

Intellectual Property advocacy in the fields of:

- IP Infrastructure
- IP Valuation
- M & A
- IP Policy
- Technology Transfer
- Innovation Research
- Patent Law
- Licensing
- Data Management
- Copyright
- Collaborations
- Balance for Rights & Obligations

**DEC 2022**

**For Private Circulation Only**

## **Editorial**

### **Essential Patent basics for Industry**

IP Protection is inherent in Trademarks and Copyrights, once you introduce them to public domain. In both these forms of IP, the more one puts to use, the stronger the protection. However, to get legal status for defence under the Trademarks Act, 1999 and the Copyrights Act, 1957, it is better to register the respective IP under the related Act. This will enable and empower to sue under the Acts rather than under common law.

Unlike Trademarks and Copyrights - Patents and Designs need to be applied for registration and get the registration granted to become eligible to sue any infringers. As such, in case of both Patents and Designs, the Inventor and the Applicant has to take special care not to make them publicly known or publicly used prior to filing an application for registration. For seeking and obtaining protection under Patents Act, 1970 and Designs Act, 2000, the person (Inventor/Applicant) needs to apply for registration, prior to making the invention or design public. If the invention or design is published or publicly used, the "NOVELTY" gets destroyed or adversely affected, and the invention/ design loses eligibility for grant of protection. Any product already marketed or advertised is no more eligible for protection under Patents Act or Designs Act. Any inventions or subject matter of original research if released for publication as a Research article also loses its right to be protected under the respective Acts.

Very often, we get requests for patenting products already marketed for many years. While success in the market place is no criteria for getting grant of IP protection under Patents and Designs, the market standing and reputation of product substantially enhances the potential for obtaining registration under Trademarks Act and Copyrights Act.

While IP (Intellectual property) have gained prominence and dominance in India post-1995 when India signed the WTO and TRIPs Agreement, the awareness and the procedural "do's and dont's" still remain out of reach of a large segment of Indian consumers, users, educational institutions and even, the industry and research communities.

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## Notice for conducting Trade Marks Agent and Patent Agent Examination 2023



**INTELLECTUAL  
PROPERTY INDIA**

PATENTS/DESIGNS/  
TRADEMARKS/  
GEOGRAPHICAL  
INDICATIONS



सत्यमेव जयते

Government of India

**Ministry of Commerce & Industry**  
**Office of The Controller General**  
**Patents, Designs & Trade Marks**  
IPO Building, Boudhik Sampada Bhavan,  
S. M. Road, Antop Hill,  
Mumbai-400037, India.

(Tel):

☎ 022-24132735

(Fax):

☎ 022-24123322

(Email):

[cgooffice-mh@nic.in](mailto:cgooffice-mh@nic.in)

(Website):

[www.ipindia.nic.in](http://www.ipindia.nic.in)

No. CGPDTM-14020/10/2021-CGOFFICE/85

Date: 15/11/2022

### **Trade Marks Agent Examination 2023 & Patent Agent Examination 2023**

The office of the Controller General of Patents, Designs & Trade Marks announces that the Trade Marks Agent Examination 2023 and Patent Agent Examination 2023 are likely to be held on 07/05/2023.

Candidates who are willing to appear in Trade Marks Agent Examination 2023 may check their eligibility as per the provision under Rule 144 of the Trade Marks Rules, 2017. Similarly, candidates who are willing to appear in the Patent Agent Examination 2023 may check their eligibility as per the provision under Section 126 of the Patents Act, 1970 (as amended).

You may keep checking the website [www.ipindia.gov.in](http://www.ipindia.gov.in) for regular updates in this regard.

Online registration of candidates is likely to start in January, 2023.

Source: [https://ipindia.gov.in/writereaddata/Portal/News/846\\_1\\_Public\\_Note\\_15.11.2022.pdf](https://ipindia.gov.in/writereaddata/Portal/News/846_1_Public_Note_15.11.2022.pdf)

**Public Notice regarding the "Cause List" of show cause application hearing in Trade Marks Registry via Video Conferencing (VC) mode to be available in dynamic mode on the official website of the office of CGPDTM w.e.f. 01 December, 2022**

Source: [https://ipindia.gov.in/writereaddata/Portal/News/847\\_1\\_Public\\_Note\\_dated\\_28-11-2022.pdf](https://ipindia.gov.in/writereaddata/Portal/News/847_1_Public_Note_dated_28-11-2022.pdf)

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## Public Notice w.r.t. Filing of Power of Attorney (Form 26)

OFFICE OF CONTROLLER GENERAL OF PATENTS, DESIGNS &  
TRADEMARKS, MUMBAI

### PUBLIC NOTICE

Dated 28<sup>th</sup> November, 2022

All the stakeholders, including Patent Agents, are hereby informed that any request for early publication of patent application made in Form 9 under sub-section (2) of section 11A of the Patents Act, 1970 (as amended) read with rule 24A of the Patents Rules, 2003 (as amended) shall be accompanied by duly executed Form 26 or Power of Attorney, if applicable.

