

UNIT – 3

Patents Trademarks and Designs

Patentability • Procedure • Rights • Trademark Distinctiveness • Infringement • Designs

Intellectual Property Law – Expanded Edition

Unit Overview

This unit covers the core principles of Patent law (patentability criteria, procedure, rights and limitations), Trademark law (distinctiveness, registration, infringement and passing off), and Design law under the Indian statutes. Key cases and practical points are included for a complete understanding.

What You Will Learn

01 Patentability

Apply the tests of novelty, inventive step and industrial application

02 Patent Procedure

Outline the procedure for obtaining a patent

03 Trademark

Explain distinctiveness and grounds of refusal

04 Infringement

Distinguish trademark infringement and passing off

05 Designs

State the requirements for design protection

06 Comparison

Compare the three rights on key parameters

Patent – Meaning and Patentability Criteria

A patent is a statutory monopoly granted for an invention that is new, involves an inventive step and is capable of industrial application.

Novelty

Invention must not form part of the state of the art

Inventive Step

Not obvious to a person skilled in the art

Industrial Application

Capable of being made or used in an industry

Exclusions

Sections 3 and 4 of the Patents Act list non-patentable subject-matter

PATENT 2

Patent Procedure and Rights

Filing	Application with specification (provisional or complete)
Publication	Application published after 18 months
Examination	Request for examination; examiner's report
Grant	Patent granted after overcoming objections
Term	20 years from the date of filing
Rights	Exclusive right to prevent others from making, using, selling, importing the invention

Limitations and Compulsory Licensing

Compulsory Licence	Can be granted on grounds of non-working, reasonable requirements of public not met, or affordable price not available
Government Use	Government can use the patented invention under certain conditions
Research Exception	Use for research and experiment is permitted
Bolar Exception	Use for obtaining regulatory approval is permitted

Trademark – Meaning and Distinctiveness

Meaning	A mark capable of distinguishing the goods or services of one person from those of others
Types	Word, device, label, shape, colour, sound, etc.
Distinctiveness	Inherent or acquired through use
Grounds of Refusal	Absolute (non-distinctive, descriptive, generic) and relative (conflict with earlier marks)

TRADEMARK 2

Registration, Rights and Infringement

Registration	Application, examination, publication, opposition, registration
Term	10 years; renewable indefinitely
Infringement	Use of identical or similar mark on identical or similar goods/services leading to likelihood of confusion
Passing Off	Common law action based on goodwill, misrepresentation and damage

DESIGNS

Industrial Designs

Meaning	Features of shape, configuration, pattern, ornament or composition of lines or colours applied to an article
Requirements	New or original, not previously published, significantly distinguishable
Term	10 years + renewable for 5 years
Rights	Exclusive right to apply the design to the article

COMPARISON

Comparison of Patent, Trademark and Design

Subject	Invention vs Source identifier vs Appearance
Duration	20 years vs Indefinite (renewable) vs 15 years max
Requirement	Novelty + Inventive step vs Distinctiveness vs Novelty/Originality
Registration	Mandatory for patent and design; strongly advised for trademark

Practical & Exam Points

Patent

Focus on ss.3 & 4 exclusions and compulsory licensing

Trademark

Likelihood of confusion is the core test for infringement

Design

Must be judged by the eye; functional features are not protected

Strategy

Often a product is protected by a combination of patent, design and trademark

SUMMARY POINTS

Must-Remember Points

- Patent protects inventions that are new, inventive and industrially applicable for 20 years.
- Trademark protects distinctive signs; registration is renewable indefinitely; infringement and passing off are the two main actions.
- Design protects the aesthetic appearance of articles for up to 15 years.
- Each right has different subject-matter, requirements, duration and limitations.
- Understanding the differences is essential for advising on the appropriate form of protection.