

Introduction on Intellectual Property to Engineers and Technologists
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Lecture – 22
Industrial Design Registration

So last class we, you learnt about industrial design and its basic components. So, now, why not to learn about the procedural aspects of registration and further on the criteria of required for registration. As I mentioned that India per se, there is no unregistered design right, definitely, you have to, you will be owners of industrial design rights by virtue of registration and definitely for registration always you have to meet some procedural, you have to go through some procedural aspects. So, procedural aspect part we will discuss, before that, just like a say, the always lies that when an intellectual property, the defined forms we discussed, that always we require to fix some criteria, for registration of any kinds of individual properties, just like Patents, we have already discussed copyright also, we discussed that originality is the criteria, specifically, Patents novelty inventiveness are the criteria.

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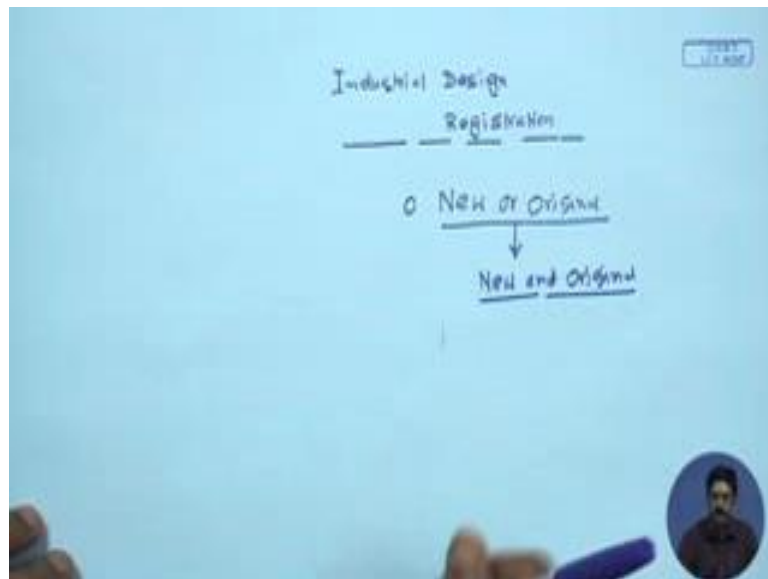


Similarly they have, the statute have created the criteria, that your designs should meet, then only you, will it, will qualified to be registerable. So, what criteria they have

specified let see, analyse those thing, before going to the procedural aspects. So, now, they mention a design which is not registerable, they have casted in a different way, a design which is not registerable means, a design which is not new or original, if design is not new or original or has been disclosed to any to the public anywhere in India or in any other country by publication intangible from, or by use or in any other way prior to filing date or now, or where applicable the priority date of the application for registration.

So, first let say, read clause A, a design. So, now, if you cast that in a positive way to register a design should be new or original. So, what type of design is not registerable which is not new or original?

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So, for now are assuming to register an industrial design, the design should be new or original. Now, if I asked new means, already you came across the word new when, I discussed about the invention and novelty. You have come across the word original when we discussed about the copyright. What is original? Original will answer definitely, independent creation, or originated from the authors. What is novel? Means which is not available or no prior art, so here the created the criteria, new or original; but statutory interpretation suggested that, it should be a new and original. So, all they are interpreting.

Now I will explain that part. So, lets see, give the example already I have given, the lets say, somebody have created a school bag in the form of Royal Bengal Tigers, just like he

created Patents like a Royal Bengal Tigers in the bag, school bag. So, if I ask that, the Royal Bengal Patent is new, you will definitely answer with reference to Royal Bengal Tiger, which is available. So, with reference to the Royal Bengal Tiger, the Royal Bengal Tiger Patent is not new in the bag. If I asked, whether it is original? Definitely will give the answer yes, is original, because it is originated from the authors that, who is the, who got the idea, who is for applying the Royal Bengal Tigers Patent in the bag itself.

So definitely it is original, but the criteria they suggested new and original. So, means, I will explain taking conjunctive, that is end part. The school bag now, there if you asked that well bag that, whether the Royal Bengals Patents of the school bag is new and original. So, then now in the new domains should be restricted with reference to the school bag or those kinds of the article. If the Royal Bengal Patent is not available in the school bag or that class of article, then it is new with reference to the school bag and definitely it is original. I referred already, it is originated from the authors; he has got idea to give the Patents of say Royal Bengal Tigers in the school bag. So, if in the school bag form the Royal Bengal Patent is new and original or then definitely it will qualify to be registerable under the industrial design rights.

