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D00743



Distr.
LIMITED

ID/WG.42/10/Add.1
25 September 1969

ORIGINAL: ENGLISH

United Nations Industrial Development Organization

Expert Group Meeting on the Organization and
Administration of Industrial Property Offices^{1/}

Vienna, 6 - 10 October 1969

**TECHNICAL ASSISTANCE AS A MEANS OF IMPROVING THE
ADMINISTRATION OF INDUSTRIAL PROPERTY OFFICES**

Addendum 1:

Detailed Practice and Procedure under the Indian
Patents and Design Act, 1911, ^{2/}

Practice and Procedure under the Trade and Merchandise
Marks Act, 1958 ^{2/}

and

A Note on the Organisation and Administration of an
Office Dealing with Trade Marks^{2/}

by

S. Vedaraman

Controller General of Patents, Designs and Trade Marks
India

^{1/} Organized jointly by UNIDO and BIRPI (United International Bureaux for the Protection of Intellectual Property), Geneva.

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Detailed Practice and Procedure under
the Indian Patents & Designs Act, 1911.

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I.- THE PATENT OFFICE.

1. The Patent Office is an office provided by the Government for granting of patents for inventions, for registering industrial designs, and for other purposes of the Indian Patents and Designs Act (II of 1911)*. The Patent Office is not concerned with the registration of Trade Marks Under the Trade and Merchandise Marks Act, 1958 (No.43 of 1958), or with artistic or literary, copyright under the Indian Copyright Act 1957 (No.27 of 1957), or with registration of patent or proprietary medicines under the Drugs Act, 1940.

2.- Address and communications and Office hours.-The Patent Office is situated at 214, Lower Circular Road, Calcutta-17. It has no branches anywhere. All communications intended for the Patent Office should preferably be made in English and are to be addressed to the CONTROLLER OF PATENTS AND DESIGNS.

3.- The Patent Office Handbook and other publications.-The Patent Office Handbook contains the Indian Patents and Designs Act and the Rules made thereunder, as amended up to date, and instructions for the guidance of Inventors and others. The proceedings of the Patent Office are published weekly in the Gazette of India. Copies of the weekly notifications and other publications are deposited at various places in India, for inspection by the public free of charge.

4. Advice.- The Patent Office does not undertake-

- (i) to express opinion on the advisability of protecting any particular invention;
- (ii) to give legal advice, except so far as it is necessary for regulating proceedings at the Patent Office;
- (iii) to examine specifications, drawings and other documents, or to make searches for the novelty of inventions, except as required by the Act and the Rules;
- (iv) to assist in the disposal of inventions, or to recommend any invention for purchase or use by a Government Department or by the public;
- (v) to recommend any particular agent for employment by applicants;
- (vi) to draft documents on behalf of applicants for patents.

* Patents granted under the Indian Patents and Designs Act are operative in the whole of India.

II.-APPLICANTS FOR A PATENT AND VARIETIES OF PATENTS.

5. Applicant's Status.- (a) An application for an ordinary patent may be made by any person whether alone or jointly with any other person.

(b) An application for a patent which claims a "priority date" may be made by the person who has made the application on which the claim to priority is based, or his legal representative, or his assignee, either alone or jointly with any other person.

(c) An application for a patent of addition may be made only by the applicant for the original patent to which it is an addition, if the application for the original patent is pending; or by the registered proprietor of such original patent, if it has been granted.

(d) An application for a secret patent should be made by the inventor himself.

6. Government Servants.- (a) Subject to any special conditions of service or to any special orders applicable to the persons employed in any particular department, all Government servants are at liberty to apply for a patent direct to the Patent Office.

(b) Government servants employed in the Defence Services, in the Indian Navy and in the Indian Air Force should not apply for patents except in the manner laid down in the Special Regulations applicable to them.

(c) Government servants employed on Scientific or Technical Research should not apply for patents or cause or permit any other person to apply for or obtain a patent for an invention made by such Government servants, save with the permission of the Government and in accordance with such conditions as the Government may impose.

(d) Restrictions similar to those at (c) above are applicable to Railway servants.

7. Varieties of Patents.- Four kinds of patents are granted under the Indian Patents and Designs Act*. They are -

(i) An ordinary patent, which is dated as of the official date of the application for the patent.

* Australia, Canada, Ceylon, New Zealand, the State of Eire, the United Kingdom, and Pakistan have established Reciprocal Arrangements with India for mutual protection of inventions.

- (ii) A patent claiming "Priority", which is dated as of the official date of the corresponding application for patent first made in a country which has established reciprocal arrangements with India for mutual protection of inventions.
- (iii) A patent of addition, for improvement or modification of an invention for which invention a patent has already been applied for or granted.
- (iv) A secret patent for an invention relating to instruments or munitions of war.

III.- WHAT MAY BE PATENTED.

8. A patent is granted for invention.

As defined under the Indian Patents and Designs Act, 1911, "invention" means any manner of new manufacture and includes an improvement and an alleged invention, and "manufacture" includes any art, process or manner of producing, preparing or making an article, and also any article prepared or produced by manufacture.

EXPLANATORY NOTES.

9. Patentable invention.- A patentable invention should have the following characteristics:-

- (i) It should relate to a manner of manufacture.
- (ii) The manner of manufacture should be novel.
- (iii) It should be the outcome of inventive ingenuity.
- (iv) It should have utility.
- (v) It should not be contrary to law or morality.

These characteristics are briefly explained below.

10. Manner of manufacture.- The expression "manner of manufacture" includes any process or apparatus for producing, preparing, or making an article by subjecting materials to manual, mechanical, chemical, electrical or the like operation, for preserving or modifying their properties or for producing new materials, and also any article so prepared, produced, or made. It is essential that the process, apparatus or article of manufacture should suggest an act to be done or an operation to be performed, and that the result must be a vendible product.

11. Mere abstract principles or schemes- which may be of a high order from the standpoint of originality or utility- which do not involve the subjecting of materials to manual or mechanical or other operations, and which do not relate to the making of vendible products, are not considered to be within the scope of this expression.

12. An article or an apparatus is prima facie a manufacture, but a method or process may not be a manufacture, but a method or process may not be a manufacture unless "(a) it results in the production of some vendible product, or (b) improves or restores to its former condition a vendible product, or (c) has the effect of preserving from deterioration some vendible product to which it is applied".

13. Examples of what constitutes a "manner of manufacture" are textile machines, power plants, agricultural implements, domestic appliances, synthetic products, food-stuffs, dyes, chemicals, toilet preparations, and also processes and devices for making the same.

14. The following are examples of what may be new and useful, but is not a "manner of manufacture":-

The discovery of new properties of known substances. The discovery of a law of nature. A plan for conducting business in a particular way. A system of shorthand. A mathematical formula. A system of alphabet. A method of writing music. An agricultural process, such as the rotation of crops. A surgical operation. A trade mark. A course of medical treatment. Literary or artistic productions. A fancy name for an article. The shape of a bottle or a soapcake. The pattern of a wall paper. Ornamental lace work. The external shape of the barrel and cap of a fountain pen.

15. Novelty.- (a) For purposes of patents in India, novelty is considered with reference to what is publicly used in India, and to what is publicly known in the provinces of India prior to the date of the patent.

If an invention has been put into practice in India publicly, it would constitute a public use of the invention and would prejudice the novelty of the invention. The working of an invention by a person secretly would not invalidate a patent of a subsequent date granted in respect of the same invention, unless such secret-working was on a commercial scale.

A prior publication, i.e., the printing, writing or publishing of some document to which the public has access, containing such a description of the invention as will enable the invention to be carried into effect from the description given, would also prejudice the novelty of the invention, on the ground of the invention being publicly known. Vague hints or descriptions of experiments, incomplete or imperfect, are not sufficient to invalidate a subsequent patent.

A patent would be also invalidated if the invention is shown to have been the subject of a valid prior grant. Applicants for patents should, therefore, take particular care to see that their inventions are not publicly used in India or publicly made known in India, prior to the date of their patents.

(b) The novelty of an invention is to be considered from the standpoint of "manner of manufacture" and not from the standpoint of its utility. The mere fact that an article is new per se would not make the article a fit subject-matter of patent, if novelty of the article is not with reference to the manner of its manufacture. Thus a gramophone record containing instructions for teaching languages by a new system, though a new article, and may be an article of great utility, would not be considered as having novel subject-matter for a patent, as there would be no novelty for it either with reference to the manner of its manufacture, or as a specimen of a gramophone record. Generally speaking, articles like gramophone records, perpetual calendars, tickets, etc., are not fit subject-matter for patents, if the novelty resides merely in the text of the matter printed or recorded thereon.

16. Inventive Ingenuity.- Although an invention may be a manner of manufacture, and may be also novel, it may yet be not proper subject-matter for a patent, if it does not have the quality of "invention". The quality of "invention" may arise either from the actual exercise of the originating powers of the mind, or may result from an accidental discovery, a happy inspiration, or a lucky hit. Mere simplicity of an invention is not a bar to its patentability. For example, a man might discover a new needle for stitching boots, which would economise half-an-hour in the manufacture of each boot, such a needle may be proper subject-matter for a patent, although the whole improvement might consist merely of a bend. A real test for inventive merit is whether or not what is effected is of such a nature as would suggest itself to a competent workman in the art to which the invention relates, if he was confronted with the problem which has to be solved. A patent can not be granted for a well-known mechanical contrivance merely when it is applied in a manner or to a purpose which is not quite the same, but which is analogous to the manner or purpose in or to which it has been hitherto notoriously used. If the process or apparatus is attended with results which are definitely obvious, then it would be presumed that the process or apparatus does not involve exercise of inventive ingenuity. But if the result produced by the process or by the combination of the parts of an apparatus which forms the subject-matter of the invention is unpredictable, it would be presumed that the process or apparatus is the outcome of inventive ingenuity.

Mere duplication of known devices or mere juxtaposition of well-known devices which function independently of one another, does not also constitute a new invention within the meaning of the Indian Patents and Designs Act.

17. Utility.- No valid patent can be granted for an invention devoid of utility. Utility does not mean abstract utility, or comparative utility, or competitive utility, or commercial utility. Utility means having practical existence as a manner of manufacture. If what is proposed by the invention is giving an option of a process or an apparatus which is better in some respects though not necessarily better in every respect than what is previously known, the invention will be deemed to possess utility.

18. Law and Morality.- A patent will be refused for an invention, if its use would be, in the opinion of the Controller, contrary to law or morality. Thus, an apparatus for gambling, or an appliance for burgling houses or a method of adulterating food would be regarded as an invention contrary to law or morality, and would not be a proper subject-matter for a patent.

IV.-GENERAL PROCEDURE FOR OBTAINING A PATENT.

19. Outline of the Procedure.- The following are the successive steps of the procedure for obtaining a patent:-

- (i) Filing the "Application", accompanied by either a Provisional or a Complete Specification (see paragraph 21 below)
- (ii) Filing the Complete Specification, if the Specification filed with the Application was a Provisional Specification (see paragraph 28 below).
- (iii) Examination and Acceptance.
- (iv) Overcoming Opposition, if any, to the grant of patent.
- (v) Sealing the patent.

20. Time-limits.- The aforesaid steps should be completed within the prescribed time-limits which are given in Appendix II.

21. Filing the Application.- An application for a patent other than one for a secret patent should be made on the appropriate form. The application accompanied by the prescribed fee and the necessary documents mentioned in paragraph 23 below may be either left at the Patent Office in person, or forwarded by a prepaid cover through the post addressed to the Controller of Patents and Designs, Calcutta. The application can be made by direct communication with the Office or through an agent. Every applicant should give an address for service in India, to which official communications may be forwarded. For instructions for the preparation of application, see paragraph 25 below.

All applications for patents made in the prescribed manner are, on receipt at the Office, numbered and dated. The number accorded to an application is in the order of its receipt, and ordinarily, the date accorded to an application, called the Official date of the application, is the actual date of its receipt in the Office.

A filing receipt showing the number and the date accorded to the application is supplied to the applicants in respect of each application. In connection with all proceedings on the application thereafter, the application is referred to by its number, and the patent that may be granted on the application will also be identified by such number.

The date accorded to the application continues to be so unless the application is subsequently post-dated or ante-dated by the orders of the Controller.

Applications unaccompanied by the prescribed fee are not numbered and dated until the fee is paid. The date accorded to such applications on payment of the fee is the actual date of payment of the fee, and not the earlier date on which the application was first received in the Office. The application is also liable to be post-dated if the specification accompanying an application does not contain sufficient details to identify the invention.

