

# VMK Professionals Private Limited

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## FREQUENTLY ASKED QUESTION

### **Q.1: What is meant by Intellectual Property?**

Answer: Intellectual property (IP) is a category of property that includes intangible creations of the human intellect. It can consist of many types of assets, including trademarks, patents, and copyrights.

Intellectual property rights (IPR) refers to the legal rights given to the inventor or creator to protect his invention or creation for a certain period of time. Intellectual property can take various forms, including inventions (protected by patents), literary and artistic works (protected by copyrights), symbols, names, images, and designs used in commerce (protected by trademarks), and creative designs or aesthetics of products (protected by design rights).

### **Q.2: What is meant by 'Design' under the Designs Act, 2000?**

Answer: Design is one of the categories of Intellectual Property Right where the design system focuses on an aesthetic feature of an article derived from its visual appearance.

Design is a type of legal protection for things that look good. It's about the appearance of an object, like its shape, patterns, colors, or lines. This protection applies to things made in a factory or by hand, using different methods like machines or chemicals. But it doesn't cover things that are purely functional, like a basic machine part. And it doesn't include brand logos either. So, if something looks nice and unique, it can be protected under design laws.

### **Q. 3: What is meant by an article under the Designs Act, 2000?**

Answer: Under the Designs Act, 2000 the "article" means any article of manufacture and any substance, artificial, or partly artificial and partly natural; and includes any part of an article capable of being made and sold separately.

### **Q.4: What is the purpose of registration of Designs?**

Answer: The purpose of registration of Design is to protect new or original designs which is created to be applied or applicable to particular article to be manufactured by Industrial Process or means. Sometimes purchase of articles for use is influenced not only by their practical efficiency but also by their appearance. The important purpose of design Registration is to see that the artisan, creator, originator of a design having aesthetic look is not deprived of his bona-fide reward by others applying it to their goods. Registering your design makes it easier to prove that the design is legally yours.

### **Q.5: Can stamps, Labels, tokens, cards be considered as an article for the purpose of registration of Design?**

Answer: No. Because once the proposed Design i.e., ornamentation is removed only a piece of paper, metal or like material remains and the article referred ceases to exist. Article must have its existence

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independent of the Designs applied to it. [Design with respect to label was held not registrable, by an Order on civil original case No. 9-D of 1963, Punjab, High Court]. So, the Design as applied to an article should be integral with the article itself.

## **Q.6: Can I register the design which is already been disclosed to public?**

Answer: No, you cannot register any design which is previously published in any country.

## **Q.7: What is the importance of registering the design?**

Answer: The importance of registering the design could be clearly defined from the point that registering the design with an approved authority would prevent others from duplicating, recreating, marketing, or distributing goods with the same design as their own. Moreover, designs boost the brand recognition and economic worth of an item in addition to making it sellable.

## **Q.8: Who can apply for registration of design?**

Answer: Any person claiming to be the proprietor or owner of any new or original design not previously published in any country and which is not contrary to public order or morality. The term “person” includes firm, partnership, small entity, and a body corporate. In the case of an NRI, his agent or legal representative needs to apply for Design Registration.

## **Q.9: What are the designs not registrable under the Act?**

Answer: Normally, designs of artistic nature like painting, sculptures and the like which are not produced in bulk by any industrial process is excluded from registration under the Act. The features of the design in the finished article should appeal to and are judged solely by the eye.

## **Q.10: What are the benefits of registering a Design of any article?**

Answer: These are some benefits of registering a Design of any article:-

- A well-designed article will be more attractive and sellable.
- Attractive designs can increase the product's marketability.
- If the design is original and authentic, the owner can sue anyone who copies or imitates it.
- Design registration protects packaging or images.
- If necessary, the other party must show that the copyright is valid.
- Design registration is a great alternative to proving a copyright's validity.
- A designer can create something original and unique for their product. This gives the product its character. Its uniqueness is rooted in the market and allows it to be unique among the other brands.

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## Q.11: How can we find that such design is already registered or not?