Can I give one example more? Take the example lets a Taj Mahal, the Taj Mahal no problem, now another person somehow converted into the Taj Mahal in the form of a paper weight and is telling that Taj Mahal paper weight, another person converted Taj Mahal in the table lamp and selling table lamp in the form of a Taj Mahal. So, all in the form of a table lamp, it is there in the follow of a paper weight also, it will be new and different class of articles and new and original. So, in the form of a table lamp Taj Mahal now new, in the form of a paper weight Taj Mahal also, new and originals, and definitely it will qualify to be registerable under the industrial design rights. So, I think you got the idea about the new or originals or new and original, new, originals by applications new in that form, in that class of article.

Original means originated from author, original space application original means application, by application, means Qutub Minar shape or Taj Mahal shape is not unknown, but by virtue of application it in the class of the article, it is become new and original. Original by (Refer Time: 07:30) of application, originated from the authors itself. So, the person definitely, the person who got the, will create that thing first in the form of a Taj Mahal shape Patent in a school bag or then, he should get the rights. So, as

new not, is not, should be new and original. So, has not, or has been disclosed to the public anywhere in India, or in any other country by publication in tangible forms.

Now, the school bag in the form of a Royal Bengal Tigers, if it is available in public in India, or any other country, then your design will not be considered a novel design. So, we have to be cautious regarding that, when I discussed about the Patent you have to do a in thorough novelty search. Just like say, it is based on prior art search, you remember, regarding the Patents, prior art searched based on key word I referred, similarly here also, the design database is available for search. So, we have to search, whether this the design is available in a public domain by means of publications in a tangible form or by use, means all over that somebody is using that design in a any form by any, in the world. So, then you may ask me, how will you know that particular task, definitely, but for that there isnt, you have to use the different data bases, paid data bases are available also, the non-unpaid data bases like the public, the public data base in the form of patent office side data bases, on the reverse PTO, you can design decide, industrial design, now Patents from India, IP India dot, NIC dot in a search design.

Similarly sometimes, other Patent office data bases may be available for search; you make us also tell me, this only for registered design or patented design, what happened to the others form, when I discussed about the Patent, I told you that Patent literature, non-Patent literatures. So, there is the questions, maybe the data bases may not able to covers all published documents, so that the other part. So, this is the part country to public country (Refer Time: 10:09) to publication in tangible form. This is to remember the tangible form or any other way, prior to filing date, means if you file today before that, it is available in the publication form or publication in the tangible form or by use; then your design will not be registerable. And the priority date, I referred, when I refer any patent, we refer conventional applications just like say, if you file a patent application in India, and taking this is a priority, you can reach to other country, if you file within the other country, within years.

By virtue of your India patents application, that the patents application in Japan will now, Japan is a priority in the conventional country. So, if you follow the conventional route, considering that your patent novelty will not be destroyed, because of prior coming in India. So, considering, that similarly this also applicable for industrial design, it is the priority date, priority has been fixed for 6 months. So, just like that if you

somebody file a design patent design application in Japan, and within 6 months if he files a design application in India. So, by virtue of his design application in Japan, that Indian design application will not be considered, not novel, because of the, this Japan is patent, Japan is design applications.

So, this is the, A and B, the two points, and it is significance. I think the got some idea regarding that, and the clause C is suggest is, not significantly distinguishable from known designs or combination of designs, just like say, only discussed about that, just like a patents, just like, and a utility model part the difference you understood that, patents and utility model parts the inventiveness requirement is high threshold of individual requirement is high respect to Patent. Threshold of invest; inventiveness requirement is less, in respect of utility model.

So, similarly kinds of, the criteria they try to put it out to somehow to block, they somebody have created design Patent of Tigers, say, later on he see simply changed some of the Patents positions and claiming that to be novel, to prevent that kind of things, they have created a criteria called, is not significantly distinguishable from known design or combination of known design. So, like this way somebody changed the positions of the bottom in a court, and claiming that my, I my, changing the bottom position of the court, is changing; giving some different look. So, in that case, we have look to analyse these characteristic. So, not significantly, mere trade variant or should be significant, not significantly this significant part should be analysed. So, that is it, bottom position change is not significant change. So, may not be with reference to earlier bottom position. So, may not be qualified to be for industrial design registration.