Hence, applicants should take care to see-

- (i) that the application is accompanied by the prescribed fee, and
- (ii) that the specification filed with the application contains a reasonable description of the invention.

In cases where a duplicate of the specification or of the drawings has not been supplied with the application, the applicant should supply them before further action is taken on the application. Failure to supply the required document within the time allowed by the Controller is liable to result in the post-dating of the application to the date on which they are actually supplied.

22. Fees.- (1) On what payable.- Fees as shown in Appendix I are payable for filing an application for a patent and in respect of subsequent proceedings thereon. The fee is payable in respect of admitting the applications or requests concerned and not in respect of the final orders granting such applications or requests. If the applications or requests are refused, the fees paid in respect of the same will not be refunded.

A proceeding in respect of which a fee is payable is of no effect unless the fee has been paid.

(ii) Manner of payment.- The fees may be paid in cash at the Patent Office, or may be sent by Postal Order, Money Order, or Cheque, made payable to the Controller at Calcutta.

When fees are forwarded by means of cheques, the cheques should be drawn on a scheduled bank as defined in the Reserve Bank of India Act, and the cheques should also include sufficient addition for bank commission. Cheques on which the full value cannot be collected in cash within the prescribed time allowed for payment of the fee will be

accepted only at the discretion of the Controller.

Stamps will not be accepted in payment of fees.

(iii) Pecuniary assistance.- It is not within the powers of the Controller to comply with requests for pecuniary assistance to obtain patents, or for reduction or remission of any fee payable under the Act and the Rules made thereunder.

23. Documents required on Application.- The following documents should accompany the Application:-

- (1) A specification in duplicate. The specification may be either a Provisional Specification drawn up on Form 3, or a Complete Specification drawn up on Form 3A (see paragraphs 26-28 below).

In this connection it should be noted that the Specification filed with an Application claiming "Priority date" should necessarily be a Complete Specification.

- (2) Drawings (if any), in duplicate (see paragraph 38 below).
- (3) In the case of applications on Form 1A, 1AC, 2A, 2AC, if the application is not endorsed in the prescribed manner, evidence of the applicant's title to apply for the patent, such as an assignment from the inventor.
- (4) When the Application claims "Priority date", a copy of the specification and drawings left with the application on which the claim to priority is based, certified as such by the Official Head of the Patent Office where such application was first filed.
- (5) When the Application is for a Secret Patent, a certificate from the Central Government to the effect that the "particulars of the invention and the manner in which it is to be performed should be kept secret".

(For special procedure for filing Applications for Secret Patents, see paragraph 30 below).

24. The Application Form.- The Application should be drawn up on one or the other of the prescribed Forms, suited to the particular status (see para 16 above) of the applicant and to the particular kind (see para 15 above) of patent which he wishes to apply for. For example, if the inventor applies for an ordinary patent either alone or jointly with others, he should use the prescribed Form No.1, but if the inventor does not wish to be a party to the application, and his assignee makes the application, the assignee should draw up the Application on Form 1A.

25. Instructions for filling up the Application Form.- Every Application should contain the full name and address of each of the applicants, his address, his nationality and the title of the invention. The Application should also be dated, and signed by each of the applicants.

- (a) **Name.-**The full name of the applicant should be given and mere initials should be avoided; for example, the name should be stated as "Arun Kumar Roy" and not as "A.K.Roy".
- (b) **Address:-** In the statement of the address of the applicant, the name of the Province or the State in which he has his address if in India, and the name of the country if outside India, should be included, e.g. "Adirampatnam, Tanjore, Madras Province"; "118, North West Avanti Street; Mysore, Mysore State"; "Adolfgatan, 5, Malmo, Sweden".
- (c) **Nationality.-** Suitable forms of the statement of nationality are - "A British Subject"; "A subject of the Indian Dominion"; "A Subject of the Mysore State"; "A Company registered in India"; etc. Statement about the community to which the applicants belong, such as "A Hindu", "A Christian", or "A Mohammedan" will not be considered as adequate statements of their nationalities.
- (d) **Title.-** The title of the invention should agree verbally with the title stated in the Specification in respect of the Application. For instructions regarding Title, see paragraph 27 below.
- (e) **Statement of Inventorship.-** When the true and first inventor is not a party to the Application, the full name, address and nationality of the actual inventor should be stated in paragraph II of the Application and the Application should either be endorsed on its reverse by the inventor or a separate deed of assignment from the inventor should be produced. A company or a firm cannot be named as the true and first inventors.
- (f) **Date and Signature.-** The application form must be dated at the end, and signed in ink by each of the applicants.

If the signature is in any Indian language, an English transliteration thereof must be given below the signature.

In case an applicant is absent from India, the application may be signed on his behalf by an agent resident in India, and authorised by the applicant in writing in that behalf.

THE SPECIFICATION.

26. General.- The specification which should accompany an application (other than one for a Patent claiming "Priority") may be either a Provisional Specification or a Complete Specification. A Provisional Specification cannot be filed in respect of an application claiming "Priority".

The specification must be written, typed or printed in large and legible characters, with deep permanent ink, on one side only, of sheets measuring approximately 13 inches by 8 inches or 33.00 centimetres by 20.50 centimetres bearing a margin of at least one inch and a half or four centimetres from the left hand side thereof.

27. Provisional Specification.- A Provisional Specification should be drawn up on the prescribed Form 3,

A Provisional Specification is not a rough draft or a skeleton of the Complete Specification. The term "Provisional" does not imply temporal or ephemeral. The Complete Specification which follows a Provisional Specification does not replace the latter. Both are permanent, independent documents. A Provisional Specification should contain - (a) the title of the invention, (b) the name, the address and the nationality of each of the applicants for the patent, (c) a description of the nature of the invention, preceded by the preamble and (d) date and signature.

(a) **Title.-** The title should give a fair indication of the art or industry to which the invention relates. It should be brief, free from fancy expressions, free from ambiguity and as precise and definite as possible, but it need not go into the details of the invention itself.

The following are not allowable in the title:-

The inventor's name. The word "Patent". Words in Indian languages. The abbreviation "etc.". Fancy words, e.g., "Wash-well Soap", "Universal Rest Easy Patent Chair".

The following titles do not appear to be objectionable:-

Improved folding chair, Railway rail chair. Improvements in pneumatic tyres, Motor car differential gear. Filaments for electric lamps.

(b) **Name, address and nationality.-** See paragraph 25 above.

(c) Description.- The description of the nature of the invention should be preceded by the prescribed preamble -

"The following specification describes the nature of this invention:-"

After the preamble should be set forth the object of the invention, a statement of the principle or discovery underlying the invention and a general statement of the actual invention.

It is advisable to include in the Provisional Specification as much information as the applicant has at the time, but in any case the description should be adequate to identify the invention.

Where an adequate description of the invention cannot be given without the aid of drawings, suitable drawings prepared according to the special instructions given in paragraph 29 below should be furnished along with the Provisional Specification.

It is inadvisable to include in the Provisional Specification any statement of "Claims", such as must be furnished in the Complete Specification.

(d) Date and signature.- The Provisional Specification should be dated at the end thereof, and signed by each applicant or his authorised agent. For instructions regarding signature, see paragraph 25 above.

28. Complete Specification.- A Complete Specification should be drawn up on Form 3A. It should contain - (a) the title of the invention and the statement of the name, the nationality and the address of each of the applicants; (b) the prescribed preamble to the description of the invention; (c) description of the invention and the manner of carrying it out in practice; (d) the statement of claims and (e) date and signature of the applicants.

Inventions which are cognate or modifications of one another described in two or more provisional specifications filed by an applicant may be united in a single complete specification, if they form a single invention.

(a) Title of the invention, and the statement of name, etc., of applicants.- For instructions, see paragraph 27 above.

(b) Preamble to description.- The description of the invention should begin with the following preamble:- "The following specification particularly describes and ascertains the nature of this invention and the manner in which it is to be performed."

(c) **Description.**- After the preamble, the nature of the invention and the manner in which it is to be performed should be fairly described and ascertained. The description given in the specification should be sufficient to enable any person reasonably skilled in the art to which the invention relates, to put the invention into practice without further assistance from the inventor, and obtain the results claimed for the invention. The language should be free from vagueness and ambiguity. The use of the terms "Special", "design", "suitable" and "etc.", which are somewhat vague should be avoided in the description. Terms in Indian languages, if used, should be accompanied by their English equivalents. The applicant must show the utmost bona fides in disclosing the most beneficial method of carrying out the invention known to him at the time. If the inventor does not disclose all the relevant information, or misleads the public, or gives a false description of the invention, the patent is liable to be rendered invalid.

(d) **Statement of Claims.**- The description in the Complete Specification should be followed by a clear and succinct statement of "Claims" preceded by the prescribed preamble, "I (we) claim". The statement of claims should not be regarded as a part or summary of the description. The claims should not be made for the efficiency or advantages of the invention. The function of the claims is to state explicitly what the applicant desires to protect by his patent. The claims should be confined to what the applicant considers to be novel, considering each claim as a whole.

The object of the statement of Claims is -

- (i) to show with conciseness, precision and accuracy as to what the invention is;
- (ii) to point out how much of what is described in the specification constitutes the inventions and
- (iii) to show what is not claimed and therefore open to public use.

It is not necessary that the statement of Claim should be confined to a single claim. It may comprise more than one claim provided that the claims are based upon a common idea which is new in itself and there is no unnecessary multiplicity of claims, or a prolixity of language, if

there are two or more claims, the principal claim should clearly define the essential novel features of the process, apparatus or product which constitutes the invention. Optional features may be made the subject-matter of subordinate claims, and should be claimed in combination with the subject-matter of the principal claim and should be so worded as to indicate clearly the optional features intended to be covered by them.

If the applicant desires to claim several features of the invention independently of one another, it will be necessary to file a separate application for a patent in respect of each feature.

For drafting claims the Specimen specifications may be consulted.

(e) Date and signature.- For instructions regarding signature, see paragraph 25 above.

For more detailed information in respect of the above matters, reference may be had to the Patent Office Handbook.

29. Drawings.- The drawings which illustrate the invention should be filed in duplicate along with the Application for patent, or at such other time as the Controller may direct. One copy of the drawings, i.e., the "original" should be capable of reproduction by the Vandyke process, and as such should be on white or light blue tracing cloth or on durable tracing paper and executed in Black Indian Ink. The sheets may be of a size either 13 inches by 8 inches equivalent to 33.00 centimetres by 20.50 centimetres or 13 inches by 16 inches equivalent to 33.00 centimetres by 20.50 centimetres or 13 inches by 16 inches equivalent to 33.00 centimetres size being the top to bottom side when the drawing is placed in the erect position. There should be a clear blank margin of half an inch or one centimetre in width all round. Drawings should be free from colour washes, erasures and patches. The other copy of the drawings, viz., the "duplicate" may be blue print or the like, provided that it is permanent, legible and an exact copy of the "original".

30. Applications for Secret Patents.- The inventor of any improvement in instruments or munitions of war may apply for a Secret Patent. The inventor should forward his application, accompanied by a Provisional Specification in duplicate on Form 3 or a Complete Specification in duplicate on Form 3A, and drawings if any in duplicate, to the Defence Department or to any other Department of the Central Government which is likely to be interested in the invention, with a request to issue a certificate under section 21A of the Act and to send all the documents to the Patent Office in the manner laid down in sub-section (4) of that Section.

If the said Department of the Central Government considers it desirable that a secret patent should be obtained, the invention will have to be assigned by the inventor to the Central Government as required under sub-section (1) of Section 21A. No form of assignment has been prescribed under

the Indian Patents and Designs Act and Rules and it is for the Central Government to decide in what form the assignment should be drawn up. After such an assignment has been effected, the Central Government may certify, as per sub-section (3) of the said section 21A that "the particulars of the invention and the manner in which it is to be performed should be kept secret". In case such a certificate is issued, the Department concerned will deliver the application, the specification and the drawings to the Controller of Patents and Designs in the manner set forth in sub-section (4) of the aforesaid section.

PROCEEDINGS AFTER FILING APPLICATIONS FOR PATENTS.

31. Acceptance and Sealing.- Applications in respect of which Complete Specifications have been filed at the Patent Office are examined, and the defects noticed on examination are communicated to the applicants and the defective documents are returned to them for amendment. The defects should be removed and the documents should be returned to the office in sufficient time to allow of the re-examination and acceptance within the period allowable for the "acceptance of the Applications". It is open to the applicants to appeal to the Central Government where the Controller refused to accept an application, or requires an amendment.

