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**INTELLECTUAL PROPERTY RIGHTS,
LEGAL AND ETHICAL MATTERS
(POLICY AND GUIDELINES)**

September - 2024

Intellectual Property Rights, Legal and Ethical Matters Policy

1. Preamble

The VIT Bhopal University (hereinafter referred to as VITB) was established in 2017 by Chancellor Dr. G. Viswanathan. VITB attracts students from all 28 states of India and different countries because of its academic excellence. VITB is been constantly endeavouring to train high-quality scientific and technical manpower and provide solutions to a variety of challenging technical problems that may arise in different fields, through its well-qualified faculty and highly skilled supporting staff, to become one of the leading centres of teaching, research and extension in Engineering and Technology and committed to excel in every sphere of its activity. It has been constantly encouraging scholarship, research, academic excellence, and innovation.

The VITB recognizes that intangible assets like inventions, copy right, know-how, designs and other creative and innovative products generated during the scientific and intellectual pursuits of its faculty and its students provide a competitive edge to the Institute. It, therefore, has formulated its intellectual property policy to provide guidance to its faculty, staff, students, research scholars and outside agencies on the practices and rules of the Institute regarding intellectual property rights (IPR) and obligations which include its ownership, commercial exploitation, technology-transfer and end confidentiality requirements. The policy is expected to promote a conducive environment for both curiosity- driven and market-driven research and development activities at the Institute and creation of original works of authorship.

It is to be stressed that this IPR policy is to be treated more as a guideline than a strict rule in the legal sense in view of the evolutionary scenario in the nations IPR policy and is, therefore, subject to changes if a need arises. This document together with the **addendum** (Operating guidelines) and the **annexures** (some useful information on Patents and Copyright) and (Salient features of IPR and services provided by IPR, Legal and Ethical Matters Cell) are designed to give a wholesome picture of Intellectual Property (IP) management at VITB.

2. Vision

- To promote a culture of research among students, scholars and faculty members with application-based engineering.

3. Mission

To improve research by:

- ✓ Nurturing knowledgeable and socially responsible graduates.
- ✓ Fostering intellectual and empowered faculty with integrity.
- ✓ Promoting collaborative research with research institutes and industries.

4. Objectives

- To ensure that the researchers understand the importance of integrity and ethics and comply with ethical publication practices in institute, national and global levels.
- Standard plagiarism check should be mandatorily followed within VIT Bhopal University campus.
- To sensitize students, scholars and faculty for dubious research, publishing practices and predatory journals.
- To protect IP rights generated by students, scholars, faculty members and staff.
- To provide a comprehensive single window reference system for all IPR, Legal and Ethical matters – related issues.
- To proactively create an environment for generating new knowledge through research and innovations compatible with the educational mission of the University.

5. Scope

This policy covers all rights arising from the intellectual property devised, created or generated by the faculty members, staff, students, research scholars (both internal and external categories), persons employed in sponsored research and consultancy projects and consultancy projects and visiting scientists/professors/professionals who participate in teaching and research work being carried out at the University either on full-time basis or part-time basis, irrespective of the eligibility of these rights for registration. The IP arising from academic research includes patents, designs, copyright, know-how, and undisclosed information.

6. Policy Statement

The VITB is committed to promoting, protecting, managing and commercializing Intellectual Property consistent with the recognition that among its primary objects and functions are teaching, research and meeting the needs of the community and society. It supports the commercialization and exploitation of IP, which can provide an additional source of revenue to the University and also accrue benefits to staff and students. At the same time, the University recognizes traditional academic values and expectations.

7. Definitions:

I. Intellectual Property (IP) is an intangible knowledge product and shall mean and include –all results, conclusions, deductions, inventions, ideas, improvements,

discoveries, enhancements, solutions, processes, modifications, know-how, data and information of every kind and description conceived, generated, made, or reduced to practice as the case may be, designs, software programs, genetically engineered microorganisms, business models and copyrightable work -resulting from the intellectual output of the faculty, staff, students, research scholars and other employees of the University. IP is, thus, an outcome of University supported research or sponsored research, industrial consulting or other forms of joint research and development work.

II. Intellectual property Rights (IPR) means the rights derived from the IP e.g. Patents, registered designs, copy right etc.

III. Background information means technical information and know-how owned or controlled by the partners of a Collaborative Research and Development program before the start of the program, in the same field as the subject matter of the programmer or in related fields as necessary for the execution of the program.

IV. Background intellectual property means the intellectual property owned or controlled by the partners of a Collaborative Research and Development program before the start of the program, in the same field as the subject matter of the program or in related fields necessary for the execution of the program.

