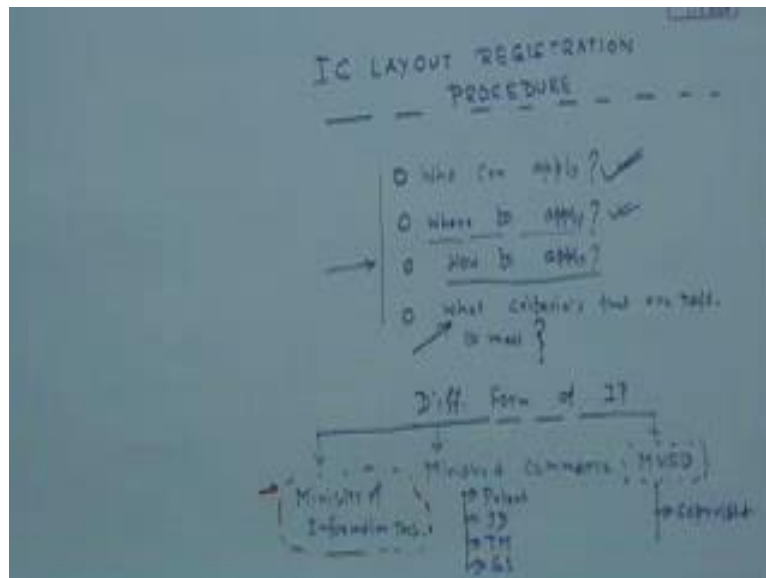


Introduction on Intellectual Property to Engineers and Technologists
Prof. T. K Bandyopadhyay
Department of Metallurgical and Materials Engineering
And
Rajiv Gandhi School of Intellectual Property Law
Indian Institute of Technology, Kharagpur

Lecture - 32
IC Layout-design Registration

So, last class, you have learnt about integresis of IC layout-design, its importance and the evolution of IC layout say legislation in India. Now, I will discuss in this class, because understood that IC layout is also an important forms of IP, where you engineers and technologists may play an important role. So, definitely it will be good if you learn the procedure for registrations of that. Definitely you will be the creators. And, if you do not know the procedure how to establish rights over locations; then, somehow there will be a gap. So, it is like say in your fabrications lab, fab lab, you used to call, you may create lots of IC and definitely intermediate steps in creation of ICs involve the IC layout-design; so, why not to know the procedure to restart the IC layout-design at India.

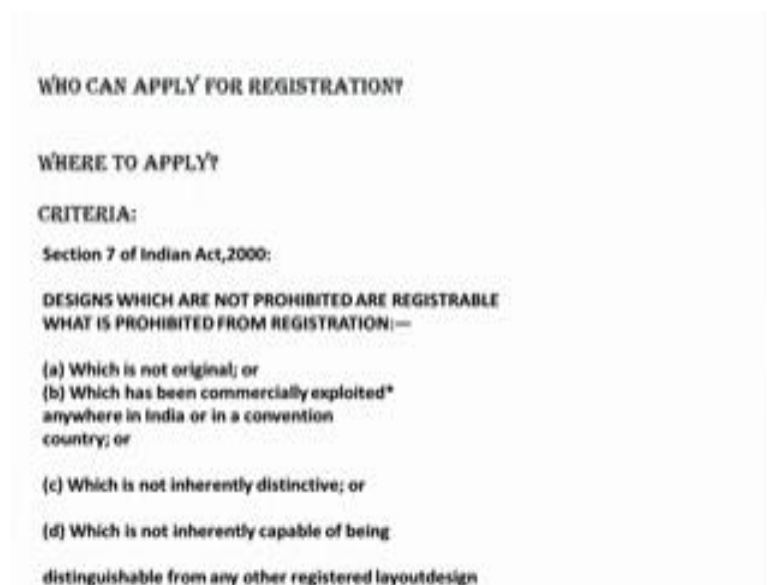
(Refer Slide Time: 01:46)



So, when we are stating about the registration, definitely you have to learn the different elements just like say who can apply for registration as a creator; whether I have may be allowed to apply or I have to follow, I have to assign it to somebody or I have to create a legal representative for it. Then, where to apply although present day internet hub make

your life easy as simply typing this query, you may get the information; but, you should know the query also where to apply? Then, how to apply? Then what criteria that are required to meet. So, (Refer Time: 03:18) criteria required to meet. So, these are the different questions will come to your minds.

