India IPR Toolkit

2026

A guide to protecting and enforcing intellectual property rights in India

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This toolkit is intended to provide general guidance for businesses and practitioners to better understand the basics of the intellectual property (IP) landscape in India. It is distributed with the understanding that the authors, editors, and publisher are not engaged in rendering legal, accounting, or other professional services. Nothing in this document constitutes legal advice. When legal or other expert assistance is required, the services of a competent professional should be sought.

This report contains information that was current as of the date of publication. While every effort has been made to make it as complete and accurate as possible, readers should be aware that all information that is contained herein is subject to change without notice.

This report was drafted by the United States Patent and Trademark Office (USPTO) with support and input from the USPTO's IP Attaché Program office in New Delhi, India. Published April 2026.

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Acronyms and abbreviations

ADR	alternative dispute resolution
CASE	Centralized Access to Search and Examination
CBIC	Central Board of Indirect Taxes and Customs
CGPDTM	Controller General of Patents, Designs and Trade Marks
CIPAM	Cell for IPR Promotion and Management
CPC	Code of Civil Procedure
DAS	Digital Access Service
DPIIT	Department for Promotion of Industry and Internal Trade
FER	First Examination Report
GI	geographical indication
GOI	Government of India
HUF	Hindu Undivided Family
IP	intellectual property
IPAB	Intellectual Property Appellate Board
IPO	Intellectual Property Office
IPR	intellectual property rights
IPRS	Indian Performing Rights Society Ltd.
IRRO	Indian Reprographic Rights Organization
ISRA	Indian Singers' Rights Association
MIPCU	Maharashtra Intellectual Property Crime Unit
NIPAM	National Intellectual Property Awareness Mission
NOC	no-objection certificate
PCT	Patent Cooperation Treaty
PIS	Patent Information System
RMPL	Recorded Music Performance Ltd.
SOP	standard operating procedure
TIPCU	Telangana Intellectual Property Crime Unit
TRIPS	Trade-Related Aspects of Intellectual Property Rights
WIPO	World Intellectual Property Organization
WTO	World Trade Organization
WPPT	WIPO Performances and Phonograms Treaty

India's intellectual property (IP) landscape

With the growing significance of the Indian market globally, it is increasingly important for businesses to know how to register, obtain, protect, and enforce intellectual property rights (IPR) in India. U.S. companies doing business or planning to do business in India must be advised that IPR registered or granted in the U.S. do not automatically extend to India. In addition, there are differences between the IP-related laws and systems of both countries.

This toolkit provides an overview of the intellectual property (IP) landscape in India. It also provides tips for protecting your IP in India and guidance on developing a suitable IP enforcement strategy for this market.

Indian government bodies with IP-related responsibilities

India's system for overseeing the protection, enforcement, and adjudication of IP rights relies on several administrative and judicial government bodies. The roles of these bodies are discussed throughout this toolkit. The following list identifies their main responsibilities:

- The **Department for Promotion of Industry and Internal Trade (DPIIT)**, under the Ministry of Commerce and Industry, is the central body in India for administering various laws related to IP rights, such as patents, copyrights, trademarks, industrial designs, geographical indications of goods, and semiconductor integrated circuit layout-designs. DPIIT handles IP policy matters and oversees the Office of the Controller General of Patents, Designs, and Trade Marks.
- The **Office of the Controller General of Patents, Designs and Trade Marks (CGPDTM)**, also known as the "Indian IP Office," is under the DPIIT. It administers the registration and grant of IP rights in India. The CGPDTM has its headquarters in New Delhi and has offices in Delhi, Kolkata, Mumbai, Chennai, and Ahmedabad. The CGPDTM implements several incentives and initiatives to support innovators. For example, the National Intellectual Property Awareness Mission (NIPAM) initiative educates students, startups, and entrepreneurs across India on IP matters. The CGPDTM also oversees the following offices:

  - The **Patent Offices** in Kolkata, Chennai, Delhi, and Mumbai
  - The **Copyright Office** in Delhi
  - The **Trade Marks Registry** in Mumbai, Kolkata, Chennai, Ahmedabad, and Delhi
  - The **Designs Wing of Patent Office** in Kolkata
  - The **Geographical Indications Registry** in Chennai
  - The **Semiconductor Integrated Circuits Layout-Design Registry** in Delhi
  - The **Patent Information System (PIS)** and **Rajiv Gandhi National Institute of Intellectual Property Management (RGNIIPM)** in Nagpur
- The **Cell for IPR Promotion and Management (CIPAM)** is a specialized professional body created by DPIIT for IPR promotion and management in compliance with the National IPR Policy, 2016. It is responsible for promoting IP culture in the country, spreading IPR awareness, and improving understanding of IPR among youth, academic institutions, businesses (including small and medium-sized enterprises and startups), enforcement agencies, and the judiciary. CIPAM also aims to ensure focused action on issues related to IPR and assist in simplifying and streamlining IP processes.
- The **Central Board of Indirect Taxes and Customs (CBIC),** under the Department of Revenue, Ministry of Finance, is a government agency empowered to provide protection against the infringement of IP rights at the border. A rights holder is required to record their copyright, trademark, design, or geographical indication with Customs authorities for the enforcement of these rights at the borders. Patent infringement cases are not handled by Customs authorities.
- The **police authorities** (central and state police forces) have the powers to search for and seize infringing products.
- **District Courts and High Courts** in India adjudicate cases relating to IP in their jurisdiction. Under the 2015 Commercial Courts Act, Commercial Courts were established to deal with commercial disputes, including IP disputes. The Supreme Court of India is the highest judicial forum and the final court of appeal.

General considerations for protecting IP in India

The following considerations may be useful in protecting your IP in India:

- Customize your strategy according to your needs, which may differ depending on the nature of your business, the type of IP rights involved, and your plans for doing business in India. Consider the general strategies and best practices identified in this toolkit and seek professional advice to assist with developing and improving your strategy.
- Develop long-term IP strategies as early as possible to avoid losing or limiting your rights.
- Carry out background checks prior to dealing with any organization or individual in India, especially prior to making any commitments, signing contracts, or entering into business or manufacturing arrangements.
- Clearly define the terms specifying how your IP will be used or addressed when signing any licenses, agreements, or contracts with Indian partners or associates.
- Include effective IP-specific clauses in employment contracts when hiring local staff in India in order to secure sensitive business information. Educate your team about IP rights and protection, and your IP assets.
- Develop an IP strategy with enforcement in mind. The strategy may involve hiring a competent local IP attorney to provide a full range of IP services, such as application preparation, filing, registration of rights, monitoring, investigation, and enforcement.
- Make use of U.S. government resources, including those offered by the United States Patent and Trademark Office (USPTO), and India IP resources made available through the USPTO's South Asia IP Attaché Program office based in New Delhi. The IP Attaché Program offers on-the-ground assistance and information on protecting and enforcing IP rights, assists with finding local service providers, and helps address issues with Indian counterparts. The U.S. government may be able to provide additional assistance through the U.S. Export Assistance Centers located throughout the United States, as well as through the U.S. Commercial Service offices in more than 80 countries, including India.

Trademarks

A *trademark* (or *trade mark*) is a method for a business to help people identify the goods or services that the business makes, sells, or provides, and to distinguish them from goods or services provided by another business. A trademark is not just a valuable asset as a source identifier for a brand owner; it also helps consumers to identify, purchase, and enjoy specific goods and services based on characteristics and qualities established by the trademark owner.

A trademark can exist in many forms—including a heading, label, name, device, numeral, shape of the goods, packaging, or combination of colors—as long as the mark identifies and distinguishes a good or service from the goods or services of others in the marketplace.

In India, the Trade Marks Act, 1999 (hereinafter referred as to "the Act" throughout the Trademarks section) provides for several aspects of trademarks, including registration, protection, and provisions of relief in case of infringement. "Trade mark" is defined under Section 2(1)(zb) of the Act. Section 2(1)(zb) defines a trademark as "a mark capable of being represented graphically and capable of distinguishing the goods or services of one person from those of others and may include the shape of goods, their packaging, and combination of colors." Under India's trademarks regime, several types of trademarks are recognized and may be registered, including the following:

- **Word marks**, which include one or more words, letters, numerals or anything written in standard characters.
- **Device marks**, which include any label, sticker, monogram, logo or any geometrical figure other than a word mark.
- **Service marks**, which are marks that differentiate the services (not goods) offered by one entity from those of another.
- **Collective marks**, which are marks that are owned by organizations, such as an association, public institution, or cooperative. Collective marks are also used to promote particular goods which have certain characteristics specific to the producer in a given region.
- **Certification marks,** which are used to identify products and services that meet certain standards or regulations and to assure consumers that products bearing the mark or services provided in connection with the certification mark have met certain prescribed standards in accordance with the certification process.
- **Well-known marks**, which are marks that are easily recognized or are famous among a large percentage of the population.
- **Unconventional or non-traditional trademarks**, which are trademarks that may gain recognition for their distinctive features, such as color, sound, shape, smell, motion, and packaging.

Registrable marks

According to the Act, a trademark is generally eligible for registration if a) the mark can be represented graphically and can distinguish the goods or services of one person from the goods or services of others, and b) there is not an earlier conflicting mark. There are absolute and relative grounds for refusal of registration of a trademark. Under Section 9 of the Act, which provides absolute grounds for refusal of registration, even if a mark lacks inherent distinctiveness, it can still be registered if it has acquired distinctiveness through prolonged and exclusive use (commonly referred to as having acquired secondary meaning) or if it is a well-known mark. For example, the name of a person can be registered for specific goods or services, if the person's name acquires recognition or acquires distinctiveness through extensive and exclusive use of such name for at least five years.

Who can register a trademark?

Any "person" who is using a mark in connection with goods or services, or intends to use a mark in connection with goods or services, can apply to register the mark. Section 18(1) of the Act states that any person who claims to be the trademark's proprietor may apply for trademark registration. "Person" refers to a natural person and also an incorporated entity, partnership firm, Hindu Undivided Family, trust, society, government authority or undertaking, an association of persons, or a joint proprietor.

Unlike in the U.S., where a trademark owner without a place of business or residence ("domicile") in the U.S. is required to use a local attorney to file a trademark application, in India, a business owner can file for trademark registration without an attorney. However, since the registration process involves numerous steps, it is recommended to work with an attorney, particularly one who specializes in trademark law.

Where to file a trademark

Jurisdiction plays an important role in trademark registration. A party may apply to register a trademark with the Trademark Office under whose jurisdiction the principal place of the applicant's business is located. However, if the principal place of business is outside India, the application should be filed with the Trademark Office under whose jurisdiction the office of the applicant's agent or lawyer is located.

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"First-to-use" system

Just as U.S. trademark law provides that priority in a trademark is based on the trademark owner's first use of a trademark, trademark law in India is based on a "first-to-use" system. In first-to-use countries, unregistered trademarks with prior use can be protected under common law. However, unlike U.S. trademark law, Indian trademark law allows first use of the mark to occur anywhere, globally. In this way, the claimant may claim transborder reputation of the mark in India—if the claimant is able to provide evidence to establish acquisition and existence of goodwill and reputation of the mark in India.

In addition, unlike in the U.S., where a registration based on use can be obtained only after a mark is in use in U.S. interstate commerce (including,commerce between a foreign country and the U.S.), trademark rights in India can be acquired through registration. A trademark may be registered in India, even if the mark is not in use, on the basis of "proposed to be used" within a period of time.

Steps to register a trademark in India

1. **Step 1: Selection of classes.** In India, trademarks are administratively categorized into classes of goods and services in compliance with the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks.

2. **Step 2: Trademark search.** While not required, it is advisable to do a trademark search before applying for a trademark registration in India. This ensures that there are no conflicting pending trademarks or registered marks, which may then help avoid potential legal issues in the future.

3. **Step 3: Filing a trademark application.** The following documents and information are required to file a trademark application in India:

   - A copy of the trademark or logo to be registered
   - Applicant's information, such as name, address, and nationality
   - The state of incorporation (if the applicant is a company)
   - A local address if the applicant is not domiciled in India
   - Indication (list or identification) of goods and services to register with which applicant uses or intends to use the mark
   - Identification of the class(es) of goods and services where registration is sought
   - Date of first use of the trademark in India (if the mark is used in connection with the goods or services prior to the filing date of the application)

If the application is being filed through a trademark agent, the trademark owner is required to execute a power of attorney.

If filing from the U.S., the trademark owner may consider extending their U.S. trademark application or registration to India through the Madrid Protocol. See https://www.wipo.int/en/web/madrid-system/. A filing under the Madrid Protocol at the World Intellectual Property Organization ("WIPO") is an alternative to filing an application directly with the India Trade Marks Registry.

A trademark owner can file a paper application at the Trademark Office, or an application may be filed online through the e-filing gateway. See https://ipindiaonline.gov.in/trademarkefiling/user/frmloginnew.aspx.

Notably, under the Trade Marks Rules, 2017, the official fee for online filing of a trademark application is 10% lower than the fee for a paper filing. Additional details can be found on the official IP website of the Office of the Controller General of Patents, Designs and Trade Marks: https://ipindia.gov.in/ or https://www.ipindia.gov.in/basics-of-trademarks.

4 **Step 4: Trademark examination.** Once the Trademark Office receives the application, a trademark examiner reviews the application for any issues that may impede the mark from being approved for registration. The review process is generally one year or more. The trademark examiner may accept the trademark absolutely or conditionally or refuse the mark. If the mark is accepted absolutely, the trademark will be published in the Trade Marks Journal, an official publication of the Trade Marks Registry (https://search.ipindia.gov.in/IPOJournal/Journal/Trademark). If the mark is not accepted absolutely, the trademark examiner issues an examination report that explains the condition(s) the trademark owner must fulfill for the mark to be registered. The trademark owner is permitted one month to satisfy the requisite conditions.

If a response by the trademark owner is found to be acceptable, the trademark then will be published in the Trade Marks Journal. If the response to the examination report is not satisfactory or where the applicant has requested a hearing, the Registrar provides the applicant with an opportunity for a hearing. If, during the hearing, the examiner determines that the trademark should be allowed registration, the mark will then proceed to publication in the Trade Marks Journal.