Answer: We can search the design which has been already registered by the following steps:

Step 1: Visit the official website of Intellectual Property India at

<https://search.ipindia.gov.in/designsearch>

Step 2: Under the dropdown menu in the “Select Search Field” select any of the suitable option;

Step 3: Select comparable;

Step 4: Enter the number selected in dropdown in step 2;

Step 5: Enter the applicable class; (Class search through <https://locpub.wipo.int/enfr/>)

Step 6: Select Logical Operator;

Step 7: Enter the Captcha Code on the bottom of page;

Step 5: Click on Get search and list of Design registered or application for registration of Design will be displayed.

## Q.12: Who is the applicant for registration of design?

Answer: Any person claiming to be the proprietor of any new or original design may apply for registration. A proprietor may be from India or from a Convention Country. A proprietor may be:

- an author of design,
- a person who has acquired the design,
- a person for whom the design has been developed by the author, or
- a person to whom the ownership of the design has been legally transferred.

## Q.13: What is a Register of Designs?

Answer: The Register of Designs is an official list or record maintained by The Patent Office, Kolkata as a statutory requirement. It contains the design number, class number, date of filing (in this country) and reciprocity date (if any), name and address of Proprietor and such other matters as would affect the validity of proprietorship of the design and it is open for public inspection on payment of prescribed fee & extract from register may also be obtained on request with the prescribed fee.

## Q.14: What are the types of application under designs act 2000?

Answer: There are two types of application under section 5 and section 44 of designs act 2000;

### 1. Ordinary application

An ordinary application does not claim priority.

### 2. Reciprocity application

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A reciprocity application claims priority of an application filed previously in a convention country. Such an application shall be filed in India within six months from the date of filing in convention country. This period of six months is not extendable.

## **Q.15: What is meant by priority claim?**

Answer: India is part of the Paris Convention, which means certain rules apply when seeking protection for inventions or designs. On the regular basis first application filed in one of the contracting states, the applicant within the six months may apply for protection in other contracting states, latter application will be regarded as if it had been filed on the same day as the first application.

## **Q.16: What is the validity of Design registration?**

Answer: The design registrations is valid for the period of ten years from the date of registration and in case of priority is claimed, then date from priority claimed.

The registered proprietors can extent the further period of 5 years by paying INR 2000 per application.

## **Q. 17: What if the design registration is not renewed within the time period?**

Answer: If the registration of design has been lapsed due to non filing of renewal or nonpayment of fee, then application for restoration of lapsed design is required to be submitted to the controller along with prescribed form and fees, within one year from the date on which design is lapsed. For fee Enquiry you may refer this link:

[https://ipindia.gov.in/writereaddata/Portal/Images/pdf/The\\_Designs\\_amendment\\_Rules\\_2021.pdf](https://ipindia.gov.in/writereaddata/Portal/Images/pdf/The_Designs_amendment_Rules_2021.pdf)

## **Q.18: What is the date of registration?**

Answer: The date of registration except in case of priority is the actual date of filing of the application. In case of registration of design with priority, the date of registration is the date of making an application in the reciprocal country.

## **Q.19: When does the Applicant for Registration of Design get the registration certificate?**

Answer: When an application for registration of a Design is in order, it is accepted and registered and then a certificate of registration is issued to the applicant. However, a separate request should be made to the Controller for obtaining a certified copy of the certificate for legal proceeding with requisite fee.

## **Q.20: Is marking of an article compulsory in the cases of article to which a registered design has been applied?**

Answer: Yes, it would be always advantageous to the registered proprietors to mark the article so as to indicate the number of the registered design except in the case of Textile designs. If someone infringes on a registered design, the owner may not be able to claim damages unless they can prove they took proper steps to mark the article.

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However, the specific requirements for marking may vary depending on the jurisdiction and the nature of the design. It's important to comply with the marking requirements to fully benefit from the legal protection afforded by the registered design.

## **Q.21: How it is possible to restore the lapsed design due to non-payment of extension fee within prescribed time?**

Answer: A registration of design will cease to be effective on non-payment of extension fee for further term of five years if the same is not paid before the expiry of original period of 10 years. However, lapsed designs may be restored when the following condition is satisfied:

Application for restoration in Form-4 with prescribed fees is filed within one year from the date of lapse stating the ground for such non-payment of extension fee with sufficient reasons. For fee Enquiry you may refer this link:

[https://ipindia.gov.in/writereaddata/Portal/Images/pdf/The\\_Designs\\_amendment\\_Rules\\_2021.pdf](https://ipindia.gov.in/writereaddata/Portal/Images/pdf/The_Designs_amendment_Rules_2021.pdf)

If the application for restoration is allowed the proprietor is required to pay the prescribed extension fee and requisite additional fee and finally the lapsed registration is restored.