(Refer Slide Time: 03:30)



We will try to I will try to give the answers regarding all the queries. So, now, who can apply for registrations of IC layout-design? Just like say when I told about the industrial design and copyright, there we referred to persons called authors. Who is the author? The person, who has created that work, is considered an author in respect of cooperators and same way it can be applicable for industrial design. And, here also IC layout-design involves creations say creation of the layout. So, here also you may consider the authors. We may refer as authors; creator as authors.

So, who can apply? The authors or if we executed that work under some consideration, then the, for whom he has created that work, the persons or the legal entity can apply for registration; let's elaborate. You were working in an organization called let us say C-DAC. Now, you are permanent employee of C-DAC; you created some layout. Now, that, your employee, employer agreement suggested that, whatever IP you will create during the course of employment, you have to assign the right to C-DAC. In that case, C-DAC will apply for registration of this IC layout. So, you got the answer regarding the questions on who can apply.

Or, if you are it is not say you are thinking about that, I will not say bother about the prosecutions and procedural aspects. So, in that case, you may assign the right to just like you are not workings in an organization, but you have a creative mind. So, what you can do? You create; after creation, you assign the right to some other persons or sell that if the personating company or organization interested sell that things to that company considering the value of that sorts of creation the company will take it as take that assignment based on some considerations; and, the company will be the now the assignee for that layout and definitely company will apply for registration. So, now, where to apply? So, you have to apply.

So, just like see this is another part just like if I now asked you that, different forms of IP and their administration. So, just like ministry of commerce. Now, you have heard about ministry of MHRD ministry of human resource development. So, just like whatever forms of IP till now discussed, I am concentrating on that part. So, it is the ministry of commerce; we have patent. Now also, there is a discussion. So, till I am putting under the ministry of MHRD specifically patent, ID industrial design, trademark, geographical indications within the purview of ministry of commerce. MHRD I am just still putting because this is the discussion; they are the copyright. So, say two ministries involvement in respect of registration of those forms of IP.

Now, another ministry is coming for ministry of information technology information technology. So, this is coming for these forms of IP; so, information technology for this IC layout. So, this is that way that, where to apply the questions also came up. And, questions I tried to answer where to apply this under the ministry of information technology. There is a so, whether if you go to that, then acts on legislation, you will get the act and there also they have referred the procedural aspect for registration to registration of IC layout-design. If you now visit the sites, there will be found that they are if you scroll the (Refer Time: 09:13) sites, you will find one registration of IC layout-design in the registries. They are just advertising that in their sites.

So, how to apply? Before that, you should know the criteria for registration of IC layout-design just like whether it is qualified to be qualify to apply; whether you will be qualified or your creation will qualify for IC layout-design registration, you should know that what criteria it required to be meet; then only you can go for applications just like I referred already patent. Before filing you should do enormous search with reference to

the prior art that include prior patents, specifications or non-patent literatures. Similarly, before commercialization, you said do go for FTO type search freedom to operate search. So, that way search is essential.