For more details, refer to the following guides:

- https://ipindia.gov.in/trade-marks-learn-filing-process-step-by-step
- https://ipindia.gov.in/trademark-application-workflow

5 **Step 5: Publication of the trademark**. If, after examination of the trademark application, it is determined that the trademark application satisfies all the requisite conditions, it is then published in the Trade Marks Journal. The publication provides notice to interested parties to oppose the mark. If there is no opposition after four months from the publication date, the trademark will then be registered.

6 **Step 6: Opposition to a trademark.** If an opposition is filed against the published mark, a hearing is held, and the Registrar then determines the disposition of the mark. The Act prescribes that any person may file a notice of opposition against a trademark within four months of the date the trademark application is published or re-published in the Trade Marks Journal. The Trade Marks Journal publications are available at: https://search.ipindia.gov.in/IPOJournal/Journal/Trademark.

The grounds for opposition must be clearly stated in the notice of opposition and the opponent must provide evidence in support of the grounds for opposition.

Grounds of opposition include the following:

- Absolute grounds of refusal as provided under Section 9 of the Act (for example, the mark is "devoid of any distinctive character" or is a term that is "customary in the current language");
- Relative grounds of refusal as provided under Section 11 of the Act (such as, similarity to an earlier trademark and identity or similarity of goods or services covered by the trademark); and
- Other relevant grounds depending on the facts of the matter–for example, if the opponent's trademark is well-known or is protected by copyright law, or if the applicant's mark conflicts with a geographical indication relating to origin of the goods or services.

The Registrar's decision in opposition proceedings may be challenged by filing an appeal at the applicable High Court. See https://ecourts.gov.in/ecourts_home/static/highcourts.php.

7 **Step 7: Trademark registration.** Once the trademark application fulfills all requirements, a registration certificate under the seal of the Trademark Office is issued.

Once registered, the registration of a mark is effective as of the filing date of the application underlying the registration. However, while the trademark registration is effective as of the application filing date, the trademark owner may only begin to apply the '®' (encircled 'R') symbol to show the mark is registered after the registration certificate has issued.

The term of protection in India for a trademark is 10 years from the application filing date. However, under Section 47 (b) of the Act, in instances of non-use cancellation, the trademark registration date is the date it was entered into the trademarks register.

8 **Step 8: Trademark renewal.** You may renew a trademark registration indefinitely, subject to the payment of a renewal fee every 10 years. Renewal applications may be filed along with the prescribed fee any time not more than one year prior to the expiration of the last registration. If the trademark owner does not renew the trademark before its expiration, they can still apply for renewal during the six-month grace period following the expiration date, along with the prescribed fee and surcharge.

- **Failure to renew registration ("default").** A trademark owner who fails to renew their trademark registration may still apply for renewal under Section 25(4) of the Act, if the owner also restores the registration. After six months, but within one year from the expiration of the most recent registration, the trademark registration owner may apply for restoration by payment of the prescribed fee, along with submission of the prescribed form for registration restoration. Trade Marks Rules, 2017 provide the rules and procedures for restoration of trademark registrations in India.
- **Steps after restoration applications are filed.** After receiving the application to restore the trademark registration, the Registrar will republish the trademark in the Trade Marks Journal. The purpose of republication is to invite objections from anyone who has reason to believe that the trademark should not be restored. If no rejections are raised within the stipulated timeframe, the trademark will be re-entered in the register. The entry will specify that the trademark has been renewed for a period of 10 years.

9

Step 9: Application for priority registration under an international agreement. India and the U.S. are members of the Paris Convention for the Protection of Industrial Property, or the "Paris Convention." In certain circumstances, trademark owners from Paris Convention member countries who apply to register their marks in their home countries and later apply to register the same mark in another member country, will receive the same filing date for the second application as they did for the home country application. That priority filing date is available if subsequent applications are filed within six months of the home country filing.

What constitutes an infringement of a trademark in India?

Section 29 of the Act defines infringement as "use of a registered mark, by an unauthorized person or a person who is not the registered proprietor, which is identical or deceptively similar to the trademark in relation to the goods or services in respect of which the trademark is registered."

Trademark infringement may occur in any of the following situations:

- An entity other than the trademark owner or licensee uses an identical or similar mark, which causes confusion in the minds of the general public, or creates an incorrect association with the trademark owner or source of the goods bearing the registered trademark or services offered in connection with that trademark;
- The registered trademark is used by a third party (not the trademark registrant) as a part of a trade name or business concern for goods and services for which the trademark is registered;
- The trademark is used in advertising that creates an unfair advantage contrary to valid or legitimate practices, or which causes harm to the distinctive character and reputation of the registered trademark; or

- The registered trademark is applied on material intended for packaging or labeling of goods, or as a business paper or advertising, without due authorization of the registered owner, if the person who applied the mark knew or had reason to know that the application of the mark was not duly authorized by the proprietor or a licensee.

Section 102 of the Act provides that a person is considered to have falsified a trademark if that person (a) applies a trademark or a deceptively similar mark, without the approval of the trademark owner, or (b) falsifies any genuine trademark, whether by alteration, addition, effacement, or otherwise.

Under this provision, a person is considered to have falsely applied a trademark to the goods, or falsely advertised services in connection with a trademark, if that person, without the consent of the trademark owner, (a) applies such trademark or a deceptively similar mark to goods or any package containing goods, or uses such trademark with services; and (b) uses any package bearing a trademark that is identical to or deceptively similar to a registered trademark, for the purpose of packing, filling or wrapping therein any goods other than the actual goods associated with the registered trademark.

Conduct not amounting to infringement

Section 30 of the Act spells out certain conditions under which a registered trademark may not constitute infringement, such as when:

- Any person makes use of a registered trademark in accordance with honest practices in industrial or commercial matters;
- Use of the trademark is not in pursuit of taking undue advantage or proves not to be detrimental to the distinctive character or reputation of the trademark;
- A trademark is used in order to indicate the kind, quality, quantity, intended purpose, value, geographical origin, time of production of goods, or rendering of services or any other characteristics of goods or services;
- Using the trademark outside the scope of registration, where the alleged infringement is under the ambit of certain limitations;
- There is implied consent when the infringing infringed use of a trademark continues beyond the permitted use by the original proprietor who has subsequently not removed or obliterated it;
- Using the trademark in relation to parts and accessories; or
- Using trademarks identical or quite similar to another trademark in the exercise of the right to use that trademark given by registration under the Act.

Concept of passing off: Provisions related to unregistered trademarks in India

In India, passing off is recognized as a common-law tort that is used to protect and enforce unregistered trademarks. Passing off prevents a person from misrepresenting goods and services from that of another.

Civil and criminal remedies simultaneously available against infringement and passing off

Relief granted by the courts in civil suits for infringement may include permanent and interim injunctions, damages, or account of profits, delivery of infringing goods for destruction, or recovery of costs of the legal proceedings. Interim relief in a civil suit may also include obtaining an order for the following:

- Appointment of a local commissioner, which is similar to an Anton Piller[1] order for search, seizure, and preservation of infringing goods, and account of books and preparation of inventory.
- Restraining the infringer from disposing of or dealing with the assets in a manner that may adversely impact the plaintiff's ability to recover damages, costs, or other pecuniary remedies that may be finally awarded to the plaintiff.

In the case of a criminal action for infringement or passing off, punishment for infringing a trademark is imprisonment for a minimum of six months, which may be extended up to three years, along with a monetary fine, consisting of INR 50,000 rupees, up to INR 200,000 (approximately US$580 up to US$2,324) as of 2025.

Landmark trademark and related decisions and cases

- Yahoo!, Inc. v. Akash Arora & Anr 78 (1999) DLT 285
  - This was a landmark judgement for cybersquatting.
  - The Delhi High Court held that a domain name serves the same function as a trademark and is entitled to equal protection.
- D.M. Entertainment v. Baby Gift House and Ors. (MANU/DE/2043/2010)
  - This was the first case to consider the issue of celebrity merchandising where the publicity rights of the artist were given due recognition.
  - Character merchandising remains an unexplored area of law in India.
- N. R. Dongre v. Whirlpool (1996) 5SCC 714.
  - This was the first case that recognized the "Well-known Trademarks" and the "Principle of Trans-Border Reputation."
- Milmet Oftho Industries & Ors. v. Allergan Inc 2004 (28) PTC 585 (SC)

1. Anton Piller is a court order that permits a plaintiff to enter a defendant's premises and seize evidence without prior warning given to the defendant. The primary objective of this order is to prevent the destruction or removal of evidence.

- The Supreme Court of India granted trademark protection to a well-known foreign brand.
- The court restrained an Indian company from using a mark that was designated as well-known. The judgment was given irrespective of the fact that the mark was neither used nor registered in India.

Tips for protecting trademarks in India

Registering trademarks early, conducting searches, monitoring for infringing use, and taking swift action against infringers are some best practices for protecting your trademark. The points below provide additional tips for securing and protecting a trademark in India.

- Trademarks are valuable business assets. Even though it is not required by law, it is recommended to register a trademark, as unregistered trademarks only receive limited protection. The trademark registration serves as the *prima facie* evidence of proprietorship of the trademark.
- Trademarks may be filed and registered on the basis of intent to use. Therefore, rights holders do not need to show actual use of a mark before registering it.
- It is important for the applicant to conduct a search to check the availability of a mark. This will inform the risk of using a mark.
- India joined the Madrid Protocol in 2013, so an applicant may file trademark applications using the Madrid System from India. Refer to the guidelines for functioning under the Madrid Protocol for additional details: https://ipindia.gov.in/frontend/pdf/trade-mark/act/1_40_1_guidelines_MadridProtocol_17December2013.pdf.
- Unlike the United States, India recognizes well-known marks, and the India IP Office maintains a list of well-known marks: (https://tmrsearch.ipindia.gov.in/tmrpublicsearch/List_of_Well-Known_Trade_Marks_as_of_10.02.2025.pdf). However, there is no clear formal procedure for recording marks as well-known. Recent amendments to the Trade Marks Rules provide for requesting the Registrar to determine that a trademark is well-known. Rights holders can apply for the determination by filing an application (Form TM-M) with the following:
  - A statement of the case along with all the evidence and documents relied on by the applicant in support of the claim that the trademark is well-known;
  - Evidence of the applicant's rights and claims which should include registrations in other jurisdictions; and

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  - Details of any successful enforcement actions taken to protect the interest in the mark (that is, if the mark has been declared as well-known by an Indian court or the Registrar of Trademarks). To review the standard operating procedure (SOP) for well-known trademark applications and processing, refer to the following resource:
    - https://ipindia.gov.in/frontend/pdf/trade-mark/act/SOP_for_Well-Known_TM_Finalised.pdf

- Trademark applicants should avoid giving class headings as specifications in their applications. Although India follows the Nice classification with regards to goods and services, the Registrar prohibits class headings as specifications. Instead, applicants should list all of the goods and services that are or may be used with the trademark.
- Indian law allows for multi-class filings.
- Recording a license with the Trademark Office is not mandatory. Rights holders may enter into a license agreement in writing and use will accrue to their benefit, even if the license is not registered with the authorities.
- If a mark is assigned in India, the assignment deed should mention (a) whether or not the assignment is made with the goodwill of the business concerned, (b) the actual monetary consideration, and (c) the effective date of the assignment.
- Under Indian law, an attorney or lawyer is not needed to file a trademark application. However, it is advisable to work with an attorney or lawyer during the registration process.
- Registration of a trademark is not a prerequisite to bring a civil or criminal action for violation(s) of trademarks in India. A combined civil action for infringement of trademark and passing off can be initiated simultaneously.
- A trademark is valid for 10 years and can be renewed indefinitely upon timely payment of the renewal fees.
- A registered trademark must be in use in India in order to be maintained. Registered marks can be canceled on the grounds of non-use if the mark is not used in India for a continuous period of five years. The date on which the mark was entered in the register of the Trademark Office is the date used for calculating the five years of non-use.
- Brand owners should be aware that Section 115(4) of the Act requires a police officer not below the rank of Deputy Superintendent of Police (DSP) to conduct a search and seizure of articles involved in committing a trademark offense. The police officer, before any search and seizure, must first obtain a favorable opinion from the Registrar of Trademarks.
- It is important to note that, prior to the abolition of the Intellectual Property Appellate Board (IPAB) in 2021, the Registrar's decision was appealable to the IPAB. Now, such decisions are appealable to the High Court.

Patents

What is a patent?

A *patent* is a statutory right for an invention granted by the government for a limited time to the patentee to prevent others from making, using, offering for sale, selling, or importing the patented invention without the patentee's consent. The Indian Patent Office is the governmental authority that receives and examines patent applications. In India, the Controller General of Patents, Designs and Trade Marks (CGPDTM) oversees the Patent Offices in Chennai, Mumbai, Kolkata, and its Delhi headquarters.

A patent granted by the Indian Patent Office is similar to a utility patent in the United States. It protects novel products and processes that involve an inventive step and are capable of industrial application. The term of protection is 20 years from the patent application filing date. Indian patent law currently does not provide for any patent term extension. For national phase application filings under the Patent Cooperation Treaty (PCT), the term is 20 years from the international application filing date accorded under the PCT. The international filing date is considered the date of filing in India if the applicant enters the national phase in India by filing a national phase application within 31 months from the date of priority.

Sections 3 and 4 of the Indian Patent Law, i.e., the Patents Act, 1970 (as amended), identify the following types of inventions as ineligible for patent protection:

- An invention that is frivolous or that claims anything obviously contrary to well-established natural laws;
- An invention for which the primary or intended use or commercial exploitation could be contrary to public order or morality, or that causes serious prejudice to human, animal or plant life or health, or to the environment;
- 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;
- Mere discovery of a new form of a known substance that does not result in the enhancement of the known efficacy of that substance, or the mere discovery of any new property or new use for a known substance, or 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;
    - For the purpose of this requirement, salts, esters, ethers, polymorphs, metabolites, pure form, particle size, isomers, mixtures of isomers, complexes, combinations, and other derivatives of known substances are considered to be the same substance, unless they differ significantly in properties with regard to efficacy.
- 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;

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- Mere arrangement or re-arrangement or duplication of known devices, each functioning independently of one another in a known way;
- A method of agriculture or horticulture;
- 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;
- Plants and animals in whole or any part thereof, other than microorganisms, but including seeds, varieties and species and essentially biological processes for production or propagation of plants and animals;
- A literary, dramatic, musical, or artistic work, or any other aesthetic creation whatsoever, including cinematographic works and television productions;
- A mathematical or business method or a computer program per se or algorithm(s);
- A mere scheme or rule or method of performing a mental act or a method of playing a game;
- Topography of integrated circuits;
- An invention that is traditional knowledge or that is an aggregation or duplication of known properties of a traditionally known component or components; and
- Inventions relating to atomic energy.

