


Intellectual Property
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Lecture-58
Designs

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What is a Design?

- Only the features of shape, configuration, pattern or ornamentation or composition of lines or colours
- Applied to a finished article which is capable of being made and sold separately by an industrial process
- Visual Appeal and judged solely by eye
- Non – Functional

Designs; what is a design? A design the first only the features of shape, configuration, pattern or ornamentation or composition of lines or colours on a product. It is applied to a finished article which is capable of being made and sold separately by an industrial process. And it should have a visual appeal meaning which it should be judged solely by the eye. A design right is granted to a non-functional aspect of the product. If it is the functional aspect of the product, then it should be protected by a patent provided it satisfies the requirements in patent law.


So, the difference between a patent and a design is that the patent if it manifests in a product, the patent protects the technical parts or the technical aspects or the functional aspects, whereas the design is for the non-functional aspects of a product. So, we understand the design as something, which makes a product aesthetically appealing, what is visually appealing or aesthetically appealing. And the aesthetic appeal does not go beyond the appearance. If something is put into the way in which a product works, then

that cannot be protected by a design. So, design only protects non-functional aspects of a product.

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Who grants it & where to file?



- Design wing in the patent offices
- Kolkata (HQ)
- Branches: Chennai, Mumbai and New Delhi



The patent office has a design wing, which grants the design. The headquarters is in Kolkata, and there are branches in Chennai, Mumbai, and New Delhi.

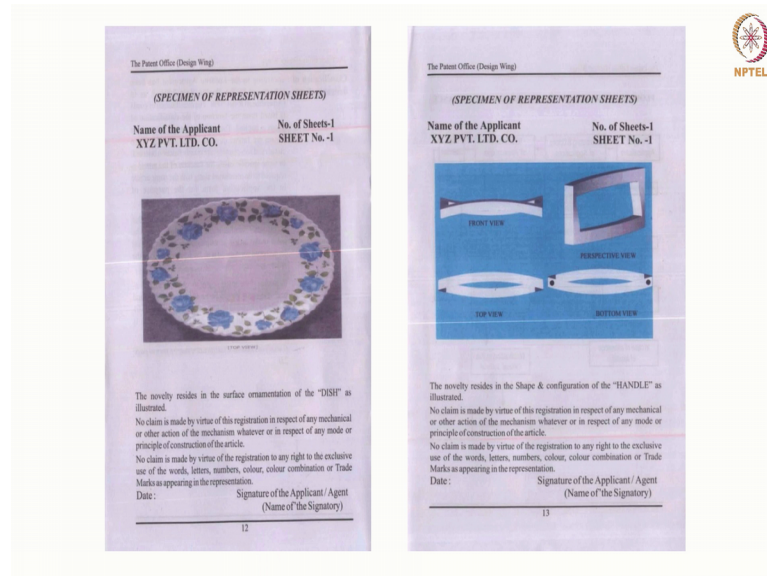
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How does it look?



When a design is granted, the patent office issues a certificate of registration of design. It bears a design number, the date of registration of that design is given.

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And the design is also shown in a graphical representation. Now, you have two examples of how a specimen looks like. There has to be a statement in the application that the novelty resides in surface ornamentation or in the shape or in the configuration. And there has to be disclaimer that no claim is made by virtue of this registration in respect of any mechanical or other action of the mechanism, whether whatever or in respect of any mode or principle of construction of the article meaning which it does not claim anything that is functional.

Further there has to be a disclaimer stating that no claim is made by virtue of a registration of any right to the exclusive use of words, letters, numbers, colour, colour combination or trademarks as appearing in the representation, which means subject matter of trademark is not covered here. So, these two disclaimers have to be made while filing the design.

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Who owns it & Who creates it?

- Any person or the legal representative or the assignee

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graph TD; A[APPLICANT] --> B[DESIGN WING OF PATENT OFFICE]; A --> C[OWNER];
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The diagram illustrates the process of filing a design. It starts with an 'APPLICANT' box. An arrow points from the 'APPLICANT' box to a 'DESIGN WING OF PATENT OFFICE' box. Another arrow points from the 'APPLICANT' box down to an 'OWNER' box.

The applicant or the person who makes the application or the legal representative or the assignee can file for a design and the person who files for a design or who applies for a design is regarded as the owner. And the application is filed before the design wing of the patent office.

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What is required to file a design?

- New or Original
- Not to be disclosed to public
- Distinguishable
- Be applied to an article &
- Visual appeal

The requirements for filing a design is that it has to be new or original. New refers to the fact that it is not gone before it is not been published before. And original is a requirement like the original originality requirement in copyright. It should not be

disclosed to the public. It should be distinguishable it should be capable of distinguishing one product from another. It should be applied to an article, because the design in itself cannot be protected, it has to manifest itself in an article. And it should have visual appeal.