On acceptance, notice of acceptance is given to the applicants and the acceptance is advertised in the Gazette of India. The application, the specification, and the drawings if any, thereupon become open to public inspection. The specifications and drawings as accepted are printed and copies are deposited at various places in India for inspection by the public. A limited number of copies are also made available for sale at the Government of India Book Depot, 8 Hastings Street, Calcutta-1.

All applications for patents except those for the grant of secret patents are open to opposition.

If an application passes the opposition successfully a sealing fee demand notice will be sent to the applicant and on receipt from him of a Request for Sealing accompanied by the prescribed fee, a patent will be sealed, and the sealing will be notified in the Register of Patents.

For more detailed information in respect of the above matters reference may be had to the Patent Office Handbook.

APPENDIX I

**SCALE OF FEES PAYABLE ON PROCEEDINGS IN RESPECT OF
APPLICATIONS FOR PATENTS.**

<u>On what payable.</u>		<u>Proper fee</u> <u>\$</u>
On application for a patent accompanied by provisional specification	..	10.00
On application for a patent accompanied by complete specification.	..	30.00
On filing complete specification after provisional specification.	..	20.00
For extension of time to leave complete specification after provisional specification.	..	10.00
For extension of time for filing certified copies in respect of applications claiming priority date.	..	
One month	..	10.00
Two months	..	20.00
Three months	..	30.00
For extension of time for acceptance of application.	..	20.00
On request for sealing a patent	..	30.00
For extension of time for sealing a patent		
One month	..	10.00
Two months	..	20.00
Three months	..	30.00

APPENDIX II

Time limits for proceedings in respect of applications for patents.

The time-limits given below should be reckoned from the Official date accorded to the Application, unless otherwise indicated: -

<u>Proceedings.</u>	<u>Normal time-limit.</u>	<u>Extension of time obtainable.</u>
1. Leaving Complete specification after provisional.	9 months from the date of the earliest of the provisional Specifications.	1 month beyond the normal 9 months.
2. Filing Reciprocity application.	12 months from the date of the first Application on which the claim to priority is based.	...
3. Leaving Priority documents in respect of Reciprocity Applications.	With the Applications.	3 months from official date of Application.
4. Acceptance.	18 months.	3 months from expiration of normal 18 months.
5. Sealing -		
(a) When Application	24 months.	3 months from expiration of normal 24 months.
(b) When extension of time was allowed for acceptance.	...	3 months from expiration from normal 28 months.
(c) When Applicant dies before expiration of the time otherwise allowable for sealing and the patent is granted to his legal representative.	Whithin one year after Applicant's death or at such later time as directed by Controller.	

Practice and procedure under the Trade
and Merchandise Marks Act, 1958.

I

The Trade Marks Registry.

Trade Marks Registry and its offices: The Trade Marks Registry is a statutory organization set up for the administration of the Trade and Merchandise Marks Act 1958. The Head Office of the Registry is at Bombay and it has a branch office each at Calcutta, Delhi and Madras. The territorial limits within which each of the office of the Trade Marks Registry exercises its functions are as follows:

Office of the Trade Marks
Registry at Bombay.

Central Building, Maharshi
Karve Road, Bombay-20.

The States of Maharashtra,
Gujarat and Madhya Pradesh
and the Union Territories
of Goa, Daman, Diu and Dadra
and Nagar Haveli.

Office of the Trade Marks
Registry at Calcutta.

1st Floor, 15/1, Chowringhee
Square, Calcutta-1.

The States of Assam, Bihar,
Orissa and West Bengal and
the Union Territories of
Andaman and Nicobar Islands,
Manipur and Tripura.

Office of the Trade Marks
Registry at Delhi.

Okhla Industrial Estate,
Okhla, New Delhi-20.

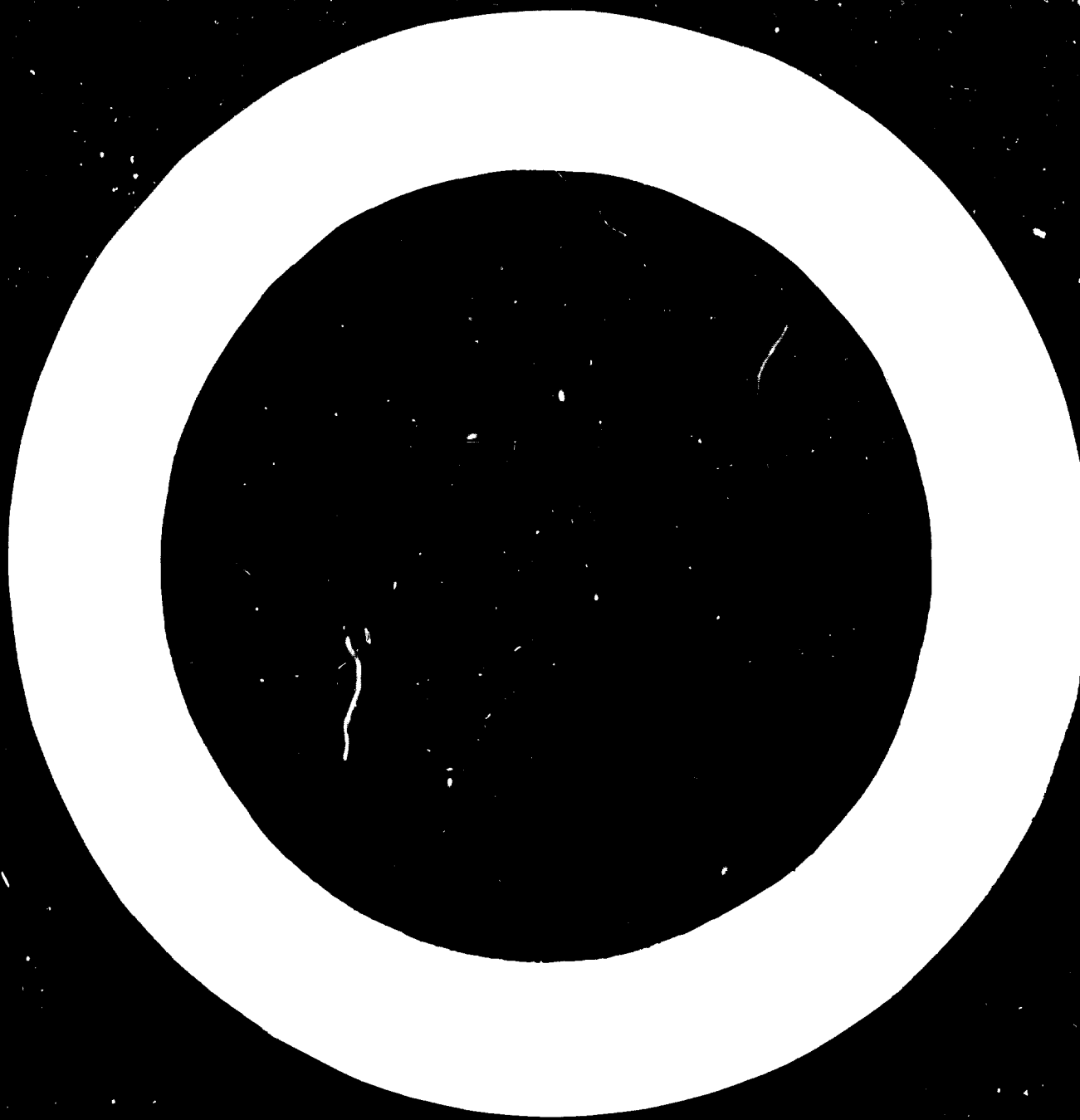
The States of Haryana, Jammu
and Kashmir, Punjab, Rajasthan
and Uttar Pradesh, and the
Union Territories of
Chandigarh, Delhi and Himachal
Pradesh.

Office of the Trade Marks
Registry at Madras.

Shastri Bhavan, C.G.O.
Buildings, 35 Haddows Road,
Madras-6.

The States of Andhra Pradesh,
Kerala, Tamil Nadu and Mysore,
and the Union Territories of
Pondicherry, Laccadive,
Minicoy and Amindive Islands.

Appropriate Office: The appropriate Office of the Trade Marks Registry is that office of the Registry within whose jurisdiction the principal place of the Applicant or of the Registered Proprietor is situate. In the case of an Applicant



or Registered Proprietor who has no place of business in India, the office of the Registry within whose jurisdiction the place in the address for service in India is situate will be appropriate office.

Communications: All communications intended for the Trade Marks Registry should be addressed to the Registrar of Trade Marks at the appropriate office of the Trade Marks Registry.

- Advice: The Trade Marks Registry does not undertake
- (i) to give legal advice except so far as it is necessary for regulating proceedings in the Trade Marks Registry.
 - (ii) to express opinion on the registrability of a trade mark except on an application for preliminary advice and search.
 - (iii) to recommend any particular agent for employment by Applicants.
 - (iv) to draft documents on behalf of applicants for registration of trade mark.

II

Register of trade marks

Register of Trade Marks: The Register of trade marks consist of two parts, Part A and Part B. Only trade marks which are distinctive can be registered in Part A, while in Part B, besides distinctive trade marks, trade marks which are capable of distinguishing can be registered. The rights conferred by registration in Part B are lesser than those conferred by registration in Part A. While registration in Part A is conclusive as to validity after seven years, the

validity of registration in Part B can be challenged even after seven years. Further, in an action for infringement of a trade mark registered in Part B, no relief will be granted to the plaintiff if the defendant establishes that his use of the mark is not likely to deceive or cause confusion.

The original of the Register is kept at the head office of the Registry and a copy each at the branch offices of the Registry.

The Register contains the registered trade marks with names, addresses and descriptions of the proprietors, notifications of assignments and transmissions, disclaimers, conditions, limitations and other matters prescribed by the Act and registered users, if any.

III

TRADE MARK:- its functions and varieties.

Mark: A mark includes a device, brand, heading, label, ticket, name, signature, word, letter or numeral or any combination thereof.

Trade Mark: A trade mark is a mark used or proposed to be used in relation to goods for the purpose of indicating or so as to indicate a connection in the course of trade between the goods and some person having the right either as proprietor or as registered user to use the mark, whether with or without any indication of the identity of that person.

Function of a trade mark: The primary function of a trade mark is to indicate trade origin of the goods. But a trade mark also serves to guarantee the quality of the goods bearing the trade mark and as an advertising tool.

Certification trade mark: It is a mark adapted in

relation to any goods to distinguish in the course of trade goods certified by any person in respect of origin, material, mode of manufacture, quality, accuracy and other characteristic from goods not so certified and registrable as such under the Act in respect of those goods in the name of that person.

Defensive trade mark: Where a trade mark consisting of any invented word has become so well known as respects any goods in relation to which it is registered and has been used, that the use thereof in relation to other goods would be likely to be taken as indicating a connection in the course of trade between those goods and a person entitled to use the trade mark in relation to the first mentioned goods, then notwithstanding that the proprietor registered in respect of the first mentioned goods does not use or propose to use the trade mark in relation to those other goods, the trade mark may on application in the prescribed manner by such proprietor be registered in his name in respect of those other goods as a defensive trade mark.

Textile trade mark: A trade mark used in respect of textile goods, namely, goods included in class 22 to 27 of the Fourth Schedule (Appendix I) to the Trade and Merchandise Marks Rules, 1959 is referred to as a textile trade mark.

IV

What marks may be registered.

Requisites for registration in Part A of the Register: In order to qualify for registration in Part A of the Register a trade mark must contain or consist of ^{any of} the following essential particulars, namely:-

- (1) the name of a company, individual or firm represented in a special or particular manner;

- (ii) the signature of the applicant for registration or some predecessor in his business;
- (iii) one or more invented words;
- (iv) one or more words having no direct reference to the character or quality of the goods and not being, according to the ordinary signification, a geographical name or a surname or a personal name or any common abbreviation thereof or the name of a sect, caste or tribe in India;
- (v) any other distinctive trade mark.

A name, signature or word other than such as mentioned above is not registrable except upon evidence of distinctiveness.

"Distinctiveness" means adapted to distinguish the proprietor's goods from the goods of others in the course of trade. In determining whether a trade mark is distinctive, regard will be had to the extent to which the trade mark is inherently distinctive and by reason of the use of the trade mark or of any other circumstances, the trade mark is in fact distinctive.

A certification trade mark is registrable only in Part A of the Register.

Requisites for registration in Part B: In order to be registrable in Part B of the Register, a trade mark must be distinctive or capable of distinguishing the goods of the proprietor from the goods of other persons in the course of trade.