Notably, even if an invention satisfies the criteria of novelty, inventive step, and industrial application, it would not qualify for a patent if it is found to be ineligible subject matter under Sections 3 or 4.

Below are some examples of inventions that may be considered patent eligible in India:

- Genetically modified microorganisms and vaccines;
- A new medicinal compound and formulation;
- A synergistic composition obtained by admixture of components;
- An improvement or combination producing a new result, or a new article or a better or cheaper article than before;
- A surgical, therapeutic, or diagnostic instrument or apparatus;
- Diagnostic methods carried out on tissues, cells, or biological fluid completely removed from a living body; and
- A computer-implemented invention demonstrating a "technical effect" or "technical contribution."

How to obtain patents in India

When deciding whether to apply for a patent in India, innovators should consider the following:

- Patents are territorial. An Indian patent is needed to enforce patent rights in India.
- The patent examination process is lengthy and may take many years to finalize.
- An applicant who is not a resident of India must either file a patent application through a registered Indian patent agent or provide an address for service in India.

Best practices in seeking patent protection

1

Step 1: Obtain a qualified patent attorney. Many companies seek to market their products globally, which makes obtaining patent protection in multiple countries an important aspect of a company's business strategy. Because disclosure (inadvertent or otherwise) in one country may result in a loss of patentability in others, inventors should obtain legal advice as early in the process as possible.

Residents of PCT member states (including the United States and India) may file an international patent application under the PCT. The PCT system streamlines and simplifies the process of filing for patent protection in multiple countries and allows an applicant greater time to decide where to file for patent protection.

The PCT system offers a simpler process than the Paris Convention route (please see Step 2 below for more information). If you wish to obtain patent protection in India as well as multiple other countries, consider filing a PCT application and include India as a designated state. For example, if at least one applicant is a resident or national of the United States, a PCT application can be filed in the USPTO Receiving Office. You would then have up to 31 months to initiate the national phase procedure with the Indian Patent Office.

A qualified patent attorney or agent can help you navigate such matters, including filings through the PCT. In addition, an attorney or agent may be able to recommend or help you to select appropriate Indian patent counsel and agents as needed.

Non-resident patent applicants (those not maintaining a business office in India) must submit their patent applications through a registered Indian patent agent. Your U.S. patent attorney may be able to recommend a qualified Indian patent agent. Ideally, the patent agent you select in India should be familiar with the technology or subject area of the invention.

2 **Step 2: Determine whether you have a priority claim.** Both India and the United States are members of the Paris Convention for the Protection of Industrial Property. The Paris Convention provides that, when applicable requirements are met, an applicant who has filed a patent application in a first country may, within 12 months of that filing, file a subsequent patent application on the same subject matter in another Paris Convention member country and claim the benefit of the filing date of the first application.

For example, if an applicant first files a patent application in his or her home country and then files a corresponding application in India claiming priority to the first application within 12 months, this should avoid rejection in India for any acts accomplished in the interval between the two filings.

3 **Step 3: Prepare and submit your patent application**. Indian patent applications may be in English and must include a complete patent specification (an abstract, description, claims, and any relevant drawings) that clearly discloses the invention.

The Indian Patent Office receives patent applications physically or via its online e-filing system: (https://ipindiaonline.gov.in/trademarkefiling/user/frmLoginNew.aspx).

For foreign applicants, the appropriate office for all proceedings depends on the address for service in India that the applicant provides.

4 **Step 4: Examination.** After receiving the application, the Indian Patent Office will review it to determine whether it meets filing requirements. If yes, then, following a request for examination by the applicant, the Indian Patent Office will conduct a substantive examination. The Patent Office will not examine an application unless it is published and a request for examination is filed.

A request for examination for patent applications filed on or after March 15, 2024, must be made on Patent Office Form 18, along with the prescribed fee, within 31 months from the date of priority of the application *or* from the date of filing of the application, whichever is earlier. If no request for examination is filed within the prescribed time limit, the application will be treated as withdrawn by the applicant.

The Indian Patent Office does not begin processing or examining a PCT national phase application filed in India before the expiration of 31 months from the priority date, except at the express request filed by the applicant using the prescribed form (i.e., Form 18) along with the prescribed fee.

Expedited examination is available in India for some applicants, including those who have selected the Indian Patent Office as the competent International Searching Authority or International Preliminary Examining Authority in the corresponding PCT application, as well as for startups, small entities, and female applicants. The request for expedited examination may be filed on the prescribed form (i.e., Form 18A) with the prescribed fees only through the office's e-filing facility. Expedited applications are examined and processed expeditiously; the grant or final disposal generally concludes within one year from the date of receipt of the expedited examination request.

After examination, the Patent Office issues a First Examination Report (FER) to the applicant. The applicant is required to comply with the requirements within six months from the date of FER, which may be extended by three months. If the applicant does not file a reply within six months or take an extension of three months, the application is then considered abandoned.

5

While there is no appeal against an order of abandonment, the jurisdictional High Court may revive an abandoned application in extraordinary situations, such as when a patent agent is found to be negligent in prosecuting the application, with no contributory negligence of the applicant, and the applicant is found to have had a positive intent to prosecute the application. Once the applicant meets the requirements for patenting within the prescribed time and the application is found to be in order for grant, the patent is granted by the Patent Office, provided there is no pre-grant opposition to the patent application pending. The grant date of a patent is the date the Controller of Patents issues the grant order.

Step 5: Review/appeal. If the patent application is rejected by the Controller of Patents, the applicant may seek subsequent review of the order of the Controller of Patents rejecting the application. The applicant may also appeal the refusal order of the Controller of Patents, including an order under pre-grant opposition, to the High Court with jurisdiction over the Patent Office branch that issued the refusal order. Review and appeal are two distinct proceedings. While the scope of review proceedings is restrictive and limited in nature, the right to appeal is broader. As another remedy, the High Court may exercise writ jurisdiction invoked against the decision of the Patent Office under certain circumstances, such as for violations of principles of natural justice.

Pre-grant opposition against grant of patent

Any "person," which may include researchers and non-governmental organizations, may file a pre-grant opposition with the Controller of Patents (on Form 7A, with prescribed fees) against the grant of a patent any time after the publication of a patent application but before the grant of a patent on any of the grounds mentioned in Section 25(1) of the Patents Act, 1970 (as amended). The opposition should include a statement, any evidence, and a request for a hearing, if so desired.

According to the Patents (Amendment) Rules, 2024, the Controller will have to first decide the *prima facie* maintainability of the pre-grant opposition. Upon consideration of the opposition filed by the opponent, if the Controller is satisfied that a *prima facie* case is made in the opposition, the Controller will, within one month of receiving the opposition, issue an order recording the reasons.

The Controller will then notify the patent applicant. Upon receiving the notice, the patent applicant may file a statement and submit any evidence in support of the patent application within two months of the date of the Controller's notice.

Upon consideration of the statement and evidence filed by the patent applicant and the opposition, submissions made by the parties, and after hearing the parties, if so requested, the Controller may either reject the opposition or ask the applicant to amend the complete specification before granting the patent, or refuse to grant a patent by issuing a speaking order.

An application for a patent, wherein an opposition has been filed and notice has been issued to the patent applicant by the Controller, would be examined in accordance with the relevant rule relating to expedited examination.

While the objective of pre-grant opposition is to assist the Controller of Patents in deciding the patentability of an application, unfortunately competitors have been able to use it as a tool to delay the grant of patents. In several cases, the courts expressed serious concerns over the filing of such frivolous or serial oppositions and held them to be an abuse of the process of law.

Invalidation of patents

Any "person interested" may file a notice of post-grant opposition against a patent with the Controller of Patents after the grant of the patent but within one year from the publication date of the patent grant. The term "person interested" includes a person engaged in or promoting research in the same field as the invention.

The grounds for both pre-grant and post-grant oppositions are the same. The Controller will notify the patentee and refer the matter to the Opposition Board. The Board will then review the record and make a recommendation to the Controller and the parties. The Controller will then order either the maintenance, amendment, or revocation of the patent.

The decision of the Patent Office under post-grant opposition proceedings may be appealed before the appropriate High Court.

In addition, any "person interested" may directly challenge the validity of a patent through a revocation petition before the High Court having jurisdiction at any time during the subsistence of the patent. A High Court within the jurisdiction where the patent was granted would generally be the forum to entertain the revocation petition. However, a 2022 ruling of the Delhi High Court held that jurisdiction for filing a revocation petition would also extend to other High Courts within whose jurisdiction the commercial interest of the "person interested" may be affected.

A patent may also be revoked by the High Court on a counterclaim in a suit for infringement of the patent. However, separate invalidation actions cannot be filed and pursued simultaneously by the same party against the same patent. While the principal grounds of a post-grant opposition and a revocation proceeding overlap (i.e. novelty, obviousness inventive step, patentability exclusions, etc.), additional grounds are available in revocation proceedings (i.e., scope of claims not being sufficiently defined or based on disclosed subject matter; fraud or misrepresentation; or applicant is not entitled to apply for a patent or they applied outside of India without foreign filing permission; etc.).

Tips for obtaining, maintaining, and enforcing patent rights in India

Novelty: Unlike the United States, India is generally considered as being an absolute novelty country. Normally, pre-filing disclosures are treated as prior art. However, Indian law recognizes certain exceptions to anticipation and accordingly provides for grace periods for pre-filing disclosures in certain circumstances, including:

- Anticipation by public working: Disclosures within one year before the priority date by public working of the invention in India for the purpose of reasonable trial only, by or with the consent of the patent applicant.
- Anticipation by public display: Disclosures within 12 months before the patent application is made (calculated from the opening of the exhibition or the reading or publication of the paper) by:
  - Display or use of the invention with the consent of the inventor at an industrial or other exhibition notified in the Official Gazette;
  - Publication of the invention in consequence of such display or use; use of the invention during the period of the exhibition without the consent of the inventor; or
  - Description of the invention in a paper presented by the inventor before a learned society, or published with the inventor's consent in the transactions of such a society.

The Patents (Amendment) Rules, 2024 require a formal request along with prescribed fees to take advantage of the grace period in the case of public display. It is important to note that India does not provide for any novelty grace period for other disclosure or commercial use of the invention before the priority date of the patent application. Therefore, if an inventor wishes to obtain patent protection in India, it is often prudent to first file a priority patent application before making any public disclosure or undertaking any commercial activity of the invention.

Trade secret considerations: It is also important to consider that seeking a patent in India may have significant consequences from the perspective of trade secret protection. For example, if a patent is sought and published but not obtained, or is granted and later invalidated, the subject matter may become public, meaning that trade secret protection may then be unavailable.

Foreign filing permission: Under Indian patent law, a resident of India may file a patent application for an invention outside India only after six weeks from the date of filing an application for a patent for the same invention in India, and *either* no secrecy direction has been imposed by the Controller of Patents in relation to the Indian patent application *or* all such directions have been revoked.

An exception to this requirement is available via a foreign filing license sought from the Controller to file the patent application outside India, without first filing a patent application in India. However, if the invention is relevant for the purposes of defense or atomic energy, the Controller will not grant a permit without first obtaining consent from the Indian government.

Notably, unlike the U.S., the need for a foreign filing license in India is based on residency rather than where the inventive concept originated. A request for permission for making patent application outside India must be made in the prescribed form, including a brief description of the invention.

The Controller normally disposes of the foreign filing license request within 21 days of the filing date of the request. However, when inventions relate to defense or atomic energy, the period of 21 days is counted from the date of receipt of consent from the central government.

Non-compliance with relevant provisions on foreign filing licenses under Indian patent law, if applicable, may result in serious consequences for the inventor(s) or applicant(s), which may include imprisonment for up to two years as well as a possible fine. Further, the Indian patent application would be considered abandoned, and if the patent is already granted, it would be subject to revocation.

Patent specification and disclosure of the invention: Under Indian patent law, every complete specification must fully and particularly describe the invention, its operation or use, and the method by which it is to be performed. It must also disclose the best method of performing the invention that is known to the applicant and for which the applicant is entitled to claim protection. The claim(s) of a complete specification must relate to a single invention or to a group of inventions linked to form a single inventive concept. The claim(s) must be clear and succinct and must be fairly based on the matter disclosed in the specification.

Making amendments: The amendments to an application for a patent, or to a complete specification, are permissible by way of disclaimer, correction, or explanation. An amended patent application must not contain a subject matter that extends beyond the content of the unamended application. Further, any claim of the amended complete specification must fall wholly within the scope of a claim of the unamended complete specification. The amended claim must not only be directly derivable from the unamended specification, but also fall wholly within the scope of an unamended claim.

At the time of filing a PCT national phase application in India, the applicant may delete a claim, without filing an application for amendment. Although deletion of claims is allowable, no other amendment—such as addition, revision, or modification of claims—is permissible.

However, a 2023 Delhi High Court Single Judge ruling recognized the applicant's right to amend claims from non-patentable subject matter to patentable subject matter during prosecution in the case of national phase patent applications, provided there is sufficient basis for such amendment in the original complete specification. The Court held that while examining whether any amended claim falls wholly within the scope of a claim of the unamended complete specification, the unamended complete specification must be considered, and not merely a textually combined reading of unamended claims themselves without the complete specification.

Indian patent law does not have a specific provision for prohibiting double patenting. However, based on the scheme of the Indian Patent Law, two patents cannot be granted for one invention.

The grant of patents with Markush[2] or selection claims, i.e., genus and species claims, is permissible in India. However, the selection patent must disclose the substantial or unexpected advantage possessed by the selected members as compared to non-selected members of the genus patent. Therefore, the selected members must possess an advantage specific to the selection.