V. Foreground intellectual property means the intellectual property generated during a collaborative Research and Development program.

VI. University Personnel in this policy document includes all the faculty members, staff, students, research scholars (Internal and External), visiting scientists, professors, and other professionals who are hired either on a full-time basis or part-time basis.

8. Ownership of Intellectual Property

I. In all the applications filed by the University for the ownership of intellectual property rights, the persons who have directly contributed intellectual inputs shall be mentioned as inventors or creators

II. Copyrights

a) The University shall be the owner of the copyright on all teaching and instructional materials developed by the employees of the University as a part of any of the academic programs or activities at the University. However, the author shall have the right to use the material in his/her professional work.

b) Books, articles, monographs, speeches, and other communications produced by the staff members in the course of research and teaching using University resources will be outside the purview of this clause. The University recognizes faculty ownership of the copyright in such traditional works of authorship.

c) In cases where the copyrightable works including software are created by the employees of the University with significant use of the University's resources, the

University may demand assignment of the copyright of such works either in full or in part depending on the extent to which the University's resources have been used to produce the copyrightable work

d) The University shall be the owner of the copyright of works produced by non-institute personnel associated with or engaged in any activity of the University either with or without the intellectual contribution of the University personnel.

e) If any copyrightable work is produced during the course of any sponsored /or collaborative activity, the ownership of copyright will be determined either according to the terms and conditions (related to IP) specified in the contract, if any, governing such activity or through mutual consultations and agreement with the sponsoring/collaborating agency.

f) In the case of a thesis/dissertation/project report written by a student, the ownership of copyright shall rest jointly with the student and his/her guide. However, in such cases, the University may demand the assignment of the ownership of the copyright in full. Where the University does not demand such assignment or where the copyright has not been assigned to the University, the University will be entitled to a non-exclusive, non-transferable license to use the work within the University for non-commercial educational and research purposes and to possess a limited number of copies for such purposes.

g) Any copyrightable work generated as a work-for-hire will normally belong to the University unless otherwise specified in the original contract for the work.

h) If the foresees a gainful return from the copyrights, it may initiate steps to file and protect such copyrights and share the financial benefits with the creator on terms and conditions of the University.

III. University-Supported Research

All rights in respect of the intellectual property generated out of investigations carried out at the University making use of the University's resources shall vest in and be the absolute property of the University except in cases where such investigations are carried out either jointly with other institutions/Universities and agencies or under sponsorship by an outside agency

IV. Sponsored Research

The IPR of inventions arising out of research projects undertaken on behalf of and entirely funded by a sponsoring agency shall be registered jointly in the name of the University and the sponsoring agency if the sponsoring agency bears the cost of securing and maintaining the IPR registration equally. Where the sponsoring agency is not forthcoming for filing a joint IPR application, the University, at its discretion, may file the application apply with absolute ownership and will meet the entire cost of securing and protecting of IPR. If the sponsoring agency funds the research projects only partially or if there are multiple sponsors for the same project, the sharing of IPR will be decided through mutual consultations and appropriate agreements.

If the sponsoring agency is an industry, the industry may opt for one of the following arrangements for sharing the IPR with the University:

a. The ownership of IPR will rest with the industry but the industry has to pay the University an initial lump sum and subsequently reasonable annual royalties for a specified period in recognition of their contribution to the project. The terms of ownership of the IPR will be governed by a specific a priori agreement between the University and the sponsoring industry. The ownership of IPR rested in the sponsoring industry may be exclusive or non-exclusive. In case of exclusive ownership, if the industrial sponsor fails to exploit within a mutually agreed time limit, the University may permit third-party exploitation of the IPR.

b. The ownership of the IPR will rest with the University but the exploitation rights will rest with the industrial sponsor either exclusively or non-exclusively, in return for an initial lump sum payment and subsequently annual royalties for a specified period or other benefits to the University. In case of exclusive rights (i) Third-part exploitation will be permitted if the industrial sponsor fails to exploit the IPR within a mutually agreed time limit. ii). The University will retain user rights for the purposes of further research and development.

V. Joint Research

If the intellectual property is an outcome of joint research undertaken by the University personnel with external organizations/agencies/individuals, the IP will be owned jointly by the University and the collaborators. The cost of filing and maintaining the IPR and the revenue generated by its commercial exploitation will be shared by the University and collaborators according to an agreed formula. If the collaborators are not either forthcoming or agreeing to share the cost, the University, at its discretion, may decide to file and maintain the IPR at its cost. In this case, the sharing of revenue accruing out of the commercial exploitation of the IPR will be solely decided by the University.