In determining whether a trade mark is capable of distinguishing regard will be had to the extent to which the trade mark is inherently capable of distinguishing and by reason of use of the trade mark or of any circumstances the mark is in fact capable of distinguishing.

Unregistrable marks: The following marks will not be registrable:

- (i) A mark the use of which would be likely to deceive or cause confusion
- (ii) A mark the use of which would be contrary to any law for the time being in force
- (iii) A mark which comprises or contains scandalous or obscene matter
- (iv) A mark which comprises or contains any matter likely to hurt the religious susceptibilities of any class or section of the citizens of India
- (v) A mark which would otherwise be disentitled to protection in a court
- (vi) A mark which is identical with or deceptively similar to a trade mark which is already registered in the name of a different proprietor in respect of the same goods or description of goods, unless there is evidence of honest concurrent use or other special circumstances
- (vii) A mark which is the commonly used and accepted name of any single element or single chemical compound in respect of a chemical substance or preparation
- (viii) A mark consisting of a line heading in respect of textile piecegoods.
- (ix) A mark consisting of a numeral of one digit or more than six digits not being a balanced numeral in respect of textile goods
- (x) A mark consisting of a single letter or any combination of letters of more than six letters,

not being a balanced numeral in respect of textile goods.

- (xi) A mark containing the name or portrait of a living person or person recently dead, except with the written consent of such living person or as the case may be of his legal representative
- (xii) A mark the Central Government has directed the Registrar not to register
- (xiii) A certification trade mark in the name of a person who carries on trade in goods of the kind certified.

V

Applications for registration of trade marks.

Who may apply to register: Any person irrespective of his nationality claiming to be the proprietor of a trade mark used or proposed to be used by him may apply to register the trade mark.

Brief preliminary advice and search: Before making an application for registration of a trade mark it is possible to obtain the Registrar's preliminary advice as to whether the trade mark is prima facie distinctive or prima facie capable of distinguishing as the case may be, and also to have the mark searched amongst the registered and pending marks. For Registrar's preliminary advice an application should be made on Form TM-55 in respect of goods comprised only in one class in the IV schedule to the Trade and Merchandise Marks Rules accompanied by three representations of the trade mark, and likewise for search a request should be made on Form TM-54 in respect of goods included in one class only in the Fourth Schedule to the Rules accompanied by three representations of the mark.

Forms of Application:

(i) Trade marks relating to non-textile goods: An application to register a trade mark (other than a certification or defensive trade mark) in respect of non-textile goods must be made on Form TM-1.

(ii) Trade marks relating to textile goods: An application to register a textile trade mark (other than a certification or defensive trade mark) must be made on Form TM-2 or TM-51 or TM-52 or TM-53 as the case may be. Where the mark consists of a word or words (not being invented), the application must be made on Form TM-51. Where the mark consists exclusively of numerals or letters or any combination thereof, the application must be made on Form TM-53, if the goods fall in any one of the items mentioned in the Fifth Schedule to the rules and on Form TM-52 in other cases. In the former case, a separate application must be made in respect of each item of the Fifth Schedule to the rules. An application to register a mark not falling in any of the above classes of marks must be made on Form TM-2.

(iii) Defensive trade mark: An application to register a defensive trade mark must be on Form TM-3.

(iv) Certification trade mark: An application to register a certification trade mark must be on Form TM-4.

Copies of applications: All applications to register marks must be made in triplicate except an application to register a certification trade mark which must be made ⁱⁿ quadruplicate.

Particulars to be stated in the application: An application must contain the name of the applicant, the address of his principal place of business in India, if any, his nationality, calling and such other particulars as are necessary for identification. In the case of a firm the full name and nationality of every partner thereof should be stated. In the

case of a body corporate or a firm the country of incorporation or the nature of registration, if any, as the case may be given. In the case of a foreign applicant

his address for service in India must be given, together with his address in his home country. An applicant may, however, if he so desires furnish an address in India to which communications in respect of the application may be sent.

Signature on the application: An application by a partnership must be signed by at least one of the partners and an application by a body corporate must be signed by a Director or by a Secretary or other principal Officer of the body corporate. The capacity in which an individual signs the application on behalf of a partnership or body corporate or other association or person must be stated below his signature.

Application to be confined to one class: Every application for the registration of a trade mark must be limited to goods comprised in one class only of the Fourth Schedule to the Trade and Merchandise Marks Rules 1959.

An application on Form TM-53 should be confined to goods comprised in one item only of the Fifth Schedule to the Rules.

Documents required with application:

- (1) Ten additional representation of the mark each mounted on strong paper of the size of 33 centimetres by 20 centimetres, in the case of an application on Form TM-1, TM-2, TM-3 or TM-4, and five copies of the mark in the case of an application on Form TM-51, TM-52 or TM-53. The additional representations should state the name address of the applicant, the class and goods and the period of use if any and should be signed by the applicant or his agent.

- (ii) Authorisation of agent on Form TM-48 if the applicant has an agent
- (iii) Statement in triplicate setting forth full particulars of the facts on which the applicant relies in support of his application verified by an affidavit by the applicant in the case of an application on Form TM-3
- (iv) Four copies of draft regulations and a statement of case in triplicate setting out the goods on which the applicant relies in support of his application.
- (v) Certificate of the Registrar or other registering authority of the convention country in the case of application under reciprocal arrangements

Where applications to be filed: Applications should be filed at the appropriate office of the Trade Marks Registry.

Fees: Fees to be paid in respect of applications and other documents are specified in the First Schedule to the rules. Fees may be paid in cash or sent by money order addressed to the Registrar or by postal order or by a bank draft issued by or by a cheque drawn on a scheduled bank. Postal orders should be crossed and made payable to the Registrar at the appropriate office of the Registry and bank drafts and cheques should be similarly crossed and made payable to the Registrar but should be drawn on a scheduled bank at the place where the appropriate office is situate.

Agency: An applicant may if he so desires act through an agent who may be a legal practitioner or a registered trade marks agent or a person in his sole and regular employment. In such a case, an authorisation on Form TM-48 duly stamped under the Indian Stamp Act should be filed.

VI

Procedure after receipt of the Application.

Numbering and acknowledgement: An application filed at the appropriate office is forwarded to the head office of the Registry where it is dated and given an official number, the date being the date of receipt of the application at the appropriate office. One of the additional representations of the mark is returned to the applicant by way of acknowledgement of the application after entering the official number.

Indexing: The application is indexed for facilitating search for conflicting marks. The following indexes are maintained in the Registry: (a) an index of registered trade mark (2) an index of trade marks in respect of which applications for registration are pending (3) an index of the names of the proprietors of registered trade marks and (4) an index of the names of applicants for registration.

Examination: After indexing, the application is examined to see whether the formalities have been observed and whether the application complies with the provisions of the Act. If the Registrar has any objection to the acceptance of the application or proposes to accept it subject to any conditions, amendments, disclaimers, modifications or limitations, he communicates the objections in writing to the applicant. Unless within three months from the date of such communication, the applicant complies with the requirements or submits his observations or applies for a hearing the application will be deemed to be abandoned. In case a hearing is applied for, it will be granted at the appropriate office of the Registry. If the application is refused, the decision of the Registrar is communicated to the applicant.

In case the applicant intends to appeal from the decision of the Registrar, he may apply on Form TM-15 to the Registrar to state in writing the grounds of and the materials used by him in arriving at the decision. If the examination reveals no objection or in case the objection has been overcome, the application will be accepted for registration.

VII

Advertisement and Opposition.

Advertisement of application: When an application for registration of a trade mark is accepted, it must be advertised in the Trade Marks Journal together with the conditions and limitations, if any, subject to which it has been accepted. The applicant must pay the prescribed fee for advertisement and supply a printing block.

Opposition to registration: Any person may oppose an application which is advertised in the Trade Marks Journal by filing a notice of opposition on Form TM-5 within three months from the date of advertisement. The period of opposition may be enlarged by the Registrar by a further period of one month on application made by the opponent in the prescribed manner. The notice of opposition has to be filed in triplicate so that one copy thereof may be sent by the Registrar to the applicant. Within two months from the receipt of the notice of opposition, the applicant has to file a counter-statement in duplicate on Form TM-6, failing which the application will be deemed to be abandoned. The Opponent on receipt of the counterstatement should file evidence in support of the opposition by way of affidavit or intimate to the Registrar and to the applicant that he does not desire to adduce evidence but intends to rely on the facts stated in

the notice of opposition within two months. If he does not do so he will be deemed to have abandoned his opposition. If the Opponent adduces evidence in support of the opposition, the applicant should leave with the Registrar evidence in support of the application by way of affidavit within two months. Within one month from the receipt by the opponent of the applicant's affidavits, the opponent should file evidence in reply by way of affidavit. The case then becomes ripe for hearing and a date is fixed by the Registrar for the hearing of the opposition proceedings. Within fourteen days from the receipt of the notice, the party who intends to appear should notify the Registrar on Form TM-7 for which a fee of Rs.20/- is charged. After hearing the parties the Registrar gives his decision in writing.

VIII

Correction and amendment

The Registrar may permit the correction or amendment of application, notices of opposition and counter-statements on such terms as he thinks fit on application made in accordance with the rules.

IX

Withdrawal of acceptance.

Before registration, the Registrar may withdraw his order of acceptance, where the application has been accepted in error or he comes to the conclusion that the trade mark should not be registered or that it should be registered subject to conditions or limitations over and above those if any imposed, after giving the applicant an opportunity to be heard.

X

Registration: After the expiration of three months from the date of advertisement of the acceptance of the application and subject to any opposition and determination thereof, unless the Central Government otherwise directs, the applicant will be called upon to pay the registration fee. On receipt of the fee, the mark will be registered and a certificate of registration will be issued. The date of the application for registration is deemed to be the date of registration.

Abandonment of application: If by reason of default on the part of the applicant the registration is not completed within twelve months from the date of the application, the Registrar may treat the application as abandoned.

Duration, renewal and restoration of registration: The registration of a trade mark is for a period of seven years but may be renewed from time to time for a period of seven years from the date of expiration of the last registration. An application for renewal of registration may be made on Form TM-12 at any time not more than six months before the expiration of the last registration of the mark. The Registrar will notify the Registered Proprietor of the approaching ^{expiration of} registration at a date not less than one month and not more than two months before the expiration of the registration. If the renewal fee is not paid the mark may be removed from the Register. After the mark has been removed from the Register if the proprietor files a request on Form TM-13, the Registrar may restore the mark to the Register and renew its registration. Where the mark is renewed or restored and renewed, a notice is advertised in the Journal after intimation to the registered proprietor the fact of renewal.

XI

Assignment and transmission

Assignability and transmissibility of marks: A registered trade mark is assignable and transmissible with or without goodwill of the business and for some only or for all of the goods for which it is registered. An unregistered mark may also be assigned or transmitted in the same manner, provided that when there is no transfer of the goodwill of the business there must at the same time be an assignment or transmission to the same person of a registered trade mark used in the same business and registered for the same goods. Where an assignment is made without goodwill of the business, the assignment will not take effect unless the assignee applies to the Registrar within six months from the date of assignment, for directions for advertisement and advertises it as directed by the Registrar. A certification trade mark cannot be assigned or transmitted without the consent of the Central Government, and associated trade marks are assignable and transmissible only as a whole and not separately.

Registration of assignments and transmissions: A person becoming entitled by assignment or transmission to a registered trade mark must apply to the Registrar in the prescribed manner to register his title and on proof of title to his satisfaction, the Registrar will cause all particulars of the assignment and transmission to be entered on the Register. But, when the validity of an assignment or transmission is in dispute between the parties, the Registrar may refuse to register the assignment or transmission until the rights of the parties have been determined by a competent court.

XII

Rectification and correction of the Register.

Rectification of the Register: A person aggrieved by the absence or omission of any entry in the Register or by an entry wrongly remaining in it or by any error or defect in any entry in the Register may apply for rectification of the Register. There are special provisions for rectification of the Register in case of defensively registered trade marks, for certification trade marks and on the ground of non-use.

Procedure: An application to rectify the Register may be made in the prescribed manner to the High Court or to the Registrar. But in a suit for infringement of a registered trade mark, if the validity of registration of either party's mark is questioned, the issue as to validity can be determined only on application made to the High Court. An application to the Registrar is to be made at the appropriate office of the Registry on Form TM-26 and is to be accompanied by a statement setting out fully the nature of the applicant's interest, the facts upon which he bases his case and the relief which he seeks. Thereafter the application is treated in the same way as a notice of opposition except that the Registrar will not rectify the Register merely because the registered proprietor has not filed a counterstatement.

