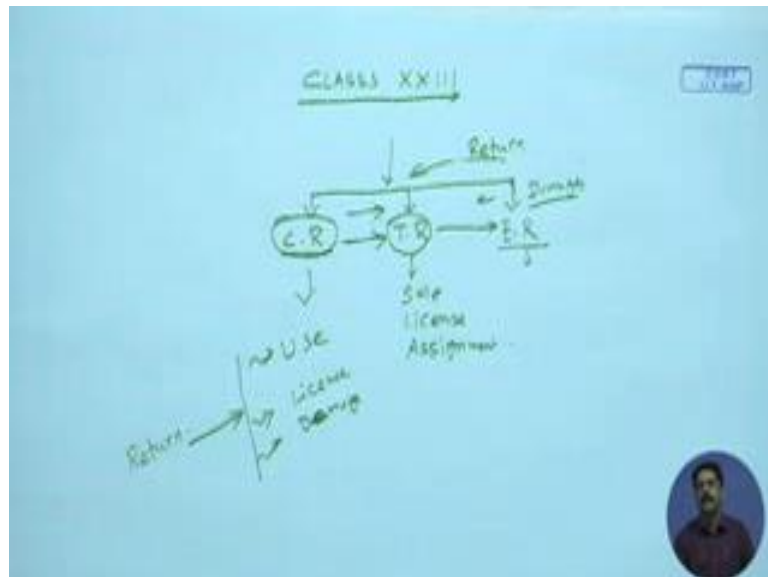


Introduction on Intellectual Property to Engineers and Technologists
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Lecture – 23
Utility Patent vs Industrial Design

So you have learnt about industrial design as important forms of IP. So, now, and already I referred that in respect of IP, that different components involved although this class I will deal different part.

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But why not to say repeat or remind you different elements of any statute of IP just I say, again I am repeating the same thing just creation of right; creation of right let us put it a c r creation of right then transaction or transfer of right yes, so right and that enforcement of right e r; enforcement of right.

So, in this case also industrial design similarly or everything is applicable to you. So, I have discussed about creation of rights part, so similarly that you can license your industrial design, you can sale your industrial design there is no problem after creation of right, you can transact or transfer the rights by virtual sale license as sale license assignment and all those things also can be applicable for your industrial design. So, also

there is no problem you can apply that things also or you can transaction roots also can be available applicable for this also. So, just like assignment will be applicable then enforcement just like after creation of right you can enforce it, I told already told you beauty of intellectual property rights. You yourself can use and get the money by transaction root; you can get the money by enforcement root.

So, somebody impinges your industrial design, you will get money out of that. So, that is called enforcement that the damages or you can get damages out of that impingement over. So, that is also some source of return, return you are getting some return; return by means of transaction, return by transaction use, so very interesting thing return you yourself using you are getting return, you are licensing somebody license; you are getting return, you are falling an impingement suit you will get the return or impingement or damage d a h damage or damage; damage; damage, so all these things are giving you return this part you should remember.

So, here another two part before going to this class specifically I want to inform you just like say there is a clause, two specific clauses there in the act, just like a one is related to exhibitions, if you exhibit your article this is what you should remember just like a some cases, you see that some time government he is attacker or some government or private entity they are organizing some exhibitions to exhibit product or product design specifically that is although that applicable for technical features, but product design features also some time, some company ask for competition or exhibitions. So, if you exhibit that things, automatically you are understanding; this will be considered as a publication before falling the date, falling date if you exhibit this will be considered power publications, so that may destroy the novelty of your industrial design.

So, for that reason there is a clause that if you somebody apply for industrial design, registration and if that things, if that industrial design things we understand if the industrial design things that if you do not say exhibit and not filed. So, automatically say there is a act has kept given in some options like if you have to take the permission from the office just like a then you can apply or what other procedure you have to just like a take permission apply or if it is a specific time frame they have specified within that time frame you have to come to the office and apply; this is the clauses applicable for exhibition.

Similarly, another clause is there just I say, if you consider with reference to defense related this is also applicable for patents also if not explain that component like atomic energy later invention and defense related invention. Similarly here they have a clause just like let us say somebody have let say design a car for a military vehicles or so one car that have applications in defense, in that case that the office has a procedure or they have to take clearance for from Ministry of Defense. So, why that type of things, so that they are telling that the defense part, they want to put on in the purview of say ministry of defense or part specifically.