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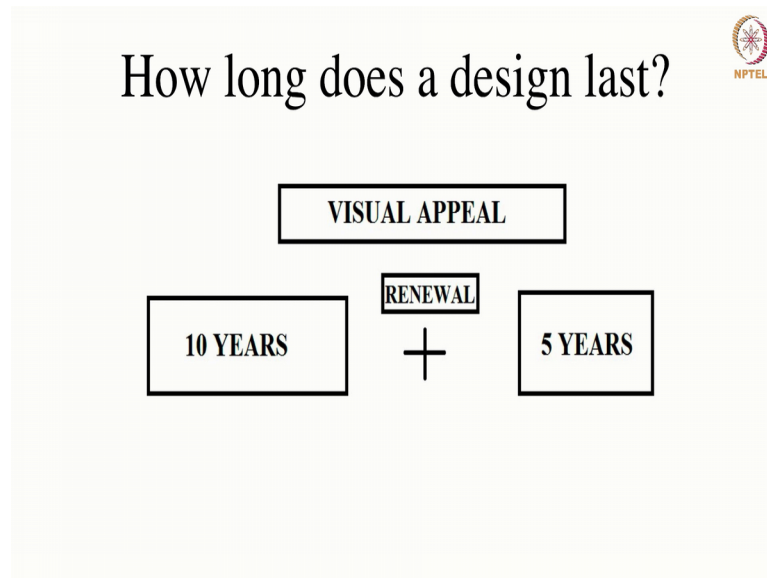


What are the exceptions?

- Contrary to public order or morality
- Articles not capable of being made and sold separately Ex: Greeting cards and postcards etc.
- Copyright works, layout designs of integrated circuits and cartoons
- flags, emblems, national symbols.

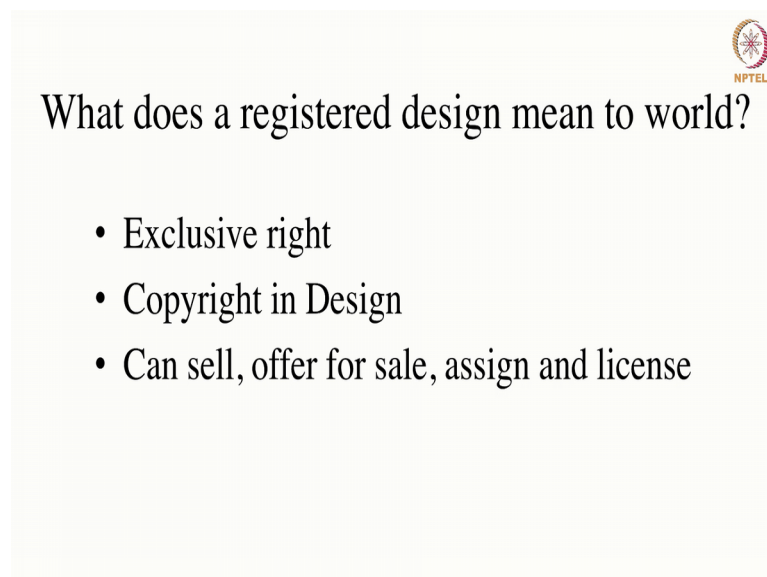
What are the exceptions? Designs that are contrary to public order or morality will not be granted. Articles not capable of being made or sold separately, what we measured referred as the design itself. For instance, greeting cards and postcards cannot be a subject matter of a design right. Copyrighted works cannot be a subject matter of design right, because it is protected by a different regime. Layout designs of integrated circuits cannot be a subject matter of a design right, because there is a separate regime to protect that and cartoons are protected by copyrights. Flags, emblems and national symbols cannot be a subject matter of design right.

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When granted a design, which is has a visual appeal has a 10 year term. And the 10 year term can be renewed to a further 5 year term. So, there can be a total protection of 15 years, and after which the design falls into the public domain.

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A design offers an exclusive right to the owner. The owner has a copyright in the design, which means the owner can take action against other people who make copies of it without his consent. The owner has the right to sell, offer for sale, assign and licence the design.

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Where to look for registered Designs?



- Design Search

<http://164.100.176.37/designsearch/>

International Classification: Locarno Agreement

- Class 1 – 31 & Class 99
- Ex: Class 2 – Articles of Clothing
Class 28 – Pharmaceutical, cosmetic etc.

Before a person files for a design, the person can do a design search. The patent office has a website, where you can do the design search. And there is an international classification, which is developed under the Locarno Agreement, which classifies different classes under which a design can be registered. Like the (Refer Time: 06:30) agreement for the trademarks. There are classes 1 to 31 and class 99. For example, class 2 deals with articles of clothing, and class 28 deals with pharmaceuticals and cosmetics.

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How is a design enforced?



- Infringement Suit – District Court/ High Court
- Remedies: Injunction and Recovery of Damages [25,000 – 50,000]

A design is enforced by an infringement suit, which is filed before the district court or the high court. And in an infringement suit like any infringement suit pertaining to intellectual property rights. They can be an injunction as a relief, which stops the person from using it or they can be a recovery of damages, which is compensation. The designs act sets the limit for compensation per design infringement at 50,000 rupees.

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Can a Design be challenged? How?

- After Registration
- Cancellation of Registration
- Grounds: Failure to satisfy requirements under Act.

A design can be challenged after it is registration, there is no pre grant challenge in when it comes to designs, unlike patterns. And it can result in the cancellation of a design. The grounds on which a cancellation can be requested for is that it fails to satisfy the requirements under the act.