

Answer to Q.1

Invention

Section 2(1) (j) defines invention as to mean a new product or process involving an inventive step and capable of Industrial application.

Inventive Step

Section 2(1) (ja) defines the term 'inventive step' as to mean a feature of an invention that involves technical advance as compared to the existing knowledge or having economic significance or both that makes the invention not obvious to a person skilled in the art.

New Invention

Section 2(1) (l) defines the term new invention as to mean any invention or technology which has not been anticipated by publication in any document or used in the country or elsewhere in the world before the date of filing of patent application with complete specification, i.e. the subject matter has not fallen into public domain or that it does not form part of the state of the art.

The following are not inventions within the meaning of Section 3 of the Act:

- (a) an invention which is frivolous or which claims anything obviously contrary to well established natural laws;
- (b) an invention the primary or intended use or commercial exploitation of which could be contrary to public order or morality or which causes serious prejudice to human, animal or plant life or health or to the environment;
- (c) the mere discovery of a scientific principle or the formulation of an abstract theory or discovery of any living thing or non-living substances occurring in nature;
- (d) the mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance or the mere discovery of any property or mere new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant. Explanation to clause (d) clarifies that salts, esters, polymorphs, metabolites, pure form, particle size, isomers, mixtures of isomers, complexes, combinations and other derivatives of known substance shall be considered to be the same substance, unless they differ significantly in properties with regard to efficacy.
- (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 re-arrangement or duplication of known devices each functioning independently of one another in a known way;
- (g) omitted by Patents (Amendment) Act, 2002.
- (h) a method of agriculture or horticulture;
- (i) any process for the medicinal, surgical, curative, prophylactic diagnostic, therapeutic or other treatment of human beings or any process for a similar treatment of animals to render them free of disease or to increase their economic value or that of their products;
- (j) plants and animals in whole or any part thereof other than micro-organisms but including seeds, varieties and species and essentially biological processes for production or propagation of plants and animals;
- (k) a computer programme per se other than its technical application to industry or a combination with hardware;

- (l) a literary, dramatic, musical or artistic work or any other aesthetic creation whatsoever including cinematographic works and television productions;
- (m) a mere scheme or rule or method of performing mental act or method of playing game;
- (n) a presentation of information;
- (o) topography of integrated circuits;
- (p) an invention which in effect, is traditional knowledge or which is an aggregation or duplication of known properties of traditionally known component or components.

Answer to Q.2

Section 6 of the Act provides that an application for a patent for an invention may be made by any of the following persons, that is to say:

- (a) by any person claiming to be the true and first inventor of the invention;
- (b) by any person being the assignee of the person claiming to be the true and first inventor in respect of the right to make such an application;
- (c) by the legal representative of any deceased person who immediately before his death was entitled to make such an application.

The application may be made by one of the persons either alone or jointly with any other person.

Answer to Q.3

Patent protection is territorial right and therefore it is effective only within the territory of India. However, filing an application in India enables the applicant to file a corresponding application for same invention in convention countries, within or before expiry of twelve months from the filing date in India. Therefore, separate patents should be obtained in each country where the applicant requires protection of his invention in those countries. There is no patent valid worldwide.

Answer to Q.4

Copyright is a well recognised form of property right which had its roots in the common law system and subsequently came to be governed by the national laws in each country. Copyright as the name suggests arose as an exclusive right of the author to copy the literature produced by him and stop others from doing so. There are well-known instances of legal intervention to punish a person for copying literary or aesthetic out put of another even before the concept of copyright took shape. The concept of idea was originally concerned with the field of literature and arts. In view of technological advancements in recent times, copyright protection has been expanded considerably. Today, copyright law has extended protection not only to literary, dramatic, musical and artistic works but also sound recordings, films, broadcasts, cable programmes and typographical arrangements of publications. Computer programs have also been brought within the purview of copyright law.

Answer to Q.5

Section 18 of the Copyright Act provides that the owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or

partially and either generally or subject to limitations and either for the whole term of the copyright or any part thereof.

However, in case of the assignment of copyright in any future work, the assignment shall take effect only when the work comes into existence. No such assignment shall be applied to any medium or mode of exploitation of the work which did not exist or was not in commercial use at the time when the assignment was made, unless the assignment specifically referred to such medium or mode of exploitation of the work.

Section 19 of the Act provides that an assignment of the copyright in any work should be in writing signed by the assignor or by his duly authorised agent. The assignment of copyright in any work required to identify such work, and also specify the rights assigned; the duration; territorial extent of such assignment; the amount of royalty and any other consideration payable to the author or his legal heirs during the currency of the assignment and the assignment subject to revision, extension or termination on terms mutually agreed upon by the parties.

Where the assignee does not exercise the rights assigned to him under any of the other sub-sections of this section within a period of one year from the date of assignment, the assignment in respect of such rights shall be deemed to have lapsed after the expiry of the said period unless otherwise specified in the assignment.

The assignment of copyright in any work contrary to the terms and conditions of the rights already assigned to a copyright society in which the author of the work is a member is void.

Answer to Q.6

No. A geographical indication is a public property belonging to the producers of the concerned goods. It shall not be the subject matter of assignment, transmission, licensing, pledge, mortgage or such other agreement. However, when an authorised user dies, his right devolves on his successor in title.

Answer to Q.7

As per section 2(d) Design means only the features of shape, configuration, pattern or ornament or composition of lines or colour or combination thereof applied to any article whether two dimensional or three dimensional or in both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye, but does not include any mode or principle or construction or anything which is in substance a mere mechanical device, and does not include any trade mark, as defined in clause (v) of sub-section of Section 2 of the Trade and Merchandise Marks Act, 1958, property mark or artistic works as defined under Section 2(c) of the Copyright Act, 1957.

Answer to Q.8

Types of intellectual property covered by the TRIPS Agreement

- Copyright and related rights
- Trademarks, including service marks

- Geographical indications
- Industrial designs
- Patents
- Layout-designs (topographies) of integrated circuits
- Undisclosed information, including trade secret.

Answer to Q.9

A trade mark performs four functions

- It identifies the goods / or services and its origin.
- It guarantees its unchanged quality.
- It advertises the goods/services.
- It creates an image for the goods/ services.

Answer to Q.10

Section 9(1) of the Act containing provisions relating to absolute grounds for refusal for registration prohibit the registration of those trade marks which are devoid of any distinctive character or which consist exclusively of marks or indications which may serve in trade to designate the kind, quality, quantity, intended purpose, etc., or which consist exclusively of marks or indications which have become customary in the current language or in the bona fide and established practices of the trade. However, a trademark shall not be refused registration, if the mark has in fact acquired a distinctive character as a result of use or is a well known trade mark before the date of application. In short, a trade mark which has been demonstrated to be distinctive in the market place shall be regarded as distinctive in law as well and be registerable.

Sub-section (3) prohibits registration of a mark, if it consists exclusively of shape of goods which result from the nature of the goods themselves or which is necessary to obtain a technical result or which gives substantial value to the goods. It is, however, explained that the nature of goods or services in relation to which the Trade Mark is used or proposed to be used shall not be a ground for refusal of registration.
