can file Patents	<ul style="list-style-type: none"> ➤ Mark Twain, famous writer obtained three patents for his inventions; adjustable strap to tighten shirts (1871), self-pasting scrapbook (1873) and history trivia game (1885). ➤ Josephine Garis Cochran, a house wife was granted Patent for a dishwasher on December 28, 1886.
Publishing is important than Patenting.	Publishing the inventions destroys its novelty (newness) which prevents the invention from getting Patent. First file Patent, and then publish it.
One can get a Patent for an idea.	Patents are granted for new, inventive and useful inventions
Patent granted in one Country is automatically enforceable in other Countries.	There is nothing like World Patent or International Patent. Patent rights are territorial rights and are valid only in the Country which has granted Patent.
Only complex inventions are patentable	<ul style="list-style-type: none"> ➤ Patent for safety pin was granted to Walter Hunt in 1849. ➤ Patent for the needle of sewing machine was granted in 1854
Age a bar to get a Patent	<ul style="list-style-type: none"> ➤ Youngest one to get a Patent was Sydney Dittmana, a four year old girl from Houston, Texas, for an aid for grasping round knobs ➤ Six year old boy (Robert Patch) was granted Patent for his toy truck

Form of IPR	What it protects	Criteria	Duration
PATENTS	Inventions	Novelty Inventive Step Industrial Application	20 years from the date of filing the Patent
COPYRIGHTS	Expression of Ideas (Literary, Dramatic, Musical works, Computer Program per se, etc.)	Originality Fixation	Literary works: Lifetime of author + 60 years Cinematography films/records/ photographs/government works : 60 years Broadcasting : 25 years
TRADEMARKS	Identification symbols, logos, slogans, words/ letters	Distinctive Graphically representable Not deceptive	Indefinite Renewal after every ten years
INDUSTRIAL DESIGNS	External appearance of an article	Novel Original Significantly distinguishable	Initially for 10 years Renewal for 5 more years (maximum protection : 15 years)
GEOGRAPHICAL INDICATIONS	Goods of specific geographical origin	Quality Reputation Unique characteristics which are essentially attributable to the geographical area of origin	Indefinite Renewal after every ten years
LAYOUT DESIGN OF INTEGRATED CIRCUITS	Lay out of components in the integrated circuits	Original Distinctive Capable of distinguishing from any other lay-out design.	10 years
PROTECTION OF PLANT VARIETIES & FARMERS' RIGHTS	New varieties Farmers' varieties Extant varieties Essentially derived varieties	Novelty Distinctiveness Uniformity Stability Denomination	Trees and vines : 18 years Extant varieties & others : 15 years

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