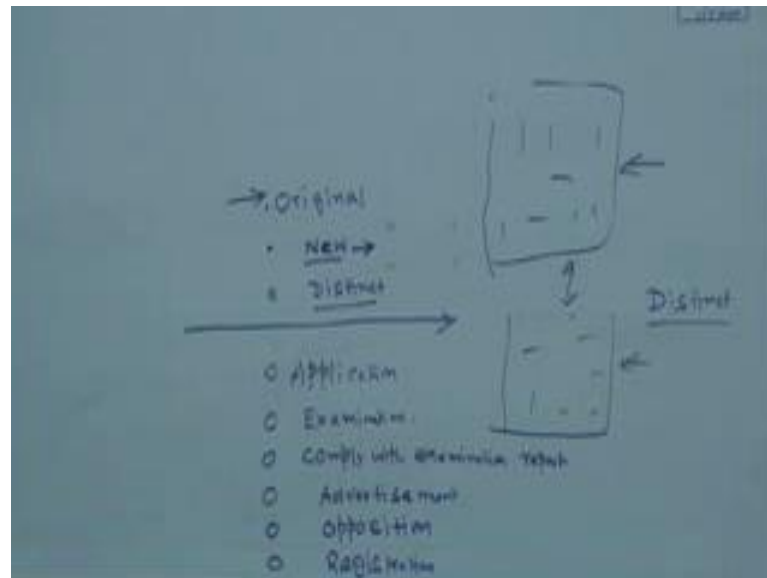
Similarly, here also industrial designs also I refer search required; trademarks also I refer that search is required trademark search. Then, what are search before registration? So, here also you may consider that search may be required. Although database in present day context is not so much and there is no search database is available. But, if you follow the say scientific method, then search is also one of the parameters in respect of IC layout-design. As per act, whatever the criteria they have specified for registration of the IC layout-design just like say refer section 7 of the Indian Act, 2000. They have created the criteria or they have spoken out the criteria for registration of the IC layout-design in India. So, they referred that like a negative way just like an industrial design, if you read, they have negative way title what is prohibited from registration they are referring, which is not original.

Now, you referred what do you mean by original? Originals means not original means originated from the authors means not copied from any others basis. So, that criteria of copyright is also applicable here. Then, the or which has been commercially exploited anywhere in India or any conventional country (Refer Time: 12:08) it is commercially exploited; that is the important parameters you have to analyze here that in respect of prior art, we are considering that, commercial exploitation. So, if it is exploited in the form of research or personal used a purpose that is not applicable here. So, what do you mean by commercial exploitation? It means that layout is commercially exploited anywhere in India or the conventional country. But, they are; there is a clause; I will refer subsequently that clause also. So, commercially exploited anywhere in India or any conventional country; conventional country includes the (Refer Time: 12:59) convention member country. So, commercial exploit the word you should remember here commercially exploited.

It can be more clarified. Let us say what do you mean by commercial exploited? Let us say a company A procure some device that contains that layout whether it seems commercially exploited; I will say yes although the questions of partial doctor in other that is not within the scope of this class. But, it will be considered commercial exploitation. And, or which is not inherently distinctive or which is not inherently

capable of being distinguishing from any other registered layout-design. So, the criteria means it should be distinctive inherently not say just like in copyright trademark, inherent and capable of distinguish. So, it should be distinct from other layout-design, which is already registered. So, it should have be met the criteria of distinctiveness and distinctive means inherent.

(Refer Slide Time: 14:21)

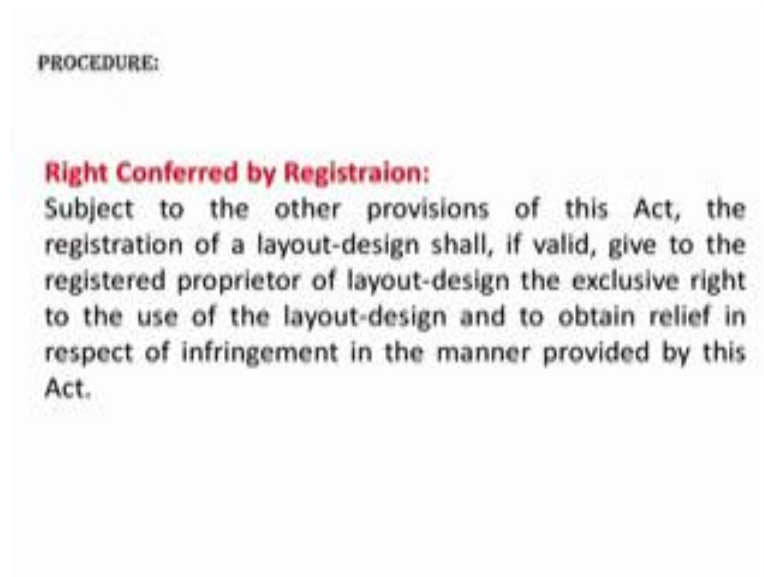


So, that way is let us say this is one part of let say like this way layout. I am just simply part. Another part I am creating. So, definitely understood for this; appearance of these two patterns both are distinct and by virtue of originality is distinct; so, distinct. So, that way, it should be also distinct. So, if I ask me or the criteria or means should have very different as and all those criteria per se required to be meet for a IC layout-design to be registered; means what criteria you are getting? It should be original; then, it should not be commercially exploited means let us say I just try to put it out the criteria called novel new by virtue of commercial exploitation. Then, you are trying to put the criteria called distinct. So, originality new with reference to some parameters distinct; these are the criteria your IC layout-design should meet in order to get register. So, now the commercial exploitation part, there is a provision clause.