Indian patent law provides for patents of addition. When an applicant has an improvement or modification of the invention described or disclosed in the main application for which he has already applied or has obtained a patent, the applicant may make an application for a patent on an improvement or modification as a patent of addition. A patent of addition is not granted before the patent on the main invention. The patent of addition expires with the term of the main patent.

Continuation and divisional practice: Unlike in the U.S., there is no provision in India for continuation applications. Further, while Indian patent law permits divisional applications, its divisional practice is restrictive as compared to U.S. divisional practice.

In India, an applicant may at any time before the grant of a patent file a divisional application with respect to the invention disclosed in the parent application if they choose or are seeking to remedy an objection raised by the Controller of Patents or on the grounds that the claims of a complete specification relate to more than one invention.

There is no advance notice of patent grant in India. A parent application may be granted without advance notice, thereby unexpectedly closing the window for filing a divisional application.

2. Markush claims recite a list of alternatively useable members.

Patents
continued

The claims of divisional applications should be patentably distinct from the parent application. A Controller of Patents may require an amendment of the claims of either the parent or divisional application to ensure that neither application includes a claim for any matter claimed in the other application.

Per Indian practice, the claims of a divisional application must be based on the claims of a parent application and not merely its disclosure or specification. Addition of claims that do not fall within the scope of the claims of a pending parent application is not allowable. A divisional application will be acceptable only when its claims are part of the subject matter claimed in a pending parent application. Unclaimed material in a patent application, including material in canceled claims, may be considered disclaimed. If a divisional application includes claims that have been canceled from the parent application, the divisional application may be disallowed by the Patent Office on the grounds that the patent applicant disclaimed those claims. The applicant should attempt to make any divisional filings that utilize claims pending in a parent application relatively early in prosecution of the parent application, before cancellation of those claims from the parent or grant of the parent application.

As a favorable development, a 2023 Delhi High Court Division Bench ruling relaxed requirements for divisional application maintainability, holding that a divisional application would be maintainable as long as the plurality of inventions is reflected in the disclosure made in the provisional or complete specification of the parent application. It was held that the 'plurality' of inventions in a parent application need not be found only in its claims. The Patents (Amendment) Rules, 2024 introduced an amendment to the Patents Rules in alignment with the Division Bench ruling.

Understanding the 'efficacy' requirement under Section 3(d): For chemical and especially pharmaceutical inventions, if the product for which patent protection is claimed is a new form of a known substance with known efficacy, then the subject product must meet the requirements for enhanced efficacy as provided under Section 3(d), in addition to the requirements for novelty, inventive step, and capability of industrial application.

According to the Supreme Court's judgment in *Novartis AG vs. Union of India and Ors.*, (2013) 6 SCC 1:

- Where a medicine claims to cure a disease, the test of efficacy in the context of Section 3(d) can only be "therapeutic efficacy."
- As to the requirement for a significant difference in properties with regard to efficacy between a known substance and the salts, esters, ethers, polymorphs, metabolites, pure form, particle size, isomers, mixtures of isomers, complexes, combinations, and other derivatives of the known substance, not all advantageous or beneficial properties (such as more beneficial flow properties, better thermodynamic stability, and lower hygroscopicity) are relevant. Only properties that directly relate to efficacy or therapeutic efficacy are relevant.
- However, Section 3(d) does not bar patent protection for all incremental innovations related to chemical and pharmaceutical substances.

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continued

Computer-related inventions: Computer programs *per se* cannot be protected under Section 3(k) of the Indian Patent Law. However, if a claimed computer-implemented invention demonstrates a "technical effect" or a "technical contribution," it would be eligible for patenting.

Compulsory licenses: Indian patent law provides a detailed mechanism for the grant of compulsory licenses for a patent. At any time after the expiration of three years from the date of the grant of a patent, any interested person may make an application to the Controller of Patents to request grant of a compulsory license on any of the following grounds:

- The reasonable requirements of the public with respect to the patented invention have not been satisfied;
- The patented invention is not available to the public at a reasonably affordable price; or
- The patented invention is not worked in the territory of India (see section below on Working Statements).

In addition, there is a separate special provision for grant of compulsory licenses on notification by the government of India in circumstances of national emergency or extreme urgency, or in cases of public non-commercial use. There is also a provision for compulsory license for export of patented pharmaceutical products in certain exceptional circumstances.

Annual working statement requirement (Form 27): Unlike in the U.S., every patentee and every licensee (whether exclusive or otherwise) must submit a statement of commercial working of a patented invention on the prescribed form (i.e., Form 27). At the time of publication of this toolkit, Form 27 must be submitted to the Controller of Patents once for every three fiscal years (from April 1 to March 31) beginning from the fiscal year right after the fiscal year in which patent was granted. Form 27 is due within six months from the expiry of every third fiscal year after the patent was granted. For example, for a patent granted in fiscal year 2023-24, computation of the three-year period starts from fiscal year 2024-25, and the six-month window for filing Form 27 would be April 1, 2027 to September 30, 2027.

The deadline to file Form 27 may be extended up to a total of nine months. Failure to submit the working statement may subject the patentee or licensee to a penalty and may also provide a basis for the grant of a compulsory license. Providing false information about the commercial working of a patented invention also may subject the patentee or licensee to a penalty.

Reporting requirements of foreign patenting activity: Unlike the U.S., Indian patent law requires patent applicants to file information and an undertaking regarding foreign patent applications. Section 8 of the Indian Patent Law alongside the corresponding Rule 12 requires patent applicants to:

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- Provide to the Controller of Patents the detailed particulars (i.e., name of the country, date of application, application number, status of the application, date of publication, and date of grant) of the foreign patent application(s) relating to the same or substantially the same invention in Form 3 at the time of filing an Indian patent application, or within six months from the filing of the Indian patent application;
- Keep the Controller of Patents informed in writing of these detailed particulars for any other patent applications related to the same or substantially the same invention filed outside of India, within three months from the date of issuance of the First Examination Report; and
- Provide to the Controller of Patents an updated Form 3 within two months from the date of communication by the Controller, if the Controller, for reasons to be recorded in writing, directs the patent applicant to provide the updated form. The Controller may use accessible and available databases to review information related to applications filed in a country outside India.

Upon an applicant's request, the Controller may grant a delay or extend the time for filing Form 3 for a period of up to three months. Non-compliance with Section 8 requirements is grounds for both pre-grant and post-grant opposition, as well as for the revocation of a patent.

However, current jurisprudence on the issue of revocation of patents for non-compliance with Section 8 requirements limits revocation to those instances where the patent applicant failed to disclose to the Controller of Patents information material to the grant of a patent, and where there was deliberate or willful suppression of information.

Section 8 requirements may be fulfilled by utilizing documents available to examiners in the World Intellectual Property Organization (WIPO) Centralized Access to Search and Examination (CASE) and Digital Access Service (DAS). The Indian Manual of Patent Office Practice and Procedure requires the Examiner/Controller to utilize all of the facilities available in WIPO CASE related to corresponding patent applications in other countries. This includes accessing search and examination reports as well as other information available from patent offices that are part of WIPO CASE, including patent offices in India and the United States.

Patent enforcement: As with Customs and Border Protection (CBP) in the United States, India's Customs authorities do not record patents. The enforcement of patent rights at the borders is possible only if the patentee in India obtains a specific injunction order of the court against importation of allegedly infringing products.

In conclusion, the Indian patent system has its own set of rules and regulations. To protect inventions in India, it is important to understand the various requirements and procedures involved, such as the novelty requirements, foreign filing permission, requirements and procedures for the patent specification and disclosure, making amendments, oppositions, patent term, and enforcement of patents. Seeking the assistance of a patent attorney in India may be helpful in navigating the protection and enforcement system, and ensuring the best possible outcome for your patent application.

Copyrights

What is a copyright?

A *copyright* protects "original works of authorship," including literary, dramatic, musical, audiovisual, and artistic works, and sound recordings that are fixed in a tangible form of expression. Literary works include computer programs, compilations, and computer databases. Copyright comes into existence—and will protect a work—as soon as the work is created and fixed in a tangible form, provided it is original. The term "original" means the work must originate from the author and must not be copied from another work.

Notably, India is a member of the Berne Convention, TRIPS Agreement, the WIPO Copyright Treaty (WCT), and the WIPO Performances and Phonograms Treaty (WPPT), which means U.S. copyrighted works will be protected in India.

Protected works

India's copyright law (the Copyright Act, 1957) defines a "work" as any literary, dramatic, musical, or artistic work, as well as a cinematograph film or sound recording (see Table 1).

Table 1: Types of copyrightable works under India's Copyright Act

Type of work	Examples
Literary work	Novels, poems, and computer databases and programs
Dramatic work	Plays and choreographic works
Musical work	Sheet music, including musical compositions but not lyrics
Artistic work	Paintings, sculptures, and photographs
Cinematograph film	Videos, TV shows, movies, and DVDs
Sound recording	CDs, LPs, digital downloads, and streams

A "musical work" means a work consisting of any graphical notation of a musical composition. However, a musical work does not include any words intended to be sung, spoken, or performed with the music or any actions intended to be performed with the music. Therefore, unlike the U.S., musical works in India include compositions but not lyrics, which are instead protected as literary works.

"Literary work" and "dramatic work" are categories of works under the Indian Copyright Act that are inclusive and open in nature. While Indian law also requires that a work must be fixed in physical form in order to obtain protection, the manner a work may be fixed is limited. In the U.S., a choreographic or musical work may be fixed through a variety of media including videos or phonorecords. Under Indian law, however, phonorecords are excluded as a form of fixation for musical works, and cinematograph films are excluded as a form of fixation for choreographic works.

Moral rights

Indian authors are granted both moral and economic rights. Moral rights, also known as author's special rights, are rights related to the personality of the author and the integrity of the work. These rights include (1) the right to paternity, which is the right to claim authorship of the work, and (2) the right to integrity, which is the right to restrain or claim damages with respect to any distortion, mutilation, modification, or other act in relation to the work, if it would be prejudicial to the owner's honor or reputation. Moral rights are independent of the author's copyright and cannot be assigned. The protection period for moral rights is perpetual.

Unprotected works

Certain works cannot be protected by copyright in India under its copyright law. Copyright in India, as in the U.S., protects only the expression of ideas and not the ideas themselves. Therefore, copyright protection is not available for ideas, themes, plots, facts, procedures, methods of operation, or mathematical concepts, only the expression of those items. For instance, a detailed written description about a company's internet business model could be protected by copyright, but the business model itself—and the ideas behind it—would not be protected.

Copyright registration

As in the U.S., registration of a copyright is not a prerequisite to obtaining protection in India, but voluntary registration is available in India. Unlike U.S. law, copyright registration under Indian law does not confer any special advantages or benefits other than serving as *prima facie* proof of the work and ownership, which would be useful if a dispute should arise. In other words, registration raises a presumption that the person mentioned in the Register is the actual author, owner, or right holder, but the presumption is not conclusive. Voluntary registration of copyrights in India is administered by the Registrar of Copyright Office located in New Delhi, working under the Controller General of Patents, Designs and Trade Marks (CGPDTM) who serves as the Registrar of Copyright. The CGPDTM office supervises the functioning of the Copyright Office. It operates under the Department for Promotion of Industry and Internal Trade (DPIIT), the agency overseeing administration of various laws related to intellectual property rights.

While a work is not required to be registered in the Register of Copyrights, there are additional requirements if a work is registered. All subsequent transfers and agreements, such as software licenses, must also be registered. Musical works need to be registered in written form, and any lyrics would be registered as separate literary works. Choreographic works would need to be registered by written notation.

Protection for designs

Design, as defined under the India's Designs Act, constitutes only the features of shape, configuration, pattern, ornament, or composition of lines or colors applied to any article, whether in two-dimensional or three-dimensional or in both forms, by any industrial process or means, which in the finished article appeal to and are judged solely by the eye. This definition excludes any artistic work (painting, sculpture, drawing, engraving, photograph, work of artistic craftsmanship, etc.) as defined in the relevant provision of the Copyright Act. Dual statutory protection under both acts is not possible in India because the Designs Act specifically excludes any artistic work as defined in the Copyright Act. Similarly, the Copyright Act notes that if any design is registered under the Designs Act, then copyright shall not subsist under the Copyright Act for the registered design.

Problematically, the Copyright Act also states that copyright protection will end for a registrable design that is not registered under the Designs Act if more than 50 copies of the article embodying the registrable design are made by the copyright owner or their licensee using an industrial process. Under this scenario, a rights holder may lose protection for their works that might otherwise have been protected. The Supreme Court of India clarified the treatment of works at the intersection of copyright and design laws by formulating a two-pronged test to determine whether a work is purely an "artistic work" entitled to protection under the Copyright Act, or whether it is a "design" derived from such work, primarily lacking "functional utility" that would qualify for design protection under the Designs Act. Determinations under the two-pronged test are case specific and require extensive legal analysis.

Protection for designs as it relates to copyright under Indian law is an extremely complex issue. Anyone wishing to protect a design in India should consider consulting an experienced IP lawyer.

Economic rights

Economic rights give authors the authority to exploit their work. Indian copyright law provides the following economic rights:

- In the case of a literary, dramatic, or musical work, the exclusive right to:
  - Reproduce the work (including its storage in any medium by electronic means);
  - Issue copies to the public, not already in circulation;
  - Perform it in public, communicate it to the public, make it available, or broadcast it;
  - Make any cinematograph film or sound recording of the work;
  - Translate it;
  - Adapt it in any way (i.e., to make a derivative work); and
  - Do any of the acts specified above to a translation or an adaptation of the work.

Copyrights
continued

- In the case of a computer program, all rights as specified for literary works apply, in addition to the right to distribute copies of the computer program through sale or commercial rental.
- In the case of an artistic work, the exclusive right to:
  - Reproduce it (including its storage in any medium by electronic or other means, or depiction of a two-dimensional work in three dimensions or vice versa);
  - Communicate it to the public, make it available, or broadcast it;
  - Issue copies to the public, not already in circulation;
  - Include it in any cinematograph film;
  - Adapt it in any way; and
  - Do any of the acts specified above to an adaptation of the work.
- In the case of a cinematograph work, the exclusive right to:
  - Make a copy of the film, including a photograph of any image that forms a part of the film, or its storage in any medium by electronic or other means;
  - Sell or allow commercial rental or offer for sale or for rental, any copy of the film; and
  - Communicate the film to the public, make it available, or broadcast it.
- In the case of a sound recording, the exclusive right to:
  - Make any other sound recording embodying it (including its storage in any medium by electronic or other means);
  - Sell or give on commercial rental or offer for sale or for rental, any copy of the sound recording; and
  - Communicate the sound recording to the public, make it available, or broadcast it.