## **Q.22: Can the Registration of a Design be cancelled?**

Answer: The registration of a design can be canceled if someone files a petition with the Controller of Designs. This petition in Form 8, needs to be submitted along with a fee. There are several reasons why the registration might be canceled:

- The design was already registered in India before.
- The design was made public in India or somewhere else before it was registered.
- The design isn't actually new or original.
- The design doesn't meet the requirements for registration.
- The design doesn't fit the definition of a design according to Clause (d) of Section 2.

## **Q.23: Are the registered designs open for public inspection?**

Answer: Yes, registered designs are open for public inspection only after publication in the official journal. To view a registered design, a person must submit a request and pay a prescribed fee using Form-5. For fee Enquiry you may refer this link :

[https://ipindia.gov.in/writereaddata/Portal/Images/pdf/The\\_Designs\\_amendment\\_Rules\\_2021.pdf](https://ipindia.gov.in/writereaddata/Portal/Images/pdf/The_Designs_amendment_Rules_2021.pdf)

## **Q.24: Can the applicant make another application for the same design, if the prior application has been abandoned?**

Answer: Yes, the same applicant can apply again since no publication of the abandoned application is made by the Patent Office, In such cases, the applicant can choose to reapply for the design registration,

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provided that the design still meets the eligibility criteria and no one else has registered a similar design in the meantime.

## **Q.25: How does a registration of design stop other people from exploiting?**

Answer: Once a design is registered, it gives the legal right to bring an action against those persons (natural/legal entity) who infringe the design right, in the Court not lower than District Court in order to stop such exploitation and to claim any damage to which the registered proprietor is legally entitled. However, it may please be noted that if the design is not registered under the Designs Act, 2000 there will be no legal right to take any action against the infringer under the provisions of the Designs Act, 2000.

The Patent Office doesn't deal with enforcing the rights you get from registering your design. Similarly The Patent Office does not involve itself with any issue relating to exploitation or commercialization of the registered design. They're just responsible for registering designs, not what happens afterward.

## **Q.26: Why is it important for filing the application for registration of design at the earliest possible?**

Answer: First-to-file rule is applicable for registrability of design. If two or more applications relating to an identical or a similar design are filed on different dates only first application will be considered for registration of design.

## **Q.27: Can the application for registration of design be filed by the applicant himself only or through a professional person?**

Answer: The application for registration of design can be filed by the applicant himself or through a professional person (i.e. patent agent, legal practitioner). However, for the applicants not resident of India an agent residing in India has to be employed.

## **Q.28: Whether there is any extension in case of priority is not claimed within the time period?**

Answer: Yes, the priority documents may be filed after the time period lapsed. It may be filed within 3 months from the time period lapsed. Extension may be sought by filing Form-18 along with the prescribed fee. For fee Enquiry you may refer this link :

[https://ipindia.gov.in/writereaddata/Portal/Images/pdf/The\\_Designs\\_amendment\\_Rules\\_2021.pdf](https://ipindia.gov.in/writereaddata/Portal/Images/pdf/The_Designs_amendment_Rules_2021.pdf)

## **Q.29: Is it mandatory to make the article by industrial process or means before making an application for registration of design?**

Answer: No, design means a conception or suggestion or idea of a shape or pattern which can be applied to an article or capable to be applied by industrial process or means. It is not mandatory to produce the article first and then make an application. You can apply for the registration of a design based solely on the idea or concept of the design, without having to actually manufacture the article. This means that if



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you have a new and original design idea, you can apply to protect it even before producing the physical article.

## **Q. 30: Where should Design application be filed?**

Answer: Design applications can be submitted filed physically to the Controller General of Patents or filed online through the e-filing gateway available at the official website.

<https://online.ipindia.gov.in/eDesign/goForLogin/doLogin>

## **Q.31: What is the Check List of documents for filing of New Design Applications (Online and Offline)?**

Answer: In order to process the Design applications faster, the applicants are hereby requested to Submit/upload the following documents. The applicants are also advised to submit the original documents duly signed for offline filing of the application(s).