So, if somebody wants to register, let us say a command or car carrying the commands or gun that may not be allowed to register without the permissions or from the ministry of defense. So, just like say army board can registers the car design by army people there is no problem because and ministry of defense if they created some equipment for defense purposes, they can register for that but others persons; if want to register then they have then office have to take the clearance from the defense only then it can be registered. So, this is another two important parameters I have not told when I discussed was the industrial design part.

So, let us for the design, I just in the beginning of this class I referred that conference. Now you got the; I think most of the components of industrial design we have covered. So, now; so in this class specifically I will say, will deal with the comparative part; comparative aspects of the four forms of IP, why I am four forms all though three forms, the utilities patents I have also put it out also this is a patents. So, definitely just like US they give patents for utility part component, they give patent for design components and they give patent for plant patent they call it is for plant patents, so that they that is the part. So, in this class I have, so again for revision or recapitulations of earlier thought; I kept this class as a comparative and components for others for components component whatever you have discussed that till earlier class.

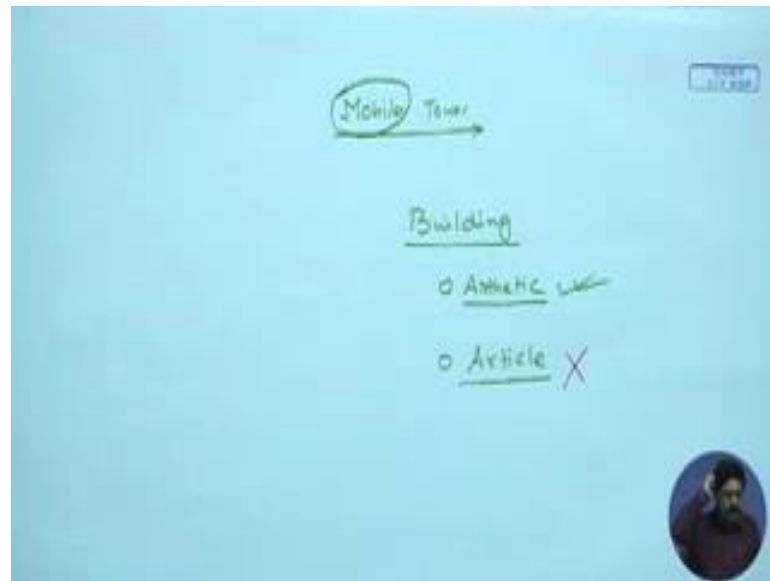
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So, now let us with a simple fired way we will try to explain the different components, see we have I have created, I have taken from the internet of for the document side although it is definitely protected figures. So, I disclaimer for that say this is only we are using for teaching purposes let say, so now see the different types of article I have kept, it kept here, just like a seizers this is a painting, this is a spring, this is mobile tower, this is a house, this is also a house.

So, now can you able to identify the different forms of IP's associated with those kinds of article and how can you distinguish the different components. So, within for that purpose I have kept this slide and this class is also specifically we will address those components. Now if I consider this let us say mobile tower, first I am considering the mobile tower.

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So, mobile tower the tower itself if I consider here you are considering that let us a mobile tower, the name see very interesting situation mobile tower. So, analyzed with reference to definition design, so definitely will ask me that what are the whether any design features involve there. Design features means not like that design specifically for some functionality, just like this design with reference to aesthetic features definitely no. If known aesthetic features are available here then definitely you may consider that this will not come within the purview of industrial design.

But say the tower; this tower if an another proposition that if the functional features is only functional and that functional features also give some source of aesthetic features and you can distinguish the functional features from aesthetic features then it may qualify for industrial design registration. So, can you able to identify some features that is also providing some aesthetic look and you can able to distinguish the aesthetic features of that component from that functional features of that components then it will definitely will qualify for industrial design registration got it so, but so in this article definitely patents involved with reference to those functionality, you may consider utility model or utility patents may be theirs, just like say you are simply changing this components or size of those components that is improving some sorts of epicasy or functionality of this tower, now though definitely that may not be sufficient lift with reference to that knowledge of ordinary people.

