

Draft for discussion

**DPR for the Establishment of
National Institute for Intellectual Property Rights
(NIIPR)**

Submitted to
**Department of Higher Education
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Prepared by



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CHAPTER I: PREAMBLE

1.1 Introduction

With the advent of the new knowledge economy, the old and some of the existing management constructs and approaches would have to change. The knowledge economy places a tag of urgency on understanding and managing knowledge based assets such as innovations and know-how. The time for grasping knowledge has become an important parameter for determining the success of an institution, enterprise, government and industry; the shorter the time better are the chances of success. Intellectual property rights (IPR) have become important in the face of changing trade environment which is characterized by the features such as global competition, high innovation risks, short product cycle, need for rapid changes in technology, high investments in research and development (R&D), production and marketing and need for highly skilled human resources. Geographical barriers to trade among nations are collapsing due to globalization, a system of multilateral trade and a new emerging economic order. It is therefore quite obvious that the complexities of global trade would be on the increase as more and more variables are introduced leading to uncertainties. Many products and technologies are simultaneously marketed and utilized in many countries. With the opening up of trade in goods and services intellectual property rights (IPR) have become more susceptible to infringement leading to inadequate return to the creators of knowledge. Developers of such products and technologies would like to ensure R&D costs and other costs associated with introduction of new products in the market are recovered and enough profits are generated. One expects that a large number of IP rights would be generated and protected all over the world including India in all areas of science and technology, software and business methods. More than any other technological area, drugs and pharmaceuticals match the above description most closely. Knowing that the cost of introducing a new drug into the market may cost a company anywhere between \$ 300 million to \$600 million along with all the associated risks at the developmental stage, no company will like to risk its intellectual property becoming a public property with out adequate returns. Creating, obtaining, protecting and managing intellectual property must become a corporate activity in the same manner

as the raising of resources and funds. The knowledge revolution will demand a special pedestal for intellectual property and treatment in the overall decision-making process. It is also important to realize that each product is amalgamation of many different areas of science and technologies. In the face of the competition being experienced by the global community, many industries are joining hands for sharing their expertise in order to respond to market demands quickly and keeping the prices competitive. Therefore all publicly funded institutions and agencies will have to come to terms with the new ground realities and take positive steps to generate more intellectual property rights, protect and manage them efficiently. Keeping in view these intricacies and implications of IPRs, concerted efforts are needed by all the nations to augur a 'win-win' situation rather than being exploited in the new and evolving IPR regime. The Indian Government, though assumes lot of significance to IPRs, more intensive efforts are needed to synergize and equip with the body of knowledge in dealing with IPRs. Against this backdrop, the proposed '**National Institute for Intellectual Property Rights**' (NIIPR) is envisioned which can act as a 'Think-Tank' in dealing with IPRs at the national and international levels.

1.2 Background of the Consultants – Institute of Public Enterprise

The Institute of Public Enterprise (IPE), established in 1964, currently located in the Osmania University campus, Hyderabad is now moving to its sprawling second campus in Shameerpet, opposite NALSAR University and is all set to scale up its four pillars of activities viz. research, consultancy, management development programmes and management education. Headed by Padma Vibhushan Dr P Rama Rao, IPE Board of Governors comprises civil servants, eminent policy makers, researchers and public sector CEOs. Since its inception IPE has completed 250 research and consultancy studies, trained more than 30,000 public sector managers and 2,000 IAS officers. IPE has turned out 3,000 Post Graduates in Management and 65 Ph.Ds. The Indian Council of Social Science Research (ICSSR), Ministry of HRD, Govt of India has recognized IPE as a 'Centre of Excellence' in research.

1.3 IPRs and various Forms

1.3.1 Intellectual Property Rights (IPR)

Intellectual Property Rights are legal rights, which result from intellectual activity in industrial, scientific, literary & artistic fields. These rights safeguard creators and other producers of intellectual goods & services by granting them certain time-limited rights to control their use. Protected IP rights like other property can be a matter of trade, which can be owned, sold or bought. These are intangible and non exhausted consumption. Intellectual property rights as a collective term thus includes the following independent IP rights which can be collectively used for protecting different aspects of an inventive work for multiple protection:-

TYPES/TOOLS OF IPRs:

- a. Patents.
- b. Trademarks.
- c. Copyrights and related rights.
- d. Geographical Indications.
- e. Industrial Designs.
- f. Trade Secrets.
- g. Layout Design for Integrated Circuits.
- h. Protection of New Plant Variety.

a. Patents: A patent is an exclusive right granted for an invention, which is a product or a process that provides a new way of doing something, or offers a new technical solution to a problem. It provides protection for the invention to the owner of the patent. The protection is granted for a limited period, i.e., 20 years. Patent protection means that the invention cannot be commercially made, used, distributed or sold without the patent owner's consent. A patent owner has the right to decide who may - or may not - use the patented invention for the period in which the invention is protected. The patent owner may give permission to, or license, other parties to use the invention on mutually agreed terms. The owner may also sell the right to the invention to someone else, who will then become the new owner of the patent. Once a patent expires, the protection ends, and an

invention enters the public domain, that is, the owner no longer holds exclusive rights to the invention, which becomes available to commercial exploitation by others. All patent owners are obliged, in return for patent protection, to publicly disclose information on their invention in order to enrich the total body of technical knowledge in the world. Such an ever-increasing body of public knowledge promotes further creativity and innovation in others. In this way, patents provide not only protection for the owner but valuable information and inspiration for future -generations of researchers and inventors.

b. Trademarks: A trademark is a distinctive sign that identifies certain goods or services as those produced or provided by a specific person or enterprise. It may be one or a combination of words, letters, and numerals. They may consist of drawings, symbols, three- dimensional signs such as the shape and packaging of goods, audible signs such as music or vocal sounds, fragrances, or colours used as distinguishing features. It provides protection to the owner of the mark by ensuring the exclusive right to use it to identify goods or services, or to authorize another to use it in return for payment. It helps consumers identify and purchase a product or service because its nature and quality, indicated by its unique trademark, meets their needs. Registration of trademark is prima facie proof of its ownership giving statutory right to the proprietor. Trademark rights may be held in perpetuity. The initial term of registration is for 10 years; thereafter it may be renewed from time to time.

c. Copyrights and related rights: Copyright is a legal term describing rights given to creators for their literary and artistic works. The kinds of works covered by copyright include: literary works such as novels, poems, plays, reference works, newspapers and computer programs; databases; films, musical compositions, and choreography; artistic works such as paintings, drawings, photographs and sculpture; architecture; and advertisements, maps and technical drawings. Copyright subsists in a work by virtue of creation; hence it's not mandatory to register. However, registering a copyright provides evidence that copyright

subsists in the work & creator is the owner of the work. Creators often sell the rights to their works to individuals or companies best able to market the works in return for payment. These payments are often made dependent on the actual use of the work, and are then referred to as royalties. These economic rights have a time limit, (other than photographs) is for life of author plus sixty years after creator's death.

d. Geographical Indications (GIs): GIs are signs used on goods that have a specific geographical origin and possess qualities or a reputation that are due to that place of origin. Agricultural products typically have qualities that derive from their place of production and are influenced by specific local factors, such as climate and soil. They may also highlight specific qualities of a product, which are due to human factors that can be found in the place of origin of the products, such as specific manufacturing skills and traditions. A geographical indication points to a specific place or region of production that determines the characteristic qualities of the product that originates therein. It is important that the product derives its qualities and reputation from that place. Place of origin may be a village or town, a region or a country. It is an exclusive right given to a particular community hence the benefits of its registration are shared by the all members of the community. Recently the GIs of goods like Chanderi Sarees, Kullu Shawls, Wet Grinders etc., have been registered. Keeping in view the large diversity of traditional products spread all over the country, the registration under GI will be very important in future growth of the tribes / communities / skilled artisans associated in developing such products.

e. Industrial Designs: Industrial designs refer to creative activity, which result in the ornamental or formal appearance of a product, and design right refers to a novel or original design that is accorded to the proprietor of a validly registered design. Industrial designs are an element of intellectual property. Under the TRIPS Agreement, minimum standards of protection of industrial designs have been provided for. As a developing country, India has already amended its

national legislation to provide for these minimal standards. The essential purpose of design law is to promote and protect the design element of industrial production. It is also intended to promote innovative activity in the field of industries. The existing legislation on industrial designs in India is contained in the New Designs Act, 2000 and this Act will serve its purpose well in the rapid changes in technology and international developments. India has also achieved a mature status in the field of industrial designs and in view of globalization of the economy, the present legislation is aligned with the changed technical and commercial scenario and made to conform to international trends in design administration. This replacement Act is also aimed to enact a more detailed classification of design to conform to the international system and to take care of the proliferation of design related activities in various fields.

f. **Trade Secrets:** It may be confidential business information that provides an enterprise a competitive edge may be considered a trade secret. Usually these are manufacturing or industrial secrets and commercial secrets. These include sales methods, distribution methods, consumer profiles, and advertising strategies, lists of suppliers and clients, and manufacturing processes. Contrary to patents, trade secrets are protected without registration. A trade secret can be protected for an unlimited period of time but a substantial element of secrecy must exist, so that, except by the use of improper means, there would be difficulty in acquiring the information. Considering the vast availability of traditional knowledge in the country the protection under this will be very crucial in reaping benefits from such type of knowledge. The Trades secret, traditional knowledge are also interlinked / associated with the geographical indications.

g. **Layout Design for Integrated Circuits:** Semiconductor Integrated Circuit means a product having transistors and other circuitry elements, which are inseparably formed on a semiconductor material or an insulating material or inside the semiconductor material and designed to perform an electronic circuitry function. The aim of the Semiconductor Integrated Circuits Layout-Design Act 2000 is to

provide protection of Intellectual Property Right (IPR) in the area of Semiconductor Integrated Circuit Layout Designs (SICLD) and for matters connected therewith or incidental thereto. The main focus of SICLD Act is to provide for routes and mechanism for protection of IPR in Chip Layout Designs created and matters related to it. The SICLD Act empowers the registered proprietor of the layout-design an inherent right to use the layout-design, commercially exploit it and obtain relief in respect of any infringement. The initial term of registration is for 10 years; thereafter it may be renewed from time to time. Department of Information Technology, Ministry of Communications and Information Technology is the administrative ministry looking after its registration and other matters.

- h. Protection of New Plant Variety:** The objective of this Act is to recognize the role of farmers as cultivators and conservers and the contribution of traditional, rural and tribal communities to the country's agro biodiversity by rewarding them for their contribution and to stimulate investment for R & D for the development new plant varieties to facilitate the growth of the seed industry. The Plant Variety Protection and Farmers Rights act 2001 was enacted in India to protect the New Plant Variety; the act has come into force on 30.10.2005 through Authority. Initially 12 crop species have been identified for regt. i.e. Rice, Wheat, Maize, Sorghum, Pearl millet, Chickpea, Green gram, Black gram, Lentil, Kidney bean etc. India has opted for sui- generic system instead of patents for protecting new plant variety. Ministry of Agriculture and Cooperation is the administrative ministry looking after its registration and other matters.

CHAPTER II: STATUS OF IPRs AND RELATED LAWS

2.1 India and Intellectual Property Rights (IPR)

In today's globalized scenario of expanding multilateral trade and commerce, it has become inevitable for any country to protect its intellectual property by providing statutory rights to the creators and inventors and thus help them fetch adequate commercial value for their efforts in the world market.

This innovative and creative capacity is protected under the intellectual property system of WTO. Recognizing this fact, India as a founder member of WTO has ratified the Agreement on Trade Related Intellectual Property Rights (TRIPS). As per the agreement, all member countries including India are to abide by the mutually negotiated norms and standards within the stipulated timeframe. Accordingly, India has set up an Intellectual Property Right (IPR) regime, which is WTO compatible and is well established at all levels whether statutory, administrative or judicial.

The Government has taken a comprehensive set of initiatives to streamline the intellectual property administration in the country in view of its strategic significance. In the Ministry of Commerce and Industry, the office of the 'Controller General of Patents, Designs and Trade Marks (CGPDTM)' has been set up under the Department of Industrial Policy and Promotion. It administers all matters relating to patents, designs, trademarks and geographical indications and also directs and supervises the functioning of:

- The Patent Office (including Designs Wing)
- The Patent Information System (PIS)
- The Trade Marks Registry (TMR), and
- The Geographical Indications Registry (GIR)

The 'Copyright Office' has been set up in the Department of Education of the Ministry of Human Resource Development, to provide all facilities including registration of copyrights and its neighbouring rights. The Ministry of Human Resource

Development under the Scheme of Intellectual Property Education, Research and Public Outreach (IPERPO) has so far set up 18 IPR Chairs in various universities and institutes considering their potential for development and growth of IPR Education, Research and Training. Out of 18 IPR Chairs set up so far, five (5) IPR Chairs are in Universities, five (5) IPR Chairs are in IITs five (5) IPR Chairs are in National Law Universities and three IPR chairs in IIMs (Kolkata, Bangalore and Ahmedabad). As far as issues relating to layout design of integrated circuits are concerned, 'Department of Information Technology' in the Ministry of Information Technology is the nodal organization. While, 'Protection of Plant Varieties and Farmers' Rights Authority' in Ministry of Agriculture administers all measures and policies relating to plant varieties.

For complementing the administrative set up, several legislative initiatives have been taken. They include the Trade Marks Act, 1999; the Geographical Indications of Goods (Registration and Protection) Act 1999; the Designs Act, 2000; the Patents Act, 1970 and its subsequent amendments in 2002 and 2005; Indian Copyright Act, 1957 and its amendment Copyright (Amendment) Act, 1999; Semiconductor Integrated Circuit Layout Design Act, 2000; as well as the Protection of Plant Varieties and Farmer's Rights Act, 2001.

2.2 IPRs and WTO: The World Trade Organization (WTO) is an international organization set up with the objective of ensuring smooth and free trade flow across nations. For this purpose, it provides a platform for negotiating agreements between the member countries. These agreements deal with agriculture, textiles and clothing, banking, telecommunications, industrial standards and product safety, food sanitation regulations and much more and are the foundation of the multilateral trading system.