So, industrial design registration the criteria up to the point C, you understood. Then comprises or contains scandalous or obscene matter shall not be registered. So, considering the public morality grounds, they have taken this criteria like something is obscene, just like understood that part scandalous, that type of elements you are putting in the form of a statement configuration of an article or on the form of (Refer Time: 13:45) of an article that will not be considered to be registerable. So, now, criteria for industrial design registration you understood with example, you may create consider that how, how this chair where ever I am sitting or that this PC, or computers or that LCD projectors, that all can be qualified to be an article, and how can you consider that article in the one of the new and originals and prior published, if you do not prior published and

not significantly, and should be significantly distinguishable from that this type of things, then it may qualify for industrial design registration.

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Who Can apply for Registration?

"proprietor of a new or original design",-

- (i) where the author of the design, for good consideration, executes the work for some other person, means the person for whom the design is so executed;
- (ii) where any person acquires the design or the right to apply the design to any article, either exclusively of any other person or otherwise, means, in the respect and to the extent in and to which the design or right has been so acquired, the person by whom the design or right is so acquired; and
- (iii) in any other case, means the author of the design; and where the property in or the right to apply, the design has devolved from the original proprietor upon any other person, includes that other person.

A design may be registered in respect of any or all the articles comprised in a prescribed class of articles.



So, what criteria to use industrial design should meet, you understood for being it to be registered. Now, quickly have to quickly we can proceed further. So, who can apply for registration? So, definitely you should know who should apply for registration. Proprietor of a new or original design, proprietor means owners of the new this owner's means, authors if we created the, authors created the design, the author is the owners, although act has not specifically mentioned that authors always have to apply for registration. So, proprietor, proprietorship can go just like in an organisation, if somebody is getting the design for the organisation the proprietor should goes to the organisation based on employee employer contract. So, proprietor of the new or supervisor will be the employers, although authors will be create of the person who is creating the design, but who will apply? The proprietor of a new or original design, now where the author of the design for good consideration, executes the work for some other person, means the person for whom the design is, so executed.

So, just like say a beautiful case is there a lady have been given to stitch some clothes to a measure to a tailor, and he told, he given a blue print of the stitch, how what type of colour, what way it will be stitched, everything he has provided. Now tailor if you stitched the cloth, as per the direction of that lady, in that case lady will be the authors,

now the owners, of the design. If now the authors, authors with reference to some, just like an employee employer contract, where the employee is creating those design for that employer, because of good consideration in that case employer will be the owners or proprietor. Where any person acquires the design or the right apply, the design of an article, either exclusively to of any other person or otherwise means, in the respect by means of assignment and others.

In other cases means of authors, the means, the authors and where the property in, or the right to apply the design has devolved from the original proprietor, upon any other person, include that other person. So, just like say the original author has dies, by virtue, virtue of the devolution of title, the ownership is going to his once a legal heirs, then legal heir has got the right of, to apply for that. Similarly in respect of company dissolution or devolution, that title may be providing may be goes to some others person. So, other person may be the considered to be proprietor or owners. So, who can apply? If I ask then, the proprietor can apply, author can be also proprietor or author executes the design in a good consideration for other, then that person will be the proprietors.

Now, design can be registered for any or all classes, just like a, the I can refer, that just like a Royal Bengal Tigers say, Patents, in respect to school bag, you can apply that Patents, if those in a chairs also. So, in that case, you have to register for that patent in a chair, in a separate class and school bag in a separate class, you can apply those Patent in a cup or containers also, separate classes. So, you have to registers for not like that your design by virtual registration (Refer time: 18:00) in a school bag, will protection will be available for chair and bottle or container, not like that. So, we have to register for that thing for others also. So, this is the one part.

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Particulars required for application

(i) Application Form-1 with requisite fee of, IT should contain full name, nationality, address, class no, articles name and address for service in India.

(ii) Four sets of Representation sheets in durable paper of A4 size, pasted with the photographs/drawings of the article from different angles.

Optional:::

(iii) Power of attorney (if required)

(iv) Priority document (for convention application)



Now, go for procedural aspects. So, what is required for filing industrial design applications, a form one with the requisite fee, just likes, now it has been increased to four thousands for legal entity and individual it is for one thousand. So, if as an authors and individual if file it, is for one thousand. As an organisation, IIT Kharagpur or other, other investigating it is, other file it is four thousand.