Non-filing of Form 26 or Power of Attorney shall lead to no action in any such request filed through Patent Agent for the early publication till such deficiency is removed (Please refer rule 135 of the Patents Rules in this regard).



(Prof. Dr. Unnat P. Pandit)  
Controller General of Patents, Designs & Trademarks

Source: [https://ipindia.gov.in/writereaddata/Portal/News/848\\_1\\_Public\\_Noteice\\_Form\\_9\\_PoA.pdf](https://ipindia.gov.in/writereaddata/Portal/News/848_1_Public_Noteice_Form_9_PoA.pdf)

## The Roster of Sitting of the Hon'ble Judges of High Court Of Delhi effective from 28.11.2022

Hon'ble Mr. Justice C. Hari Shankar, Hon'ble Mr. Justice Sanjeev Narula and Hon'ble Mr. Justice Amit Bansal have been nominated to function as 'IP Division'. The current IP Bench has replaced previous bench of Hon'ble Ms. Justice Prathiba M. Singh, Hon'ble Ms. Justice Jyoti Singh and Hon'ble Mr. Justice Navin Chawla.

Source: <https://delhihighcourt.nic.in/uploads/roster/15498259066380877552e2a.pdf>

## Gov't draft Data Protection Bill proposes hefty fine for violation

The new Bill now being called the Digital Personal Data Protection Bill, 2022, has provisions on 'purpose limitations' around data collection, grounds for collecting and processing personal data, relaxation on cross-border data flows, and imposes significant penalties on businesses for violating provisions of the Bill.

Source: <https://indianexpress.com/article/technology/tech-news-technology/digital-personal-data-protection-bill-2022-released-india-govt-meity-comments-8275939/>

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## AI use in the patent application process

USPTO are expanding their use of AI when searching for prior art documents during the patent application process. In particular, the USPTO are using a tool referred to in the article as "Similarity Search". The patent examiner can combine their own search with that of Similarity Search, increasing the robustness of the search process and reducing the risk that relevant prior art is not identified prior to grant of the patent.

Source: <https://www.lexology.com/library/detail.aspx?g=45d5fceb-ce58-4111-917f-c3453ec556c3>

## IP High Court in Japan awards patent damages pursuant to Sec 102(2) and 102(3) of Patent Act

Section 102 of the Patent Act provides a certain remedy for patent infringement with regard to the calculation of damages, aside from the general remedy under section 709 of the Civil Code, which provides compensation for damages caused by tort.

Section 102(1): Damages calculation based on infringer's sales and patentee's profit

Section 102(2): Damages presumption based on infringer's profit

Sections 102(3) and 102(5): Reasonable royalties

Source: <https://www.lexology.com/commentary/intellectual-property/japan/nishimura-asahi/ip-high-court-awards-patent-damages-pursuant-to-sections-1022-and-1023-of-patent-act>

## Revision of SIPP scheme as approved by SIIT with effect from 02.11.2022

To,  
Controller General of Patents  
Designs & Trade Marks  
Boudhik Sampada Bhawan  
S.M. Road, Near Antop Hills  
Mumbai-400037

**Subject: Scheme for Facilitating Start-Ups Intellectual Property Protection (SIPP) – reg.**

Sir,

I am directed to refer to this Department email dated 30/04/2022 regarding extension of SIPP Scheme for 3 years w.e.f. 01/04/2020 and forward herewith the revised Scheme for Facilitating Start-Ups Intellectual Property Protection (SIPP) for your information and necessary action. The fees of facilitators has been revised and will be applicable from 02/11/2022.

2. This issues with the approval of competent authority.

Yours faithfully,  
  
(Rajesh Ranjan)  
Under Secretary to the Government of India  
Tele. No. 23038975

Source: [https://ipindia.gov.in/writereaddata/Portal/Images/pdf/Approved\\_SIPP\\_Scheme\\_0001.pdf](https://ipindia.gov.in/writereaddata/Portal/Images/pdf/Approved_SIPP_Scheme_0001.pdf)