One such important agreement is the **Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS)**. It for the first time brought laws relating to intellectual property into the international trading system. It was a result of the Uruguay Round of the multilateral trade negotiations. This agreement narrowed down

the differences existing in the extent of protection and enforcement of the **Intellectual Property rights (IPRs)** around the world by bringing them under a common minimum internationally agreed trade standards. The member countries are required to abide by these standards within stipulated time-frame and promote effective protection of IPRs in order to reduce distortions and impediments to international trade. There are three obligations of member countries under TRIPS:

- To provide minimum intellectual property rights protection through domestic laws.
- To ensure effective enforcement of these rights.
- To agree to submit disputes to the WTO Dispute Settlement System.

The TRIPS Agreement covers following categories of intellectual property:-

2.2.1 Copyrights and related rights are the rights given by the law to creators of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings. It is a bundle of rights including, inter alia, rights of reproduction, communication to the public, adaptation and translation of the work. Copyright protection are extend to expressions and not to ideas, procedures, and methods of operation or mathematical concepts as such. Compilations of data or other material, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual creations shall be protected as such. Member shall provide authors and their successors in title the right to authorize or to prohibit the commercial rental to the public of originals or copies of their copyright works. The agreement says performers must also have the right to prevent unauthorized recording, reproduction and broadcast of live performances.

2.2.2 Trade Marks: Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. The owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from

using in the course of trade identical or similar signs for goods or services. Thus, the agreement defines the types of signs eligible for protection as trademarks and the minimum rights that must be conferred on their owners. It says that service marks must be protected in the same way as trademarks used for goods. Also, the marks that have become well-known in a particular country must enjoy additional protection.

2.2.3 Geographical Indications are the indications which identify a good as originating in the territory of a member country, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin. Under the agreement, the members shall provide the legal means for interested parties to prevent: (i) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good; (ii) any use which constitutes an act of unfair competition within the meaning of the agreement.

2.2.4 Patents are the exclusive rights granted by a country to the inventor to make, use, manufacture and market the invention that satisfies the conditions of novelty, innovativeness and usefulness. Patents shall be available for any such inventions, whether products or processes, in all fields of technology. The members may exclude from patentability: (i) diagnostic, therapeutic and surgical methods for the treatment of humans or animals; (ii) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. A patent shall confer on its owner the following exclusive rights:

- Where the subject matter of a patent is a product, to prevent third parties not having the owner's consent from the acts of making, using, offering for sale, selling, or importing such those products;
- Where the subject matter of a patent is a process, to prevent third parties not having the owner's consent from the act of using the process, and from the acts of

using, offering for sale, selling, or importing for these purposes at least the product obtained directly by that process.

2.2.5 Industrial Designs refer to creative activity, which result in the ornamental or formal appearance of a product. But it does not include any mode or principle or construction or any thing which is in substance a mere mechanical device. Under the agreement, members shall provide for the protection of independently created industrial designs that are new or original. The owner of a protected industrial design shall have the right to prevent third parties not having the owner's consent from making, selling or importing articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.

2.2.6 Lay out Designs of Integrated Circuits: Under the agreement, members provide protection to the layout-designs (topographies) of integrated circuits. Members shall consider unlawful the following acts if performed without the authorization of the right holder:- importing, selling, or otherwise distributing for commercial purposes a protected layout-design, an integrated circuit in which a protected layout-design is incorporated, or an article incorporating such an integrated circuit only in so far as it continues to contain an unlawfully reproduced layout-design.

2.2.7 Protection of Undisclosed Information (Trade Secrets): A trade secret or undisclosed information is any information that has been intentionally treated as secret and is capable of commercial application with an economic interest. Natural and legal persons shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices so long as such information:

- Is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to

persons within the circles that normally deal with the kind of information in question;

- Has commercial value because it is secret; and
- Has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.

2.2.8 Plant varieties: Members provide for the protection of plant varieties either by patents or by an effective '*sui generis*' system or by any combination thereof.

2.3 IPRS AND KEY REGULATIONS

An entrepreneur has to take into account the basic regulatory requirements of the country in order to ensure sustainability of the profits and productivity of his/her business. The most important regulation relates to the environment. The environmental regulatory requirements envisage a wide legislative framework covering every aspect of environment protection. Broadly, it includes the emission standards for air, noise, water, etc. Separate set of laws for emission of hazardous wastes have also been enacted. Every industry has to abide by these guidelines and parameters for environmental protection.

An organization for its smooth and effective functioning must ensure health and safety of its employees. The major legislations relating to Occupational Health and Safety in India are: - the Factories Act, 1948; the Mines Act, 1952 and the Dock Workers (Safety, Health & Welfare) Act, 1986. The Directorate General of Mines Safety (DGMS) and the Directorate General of Factory Advice Service and Labour Institutes (DGFASLI) are the two field organizations of the Ministry of Labour and Employment in the area of occupational safety and health in mines, factories and ports.

The Government of India has taken steps like, announcing a competition policy, enacting Competition Act, 2002 and setting up of Competition Commission of India, in order to ensure a healthy and fair competition in the market economy. These aim to

prohibit the anti-competitive business practices, abuse of dominance by an enterprise as well as regulate various business combinations like mergers and acquisitions.

For regulation of the export and import of goods and services an entrepreneur has to abide by the Foreign Trade (Development and Regulation) Act, 1992 and the EXIM policy announced by the Government from time to time. The Ministry of Commerce and Industry is the most important organ concerned with the promotion and regulation of the foreign trade in India. The Ministry has an elaborate organizational set up to look after the various aspects of trade. Within the Ministry, the Department of Commerce is responsible for formulating and implementing the foreign trade policy.

2.3.1 Laws Relating to Copyrights and Related Rights

The umbrella legislation relating to copyright is the **Copyright Act, 1957**. According to the Act, the term 'copyright' means the exclusive right to do or authorize the doing of a 'work' or a substantial part of it. The term 'work' referred here means:

- **A literary work:** it includes computer programmes, tables, compilations and computer databases.
- **A dramatic work:** it includes any piece of recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting, whose form is fixed in writing or otherwise.
- **A musical work:** it includes works of music, any graphical notation of such work but does not include any words or action intended to be sung, spoken or performed with the music.
- **An artistic work:** it means a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not they possess artistic quality. It also includes a work of architecture and any other work of artistic craftsmanship.
- **A cinematographic film:** it means any work of visual recording on any medium produced through a process from which a moving image may be produced by any means.

- **A sound recording:** it means recording of sounds from which sounds may be produced regardless of the medium by which sounds are produced.

The 'Related rights or Neighbouring rights' are the rights of performers (e.g., actors, singers and musicians), producers of phonograms (sound recordings) and broadcasting organizations.

The Act is administered by the **Department of Higher Education** in the **Ministry of Human Resource Development**. A **Copyright Board** is established under the Act. The Board is entrusted with the task of adjudication of disputes pertaining to copyright registration, assignment of copyright, grant of licenses in respect of works withheld from public, unpublished Indian works, production and publication of translations and works for certain specified purposes. A **Copyright Office** was set up under the control of Registrar of Copyrights, for the registration of Copyrights.

The main provisions of the Act are:

- There shall be established for the purposes of this Act an office to be called as the 'Copyright Office'. The Copyright Office shall be under the immediate control of the Registrar of Copyrights who shall act under the superintendence and direction of the Central Government. Also, the Central Government shall constitute a 'Copyright Board'.
- There shall be kept at the Copyright Office a register in the prescribed form to be called as the 'Register of Copyrights' in which may be entered the names or titles of works and the names and address of authors, publishers and owners of copyright and such other particulars as may be prescribed.
- The author or publisher of, or the owner of or other person interested in the copyright in any work may make an application in the prescribed form accompanied by the prescribed fee to the Registrar of Copyrights for entering particulars of the work in the Register of Copyrights.
- The register of Copyrights and indexes thereof kept under this Act shall at all reasonable times be open to inspection, and any person shall be entitled to take

copies of, or make extracts from, such register or indexes on payment of such fee and subject to such conditions as may be prescribed.

- The Register of Copyright shall be prima facie evidence of the particulars entered therein and documents purporting to be copies of any entries therein, or extracts there from certified by the Registrar of Copyrights and sealed with the seal of the Copyright Office shall be admissible in evidence in all courts without further proof or production of the original.
- Copyright shall subsist in any literary, dramatic, musical or artistic work (other than a photograph) published within the lifetime of the author until sixty years from the beginning of the calendar year next following year in which the author dies. Also, in the case of a literary, dramatic, musical or artistic work (other than photograph), which is published anonymously, copyright shall subsist until sixty years from the beginning of the calendar year next following the years in which the work is first published.
- The owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or partially and either generally or subject to limitations and either for the whole term of the copyright or any part thereof. However, in the case of the assignment of copyright in any future work, the assignment shall take effect only when the work comes into existence.

If at any time during the term of copyright in any Indian work which has been published or performed in public, a complaint is made to the Copyright Board that the owner of copyright in the work: (i) has refused to republish or allow the republication of the work or has refused to allow the performance in public of the work, and by reason of such refusal the work is withheld from the public; or (ii) has refused to allow communication to the public by broadcast of such work or in the case of a sound recording, the work recorded in such sound recording, on terms which the complainant considers reasonable. Then, the Copyright Board, after giving to the owner of the copyright in the work reasonably opportunity of being heard and after holding such inquiry, as it may deemed necessary, may, if it is satisfied that the

grounds for such refusal are not reasonable, direct the Registrar of Copyrights to grant to the complainant a license to republish the work, perform the work in public or communicate the work to the public by broadcast, as the case may be, subject to payment to the owner of the copyright of such compensation and subject to such other terms and conditions as the Copyright Board may determine, and thereupon the Registrar of Copyrights shall grant the license of the complainant in accordance with the direction of the Copyright Board, on payment of such fees, as may be prescribed.

The Central Government may, by order published in the Official Gazette, direct that all or any provisions of this Act, shall apply to:

- work first published in any territory outside India to which the order related in like manner as if they were first published within India;
- unpublished works, or any class thereof, the authors whereof were at the time of the making of the work, subjects or citizens of a foreign country to which the order relates, in like manner as if the authors were citizens of India; In respect of domicile in any territory outside India to which the order relates in like manner as if such domicile were in India;
- any work of which the author was at the date of the first publication thereof, or, in case where the author was dead at the date, was at the time of his death, a subject or citizens of foreign country to which the order relates in like manner as if the author was a citizen of India at that date or time.

Copyright in a work shall be deemed to be infringed:

- When any person, without a license granted by the owner of the Copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a license so granted or of any conditions imposed by a competent authority under this Act: (i) does anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright; or (ii) permits for profit any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work, unless he was not aware

and had no reasonable ground for believing that such communication to the public would be an infringement of copyright; or

- When any person: (i) makes for sale on hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire; or (ii) distributes either for the purposes of trade or to such an extent as to affect prejudicially the owner of the copyright; or (iii) by way of trade exhibits in public; or (iv) imports into India, any infringing copies of the work.
- Every broadcasting organization shall have a special right to be known as 'broadcast reproduction right' in respect of its broadcasts. The broadcast reproduction right shall subsist until twenty-five years from the beginning of the calendar year next following the year in which the broadcast is made.
- Where any performer appears or engages in any performance, he shall have a special right to be known as the 'performer's right' in relation to such performance. The performer's right shall subsist until twenty-five years from the beginning of the calendar year next following the year in which the performance is made.
- No broadcast reproduction right or performer's right shall be deemed to be infringed by:
 - The making of any sound recording or visual recording for the private use of the person making such recording, or solely for purposes of bona fide teaching or research; or
 - The use, consistent with fair dealing, of excerpts of a performance or of a broadcast in the reporting of current events or for bona fide review, teaching or research; or
 - Such other acts, with any necessary adaptations and modifications, which do not constitute infringement of copyright under the Act.
- Where any offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for, the conduct of the business of the company, as well as the company, shall be deemed to be guilty of such offence and shall be liable to be proceeded against and punished accordingly.

2.3.2 Laws relating to Industrial Designs

The Designs Act, 2000 has been enacted to consolidate and amend the law relating to registration and protection of new and original industrial designs. It repealed and replaced the Designs Act, 1911. According to the Designs Act, 2000, the term 'design' means "only the features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article whether in two dimensional or three dimensional or in both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye; but does not include any mode or principle of construction or anything which is in substance a mere mechanical device, and does not include any trade mark as defined in the Trade and Merchandise Marks Act, 1958 or property mark as defined in the Indian Penal Code or any artistic work as defined in the Copyright Act, 1957".

Under the Act, the Controller-General of Patents, Designs and Trade Marks under Department of Industrial Policy and promotion, Ministry of Commerce and Industry is the Controller of Designs. The Controller General of Patents, Designs & Trade Marks directs and supervises the functioning of 'Industrial Designs Wing'. The registration of industrial designs under the Designs Act is done by the 'Industrial Designs Wing' of the Head Office of Patents located at Kolkata.

The main provisions of the Act are:

- The 'Controller General of Patents, Designs and Trade Marks' appointed under the Trade and Merchandise Marks Act, 1958 shall be the Controller of Designs for the purposes of this Act.
- The Controller may, on the application of any person claiming to be the proprietor of any new or original design not previously published in any country and which is not contrary to public order or morality, register the design under the Act. Every application shall be in the prescribed form and shall be filed in the Patent Office in the prescribed manner and shall be accompanied by the prescribed fee. A design may be registered in not more than one class, and, in case of doubt as to

the class in which a design ought to be registered, the Controller may decide the question.

- Prohibition of registration of those designs which:
 - Are not new or original; or
 - Have been disclosed to the public anywhere in India or in any other country by publication in tangible form or by use or in any other way prior to the filing date, or where applicable, the priority date of the application for registration; or
 - Are not significantly distinguishable from known designs or combination of known designs; or
 - Comprise or contain scandalous or obscene matter.