Correction of the Register: The Registered Proprietor may apply in the prescribed manner to correct in the Register any error in the name, address or description or any other entry, or to enter any change in the name, or to cancel the entry of a mark, or strike out goods in respect of which the mark is registered or to enter a disclaimer or memorandum relating to a mark.

Alteration of registered trade mark: An application to alter or add to a registered trade mark must be made on Form TM-38 accompanied by twelve copies of the mark as it will appear when so aided or altered. If the Registrar has any doubt about the identity of the mark being affected, he will have the mark advertised in the Trade Marks Journal before granting leave to amend it. When the mark is advertised any person is entitled to oppose the mark as advertised and the matter will be heard in the same manner as an ordinary opposition proceeding is heard.

XIII

Certification trade marks

An application to register a certification trade mark will be dealt with in the same manner as an application for registration of a trade mark. The Registrar may refuse the application or authorise the application to proceed absolutely or subject to amendments, modifications, conditions or limitations. If the Registrar authorises the application to proceed, the application will be forwarded to the Central Government, which will consider the application with regard to the following matters, namely (i) whether the applicant is competent to certify the goods, (ii) whether the draft of the regulations governing the use of the mark is satisfactory and (iii) whether registration would be to the public advantage. After considering these matters, the Central Government may direct the Registrar that the application should not be accepted or to accept the application either unconditionally or subject to conditions or limitations if any. However, before the Central Government directs the Registrar that the application shall not be accepted or to accept the application subject to any conditions

or modifications, the Central Government will give an opportunity to the applicant to be heard.

Where an application has been accepted it will be advertised in the Trade Marks Journal. Any person may within three months from the date of advertisement give notice of opposition to the registration of the mark. When the notice of opposition relates to matters referred to in Section 63, the parties are heard by the Central Government and in respect of other matters, the opposition will be heard by the Registrar. Subject to determination of the opposition, the mark will be registered.

XIV

Registered Users

Application: An application to register a person as a registered user of a trade mark must be made jointly by the registered proprietor and the proposed registered user on Form TM-28.

Documents to be filed with the application: The following documents should be filed with the application:

1. The agreement in writing or a duly authenticated copy thereof, entered into between the registered proprietor and the proposed registered user.
2. The documents and correspondence, if any, mentioned in the agreement or duly authenticated copies thereof.
3. Agreements if any or duly authenticated copies thereof entered into between the registered proprietor and proposed registered user with regard to purchase of the materials for the purpose of manufacturing the goods.
4. An affidavit testifying to the genuineness of the documents accompanying the application and

containing:

(a) the particulars and statements required by clause (ii) of sub-section 1) of section 49;

(b) the precise relationship between the registered proprietor and the proposed registered user, if any;

(c) a statement as to the goods in which the registered proprietor is dealing together with details as to whether the trade mark has been used by him in the course of trade before the date of the application and if so the amount and duration of such use;

(d) the details as to when and how registered proprietor acquired title to the mark and if this was by assignment, whether he had acquired any other trade mark by the same assignment and if so how he had dealt with such other marks;

(e) a statement that the registered proprietor had not before the date of the application allowed or acquiesced in the use of the mark by any person other than a registered user;

(f) a statement whether or not the proposed permitted use is intended solely in relation to goods for export from India.

Procedure on receipt of Application: The application will be examined to see whether the requirements are complied with. If the requirements are satisfied, the Registrar shall forward the application to the Central Government with his report. The Central Government will consider the application bearing in mind the interest of the general public and the development of any

industry, trade or commerce in India and direct the Registrar either to refuse or to accept the application either absolutely or subject to conditions, restrictions or limitations. Before, however, the Central Government issues a direction to refuse an application or to accept it conditionally, the applicant will be given an opportunity of being heard. The Registrar will act according to the directions of the Central Government.

XVI

Appeals.

An appeal lies to the High Court having jurisdiction from any order or decision of the Registrar except an order or decision issued for the purpose of giving effect to a direction of the Central Government. The period of appeal is **three months** from the date of order or decision or within such further time as the High Court may allow.

XVII

Organization of the Trade Marks Registry.

The Controller General of Patents, Designs and Trade Marks is the Registrar of Trade Marks for the purpose of the Trade and Merchandise Marks Act, 1958. He is assisted by the following technical officers:

1. One Joint Registrar of Trade Marks
2. Two Deputy Registrars of Trade Marks
3. Four Assistant Registrars of Trade Marks
4. Seventeen Examiners of Trade Marks

Beside the above officers, there is an Administrative Officer and other ministerial staff.

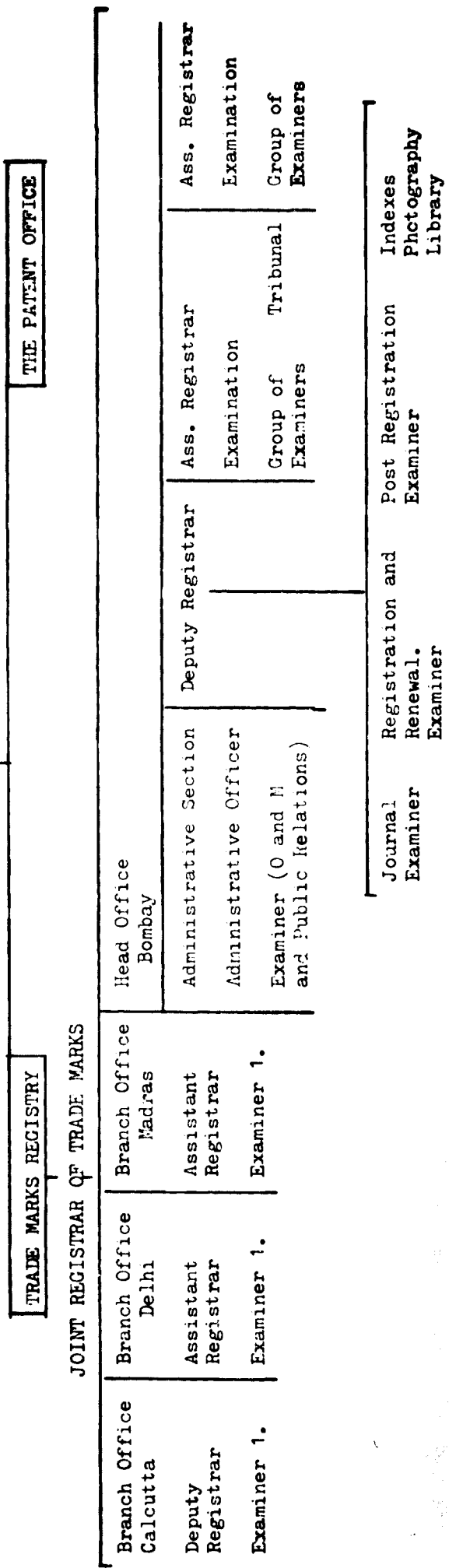
The Joint Registrar of Trade Marks is in charge of the day to day functions of the Trade Marks Registry and works

under the overall charge of the Controller-General of Patents, Designs and Trade Marks. One of the Deputy Registrars is at the head office of the Registry at Bombay and the other is in charge of the office of the Registry at Calcutta. One of the Assistant Registrars is in charge of the office of the Registry at Delhi and another is in charge of the office of the Registry at Madras and the remaining two are at the head office of the Registry at Bombay. The Joint Registrar, the Deputy Registrars and Assistant Registrars have been delegated some of the functions of the Registrar and they are hearing officers.

An organisational chart of the Trade Marks Registry is annexed hereto.

ORGANIZATIONAL CHART OF THE TRADE MARKS REGISTRY

Controller General of Patents, Designs and Trade Marks



End

A note on the organisation and administration
of an office dealing with trade marks.

The pattern and size of an office dealing with registration of trade marks will necessarily depend on the system of law followed by the country and the number of cases it has to deal with. But in an examining office, the head of the office will find it convenient and useful to organise the office into the following units:

1. House keeping and Cash
2. Application and Index
3. Examination
4. Publication
5. Tribunal
6. Registration and Post-registration

1. House keeping and Cash: This unit will be responsible for the budget, cash, staff matters, typing pool, receipt and issue of letters and other documents, the public room library and records. In case the Trade Marks Office is part of a larger office including patents, there is no need to have a separate unit, but the same unit will serve for the entire industrial property office. All applications, letters and documents and fee will be received in this Unit which after noting the fee and issuing receipts will pass on the applications and documents to the appropriate units for further action. Similarly letters received in this unit will be passed on to the concerned units.

2. Application and Index: All applications for registration of trade marks forwarded by the House keeping and Cash Unit will be numbered and dated in the order of their receipt and placed in separate shell covers. The application will thereafter be entered in a Register which will give

particulars as to the number of the application, its date, the name and address of the applicant, the trade mark, the goods for which registration is sought, and also the name of the agent, if any. At this stage the number allotted to the application will be intimated to the applicant.

This Unit will also prepare the necessary indexes for search purposes. The success and efficiency of examination of an application for registration of a trade mark will depend upon the indexes maintained by the office. It will be useful to maintain the following indexes separately both for pending marks and registered marks:-

- i) Name Index
- ii) Index of word marks
- iii) Index of letter marks
- iv) Index of numeral marks
- v) Index of letter and numeral marks
- vi) Index of numeral and letter marks
- vii) Index of device marks, and
- viii) Terminal index of word marks.

Name Index: This is an index of the applicants and of the owners of trade marks and it can be maintained in card form arranged alphabetically according to the name of the Applicant or the Registered owner as the case may be. Each card will contain the name and address of the applicant or the registered owner as the case may be, the name of the agent, if any, and the number of the application or the registration as the case may be.

Index of word marks: This is an index of word marks. It will comprise not only word marks simpliciter, but also words of trade mark value appearing in composite marks. It

can be maintained in card form arranged alphabetically in index cabinets. Each card will contain the word written in block capital letters the number of the application or the registration as the case may be, the goods, name and address of the applicant or registered owner and the period of use of the trade mark, if any. If the mark consists of two or more words, as many cards as there are words will be prepared, and each card placed in the appropriate place in the index.

Example:

ADIPI TOKA

No.1623

Medicinal preparation
for treatment of cough
Swiss Serum & Vaccine
Institute, Berne,
Switzerland.
User 1929
Agent: M/s. DePenning & DePenning

TOKA, ADIPI

No.1623

Medicinal and pharmaceutical
preparation for treatment of
cough
Swiss Serum & Vaccine
Institute, Berne,
Switzerland,
User 1929
Agent: M/s. DePenning & DePenning

In the above example the first card will be kept in the appropriate place under "A" and the second card will be kept under "T". This will ensure that the mark ADIPI TOKA is not missed while considering a mark TOKA.

Letter marks index: This is an index of letter marks and includes letters of trade marks value appearing in composite marks. It also can be maintained in card form arranged in index cabinet alphabetically. The card will contain the mark and ~~the~~ other particulars as in the word marks index.

Numeral marks Index: This is an index of numeral marks and it can be maintained in card form arranged numerically with the relevant particulars given on each card.

Letter numeral marks: This index will consist of marks containing a combination of letters and numerals where the beginning portion is a letter or letters: e.g. SH 273. The index can be maintained in card form arranged in the alphabetical order of the letters and will contain the mark and the other particulars as in the word marks index.

Numeral letter marks: This is an index of letter numeral marks. In this index which will also be maintained in card form, the cards will be arranged in the numerical order. e.g. 26P, 26C, 27A, 27B etc.

Terminal Index: This index will comprise word marks having no dictionary meaning and it will be very useful in searching for phonetic equivalent of words. e.g. TARAB and DARAB; XEROX and SEROX etc. This index will be maintained in card form, each card containing the word and the number of the application or the registration as the case may be. The cards will be arranged alphabetically but inversely according to the ending consonant and vowel of the word. Thus, first all words ending in AB will be placed together, followed by BB, CB etc. till ZB. This will be followed by words ending in BA, BE, BI, BO, BU. In the same manner words ending in the other consonants C to Z will be arranged. By using this index it will be possible to find out phonetically similar words. For instance if the word under consideration is TARAB, by looking up this index at "AB", one would find BARAB, CARAB, DARAB, TERAB, TIRAB, TORAB, TURAB etc., which one would likely to miss in the word marks index.

Index of device marks: This index will consist of device marks arranged into groups. It will be convenient to arrange the devices into the following main groups:-

1. Animals
2. Birds
3. Buildings and views
4. Fish and shells
5. Geometry
6. Heraldry
7. Human beings
8. Mythology
9. Insects
10. Miscellaneous
11. Monograms
12. Reptiles
13. Ships and flags
14. Trees and flowers.