1. Form-1 in the prescribed format [as in Schedule-II of the Designs (Amendment) Rules, 2021] along with prescribed fees (as per Schedule I).
2. Representation sheets should be prepared as prescribed under Rule 12, 13 and 14 of the Designs Rules, 2001.
3. Form-21 (Power of Authority/General Power of Authority) in original (if filed through patent agent/advocates) (as in Schedule-II). If the applicant files copy of General Power of Authority (GPA), it should be endorsed with the design application number, with which the original GPA has been filed.
4. Form-24 in prescribed format [if applicant (or one of the applicants) is a Small Entity or a Start-up] (as in Schedule-II):
  - a. It should be accompanied with documentary evidence in respect of registration under MSME Act, 2006 or in respect of recognition as a Start-up (as the case may be) in case of Indian entities.
  - b. It should be accompanied with affidavit deposed by the applicant or authorised signatory as prescribed under Rule 42 of the Designs Rules in case of Foreign entities.
5. Original certified copy of priority document as prescribed under Rule 15 of the Designs Rules (in case of applications filed in India through reciprocal arrangement under Section 44 of the Designs Act, 2000).
6. However, instead of submitting certified copy of priority document in paper format, the applicant may provide the WIPO-DAS Code during filing of design application.
7. Authenticated English translated copy of the priority document (if original priority document is in language other than English).
8. Assignment document in original (if the applicant of first/priority application in convention country is different from that of Indian application).

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## **Q.32: List out the article which cannot be registered under design act 2000.**

Answer: The following items cannot be registered as design:

- Books, jackets, calendars, certificates, forms and other documents, dressmaking patterns, greeting cards, leaflets, maps and plan cards, postcards, stamps, medals.
- Labels, tokens, cards, cartoons, any principle or mode of construction of an article.
- Mere mechanical contrivance (mechanical machinery).
- Buildings and structures.
- Parts of articles not manufactured and sold separately.
- Variations commonly used in the trade.
- Mere workshop alterations of components of an assembly.
- Mere change in size of article.
- Flags, emblems or signs of any country.
- Layout designs of integrated circuits.

## **Q.33: Can we file a single application of design in multiclass?**

Answer: A design may be registered in not more than one class, and, in case of doubt as to the class in which a design ought to be registered; the Controller (the authority in charge) can make the decision for you.

## **Q.34: Can any correction be made in the application or register?**

Answer: Yes, Corrections can be made in Design application. When a request is made under **Form 14**, urging the Controller to correct any clerical error in the representation of the design with the required fees, the Controller must approve this change. Once approved, this modification is entered into the register for Designs. For fee Enquiry you may refer this link :

[https://ipindia.gov.in/writereaddata/Portal/Images/pdf/The\\_Designs\\_amendment\\_Rules\\_2021.pdf](https://ipindia.gov.in/writereaddata/Portal/Images/pdf/The_Designs_amendment_Rules_2021.pdf)

## **Q.35: Do I require a DSC (Digital Signature Certificate) to file an application for Design?**

Answer: Yes, to file a design application, a DSC is required. In addition, the applicant also needs to create an account on the e-filing design. It is advisable to consult a professional who can help you with the design registration and hence you will not need to get a DSC.

## **Q.36: Define the Design Fees Payment structure?**

Answer. Once the application is filed, the process for Design registration necessitates the payment of requisite fees. These fees cover the costs associated with processing the application, conducting examinations, and other administrative functions. It's important to know the fee structure that applies to you, which depends on factors like the type of entity you are (individual, company, etc.) and how many



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different classes your design falls under. You can find more information about the fee structure on the official website of the Intellectual Property Office of India. <https://ipindia.gov.in/designs-act-2000.htm>

## **Q.37: Can the name, address of proprietor or address for service be altered in the register of design?**

Answer: Name and address of the registered proprietor, or address for service can be altered in the register of designs. But this change can't happen if it involves transferring ownership to someone else through things like selling it or giving it away in a legal document. To make this change, you need to fill out a form called Form-22 and pay a fee. Then, you submit it to the Controller of Designs along with any documents they need to process the request.

## **Q.38: How to get information on registration of design?**

Answer: After registration of designs the best view of the article along with other bibliographic data will be notified in the Official Journal of The Patent Office, which is being published on every Friday.