9. Technology Transfer:

I. The University shall take all necessary steps for the commercial exploitation of the IPR obtained either in its name or jointly with other agencies, to the fullest possible extent that is reasonably practicable, without undue delay. The marketing of the IPR will be done under the agreements involving technology transfer, licensing (exclusive or non-exclusive), and revenue-sharing models.

II. The University shall try to identify the potential licensee(s) for commercial exploitation of the IP to which it has absolute ownership. In case of joint ownership, the University will offer the first right to commercially exploit the joint IP, whether or not the same has been formally protected by patent(s). The licensing in this case would involve payment of a lump sum in the beginning as a technology transfer fee and payment of a royalty from the first date of the commercial exploitation for the mutually agreed period. If the collaborator refuses to exercise this option, the University will proceed to commercialize the IP in a manner that it deems fit.

III. In the event of the other collaborating organization/industry not undertaking commercial exploitation within a period of two years from the first date

of development of technology, the University reserves the right to license the use of IP to a third party.

IV. To promote and encourage entrepreneurial activities by its staff, the University may reassign, under an agreement, its ownership of the intellectual property to the inventor(s) or creator(s) of the property, who opt to market, protect and license it on their own with minimal involvement of the University.

The fees to be paid to the University by the assignee consist of all patenting and licensing expenses and the appropriate amount of royalties, equity, or other value received by the inventor(s) or creator(s).

V. The University would endeavour to exploit the IP either by itself or by commissioning a Technology Management Agency to bring to fruition the IP produced by its personnel. The inventor(s)/Creator (s) may seek the University to assign the rights to them after a certain holding period.

10. Revenue sharing:

The revenue accruing out of the commercial exploitation of IP (i.e. the technology transfer fee and subsequent royalty payments) would be shared appropriately between the inventor(s) and the University. Currently, this ratio is 60:40. Where the University reassigns the right to IP to its inventor(s)/Creator (s), he/she/they shall reimburse all the costs incurred by the University, which include protection, maintenance, marketing, and other associated costs.

11. Infringements, Damages, Liability and Indemnity Insurance:

As a matter of policy, the University, in any contract between the licensee and the University, seeks indemnity from any legal proceedings including but not limited to manufacturing defects, production problems, design guarantee, upgradation, and debugging obligations.

The University personnel shall have an indemnity clause built into the agreements with the licensee(s) while transferring technology or copyrighted material to licensees. The University shall retain the right to engage or not in any litigation concerning patents and license infringements.

12. Conflict of Interest:

The inventor(s) are required to disclose any conflict of interest or potential conflict of interest, if the inventor (s) and/or their immediate family have a stake in a licensee or potential licensee company, then they are required to disclose the stake they and/or their immediate family have in the company.

A license or an assignment of rights for a patent to a company in which the inventor(s) have a stake shall be subject to the approval of the Vice Chancellor of the University through proper procedure.

13. Dispute Resolution

In case of any disputes between the University and the inventors regarding the implementation of the IP policy, the aggrieved party may appeal to the Assistant Vice-President of the University. Efforts shall be made to address the concerns of the aggrieved party. The Assistant Vice-President`s decision in this regard would be final and binding.

14. Application of Policy:

This policy shall be deemed a part of the conditions of employment for every employee of the University and apart of the conditions of enrolment and attendance of students at the University, students on enrolment and all existing staff and students.

Further, the University reserves the right to amend the IPR Policy as and when such a need arises/deemed fit.

All potential creators who participate in a sponsored research project and/or make use of University–sponsored resources shall abide by this policy and shall accept the principles of ownership of intellectual property as stated in this policy unless an exception is approved in writing the University.

15. Right to Regulate Policy:

The IPR Cell shall have the responsibility for interpreting the policy, resolving disputes, the application of the policy, and recommending changes to the policy from time to time to the Assistant Vice-President through the Registrar and Vice-Chancellor. The Assistant Vice-President shall consider such changes/recommendations and take such decision thereon as he/she deems fit. The IPR policy may be reviewed after three years or earlier if a major change in the same takes place at the National Level.

16. Legal Jurisdiction:

As a policy, all agreements signed by the University and dispute(s) arising therefrom, will be subject to the legal jurisdiction of the Court of Adjudication at Bhopal only and shall be governed by the appropriate laws of India.