If in a particular group there are many marks, the group may be divided into suitable sub-groups.

If convenient, a copy of the index may be kept in the public room for the benefit of members of the public who would desire to make searches before they file applications for registration of trade marks.

After indexing, the application files i.e., the shell cover containing the application will be forwarded to the Examination Unit.

Examination: This Unit will examine the applications for formalities as well as for statutory requirements and deal with correspondence till the stage of publication in the

Journal, or till they are transferred to the Tribunal Unit for hearing purposes. In case an application is abandoned for non-prosecution or refused or withdrawn, the file will be sent to the Record after making the necessary entries in the relevant indexes.

The examination of application for registration of trade marks is the most important part of the work in the Trade Marks Office and it requires sufficient knowledge of the law, skill and experience. The law would provide the qualifications for a registrable mark and what marks are prohibited from registration. Usually, a descriptive word, a geographical name or a surname or a personal name does not qualify for registration unless there is evidence of its factual distinctiveness. The Examiner will therefore have to consult various dictionaries, Directories, Gazetteers and other reference books to find out whether a word mark is a descriptive term, a geographical name, a surname or a personal name. In case the word does not occur in any reference books, he has to see whether it conveys any meaning or at any rate any obvious meaning. In the case of a label mark, it is necessary to examine whether its leading feature is distinctive, whether it contains any mis-representation as to origin or nature of the goods, any expressions such as "patent", "copyright" etc., whether the mark offends against the provisions of any other statute, whether the mark contains any state emblem, picture of the flag or emblem of any nation, the words "Red Cross" or "Geneva Cross" or a representation of the Geneva or Red Cross or whether it contains or comprises any scandalous or obscene matter. If the mark contains the portrait of any person other than the applicant, it should be seen whether consent of such person

to the use of his portrait as a trade mark has been obtained. The examination includes a search for conflicting marks, both amongst registered trade marks and amongst pending marks. For this purpose, the relevant indexes will have to be consulted. In the case of a word mark it is necessary to see not only whether the word as a whole occurs in the indexes but also whether any possible variations of the word which produce the same phonetic effects occur in the indexes. Search should be made also for words of trade mark value appearing on label marks. Where a mark is found to be identical with or closely similar to a mark already registered or pending it is necessary to consider whether such mark is in respect of the same goods or similar goods. If examination does not reveal any objection the application will be accepted for registration and passed on to the Publication Unit. If, however, any requirement has to be complied with, the applicant will be called upon to do so and on compliance of the requirement the application will be accepted and passed on to the Publication Unit. Where a printing block is required for publication of the mark in the journal, the applicant will be required to furnish a suitable printing block. Where there is objection to the registration of the mark, the applicant will be required to meet the objection and will be given an opportunity to be heard. If the applicant applies for a hearing, the application will be forwarded to the Tribunal Unit which will appoint a hearing and notify the applicant.

Publication: This Unit will be responsible for the printing and distribution of the official Journal which may be a monthly, fortnightly or weekly publication. The Journal will publish all accepted applications for registration of trade marks, particulars of trade marks registered, registrations renewed, licences granted if any, alterations of trade marks, trade marks removed

from the Register, notifications and other matters which may be required.

On receipt of the application after acceptance, this unit will prepare the manuscript, scrutinise the printing block, if any, and arrange to publish the application in the Journal. The manuscript will be seen by the head of the office to see whether any last minute change of the order of acceptance of the application is necessary before passing on to the press. After publication and the period of opposition is over, the application will be forwarded to the Registration and Renewal Unit. In case any opposition is filed, the application will be sent to the Tribunal Unit.

Tribunal: This Unit will deal with applications where hearing is required, opposition and rectification proceedings and also attend to matters in the court.

Applications received from the Examination Unit for fixing hearings will be entered in the hearing appointment diary and the date of hearing will be notified to the applicant. At the end of the month a list of cases fixed for hearing for the following month will be prepared and submitted to the concerned hearing officer. After hearing the decision of the hearing officer will be communicated to the party and the application if accepted will be sent to the Publication Unit and if rejected will be sent to the record.

Where an opposition is entered in respect of any application for registration of a trade mark, the application will be called for from the Publication Unit and after noting the opposition in the Opposition Register, necessary further action in accordance with the statutory provisions will be taken. When the matter becomes ripe for hearing, a suitable date will be fixed and the parties notified. It will also be included

in the monthly list of cases fixed for hearing. The decision of the hearing officer will be communicated to the parties and if no appeal is filed within the stipulated period, the application file will be sent to Registration Renewal Unit, if the opposition is decided in favour of the applicant or to the Record if the application is refused.

Rectification proceedings will also be dealt with in similar manner by this Unit.

This Unit will maintain copies of all decisions including decisions in appeal, suitably indexed. It will be useful to publish important decisions.

Registration and Post Registration: This Unit will be responsible for the maintenance of the Register of Trade Marks, which will contain all particulars required by the statute. Since trade marks may have to be removed from the Register for non-renewal of registration or on account of cancellation proceedings and for facility of handling it will be convenient to have the Register in loose leaf volumes. It is advisable to have a duplicate of the Register also made which may be kept in the public room for the use of the public.

Where an application is not opposed or in case if it is opposed and the opposition is decided in favour of the applicant, it will be sent to this Unit. This Unit will call for the registration fee and on its receipt the mark will be registered and a certificate of registration issued to the applicant. The entry in the Register will include besides the trade mark, the name, address and description of the owner of the mark, the goods, limitations and other matters which are prescribed by the statute.

Before the expiration of the registration this Unit will notify the Registered Owner of the mark, the date of expiration and the conditions as to payment of the renewal fee. To facilitate this work, a diary will be maintained giving the registration number and the date on which notice of approaching expiration of the registration should be issued. On receipt of the renewal fee, the registration will be renewed by making the following entry on the relevant sheet of the Register.

"Registration of this trade mark is renewed for
a period ofyears from....."

This entry can be made by means of a rubber stamp and every entry should be initialled by a responsible officer. If the renewal fee is not paid, the mark will be removed from the Register i.e., by removing the relevant sheet from the Register. In case the renewal fee together with penalty is paid within the stipulated time, the mark will be restored to the Register and the registration renewed.

This Unit will deal with all post registration work including recording changes of address, subsequent owners of marks, assignments and transmissions, licensees if any and alteration of registered trade marks. It will furnish periodically particulars of these recordings to the Publication Unit for inclusion in the Journal. Certified copies of entries in the Register and of other documents will also be issued by this Unit.

Personnel: The personnel required to man the office will depend upon the volume of work to be handled by the Office. The head of the office will be assisted by as many senior and junior staff officers and clerical staff as may be required.

THE FOURTH SCHEDULE CLASSIFICATION OF GOODS

NAMES OF THE CLASSES

(Parts of an article or apparatus are, in general, classified with the actual article or apparatus except where such parts constitute articles included in other classes.)

1. Chemical products used in industry, science, photography, agriculture, horticulture, forestry; manures (natural and artificial); fire extinguishing compositions; tempering substances and chemical preparations for soldering; chemical substances for preserving foodstuffs; tanning substances; adhesive substances used in industry.
2. Paints, varnishes, lacquers, preservatives, against rust and against deterioration of wood; colouring matters, dyestuffs; mordants; resins; metals in foil and powder form for painters and decorators.
3. Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps, perfumery, essential oils, cosmetics, hair lotions; dentifrices.
4. Industrial oils and greases (other than edible oils and fats and essential oils); lubricants; dust laying and absorbing compositions; fuels (including motor spirit) and illuminants; candles, tapers, nightlights and wicks.
5. Pharmaceutical, veterinary and sanitary substances; infants' and invalids' foods; plasters, material for bandaging; material for stopping teeth; dental wax; disinfectants; preparations for killing weeds and destroying vermin.
6. Unwrought and partly wrought common metals and their alloys; anchors, anvils, bells rolled and cast building materials, rails and other metallic materials for railway tracks; chains (except driving chains for vehicles), cables and wires (non electric), locksmiths' work; metallic pipes and tubes; safes and cash boxes, steel balls, horse shoes, nails and screws; other goods in non-precious metal not included in other classes, ores.
7. Machines and machine tools, motors (except for vehicles), machine couplings and belting (except for vehicles), large size agricultural implements, incubators.
8. Hand tools and instruments, cutlery, fork and spoons, side arms.
9. Scientific, nautical, measuring and electrical apparatus and instruments (including wireless), photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life saving and teaching apparatus and instruments, coin or counterfeit apparatus; talking machines; cash registers; calculating machines; fire extinguishing apparatus.
10. Surgical, medical, dental and veterinary instruments and apparatus (including artificial limbs, eyes and teeth).
11. Installations for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes.
12. Vehicles, apparatus for locomotion by land, air, or water.
13. Firearms, ammunition and projectiles, explosive substances, fire works.
14. Precious metals and their alloys and goods in precious metals or coated therewith (except cutlery forks and spoons), jewellery, precious stones, horological and other chronometric instruments.
15. Musical instruments other than talking machines and wireless apparatus.
16. Paper and paper articles, cardboard and cardboard articles; printed matter, newspapers and periodicals, books; book-binding materials; photographs; stationery, adhesive materials (stationery); artist's materials; paint brushes, typewriters and office requisites (other than furniture); instructional and teaching material (other than apparatus); playing cards; printers' type and clichés (stereotype).

[P.T.O.]

17. Gutta percha, Indiarubber, balata and substitutes, articles made from these substances and not included in other classes; materials for packing, stopping or insulating; asbestos, mica and their products; hose pipes (non-metallic).
18. Leather and imitations of leather, and articles made from these materials, and not included in other classes: skins, hides; trunks and travelling bags; umbrellas; parasols and walking sticks; whips, harness and saddlery.
19. Building materials, natural and artificial stone, cement, lime, mortar plaster and gravel; pipes of earthenware or cement; road-making materials; asphalt, pitch and bitumen; portable buildings; stone monuments; chimney pots.
20. Furniture, mirrors, picture frames; articles (not included in other classes) of wood, cork, reeds, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum, celluloid and substitutes for all these materials.
21. Small domestic utensils and containers (not of precious metal, nor coated therewith); combs and sponges; brushes (other than paint brushes); brushmaking materials; instruments and material for cleaning purposes; steelwood; glassware; porcelain and earthenware not included in other classes.
22. Ropes, string, nets, tents, awnings, tarpaulins, sails, sacks, padding and stuffing material, (hair, capoc, feathers, seaweed, etc.); raw fibrous textile materials.
23. Yarns and threads.
24. Tissues (piecegoods); bed and table covers; textile articles not included in other classes.
25. Clothing, including boots, shoes and slippers.
26. Lace and embroidery, ribbons and braid; buttons, press buttons, hooks and eyes, pins and needles; artificial flowers.
27. Carpets, rugs, mats and matting; linoleums and other materials for covering floors; wall hangings (non-textile).
28. Games and playthings; gymnastic and sporting articles (except clothing); ornaments and decorations for Christmas trees.
29. Meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams; eggs, milk and other dairy products; edible oils and fats; preserves, pickles.
30. Coffee, tea, cocoa, sugar, rice, tapioca, sago, coffee substitutes; flour and preparations made from cereals; bread, biscuits, cakes, pastry and confectionery, ices; honey, treacle, yeast, baking powder; salt, mustard; pepper, vinegar, sauces; spices; ice.
31. Agricultural, horticultural and forestry products and grains not included in other classes; living animals; fresh fruits and vegetables; seeds; live plants and flowers; food-stuffs for animals, malt.
32. Beer, ale and porter; mineral and aerated waters and other non-alcoholic drinks; syrups and other preparations for making beverages.
33. Wines, spirits and liqueurs.
34. Tobacco, raw or manufactured; smokers' articles; matches.

FORM TM-24
प्रकृत्य नं० वि० ५५

Fee—Rs. 10

TRADE AND MERCHANDISE MARKS ACT, 1958

Request for Search under Rule 24(1)

व्यापार और पण्य चिन्ह अधिनियम, १९५८
नियम २४(१) के अर्थात् तस्मात् के नियम प्रायोजन

The Registrar is hereby requested under Rule 24 (1) to search in class¹.....
in respect of..... to ascertain whether any trade marks are on record
which resemble the Trade Mark sent herewith in triplicate [each representation being mounted
on a sheet of strong paper approximately 13 inches by 8 inches (or 33 centimeters by 20
centimeters) in size].