The Controller grants a certificate of registration to the proprietor of the design when registered. Also, there shall be kept at the Patent Office a book called the 'register of designs', wherein shall be entered the names and addresses of proprietors of registered designs, notifications of assignments and of transmissions of registered designs, and such other matter as may be prescribed

When a design is registered, the registered proprietor of the design shall, subject to the provisions of this Act, have copyright in the design during ten years from the date of registration. If, before the expiration of the said ten years, application for the extension of the period of copyright is made to the Controller in the prescribed manner, the Controller shall, on payment of the prescribed fee, extend the period of copyright for a second period of five years from the expiration of the original period of ten years.

- The Controller shall, as soon as may be after the registration of a design, cause publication of the prescribed particulars of the design to be published in such a manner as may be prescribed and thereafter the design shall be open to public inspection. During the existence of copyright in a design, any person on furnishing such information as may enable the Controller to identify the design and on payment of the prescribed fee may inspect the design in the prescribed

manner. Also, any person may, on application to the Controller and on payment of such fee as may be prescribed, obtain a certified copy of any registered design.

- Any person interested may present a petition for the cancellation of the registration of a design, at any time after the registration of the design, to the Controller on any of the following grounds:- (i) that the design has been previously registered in India; or (ii) that it has been published in India or in any other country prior to the date of registration; or (iii) that the design is not a new or original design; or (iv) that the design is not registrable under this Act; or (e) it is not a design as defined under the Act. The Controller may at any time refer any such petition to the High Court, and the High Court shall decide any petition so referred.
- The exhibition of a design, or of any article to which a design is applied, at an industrial or other exhibition to which the provisions of the Act have been extended by the Central Government by notification in the Official Gazette, or the publication of a description of the design, during or after the period of the holding of the exhibition, or the exhibition of the design or the article or the publication of a description of the design by any person else-where during or after the period of the holding of the exhibition, without the privity or consent of the proprietor, shall not prevent the design from being registered or invalidate the registration thereof, subjected to the conditions that:- (i) the exhibitor exhibiting the design or article, or publishing a description of the design, gives to the Controller previous notice in the prescribed form; and (ii) the application for registration is made within six months from the date of first exhibiting the design or article or publishing a description of the design.
- During the existence of copyright in any design it shall not be lawful for any person:
 - For the purpose of sale to apply or cause to be applied to any article in any class of articles in which the design is registered, the design or any fraudulent or obvious imitation thereof, except with the license or written

the class in which a design ought to be registered, the Controller may decide the question.

- Prohibition of registration of those designs which:
 - Are not new or original; or
 - Have been disclosed to the public anywhere in India or in any other country by publication in tangible form or by use or in any other way prior to the filing date, or where applicable, the priority date of the application for registration; or
 - Are not significantly distinguishable from known designs or combination of known designs; or
 - Comprise or contain scandalous or obscene matter.

The Controller grants a certificate of registration to the proprietor of the design when registered. Also, there shall be kept at the Patent Office a book called the 'register of designs', wherein shall be entered the names and addresses of proprietors of registered designs, notifications of assignments and of transmissions of registered designs, and such other matter as may be prescribed

When a design is registered, the registered proprietor of the design shall, subject to the provisions of this Act, have copyright in the design during ten years from the date of registration. If, before the expiration of the said ten years, application for the extension of the period of copyright is made to the Controller in the prescribed manner, the Controller shall, on payment of the prescribed fee, extend the period of copyright for a second period of five years from the expiration of the original period of ten years.

- The Controller shall, as soon as may be after the registration of a design, cause publication of the prescribed particulars of the design to be published in such a manner as may be prescribed and thereafter the design shall be open to public inspection. During the existence of copyright in a design, any person on furnishing such information as may enable the Controller to identify the design and on payment of the prescribed fee may inspect the design in the prescribed

manner. Also, any person may, on application to the Controller and on payment of such fee as may be prescribed, obtain a certified copy of any registered design.

- Any person interested may present a petition for the cancellation of the registration of a design, at any time after the registration of the design, to the Controller on any of the following grounds:- (i) that the design has been previously registered in India; or (ii) that it has been published in India or in any other country prior to the date of registration; or (iii) that the design is not a new or original design; or (iv) that the design is not registrable under this Act; or (e) it is not a design as defined under the Act. The Controller may at any time refer any such petition to the High Court, and the High Court shall decide any petition so referred.
- The exhibition of a design, or of any article to which a design is applied, at an industrial or other exhibition to which the provisions of the Act have been extended by the Central Government by notification in the Official Gazette, or the publication of a description of the design, during or after the period of the holding of the exhibition, or the exhibition of the design or the article or the publication of a description of the design by any person else-where during or after the period of the holding of the exhibition, without the privity or consent of the proprietor, shall not prevent the design from being registered or invalidate the registration thereof, subjected to the conditions that:- (i) the exhibitor exhibiting the design or article, or publishing a description of the design, gives to the Controller previous notice in the prescribed form; and (ii) the application for registration is made within six months from the date of first exhibiting the design or article or publishing a description of the design.
- During the existence of copyright in any design it shall not be lawful for any person:
 - For the purpose of sale to apply or cause to be applied to any article in any class of articles in which the design is registered, the design or any fraudulent or obvious imitation thereof, except with the license or written

consent of the registered proprietor, or to do anything with a view to enable the design to be so applied; or

- To import for the purposes of sale, without the consent of the registered proprietor, any article belonging to the class in which the design has been registered, and having applied to it the design or any fraudulent or obvious imitation thereof; or
 - Knowing that the design or any fraudulent or obvious imitation thereof has been applied to any article in any class of articles in which the design is registered without the consent of the registered proprietor, to publish or expose or cause to be published or exposed for sale that article.
- Where an application for a design has been abandoned or refused, the application and any drawings, photographs, tracings, representations or specimens left in connection with then application shall not at any time be open to public inspection or be published by the Controller.
- If any person acts in contravention of the Act, he shall be liable for every contravention to pay to the registered proprietor of the design a sum not exceeding certain prescribed amount as a contract debt, or if the proprietor elects to bring a suit for the recovery of damages for any such contravention, and for an injunction against the repetition thereof, to pay such damages as may be awarded and to be restrained by injunction accordingly.

2.3.3 Laws relating to Patents

The umbrella legislation relating to patents is the **Patents Act, 1970**. The term 'patent' is defined as a monopoly right which is granted to a person who has invented a new and useful article, or an improvement of existing article, or a new process of making an article. It consists of an exclusive right to manufacture the new invented article or manufacture an article according to the invented process for a limited period. Inventions that consist of products or new alloy is called product invention and the corresponding patent to this is referred to as 'product patent'. Invention that consists of process or processes of making a known or new alloy is a process invention and patent for this is called a 'process patent'. This Act only provided for process patent

and for product like food, pharmaceutical and chemicals, the inventors were granted only EMR (exclusive marketing rights).

Patent system in India is administered under the superintendence of the **Controller General of Patents, Designs, Trademarks and Geographical Indications**. The Office of the Controller General functions under the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry. The Controller General directs and supervises the functioning of the **Patent Office** and the **Patent Information System (PIS)**. The Patent Office performs the statutory duties in connection with the grant of patents for new inventions under the Patents Act. The Head Office of Patents is at Kolkata with branches at Mumbai, Chennai and Delhi. The branches deal with the applications for patents originating within their respective territorial jurisdiction. The Patent Information System (PIS) at Nagpur has been functioning as patent information base for the users. The PIS maintains a comprehensive collection of patent specification and patent related literature, on a world-wide basis and provides technological information contained in patent or patent related literature through search services and patent copy supply services to various users of R&D establishments, Government offices, private industries, business, inventors and other users within India.

The main provisions of the Act are:

- The Controller General of Patents, Designs and Trade Marks appointed under the Trade and Merchandise Marks Act, 1958, shall be the Controller of Patents for the purposes of this Act. Also, there shall be a 'patent office' for the purpose of facilitating the registration of patents at such places as the Central Government may specify.
- There shall be kept at the patent office a 'register of patents' wherein shall be entered:-
- The names and addresses of grantees of patents;
- Notifications of assignments, extensions, and revocations of patents; and

- Particulars of such other matters affecting the validity or proprietorship of patents as may be prescribed.
- An application for a patent for an invention may be made by any of the following persons:
 - By any person claiming to be the true and first inventor of the invention;
 - By any person being the assignee of the person claiming to be the true and first inventor in respect of the right to make such an application;
 - By the legal representative of any deceased person who immediately before his death was entitled to make such an application.

The following are not inventions within the meaning of this Act:-

- An invention which is frivolous or which claims anything obvious contrary to well established natural laws;
- An invention the primary or intended use of which would be contrary to law or morality or injurious to public health;
- The mere discovery of a scientific principle or the formulation of an abstract theory;
- The mere discovery of any new property of new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant;
- 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;
- The mere arrangement or re-arrangement or duplication of known devices each functioning independently of one another in a known way;
- A method or process of testing applicable during the process of manufacture for rendering the machine, apparatus or other equipment more efficient or for the improvement or restoration of the existing machine, apparatus or other equipment or for the improvement or control of manufacture;
- A method of agriculture or horticulture;
- Any process for the medicinal, surgical, curative, prophylactic or other treatment of human beings or any process for a similar treatment of animals or plants to

render them free of disease or to increase their economic value or that of their products.

- Every application for a patent shall be for one invention only and shall be made in the prescribed form and filed in the patent office. Every application shall state that the applicant is in possession of the invention and shall name the owner claiming to be the true and first inventor; and where the person so claiming is not the applicant or one of the applicants, the application shall contain a declaration that the applicant believes the person so named to be the true and first inventor. Every such application shall be accompanied by a provisional or a complete specification.
- Where an application for a patent (not being a convention application) is accompanied by a provisional specification, a complete specification shall be filed within twelve months from the date of filing of the application, and if the complete specification is not so filed the application shall be deemed to be abandoned. Every complete specification shall:-
 - Fully and particularly describe the invention and its operation or use and the method by which it is to be performed;
 - Disclose the best method of performing the invention which is known to the applicant and for which he is entitled to claim protection; and
 - End with a claim or claims defining the scope of the invention for which protection is claimed.
- At any time within four months from the date of advertisement of the acceptance of a complete specification under this Act (or within such further period not exceeding one month in the aggregate as the Controller may allow on application made to him in the prescribed manner before the expiry of the four months aforesaid) any person interested may give notice to the Controller of opposition to the grant of the patent on any of the following grounds, namely: -
 - That the applicant for the patent or the person under or through whom he claims, wrongfully obtained the invention or any part thereof from him or from a person under or through whom he claims;

- That the invention so far as claimed in any claim of the complete specification has been published before the priority date of the claim:- (i) in any specification filed in pursuance of an application for a patent made in India on or after the 1st day of January, 1912; or (ii) in India or elsewhere, in any other document.
- That the invention so far as claimed in any claim of the complete specification is claimed in a claim of a complete specification published on or after the priority date of the applicant's claim and filed in pursuance of an application for a patent in India, being a claim of which the priority date is earlier than that of the applicant's claim;
- That the invention so far as claimed in any claim of the complete specification was publicly known or publicly used in India before the priority date of that claim.
- That the invention so far as claimed in any claim of the complete specification is obvious and clearly does not involve any inventive step;
- That the subject of any claim of the complete specification is not an invention within the meaning of this Act, or is not patentable under this Act;
- That the complete specification does not sufficiently and clearly describe the invention or the method by which it is to be performed;
- That in the case of a convention application, the application was not made within twelve months from the date of the first application for protection for the invention made in a convention country by the applicant or a person from whom he derives title, etc.
- Where any such notice of opposition is duly given, the Controller shall notify the applicant and shall give to the applicant and the opponent an opportunity to be heard before deciding the case.
- Where a complete specification in pursuance of an application for a patent has been accepted and either:- (i) the application has not been opposed and the time for the filing of the opposition has expired; or (ii) the application has been opposed and the opposition has been finally decided in favour of the applicant; or (iii) the application has not been refused by the Controller by virtue of any power vested in him by this Act; then the patent shall, on request made by the applicant

in the prescribed form, be granted to the applicant or, in the case of a joint application, to the applicants jointly, and the Controller shall cause the patent to be sealed with the seal of the patent office and the date on which the patent is sealed shall be entered in the register.

- The term of every patent granted and the term of every patent which has not expired and has not ceased to have effect under this Act, shall be twenty years from the date of filing of the application for the patent.
- Where an application is made for a patent in respect of any improvement in or modification of an invention described or disclosed in the complete specification filed thereof and the applicant also applies or has applied for a patent for that invention or is the patentee in respect thereof, the Controller may, if the applicant so requests, grant the patent for the improvement or modification as a patent of addition. A patent of addition shall be granted for a term equal to that of the patent for the main invention.
- At any time after the expiration of three years from the date of the sealing of a patent, any person interested may make an application to the Controller alleging that the reasonable requirements of the public with respect to the patented invention have not been satisfied or that the patented invention is not available to the public at a reasonable price and praying for the grant of a compulsory license to work the patented invention.
- If any person fails to comply with any direction given under the Act or makes or causes to be made an application for the grant of a patent in contravention of the Act, he shall be punishable with imprisonment or with fine or with both.