So, then that may qualify for say utility model protection, so in this article you are getting patent, you are getting utility patent or may be and say then industrial designs you have to so really (Refer Time: 12:27) really searched out of that, but I am telling you that India peoples trying to register this within the far view of industrial design. So, that this way that if it is safe and configuration giving some as aesthetic look then only can be, I will able for industrial design protection, but utility patents or patent there is no problem functionality components as involved the functionality components within the within this article.

Now, copy right I will say no but in respect of industrial designs also one issue is coming up, that tower whether the tower is made and sold independently and I have already referred whether it is physically transferable so for the reason the word itself is suggesting the mobile tower. No problem mobile means it is mobile; it can be transferable from one place to another place, so that way there is no problem for this component to be qualifying the definition of article.

So, what you are getting in the mobile itself, mobile tower itself that you are getting that may be patents lots several patents, (Refer Time: 13:57) patents what are the functional features. May be industrial design, as it is qualifying the definition of the article there is no problem for it to qualify the definition of the article then copyright no. What copyright features involved in this mobile towers, whether it is literary work or it is an artistic work you may consider some aspect artistic, but again I forget to mention if something artistic, that part will not come within the per view of industrial design. So, there is the; say separate features it is created industrial design with something ease artistic.

So, if you I ask the why you will put differentiate artistic from aesthetic, so this is the important component; something is artistic, just like some time people ask that in a gutka packet you just give some pattern, ornamentations all those things is artistic or aesthetics. Sometime people say those are aesthetics not artistic, but a painting is artistic see that this painting; painting is artistic not aesthetics, but you may consider within the aesthetic part, the aesthetic part may be embedded, but artistic part are reflected more compared to the aesthetic part. So, that way that within the mobile tower artistic part lacking, there is no (Refer Time: 15:40) artistic part within that mobile tower.

So, I am not considering this is artistic work within the purview of copy rights. So, in this mobile tower what we are getting that patent, utility patents may be industrial design as it is qualifying the definition of the article no problem. Now from the mobile tower, let us come to this building, so building definitely have now already I have discussed about the artistic and aesthetic tell me which is (Refer Time: 16:17) remains in this building; artistic or aesthetics which is prevalent artistic or aesthetic aesthetic part. So, maybe aesthetic not artistic, maybe artistic or they are in few elements, but let us I am considering this aesthetic ok.

So, now whether it will be come within the purview of industrial design; the building shape, configuration and ornamentation within ornamentation of this building, tell me yeah shape configuration ornamentation if is aesthetic definitely. So, we are now just I like say yes no formats for this building we are analyzing the different components, now this is the analysis. So, building first you are telling that within the design definition aesthetic or aesthetic as aesthetic tic components by virtue of ornamentation or other part aesthetic, yeah if you consider it is yes then what is the problem for registration of this building in the form of industrial design IP can you guess whether now question that whether it is article, so I referred already that industrial design should be applied to an article.

So, can you tell whether this is an article or not; definitely it is not an article why this cannot be physically transferable, so whatever the article definition something should be made and sold independently, so that way that what you are getting that this is not an article? So, you cannot register this aesthetic look of this building in the form of intellectual property. So, what forms of IP will be applicable out of the discussion now, can you tell yeah this can be an architectural work whatever I discussed in the copyright part. So, if it is not artistic; not an artistic, but it can be qualifying as architectural work. Architectural work suggested that works on the works should be erected or you know like this way. So, that way this is a building erected or commissioned in a particular places, so this is can be qualify easily as an architectural work no problem. So, it is the mode of protection for this building is copyright.

But now come to this building whatever I told that for this building one, now come to building two see wheels is there. So, now, this building is a portable building, so I told this building is aesthetic. So, qualifying the definition of the design, but this is not an

article, so now what people have converted is to for getting it to be registered on that industrial design form of intellectual property, they have made that building a transferable means building can be made and sold independently and should be physically transparent; that means, somebody can sale this building, another person can carry or transport that building from one place to another place. So, there is no problem to tell this in the form of an article, so portable building can be considered as article sold, there is no problem to register it within the purview of industrial design.