For purposes of the above, a copy that has been sold once is considered to be a copy already in circulation.

The Indian Copyright Act also provides a broadcast reproduction right to every broadcasting organization, a performer's right over their performances, as well as a resale share right to an author of original copies of a painting, sculpture, or drawing, or in the original manuscript of a literary or dramatic work or musical work.

Copyright term

Note that the terms of protection for economic rights in India are generally less than those provided in the United States. As such, works protected in the U.S. may not be protected in India.

Table 2 shows the terms of protection in India for different kinds of works.

Table 2: Terms of copyright protection in India

Type of work	Term
Published literary, dramatic, musical, or artistic work	Lifetime of the author plus 60 years from the beginning of the calendar year following the year of the author's death
Literary, dramatic, musical, or artistic work (other than a photograph) published anonymously or pseudonymously	60 years from the beginning of the calendar year following the year the work is first published
Posthumous published literary, dramatic, or musical work, or an engraving	60 years from the beginning of the calendar year following the year the work is first published
Cinematograph film or sound recording	60 years from the beginning of the calendar year following the year the cinematograph film or sound recording is published
Government works or works of a public undertaking, or works of international organizations	60 years from the beginning of the calendar year following the year the work is first published
Broadcaster's reproduction right	25 years from the beginning of the calendar year following the year the broadcast is made
Performer's right	50 years from the beginning of the calendar year following the year the performance is made

Inalienable economic rights

The author of a literary work or a musical work included in a cinematograph film has an inalienable right to receive royalties for the exploitation of such work in any form, except when the film is shown in a movie theater. These royalties must be shared on an equal basis with the copyright owner of the film. In addition, the author of a literary or musical work included in a sound recording that does not form part of any cinematograph film has an inalienable right to receive royalties for any exploitation of such work, and these royalties must also be shared on an equal basis with the copyright holder of the sound recording. Both of these rights to receive royalties cannot be assigned by the author to anyone except their own legal heirs or to a copyright society for collection and distribution of royalties.

Assignments and licenses

In India, copyright may be assigned or licensed. Assignments must be in writing and signed by the assignor or by their duly authorized agent. The assignment must identify the work and specify the rights assigned and the duration and territorial extent of the assignment, as well as the amount of royalty and any other consideration payable to the author or their legal heirs during the period of the assignment. If the period and territorial extent of the assignment is not specified, the duration of assignment is for a period of five years, and the assignment extends only to the territory of India. Further, unless otherwise agreed upon, if the assignee does not exercise the rights assigned within a period of one year from the date of assignment, the assignment with respect to such rights is considered to have lapsed. While these requirements also apply to a license of a copyright, there is one difference: Although a license agreement must be in writing, it does not need to be signed by the licensor or the licensee.

Statutory and compulsory licensing

The Indian Copyright Act also provides for compulsory and statutory licenses of certain works in certain cases. A compulsory license may apply to works withheld from the public, and there are statutory licensing provisions for making a sound recording of a musical work, as well as the broadcasting of literary works, musical works, and sound recordings.

Collective management organizations

In India, collective management organizations (CMOs) called copyright societies administer the business of issuing or granting licenses with respect to copyrighted and performers' works.

- For musical works and lyrics: Indian Performing Rights Society Ltd. (IPRS): https://iprs.org/
- For sound recordings: Recorded Music Performance Ltd. (RMPL): https://www.rmplindia.org/
- For cinematograph film works: Cinefil Producers Performance Ltd.: https://cinefilindia.com/
- For dramatic works and literary works associated with dramatic works: Screenwriters Rights Association of India (SRAI): https://www.sraindia.org/
- For reprographic rights in the field of literary works: Indian Reprographic Rights Organisation (IRRO): https://www.irro.org.in/

There are two other copyright societies that are awaiting registration[3]: the **Indian Singers' and Musicians' Rights Association (ISAMRA)**[4], which administers sound recording performers' rights and other activities ancillary thereto, and **Phonographic Performance Ltd. (PPL)**, which administers public performance and broadcast rights for sound recordings. PPL represents sound recordings owned by the global major music companies (Sony, Warner, and Universal).

Copyright owners in India may license their works directly or through registered copyright societies. However, only a registered copyright society may license and collect for uses of literary, dramatic, musical, and artistic works incorporated into sound recordings and films. In practice, however, some publishers of musical works appear to issue direct licenses for those works. In India, performance and mechanical rights for musical works and lyrics are administered by IPRS, so if your musical works are being used in India, then you must ensure your U.S. CMO and representatives have agreements to collect from IPRS. Performers on sound recordings used in India will want to ensure their U.S. CMO and representatives have agreements to collect from ISAMRA. Producers of sound recordings that are not directly licensed should ensure that their U.S. CMO and representatives are collecting from PPL and/or RMPL.

International copyright

India is a member of the following international conventions, agreements, and treaties concerning its copyright regime:

- Berne Convention for the Protection of Literary and Artistic Works: https://www.wipo.int/treaties/en/ip/berne/
- Universal Copyright Convention: https://www.wipo.int/wipolex/en/treaties/details/205
- Geneva Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms: https://www.wipo.int/treaties/en/ip/phonograms/
- Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties: https://www.wipo.int/wipolex/en/treaties/textdetails/12721
- Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement: https://www.wto.org/english/tratop_e/trips_e/trips_e.htm
- WIPO Performances and Phonograms Treaty (WPPT): https://www.wipo.int/en/web/treaties/ip/wppt/index
- WIPO Copyright Treaty (WCT): https://www.wipo.int/treaties/en/ip/wct/

3. As of March 2025.

4. Indian Singers' and Musicians' Rights Association (ISAMRA) was formerly known as the Indian Singers' Rights Association (ISRA), which was registered as a copyright society until 2023. The name change reflects the fact that the organization now represents—and pays royalties to—both musicians and vocalists, whereas in the past it represented only vocalists on a recording. In September 2023, ISAMRA filed an application with the Indian Copyright Office for registration as a Performers' Society with respect to the singers and musicians' category.

The major copyright conventions, including the Berne Convention, are based on the following three basic principles:

- The principle of "national treatment," i.e., contracting states must give to works originating in other contracting states the same protection that it grants to the works of its own nationals;
- The principle of "automatic" protection, i.e., protection must not be conditional upon compliance with any formality; and
- The principle of "independence" of protection, i.e., protection is independent of the existence of protection in the country of origin of the work.

The rights of the authors of the member countries of the Berne Convention and Universal Copyright Conventions are protected under India's copyright law. By virtue of the relevant provisions of the Copyright Act, 1957, read with the International Copyright Order, 1999, foreign works are accorded copyright protection in India. As in the United States and most other countries, copyright protection in India arises automatically when an original work is created—even if the work is created outside India—as long as the author is from a member state of the Berne Convention for the Protection of Literary and Artistic Works.

Copyright protection begins on the date the original work is created. For example, if an author writes a book in the U.S., the book receives automatic copyright protection in India as soon as it is created. Notably, the major active multilateral treaties concerning copyright and related rights also contain a variety of specific exceptions and limitations to national treatment. For instance, India applies the "Rule of the Shorter Term" from the Berne Convention, which provides that, unless the legislation of the country where protection is claimed otherwise provides, the term shall not exceed the term fixed in the work's country of origin.

Sound recordings

The Berne Convention does not apply to sound recordings. However, both the TRIPS Agreement and the WPPT accord national treatment for the rights granted in those treaties regarding sound recordings and performers, with the exception of the right of equitable remuneration for producers of, and performers on, sound recordings for broadcast and communication to the public. However, India does protect foreign sound recording rights holders and performers—including those from the United States—for the public performance or broadcast of their sound recordings.

The CMO SoundExchange, which collects digital performance royalties for sound recordings in the U.S., has an agreement with Phonographic Performance Limited India (PPL India) to collect royalties in India for the broadcast, communication to the public, and public performance of U.S. sound recordings. Under the Indian Copyright Act, the performers also have this broadcast, communication to the public, and public performance right. ISAMRA and all the music labels in India—including Indian Music Industry (IMI) member labels—entered into an agreement under which ISAMRA is to receive a certain percentage of broadcast, communication to the public, and public performance royalties from sound recordings collected by PPL. ISAMRA currently has an agreement with SoundExchange to collect the Indian performers' share for public performances of their sound recordings in the U.S.

Enforcement of copyrights

A copyright owner is entitled to civil as well as criminal remedies for copyright infringement under Indian copyright law, in addition to border enforcement as well. By virtue of India's membership in relevant multilateral agreements, including the Berne Convention, foreign rights holders may enforce their copyright in India by instituting copyright infringement suits based on the copyright created in the convention countries.

The civil remedies for copyright infringement for the copyright owner include the following:

- Injunction
- Damages
- Rendition of accounts
- Delivery and destruction of infringing copies

Every suit with respect to the infringement of a copyright in any work or the infringement of any other right conferred by the Copyright Act must be instituted in the appropriate District Court or High Court having jurisdiction. Under the 2015 Commercial Courts Act, expedited procedures exist for commercial disputes, including IP disputes. In these cases, copyright infringement litigations are dealt with by Commercial Courts at the district level, or Commercial Divisions of the High Courts.

In early 2019, the Delhi High Court devised a dynamic injunction remedy, which is discussed in more detail in the Enforcement section of this toolkit. Copyright infringement is also a criminal offense and may entail imprisonment for a minimum of six months and up to three years, plus a fine of at least INR 50,000 (US$580) and up to INR 200,000 (US$2,330). Criminal remedies also provide for seizure of infringing copies and their delivery to the copyright owner.

The Indian Copyright Act provides for enhanced penalties on second and subsequent convictions. There are several penal provisions for various offenses, such as:

- Knowingly infringing or abetting infringement of copyright;
- Knowingly using an infringing copy of computer program;
- Knowingly making or possessing plates for the purpose of making infringing copies;
- Circumventing an effective technological measure applied for the purpose of protecting copyright or other rights with the intention of infringing them;
- Knowingly performing an unauthorized removal or alteration of any "rights management information" or unauthorized distribution, importing for distribution, broadcasting, or communicating to the public, of copies of the work or performance, knowing that electronic rights management information has been removed or altered without authority; and
- Making false entries in the Register of Copyrights.

Unlike the United States, copyright holders in India may directly pursue criminal enforcement by filing an official complaint with the police authorities, informing them of the actual, potential, or suspected infringement of their copyright. They may also file a criminal complaint with the competent Court of Magistrate so that the court can direct the police authorities to investigate the matter further.

Copyright owners should seek the advice of experienced counsel if criminal copyright infringement is suspected.

Copyright owners may also avail themselves of appropriate state-specific IP crime units, such as the Maharashtra Intellectual Property Crime Unit (MIPCU), for assistance with the enforcement of their rights.

Customs enforcement

Recordation of a copyright with India's Customs authorities helps prevent the import of infringing goods or pirated works into India, or, conversely, the export of such goods or works from India. The Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007, framed under the Indian Customs Act, 1962, prescribe a remedy to prevent the importation of copyright-infringing goods.

Copyright owners may record their copyright online through the Indian Customs IPR Recordation Portal at https://ipr.icegate.gov.in. The Indian Customs authority can on its own initiative suspend the clearance of the imported goods if there is *prima facie* evidence or reasonable grounds to believe the goods are infringing a copyright, even when the copyright is not recorded under the 2007 rules. Indian copyright law also provides for the detention of imported infringing copies of copyrighted works as prohibited goods, which is carried out by the Customs authorities. The Customs authorities, upon the written notice of the copyright owner (or their duly authorized agent), and upon being satisfied by the evidence furnished by the rights holder, may treat imported infringing copies of the work as prohibited goods and exclude the goods in transit and detain them. The Customs authorities must release detained goods if the noticer does not produce an order from a court as to the temporary or permanent disposal of the goods within 14 days from the date of their detention.

Safe harbor for online intermediaries

In India, the Information Technology Act, 2000 provides safe harbor protection for an intermediary from liability in certain cases for any third-party information, data, or communication link made available or hosted by it. In the case of online copyright infringement involving an intermediary, a copyright owner may make a complaint before the Grievance Officer of the intermediary. The Grievance Officer must acknowledge the complaint within 24 hours and resolve the complaint within seven days from the date of its receipt.

However, if the intermediary receives actual knowledge in the form of an order by a court of competent jurisdiction or a reasoned intimation, in writing, issued by an officer authorized by the appropriate government or its agency that clearly specifies the legal basis and statutory provision invoked, the nature of the unlawful act, and the specific uniform resource locator, identifier or other electronic location of the information, data or communication link required to be removed or disabled, it must remove or disable access to copyright-infringing information within three hours from the receipt of such actual knowledge.

Under the Indian Copyright Act, intermediaries are exempt from liability of copyright infringement for any transient or incidental storage of a work or performance if certain conditions are met. First, such transient or incidental storage must be for the purpose of providing electronic links, access, or integration. Second, the links, access, or integration must have not been expressly prohibited by the copyright owner, unless the person responsible is aware or has reasonable grounds for believing that such storage is of an infringing copy.

However, if the copyright owner complains in writing to the intermediary that such transient or incidental storage is an infringement, then the intermediary would have to refrain from facilitating such access to the infringing copy of the work for 21 days, or until the intermediary receives an order from the competent court refraining from facilitating such access. If the intermediary does not receive a court order within 21 days, the intermediary may reinstate access to the content. The relevant provision under India's Copyright Rules, 2013, describes the procedural rules the intermediary should follow after receiving such a complaint.