This Act has been amended by the **Patents (Amendment) Act, 2002** and the **Patents (Amendment) Act, 2005** to take care of India's obligations under the TRIPS Agreement. After the amendments, product patent (instead of process patent) is being granted for food, pharmaceutical and chemical products. Also, along with post grant opposition to patents, pre-grant opposition is also permissible. The **Trade Marks Act, 1999** has been enacted to amend and consolidate the law relating to trade marks, to provide for registration and better protection of trade marks for goods and services

and for the prevention of the use of fraudulent marks. It repealed the earlier **Trade & Merchandise Marks Act, 1958**. According to the Trade Marks Act, 1999, the term 'trade mark' means "a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours". Under the Act, the **Controller-General of Patents, Designs and Trade Marks** under **Department of Industrial Policy and Promotion, Ministry of Commerce and Industry** is the 'Registrar of Trade Marks'. The Controller General of Patents, Designs & Trade Marks directs and supervises the functioning of the **Trade Marks Registry (TMR)**. The '**Trade Marks Registry**' administers the Trade Marks Act, 1999 and the **Rules** there under. TMR acts as a resource and information centre and is a facilitator in matters relating to trade marks in the country. The main function of the Registry is to register trade marks which qualify for registration under the Act and Rules. The main provisions of the Act are:

- The Central Government may, by notification in the Official Gazette, appoint a person to be known as the 'Controller-General of Patents, Designs and Trade Marks', who shall be the Registrar of Trade Mark for the purpose of this Act. Also, there shall be a 'Trade Marks Registry' at such place as the Central Government may specify, and for the purpose of facilitating the registration of trade marks.
- For the purposes of this Act, a record called the 'Register of Trade Mark' shall be kept at the head office of the Trade Marks Registry, wherein shall be entered all registered trade mark with the names, addresses and description of the proprietors, notifications of assignment and transmissions, the name, addresses and description of registered users, conditions, limitations and such other matters relating to registered trade mark as may be prescribed.
- The Register shall **classify goods and services**, as far as may be, in accordance with the International classification of goods and services for the purposes of registration of trade marks. Any question arising to the class within which any goods or services falls shall be determined by the Register whose decision shall be final.

Absolute grounds for refusal of registration of trade marks:-

- Which are devoid of any distinctive character (that is not capable of distinguishing the good or services of one person from those of another person);
- Which consist exclusively of marks or indications which may serve in trade to designate the kind, quality, quantity, intended purpose, values, geographical origin or the time of production of the goods or rendering of the service or other characteristics of the goods or service;
- Which consist exclusively of marks or indications which have become customary in the current language or in the bona fide and established practices of the trade;
- If it consists exclusively of shape of goods:- (i) which results from the nature of the goods themselves; or (ii) which is necessary to obtain a technical result; or (iii) which gives substantial value of the goods.

Relative grounds for refusal of registration of trade marks:-

- Existence of a likelihood of confusion on the part of the public due to:- (i) its identity with an earlier trade mark and similarity of goods or services covered by the trade mark; or (ii) its similarity to an earlier trade mark and the identity or similarity of the goods of services covered by the trade mark.
- If its use in India is liable to be prevented:- (i) by virtue of any law, in particular the law of passing off protecting an unregistered trade mark used in the course of trade; or (ii) by virtue of law of copyright.
- Any person claiming to be the proprietor of a trade mark used or proposed to be used by him, who is desirous of registering it, shall apply in writing to the Registrar in the prescribed manner for the registration of his trade mark. A single application may be made for registration of a trade mark for different classes of goods and services and fee payable thereof shall be in respect of each such class of goods or services.
- Any person may, within three months from the date of the advertisement or re-advertisement of an application for registration or within such further period, not exceeding one month in the aggregate, give notice in writing in the prescribed

manner to the Registrar, of opposition to the registration. The Registrar shall serve a copy of the notice on the applicant for registration and, within two months from the receipt by the applicant of such copy of the notice of opposition, the applicant shall send to the Registrar in the prescribed manner a counter-statement of the grounds on which he relies for his application, and if he does not do so he shall be deemed to have abandoned his application. The Registrar shall, after hearing the parties, if so required, and considering the evidence, decide whether and subject to what conditions or limitations, if any, the registration is to be permitted, and may take into account a ground of objection whether relied upon by the opponent or not.

- The registration of trade mark, after the commencement of this Act, shall be for a period of ten years, but may be renewed from time to time in accordance with the provisions of the Act. The Registrar shall, on application made by the registered proprietor of a trade mark in the prescribed manner and within the prescribed period and subject to payment of the prescribed fee, renew the registration of the trade mark for a period of ten years from the date of expiration of the original registration or of the last renewal of registration, as the case may be.

Grounds for infringement of registered trade marks are:

- By any advertising of that trade mark if such advertising: (i) takes unfair advantage of and is contrary to honest practices in industrial or commercial matters; or (ii) is detrimental to its distinctive character; or (iii) is against the reputation of the trade mark.
- By a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which:- (i) is identical with or similar to the registered trade mark; and (ii) is used in relation to goods or services which are not similar to those for which the trade mark is registered; and (iii) the registered trade mark has a reputation in India and the use of the mark without due cause takes unfair advantage of or is detrimental to, the distinctive character or repute of the registered trade mark.

- By a person if he uses such registered trade mark, as his trade name or part of his trade name, or name is his business concern or part of the name, of his business concern dealing in goods or services in respect of which the trade mark is registered.
- Where the distinctive elements of a registered trade mark consists of or include words, the trade mark may be infringed by the spoken use of those words as well as by their visual representation.
- By a person who applies such registered trade mark to a material intended to be used for labeling or packaging goods, as a business paper, or for advertising goods or services, provided such person, when he applied the mark, knew or had reason to believe that the application of the mark was not duly authorized by the proprietor or a licensee.
- Any person who:- (i) falsifies any trade mark; or (ii) falsely applies to goods or services any trade mark; or (iii) makes, disposes of, or has in his possession, any die, block, machine, plate or other instrument for the purpose of falsifying or of being used for falsifying, a trade mark; or (iv) applies any false trade description to goods or services; or (v) tampers with, alters or effaces an indication of origin which has been applied to any goods to which it is required to be applied under the Act, shall be punishable with imprisonment and with fine.

2.3.4 Laws relating to Layout Designs of Integrated Circuits

The **Semi-Conductor Integrated Circuits Layout-Design Act, 2000** has been enacted to provide for the protection of semiconductor integrated circuits layout-designs and for matters connected therewith or incidental thereto. According to the Act, the term 'layout-design' means "a layout of transistors and other circuitry elements and includes lead wires connecting such elements and expressed in any manner in a semiconductor integrated circuit". Here, the term 'semiconductor integrated circuit' means "a product having transistors and other circuitry elements which are inseparably formed on a semiconductor material or an insulating material or inside the semiconductor material and designed to perform an electronic circuitry function".

The Act is implemented by the **Department of Information Technology**, Ministry of Information Technology. The Act is applicable for Integrated Circuits Layout-Design IPR applications filed at the Registry in India. The **Semiconductor Integrated Circuits Layout-Design Registry (SICLDR)** is the office where the applications on Layout-Designs of integrated circuits are filed for registration of created IPR. The Registry has jurisdiction all over India.

The main provisions of the Act are:

- The Central Government may, by notification in the Official Gazette, appoint a person to be known as the 'Registrar of Semiconductor Integrated Circuits Layout-Design' for the purposes of this Act. Also, there shall be a 'Semiconductor Integrated Circuits Layout-Design Registry' for the purposes of facilitating the registration of layout-designs at such places as the Central Government may specify.
- For the purposes of this Act, a record called the 'Register of Layout-Designs' shall be kept at the head office of the Semiconductor Integrated Circuits Layout-Design Registry, wherein shall be entered all registered layout-designs with the names, addresses and descriptions of the proprietor and such other matters related to the registered layout-designs as may be prescribed.
- Prohibition of registration of those layout-designs which:-
 - Are not original; or
 - Have been commercially exploited anywhere in India or in a convention country; or
 - Are not inherently distinctive; or
 - Are not inherently capable of being distinguishable from any other registered layout-design.
- A layout-design shall be considered to be original if it is the result of its creator's own intellectual efforts and is not commonly known to the creators of layout-designs and manufacturers of semiconductor integrated circuits at the time of its creation. Any person claiming to be the creator of a layout-design, who is

desirous of registering it, shall apply in writing to the Registrar in the prescribed manner for the registration of his layout-design. Every application shall be filed in the office of the Semiconductor Integrated Circuits Layout-Design Registry within whose territorial limits; the principal place of business of the applicant is situated in India.

- When an application for registration of a layout-design has been accepted, the Registrar shall, within fourteen days after the date of acceptance, cause the application as accepted to be advertised in the prescribed manner.
- Any person may, within three months from the date of the advertisement or re-advertisement of an application for registration or within such further period, not exceeding one month in the aggregate give notice in writing in the prescribed manner to the Registrar, of opposition to the registration. The Registrar shall serve a copy of the notice on the applicant for registration and, within two months from the receipt by the applicant of such copy of the notice of opposition, the applicant shall send to the Registrar in the prescribed manner a counter-statement of the grounds on which he relies for his application and if he does not do so, he shall be deemed to have abandoned his application.
- Also, where registration of a layout-design is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice to the applicant in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf in the notice.
- The registration of a layout-design shall be only for a period of ten years counted from the date of filing an application for registration or from the date of first commercial exploitation anywhere in India or in any country, whichever is earlier.
- A registered layout-design is infringed by a person who, not being the registered proprietor of the layout-design or a registered user thereof:-
- Does any act of reproducing, whether by incorporating in a semiconductor integrated circuit or otherwise, a registered layout-design in its entirety or any part thereof, which is not original within the meaning of the Act.

- Does any act of importing or selling or otherwise distributing for commercial purposes a registered layout-design or a semiconductor integrated circuit, incorporating such registered layout-design or an article incorporating such a semiconductor integrated circuit, containing such registered layout-design for the use of which such person is not entitled under the Act.
- Any person who contravenes knowingly and willfully any of the provisions of the Act or falsely represent a layout-design as registered, shall be punishable with imprisonment or with fine or with both.

2.3.5 Laws relating to Plant Varieties

The **Plant Varieties and Farmers' Right Act, 2001** has been enacted to provide for the establishment of an effective system for protection of plant varieties, the rights of farmers and plant breeders and to encourage the development of new varieties of plants. According to the Act, the term 'variety' means "a plant grouping except micro organism within a single botanical taxon of the lowest known rank, which can be:- (i) defined by the expression of the characteristics resulting from a given genotype of that plant grouping; (ii) distinguished from any other plant grouping by expression of at least one of the said characteristics; and (iii) considered as a unit with regard to its suitability for being propagated, which remains unchanged after such propagation; and includes propagating material of such variety, extant variety, transgenic variety, farmers' variety and essentially derived variety".

The Central Government has established the '**Protection of Plant Varieties and Farmers' Rights Authority**' in **Ministry of Agriculture** to administer the various provisions of the Act and take measures to promote the development of new varieties of plants and to protect the rights of the farmers and breeders. The Central Government has also established the 'Plant Varieties Registry' which shall be located in the head office of the Authority. The Authority is empowered to appoint a Registrar-General of plant varieties and other Registrars for the purpose of registration of plant varieties.

The main provisions of the Act are:

- The Central Government shall, by notification in the Official Gazette, establish an Authority to be known as the 'Protection of Plant Varieties and Farmers' Rights Authority' for the purposes of this Act. Also, there is a 'Plant Varieties Registry' for the purpose of facilitating the registration of varieties at such places, as the Authority may think fit.
- For the purposes of this Act, a Register called the 'National Register of Plant Varieties' shall be kept at the head office of the Registry, wherein shall be entered the names of all the registered plant varieties with the names and addresses of their respective breeders, the rights of such breeders in respect of the registered varieties, the particulars of the denomination of each registered variety, its seed or other propagating material along with specification of salient features thereof and such other matters as may be prescribed.
- An application to the registrar for registration of any variety shall be made by:-
 - Any person claiming to be the breeder of the variety; or
 - Any successor of the breeder of the variety; or
 - any person being the assignee of the breeder of the variety in respect of the rights to make such application; or
 - Any farmers or group of farmers or community of farmers claiming to be the breeder of the variety; or
 - Any person authorized in the prescribed manner by a person specified above to make application on his behalf; or
 - Any university or publicly funded agricultural institution claiming to be the breeder of the variety.
- A new variety shall be registered under this Act, if it conforms to the criteria of novelty, distinctiveness, uniformity and stability (DUS). While, an extant variety shall be registered under this Act within a specified period if it conforms to such criteria of distinctiveness, uniformity and stability as shall be specified under the regulations.

A new variety shall be deemed to be

- Novel, if, at the date of filing of the application for registration for protection, the propagating or harvested material of such variety has not been sold or otherwise disposed of by or with the consent of its breeder or his successor for the purposes of exploitation of such variety - (i) in India, earlier than one year; or (ii) outside India, in the case of trees or vines earlier than six years, or in any other case, earlier than four years.
- Distinct, if it is clearly distinguishable by at least one essential characteristic from any other variety whose existence is a matter of common knowledge in any country at the time of filing of the application.
- Uniform, if subject to the variation that may be expected from the particular features of its propagation it is sufficiently uniform in its essential characteristics.
- Stable, if its essential characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.
- A new variety shall not be registered under this Act if the denomination given to such variety:-
 - Is not capable of identifying such variety; or
 - Consists solely of figures; or
 - Is liable to mislead or to cause confusion concerning the characteristics, value identity to such variety of the identity of breeder of such variety; or
 - Is not different from every denomination which designates a variety of the same botanical species or of a closely related species registered under this Act; or
 - Is likely to deceive the public or cause confusion in the public regarding the identity of such variety; or
 - Is likely to hurt the religious sentiments respectively of any class or section of the citizens of India; or
 - Is prohibited for use as a name or emblem for any of the purposes mentioned in the **Emblems and Names (Prevention of Improper Use) Act, 1950**; or
 - Is comprised of solely or partly of geographical name.
- Every applicant shall assign a single and distinct denomination to a variety with respect to which he is seeking registration under this Act in accordance with the

regulations. The Authority shall, having regard to the provisions of any international convention or treaty to which India has become a party, make regulations governing the assignment of denomination to a variety.