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INTELLECTUAL PROPERTY RIGHTS, LEGAL AND ETHICAL MATTERS

(Operating Guidelines)

1. Introduction

The VELLORE INSTITUTE OF TECHNOLOGY BHOPAL UNIVERSITY (VITB) is a premier institution devoted to undergraduate, postgraduate, and doctoral education in Engineering, Science, Management, and Humanities and advanced research in all these fields. VITB has been constantly encouraging scholarship, research, academic excellence and innovation with the aim of creating an environment for open dissemination of research results and free exchange of information amongst academicians and scholars. VITB, along with its role as a facilitator for the generation of fundamental knowledge in science and technology, undertakes also programs of social and economic relevance to the country. VITB, therefore, has set in place, systems and mechanisms to structure the process of commercial exploitation of the knowledge generated at VITB under the provisions of IPR regimes in the country.

2. Intellectual Property Rights, Legal and Ethical Matter Cell (IPRLEM Cell)

The IPR Cell is constituted for formulating the guidelines and policies for adoption by VIT after due approval by the Board of Management of the Institute and to carry out executive actions for their implementation. The Intellectual Property Rights Cell arranges for the speedy processing and filling of applications for patents and effectively implements the policy and guidelines of the Institute in respect of Intellectual Property Rights.

- I. The Cell will have the following structure

Convener of the IPR Cell: To be nominated by Assistant Vice-President from amongst the Senior Professors of the Institute

Three Associate Faculty members: To be nominated by Assistant Vice-President from amongst the Faculty of the Institute

Committee
Dr. Shiv Manjaree Gopaliya, SMEC (Convener)
Dr. Sanay Kumar Naha, SASL
Dr. Monica Sankat, SCOPE
Dr. Ankur Beohar, SEEE

- II. The IPRLEM Cell will have an IPR legal Advisor /consultant who will be appointed by VITB. He / She will be a well-known practicing attorney and would render the necessary advice to IPR Cell to provide information on the most vulnerable patent rules and regulations in the wake of the Patent Cooperation Treaty (PCT) and so on. He / She will also assist in drafting and evaluating MOUs and filing patent and copyright applications.
- III. The cell shall inter-alia have the following responsibilities
- **IP COUNSELLING:** The IPRLEM Cell will counsel and interact with inventors of potential intellectual products and assist the Institute in identifying the IPR potentials.
 - **IP MANAGEMENT:** Filing, maintaining and monitoring, and managing patents and coordination between attorneys, faculty (inventor (s)), and VITB authorities.
 - **IP TRANSACTIONS:** Advising, drafting, and monitoring all IP-related MOUs of VITB.
 - **IP POLICY FORMULATION:** Framing of IP policy and amendments from time to time for consideration of the Institute authorities.
 - **PROMOTING IP-AWARENESS:** The IPRLEM Cell will undertake such measures which promote awareness of IP rights and strive to develop an IP culture within the VITB fraternity.
 - **CAPITALIZATION OF IP ASSETS:** The cell shall periodically recommend patentable technologies to potential licensing agencies, CII, and other Financial Institutions to invest in venture capital towards the new technologies. The cell shall identify specific industries and direct marketing of these technologies and promote advertising in-house technologies of VITB via electronic media/newspapers and magazines. The IPRLEM Cell would also enlist the services of reputed Management Consultants for the capitalization and commercialization of patented technologies owned by VITB. The IPRLEM Cell will interact with the faculty members, patent attorneys, financial institutions, and industries and follow up on royalty payments from industries.

- ASSISTANCE IN TECHNOLOGY TRANSFER: The Cell shall handle the transfer of all technologies developed at VITB.
- REPORTING ON IP ASSETS AND IPR MANAGEMENT: IPR Cell will submit periodic reports on IP assets and current status to the Registrar / Vice Chancellor and the Board of Management of the University for *consideration and advice*.
- Appointment of a panel of attorneys for processing /filling of applications for patents etc.
- Periodical patent/Intellectual audits through professional experts.
- To recommend terms of payment of annuity retention fees for Professional services
- To advise such proactive measures which will promote the commercialization of patents, including an exhibition of patents, industry meet, etc.
- All matters for securing the protection and management of IPs in the interest of the country, Institute, and the inventors
- Seeking expert advice from renowned financial consultants, including experts from the financial/ business Institutions such as FICCI, CII, IDBI, etc...

IV. The IPRLEM Cell will report to the Vice-Chancellor of the University. It will seek the guidance of the Registrar and Vice-Chancellor in discharging its responsibilities.

3. IP Protection-Some Explanatory Notes (To be read in conjunction with VITB-IPR –Annexure: some useful information on patents and copyright)

The Intellectual Property could be protected in the form of patent, Industrial design, Trademark, Copyright, confidential information, technical know-how, Mask works, process, plans, specifications, guidelines, graphics, training materials, software programs, records, drawings, instruction guides, student materials, new techniques, algorithms, concepts, etc. The intangible product of the intellect must have the potential for industrial application or potential for augmenting the S&T knowledge base if it must be protected by the VIT Bhopal University.