Dated this day of 19.....

To

The Registrar of Trade Marks
The Office of the Trade Marks Registry at⁴

- ¹ The Registrar's direction may be obtained if the class is not known.
- ² Here specify the goods (in the class stated) in respect of which the search is to be made.
- ³ Signature
- ⁴ Address in India
- ⁵ State the name of the place of the office of the Trade Marks Registry within whose territorial limits the place mentioned in the address at 4 is situated

Footnote.—No fee is payable in cases where the directions of the Central Government for exemption from payment of fee have been obtained.

GIPN—CRFW—16 T. M. R. Bom./65—30-9-66—6,000

FORM TM. 55
प्रारूप न्या. वि. ५५

TRADE AND MERCHANDISE MARKS ACT, 1958
व्यापार और पब्लि सिन्ट अघिनियस, १९५८

Request for Registrar's preliminary advice as to distinctiveness or capability of distinguishing by a person proposing to apply for registration of a trade mark. Section 103 Rule 23.

व्यापार चिन्ह का रजिस्ट्रिकरण करने के लिये आवेदन करने की प्रत्याशा में जिस व्यक्ति को है, सुभिनता या सुभिनता करने की सामर्थ्य के सम्बन्ध में रजिस्ट्रार की प्राथमिक मंत्रणा अभिप्राप्त करने के लिये उस व्यक्ति द्वारा प्रार्थना । धारा १०३ नियम २३ ।

I (or we) hereby request the Registrar to advise me (or us) whether the accompanying trade mark² appears to him *prima facie* to be inherently adapted to distinguish my (or our) goods so as to comply with the requirements of Section 9 of the Act for registrability in Part A or Part B of the Register.

The goods in respect of which I (or we) propose to apply for registration of the said trade marks are³.....in Class⁴.....

The Registrar's advice may be sent to the following address in India :—⁵

Dated this.....day of.....19.....

To
6.....

The Registrar of Trade Marks,
The Office of the Trade Marks Registry at.....

- 1 State the name and address in full.
- 2 To be sent in triplicate, each representation being mounted on a sheet of strong paper approximately 13 inches by 8 inches (or 33 centimeters by 20 centimeters) in size.
- 3 Here specify the goods. Only goods included in one and the same class should be specified. A separate form of request is required for each class.
- 4 Insert the number of class (if known). In case of doubt the Registrar's direction may be obtained.
- 5 State only if the address given at¹ is not of a place in India.
- 6 Signature
- 7 State the name of the place of the office of the Trade Marks Registry within whose territorial limits the place in the address in India stated in this request is situate.

FOOT NOTE.—If and when an application is made to register the trade mark, objection may arise. If identical or deceptively similar marks are found on the records of the Trade Marks Registry. A prior notification of any such relevant marks (if they are to be found) can be obtained by a request to the Registrar on Form TM. 54.

Fee : Rs. 30
See entries
Nos. 1 and 2
of First Schedule

FORM TM-2

TRADE AND MERCHANDISE MARKS ACT, 1958.

Application for registration of a trade mark (other than a mark consisting exclusively of a word or words (not being an invented word or invented words) or a mark consisting exclusively of letters, or numerals, or any combination thereof or a certification trade mark or a defensive trade mark) in respect of textile goods in Part ^A_B of the Register. Rule 141.

(To be filed in triplicate accompanied by ten additional representations of the trade mark)

One representation to be fixed within this space and ten others to be sent separately.

Representation of a larger size may be folded, but must then be mounted upon linen or other suitable material and affixed hereto. See rule 28.

Application is hereby made for registration in Part ^A_B of the register of the accompanying trade mark in Class²..... in respect of³.....
..... in the name(s) of⁴.....
..... whose address is⁵.....
..... who claim(s) to be the proprietor(s) thereof (and by whom the said trade mark is proposed to be used)⁶ or [and by whom and his (their) predecessor(s) in title⁷ the said mark has been used since.....19.....] in respect of the said goods⁸.

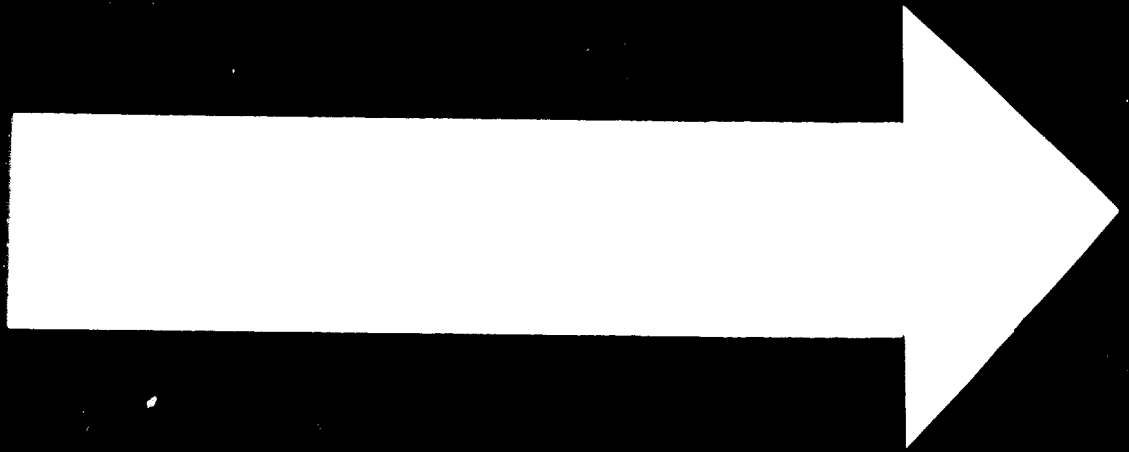
Dated this day of 19

¹⁰.....

To

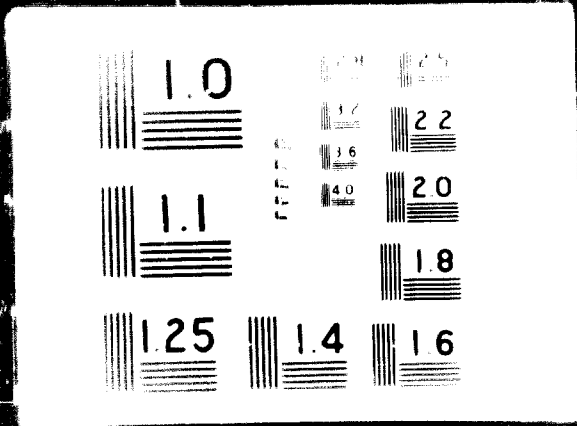
The Registrar of Trade Marks,
The Office of The Trade Marks Registry at¹¹.....

[For instructions see coverleaf]



12 . 12 . 73

2 OF 2
D O
0743



- 1 **Strike out whichever is not necessary.**
- 2 **The Registrar's direction may be obtained if the class of the goods is not known.**
- 3 **Specify the goods. Only goods included in one and the same class should be specified. A separate application form is required for goods falling in each class.**
- 4 **Insert legibly the full name, description (occupation and calling) and nationality of the applicant. In the case of a body corporate or firm the country of incorporation or the names and descriptions of the partners composing the firm and the nature of registration, if any, as the case may be, should be stated. See rule 16.**
- 5 **The applicant must state the address of his principal place of business in India, if any. See rules 3 and 17. (If the applicant carries on business in the goods for which registration is sought at only one place in India such fact should be stated and the address of the place given. If the applicant carries on business in the goods concerned at more places than one in India the applicant should state such fact and give the address of that place of business which he considers to be his principal place of business. If however, the applicant does not carry on business in the goods concerned but carries on business in other goods at only one place in India this fact should be stated and the address of that place given; and where the applicant carries on such business at more places than one in India such fact should be stated and the address of the place which he considers to be his principal place of business given. Where the applicant is not carrying on any business in India the fact should be stated and the place of his residence in India, if any, should be stated and the address of that place given. In addition to the principal place of business or of residence in India, as the case may be, an applicant may if he so desires give an address in India to which communications relating to the application may be sent.)—See rule 19.**

Where the applicant has neither a place of business nor of residence in India the fact should be stated and an address for service in India given along with his address in his home country abroad.
- 6 **Strike out if the mark is already in use.**
- 7 **Strike out the words in italics if not applicable. If user by predecessor(s) in title is claimed the name(s) of such person(s) together with the date of commencement of use by the applicant himself should be stated at 9.**
- 8 **If there has been no use of the trade mark in respect of all the goods specified at 3, the items of goods in respect of which the mark has actually been used should be stated.**
- 9 **For additional matter if required; otherwise to be left blank.**
- 10 **Signature of the applicant or of his agent (legal practitioner or registered trade marks agent or person in the sole and regular employment of the applicant—See section 123).**
- 11 **State the name of the place of the appropriate office of the Trade Marks Registry—See rule 4.**

Fee : Rs. 50—
See entries
Nos. 1 and
2 of First
Schedule.

FORM TM-1

TRADE AND MERCHANDISE MARKS ACT, 1958

Application for registration of a trade mark (other than a textile mark or a certification trade mark or a defensive trade mark) in Part $\frac{A^1}{B}$ of the register.

Section 18 (1), Rule 25.

(To be filed in triplicate accompanied by ten additional representations of the trade mark)

One representation to be fixed within this space and ten others to be sent separately.

Representation of a larger size may be folded, but must then be mounted upon linen or other suitable material and affixed hereto.
(See Rule 28)

Application is hereby made for registration in Part $\frac{A^1}{B}$ of the register of the accompanying trade mark in Class ²..... in respect of ³..... in the name(s) of ⁴..... whose address is ⁵..... who claim(s) to be the proprietor(s) thereof (and by whom the said mark is proposed to be used)⁶ or (and by whom *and his (their) predecessor(s) in title*⁷ the said mark has been continuously used since..... 19.....) in respect of the said goods.⁸

Dated this day of 19.....

To
The Registrar of Trade Marks,
The Office of The Trade Marks Registry at ¹¹.....
[For instructions see overleaf]

- 1 **Strike out whichever is not necessary.**
- 2 **The Registrar' direction may be obtained if the class of the goods is not known.**
- 3 **Specify the goods. Only goods included in one and the same class should be specified. A separate application form is required for goods falling in each class.**
- 4 **Insert legibly the full name, description (occupation and calling) and nationality of the applicant. In the case of a body corporate or firm, the country of incorporation or the names and descriptions of the partners composing the firm and the nature of registration, if any, as the case may be, should be stated—*See* rule 16.**
- 5 **The applicant must state the address of his principal place of business in India, if any—*See* rules 3 and 17. (If the applicant carries on business in the goods for which registration is sought at only one place in India such fact should be stated and the address of the place given. If the applicant carries on business in the goods concerned at more places than one in India the applicant should state such fact and give the address of that place of business which he considers to be his principal place of business. If, however, the applicant does not carry on business in the goods concerned but carries on business in other goods at only one place in India this fact should be stated and the address of that place given; and where the applicant carries on such business at more places than one in India such fact should be stated and the address of the place which he considers to be his principal place of business given. Where the applicant is not carrying on any business in India the fact should be stated and the place of his residence in India, if any, should be stated and the address of that place given. In addition to the principal place of business or of residence in India, as the case may be, an applicant may, if he so desires, give an address in India to which communications relating to the application may be sent.)—*See* rule 19.**

Where the applicant has neither a place of business nor of residence in India the fact should be stated and an address for service in India given along with his address in his home country abroad.
- 6 **Strike out if the mark is already in use.**
- 7 **Strike out the words *in India* if not applicable. If user by predecessor(s) in title is claimed the name(s) of such person(s) together with the date of commencement of use by the applicant himself should be stated at 7.**
- 8 **If there has been no use of the trade mark in respect of all the goods specified at 3, the items of goods in respect of which the mark has actually been used should be stated.**
- 9 **For additional matter if required : otherwise to be left blank.**
- 10 **Signature of the applicant or of his agent (legal practitioner or registered trade marks agent or person in the sole and regular employment of the applicant—*See* section 123).**
- 11 **State the name of the place of the appropriate office of the Trade Marks Registry.—*See* rule 4.**

Fee : Rs. 30 for each trade mark.

Form TM-51

TRADE AND MERCHANDISE MARKS ACT, 1958.

Applications Nos.⁹

Application for registration of trade mark(s) (other than certification trade marks) consisting exclusively of a word or words (not being an invented word or invented words) relating solely to textile goods in Part $\frac{A^1}{B}$ of the register—Rule 138.