So, in application form, you have to give, provide full name, nationality address, means which are address for which address that communication from the office should be made, address of the organisation and sorry, address of organisation along with the address of service means let see it is filed trough an attorney attorney's address of service will be provided, then four set of representation sheets in durable A4 size paper, should be pasted in appropriate phases, this is the essential optional thing, if you are filing though power of attorney, you have to give a general power of attorney, or power of attorney. Then priority document if are filing through conventional route, in that case priority document is also adequate.

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FORM 1
FDI No. 1000

APPLICATION FOR REGISTRATION OF DESIGNS,
Section 8 and 44

You are requested to register the accompanying in

Class No. 1. In
the name of 2.
..... (who stated) to be the proprietor(s)

Name of the design 3. of the design (drawing or photograph) accompany this request

The design is to be applied to 4.

*The design has been previously registered in Class No. Under No.

Details of first application in UK, or convention country or group of countries or inter-governmental organization:
(i) Name of country:
(ii) Official date:
(iii) Official number:
Address for service⁵ in India is :
.....

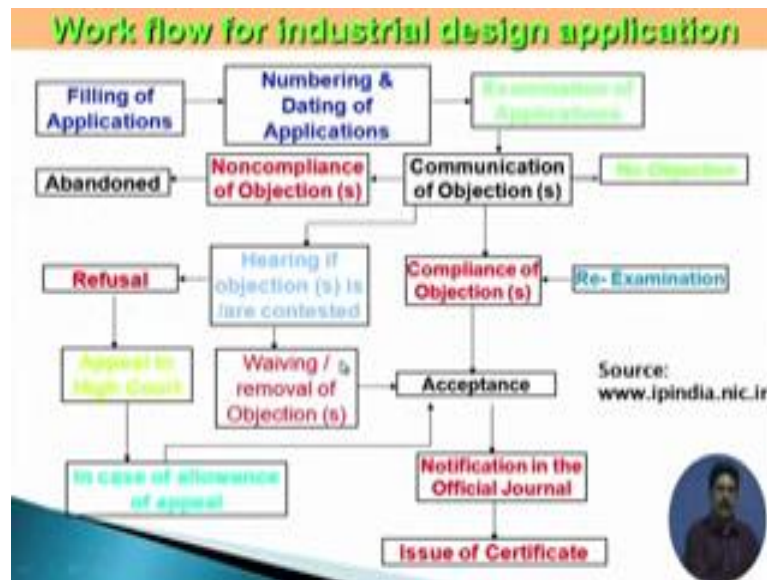
Declaration:
The applicant claims to be the proprietor of the design and that to his knowledge and belief the design is new or original

Dated this Day of 200.....
(Signed)

THE CONTROLLER OF DESIGNS,

And I will show, what is the form one? Specifically you are requested to register, a company, class number. you refer just like a for container is the class 19, name of the article you are referring, then it is simple file form, full name design is to applied to article, then if you are claiming priority the, you refer that document, the simple part.

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Now, come to the procedural aspect, very simple also, filing an applications, then they will provide a number and date, then there from your date, date will be where you from the date of your application, you are right will start. Then examination of applications,

then communication of example communication of objection, if there is this is not novel, this not a design, it is already priorly published or that is the that say mere trivial, just likes, a all those kinds of the objection they will communicate. Then compliance, noncompliance, if you do not comply with the objection of that, that will be raised from the office, then it will be abandoned. If you comply with objections, of the objection, then it will be accepted then, so that you understand that, now it will be notified in the official gadget that your this design has been accepted by the industrial design registries, so understood that.

So, then there is no opposition there, but now, they will issue a certificate, but within the, after that, after the notification in the official gadget, one important procedural they have kept it that is, cancellation. So, any person can further cancel the your design, considering those of those elements, just like criteria for registration not novel, or just like not novel, or not new or originals, not in it, is available power published form or working form, prior used form, or it is obscene, it is this is not an article, just like say, on that ground, all those grounds, can be applicable for cancellation of your designs.

So, if you got, accept, got a certificates also any time your design can be cancelled on that ground. We referred that grounds, are referred with into industrial design act, they section 19 as referred. So, procedural aspects very simple, filing of applications, provide the numbering dating of applications, examination of applications, communication of objections and cohesion objection to whom on that address of subjects. If no objection also, you understood, it will be automatically accepted. Compliance of objections, they will again re examine, not like that they if that they will examine, then they may accept it. If that you are not agreeing with the objection as raised by the office, then you can ask for a hearing, then in that hearing they may be the (Refer Time: 22:31). So, here, that is a different part appeal to high court, this will be different now, I say it can be applicable to IPAB also. So, this is the, you just change it, amend it, this is appeal based on that. So, the hearing, if they are not accepting, agreed by the order of the, controller from in the office. So, you can appeal before IPAB. So, this part you just changed it, change it ok, this change it this has been recently changed.