Tips for protecting your copyrights

Courts: The High Court deals with matters of rectification of the Register of Copyrights and appeals filed against orders of the Registrar of Copyrights. The High Court, on application of the Registrar of Copyrights or of any person aggrieved, shall order a correction to an entry in the Register of Copyrights by:

- The making of any entry wrongly omitted to be made in the Register
- The expungement of any entry wrongly made in, or remaining on, the Register
- The correction of any error or defect in the Register

Any person aggrieved by a final decision or order of the Registrar of Copyrights may appeal to the High Court within three months from the date of the order or decision. Appropriate Commercial Courts deal with other matters, including disputes regarding assignment of copyright, compulsory licenses in works withheld from public, statutory licenses for broadcasting of literary and musical works and sound recordings, and tariff schemes by copyright societies, etc.

Infringement: A copyright in a work is infringed if any person without a license granted by the copyright owner or the Registrar of Copyrights, or in contravention of the conditions of a license so granted, does anything to which the copyright owner has the exclusive right. There are other grounds of infringement as well, such as when any person imports into India any infringing copies of a work.

Fair use: Unlike in the United States, Indian copyright law does not have a codified "fair use" exception, and it contains an exhaustive list of non-infringing acts under Section 52, including a fair dealing exception.

Copyrights and trademarks: Copyright can form an important part of an IP strategy, both as the primary protection for content and as a supplementary tool alongside other kinds of IP. For example, a company logo may be protected by both trademark and copyright law. A copyright of the company logo can be used as a "prior right" under India's Trade Marks Law to oppose or cancel bad-faith trademark registrations and as a basis for removing infringing stores on e-commerce platforms. Of note to U.S. companies: failure to register your logo as a trademark presents an enforcement barrier. On the other hand, registration is not required to receive copyright protection.

Copyrights
continued

Authorship: In India, as a general rule, the author of a work is the first copyright owner for that work. However, there are exceptions to this rule. India's copyright law contains provisions that determine who may be regarded as the first owner of a copyrighted work in certain circumstances.

Work for hire: In the case of a work made during the course of an author's employment under a contract of service or apprenticeship, the employer becomes the first owner of the copyright in the work, so long as there is no contract to the contrary. In the case of a work created on a commissioned basis, copyright in the work vests with the person creating such work and not with the commissioner. A written assignment in favor of the party commissioning the work would be necessary in order to vest the copyright with said party. For instance, in the case of a work created by an independent contractor, the first owner of the copyright is the independent contractor, and the hiring party would have to obtain a written assignment in its favor from the independent contractor in order to own the copyright. On the other hand, when a photograph, painting, portrait, engraving, or cinematograph film is commissioned for payment, the person who commissioned it is the initial copyright owner, unless a different arrangement is agreed upon in writing. The issue of copyright ownership should be explored with attorneys who are skilled in employment, IP, and contract law in India.

Joint works: In India, a joint owner of a copyright cannot, without the consent of the other joint owner, grant a license or interest in the copyright to a third party. This is contrary to U.S. rules on joint authorship, which permit each joint owner of a work to exploit the work without seeking the permission of other joint owners, subject to an obligation to account to the other joint owners for their share of the profits.

Trade secrets and unfair competition

Unlike the United States and other large economies, India has no specific statute governing the protection of trade secrets. Confidential information is generally protected under common law and largely through contractual obligations. The Indian courts have granted protection to trade secrets on the basis of various legal principles and/or statutes, including laws of contract and equity and, at times, a common law principle of breach of confidence, which effectively equates to a breach of contractual obligation. The National IPR Policy, 2016 recognized that the protection of trade secrets is extremely important to attaining the objective of having strong and effective IPR laws that balance the interests of rights owners with broader public interest. However, a standalone trade secret law has yet to be enacted.

As with India's core IP laws, enforcement against trade secret misappropriation may be carried out through India's two enforcement channels: civil enforcement and criminal enforcement.

U.S. companies are deeply concerned about the lack of adequate protection for trade secrets in India. These companies continue to face uncertainty due to insufficient legal means to protect trade secrets in the country. They have expressed interest in India eliminating gaps in its trade secrets regime through the adoption of standalone trade secret legislation.

What is a trade secret?

India is a signatory to the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement. Article 39 of the TRIPS Agreement provides for protection of undisclosed information. TRIPS imposes an obligation on the contracting states to provide means to protect undisclosed information of natural and legal persons from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices, provided this information meets the following criteria:

- It is secret in the sense that it is not generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
- It has commercial value because it is secret; and
- It has been subject to reasonable steps, by the person lawfully in control of the information, to keep it secret.

Indian courts have observed that a *trade secret* is a formula, process, device, or other piece of business information that is kept confidential to maintain an advantage over competitors. The terms "trade secret" and "confidential information" are often used synonymously and interchangeably. Confidential information includes a formula, pattern, compilation, program, device, method, technique, or process that:

Trade secrets and unfair competition
continued

- Derives independent economic value, actual or potential, from not being generally known or readily ascertainable by others who can obtain economic value from its disclosure or use; and
- Is protected from disclosure through reasonable efforts to maintain its secrecy.

Indian courts have considered the following factors when determining whether a piece of information is a trade secret:

- The extent to which the information is known outside the business;
- The extent to which it is known to those inside the business (i.e., by the employees);
- The precautions taken by the holder of the trade secret to guard the secrecy of the information;
- The savings effected and the value to the holder in having the information protected against competitors;
- The amount of effort or money expended in obtaining and developing the information; and
- The amount of time and expense it would take for others to acquire and duplicate the information.

The courts have considered the following three elements of a claim for protection of certain information as confidential:

- Information must be of a confidential nature;
- Information must have been disclosed to the confidant under circumstances that cast an obligation of confidence on the confidant (which may or may not include formal contractual obligations); and
- Information disclosed should either be actually used or threatened to be used by the confidant (without authorization).

Enforcing trade secrets in India

Administrative enforcement: In India, there are no administrative remedies available for trade secret misappropriation.

Criminal enforcement: Under Indian law, there is no specific offense recognizing trade secret misappropriation. While seeking relief for misappropriation of information may be complex and difficult to obtain, offenses such as criminal breach of trust, theft, or cheating may be applicable, as per the facts of a given case. Other criminal provisions may also be invoked in cases where a computer resource is involved in the misappropriation.

Civil enforcement: Businesses harmed by trade secret misappropriation or unauthorized disclosure of a trade secret or confidential information may seek relief in India's court system. However, there are no specialist courts for resolution of trade secret disputes in India. A court's jurisdiction over trade secret disputes is governed by the general statute governing civil disputes, namely the Code of Civil Procedure, 1908 (CPC).

The disputes relating to trade secrets or confidential information may fall within the category of commercial disputes, which are governed by the Commercial Courts Act, 2015. However, the terms "trade secret" or "confidential information" are not referred to specifically under the term "intellectual property" in the 2015 Act. Protection of trade secrets and confidential information are specifically included under the IPR Subject Matter and IPR Disputes in the Delhi High Court IPR Division Rules, 2022, the Madras High Court IPR Division Rules, 2022, the IPR Division Rules of the High Court at Calcutta, 2023, and the Himachal Pradesh High Court IPR Division Rules, 2022.

A trade secret holder may seek an injunction, both at the preliminary and final stages in a suit. They may also seek damages or rendition of accounts of profit made by the infringer from the misappropriation as a remedy in trade secret misappropriation cases. The trade secret holder must provide evidence to support a claim of damages for determination by the court. The damage may be liquidated, actual, punitive, or aggravated. Aggravated damages are typically based on the discretion of the court and are granted in cases where the conduct of the misappropriating party is extremely *mala fide* (in bad faith) and wanton. The degree of *mala fide* conduct has a direct impact on the amount and nature of damages that could be awarded in addition to a claim for actual or compensatory damages. Where the compensatory damage is inadequate to punish the misappropriating party for their outrageous conduct, the court can award some larger sum, i.e., aggravated or exemplary damages, in order to serve as a deterrence from repeating the misappropriation. Successful litigants may also seek recovery of actual litigation costs, including attorneys' fees from the courts, but this remedy is discretionary.

In addition to injunction and damages, other civil remedies available to a trade secret holder include court orders granting the return of trade secrets or confidential information, and appointment of court commissioners for search and seizure of incriminating evidence and material.

Issues to consider

Businesses should consider the following issues when bringing trade secret protection cases in Indian courts:

- Proper and cogent documentation and evidence play a crucial role in trade secret protection cases in courts.
- In a civil suit, the trade secret holder must specify the confidential information or trade secret, the disclosure of which the holder seeks to restrain.
- The litigants have the option to file applications for discovery and interrogatories, interim relief such as injunctions, appointment of a court commissioner for search and seizure of infringing materials, etc.
- Confidentiality of trade secrets during litigation is possible through measures that include filing of confidential information under sealed covers, which are only accessible to the Court for review. With the permission of the Court, the trade secrets may be shown to the other party's counsel, and formation of confidentiality clubs usually consisting of specified external counsel, technical experts, and identified representatives of the parties. The formation of confidentiality clubs ensures that the confidential documents or information is only made accessible to members who are part of the club. Any proceedings involving review of the trade secret information or arguments on such information are conducted "in camera" in the limited presence of such members.
- The Commercial Courts Act, 2015 sets strict timelines for each step in a suit and imposes severe penalties for lack of compliance. If these timelines before the Commercial Courts are strictly followed, a commercial suit may be disposed of expeditiously.

Any contracts or terms in restraint of trade are void and unenforceable under the relevant provision of Indian Contract Act, 1857. Accordingly, enforcement of a post-employment restriction is barred by the relevant provision of the Contract Act. Therefore, it is not possible for an employer to restrain an ex-employee from joining a competing business or starting such a business. However, an employer can prohibit the ex-employee from disclosing the trade secrets or confidential information disclosed to such employee during the employment by the employer, provided such terms are clearly set forth in the relevant employment contracts.

The "inevitable disclosure" doctrine that allows a court to enjoin a former employee from working for a competitor because the nature of the new job and the knowledge of the employee makes it inevitable that the trade secrets of the former employer will be disclosed is not recognized in India. Every opinion or general knowledge of facts cannot be labeled as trade secrets or confidential information. Routine affairs of employment that are known by many cannot be referred to as trade secret information.

Independent discovery by fair and honest means, which does not constitute violation of statutory IP rights, may not constitute a trade secret misappropriation. Though rare, there have been few instances where the Indian courts, even in the absence of a contract, have protected information received under a duty of confidence.

A trade secret misappropriation case does not have a special trial process. It proceeds in the same manner of disposition as cases relating to other intellectual property.

Alternative dispute resolution (ADR) mechanisms are available in India. In the case of a dispute involving a contract with an arbitration clause, either party can seek interim relief under relevant provisions of the Arbitration and Conciliation Act, 1996.

Tips for protecting trade secrets in India

Trade secrets and confidential business information are best protected through good business practices and strong contractual arrangements between employees, manufacturers, and other entities with access to this information. In addition to limiting personnel who have access to proprietary information, other recommended practices include strong physical measures (such as locked cabinets and server rooms) and technical measures (for example, multifactor authentication, mobile device management, and data loss prevention software) to limit and monitor access to trade secret information. Some other useful steps include the following:

- Identify and categorize the trade secrets to understand which are most valuable. Then develop a program that prioritizes resources for protecting them. If a trade secret is vital to your company, you should then devote significant resources to protect it.
- Focus on human resources by finding and developing trust in the workforce to help prevent breaches.
- Conduct background checks on key employees and potential business partners and include non-disclosure and nonuse obligations in contracts.
- Share proprietary information with employees on a need-to-know basis.
- Establish written policies for trade secret management, and educate employees about those policies.
- Track data flows and file transfers and closely monitor the entry and exit of storage devices, laptops, mobile devices, and so on.
- Carefully select and closely monitor Indian manufacturers and business partners.
- Conduct comprehensive due diligence before choosing a partner. See the International Trade Association's India page to find out more about services available through the U.S. Foreign Commercial Service that can assist with background checks on prospective business partners: https://www.trade.gov/india.
- Select partners that have brand images and reputations of their own and experience protecting their own IP.
- Manage supplier, vendor, and distributor relationships through multiple personnel to prevent staff of foreign partners from cultivating a comprehensive personal network of their own that may implicate your business interests.
- Secure your IP in India before exploring potential business relationships in the country.

Trade secrets and unfair competition
continued

- Control the production process. Compartmentalize the production process and design products and packaging (and the equipment that produces them) so that they are difficult to copy.
- Consider keeping vital designs or latest-generation technologies in the United States.
- Classify and mark information according to IP sensitivity, laying out which employees have what level of access to the information.
- Consider incorporating into the production process overt and covert technologies and techniques that are difficult to copy, such as chemicals, films and foils, codes, holograms, inks, labels, papers, and odors.
- Consider including digital rights management and robust licensing terms containing anti-reverse engineering provisions in object codes given to customers.
- Use non-disclosure agreements (NDAs). NDAs should be required prior to entering negotiations with potential business partners. NDAs should include secrecy and non-use obligations, audit rights, and provisions for post-relationship control. NDAs should be governed by and not extend beyond what is permissible under Indian law.

Geographical indications

What is a geographical indication?

Article 22(1) of the World Trade Organization's (WTO) 1995 Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) defines *geographical indications* (GIs) as "indications which identify a good as originating in the territory of a member, or a region or locality in that territory, where a given quality, reputation or other characteristics of the good is essentially attributable to its geographic origin."

Article 1 of TRIPS permits members "to determine the appropriate method of implementing the provisions of the TRIPS agreement within their own legal system and practice." It states that "members shall not be obliged to implement in their law more extensive protection than is required by the TRIPS agreement, provided that such protection does not contravene the provisions of this Agreement." Accordingly, the TRIPS agreement permits members to design their own legal system to protect all forms of intellectual property, including geographical indications.

Indian system of protecting GIs

Unlike the United States—where geographical indications are protected under the trademark system as either geographic certification marks, collective marks, or trademarks—the government of India follows a *sui generis* system of protection for GIs. India enacted the Geographical Indications of Goods (Registration and Protection) Act, 1999 (GI Act) and the Geographical Indications of Goods (Registration and Protection) Rules, 2002 (GI Rules) to provide protection to GIs. The GI Act is in the process of being amended. The purpose of the amendment is to simplify the GI registration process.

Benefits of GI protection

Benefits to the consumers:

- Assurance of quality and distinctiveness, which is essentially attributable to the fact of its origin.
- Helps in identifying the geographic source of a product that has acquired its quality, reputation, or other characteristics from that named region.