- Every application for registration shall:-
- Be with respect to a variety;
- State the denomination assigned to such variety by the applicant;
- Be accompanied by an affidavit sworn by the applicant that such variety does not contain any gene or gene sequence involving terminator technology;
- Be in such form as may be specified by regulations;
- Contain a complete passport data of the parental lines from which the variety has been derived along with the geographical location in India from where the genetic material has been taken and all such information relating to the contribution, if any, of any farmer, village community, institution or organization in breeding, evolving or developing the variety;
- Be accompanied by a statement containing a brief description of the variety bringing out its characteristics of novelty, distinctiveness, uniformity and stability as required for registration;
- Be accompanied by such fees as may be prescribed;
- Contain a declaration that the genetic material or parental material acquired for breeding, evolving or developing the variety has been lawfully acquired; and
- Be accompanied by such other particulars as may be prescribed.
- Every applicant shall, along with the application for registration made under this Act, make available to the Registrar such quantity of seed of a variety for registration of which such application is made, for the purpose of conducting tests to evaluate whether seeds of such variety along with parental material conform to the standards as may be specified by regulations. The applicant shall deposit such fees as may be prescribed for conducting tests so referred.
- Any person may, within three months from the date of the advertisement of an application for registration on payment of the prescribed fees, give notice in writing in the prescribed manner, to the Registrar of his opposition to the registration. The opposition may be made on any of the following grounds:-

- That the person opposing the application is entitled to the breeder's right as against the applicant; or
- That the variety is not registerable under this Act; or
- That the grant of certificate of registration may not be in public interest; or
- That the variety may have adverse effect on the environment.
- The Registrar shall serve a copy of the notice of opposition on the applicant for registration and, within two months from the receipt by the applicant of such copy of the notice of opposition, the applicant shall send to the Registrar in the prescribed manner a counter-statement of the grounds on which he relies for his application, and if he does not do so, he shall be deemed to have abandoned his application.
- The certificate of registration issued under the Act shall be valid for nine years in the case of trees and vines and six years in the case of other crops and may be reviewed and renewed for the remaining period on payment of such fees as may be fixed by the rules made in this behalf subject to the condition that the total period of validity shall not exceed:-
 - In the case of trees and vines, eighteen years from the date of registration of the variety;
 - In the case of extant variety, fifteen years from the date of the notification of that variety by the Central Government under the **Seeds Act, 1966**; and
 - In other cases, fifteen years from the date of registration of the variety.
- No registration of a variety shall be made under this Act in cases where prevention of commercial exploitation of such variety is necessary to protect public order or public morality or human, animal and plant life and health or to avoid serious prejudice to the environment.

Under the Act, the farmers' rights are:

- A farmer who has bred or developed a new variety shall be entitled for registration and other protection in like manner as a breeder of a variety;
- The farmers' variety shall be entitled for registration;

- A farmer who is engaged in the conservation of genetic resources of land races and wild relatives of economic plants and their improvement through selection and preservation shall be entitled in the prescribed manner for recognition and reward from the Gene Fund.
- A farmer shall be deemed to be entitled to save, use, sow, resow, exchange, share or sell his farm produce including seed of a variety protected under this Act in the same manner as he was entitled before the coming into force of this Act.
- At any time, after the expiry of three years from the date of issue of a certificate of registration of a variety, any person interested may make an application to the Authority alleging that the reasonable requirements of the public for seed or other propagating material of the variety have not been satisfied or that the seed or other propagating material of the variety is not available to the public at a reasonable price and pray for the grant of a compulsory licence to undertake production, distribution and sale of the seed or other propagating material of that variety. The duration of the compulsory licences may vary from case to case keeping in view the gestation periods and other relevant factors but in any case it shall not exceed the total remaining period of the protection of that variety.
- A right established under this Act is infringed by a person:-
- Who, not being the breeder of a variety registered under this Act or a registered agent or a registered licensee of that variety, sells, exports, imports or produces such variety without the permission of its breeder or within the scope of a registered licence or registered agency without permission of the registered licensee or registered agent, as the case may be;
- Who uses, sells, exports, imports or produces any other variety giving such variety, the denomination identical with or deceptively similar to the denomination of a variety registered under this Act in such manner as to cause confusion in the mind of general people in identifying such variety so registered.
- Any person who applies any false denomination to a variety or indicates the false name of a country or place or false name and address of the breeder of a variety registered under this Act in the course of trading such variety, shall be punishable with imprisonment or with fine or with both.

2.3.6 Laws relating to Geographical Indications (GIs)

The **Geographical Indication of Goods (Registration and Protection) Act, 1999** has been enacted to provide for the registration and better protection of geographical indications relating to goods. According to the Act, the term 'geographical indication' (in relation to goods) means "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".

Under the Act, the **Controller-General of Patents, Designs and Trade Marks** under **Department of Industrial Policy and promotion, Ministry of Commerce and Industry** is the 'Registrar of Geographical indications'. The Controller General of Patents, Designs & Trade Marks directs and supervises the functioning of the Geographical Indications Registry (GIR).

The main provisions of the Act are:

- The 'Controller-General of Patents, Designs and Trade Marks' appointed under the **Trade Marks Act, 1999**, shall be the Registrar of Geographical Indications. Also, there shall be a 'Geographical Indications Registry' for the purpose of facilitating the registrations of geographical indications, at such place as the Central Government may, by notification in the Official Gazette, specify.
- For the purposes of this Act, a record called the Register of Geographical Indications shall be kept at the Head office of the Geographical Indications Registry, wherein shall be entered all registered geographical indications with the names, addresses and descriptions of the proprietors, the names, addresses and descriptions of authorized users and such other matters relating to registered geographical indications as may be prescribed.

- A Geographical Indication may be registered in respect of any or all of the goods, comprised in such class of goods as may be classified by the Registrar and in respect of a definite territory of a country, or a region or locality in that territory, as the case may be. The Registrar shall classify the goods, as far as may be, in accordance with the International classification of goods for the purposes of registration of geographical indication.

Prohibition of registration of those geographical indications:

- The use of which would be likely to deceive or cause confusion; or
- The use of which would be contrary to any law for the time being in force; or
- Which comprises or contains scandalous or obscene matter; or
- Which comprise or contains any matter likely to hurt the religious susceptibilities of any class or section of the citizens of India; or
- Which would otherwise be disentitled to protection in a court; or
- Which are determined to be generic names or indications of goods and are, therefore, not or ceased to be protected in their country of origin, or which have fallen into disuse in that country; or
- Which although literally true as to the territory, region or locality in which the goods originate, but falsely represent to the persons that the goods originate in another territory, region or locality, as the case may be.
- Any association of persons or producers or any organization or authority established by or under any law for the time being in force representing the interest of the producers of the concerned goods, who are desirous of registering a geographical indication in relation to such goods, shall apply in writing to the Registrar in such form and in such manner and accompanied by such fees as may be prescribed for the registration of the geographical indication. A single application may be made for registration of a geographical indication for different classes of goods and fee payable thereof shall be in respect of each such class of goods.

The application shall contain:

- Statement as to how the geographical indication serves to designate the goods as originating from the concerned territory of the country or region or locality in the country, as the case may be, in respect of specific quality, reputation or other characteristics of which are due exclusively or essentially to the geographical, environment, with its inherent natural and human factors, and the production, processing or preparation of which takes place in such territory, region or locality, as the case may be;
- The class of goods to which the geographical indication shall apply;
- The geographical map of the territory of the country or region or locality in the country in which the goods originate or are being manufactured;
- The particulars regarding the appearance of the geographical indication as to whether it is comprised of the words or figurative elements or both;
- A statement containing such particulars of the producers of the concerned goods, if any, proposed to be initially registered with the registration; and
- Such other particulars as may be prescribed.
- Any person may, within three months from the date of advertisement or re advertisement of an application for registration or within such further period, not exceeding one month, in the aggregate, give notice in writing in the prescribed manner to the Registrar, of opposition to the registration. The Registrar shall serve a copy of the notice on the applicant for registration and, within two months from the receipt by the applicant of such copy of the notice of opposition, the applicant shall send to the Registrar in the prescribed manner a counter-statement of the grounds on which he relies for his application, and if he does not do so, he shall be deemed to have abandoned his application.
- The registration of a geographical indication shall be for a period of ten years, but may be renewed from time to time in accordance with the provisions of the Act. The registration of an authorized user shall be for a period of ten years or for the period till the date on which the registration of the geographical indication in respect of which the authorized user is registered expires, whichever is earlier.

- A registered geographical indication is infringed by a person who, not being an authorized user thereof.
- Uses such geographical indication by any means in the designations or presentation of goods that indicates or suggests that such goods originate in a geographical area other than the true place of origin of such goods in a manner which misleads the persons as to the geographical origin of such goods; or
- Uses any geographical indication in such manner which constitutes an act of unfair competition including passing off in respect of registered geographical indication;
- Uses another geographical indication to the goods which, although literally true as to the territory, region or locality in which the goods originate, falsely represents to the persons that the goods originate in the territory, region or locality in respect of which such registered geographical indication relates.
- Any person who:- (i) falsifies any geographical indication; or (ii) falsely applies to goods any geographical indication; or (iii) makes, disposes of, or has in his possession, any die, block, machine, plate or other instrument for the purpose of falsifying or of being used for falsifying, a geographical indication; or (iv) tampers with, alters or effaces an indication of origin which has been applied to any goods to which it is required to be applied under the Act, shall be punishable with imprisonment and with fine.

2.3.7 Protection of Undisclosed Information (Trade Secrets or Know-how)

Know-how is another important form of intellectual property generated by R&D institutions that does not have the benefit of patent or copyright protection. Such know-how is kept undisclosed as trade secrets. A Trade Secret or undisclosed information is any information that has been intentionally treated as secret and is capable of commercial application with an economic interest. It protects information that confers a competitive advantage to those who possess such information, provided such information is not readily available with or discernible by the competitors. They include technical data, internal processes, methodologies, survey methods, a new invention for which a patent application has not yet been filed, list of customers,

process of manufacture, techniques, formulae, drawings, training material, source code, etc. It therefore becomes imperative to strengthen the confidentiality around the trade secret by ensuring that contractual obligations are enforced on persons who are allowed to use the trade secret, especially, when it is licensed to a third party. Since there is no documentary evidence such as a Letters Patent or a Copyright registration or a Trademark Registration to prove that the trade secret was originally created by the proprietor, it is essential to maintain proof of creation of trade secret either by mailing the information to oneself and retaining postmarked and sealed envelope or by depositing a copy of the information with a third party that would maintain a dated copy.

Trade secret remains confidential for indefinite period of time as per the will of the proprietor provided the security and its confidentiality is not breached. There is no specific legislation regulating the protection of trade secrets in India. India follows common law approach of protection and all matters relating to it are generally covered under the **Contract Act, 1872**. So, if the information constituting trade secret is leaked, legal action can be brought against the parties who have leaked it under the Law of Contracts. However, in such a case the protection of trade secret will be lost and it becomes available in public domain. For further details on Contract Act, 1872, refer to '**Contract Law**' in the Sub-section "**Industrial Acts and Legislation**".

CHAPTER III: NATIONAL INSTITUTE FOR INTELLECTUAL PROPOERTY RIGHTS (NIIPR)

3.1 RATIONALE

National Institute for Intellectual Property Rights (NIIPR) will be established as an autonomous Policy Research Institute under the Department of Higher Education, Ministry of Human Resource Development, Government of India. NIIPR envisages specializing in policy research and development cooperation in the field of intellectual property rights. Further, the Institute will promote multi-stakeholder collaborations in the field of IPRs. It will provide policy inputs to the Government of India for formulating legislations and international cooperation agreements. The Institute will serve as a common platform for policy dialogue among developing countries on IPR issues. The Institute will work as a 'Hub and Spoke' model to connect and coordinate with the MHRD IPR Chairs / other institutions working in the field of IPR.

3.2 VISION

- To be an 'Institute of Excellence' in policy research and advocacy of IPR.

3.3 MISSION

- To provide effective research and policy inputs in the field of IPR

3.4 OBJECTIVES

The major objectives of the IUC-IPR would be as under:-

- To serve as a 'think-tank' to provide policy inputs on IPR at regional, national and international level.
- To work on inter-disciplinary research on IP involving multi-stakeholders.
- To focus on IPR trade related issues and their impact on socio-economic aspects at regional, national and international levels.
- To disseminate information on social, legal, ethical and economic aspects of IPR.
- To promote, integrate and develop 'Academia – Industry' knowledge, structures, models and mechanisms associated with IPR.
- To coordinate the activities of 'MHRD - IP Chairs' on behalf of Ministry of HRD.

- To engage in capacity building and providing inputs on IPR to policy makers including judiciary.

3.5 FUNCTIONS

In order to realize the objectives mentioned above, the IUC-IPR shall perform the following functions

- To undertake inter-disciplinary research and provide necessary inputs to the State and Central Governments in formulating the policies in IPRs.
- To establish a repository of IPR resources in collaboration with various academic institutions, organizations, Chairs and other stakeholders engaged in IPRs.
- To offer visiting fellowships to encourage multi-disciplinary research.
- To organize and participate in Seminars, Conferences and awareness programmes.
- To undertake consultancy and conduct training in IPR to assist various stakeholders.
- To forge links with national and international IP research institutions/ organizations.
- To act as a nodal Institute to interface various Ministries/Departments of the Government on IP matters.
- To undertake review on the performance of MHRD-IP Chairs on behalf of Ministry of HRD.
- To offer Ph.D programme in IPR in association with reputed Universities/ Institutions in India and abroad.

3.6 VERTICALS OF NIIPR

NIIPRs will mainly focus on

- (i) Research, (ii) Policy and Advocacy, (iii) International Collaborations and (iv) Development Agenda

RESEARCH	POLICY AND ADVOCACY	INTERNATIONAL COLLABORATIONS	DEVELOPMENT AGENDA
Basic research	Policy Awareness and Sensitization	Research Networking with WIPO, WTO, BRICS , NAM, SAARC, ASEAN, International Conclaves	Social Bounds of IP
Applied research	Interactive consultations with Stakeholders		
Case Research	Position Papers and Briefs		Access and Availability
Collaborative Research	Capacity Building		Equity
Publications	Consultancy		Benefit Sharing

3.7 BROAD DELIVERABLES AND OUTCOMES OF THE INSTITUTE

3.7.1 Deliverables

- a) Policy Research Inputs.
- b) Research Publications.
- c) Research Monographs
- d) Treaty Analysis.
- e) Sensitization Programmes.
- f) National and International Conclaves/Conferences / Round Tables.

3.7.2 Outcomes

The outcomes of proposed Institute are given below.

