



Design Act: Key Aspects

Introduction

We come across a variety of objects in our daily lives that we can recognise by looking at their design. Customers' attention is drawn to artistically designed products the moment they see them. These designs can be in the form of art, drawings, or graphics, among other things.

The term 'design' does not include any procedures, such as an article's mode of construction. Previously, the Design Act, 1911 governed this Act. The new act was enacted to bring the Design Act and laws up to date with the international law in force. The Design Act, 2000 currently governs design laws.

Trademarks, copyrights, patents, designs, and geographical indications of goods are all protected under Indian intellectual property laws. The 'first to file, first to get' system was the foundation of these Act, which stated that an innovator or owner of a design should apply to register it as soon as possible to prevent piracy and to claim certain rights over that design.



Brief Timeline of What you would get to know about the Term Design:

1. What is Design?
2. What does the term abandon out mean?
3. What are the Objectives?
4. What are the features and who are eligible to apply?
5. Procedure for registration.
6. Timeframe, Design Cancellation, Design infringement and other key takeaways.

Definition of the Design:

- "Design" refers to features of shape, pattern, configuration, ornament, or colours or lines composition that are applied in three dimensional, two dimensional, or both forms using any process, whether manual, chemical, mechanical, and separate or combined, and that appeal to or are judged entirely by the eye in the finished article.

What does it abandon out?

- It does not include any mode or principle of construction or anything which is in substance a mere mechanical device
- any trade mark as defined in clause (v) of sub-section (1) of section 2 of the Trade and Merchandise Marks Act, 1958;
- The term "property mark," as defined in section 479 of the Indian Penal Code, 1860, is not included.
- It excludes any artistic work as defined in section 2 clause (c) of the Copyright Act of 1957.

Objectives

- The objective of Design Act, 2000 is to ensure that designs are protected.
- The Design Act, 2000 is a law that consolidates and amends the law governing design protection and its registration process.
- Its main goal is to prevent new or original designs from being copied or misused, and causing financial loss to the owner.
- The main goal of design registration is to ensure that the creator, originator, or artisan of a design does not lose his or her reward for creating it due to the others who are copying it for their goods or products.



- An industrial design aids in attracting a customer's attention and increasing an item's commercial value. As a result, it aids in the expansion of its market.
- Many competitors use nefarious methods to reduce competition in rival groups by exploiting designs to their advantage. As a result, laws are required to protect the interests of the owners of these designs. The Design Act ,2002 was enacted to accomplish this goal.

What are the qualifications to be register under this Act?

If you want to register a design under the Design Act, 2000, you must include the following features in your design:

- The work must be able to be sold and made independently.
- It must be unique and unheard of in the market. This act will not take into account the plagiarised design.
- It should be unmistakably distinctive from other designs or the combination of known designs.
- It can't be about obscenity or any other inappropriate material.

Who is eligible to apply for registration?

- Any proprietor seeking registration of a design that is original and unpublished previously in any country and does not appear to be contrary to any law or order of that country can file an application for registration under the provisions of the Design Act, 2000.

* "Proprietor of a new or original design" as defined in Section 2(j):

- (i) where the author of the design, for good consideration, executes the work for some other person, means the person for whom the design is so executed;
- (ii) where any person acquires the design or the right to apply the design to any article, either exclusively of any other person or otherwise, means, in the respect and to the extent in and to which the design or right has been so acquired, the person by whom the design or right is so acquired; and
- (iii) in any other case, means the author of the design; and where the property in or the right to apply, the design has devolved from the original proprietor upon any other person, includes that other person.



- Any person to whom the design has been devolved from the original proprietor and is the author of that design who acquired design for a valid consideration.
- If there are multiple authors, the design must be applied only by the joint authors.

Procedure for registering a design, in India

The Design Act's Chapter 2 deals with the registration of designs and the procedures that must be followed. The steps below must be followed for the purpose of registering a design:

- The patent office must receive an application for registration in the prescribed form along with the prescribed fee. The class in which the design will be registered, as well as the article(s) to which it will be applied, must be specified in the application. For each category of article, a separate application must be submitted.
- The controller will hand over the application to be examined to determine whether the design can be registered or not. If everything appears to be in order, the controller will accept the application and move on.
- If there is an objection, the applicant or his agent will be asked to make the necessary changes so that the design can be registered and the objection can be removed.

The application will be withdrawn if the objection is not removed within stipulated time limit, and it should be noted that Section 5 of the Design Act, 2000 governs the application for design registration.

- The controller registers a design under this Act after verifying that any person claiming to be the proprietor's design is a new or original design that has never been published before and does not violate any public policy or morality. Provided, however, that such a design can be registered under this Act.
- Applications filed under the Act must be submitted to the Patent Office in the prescribed manner in Form 1, along with the required fee for filing the form.
- The design should be registered in only one class, not multiple classes. If there is any doubt about which class the design should be registered in, the Controller will make the final decision.
- If any design rejected by the controller and not registered. In that case, the person who has been wronged may file an appeal with the High Court.

