



European Business &
Technology Centre

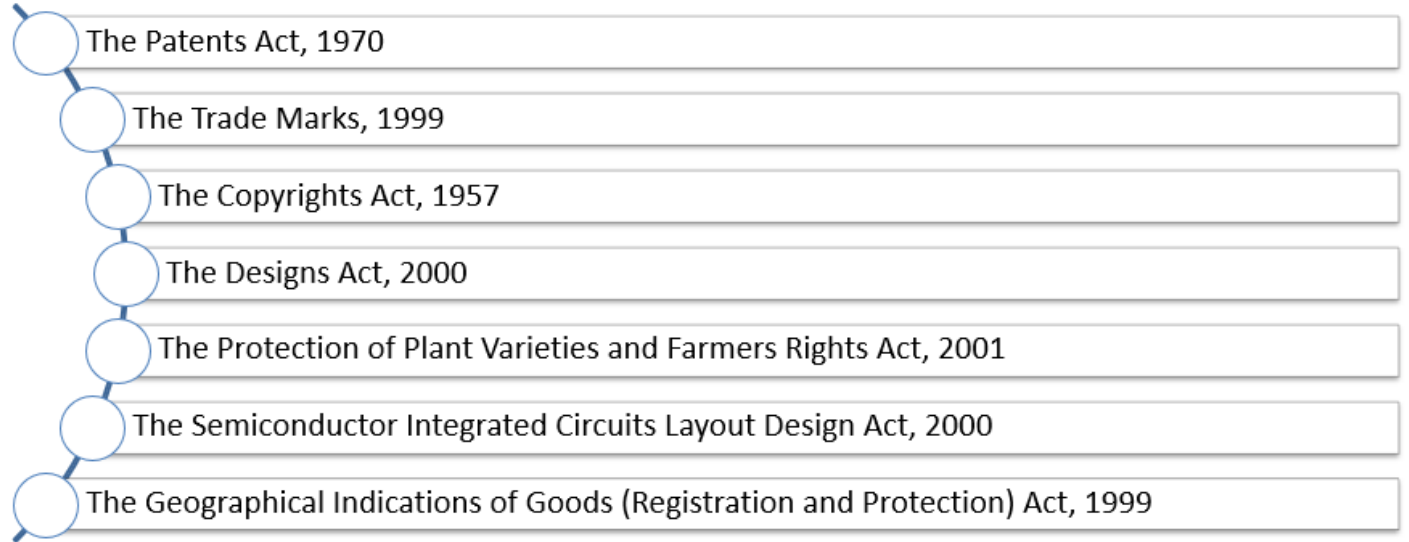
Enabling Europe-India
Collaborations

**OVERVIEW OF PATENT SYSTEM IN INDIA – SOME TIPS & TRICKS
FOR EU APPLICANTS**

December 10, 2020
New Delhi



Present IPR Legislations

- 
- The Patents Act, 1970
 - The Trade Marks, 1999
 - The Copyrights Act, 1957
 - The Designs Act, 2000
 - The Protection of Plant Varieties and Farmers Rights Act, 2001
 - The Semiconductor Integrated Circuits Layout Design Act, 2000
 - The Geographical Indications of Goods (Registration and Protection) Act, 1999

Supporting legislations

- ✓ The Biological Diversity Act, 2002
- ✓ The Information Technology Act, 2000

IDEAL IP PORTFOLIO



**Patents, Designs, Copyrights, Trade Marks, Know How,
Trade Secrets, Confidential Information, Reputation**

TERM OF PROTECTION

Intellectual Property	Protection period (TERM)
Patents	20 yrs from the date of filing.
Copyright	extends through the lifetime of the author and 60 years from the year in which the author dies.
Trademarks	10 years from date of registration, which can be renewed time by time.
Designs	10 years from date of registration, extendible <u>upto</u> 5 years more.
Geographical indication	10 years from date of registration, which can be renewed time by time.
Plant variety protection	trees and vines- 9 <u>yrs</u> , can be renewed after payment of fees <u>upto</u> 18 years from the date of registration.
	Other crops- 6 <u>yrs</u> , can be after payment of fees <u>upto</u> 15 years from the date of registration. In case such crop is extant variety then, 15 years from the date of the notification of that variety by the Central Government under section 5 of the Seeds Act, 1966 (54 of 1966)

PATENT SYSTEM IN INDIA



Statutory protection for 20 years

Member of Paris Convention

Member of PCT – TRIPs compliant

Designated RO/ISA

Follows substantive examination system

Patent filing to grant – ~3-4 years

Four Patent Offices (administered by single body)

WHO CAN APPLY FOR A PATENT & WHEN TO APPLY FOR A PATENT ?