- **Research on thrust areas:** Preparation of Occasional Briefs/Annual Briefs and Discussion papers/Books/Journals.
- **Knowledge Management in IPRs:** Documenting and mapping the competencies on various IP segments.
- **IPR Online Resources:** Online Documents relating to IPR policy inputs.
- **National/International Conferences/Public Debate and Distinguished lectures:**
To provide a common platform for deliberations on contemporary IPR practices, issues and critical analysis.

3.8. LINKAGES

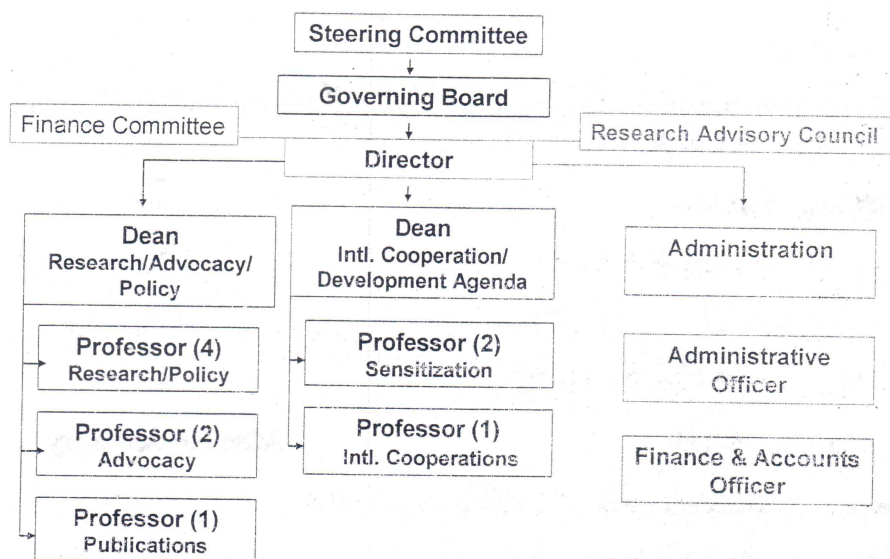
The Institute will establish linkages and network with

- MHRD IP Chairs
- Industry Associations (National & International)
- Civil Society Advocacy Groups
- Public Institutes with IPR research capacity

CHAPTER IV: ORGANIZATIONAL STRUCTURE AND FUNDING

4.1 THE ORGANOGRAM

ORGANISATIONAL STRUCTURE



a) Steering Committee

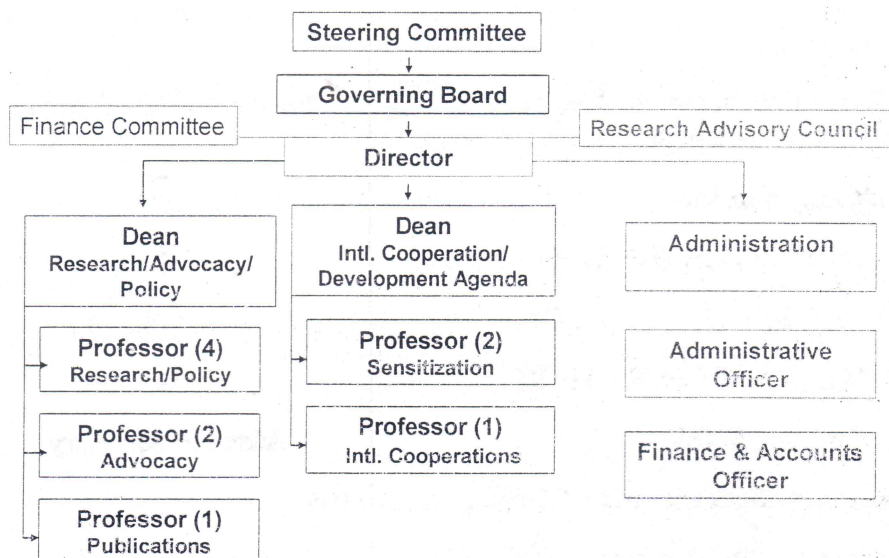
Ex-Officio Members:

- | | |
|--|-----------|
| 1. Secretary, DHE, MHRD, GOI | President |
| 2. Secretary, DIPP, MOC&I, GOI | Member |
| 3. Secretary, Ministry of Envi & Forests, GOI | Member |
| 4. Secretary, Department of Science & Technology, GOI | Member |
| 5. Secretary DIPP, MOC&I, GOI | Member |
| 6. Chairman, UGC, New Delhi | Member |
| 7. Joint Secretary (BP &CR), MHRD | Member |
| 8. Joint Secretary DIPP, MOC&I, GOI | Member |
| 9. Director, (BP&CR), MHRD | Member |
| 10. Vice Chancellor, Delhi University (Host Institution) | Member |
| 11. Director -NIIPR | Member |

CHAPTER IV: ORGANIZATIONAL STRUCTURE AND FUNDING

4.1 THE ORGANOGRAM

ORGANISATIONAL STRUCTURE



a) Steering Committee

Ex-Officio Members:

- | | |
|--|-----------|
| 1. Secretary, DHE, MHRD, GOI | President |
| 2. Secretary, DIPP, MOC&I, GOI | Member |
| 3. Secretary, Ministry of Envi & Forests, GOI | Member |
| 4. Secretary, Department of Science & Technology, GOI | Member |
| 5. Secretary DIPP, MOC&I, GOI | Member |
| 6. Chairman, UGC, New Delhi | Member |
| 7. Joint Secretary (BP &CR), MHRD | Member |
| 8. Joint Secretary DIPP, MOC&I, GOI | Member |
| 9. Director, (BP&CR), MHRD | Member |
| 10. Vice Chancellor, Delhi University (Host Institution) | Member |
| 11. Director -NIIPR | Member |

Nominated Members by the President:

12. Two Members from Governing Board representing NIIPR.
13. Two Vice Chancellors of Universities having MHRD Chairs.
14. Two Directors of IITs/IIMs having MHRD IP Chairs.
15. Two IP Experts from regulatory/Research Councils.

b) Governing Board:

- (i) Chairman:

Governing Board shall be appointed by the President of the Steering Committee as per the procedure given in Rule 33.

Ex-Officio Members

- | | |
|-------------------------------------|------------------|
| (ii) Joint Secretary (BP &CR), MHRD | Member |
| (iii) Joint Secretary (DIPP), GOI | Member |
| (iv) Director, (BP&CR), MHRD | Member |
| (v) Director, NIIPR | Member Secretary |

Nominated Members by the Chairman of the GB

- (vi) Two faculty Members of the NIIPR.
- (vii) Two MHRD IP Chair Professors.
- (viii) Three national and international experts in the field of IPR

c) Research Advisory Council

- | | |
|---------------------|----------|
| (i) Director, NIIPR | Chairman |
|---------------------|----------|

Ex-officio Members:

- | | |
|-----------------------------|---------|
| (ii) Deans, NIIPR | Members |
| (iii) Two Professors, NIIPR | |

Nominated Members by Chairman:

- (iv) Two IP experts.
- (v) One representative each from Ministry of Culture & Arts, Agriculture, Information Technology, Environment and Forests, Science & Technology and External Affairs.

(vi) Two representatives from Civil Society Advocacy Groups.

(vii) Administrative Officer of the NIIPR - Non Member Secretary.

4.2 FUNDING

The Institute will be established with UGC funding for its building infrastructure, salary and non-salary components. The Institute will also strive to create its own corpus by way of consultancy and other grant-in-aids from relevant National/International Organizations to compliment the UGC funding. Required allocation is estimated at **Rs.65.00 crore towards capital expenditure** relating to acquisition of land, buildings (Academic Block, Conference Halls, Guest House, Administrative Block, Faculty Quarters, equipment, IT infrastructure, etc. The **revenue expenditure is estimated at Rs.25.00 crores annually**, towards meeting the operating activities of the proposed Institute.

4.2.1 Staff Requirement:

S No	Particulars	Numbers
1	Director	1
2	Deans	2
3	Professors	10
4	Associate & Assistant Professors	20
5	Research Associates	20
6	Administrative Officer	1
7	Accounts Officer	1
8	Office Assistants/ Accounts Assistants/Stenographers	15
9	Office Support Staff	10

4.2.2 Estimated Expenditure:

A. Non-Recurring (Capital Expenditure).

(Rs in crores)

Sr.No	Budget Heads	Total
1	Construction of Building, Guest House (including development of infrastructure)	49.75
2	Technology Institute which shall include modern High Quality Video Conferencing facilities, VSA.T equipment etc.,	5.00
3	Infrastructure for web development, Hosting, streaming & maintenance of Web Portal	2.00
4	Digital library	3.00
5	e-Conference Halls	1.50

6	Infrastructure for Research, Development and other activities	3.00
7	Office furniture	0.75
	Total	65.00

B. Recurring Expenditure Per Annum.

(Rs in crores)

Sr.No	Expenditure Head	Per annum
A	SALARIES	9.35
B	MAINTENANCE AND OFFICE EXPENDITURTE	
1	Electricity charges	0.50
2	Water charges	0.15
3	Telephone, lease line, V-Sat	0.50
4	Library	1.00
5	Publications	2.00
6	Research, Capacity building, seminars, professional development	3.00
7	International and national cooperation	2.00
8	TA and DA.	1.50
9	Stationery & Postage	0.50
10	Board, Council meetings, Audit expenses, etc.	0.50
11	AMC, Maintenance of Facilities	1.50
12	Housekeeping and contingencies	2.50
	TOTAL	25.00

ANNEXURE

MEMORANDUM OF ASSOCIATION AND RULES

**NATIONAL INSTITUTE FOR INTELLECTUAL PROPERTY RIGHTS
(NIIPR)**

MEMORANDUM OF ASSOCIATION

1. Name of the Society

The name of the Society established by the Department of Higher Education, Ministry of Human Resource Development (MHRD), Government of India (GOI) shall be "National Institute for Intellectual Property Rights".

2. Registered Office of the Society

The Registered Office of the Society shall be at Delhi University, New Delhi.

3. The objectives of National Institute for Intellectual Property Rights (NIIPR)

The major objectives of the NIIPR would be as under:-

- To serve as a 'think-tank' to provide policy inputs on IPR at regional, national and international level.
- To work on inter-disciplinary research on IP involving multi-stakeholders.
- To focus on IPR trade related issues and their impact on socio-economic aspects at regional, national and international levels.
- To disseminate information on social, legal, ethical and economic aspects of IPR.
- To promote, integrate and develop 'Academia – Industry' knowledge, structures, models and mechanisms associated with IPR.
- To coordinate the activities of 'MHRD - IP Chairs' on behalf of Ministry of HRD.
- To engage in capacity building and providing inputs on IPR to policy makers including judiciary.

4. Functions of the NIIPR

In order to realize the objectives mentioned above, the NIIPR shall perform the following functions

- a) To undertake inter-disciplinary research and provide necessary inputs to the State and Central Governments in formulating the policies in IPRs.

- b) To establish a repository of IPR resources in collaboration with various academic institutions, organizations, Chairs and other stakeholders engaged in IPR.
- c) To offer visiting fellowships to encourage multi-disciplinary research.
- d) To organize and participate in Seminars, Conferences and awareness programmes.
- e) To undertake consultancy and conduct training in IPR to assist various stakeholders.
- f) To forge links with national and international IP research institutions/ organizations.
- g) To act as a nodal Institute to interface various Ministries/Departments of the Government on IP matters.
- h) To undertake review on the performance of MHRD-IP Chairs on behalf of Ministry of HRD.
- i) To offer Ph.D programme in IPR in association with reputed Universities/Institutions in India and abroad.

5. The Governing Board of the NIIPR will be the Board under the Rules and Regulations of the said NIIPR.

- a) Certified that the Association is formed with no profit motive and no commercial activities are involved in its working.
- b) Certified that the Association is not engaged in agitational activities to ventilate grievances.
- c) Certified that the Office bearer's signatures are genuine and correct.

6 The first members of the NIIPR Governing Steering Committee shall be:-

- | | |
|-------------------------------------|----------------|
| 16. Secretary, DHE, MHRD, New Delhi | President |
| 17. Secretary, DIPP, MOC, New Delhi | Vice President |
| 18. Joint Secretary (BP &CR), MHRD | Member |
| 19. Joint Secretary, DIPP, GOI | Member |
| 20. Director, (BP&CR), MHRD | Member |

21. Vice Chancellor, Delhi University (Host Institution) Member

S. No	Name	Designation in the Society
1	Secretary, DHE, MHRD, New Delhi	Chairman
2	Secretary, DIPP, MOC, New Delhi	
3	Joint Secretary (BP & CR), MHRD	
4	Joint Secretary (DIPP), GOI	
5	Director, (BP&CR), MHRD	
6	Vice Chancellor, Delhi University (Host Institution)	

The other Members of the Steering Committee as provided in the Rules and Regulations of the Institute will be nominated later

7.

We, the several persons whose names and addresses are given below, having associated ourselves for the purposes described in the Memorandum of Association, do hereby subscribe our names to the Memorandum of Association and set our several and respective hands hereunto and ourselves into a Society under Societies Registration Act, 1860.

S. No	Name	Occupation	Signature
1			
2			
3			
4			
5			
6			
7			
8			

A copy of the Rules of the Society certified to be correct copy is filed along with the Memorandum of Association duly signed by the members:

RULES OF THE NATIONAL INSTITUTE - INTELLECTUAL PROPERTY RIGHTS (NIIPR)

1. These Rules may be called the Rules of NIIPR.
2. The registered office of NIIPR will be at Delhi University, New Delhi.

3. Interpretation:

In these Rules, the following words and abbreviations shall have the meanings given to them unless is any contrary in the subject context.