So, even if you commercially exploited in India, if you go and register within the specific time frame, then it will not denied registrations. So, commercial exploitations also does not prevent you to register your IC layout-design if you register it within a specific time

frame. That act has given that sort of privileges to the creators, owners or user. So, now, you understood the criteria for registration of IC layout-design in India. Original means originated from authors new with reference to commercial exploitation; then, distinct.

(Refer Slide Time: 16:51)



I will tell about the procedural aspect to register the IC layout-design in India just like say you have understood; the person has to apply the particular forms is available. Sometime we call LD 1 form; in that form, you have to refer, who is the applicant. So, now, applicant will apply. Then, it will be you can apply; I think there is no e portal available; for this, you apply following that forms and you have to give the representations of the layout, which is there is a procedural aspect suggested a dimensional requirement just like say, it should be 20 times more than the exact layout, which for you are trying to implement just like nano chips. So, it is 5 kilometer dimension if the layout representations should have been 100 nanometer in dimension. So, that would (Refer Time: 17:59) most referred; then, when you apply for registrations, then they will ultimately examine. So, it is not simply registration based procedure; it is examination based procedure.

The registry will examine the IC layout with reference to the criteria just like say originative distinctiveness criteria. Then, they will send an examination report; they have to comply with the examination report. Then also, they will publish this design for opposition or they will advertise this design for opposition. Any persons can oppose the

registration of this design if no opposition or opposition decided in favor of the applicant, it will be registers; date of application will be considered; the date of registration. So, steps involves of registers; steps involves in respect of registration means applications; you will get substantial similarity with reference to the others process also. Applications, then examination; say comply with the examination report; then, advertisement, opposition, registration. These are the steps involved in the order to register your IC layouts. So, now, you understood that steps involved in operation to involve in registration of IC layout-design.

Now, learnt about the rights; so, right means IC layout whether people are selling the IC layout or people are selling in components that have incorporated the IC layout. Let us see what they have been provided. So, right conferred by registration; so, they had mentioned subject to the other provisions of this act; the registration of the IC layout-design shall, if valid. What do you mean by if valid? That when you register your IC layout, it will be protected or registered or 10 years there is no subsequent renewal. So, valid means if it is industrial is registered IC layout-design is registered; it is say valid, give to the registered proprietor; who is registered proprietor? Under whose name the IC layout is registered, because the registry will keep a register in the registers. Against this IC layout, the proprietor name will be mentioned.

The proprietor's name, whose name will be mentioned, will be the registered proprietor of IC layout-design. So, registered proprietor of the layout-design; the exclusive right to use the layout-design; so, what rights they are providing? They have the right to use the layout-design and to obtain relief in respect of infringement in the manner provided by this act. So, see that, the beauty of intellectual property rights. And, nice way, it has been trusted; just like say he has the right in the form of exclusive right to use the IC layout-design. Use means not clearly spoken; use means use in that IC layout form or use in the form of in the use such a way that, use involves incorporating the layout-design in a particular electronic components.

Both can be considered as use; use of IC layout-design. So, he can use it and he can obtain relief in respect of infringement in a manner provided by this act. So, you understood what rights have been provided to the registered proprietor of IC layout-design. So, now, definitely the word you understood the infringement in manner

provided by this act. So, you are the proprietor; you are creator; you are the proprietors; you are the registered proprietors.

Now, how can you obtain revenue out of this layout-design? You obtain revenue out of this layout-design by virtue of use. You yourself use or you used by virtue of license agreement. So, definitely you can give license of your IC layout-design to some organization or person. So, in that case it will be considered permitted use the license arrangement can be made. So, that way you are using getting revenue and that way also you get revenue. If some company is using that your IC layout-design, then you can file an infringement suit against that company and obtain relief; if you are asking for some damages. So, relief will come in the form of damages.