Benefits to GI holders:

- Positive association with a product. If it has a reputation as a quality product, consumers will buy it and even tell others about how good it is.
- A GI can be a useful marketing tool for producers seeking to commercialize their efforts, as many consumers are likely to pay a premium to buy authentic products instead of spending less money on inferior ones.

Important and relevant sections of the GI Act, 1999

Definition of GI

Section 2e defines geographical indications as "an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be."

What can be protected?

Section 8 defines what can be protected. A GI may be registered with respect to any or all of the goods comprised in such class of goods as may be classified by the Registrar. The Registrar is required to classify the goods in accordance with the international classification of goods for the purpose of registering a GI.

What cannot be protected?

Section 9 describes certain GIs that are ineligible for registration as a GI under the Indian system. A GI may not be registered if it:

- Would be likely to deceive or cause confusion;
- Would be contrary to any law for the time it is in force;
- Comprises or contains scandalous or obscene matter;
- Comprises or contains any matter likely to offend or harm the religious susceptibilities of any class or section of the citizens of India;
- Would otherwise be disentitled to protection in a court;
- Is determined to be a generic or common name or indication of goods and which are, therefore, not or ceased to be protected in their country of origin, or which have fallen into disuse in that country*[5]; or
- Is literally true as to the territory, region, or locality in which the goods originate, but falsely represent to others that the goods originate in another territory, region, or locality, as the case may be.

5. **Note:* For the purposes of this provision, "generic names or indications" in relation to goods means the name of a good that, although it relates to the place or the region where the goods was originally produced or manufactured, has lost its original meaning and has become the common name of such goods and serves as a designation for or indication of the kind, nature, type, or other property or characteristic of the goods. In determining whether the name has become generic, all factors shall be taken into account, including the existing situation in the region or place in which the name originates and the area of consumption of the goods.

Additional requirements for GI registration

For **manufactured goods**, either the production, processing, or preparation must also occur in its geographical origin.

For **handicraft goods**, according to Section 11(2)(a) of the GI Act, the inclusion of "human factors" becomes essential where handicraft products of Indian origin are registrable.

The applicant must provide a written statement describing how the product's uniqueness is related to the geographical environment, inherent nature, and human factors involved.

Who can apply for GI protection?

Any association of persons or producers or any organization or authority may apply for GI registration.

Provisions related to an authorized user: Any person who claims to be the producer of goods where a GI has been registered may apply to record their name under "authorized user," pursuant to Section 17 of the GI Act, to establish ownership as an authorized owner.

Provisions related to assignment and licensing of GI: The GI Act allows for the registration of an authorized user but it prohibits the assignment or licensing of the GI. According to Section 24 of the GI Act, "Notwithstanding anything contained in any law for the time being in force, any right to a registered geographical indication shall not be the subject matter of assignment, transmission, licensing, pledge, mortgage, or any such other agreement."

Office dealing with registration of GI: GI registration in India is administered by the IP Office in Chennai, Tamil Nadu. The CGPDTM supervises the IP Office in Tamil Nadu.

Steps for registering a GI in India

A single GI application may include multiple classes of goods. A fee is required for each class.

1 **Step 1: File an application.** Before filing an application for GI registration, the association, producers, or organization needs to determine if the indication falls within the GI Act's definition of a Gl. Any association of persons or producers or any organization or authority can apply for GI registration, provided they represent the interest of producers of the concerned goods. The application must have an address for service in India.

An association of persons or producers or any organization or authority filing the application should file an affidavit stating how the applicant intends to represent their interest. The application must be signed by the applicant or their agent and must be accompanied by a statement of the case. A statement of the case consists of all relevant and important information that the applicant uses to apply for GI registration.

Details of the special characteristics and how quality standards are maintained must be included.

Three copies of the application are required. In addition, the application must include three certified copies of the map of the region associated with the GI. Details of the inspection structure, if any, to regulate the use of the GI in the related territory must be included. If the application is made by the association, then the application would require the addresses of all the applicants.

2. **Step 2: Preliminary scrutiny and examination.** The GI examiner will examine the application for any deficiencies. If any deficiencies are found, the applicant is required to respond within one month. After that, a committee called a consultative group is formed to study the statement of the case. Following close examination by the consultative group, the examination report is furnished.

3. **Step 3: Show-cause notice.** A show-cause notice is issued if the Registrar has any objections to the application. The applicant is required to respond within two months or apply for a hearing before the Registrar.

4. **Step 4: Publication in the Geographical Indications Journal.** Once the GI application is accepted, it is published within three months in the Geographic Indications Journal: https://search.ipindia.gov.in/IPOJournal/Journal/GIR.

5. **Step 5: Opposition to registration.** Any person can file a notice of opposition within three months (extendable by another month upon request, which must be filed before the three-month period ends) opposing the GI application published in the Geographical Indications Journal.

The Registrar shall serve a copy of the opposition notice to the applicant. The applicant has two months to submit their counter-statement. If the applicant does not submit a counter-statement, the application will be considered abandoned. The Registrar shall serve a copy of the counter-statement to the opposing party if such a statement is filed. Thereafter, both sides will lead their respective evidence by way of affidavits and supporting documents, after which a date for a hearing will be set.

6 **Step 6: Registration and renewal.** Once the application for a GI has been accepted, it is registered. The date of registration is effective from the date of filing of the application.

A registered GI is valid for 10 years and may be renewed every 10 years upon payment of the renewal fee. If it is not renewed on time, it may be removed from the Geographical Indications Registry. A registered GI may not be assigned, licensed, leveraged, or be part of any other agreement.

7 **Step 7: Appeal.** Any person aggrieved by an order or decision may pursue an appeal to the High Court within three months.

Legal protection to GI holders

Rights of action against infringement or passing off: A registered GI gives its owner and its authorized users the right to obtain relief for infringement. Any lawsuit relating to infringement of a registered GI or for the passing off of an unregistered GI must be instituted in a district court with jurisdiction to try the suit. No suit shall be instituted in any court below a district court.

While the registration of a GI is not mandatory in India, Section 20(1) of the GI Act states that no person "shall" be entitled to institute any proceeding to prevent or recover damages for the infringement of an "unregistered" GI.

IP enforcement

As referenced in the preceding sections on patents, trademarks, copyrights, and trade secrets, India has judicial and administrative mechanisms for enforcing its IP laws. Administrative enforcement for cross-border trade is conducted by Customs authorities. Judicial enforcement is conducted through India's court system on the basis of either civil or criminal actions, with support from local police and other law enforcement authorities. In this section, we will closely examine India's enforcement system.

U.S. companies are generally concerned about navigating India's overall IP enforcement regime, stemming from inconsistent decisions by the courts, a lack of familiarity with IP investigation techniques by police and Customs officials, and the absence of a central body coordinating IP enforcement actions at the national and state levels. Progress is being made with the recent institution of Intellectual Property Divisions (IPD) in the Delhi High Court, Madras High Court, Calcutta High Court, and Himachal Pradesh High Court, as well as some of India's state authorities operating dedicated crime enforcement units to handle certain IP matters. It is a good idea to check if other High Courts in India have established IPDs since the publication of this toolkit.

Civil enforcement

Courts and the judiciary: IP rights holders can pursue civil actions in India's courts. The civil remedies assume greater importance for enforcement of both patents and designs, as no criminal remedies are available to a patent or design rights holder. The Indian judiciary is principally a three-tiered system. The Supreme Court in Delhi is the apex judicial authority in India, which is the court of final appeal. The High Courts occupy the tier below the Supreme Court. The High Courts are the highest judicial bodies at the state level, and they have superintendence over all courts and tribunals within their territorial jurisdiction.

While the District Courts generally have an unlimited pecuniary jurisdiction on the civil side, the five High Courts (in Delhi, Bombay, Calcutta, Madras, and Himachal Pradesh) also have an original or first-instance civil jurisdiction to directly entertain IP cases above a certain pecuniary level. For instance, the Delhi High Court—a leading venue in deciding IP cases—can currently exercise original civil jurisdiction with respect to Delhi to entertain fresh IP suits where the suit value exceeds US$254,000. The High Courts also exercise writ jurisdiction. The High Courts issue writs against the public authorities. These Courts exercise writ jurisdiction invoked against the decisions of the Controller General of Patents, Designs, and Trade Marks (CGPDTM), or the offices within its administrative control—such as the Patent Office, Copyright Office, and Trade Marks Registry—when there is a violation of principles of natural justice or other principles enshrined in the Indian Constitution.

Until April 2021, the appeals over trademarks, patents, copyrights, and other cases were heard by a dedicated IP tribunal called the Intellectual Property Appellate Board (IPAB), which was established in 2003. However, the Tribunals Reforms (Rationalization and Conditions of Service) Ordinance, 2021, which became effective on April 4 of that year, abolished the IPAB and transferred all of its powers to the High Courts for patents, trademarks, geographical indications, and plant varieties matters, and to the Commercial Courts for some copyright issues and the High Courts for other copyright matters.

While there are no specialized courts in India to enforce IP rights, the Commercial Courts Act, 2015 provided for, among other things, the constitution of the Commercial Courts at the district level in the High Courts, and the Commercial Divisions in the High Courts having ordinary original civil jurisdiction to fast-track adjudication of commercial disputes, including IP disputes, of a specified value. The Commercial Courts Act, 2015 amended the Code of the Civil Procedure, 1908 to reduce the time taken for commercial disputes. Under the Commercial Courts Act, 2015, the definition of "commercial dispute" includes a dispute arising out of intellectual property rights (IPR) relating to registered and unregistered trademarks, copyrights, patents, designs, domain names, geographical indications, and semiconductor integrated circuits. Under the Commercial Courts Act, 2015, only those commercial disputes whose "specified value" is equal or above INR 300,000 (approximately US$3,510 in 2025) are treated as commercial disputes. Under the act, the Commercial Courts are empowered to adjudicate summary judgments in IP cases.

In July 2021, following the IPAB's abolition, the Delhi High Court created an Intellectual Property Division (IPD) to deal with all IPR-related matters, including those that were to be transferred to the Delhi High Court from the IPAB. The Delhi High Court notifies the IPD benches from time to time as per the judges' roster, which changes periodically. According to the recent roster of judges, the Delhi High Court nominated two judges to function exclusively as the IPD. There is an IPR Appellate Division to hear appeals against orders of the IPD.

In February 2022, the Delhi High Court notified "Delhi High Court Intellectual Property Rights Division Rules, 2022." The Delhi High Court made the rules for the matters listed before its IPD with respect to practice and procedure for the exercise of its original and appellate jurisdiction, and for other miscellaneous petitions arising out of specific IP statutes. Under the rules, the definition of "IPR subject matter" is quite broad and includes matters pertaining to patents, copyrights, trademarks, geographical indications, plant varieties, designs, semiconductor integrated circuit layout-designs, traditional knowledge, trade secrets, confidential information, and related rights under common law.

Other High Courts have begun to follow suit and set up their own IPDs. In April 2023, Madras High Court notified the Madras High Court Intellectual Property Rights Division Rules, 2022, making it the second High Court in the country to have its own IPD. In September 2024, "Intellectual Property Rights Division Rules of the High Court at Calcutta, 2023" were notified in the Official Gazette, making the Calcutta High Court the third High Court in the country to have its own IPD. In October 2024, "The Himachal Pradesh High Court Intellectual Property Rights Division Rules, 2022" were notified in the Official Gazette, making the Himachal Pradesh High Court the fourth High Court in India to have its own IPD. The Bombay High Court and the Gujarat High Court also allotted nomenclature to IPR matters.

Dynamic injunctions at the Delhi High Court: After a successful court decision to block infringing content online, the Delhi High Court's dynamic injunction process allows copyright holders to quickly block subsequent infringing content without having to file multiple lawsuits. Under this process, copyright holders can submit a list of URLs to the court, which can then order internet service providers (ISPs) to block those URLs through an administrative proceeding, providing a faster and more streamlined remedy.

In early 2019, in a batch of online piracy matters, the Delhi High Court devised the dynamic injunction remedy to allow copyright owners to approach the Joint Registrar of the Court to extend an injunction order already granted against a primary rogue website. The extension of such an injunction can be directed to a website that mirrors, redirects, or is an alphanumeric variation that merely provides new means of accessing the same primary infringing website or content that was injuncted. The rights holders can approach the Joint Registrar with an application for prosecution of the mirror websites, along with an affidavit with sufficient supporting evidence seeking extension of the existing injunction to such websites. The objective of the remedy is to help the rights holders avoid the cumbersome process of filing a new lawsuit. In 2023, to keep pace with infringing tactics by online pirates, the Delhi High Court issued its first "dynamic+ injunction" order to protect the future copyrighted works of rights holders from copyright infringement by such recurring websites. Indian courts have also granted dynamic injunctions against rogue websites for infringing well-known trademarks.

In 2025, in a suit concerning infringement of copyright and broadcast reproduction rights, the Delhi High Court granted a superlative injunction—an extended version of the available dynamic+ injunction—opening up an additional route for rights holders to avail the grant of real-time reliefs against the infringing activities of rogue defendants, irrespective of the modes of infringement.

Strengths and challenges

The benefits of pursuing civil enforcement actions include the following:

- Compensatory damages available to rights holder
- Specialized commercial benches equipped to deal with IPR matters
- Availability of injunctive remedies
- Possible fear created by Anton Piller order (an order to search and seize infringing products without warning to the infringer) with presence of uniformed police officers
- Appeal to higher courts
- Easy exit if case is settled

The shortcomings of pursuing civil enforcement actions include the following:

- Low damage awards, which are generally insufficient to deter infringing activity
- Rare punitive damages
- Difficulties in collecting damages
- Frequent delays

Criminal enforcement

An IP owner in India also may enforce their rights through criminal recourse. In addition to the specific IP laws, the legal framework for criminal enforcement includes the Bharatiya Nyaya Sanhita, 2023[6] and other specific subject matter laws, such as the **Information Technology Act, 2000**. The provisions of the Bharatiya Nyaya Sanhita, 2023, which sets out punishments for counterfeiting and cheating, among other things, that may be invoked in criminal actions. The Bharatiya Nagarik Suraksha Sanhita, 2023 governs the procedure applicable to criminal cases. The IP rights holder can initiate a criminal action against the infringer either by way of filing a complaint with the police or with the Court of Competent Magistrate. The offenses under the **Trade Marks Act, 1999**, **Copyright Act, 1957**, and **Geographical Indications of Goods (Registration and Protection) Act, 1999** are punishable by six months to three years imprisonment and a fine of INR 50,000 to INR 200,000 (approximately US$585 to US$2340 in 2025). Under these statutes, the offenses are cognizable in nature, meaning that the police are mandated to register a First Information Report (FIR) and can initiate investigation and arrest without a court warrant.