- (a) "The NIIPR" shall mean Society.
- (b) "The Society" shall mean the NIIPR society.
- (c) "The Central Government" shall mean the Administrative concerned with the higher education.
- (d) "The Steering Committee" shall mean the Steering Committee of the NIIPR.
- (e) "The Governing Board" shall mean the Governing Board of the NIIPR
- (f) "The Finance Committee shall mean the Finance Committee of the NIIPR
- (g) "The Research Advisory Council" means the Research Advisory Council of the NIIPR
- (h) "The President" shall mean the President of the Steering Committee.
- (i) "The Chairman" shall mean the Chairman of the Governing Board of the Institute.
- (j) "The Secretary" shall mean the Secretary of the Governing Board appointed under the rules
- (k) "The Director shall mean the Director of NIIPR approved under rules.
- (l) Words indicating the singular number shall also include the plural number and vice versa.
- (m) In the absence or ambiguity of any definition contained under this Clause, the interpretation of the Institute shall be treated as final.

4. Membership of the NIIPR

- (a) The NIIPR shall consist of all the members of the Steering Committee set up under the rules.

- (b) The NIIPR shall maintain a register of members giving their names and addresses and the same shall be open to inspection by the members. Every member of the Steering Committee shall sign the register.
- (c) A member of the NIIPR shall cease to be a member: (i) on death, (ii) on resignation, (iii) upon being declared insolvent or of unsound mind. (iv) on conviction in criminal offence involving moral turpitude, (v) on his/her failure to attend three consecutive meetings of the Steering Committee.
- (d) Resignation from the membership of Steering Committee shall be tendered to the President and will take effect from the date of acceptance.
- (e) The NIIPR shall function notwithstanding any vacancy in its SC and no act or proceedings of the Institute shall be invalid merely by reasons of such vacancy or of any defect in appointment of any of its members.

5. Authorities of the Institute

The following shall be the authorities and officers of the Institute:

- (i) The Steering Committee
- (ii) The Governing Board
- (iii) The President
- (iv) The Chairman
- (v) The Director
- (vi) Research Advisory Steering Committee
- (vii) Such other authorities as may be constituted/appointed by the Governing Board.

5.1 Steering Committee

Ex-Officio Members:

- | | |
|---|-----------|
| 1. Secretary, DHE, MHRD, GOI | President |
| 2. Secretary, DIPP, MOC&I, GOI | Member |
| 3. Secretary, Ministry of Envi & Forests, GOI | Member |
| 4. Secretary, Department of Science & Technology, GOI | Member |

5. Secretary DIPP, MOC&I, GOI	Member
6. Chairman, UGC, New Delhi	Member
7. Joint Secretary (BP &CR), MHRD	Member
8. Joint Secretary DIPP, MOC&I, GOI	Member
9. Director, (BP&CR), MHRD	Member
10. Vice Chancellor, Delhi University (Host Institution)	Member
11. Director -NIIPR	Member

Nominated Members by the President:

12. Two Members from Governing Board representing NIIPR.
13. Two Vice Chancellors of Universities having MHRD Chairs.
14. Two Directors of IITs/IIMs having MHRD IP Chairs.
15. Two IP Experts from regulatory/Research Councils.

5.2 President

(a) The President of the Steering Committee shall preside at all meetings of the Steering Committee. In his/her absence, the Vice-President shall preside and in the absence of both, the senior-most member of the Steering Committee will act as the pro-term Chairman.

(b) Meeting of the Steering Committee shall be called by the Member-Secretary under the direction of the President, and in case of a vacancy of the President, the Vice-President, or in case both positions are vacant, by the senior most member of the Steering Committee.

(c) The President may convene a special meeting of the Steering Committee as and when he/she thinks fit or direct the Member Secretary to call such a meeting.

(d) In case of tie of votes, the President will have the power to vote, whether or not he/she has previously voted on the question.

(e) The President shall perform such other duties as may be specified by rules.

5.3 Member Secretary

(a) The Director of NIIPR shall be the Member-Secretary of the Steering Committee.

(b) Meeting of the Steering Committee shall be called by the Member Secretary.

(c) The Member Secretary may call a special meeting of the Steering Committee.

(d) The Member Secretary of the Steering Committee shall issue notice of all meetings of the Steering Committee.

(e) The Member Secretary of the Steering Committee shall perform such functions and other duties as provided in the Rules, and as may be decided by a resolution of the Steering Committee.

5.4 Meeting

The Steering Committee shall hold an Annual meeting at such time, date and place as may be determined by the President to consider inter alia the Annual Report of the Society, and the Audited Statement of Accounts together with the Auditor's Report thereon.

6. Requisitioned Meetings

The Secretary shall, in consultation with the President, also call, a meeting of the Steering Committee on the requisition given to him/her in writing by any four members of the Steering Committee specifying the purpose for which the meeting is desired to be held.

7. Notices of Meetings

(i) The President or the Secretary of the Steering Committee, under the directions of the President shall issue notices of all meetings of the Society to members of the Steering Committee giving ten clear days before the appointed date for such meeting. The notice shall specify the time and place of the meeting and can be served personally or by post under certificate of posting/speed post/ courier.

(ii) Non-receipt of the notice by any member shall not invalidate the proceedings of the meetings.

8. Quorum

(i) One-third of the members of the Steering Committee present shall form a quorum at any meeting of the Steering Committee.

(ii) If there is no quorum at any meeting it shall stand adjourned and members shall meet after half an hour. At an adjourned meeting, no quorum shall be necessary. However, at such adjourned meeting no other business, except that mentioned in its agenda, shall be transacted.

9. Resolution by Majority

(i) Every resolution or question submitted to any meeting of the Steering Committee shall be decided by a majority of the members present at such meeting and voting on the question

(ii) Each member shall have the right to give one vote but in the event of an equality of votes, the President of such meeting shall have a second or casting vote, whether or not he/she previously voted on the question.

(iii) In case of difference of opinion amongst the members of the Steering Committee on a question of sufficient importance, the opinion of the majority shall prevail. The ruling of the President in regard to all questions of procedures shall be final.

10. Resolution by Circulation

Any business, which may be necessary for the Steering Committee to perform, may be performed by a resolution in writing circulated among all its members. Any such resolution, so circulated and approved by a majority of the members signing shall be as effectual and binding as if such resolution had been passed at a meeting of the Steering Committee, provided that at least five members of the Steering Committee have recorded their approval of the resolution.

11. Minutes Book

1. The Secretary shall maintain a minute's book for recording the proceedings of the Steering Committee in which shall appear.

(a) A clear report of the proceedings of each meeting of the Steering Committee.

(b) A copy of each agenda item on which a decision has been arrived at.

2. The minutes of the Meeting shall be read and confirmed at the next meeting and signed by the President of such next meeting.

3. In case of difference of opinion at the time of confirmation of the proceedings of a previous meeting, the minutes shall be confirmed in accordance with the decision of the majority of the members present at such

previous meeting and if the members are equally divided in their opinion, the President of the meeting shall give his/her casting vote, even if he/she has previously cast his/her vote.

12. The Governing Board

The affairs of the Institute shall be managed, administered, directed and controlled as per Rules and Bye-Laws, by the Governing Board. The Bye-laws shall be framed from time to time by the Governing Board circulated to the members of the Steering Committee and then sent to the DPE, MHRD for concurrence. The Governing Board of the Institute for the purpose of Societies Registration Act XXI of 1860 shall consist of the following members:

(i) Chairman:

Governing Board shall be appointed by the President of the Steering Committee as per the procedure given in Rule 33.

Ex-Officio Members

- | | |
|-------------------------------------|------------------|
| (ii) Joint Secretary (BP &CR), MHRD | Member |
| (iii) Joint Secretary (DIPP), GOI | Member |
| (iv) Director, (BP&CR), MHRD | Member |
| (v) Director, NIIPR | Member Secretary |

Nominated Members by the Chairman of the GB

- (vi) Two faculty Members of the NIIPR
- (vii) Two MHRD IP Chair Professors.
- (viii) Three national and international experts in the field of IPR

13. Terms of Membership of the Governing Board

A member of the Governing Board shall cease to be a member in case he/she:

- (i) Resigns (to be effective from the date of acceptance by the Chairman);
- (ii) Dies;
- (iii) Is declared of unsound mind;
- (iv) Is declared insolvent;
- (v) Is convicted of criminal offence involving moral turpitude;

- (vi) Is not permitted by his/her employer to serve on the Governing Board;
- (vii) Proceeds abroad for a continuous period exceeding six months and
- (viii) Fails to attend three consecutive meetings;
- (ix) Leaves India for purpose of residing abroad;
- (x) Becomes, in opinion of the Steering Committee/Governing Board unfit or physically incapable to act or accepts a position which is inconsistent with his/her position as member.

14. Tenure of Nominated Members

The first Steering Committee and Governing Board shall be nominated by the Secretary, Department of Higher Education, MHRD. The following shall be the procedure for re-nomination of members of the first Steering Committee and Governing Board.

(i) 1/3rd of the members to be decided by the Secretary, Department of Higher Education, MHRD, would have the term of office for one year only and they would be re-nominated for a second term.

(ii) In the second year one half of the remaining members (i.e. excluding 1/3rd of the total members who are re-nominated for a second term) to be decided by the Secretary, Department of Higher Education, MHRD, would complete the term of office and they shall be re-nominated for the second term. The remaining 1/3rd of the total members would retire at the completion of the first term.

The term of office of the nominated members shall be three years and 1/3rd of them would retire at the end of their term. No nominated member shall have more than two consecutive terms.

15. Tenure of Ex-Officio Member

Whenever a member hold the membership of the Steering Committee and/or Governing Board by virtue of an office held by him/her membership shall terminate when he/she ceases to hold that office and the vacancy so caused shall be filled by his/her successor to that office.

16. Members not to receive any Remuneration

The members of the Steering Committee and Governing Board shall not be entitled to any remuneration from the NIIPR excepting the full-time Director of the NIIPR.

The NIIPR members of the Steering Committee or Governing Board or any Committee appointed by it, shall be paid by the Institute, such travelling and daily allowances and honorarium as may be provided for in the Bye-laws.

17. Members by Name to Attend Meeting

A person holding the membership of the Steering Committee and/or Governing Board will attend meeting himself/herself.

FUNCTIONS AND POWERS OF THE GOVERNING BOARD

18. The Governing Board shall generally carry out and pursue the objects of the NIIPR as set forth in the Memorandum of its Association. The Management of all the affairs and funds of the NIIPR shall for this purpose vest in the Governing Board.
19. The Governing Board shall exercise all the powers of the Institute; subject nevertheless to such limitations as the Department of Higher Education, MHRD may from time to time impose in respect of the expenditure from the funds of the NIIPR.
20. In particular and without prejudice to the generality of the foregoing provisions, the Governing Board shall have the power subject to the provisions of these rules to:
 - (i) Manage, administer and review the affairs of the NIIPR and to conduct all administrative affairs of the Institute not otherwise provided for:
 - (ii) Consider the annual and supplementary budgets placed before it from time to time and pass them with such modifications as the Governing Board may think fit and forward them to the Department of Higher Education, MHRD for approval:
 - (iii) Create and abolish post, the emoluments structures of various posts, i.e. adoption of pay scales, allowances and revision thereof and creation of posts above a specified scale, subject to the approval of the Department of Higher Education, MHRD:
 - (iv) Appoint various academic and administrative and other Officers and staff of the NIIPR for those posts for which the Governing Board is the appointing authority, to fix their remuneration, terms and conditions of service, to enforce discipline and to impose penalty in accordance with the rules and the bye-laws: if action is to be taken in an emergency, the Director can take necessary action and subsequently report to the Governing Board:

(v) Enter into arrangements with the Central Government, the State Governments, and other public or private organizations or individuals within the country, for securing and accepting grant-in-aid, endowments, donations or gifts to the NIIPR on mutually agreed terms and conditions, provided that such terms and conditions, if any, shall not be contrary to, inconsistent or in conflict with the objects of the NIIPR, provided, for any such arrangement with foreign and/or international agencies or organizations, the prior approval of the Department of Higher Education, MHRD shall be obtained:

(vi) Take over, acquire by purchase, gifts, exchange, lease or hire or otherwise; from Central Government, the State Governments and other public or private bodies; or individuals, institutions, libraries, laboratories, immovable properties, endowment or other funds together with any attendant obligations and engagements not inconsistent with the objects of the NIIPR provided, for any such activity involving foreign and/or international agency or organization, the prior approval of the Department of Higher Education, MHRD shall be obtained:

(vii) Appoint Committee or Sub-Committee for such purposes and with such powers and for such period and on such terms as it may deem fit and dissolve any of them:

(viii) Delegate such administrative and financial powers as it may think proper to the Director and such other officers of the NIIPR as may be considered necessary, and to frame, amend or repeal Bye-laws, for the administration and management of the following matters except 22(iii) which requires the approval of the Steering Committee and concurrence of the Department of Higher Education, MHRD:

a) Preparation and sanction of budget estimates, sanctioning of expenditure, entering into the execution of contracts investment of the funds of the NIIPR, sale or alteration of such investments and maintenance of account and their audit;

b) Procedure for recruitment of Officers, Faculty and establishment in the service of the NIIPR;

c) Terms and tenure of appointments, emoluments, allowances, rules of discipline and other condition of the establishment of the NIIPR;

d) Terms and conditions governing the grant of scholarships, fellowships and grant-in-aid for research schemes and projects not inconsistent with the objects of the NIIPR;

e) Such other matters as may be necessary for the administration of the affairs and funds of the NIIPR;

(ix) Entertain, adjudicate upon or redress grievances of the employees of the NIIPR who may feel aggrieved;

(x) Transfer or accept transfers of any immovable property on behalf of the NIIPR with the concurrence of the Department of Higher Education, MHRD.

21. Finance Committee

The Finance Committee of the NIIPR shall consist of the following members:

(i) The Chairman of the Governing Board as the Chairman of the Finance Committee

Ex-officio Members:

(ii) The Joint Secretary, (BP&CR) MHRD

(iii) The Financial Advisor, MHRD

(iv) The Director, NIIPR

Nominated Members:

(vi) One Professor from NIIPR to be nominated by the Governing Board

(vii) One member of the Governing Board, nominated by the Chairman, Governing Board

(viii) An Administrative/Accounts Officer of the NIIPR - Non Member Secretary.

22. The Finance Committee will meet at least once a year. It shall make recommendations to the Governing Board on Budget proposals of the NIIPR.