- I. A **Patent** is granted for any invention capable of commercial application. For it to meet the requirements of patentability there has to be Novelty, Utility, and Non-obviousness. There must be an inventive step, which under the law, is one, which is not obvious to the person skilled in the art. The

invention may relate to a new product or an improvement of an existing product or a new process of manufacturing an existing or a new product.

- II. **Design Protection** is available for any prototype, which influences the consumer's choice by appealing to the aesthetic sense of the consumer. In other words, design protection is available for "the look of the article", appearance, and other visual features. There is no design protection for functional features.
- III. **Copyright:** Patent seeks to protect the applied and extension research; the law of copyright seeks to protect pure or basic research. The requirements of copyright law are Originality, meaning its origin to the author. Unlike patents, copyright law does not demand compulsory registration. Under copyright, the form of the expression can only be protected and not the idea itself. Copyright subsists in any original work specified in the Copyright Act which is (i) a literary, dramatic, and musical or artistic work, (ii) a cinematograph film, and (iii) a sound recording. Literary works include computer programs, tables, and compilations including computer databases.
- IV. **Know-how** and confidential information can be protected only so long as the owner can keep them secret and takes action against the unlawful use of such information by others by the action of breach of confidence or contract.

4. Procedure for IP Protection:

All applications for patents and copyright (as per proforma VITB/IPR-01 and VITB/IPR-02 and VITB/IPR-03 respectively) will be forwarded to the Convener, IPRLEM Cell through the Dean of the School/the Director of the Centre irrespective of whether the inventions have resulted from the in-house projects or sponsored projects.

5. Record-Keeping Procedures:

All data and details generated by a creator in the course of the creation of intellectual property should be systematically recorded in the concerned School/Centre, with particular reference to the following:

- a) No abbreviations or terms, except their use, is a standard practice in that particular discipline, should be used, unless clearly explained in a table at the front or back of the book.
- b) Crucial data or descriptions or experiments, which relate to valuable inventions or discoveries should be signed and stated by the creator, supervisor, or coordinator of the project.
- c) Modifications, if any, should be made by drawing a line through the deleted matter and writing cancelled beside it. The corrected data (clearly marked as such) should be entered immediately below, authenticated by the creator with his / her Initials and date.

- d) Samples of new products or products by a new method should be preserved, if possible, and photographed for the record. All photographs should be dated and signed by the creator on the reverse.

6. When should Faculty Approach IPR Cell discuss a possible Patent?

VITB has created an exclusive IPRLEM Cell. Any faculty, who believes to have a potential intellectual property generated while in service of the VIT may approach and set up discussions with the IPRLEM Cell Convener at any mutually convenient time. In any case, the chosen time for discussion should be sufficiently in advance of the maturation of the idea into a process or product. When the invention is only at the conception stage, it is still possible to file a provisional specification, which has to be followed up with a complete specification within 12 months. If it is not done, the patent application is deemed to have been abandoned. On the other hand, if the inventor has at his hand an inventive product, which can be marketed immediately, then complete specification can be lodged straight away.

7. Evaluation of Patent/Copyright applications:

Each application for a patent/copyright through an Invention Disclosure Form / Copyright Disclosure form as per proforma VITB/IPR-01 or VITB/IPR-02 or VITB/IPR-03 along with IPR facilitation request (VITB/IPR-04)) shall be received and scrutinized/examined by IPR Cell. The Committee may seek the help of other Professors as 'domain experts' to preliminarily evaluate the proposals for their prima-facie patentability. The 'domain experts' would be required to enter into a Non-Disclosure agreement as per the proforma VITB/IPR-05 and sign a No Conflict-of-Interest Form as per the proforma VITB/IPR-06, before getting access to the proposal. The inventors may be requested, if necessary, to make a presentation of their case before the IPRLEM Cell. In case the Cell recommends filing of patents, the Convener, IPRLEM Cell will process the application through one of the approved attorneys from the panel maintained at the IPRLEM Cell.

8. Assistance in Filling the Proforma:

Once the IPRLEM Cell approves protecting the Intellectual output, a patent Attorney shall be identified by the Cell for drafting the IP application. The following aspects need to receive attention:

- Objectives of the invention: What is the problem one is trying to solve? What are the issues involved?
- What prior art searches have been made? Which database? Search strategies adopted? Did searches cover grey literature – advertisements, pamphlets, Knowledge already available to the public either published or unpublished?