So, portable building can be registered under the per view of industrial design, so in this building that these two part we are analyzing with reference to industrial design and copyright, this is industrial design, this is copy right. Then again come back to the mechanical components of this spring, already I have discussed the spring shape and configuration mostly technical and functional, you know spring for specific purpose we are making the spring including this pitch, pitch of the spring that coil length and coil strength all those things for technical purpose. So, then may not qualify for industrial design, but spring can qualify for what patent or utility model kinds of situation.

How the spring can come within the per view of industrial design also means I have already referred again repeating if you give some surface ornamentation in the spring that is providing some I aesthetic look to the spring, that enhancing some aesthetic look to the spring then that aesthetic look will come within the per view of industrial design and say that a spring incremental invention will come within the per view of utility model or utility patent, so utility patents. But that surface ornamentation part providing aesthetic look will come within the purview of industrial design, so even within a functional article how you are incorporating another form of IP by simply involving that surface ornamentation they understood.

So, now this article also let say so this article, this article although more functional how you are involving or creating another form of intellectual property rights within these, got the idea. Now this also I told this is also copyright, but how you are converting; this a copyright protected intellectual property and converting from that you are creating another form of intellectual property rights, in the form of a mobile house, this is also no problem portable house, mobile house; I think you may register.

So, now for this painting; beautiful painting, painting as such is they say is fully artistic. Show whether it painting as a whole can be qualify to be an article no per say no, but let us say you are incorporating this painting in a textile goods and by virtue that let us that textile goods, aesthetic look have been increasing. In that textile good incorporating that painting then it is not artistic, you may consider say it is aesthetic because eye catchy (Refer Time: 23:59).

So that way this from this painting also you may convert in the form of an industrial design. Then come to this scissors, this is an useful article and the scissors functional features can come within the per view of invention either (Refer Time: 24:27) of patent or utility model patent if it is simply incremental by let say scissors changing this knob of this scissor by virtue of that, you may change that some time you call fully arrangement, you changing this part little bit way different position by that you may improving a radical improvement, you may get radical improvement in functionality of these scissors.

So, definitely the scissors incremental invention will come within the per view of utility model protection or utility patent and that, but how to involve industrial design features in that scissors itself. Sometime people may give some sorts of ornaments, ornamental pattern in the handle itself or handles a configuration although giving some sorts of functionality, but also may provide some sorts of aesthetic look. So, by virtue of that that scissors as a whole can qualify for industrial design registrations. So, that way that how a functional article where the more functional features are involve by incorporating some sorts of elements of creativity in the form of a surface ornamentation or in the form of a shape configuration that is providing technical functional features along with the aesthetic features by virtue of that you are providing industrial design features within those articles.

So, now with that article; I try to distinguish your knowledge with reference to these three forms of IP, this copy right industrial design and patents. So, patent protect now you understood patent protect functionality patent protect invention. Industrial design protect creativities, aesthetic features of an article; aesthetic features of a functional article, aesthetic features of an article which can be made and sold independently and utility patents, it also protect invention, it also protect that say incremental invention. So, that out of those high say three plus three six object, how in respect of two solely

copyright, but how that copy right components can be with respect to copy right components further we can think about that industrial design components also that part also you came to know.

So, now distinguishing features about that utility patents, industrial design, copy right there is some inter mingle with reference to the copyright and industrial design, I already referred that let us say this painting somewhere this painting is there, now you apply those painting in a carpet. So, now, the panting people the copyright owners of the painting whether he can enforce his right in the carpet forms, does challenge lies because now copyright problem is that, copyright the registration is not compulsory, but industrial design registration is compulsory, so now whether copy right is considered as an article.

So, industrial design, but you know that they have the very loused doctor they have created if that industrial design, you applied to a carpet and if you do not manufacture it more than 50 times and mores, then till industrial copyright owners can enforce his rights in that product. So, these are the things and further let us industrial design enforcement also done based on substance similar details just like a copy right and who will in charge the substance symmetry, a person having person average consumer who do not just like say person having just like say (Refer Time: 29:05) applicable for copy rights. Similarly here also the eyes of the customers; the consumer who will procuring, now it will be judged on the eyes of the customer or customers should be judged by the consumer, which I apply to the consumer; you will judge the substance similarities (Refer Time: 29:29) with reference to the industrial design feature not the technical features.

So, you got the things, so now we are winding up with reference to the industrial design after comprising it with the others forms of IP.

Thank you.