1. Scrutiny of the Audited Accounts and reply to the Annual Audit Report
2. Any other matter on which the Governing Board seeks its recommendations.
3. The minutes of the Finance Committee after approval by the Governing Board, shall be forwarded to the Department of Higher Education, MHRD for examination approval and release of grants.
4. The meeting to consider the revised estimates and the budget for the following year should be convened in August and the statement should reach the Department of Higher Education, MHRD by August 31st.
5. One-third of the members present shall form a quorum at any meeting of the Finance Committee. If there is no quorum at any meeting, it shall stand adjourned and members shall meet after half an hour. At an adjourned meeting no quorum shall be necessary. However, at such adjourned meeting no other business, except that mentioned in its

27. Requisitioned Meeting

1. Four members of the Governing Board may requisition, in writing duly signed by them, the Secretary to call a meeting of the Governing Board at any time and on receipt of such a requisition the Secretary shall forthwith call such a meeting in consultation with the Chairman.
2. The Chairman may himself/herself call or by a requisition in writing signed by him/her, may require the Secretary to forthwith call such a meeting.

28. Notice of Meeting

1. Notice in writing of every Governing Board Meeting shall be delivered or sent through post, Under Certificate of Posting/ speed post/ Courier to each member, at least ten clear days before the date of meeting. In event the Governing Board framing any Rule prescribing some other mode of giving notice, the notice shall be given in accordance with the said Rule.
2. If the notice is served by post Under Certificate of Posting/speed post/courier, non-receipt of the notice by any member shall not invalidate the proceedings of the meeting.

29. Quorum

One-third of the members present shall form the quorum at any meeting of the Governing Board. If there is no quorum at any meeting, it shall stand adjourned and members shall meet after half an hour. At an adjourned meeting, no quorum shall be necessary. However, at such adjourned meeting no other business, except that mentioned in its agenda, shall be transacted.

30. Resolution by Majority

- (i) Every resolution or question submitted to any meeting shall be decided by a majority of the members present at such meeting and voting on the question.
- (ii) Each member shall have the right to give one vote but in the event of an equality of votes, the President of such meeting shall have a second or casting vote. Whether or not he/she has previously voted on the question.
- (iii) In case of difference of opinion amongst the members of the Governing Board on a question of sufficient importance the opinion of the majority shall prevail. The ruling of the Chairman in regard to all questions of procedures shall be final.

31. Resolution by Circulation

Any business, which may be necessary for the Governing Board to perform may be performed by a resolution in writing circulated among all its members and any such resolution so circulated and approved by a majority of the members signing, shall be as effectual and binding as if such resolution had been passed at meeting of the Governing Board, provided that at least four members of the Governing Board have recorded their approval of the resolution

32. Minutes Book

1. The Secretary shall maintain separate Minutes Book for recording the proceedings of the Governing Board's meetings.
2. The minutes of the Meeting shall be read and confirmed at the next meeting and signed by the Chairman of such next meeting.
3. In case of difference of opinion at the time of confirmation of the proceedings of a previous meeting, the minutes shall be confirmed in accordance with the decision of the majority of the members present at such previous meeting and if the members are equally divided in their opinion, the Chairman of the meeting shall give his/her casting vote, even if he/she has previously cast his/her vote.

33. Chairman of the Governing Board

- (i) The Chairman of the Governing Board shall be an eminent academician, in the areas of relevance to the NIIPR nominated by the President of the Steering Committee.
- (ii) The President shall constitute a Search Committee consisting of three eminent academicians, which will submit a panel of three names. The President shall make the nomination of the Chairman of the Governing Board from the names submitted by the Search Committee. Besides the experts in the concerned field, the Search Committee may consult the NIIPR and the Vice-Chancellors.
- (iii) The tenure of the Chairman shall normally be three years which may further be extended by another term of three years.

34. Function and Powers of the Chairman

1. The Chairman will preside over the meetings of the Governing Board and the Finance Committee.
2. The Chairman shall perform such other duties as may be specified by Rules.
3. The Chairman may, with the approval of the Governing Board, delegate such of his/her powers, as may be considered necessary, to the Director.

35. Director

- a) The Director will be the executive authority of the NIIPR and shall have all powers needed for the administration of the NIIPR and shall be responsible for proper administration and control over funds of the NIIPR. He/She will provide leadership on all aspects of the NIIPR functioning.
- b) The Director will be vested with such executive powers as may be necessary or incidental for the purpose of proper administration subject to the rules and the Bye-Laws.
- c) The Director of the NIIPR will be an eminent academician engaged in the field of Intellectual Property Rights. The Director should have a reputed track record of IP teaching/research/publications and International exposure on policy and negotiations. The Director will be appointed by the President of the Steering Committee on the recommendation of the Search Committee. The Search Committee will comprise eminent academicians in the field of IPR.
- d) The term of appointment will be for five years and the term can be renewed for further period of five years at a time or till he attains the age of sixty-five years, whichever is earlier.
- e) The terms and conditions of the services of the Director will be fixed by the Governing Board. The emoluments will be the same as those of the Vice-Chancellors of Central Universities.
- f) When the Director has to leave station for short periods, the routine duties will be performed by one of the senior most faculty of the NIIPR.
- g) When the Director's office is vacant or when the Director is on long leave exceeding two months, the Chairman of the Governing Board may appoint an Acting Director (for a period not exceeding six months at a time) with the approval of the President.
- h) The Director shall subject to the provisions of the Rules and the Byelaws and decisions of the Governing Board, exercise general supervision and disciplinary control over the officers and the staff of the Institute and prescribe their duties and functions.

i) The Director shall coordinate and exercise academic leadership and administrative supervision of all the activities of the Institute.

j) The Director of the NIIPR shall act as the Secretary of the Society. For the purpose of the Societies Registration Act 1860, as applicable in State of Delhi and the Society may sue or be sued in the name of the Secretary of the Society.

36. Staff

1) The Governing Board shall have power to prescribe procedure for recruitment of officers and other employees.

2) The Governing Board shall have power to provide for such benefactions, insurance, provident fund, pension, gratuity, etc. as may be deemed fit for the benefit of technical, administrative and other staff of the Institute in such manner and subject to such conditions as may be prescribed in the rules framed by Government of India from time to time for such working in similar organizations/ departments/laboratories of the Government of India.

3) The Governing Board shall determine the number, qualifications, scales of pay and terms and conditions of service of technical, administrative and other posts and fix emoluments and other term and conditions of service of the employees of the NIIPR, as prescribed in the rules with prior approval of Department of Higher Education, MHRD.

37. Funds of the Institute.

The funds of the Society will consist of the following:-

1) Plan and Non-Plan grants made by the Department of Higher Education, MHRD.

2) Fees and other charges received by the Institute.

3) All money received by the Institute by way of grants, donations or other contributions.

4) Miscellaneous receipts

38. Funds to be Paid to NIIPR Account

All the funds of the NIIPR shall be paid into the Institute's account with Treasuries/ Sub-treasuries including the Reserve Bank of India, branches of the State Bank of India and its subsidiaries and in a Scheduled Nationalized bank and shall not be withdrawn except on cheques signed and

countersigned by such Officers/Faculty as may be duly empowered by the Governing Board.

39. Application of the Property

All income and the property of the NIIPR howsoever derived shall be applied towards the promotion of the objectives thereof as set forth in the Memorandum of Association, nevertheless in respect of the expenditure of grants made by the Department of Higher Education, MHRD to such limitations as the DHE, MHRD may impose. No portion of the income and property of the NIIPR shall be paid or transferred directly or indirectly by way of dividends, bonus or otherwise howsoever by way of profit to the persons who at any time and/or have been members of the NIIPR or to any persons claiming through them or any of them provided that nothing herein contained shall prevent the payment in good faith of remuneration of any member thereof or other persons in return for any service rendered to the Institute.

40. Assets and Funds to vest in the Governing Board

The powers for the creation/utilization/disposal of assets and funds of the Society vest in the Governing Board, with prior approval of Department of Higher Education, MHRD.

41 Accounts and Audit

The Accounts of the NIIPR shall be audited annually by a Chartered Accountant or Accountants as defined in the Chartered Accountants Act, 1949 (XXXII 1949) to be appointed by the Governing Board or by CAG. The nature of audit to be applied and the detailed arrangements to be made to the form of accounts and their maintenance and presentation for audit, shall be prescribed by the bye-laws to be framed by the Governing Board and approved by the Department of Higher Education, MHRD.

42. Annual Report

An Annual Report of the NIIPR and of all work undertaken during the year shall be prepared by the NIIPR and submitted to the Governing Board and Steering Committee for approval and then forwarded to the Department of Higher Education, MHRD for information. The report and the audited accounts of the NIIPR along with the Auditor's Report thereon shall be placed before the Steering Committee.

43. Power to Appoint Sub-Committee

The Governing Board may by resolution appoint such Sub-Committee as it may think fit and may delegate to it such powers and duties as it may specify in the resolution and the Committee or such Sub-Committee may associate with itself, generally or for any particular purpose in such manner as may be determined by its resolutions, any person who is not a member, but whose assistance or advice it may desire. The person associated as aforesaid shall have the right to take part in the discussion in the meeting of the Committee or the Sub-Committee, as the case may be, relevant for that purpose, but he/she shall not have the right to vote in any meeting thereof.

44. Power to Deal with Properties

Subject to law the Governing Board shall have the power to acquire by gifts, purchase, exchange, lease, hire, or otherwise any property movable and/or immovable and to construct, improve, alter, demolish or repair buildings and structures as may be necessary or convenient for carrying on the activities of the Institute, with concurrence of the Department of Higher Education, MHRD.

45. Power to Draw Negotiable Instruments

The Governing Board shall have for the purpose of the Institute, to draw and accept and make and endorse, discount and negotiate Government of India and other Promissory Notes, Bills of exchange, cheques and other negotiable instruments.

46. Power to Receive Monetary Assistance

Subject to Law, the Society can receive monetary assistance from foreign sources including international organizations, for training programmers, research, development of experimental facilities and other, activities with permission of the Department of Higher Education, MHRD/Central Government.

47. Delegation of Power

The Governing Board shall have power, subject to laws to delegate such of its powers as it may deem fit to any Authority or Officer of the Institute.

48. Maintenance of Fund

The Governing Board shall maintain a Fund to which shall be credited funds received from the Department of Higher Education, MHRD and other sources and deposit them in scheduled nationalized banks and invest the surplus in term deposits as prescribed in rules.

49. Utilization of Income

All the incomes, earnings moveable/immoveable properties of the society shall be solely utilized and applied towards the promotion of its aims and objects only, as set forth in the Memorandum of Association, and no profit thereof shall be paid or transferred directly or indirectly by way of dividends, bonus, profits or in any manner whatsoever to the present or past members of the Society, or to any person claiming through anyone or more of the present or the past members. No member of the Society shall have any personal claim on any movable or immovable properties of the Society or make any profits, whatsoever, by virtue of this membership.

50. Alterations and Amendments

a. Subject to the provisions of the Societies Registration Act, and with the prior approval of the Department of Higher Education, MHRD; the Rules and Bye-Laws of the institute may be altered at any time by the Governing Board/Steering Committee by a resolution passed by at least three-fourths majority of the members present and meeting and subject to 3 (n) of the Memorandum.

b. Any resolution on proposed changes in Rules/Bye-laws approved in a Governing Board meeting should be circulated to the Steering Committee members for passing by a majority of members, and then to Department of Higher Education, MHRD for concurrence.

c. With prior approval of the Department of Higher Education, MHRD the Society may alter or extend the purpose for which it is established or be amalgamated either wholly or partially with any other society by following the under mentioned procedure:-

i. The Governing Board shall convene a Special General Meeting of the Members of the Society, according to these Rules for the consideration of the said proposition.

ii. The Governing Board shall submit the proposition for such alteration, extension or amalgamation as aforesaid to the members of the Society in a written or printed report.

- iii. Such report shall be delivered or send by post to every member of the Society ten clear days previous to the said Special General Meeting.
 - iv. Such proposition shall be deemed to have been agreed to if not less than three-fifths of the members of the Society cast their votes in its favors either in person or by proxy at the said Special General Meeting, and
 - v. Such proposition shall be confirmed by the votes of threefifths of members of the Society present at the Second Special General Meeting convened by the Governing Board at an interval of one month after the former meeting.
- d. The Society. May with the prior approval of the Department of Higher Education, MHRD, change its name by a resolution passed by a majority of the members of the Society at any meeting of the Society convened for the purpose.
- e. Any number not less than three-fifths of the members of the Society may determine, with prior approval of the Department of Higher Education, MHRD, that it shall be dissolved and thereupon it shall be dissolved forthwith or at the time then agreed upon. If, on the winding up or dissolution of the Society, there shall remain, after the satisfaction of all debts and liabilities, any property whatsoever, the same shall not be paid to, or distributed among the members of the Society or any of them, but shall be dealt with in such manner as the Department of Higher Education, MHRD may determine.

51. Inspection by Department of Higher Education, MHRD

The Department of Higher Education, MHRD shall have the right to cause an inspection or enquiry by person or persons as it may direct, of the NIIPR, its building, laboratories, Equipments and its working including administration and finance. The Department of Higher Education, MHRD can appoint one or more persons to conduct an enquiry if required and to submit a report. After obtaining the views of the Governing Board, the Department of Higher Education, MHRD may take such action and issue directions, as it considers necessary on any dealt with in the report.

52. Review by Department of Higher Education, MHRD

The Department of Higher Education, MHRD will appoint a Review Committee every five years to review the work done by the organization NIIPR in reference to its objectives. On the basis of such review, Department of Higher Education, MHRD may require NIIPR organization to take such actions as Department of Higher Education, MHRD may direct.

53. Provisions of Societies Registration Act, 1860 to apply

All provisions contained in the Societies Registration Act as applicable to the (NCR) shall apply to this Society.

Sd/-

Sd/-

Sd/-

ESSENTIAL CERTIFICATE

We the undersigned do hereby certify that this is the correct copy of the Rules and Regulations of the said Society.

n) Sd/-