6. The Bharatiya Nyaya Sanhita, 2023 is India's new official criminal code and came into effect in 2024. It replaced the Indian Penal Code, 1860.

Strengths and challenges

Criminal enforcement in India has several **benefits** relative to other mechanisms. For example, it:

- Has a high degree of deterrence;
- Costs less than civil litigation; and
- Is an effective strategy in targeting large-scale infringers or dealing with those who continue with their acts despite civil action.

The **shortcomings** of the criminal enforcement regime include the following:

- Lack of injunction and compensatory damages
- Limited priority given to IP cases
- Lengthy and time-consuming trials
- Low conviction rates
- High evidentiary standards
- Lack of resources and expertise
- Need for continued liaison with the police
- Chances of corruption or influence
- Difficult exit because a criminal action is a case the state initiates

Customs

Under the Customs Act, 1962, Customs authorities have the statutory power to prohibit the import or export of IP-infringing goods. The import of infringing goods is prohibited under the Customs Act 1962, read with the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007. Customs can only prohibit importation of goods infringing trademarks, copyright, designs, and geographical indications. Customs does not have the authority to restrict importation of goods on the ground of alleged patent infringement. An IP rights holder is required to duly record their IP right with Customs by giving a prescribed notice under the rules requesting for suspension of clearance of goods suspected to be infringing the IP right. The notice must be accompanied by proof of the existence and ownership of a valid IP right. Each IP right is required to be separately recorded with Customs.

A single application for recordation of an IP right covers multiple ports. The rights holder can apply online for recordation of a valid IP right via the Customs IPR portal: https://ipr.icegate.gov.in/IPR/homePage.

The recordation of the IP right, i.e., grant of registration of the notice by Customs, is subject to the conditions that the rights holder must do the following:

IP enforcement
continued

- Execute a bond with Customs for an amount with such surety and security as deemed appropriate by Customs, undertaking to protect the importer, the consignee, the owner of the goods, and the competent authorities against all liabilities, and to bear the costs towards destruction, demurrage, and detention charges incurred until the time of destruction or disposal.
- Execute an indemnity bond with Customs, indemnifying it against all liabilities and expenses on account of suspension of the release of allegedly infringing goods.
- Inform Customs in the case of any order of amendment, cancellation, revocation, or suspension of the IP right by the relevant authorities, including the court.

At the time of recordation of their IP rights, rights holders in India may choose between two bonding mechanisms to protect against the importation of infringing goods based on their specific needs:

Consignment-specific bond with security: IP rights holders can provide a separate bond for each shipment of intercepted infringing goods. The bond amount is set at 110% of the detained goods' value, accompanied by a security deposit of 25% of the bond value. This option is suitable for IP rights holders with a relatively low volume of shipments or who prefer granular control over individual interceptions.

Centralized bond: IP rights holders can furnish a single, running bond with a value sufficient to cover the value of all suspected infringing goods across all ports in India. The bond is uploaded online and can be debited or credited for each interception, eliminating the need for separate bonds and security deposits for each shipment. This option is more convenient and cost-effective for IP rights holders with a high volume of shipments or who wish to avoid the administrative burden of managing multiple bonds at every port where the allegedly infringing goods have been suspended.

The recordation normally remains effective for a period of five years or until the expiration of the IP, whichever is earlier. Customs may, on its own, suspend the clearance of the imported goods if there is *prima facie* evidence or if it has reasonable grounds to believe that the goods are infringing IP rights, even when the rights have not been recorded under the rules. The rights holder must join the proceedings within the stipulated time period; otherwise, the goods may be released to the importer. If an investigation by Indian Customs uncovers evidence of infringement, Indian Customs has the authority to confiscate, destroy, or dispose of the infringing goods, and impose penalties. Customs currently does not treat parallel-imported or grey-market goods as prohibited goods except in certain cases.

The **benefits** of Customs enforcement include the following:

- Stops the counterfeits at the borders itself
- Import or export of counterfeit goods may be prohibited
- Deters parallel import in certain cases

IP enforcement
continued

Unlike the United States, a rights holder may record designs in addition to registered copyrights and trademarks.

The **challenges** to Customs enforcement are as follows:

- Customs officials require training for effective enforcement.
- Bond and other charges are expensive.
- Goods in transit through India are excluded (i.e., prohibition applies only to import of goods intended for sale or use in India).
- The process does not always address root causes or origins of the infringing activity.

In a positive development, in November 2023, the CGPDTM Office instituted a working group for coordination between it and National Customs Targeting Centre (NCTC)—the risk management division of Indian Customs—to counter import and export of counterfeits and pirated goods. The working group consists of five officials from NCTC and three officials from the CGPDTM Office. The group reports to the CGPDTM director on a case-by-case basis.

Notice-and-takedown procedures on e-commerce platforms

Notice-and-takedown procedures may vary widely from one e-commerce platform to another. IP rights holders should carefully review the policies of each e-commerce platform to gather specific information on notice-and-takedown procedures. E-commerce platforms generally require Indian IP certificates of registration to remove online merchants selling allegedly infringing products in India.

India does not yet have a national e-commerce policy. In India, the Information Technology Act, 2000 provides safe harbor protection for an intermediary from liability in certain cases for any third-party information, data, or communication link made available or hosted by it. Under the Information Technology Act, 2000, an e-commerce entity operating under the marketplace business model to act as a third-party facilitator for transactions between clearly identifiable buyers and sellers will qualify as an intermediary. The Information Technology Act, 2000 and Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (as amended) regulate the duties and liabilities of intermediaries. The jurisprudence around standards to be met by the intermediaries, particularly the e-commerce platforms, to avail safe harbor protection is still evolving.

Such safe harbor protection applies if:

- The function of the intermediary is limited to providing access to a communication system over which third-party information is transmitted or temporarily stored or hosted;
- The intermediary does not initiate the transmission, select the receiver of the transmission, and select or modify the information contained in the transmission; or

IP enforcement
continued

- The intermediary observes due diligence while discharging its duties under the Information Technology Act, 2000 and also observes the other prescribed guidelines.

However, such safe harbor protection does not apply if:

- The intermediary has conspired or abetted or aided or induced in the commission of the unlawful act: or
- The intermediary fails to expeditiously remove or disable access to material, upon receiving knowledge or upon being notified by the appropriate government agency that any information, data, or communication link residing in or connected to a computer resource controlled by the intermediary is being used to commit the unlawful act.

Under the existing regime, in the case of online IP infringement involving an intermediary, an IP rights holder may make a complaint before the grievance officer of the intermediary, and the Grievance Officer must acknowledge the complaint within 24 hours and dispose of the complaint seven days from the date of its receipt.

However, in case an intermediary on whose computer resource the IP infringing information is hosted, displayed, published, transmitted or stored receives actual knowledge in the form of an order by a court of competent jurisdiction, or a reasoned intimation, in writing, issued by an officer authorized by the appropriate government or its agency that clearly specifies the legal basis and statutory provision invoked, the nature of the unlawful act, and the specific uniform resource locator, identifier or other electronic location of the information, data or communication link required to be removed or disabled, it must remove or disable access to IP infringing information within three hours from the receipt of such actual knowledge. Under the existing regime, an intermediary has a legal obligation to not only inform its users of its rules and regulations, privacy policy, and user agreement, but also to make reasonable efforts by itself, and to cause the users of its computer resource not to host, display, upload, modify, publish, transmit, store, update or share any information that is illegal. Further, the significant social media intermediaries (i.e., intermediaries with over 5 million registered users in India) have been obligated to deploy appropriate technical measures, including automated tools or other suitable mechanisms to proactively identify any identical information that has previously been removed or disabled on the computer resource of such intermediary pursuant to a court order or a reasoned intimation, in writing, from the appropriate government or its agency. Rights holders should discuss the relevant e-commerce regulations and procedures regarding notice-and-takedowns in India before enforcing their rights.

Appendix: Intellectual property rights resources

U.S. government resources

United States IP Attaché Program office in South Asia
Website: www.uspto.gov/ip-policy/ip-attache-program/regions/india

The USPTO Intellectual Property Attaché Program has a resource on the ground in South Asia who serves Afghanistan, Bangladesh, Bhutan, India, the Maldives, Nepal, Pakistan, and Sri Lanka. Located at the U.S. Embassy in New Delhi, the South Asia IP Attaché Program office is headed by a U.S. IP attaché or counselor. They serve as the principal officer within the U.S. embassies and consulates throughout South Asia on matters related to the protection and enforcement of IP rights. Their duties include:

- Working with host governments on efforts to improve IP laws, regulations, and systems;
- Assisting U.S. companies doing business in the region;
- Advocating for effective IP policies;
- Advising ambassadors and other U.S. government officials on foreign governments' IP practices;
- Sharing international best practices with foreign government officials, students, entrepreneurs, startups, and business representatives on the IP landscape; and
- Conducting public awareness programs to support a strong and vibrant IP system globally.

United States Patent and Trademark Office
Website: www.uspto.gov

United States International Trade Administration and Foreign Commercial Service
Website: www.trade.gov

United States International Trade Commission
Website: www.usitc.gov/

Strategy for Targeting Organized Piracy (STOP)
The website www.STOPfakes.gov is a one-stop shop for U.S. government tools and resources on IP rights. Through the STOP initiative, the U.S. government educates and assists businesses, particularly small and medium-sized enterprises, as well as consumers, foreign government officials, and the public, and empowers U.S. rights holders to protect their IP rights and combat counterfeiting.

U.S. Customs and Border Protection
Website: www.cbp.gov/

Resources
continued

U.S. Immigration and Customs Enforcement/Homeland Security Investigations
Website: www.ice.gov/

Office of the United States Trade Representative
Website: https://ustr.gov/

Computer Crime and Intellectual Property Section (CCIPS), Criminal Division, United States Department of Justice
Website: www.justice.gov/criminal-ccips

Selected industry association resources

U.S.-India Business Council
Website: www.uschamber.com/program/international-affairs/south-asia-program/us-india-business-council

The U.S. Chamber of Commerce is the world's largest business organization, representing the interests of more than 3 million businesses of all sizes, sectors, and regions. The chamber's India team —the U.S.-India Business Council—aims to create an inclusive bilateral trade environment between India and the United States by:

- Serving as the voice of industry;
- Linking governments to businesses; and
- Supporting long-term commercial partnerships that will nurture the spirit of entrepreneurship, promote IP awareness, create jobs, and successfully contribute to the global economy.

American Chamber of Commerce in India
Website: www.amchamindia.com/

The American Chamber of Commerce in India (AMCHAM India) is an association of American business organizations operating in India. AMCHAM has over 400 U.S. companies as members. The chamber's mission is to help member companies to succeed in India through advocacy, information, networking, and business support services. AMCHAM has its headquarters in New Delhi and has regional chapters in Bengaluru, Chennai, Hyderabad, Kolkata, and Mumbai.

Resources
continued

Additional resources relating to India's IP laws, practices, and procedures

Databases:

- India Patent Advanced Search System: https://iprsearch.ipindia.gov.in/publicsearch
  (Information on pending and granted patents in India)
- Trademark Public Search: https://tmrsearch.ipindia.gov.in/tmrpublicsearch/
  (Information of trademarks either registered or in the process of being registered with the Trade Marks Registry of India)
- Copyrights search: https://copyright.gov.in/SearchRoc.aspx
  (Information of registered works in India (dating from 2012)
- IP Office journals: https://search.ipindia.gov.in/IPOJournal/Journal
  (Trademark, geographic indication, patent, and design journals published by the Indian government)
- Darts-IP: www.darts-ip.com
  (Global IP cases with statistical tools to generate graphical outputs)

Websites:

- Office of the Controller General of Patents, Designs & Trade Marks: https://ipindia.gov.in
- Indian Customs IPR Recordation Portal: https://ipr.icegate.gov.in/IPR/homePage
- Cell for IPR Promotion and Management: https://cipam.gov.in/#

Acts, rules, manuals and, guidelines:

- http://ipindia.gov.in/home/resources

Important links for trademarks:

- Intellectual Property Office, India: https://ipindia.gov.in/
- For more details on the Trade Marks Office in India: https://ipindia.gov.in/vision-and-mission-2
- For forms and fees associated with various trademark applications: https://ipindia.gov.in/pages/trade-marks/learn/forms-and-official-fees
- The Trade Marks Rules, 2017: https://ipindiav4.adgstaging.in/tm-rules-2017
- Link for checking day-to-day public notices: https://ipindia.gov.in/pages/alert-notices
- Link for facilitators for trademarks under SIPP: https://ipindia.gov.in/frontend/pdf/legal-facilator/List_of_Facilitators_for_Patents__Designs_and_Trademarks_under_SIPP_Scheme.pdf
- Contact details for Trade Marks Registry offices in India: https://ipindia.gov.in/office-locations

Resources
continued

- Trade Marks Act and Rules: https://ipindia.gov.in/trade-marks-acts and https://ipindia.gov.in/pages/trade-marks/publications/rules

Important links for GIs:

- GI registration process: https://ipindia.gov.in/gi-introduction
- Procedure for filling GI applications in India: https://ipindia.gov.in/gi-filing-process-step-by-step
- List of registered GIs: https://ipindia.gov.in/part-a-register-list-of-registered-gi-of-india
- List of authorized users of registered GIs: https://ipindia.gov.in/storage/uploads/pages/pdfs/rqi08IS0epaFxGLhfC2uAEn7xPNqEaCFRVzJyKOO.pdf
- Example of an Indian GI registered with the USPTO: http://tdr.uspto.gov/search.action?sn=76357485#
- Checking application status: https://search.ipindia.gov.in/GIRPublicSearch/
- Classification of goods: https://ipindia.gov.in/classification-of-goods