

DESIGNS

What is Design?

A Design refers to the features of **shape, configuration, pattern, ornamentation or composition of lines or colors** applied to any article/product, whether in two or three dimensional (or both) forms. This may be applied by any industrial process or means (manual, mechanical or chemical) separately or by a combined process, which in the finished article appeals to and judged solely by the eye.

Design does not include any mode or principle of construction or anything which is mere mechanical device. It also does not include any trade mark or any artistic work.

An industrial design registration protects the ornamental or aesthetic aspect of an article. Designs may consist of three-dimensional features, such as the shape or surface of an article, or of two dimensional features, such as patterns, lines or color. Designs are applied to a wide variety of products of different industries like handicrafts, medical instruments, watches, jewelry, house wares, electrical appliances, vehicles and architectural structures. An industrial design is primarily for aesthetic features.

Design law in India

The essential purpose of design law is to promote and protect the design element of industrial production. It is also intended to promote innovative activity in the field of industries.

The Designs Act, 2000 and the Designs Rules, 2001 presently govern the design law in India.

The object of the Designs Act is to protect new or original designs so created to be applied or applicable to particular article to be manufactured by Industrial Process or means. Sometimes purchase of articles for use is influenced not only by their practical efficiency but also by their appearance.

Need for registration of Design

The registration of a design confers upon the registered proprietor the exclusive right to apply a design to the article in the class in which the design has been registered. A registered proprietor of the design is entitled to a better protection of his intellectual property. He can sue for infringement, if his right is infringed by any person.

He can license or sell his design as legal property for a consideration or royalty. Registration initially confers this **right for ten years** from the date of registration. It is renewable for a further period of five years. If the fee for extension is not paid for the further period of registration within the period of initial registration, this right will cease. There is provision for the restoration of a lapsed design if the application for restoration is filed within one year from the date of cessation in the prescribed manner.

Essential requirements for registration of Design

A design should -

- Be new or original

- Not be disclosed to the public anywhere by publication in tangible form or by use or in any other way prior to the filling date, or where applicable, the priority date of the application for registration.
- Be significantly distinguishable from known Designs or combination of known designs.
- Not comprise or contain scandalous or obscene matter.
- Not be a mere mechanical contrivance.
- Be applied to an article and should appeal to the eye.
- Not be contrary to public order or morality.

Exclusion from scope of Design

Designs that are primarily literary or artistic in character are not protected under the Designs Act.

These will include:

- ✓ Books, jackets, calendars, certificates, forms-and other documents, dressmaking patterns, greeting cards, leaflets, maps and plan cards, postcards, stamps, medals.
- ✓ Labels, tokens, cards, cartoons.
- ✓ Any principle or mode of construction of an article.
- ✓ Mere mechanical contrivance.
- ✓ Buildings and structures.
- ✓ Parts of articles not manufactured and sold separately.
- ✓ Variations commonly used in the trade.
- ✓ Mere workshop alterations of components of an assembly.
- ✓ Mere change in size of article.
- ✓ Flags, emblems or signs of any country.
- ✓ Layout designs of integrated circuits.

Who can apply for registration?

Any person or the legal representative or the assignee can apply separately or jointly for the registration of a design. The term "person" includes firm, partnership and a body corporate. An application may also be filed through an agent in which case a power of attorney is required to be filed. An Application for registration of design may be prepared either by the applicant or with the professional help of attorneys.

Register of Design

The Register of Designs is a document maintained by the Patent Office, Kolkata as a statutory requirement. It contains the design number, date of filing and reciprocity date (if any), name and address of proprietor and such other matters as would affect the validity of proprietorship of the design such as notifications of assignments and of transmissions of registered designs, etc. and it is open for public inspection on payment of prescribed fee and extract from register may also be obtained on request with the prescribed fee.

Procedure for submission of application of registration

Any person who desires to register a design is required to submit the following documents to the Design Wing of the Patent Office at "Intellectual Property Office", CP-2, Sector V, Salt Lake, Kolkata - 700 091 or any of the Branch Offices of the Patent Office at Delhi, Mumbai and Chennai. The applications received by the Branch Offices will be transmitted to the Head Office for processing and prosecuting.

- i. Application duly filed in on the prescribed form (Form-I) along with the prescribed fees, stating name in full, address, nationality, name of the article, class number, address for service in India. The application should also be signed either by the applicant or by his authorized agent.
- ii. Representation (in quadruplicate of size 33 cm x 20.5 cm with a suitable margin) of the article. Drawings \ sketches should clearly show the features of the design from different views and state the view (e.g. front or Side)
- iii. A statement of novelty and disclaimer (if any) in respect of mechanical action, trademark, work, letter, numerals should be endorsed on each representation sheet which should be duly signed and dated.
- iv. Power of attorney (if necessary).
- v. Priority documents (if any) in case of convention application claimed under Section 44 of the Designs Act, 2000.

Cancellation of registration of Design

The registration of a design may be cancelled at any time after the registration of design on a petition for cancellation in form 8 with a fee of Rs. 1,500/-to the Controller of Designs on the following grounds:

1. That the design has been previously registered in India or
2. That it has been published in India or elsewhere prior to date of registration or
3. The design is not new or original or
4. Design is not registrable or
5. It is not a design under Clause (d) of Section 2.

Piracy of registered design

During the existence of copyright over any design, other persons are prohibited from using the design except or with the permission of the proprietor, his licensee or assignee. The following activities are considered to be infringement.

- To apply the design or any fraudulent imitation of it to any article for sale;
- To import for sale any article to which the design or fraudulent or obvious imitation of it, has been applied;
- To publish or to expose for sale knowing that the design or any fraudulent or obvious imitation of it has been applied to it.

Administration

The Patent Office, under the Department of Industrial 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. Patent Offices are located at Kolkata, Mumbai, Chennai and Delhi to deal with the applications for patents originating within their respective territorial jurisdictions.