[To be filed in triplicate accompanied by five signed copies of the trade mark(s)]

Application is hereby made for registration of the Trade Mark(s) mentioned in the form annexed hereto in Part $\frac{A^1}{B}$ of the register in class².....In the name (s) ³ of..... whose address is⁴..... and who claim(s) to be the proprietor(s) thereof.

⁵.....

Dated this day of 19 .

⁶.....

To

The Registrar of Trade Marks,
The Office of The Trade Marks Registry at⁷.....

[For instructions see overleaf.

TM-51

1 Strike out whichever is not applicable.

2 The Registrar's direction may be obtained if the class of the goods is not known.

3 Insert legibly the full name, description (occupation and calling) and nationality of the applicant. In the case of a body corporate or firm the country of incorporation or the names and descriptions of the partners composing the firm and the nature of registration if any, as the case may be, should be stated. See rule 16.

4 The address of the principal place of business in India, if any, of the applicant should be stated. See rules 3 and 17. (If the applicant carries on business in the goods for which registration is sought at only one place in India, such fact should be stated and the address of the place given. If the applicant carries on business in the goods concerned at more places than one in India the applicant should state such fact and give the address of that place of business which he considers to be his principal place of business. If, however, the applicant does not carry on business in the goods concerned but carries on business in other goods at only one place in India the fact should be stated and the address of that place given; and where the applicant carries on such business at more place than one in India such fact should be stated and the address of the place which he considers to be his principal place of business given. Where the applicant is not carrying on any business in India, the fact should be stated and the place of his residence in India, if any, should be stated and the address of that place given. In addition to the principal place of business or of residence in India, as the case may be, an applicant may, if he so desires, give an address in India to which communications relating to the application may be sent.) See rule 19.

Where the applicant has neither a place of business nor of residence in India, the fact should be stated and an address for service in India given along with his address in his home country abroad.

5 For additional matter, if required; otherwise to be left blank.

6 Signature of the applicant or of his agent.

7 State the name of the place of the appropriate Office of the Trade Marks Registry. See rule 4.

FOOTNOTE :— This Form to be used for applying for registration of one or more trade marks by an applicant. Each such trade mark will be treated as having been applied for separately for registration and a separate application number will be noted against it by the Trade Marks Registry in column (1) of the annexure to this Form.

***ANNEXURE TO FORM TM-51.**

Applications Nos.⁹

Name of Applicant.....
(in block letters)

Address.....

*Application No. (to be left blank by the applicant)	Trade Mark	Language in which word/words is/are written	Translation in English, if any, of the word or words (in the case of words not in the English language)	Transliteration in Roman characters of the word or words (in the case of words not in Roman characters)	Description of goods in respect of which registration is sought ¹⁰	Whether the mark is being used and if so, the period during which and by whom it has been used in respect of the goods mentioned ¹¹
1	2	3	4	5	6	7

Dated this day of 19

*Signature.....
[For instructions see overleaf.]

⁹ If the space provided in this Form is not sufficient, the entries may be continued on additional sheets of paper. The size of each such additional sheet should be the same as that of this Form and entries should be made only on one side of the sheet leaving a margin of 1 1/4 inches (or 4 centimetres) on the left-hand part of the sheet. Each such additional sheet should contain the name and address of the applicant at the top and bear the date and signature of the applicant or of his agent at the bottom as above.

¹⁰ To be filled in by the Trade Marks Registry only.

¹¹ Only goods included in one and the same class should be specified. A separate application is required for each class.

¹² If user by predecessor(s) in title is claimed the name(s) of such person(s) should be stated together with the date of commencement of use of the mark by the applicant himself. If there has been no use of the mark in respect of all the goods specified, the user for those items of goods in respect of which the mark has actually been used should be stated. If, however, the mark is proposed to be used the words "proposed to be used" should be stated.

FORM TM-52.

See: Rs. 30 for each mark

TRADE AND MERCHANDISE MARKS ACT, 1958.

Application(s) No.(s)¹.....

Application for registration of trade marks (other than certification trade marks) consisting exclusively of letters or numerals or any combination thereof relating solely to textile goods for specification of goods not included in any of the items of the Fifth Schedule in Part $\frac{A^1}{B}$ of the register—Rule 139.

[To be filed in triplicate accompanied by five additional signed copies of the trade mark(s)]

Application is hereby made for registration of the trade mark(s) mentioned in the form annexed hereto in Part $\frac{A^1}{B}$ of the register in class².....in the name(s) of ³.....

.....whose

address is ⁴.....

⁵.....

Dated this day of 19 .

⁶.....

To

The Registrar of Trade Marks,

The Office of the Trade Marks Registry, at⁷.....

[For instructions see overleaf.]

TM-52

1 Strike out whichever is not applicable.

2 The registrar's direction may be obtained if the class is not known.

3 Insert the full name, description (occupation and calling) and nationality of the applicant. In the case of a body corporate or firm the country of incorporation, or the names and descriptions of the partners composing the firm and the nature of registration, if any, as the case may be, should be stated—See rule 16.

4 The address of the principal place of business in India, if any, of the applicant should be stated. See rules 3 and 17. (If the applicant carries on business in the goods for which registration is sought at only one place in India such fact should be stated and the address of the place given. If the applicant carries on business in the goods concerned at more places than one in India the applicant should state such fact and give the address of that place of business which he considers to be his principal place of business. If, however, the applicant does not carry on business in the goods concerned but carries on business in other goods at only one place in India the fact should be stated and the address of that place given; and where the applicant carries on such business at more places than one in India such fact should be stated and the address of the place which he considers to be his principal place of business given. Where the applicant is not carrying on any business in India the fact should be stated and the place of his residence in India, if any, should be stated and the address of that place given. In addition to the principal place of business or of residence in India, as the case may be, an applicant may, if he so desires, give an address in India to which communications relating to the application may be sent)—See rule 19.

Where the applicant has neither a place of business nor of residence in India, the fact should be stated and an address for service in India given along with his address in his home country abroad.

5 For additional matter, if required; otherwise to be left blank.

6 Signature of the applicant or of his agent.

7 State the name of the place of the appropriate office of the Trade Marks Registry—See rule 4.

FOOTNOTE:—This Form to be used for applying for registration of one or more trade marks by an applicant. Each such trade mark will be treated as having been applied for separately for registration and a separate application number will be noted against it by the Trade Marks Registry in Column (1) of the annexure to this Form.

***ANNEXURE TO FORM TM-52.**

Application(s) No.(s)⁸

Name of Applicant.....
(in block letters)

Address⁴.....

*Application No. (to be left blank by applicant) 1	Trade Mark 2	Description of goods in respect of which regis- tration is sought¹⁰ 3	Whether the mark is being used; if so, the period during which and by whom it has been used in respect of the goods men- tioned.¹¹ 4

Dated this day of 19 .

***Signature.....**

(For instructions see overleaf.)

⁸ If the space provided in this Form is not sufficient, the entries may be continued on additional sheets of paper. The size of each such additional sheet should be the same as that of this Form and entries should be made only on one side of the sheet leaving a margin of 1 1/2 inches or 4 centimetres on the left-hand part of the sheet. Each such additional sheet should contain the name and address of the applicant at the top and bear the date and signature of the applicant or of his agent at the bottom as above.

⁹ To be filled in by the Trade Marks Registry only.

¹⁰ Only goods included in one and the same class should be specified. A separate Application Form is required for each class.

¹¹ If user by predecessor (s) in title is claimed the name (s) of such person (s) should be stated together with the date of commencement of use of the mark by the applicant himself. If there has been no use of the mark in respect of all the goods specified, the user for those items of goods in respect of which the mark has actually been used should be stated. If, however, the mark is proposed to be used the words "proposed to be used" should be stated.

FORM TM-53.

Fee: Rs. 30 for each mark

TRADE AND MERCHANDISE MARKS ACT, 1958.

Application(s) No.(s)¹.....

Application for registration of trade marks (other than certification trade marks) consisting exclusively of letters or numerals or any combination thereof relating solely to textile goods for specification of goods included in any of the items of the Fifth Schedule in Part ^A_B of the register Rule 140.

[To be filed in triplicate accompanied by five additional signed copies of the trade mark(s).]

Application is hereby made for registration of the trade marks mentioned in the Form annexed hereto in Part ^A_B of the Register in Item No.².....and class.....

.....in the name(s) of ³.....

whose address is ⁴.....

.....and who claim(s) to be the proprietor(s) thereof.

⁵.....

Dated this day of 19 .

⁶.....

To
The Registrar of Trade Marks,
The Office of the Trade Marks Registry at ⁷.....

[For instructions see heading.]

TM-53

1. ~~Strike out whichever is not applicable.~~
2. The Registrar's direction may be obtained if the item number and class are not known.
3. Insert the full name description (occupation and calling) and nationality of the applicant. In the case of a body corporate or firm the country of incorporation, or the names and descriptions of the partners composing the firm and the nature of registration, if any, as the case may be should be stated. See rule 16.
4. The address of the principal place of business in India, if any, of the applicant should be stated. See rules 3 and 17. (If the applicant carries on business in the goods for which registration is sought at only one place in India such fact should be stated and the address of the place given. If the applicant carries on business in the goods concerned at more places than one in India the applicant should state such fact and give the address of the place of business which he considers to be his principal place of business. If however the applicant does not carry on business in the goods concerned but carries on business in other goods at only one place in India the fact should be stated and the address of that place given. and where the applicant carries on such business at more places than one in India such fact should be stated and the address of the place which he considers to be his principal place of business given. Where the applicant is not carrying on any business in India the fact should be stated and the place of his residence in India, if any, should be stated and the address of that place given. In addition to the principal place of business or of residence in India, as the case may be, an applicant may, if he so desires, give an address in India to which communications relating to the application may be sent).— See rule 19.

Where the applicant has neither a place of business nor of residence in India, the fact should be stated and an address for service in India given along with his address in his home country abroad.
5. For additional matter, if required, otherwise to be left blank.
6. Signature of the applicant or of his agent.
7. State the name of the place of the appropriate office of the Trade Marks Registry. See rule 4.

FOOTNOTE.—This Form to be used for applying for registration of one or more trade marks by an applicant. Each such trade mark will be treated as having been applied for separately for registration and a separate application number will be noted against it by the Trade Marks Registry in Column (1) of the annexure to this Form.

'ANNEXURE TO FORM TM-53

Application(s) No(s).'.....

Name of Applicant _____
(In block letters)

Address _____

*Application No. (to be left blank by applicant.) 1	Trade Mark 2	Description of goods as per sample attached in each case in respect of which registration is sought. ¹⁰ 3	Whether the mark is being used, and if so, the period during which and by whom it has been used in respect of the goods mentioned. ¹¹ 4

Dated this **day of** **19** .

Signature*

[For instructions see overleaf.]

9 If the space provided in this Form is not sufficient, the entries may be continued on additional sheets of paper. The size of each such additional sheet should be the same as that of this form and entries should be made only on one side of the sheet leaving a margin of $1\frac{1}{2}$ inches (or 4 centimeters) on the left hand part of the sheet. Each such additional sheet should contain the name and address of the applicant at the top and bear the date and signature of the applicant or of his agent at the bottom as above.

• To be filled in by the Trade Marks Registry only.

10 Only goods included in one and the same item of the Fifth Schedule should be specified. A separate application is required for each item (vide rule 140.)

Each sample should be mounted on a separate sheet of paper of the same size as of this Form and its description as used in the Form should be given below the sample. Each such sheet should bear the date and signature of the applicant or of his agent.

11 If user by predecessor(s) in title is claimed the name(s) of such person(s) should be stated together with the date of commencement of use of the mark by the applicant himself. If the mark is proposed to be used the words "proposed to be used" should be stated.

Schedule of Fees in respect
of some matters.

<u>S.No.</u>	<u>On what payable.</u>	<u>Amount.</u>
1.	Application to register a trade mark	30.00
2.	Notice of opposition	30.00
3.	Counter-statement	15.00
4.	For registration of a trade mark	60.00
5.	For renewal of registration of a trade mark	60.00
6.	For restoration of a trade mark removed from the Register and renewal of registration	90.00
7.	Application to register subsequent proprietor:	
	If made within six months of acquisition of proprietorship	15.00
	If made after six months from the date of acquisition of proprietorship	50.00
8.	On application for rectification of the Register	40.00
9.	On application for leave to add to or alter a registered trade mark	30.00
10.	On application to register a registered user of a trade mark	100.00
11.	For advertisement of the application	
	(i) where no printing block is required	5.00
	(ii) where a printing block is required	10.00





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