India - 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

By the legal representative of any deceased inventor

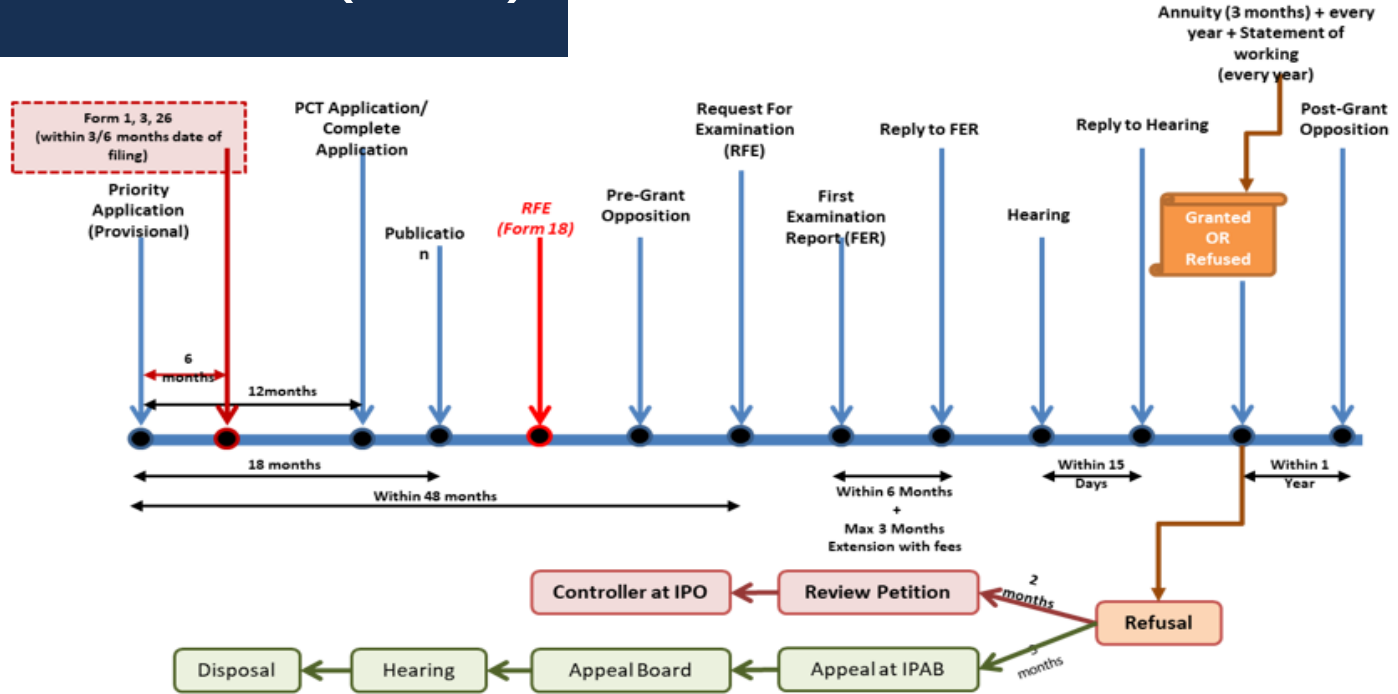
FIRST TO FILE

- Take advantage of Provisional Applications
- File Timely
- Make it Broadest

APPLY FOR A PATENT

- before sending anything for publication in a journal
- Before Public Display- by means of poster presentations

TIMELINES -- FILING TO GRANTING (INDIA)