This can be, you can apply before IPAB board, IPAB appeal, before IPAB, just change it. So, understood the procedural part, now what procedural you have to adopt.

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So, now I will show you, that some specimen representation, just like a one important parameters, here, for preparation or representation sheet others nothing, just like a patents we have to prepare a specification, explaining the details of your inventions and then claim, then prior art, all sorts of things, here nothing is required, understood. So, simply you have to give the form one, form one is also very simple. So, that name of the applicant or the class, class where you are registering article name and all out sorts of things should be remains in that form one, then along with that you have to give a representation sheet, when a, three sets, I think three sets is required for that.

So, like this way, here representation sheet, we puts name of the applicant, just xyz private limited company, number of sheets, how many sheet you have? Just one sheet or two sheets, sheet number one, may be. So, what you are giving? Front view of a chair, they are registering (Refer Time: 24:26) may be, the front perspective view of the chair, that is like front perspective view, back view of the chair, top view of the chair, bottom view of the chair, all sorts of views of the chair they are providing, and that they may give a novelty statement, that novelty resides, they refer like that, a novelty resides in shape configuration of the article as illustrated, like this way you have to prepare a novelty statement, means novelty resides on the shape, configuration fundamention of (Refer Time:24:55) fundamention, the article decided, and you can give a disclaimer statement like this way, because in this chair lots of others features, which has

mechanical features or functional features are involved, those will not come within the purview of industrial design.

So, you may create a, say disclaimer statement, by virtue of that no claim is made, by virtue of this registration, in respect of any mechanical or other action of any mechanism, what whatever or in respect of any mode or principle of construction of that article. I already referred that functional features will not come in the purview of industrial design.

So, you have to give a disclaimer statement. So, similarly you can give a disclaimer statement, no claim is made if some trademark or logo is also coming within the features, features of an article here. So, you have to give a disclaimer statement, regarding that also, that is, no claim is made by virtue of this registration, with reference to any trademark later, word, and symbol, whatever is appearing on the figures. So, you understood how to prepare representation sheet of an article, during registration? Just like say prepare this way; what way? You give a front perspective view. So, you remember that engineering drawing is not allowed, you can with the drawing in the front perspective views, perspective view no problem, sometime dotted line is not allowed you understood this why, because dotted line will not allow able to give you the, to the assess the design features, apply to now that article. So, you should give, better to give a perspective views, but if they ask me, whether I could give all perspective views, front, back, top of others, no, you make consider your design whether it is restricted in the front perspective view. So, you should give front perspective views only.

But if you considered the design features is, involve in all back perspectives or side perspective view also, then you can give the front or side perspective along with the front perspective views also, that we have to decide. So, if you think about the my, my want to distinguish or pin point my novel features, then you may lap it, novelty decide on the as marked on that article, novel will decide on the point as mark on that article, that way also you can pinpoint the novel features and on the articles. So, that is why how to prepare representation sheet by means of giving a views, perspective views or whatever is the prudent way, you may give a photographs of the articles also, you may not required to give the physical specimens of the article, but if the controller ask for that, may have to provide ,because the controller is not act able to judge, which is the article, what is the article, what is the nature of the article, whether it is paper weight or whether

it is something else, in that case then may ask to give a physical specimens of the article to access, access what is the article itself is. So, in that case you have to provide the article.

So, now wind up this class specifically. So, now, that this is the dated and signature. So, now, you understood what you understood? By virtue of that I would understand that, how what way you can register your industrial design. Very simple, you should know the criteria for registration, you should know who can apply for registration or whether you can apply through you attorney or say a patent agent, that can we also applicable. Then it is very simple simplified way, why to go through attorney routine, you yourself can find your industrial design applications, application as a proprietor or owners. Only when there is a need for hearing and other cancellation, but you may hire some, hire the some advocates or agent for that. So, this is overall with reference to the industrial design filing, it is criteria, who can apply, what is the workflow in respect of industrial design, all those aspects.

Let us stop here for industrial design part, will further continue with other attitudes and comparisons.