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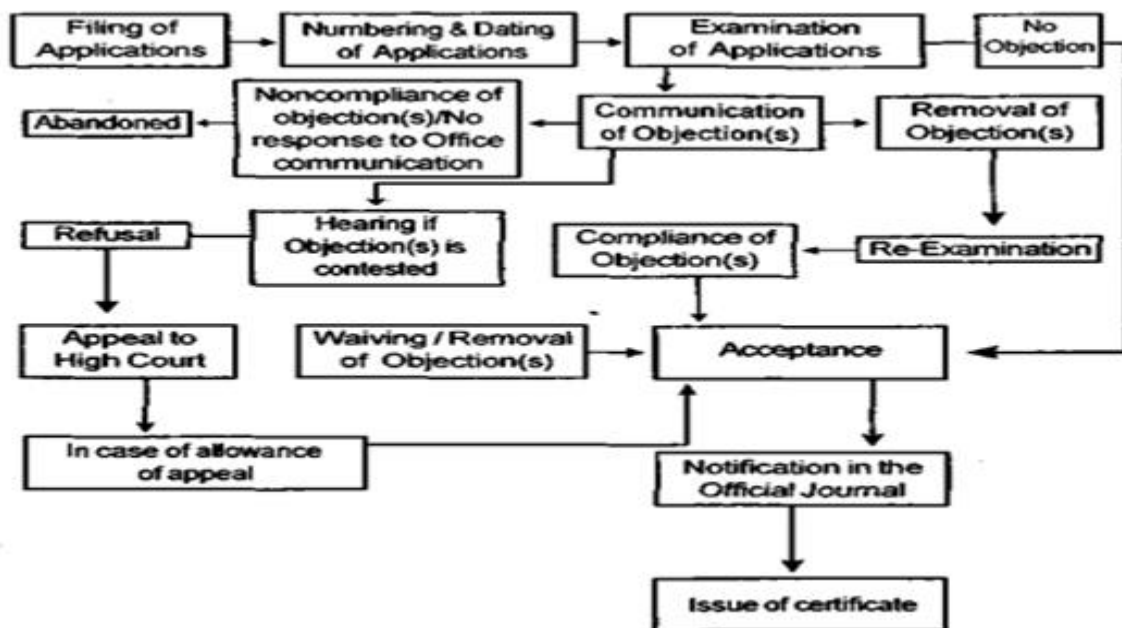
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- If an application is not completed within the specified time frame due to the applicant's fault, it will be abandoned.
- When a design is registered, it is registered as of the application date.

Application for design registration



Items that are not eligible for design registration under the Act

- Any country's symbols, emblems, or flags.
- If the size of any article is altered.
- Buildings and structures.
- Layout designs for integrated circuits.
- Variations in trade.
- Any principle or method of making an article, such as labels, tokens, cartoons, or cards.
- Books, calendars, certificates, jackets, forms and other documents, greeting cards, maps and plan cards, postcards, leaflets, stamps, medals, and dressmaking patterns are all examples of items that can be found in the library.
- It's a contraption made of metal.
- Modifications to an assembly's components in the workshop.
- Parts of any non-manufactured item are sold separately.



Duration of the Design registration

A design can only be registered for a total of 15 years. Initial duration of registration is ten years from the date of registration, which could be extended for another five years by paying a specified to the Controller, but only if done before from the expiration of the original period of ten years. Any design's owner can apply as soon as the design is registered for such an extension.

An application for the cancellation of a design's registration has been filed.

After a design has been registered, it can be cancelled at any time by filing a petition for cancellation in Form 8 with a fee of Rs. 1000 for natural Person and Rs. 2000 and Rs. 4000 for small and other than small entity respectively to the Controller.

The following are the reasons for such a cancellation:

- The design had previously been registered in India.
- It was published in India or elsewhere before the registration date.
- The design isn't new or original.
- Under the Act, it is not registerable.
- Article or whatever it may called, do not qualify the definition of Design.

Design plays an important role.

- A design is a reflection of someone's intelligence and creativity, which is then turned into a product.
- Any product's design leaves an indelible impression on the minds of its users.
- A design aids in the recognition of any product by consumers.
- If a design is appealing, it adds value to the product's business.
- It improves the product's value and aids in achieving reasonable returns on investment. It allows you to compete fairly in the market.

Design infringement

- The designs, like any other form of intellectual property, are vulnerable to infringement and can be copied by competitors or others. If a design is copied, the owner of the design can seek damages as well as an injunction to prevent the design from being used again.



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- If there is any doubt about whether or not there has been infringement, the Court will look for the design from the perspective of a typical customer. In other words, the Court will consider whether there is any obvious or material factual confusion between the two articles in the minds of the customers.

Cases of infringement of industrial designs

The international registration of industrial designs became a point of contention in India in *Disney Enterprises Inc. v. Prime Housewares Ltd.* The Disney enterprises filed a lawsuit against Prime Housewares, a Mumbai-based company that used to manufacture characters like Mickey Mouse, Donald Duck, and others, alleging infringement of their internationally registered designs.

The plaintiff's trademark is protected under Indian law, but not the designs, according to the court. The court issued an order for the enterprises' trademark to be infringed upon. The Indian firm was instructed to deliver all infringing material to the businesses so that it could no longer be used.

Conclusion

Many changes are visible in the features as a result of the Design Act, 2000. For example, when a programmer, creates something, when an architect creates a building's structure, there is an expectation that their structure will not be infringed upon. Many designs are also capable of providing copyrights to the author.

In that case, both types of infringement cannot be claimed separately. The owner must decide which is more advantageous. It takes a lot of brainpower to create a design that looks good and has a long-lasting impact. The government has devised an excellent policy for the protection of designs.