PECULIAR PROVISIONS- MUST BE CHECK BEFORE ENTERING INDIA / IP

Differentiating Pointers	India
Foreign Filing Permission (FFL)	<ul style="list-style-type: none">• First filing requirement in India for Indian Resident
Annual statement of working (SOW)	<ul style="list-style-type: none">• Required (Form 27)
Compulsory licensing	<ul style="list-style-type: none">• Section 84 deals with Compulsory Licensing
Biodiversity, Law	<ul style="list-style-type: none">• Any invention based on any research or information on a biological resource obtained from India----Need Permission from NBA.
Protection of Trade Secrets & confidentiality Law	<ul style="list-style-type: none">• Courts apply Contract law and principles of equity (no Specific Law)
IP Enforcement- Commercial Court Act	<ul style="list-style-type: none">• Special Courts at District level for high level commercial disputes including all IP matters.• Fast track expedited process in such commercial courts : timelines for disposal of first instance within 2 years

PECULIAR PROVISIONS- MUST BE CHECK BEFORE ENTERING INDIA / IP

Differentiating Pointers	India
Start-up	<ul style="list-style-type: none">• include foreign Start-up as well• Date of incorporation up to 10 Years• Industry- Service sector or manufacturing sector• Turn over-• Reduced official fee• Assistance from professional for patent filing
Compute Related Invention (CRI) & Artificial Intelligence	<ul style="list-style-type: none">• Properly construe the claim and identify the actual contribution;• If the contribution lies only in mathematical method, business method or algorithm, deny the claim;• If the <u>contribution lies in the field of computer programme</u>, check whether it is claimed in conjunction with a <u>hardware</u> and proceed to other steps to determine patentability with respect to the invention. The computer programme in itself is never patentable. If the contribution lies solely in the computer programme, deny the claim. If the <u>contribution lies in both the computer programme along with hardware</u>, proceed to other steps of patentability

Peculiar Provisions- Must be check before entering India / IP

Differentiating Pointers	
Expedite examination	<ul style="list-style-type: none">➤ If selecting India as ISA or IPEA/ or Start-up company➤ Normal request can be converted into expedite request➤ Female applicant: as natural person, or, as joint applicant (where all the other applicants are natural persons);➤ Government entities;➤ Countries who have PPH-like agreements in place with India
Topography of Semi-conductor /IC	<ul style="list-style-type: none">➤ Cannot be patented➤ Protected under The Semiconductor Integrated Circuits Layout-Design Act, 2000 (SICLD)
Design Protection	<ul style="list-style-type: none">➤ Quick protection (6 to 8 months) for the articles / product having aesthetic value appearance.➤ Term 10 + 5 years➤ 6 months priority

IP PROTECTION IN INDIA - RELEVANT AGENCIES

PATENT OFFICE
(Filing and
oppositions)

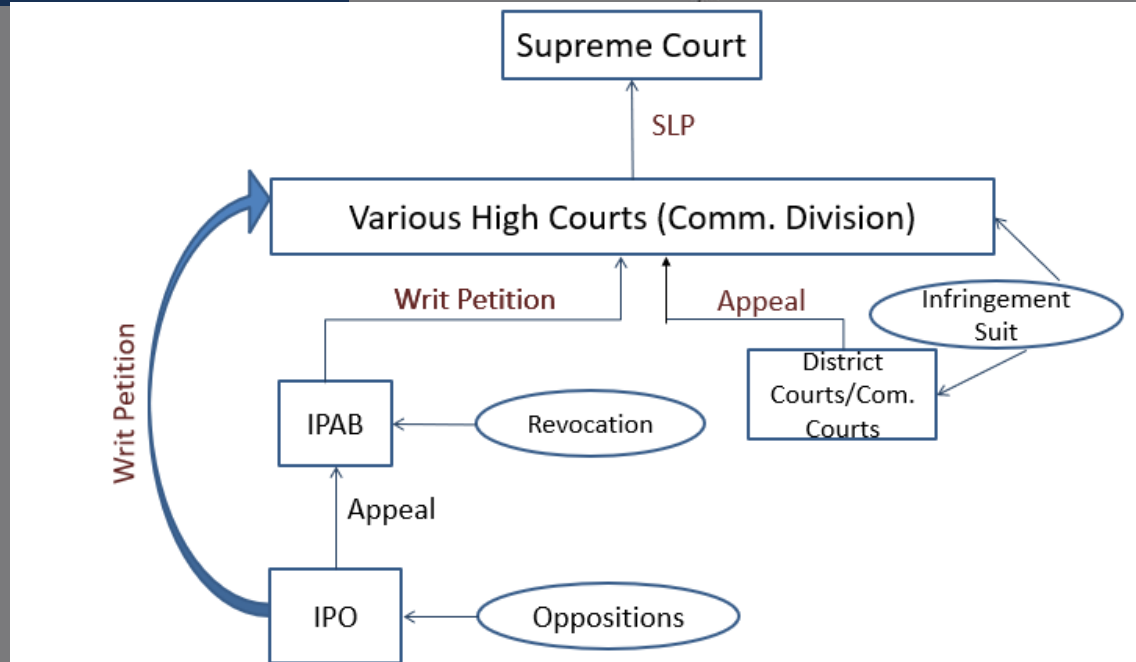
**IPAB (Appeal
against decisions
of Controllers)**