- How does the present invention differ from the known prior art? It is important to establish that the invention is not an obvious extension of the prior art to prove non-obviousness. Are there any unexpected findings in the present invention? What are those aspects of the invention that previous workers have not been able to find the solution for? What are the potentials for commercial applications of the new intellectual property concerning the previous products in the same area, if known?
- To establish the usefulness of the invention, one should highlight the technical value of the invention and illustrate where and how the solutions obtained over the prior art can be applied with distinction. One might consider savings in the cost, materials, manpower, energy, durability, efficiency, time, etc.
- The boundary conditions of the parameters under which the invention works effectively and beyond which the invention may not work. Also, outline several other applications of the invention if any.
- Furnish all the information in the proforma which can be collected from the office of IPRLEM Cell or through e-mail. Adequate information is to be given to the Attorney to enable him to prepare a draft claim. To ensure good protection, the attorney must understand the invention. A good patent specification should have the synergetic efforts of the inventor and the patent attorney.

9. Filing of Applications for IPR and Support

- I. All applications for IPR shall be filed by the Registrar in the name of the Institute as the owner of the IPR. The inventor's name will be filled in the application at appropriate places. All applications will be filed in India. Inventors will assign the exclusive right of ownership to the Institute to facilitate the Institute to file, secure and commercialize the IPRs without any encumbrance.
- II. PATENT CO-OPERATION TREATY (PCT) APPLICATION: For any patent which needs protection outside India, the procedure would be to first file a provisional patent in India and within 12 months, to file a PCT application along with an application for filing an Indian patent. This would be based on the recommendation of the IPRLEM Cell. The PCT route is preferred, efficient, and economical.
- III. The IPRLEM Cell would meet the expenses i.e. the statutory fee and patent attorney's fee, for processing the patent applications.
- IV. If an inventor decides to abandon or withdraw the application for a patent at some

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SOME USEFUL INFORMATION ON PATENTS AND COPYRIGHT

1. What is Intellectual Property Right (IPR)?

IPR is a general term covering patents, registered designs, trademarks, copyright, layout design of integrated circuits, trade secrets, geographical indicators, and anti-competitive practices in contractual licenses.

2. What are the legislations covering IPRs in India?

Patents:

The Patents Act 1970. It has been amended in 2005

RefLink:http://www.ipindia.nic.in/ipr/patent/eVersion_ActRules/sections-index.htm

Design:

The Design Act 2000

Ref Link: http://www.ipindia.nic.in/ipr/design/design_act.PDF

Trade marks:

The Trade and Merchandise Marks Act 1999 (amended in 2010)

Ref Link: http://www.ipindia.nic.in/IPActs_Rules/tmrAct/TMRAct1999.htm

3. Who is responsible for the administration of IPRs in the country?

Patents, designs, and trademarks are under the charge of the Controller General of Patents, Designs, and Trademarks which is under the control of the Department of Industrial Development, Ministry of Industry. Copyright is under the charge of the Ministry of Human Resource Development.

4. What is a patent?

A patent is a legal monopoly that is granted for a limited time to the owner of an invention. Patent rights are granted by the state. Merely having a patent does not give the owner the rights to use or exploit a patented invention: that right may still be

affected by other laws such as health and safety regulation, the food and drugs regulation, or even by way, inherited, sold, licensed and can even be abandoned. As it is conferred by the state, it can be revoked by the state, it can be revoked by the state in certain cases even after a grant, and a world patent.

5. What is the distinction between patented invention and know-how?

The law does not require that the information disclosed in the patent specification be sufficient for commercial exploitation of the invention. Thus, a patent usually will not disclose sufficient information for commercialization.

Known-how on the other hand, covers all information necessary to commercialize the invention e.g. setting up a production plant. Such information would include, for example, details of the production methods, the design drawings, etc. It is this known-how developed around an existing patent and commercialized subsequently will be an infringement of the patent unless the patentee had agreed to commercialization on mutually agreed terms.

6. How is an invention interpreted?

To be patentable the invention must not only be novel but must involve an inventive step. An invention involves an inventive step if it is not obvious to a person 'skilled in the art' having regard to any matter which forms part of the state of the art but disregards unpublished pending patent applications. Simplicity is not necessarily an objection to securing a patent. The means by whereby the object is attained may be perfectly simple and common, yet there may be an inventive step if the inventor has developed a variant that will render more useful results as disclosed. It is immaterial whether the invention comes into existence by accident, but there must be some inventive step.

whether or not it has been in the meantime sold or licensed. There is no such thing as
What are patentable inventions under the Patent Act, of 1970?