(Refer Slide Time: 24:09)

Infringement :
A registered layout-design is infringed by a person who, not being the registered proprietor of the layout-design or a registered user thereof,—

(a) does any act of reproducing, whether by incorporating in a semiconductor integrated circuit or otherwise, a registered layout-design in its entirety or any part thereof, except such act of reproducing any part thereof which is not original within the meaning of sub-section (2) of section 7;

(b) subject to the provisions of sub-section (5), does any act of importing or selling or otherwise distributing for commercial purposes a registered layout-design or a semiconductor integrated circuit incorporating such registered layout-design or an article incorporating such a semiconductor integrated circuit containing such registered layout-design for the use of which such person is not entitled under this Act.

Now, let us learn, what is infringement as specified in the act? So, I mentioned a registered layout-design is infringed by a person, who not being the registered proprietor of the layout-design or a registered user. What do you mean by a registered user? Just like say if a registered layout-design is licensed to some other person; so, sometime that the registered proprietor has to inform to the registry that, I have given license to myself my IC layout-design to that person; and, his name also will be reflected in the registers and he will be considered as registered user.

So, now, the registered users, registered proprietor or registered user if you are registered user, then no problem; then, last say there registered user thereof does not does any act of

reproducing; means if he reproduce that IC layout-design whether by incorporating in a semiconductor integrated circuit or otherwise a registered layout-design is in its entirety or any parts thereof.

So, understand if you also incorporated that registered layout-design in a part also incorporating, where in a semiconductor integrated circuit means IC; maybe let us say chip. And, how you will incorporate it? Either in an entirety or any parts thereof except such act of reproducing any part thereof, which is not original; Let us say if your registered layout-design is not original; then definitely, you will not be liable because there is no rights you may claim in an infringement suit. In a defense, this is not an original IC layout-design; then, will not be liable for infringements.

So, that way reproducing any part also may lead to the infringement, if it qualifies the sub-section similarity test. That is also applicable here although there is no case involved in India till date. So, then understanding that any part thereof; then, subsequently subject to the provision of the sub-section, it does, which is not so, consider infringement subject to the provision of subsection, does any act of importing. So, that is what I want to refer here because use and, user integrity. Then, what are other things they have been provided? Subject to the provision of sub-section 5, does any act of importing or selling or otherwise distributing for commercial purposes that, this is already I referred commercial purposes. For commercial purposes, a registered layout-design or a semiconductor integrated circuit is incorporating such registered layout-design or an article incorporating such semiconductor integrated circuit containing such registered layout-design for use of which such person is not entitled under the act.

So, what is the meaning of these sections? It indicate that, if you, somebody commercial purposes import an equipment that contain that semiconductor integrated circuit, that is registered in India; then also, he will be considered as infringer. So, importing and selling lead to the infringement of the IC layout-design; so, you simply importing incorporating that layout-design lead to also infringement. So, you know that, if you are registered proprietor; obviously, design company A is importing for commercial purposes some electronic components; and, somehow you are able to understood that electronic components contain an IC. And, that IC the, layout-design, you are the registered proprietor; then, you can finally, infringement the suit and get definitely relief in the form of damages. So, understood what is considered your rights in respect of IC

layout-design. So, in the right part, for the design, I mentioned that better to analyze the infringement components also and I have restarted with reference to the statutory provision applicable in India.

And, there is also exception; just like say if we use the IC layout-design for research analysis purposes just like you in your educational institutes or in an R and D, just you understood you are curious about let us say Pentium 4, 6. Let us see what are the components involved in that chip or let us say other IC. Then, you can procure that and go for research; use that for research analysis purposes; then, it will not be considered infringement; that have been provided. So, you consider research or analytical purposes if we use, for that reason, you will not be consider (Refer Time: 29:42) also understood here commercial purpose have been here.

So, if you use it for personal purposes; that also may not consider infringements. So, now, you understood the whole procedural aspects in respect of the IC layout-design. So, now, let us summarize the discussions. We have learnt about who can apply, where to apply, how to apply, and what rights you have on the IC layout-design registers, and how you will get return on investment on respect of your creations; that also have been provided based on the right or registered layout-design.