COURTS
(Enforcement /
Revocation)

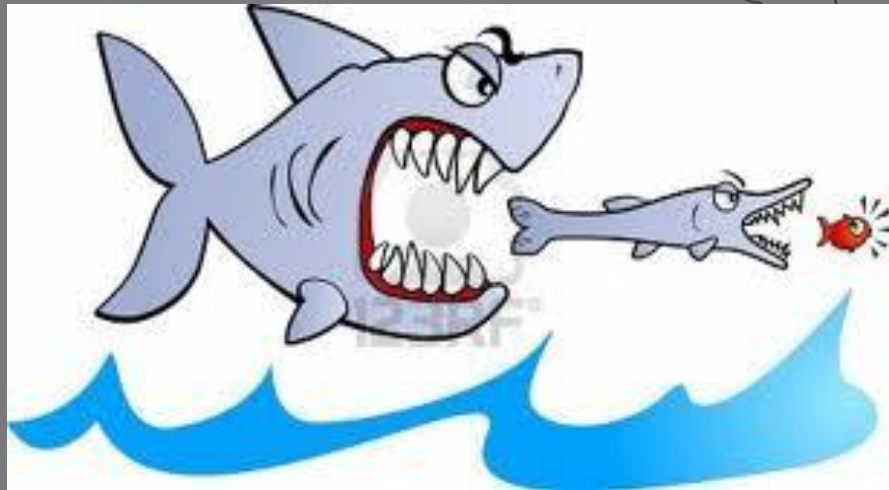
Patent rights in India can be enforced through
civil courts.

There have been increased and conscious
efforts to bring in the changes in the system by
bringing in judges and technical members with
experience in IP Matters in courts and IPAB.

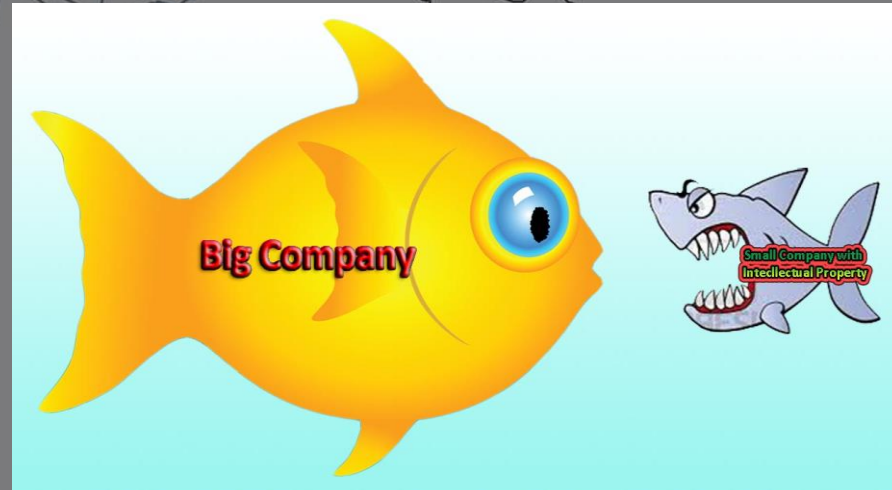
JUDICIAL STRUCTURE FOR IP MATTERS IN INDIA



Scenario 1 – IP Assets doesn't Exist



Scenario 2- IP Assets Exist



The background features a stylized world map with white outlines on a dark grey background. A vertical orange bar highlights the European continent, and a vertical green bar highlights the Indian subcontinent. A white rectangular box is positioned over the map, containing text.

Thank you for your attention!

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