Invention means any new and useful:

- a) Art, process, method, or manner of manufacture
- b) Machines, apparatus, or another article
- c) Substances produced by a manufacturer, and include any new and useful improvements of any of them and an alleged invention. However, inventions claiming substances intended for use; or capable of being used, as food as medicine, or drug, or relating to substances prepared or produced by chemical processes (including alloys, optical glass, semiconductors, and inter-metallic compounds) are not patentable.

7. How is the novelty of an invention determined?

The novelty is judged taking into consideration the knowledge available in India and elsewhere at the time of filling the application for a patent. In other words, the invention should not be known anywhere in the world before applying for a patent.

8. What are the types of inventions which are not patentable?

- a. An invention that is frivolous or which claims anything contrary to well-established natural laws e.g. different types of perpetual motion or machines which violate the third law of thermodynamics.
- b. An invention the primary or intended use of which be contrary to law or morality or injurious to public health e.g. a process for the preparation of a beverage which involves use of a carcinogenic substance, although the beverage may have higher nourishment value.
- c. The mere discovery of a scientific principle of formulation of an abstract theory e.g. Raman Effect.
- d. The mere discovery of any new property or new use of a known substance or the mere use of a known process, machine, or apparatus unless such a known process results in a new product or employs at least one new reactant.
- 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 rearrangement or duplication of features of known devices each functioning independently of one another in a known way.
- g. A method or process of testing applicable during the process of manufacture for rendering the machine, apparatus, or other equipment more efficient.
- h. A method of agriculture or horticulture.
- i. Any process for medicinal, surgical, curative, prophylactic, or other treatment of human 'beings, or any process for a similar treatment of animals or plants.
- j. An invention relating to atomic energy.

9. When should an application for a patent be filed?

Filing of an application for a patent should be completed at the earliest possible date and should not be delayed until the invention is fully developed for commercial work. An application filed with provisional specification disclosing the essence of the nature of the invention helps to register the priority by the applicant. Delay in applying may entail some risks like (i) other inventors might forestall the first inventor in applying for a patent for the said inventor (ii) there may be either an inadvertent publication of the invention by the inventor himself/herself or by others independently of him/her.

10. What are the essential patent documents to be generated and submitted by a potential patentee?

There are two types of patent documents usually known as patent specifications namely:

I) Provisional Specification:

A Provisional Specification is usually filed to establish the priority of the invention in case the disclosed invention is only at a conceptual stage and a delay is expected in submitting a full and specific description of the invention. Although a patent application accompanied by a provisional application does not confer any legal rights to the applicants, it is, however, a very important document to establish the earliest ownership of an invention. It is essential to submit the complete specification within 12 months from the date of filing the first application. This period is extendable by 3 months.

The provisional Specification is a permanent and independent scientific cum legal document and no amendment is allowed in this.

II) Complete Specification:

Submission of Complete Specifications is necessary to obtain a patent. The contents of the specification would include information regarding the field to which the invention relates, the background of the prior art giving drawbacks connected to the hitherto known details of the invention, the best mode of carrying out the invention, and claims defining the scope of the invention. The contents of the complete specification should enable a reasonably skilled person in the art to work on the invention without the help of the inventor.

11. What are the criteria for naming inventors(s) in a patent application?

The naming of inventors is normally decided based on the following criteria:

- I. All persons who contribute towards the development of patentable features of an invention should be named inventors(s)
- II. All persons who have made intellectual contributions in achieving the final results of the research work leading to a patent should be named inventor(s)
- III. A person who has not contributed intellectually to the development of an invention is not entitled to be included as an inventor
- IV. A person who provides ideas needed to produce the germ of the invention” need not himself/herself carry out the experiments, construct the apparatus with his/her own hands or make the drawing himself/herself. The person may take the help of others. Such persons who have helped in conducting experiments, constructing apparatus, or making the drawings of models without providing any intellectual inputs are not entitled to be named inventors.

Quite often difficulties are experienced in deciding the names of inventors. To avoid such a situation, all scientists engaged in research must keep a factual, clear, and accurate record of daily work done by them in the form of a diary. The pages in the diary should be consecutively numbered and the entries made should be signed both by the scientists and the concerned leader.

12. Can a published or disclosed invention be patented?

NO. Publication or disclosure of the invention anywhere by the inventor before the filing of a patent application would disqualify the invention to be patentable. Hence inventors should not disclose their inventions before filing a patent application. If

published after the filing of the patent application, the number and date of the patent application should be given by way of information to the public.

13. What is considered the date of the patent?

The date of the patent is the date of filing the complete specification. This is an important date because it is from this date that the legal protection of an invention covered in the patent takes effect. The term of the patent is counted from this date onwards.