## **Q.39: Is it possible to register the additional design in the same class?**

Answer: Yes, it's possible to register additional designs within the same category by paying extra fees. If the same owner wants to register a similar design for an item in the same category later on, they can do so. However, the new registration will only be valid for as long as the previous registration for the same design was valid.

## **Q.40: What are the essential requirements for the registration of 'design' under the Designs Act, 2000?**

Answer: The design should be new or original, not previously published or used in any country before the date of application for registration. The novelty may reside in the application of a known shape or pattern to new subject matter.

The design should relate to features of shape, configuration, pattern or ornamentation applied or applicable to an article.

The design should be applied or applicable to any article by any industrial process.

The features of the design in the finished article should appeal to and are judged solely by the eye. This implies that the design must appear and should be visible on the finished article, for which it is meant.

Any mode or principle of construction or operation or anything which is in substance a mere mechanical device, would not be a registrable design. For instance a key having its novelty only in the shape of its corrugation or bent at the portion intended to engage with levers inside the lock associated with, cannot be registered as a design under the Act.

The design should not include any Trade Mark or property mark or artistic works as defined under the Copyright Act, 1957.

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## **Q.41: What is piracy of a Design?**

Answer: Piracy of a design entails the application or imitation of a design to any article belonging to the class of articles in which the design has been registered, for the purpose of selling or importing such articles without the written consent of the registered proprietor. Publishing such articles or offering them for sale with knowledge of the unauthorized application of the design also constitutes piracy of the design."

## **Q.42: What is the penalty for the piracy of a registered Design?**

Answer: If anyone violates the intellectual property of a design, they are liable to pay a sum not exceeding Rs. 25,000/- for each offense to the registered proprietor, with a maximum limit of Rs. 50,000/- recoverable as a contractual debt for any single design. The registered proprietor has the right to initiate legal action to recover damages for such violation and seek an injunction to prevent its recurrence. However, the total amount recoverable as contractual debt should not exceed Rs. 50,000/- as stated in Section 22(2)(a). Furthermore, suit for infringement, recovery of damages, etc., should not be filed in any court lower than the court of the District Judge.

## **Q.43: What is meant by classification of goods mentioned in the Third Schedule?**

Answer: The applications for registration of Designs applied to articles are classified according to the Third Schedule of Designs Rules, 2001, using the Locarno Classification system. Only one class number must be mentioned in each application, as mandated by the Rules. This classification is based on the specific articles to which the design is applied.

For example, if the design is applied to a toothbrush, it would be classified under class 04-02. Similarly, if the design is applied to a calculator, it would fall under class 18-01. Subsequent applications by the same proprietor for the registration of the same or similar design applied to any article of the same class are possible. However, the period of registration will only be valid up to the period of the previous registration of the same design.

## **Q.45: Whether it is possible to transfer the right of ownership?**

Answer: Yes, it is possible to transfer the rights through assignment, agreement, or transmission, either in writing or by operation of law. However, certain restrictive conditions, which are not related to the protection of the registered design, should not be included in the terms and conditions of the contract or agreement. An application in Form-10, along with the prescribed fees for the first design and appropriate fees for each additional design, is required for the registration of the transfer documents. This application must be made by the beneficiary to the Controller within six months from the date of execution of the instruments or within a further period not exceeding six months in total. An original or notarized copy of the instrument to be registered must be enclosed with the application.

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## **Q.46: Can the application for registration of design be filed by the applicant himself only or through a professional person?**

Answer: The application for registration of design can be filed by the applicant himself or through a professional person (i.e. patent agent, legal practitioner). However, for the applicants not resident of India an agent residing in India must be employed.

## **Q.47: What is the effect of registration of design?**

Answer: The registration of a design confers upon the registered proprietor 'Copyright' in the design for the period of registration. 'Copyright' means the exclusive right to apply a design to the article belonging to the class in which it is registered.

## **Q.48: Is it possible to re-register a design in respect of which Copyright has expired?**

Answer: No. A registered design, the copyright of which has expired cannot be re-registered.

## **Q.49: What is the process of design registration?**

### **Answer: Step: 1 Design Search:**

This step is of utmost importance before filing a Design application, as it aids the owner in determining whether there exists another design that closely resembles the owner's mark. Merely having a unique design in mind does not guarantee that it is not already registered by another, making the Design search an essential and unavoidable process. This search can be conducted either through the Controller of Designs, Patent Office, or via the Online Portal at <https://search.ipindia.gov.in/designsearch>."