14. What is the term of a patent in the Indian system?

The term of every patent in India is 20 years from the date of filing of the patent application, irrespective of whether it is filed with provisional or complete specifications. However, in the case of applications filed under PCT, the term of 20 years begins from the International filing date.

15. How does one keep a patent in force for the full patent terms?

A patent has to be renewed from time to time by paying the prescribed renewal fees. If the patent is not renewed, it will cease to remain in force and the invention becomes open to the public.

16. What is expected from a patentee?

A patentee must try to ensure that the patent is worked in India on a commercial scale and without undue delay. The patent is not granted to allow the patentee to enjoy a monopoly for the importation of the patented article. In other words, a patentee cannot sit over an invention and block the use of that invention.

17. What is the nature of the information needed while consulting a patent attorney?

- An explanation of the history of the invention, where you got the idea from, how you developed it, any early failures and possible prototypes, with all your laboratory notebooks, etc., if possible. This will help the patent agent to explain the inventive step which is necessary to establish to obtain the patent, and it also increases his or her understanding of the invention to maximize the skill with which he or she can draft claims and specifications for it.
- What do you think is the central part of it, the most inventive element or most useful aspect, together with what other similar prior inventions you know of or have developed the idea from and improved upon? If you have developed an improved version of your competitor's products, admit it, and be honest. It is vital to be such so that the patent agent can define your invention properly in making the application and avoid excessive claims which might be struck down.
- A detailed description of the best way of putting the invention into practical use, results of your tests and trials, etc., including all the failures and defects.

- Alternative ways of using the invention, and the substitutes for parts of it – i.e. will one chemical compound do as well as any other in the process, is there an optimum size, etc. it may be worth drafting the patent widely enough to cover less satisfactory alternatives_ if this is possible- to prevent rivals from marketing a less satisfactory competing product which because of its defects might bring the whole genre of product into disrepute.
- Both after an initial search and during the course of the patent application it is important to respond quickly and accurately to queries that the patent agent may have, to help the patent application on the way and to save you money. Thus, the client should in particular keep the patent agent informed of any new developments or improvements or other changes made to the invention and any rivals which appear etc.

18. What are the different types of work covered under copyright?

Copyright covers:

- I. Literary, dramatic, and musical work. Computer programs/software are covered within the definition of literary work.
- II. Artistic work.
- III. The cinematographic film includes a soundtrack and a video film.
- IV. Record- any disc, tape, perforated roll, or other device.

19. What are the rights of a copyright holder (which when violated lead to infringement)?

a) In the case of literary, dramatic, or musical work, not being a computer program:

- I. To reproduce the work in any material form including the storing of it in any medium by electronic means
- II. To issue copies of the work to the public not being copies already in circulation
- III. To perform the work in public, or communicate it to public
- IV. To make any cinematograph film or sound recording in respect of the work
- V. To make any translation of the work
- VI. To do, about a translation or an adaptation of the work, any of the acts specified concerning the work in sub-clauses (i) to (vi)

b) In the case of computer programs:

- I. To do any acts specified in clauses (a)
- II. To sell or give on hire, or offer for sale or hire any copy of the computer the programme, regardless of whether such copy has been sold or given on hire on earlier occasions

c) In the case of an artistic work

I. To produce the work in any material form including depiction in three dimensions of a two-dimensional work or in two dimensions of a the dimensional work.

II. To communicate the work to the public

III. To issue copies of the work to the public not being copies already in circulation

IV. To include the work in any cinematograph film

V. To make any adaptation to the work

VI. To do about an adaptation of the work, all of the acts specified in relation to the work in sub-clauses(i) to (iv)

d) In the case of a cinematograph film

I. To make a copy of the film including a photograph of any image forming part thereof.

II. To sell or give on hire or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions.

III. To communicate the film to the public.

e) In the case of sound recording

I. To make another sound recording embodying it.

II. To sell or give on hire, or offer for sale of hire, any copy of the sound recording, regardless of whether such copy has been sold or given on hire on earlier occasions.

III. To communicate the sound recording to the public Explanation: - For this section, a copy that has been sold once shall be deemed to be a copy already in circulation.

20. How is a computer defined for copyright?

A computer includes any electronic or similar device having information processing capabilities.

21. What is the definition of a computer program?

Computer program means a set of instructions expressed in words, codes, schemes, or any other form, including a machine-readable medium, capable of a computer to perform a particular task or achieve a particular result.

22. What is the term of a copyright?

a) If published within the lifetime of the author of a literary work the term is for the life of the author plus 60 years.

b) For cinematographic films, records, photographs, posthumous publications, anonymous publications, and 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.

Thank you