### **Step: 2 Filling of application:**

An application shall be filed in Form-1, along with the prescribed fees, stating the full name, address, nationality, name of the article, class number and address for service in India. Foreign applicants must also provide an address for service in India. This address can be that of their agent in India. For foreign applicants, providing an address for service in India is mandatory. Unless, such an address is provided, the Office shall not proceed with the application.

### **Step: 3 Examination of application:**

The application is referred by the Controller of Designs to an Examiner of Designs for conducting an examination to determine whether the application and the documents satisfy the formal requirements and whether such design as applied to an article/product can be registered under the provisions of the Designs Act, 2000 and Designs Rules, 2001.

### **Step: 4 Formality Check:**

The Examiner determines whether:

- Submission of Application in the prescribed format

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- Payment of prescribed fee
- The application contains the name, address, and nationality of the applicant
- The application contains the address for service
- The application contains the Declaration of proprietorship
- The representation sheet is as prescribed in Rule 14
- Power of authority, if applicable, has been filed

## **Step: 5 Substantive Examinations:**

Substantive examination is carried out to ascertain whether the proposed design is:

- Eligible for protection under the Act
- New or original
- Not contrary to public order or morality
- Does not pose a threat to the security of India

## **Step: 6 Reply to the Objection**

Applicant shall file the reply of the objection raised in the examination report within one month.

If the applicant fails to comply with the objections or fails to apply for a hearing within three months from the date of communication of statement of objections, the application shall be deemed to be withdrawn.

## **Step: 7 Hearing notice**

On consideration of response of the applicant, if the

Controller is of opinion that the requirements of Act and Rules have not been met, the fact shall be communicated to the applicant clearly mentioning that the application is liable to be refused for reasons to be detailed and fixing a date for hearing.

*\*Job Vacancy Notice: CS Trainee Position at B.Kaushik & Associates\**

B.Kaushik & Associates, a reputable firm specializing in corporate secretarial services, is pleased to announce a vacancy for the position of CS Trainee. We are seeking dedicated individuals who are passionate about pursuing a career in Company Secretaryship and are eager to gain practical experience in a dynamic professional environment.

*\*Position:\* CS Trainee*

*\*Location:\* 8/2 Patel Nagar , New Delhi - 110008*

*\*Responsibilities:\**

1. Assist senior team members in various Company Secretarial tasks.
2. Support in the preparation and filing of statutory documents with regulatory authorities.
3. Conduct research and analysis on corporate laws and regulations.

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4. Assist in compliance audits and due diligence activities.
5. Perform administrative tasks as required.

**\*Requirements:\***

1. Strong understanding of corporate laws and regulations.
2. Excellent communication and interpersonal skills.
3. Detail-oriented with strong analytical abilities.
4. Ability to work effectively both independently and as part of a team.

Note : We encourage applications from CS trainees who do not have CS exams scheduled in June 2024.

**\*How to Apply:**

Interested candidates are invited to send their resume along with a cover letter detailing their suitability for the position to [career@bkacs.com](mailto:career@bkacs.com) . Please mention "CS Trainee Application" in the subject line of the email.

Join us at B.Kaushik & Associates and embark on a rewarding journey towards becoming a proficient Company Secretary. We offer a supportive work environment, ample learning opportunities, and a chance to grow professionally. We look forward to welcoming talented individuals who share our passion for excellence and commitment to success.

Warm regards,

B.Kaushik & Associates If the applicant fails to appear for the hearing without any request for adjournment, the application shall be refused giving a reasoned order.

### **Step: 8 Registration & publication**

If the applicant complies with all the requirements laid down under the Act and Rules, communicated in the form of statement of objections, the application shall be registered forthwith.

Once an application is registered, it is published in the Patent Office Journal ordinarily within one month. The registration number is same as the application number.

### **Q.50: What is meant by Reciprocity Application?**

Answer: Reciprocity Application means an application in India under section 44 of the Designs Act. A person, who has applied for protection of a Design, in any of the convention countries or group of countries or countries which are members of intergovernmental organizations, may file an application for registration of the same design in India, within six months from the date of priority. Such applications are called reciprocity applications.