

ONLINE CHAT • GLOBAL BUSINESS OPPORTUNITIES • TRADEWINDS

Knowledgeable Consultants
B-71, LGF, Greater Kailash-I
New Delhi-110048



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The Union Minister for Commerce, Industry and Textiles, Mr Anand Sharma (extreme right) and the Minister of Commerce of the People's Republic of China, Mr Gao Hucheng (extreme left) signing the Work Programmes of the three Working Groups under Joint Economic Group between the Ministry of Commerce & Industry, the Republic of India and the Ministry of Commerce, People's Republic of China, in the presence of the Prime Minister Dr Manmohan Singh and the Premier of the State Council of the People's Republic of China, Mr Li Keqiang, in New Delhi on May 20, 2013

03 India-China Relations

05 Export Growth in Andhra Pradesh

08 Coastal Shipping & IWT Summit, Kochi



Chat

ON LEGAL ISSUES

Every Tuesday, other than holidays, from 4:00 pm to 5:00 pm Ms Aparna Jain, Partner & Advocate, Knowledge Consultants, for FIEO, will be available on the chat section of the Federation's website to clarify your queries/issues on Corporate Legal Affairs, Arbitration, International Agreement, Technology Transfer, Patents, Trade Marks, Brand Management, Copyright and related topics.

Q: I am a manufacturer of mechanical products in the field of packaging in India. I have filed for a Process as well as Product Patent for a newly innovative machine. I have also registered the aesthetic appearance of the same under the Designs Act, 2000. One of my competitors is intending to import a copy of my machine from China. What remedy do I have?

Ans: Under the Customs Act, vide Notification No. 47/2007 dated 8.5.2007, the Government has introduced Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007. You can notify the Commissioner of Customs about your IP rights by a notice as per the stipulated format. The Commissioner shall then grant or reject the registration. Once the registration is granted, the import of infringing goods shall be deemed to be prohibited.

Q: One of my employees has developed a program as part of his scope of work in the company. Would this employee have any copyright in the program?

Ans: No. In the case of a program made in the course of the author's employment under a contract of service or apprenticeship, the employer shall, in the absence of any agreement to the contrary, be the first owner of the copyright.

Q: What is the lifetime of a Patent, Trademark and Design?

Ans: All these are retrospective protections dating back to the date of application or date of use in case of

trademarks. The patent rights are valid for a period of 20 years from the date of the first priority application. The design is protected initially for 10 years and can be renewed for next 5 years. The trademark registration is valid for 10 years from the date of application and can be renewed after every 10 years for a period of another 10 years.

Q: I entered into an agreement with a foreign company for transfer of technology to my Indian company. There has been a dispute as to the quality as well as the consideration and the agreement has an arbitration clause under the Indian Arbitration Law. However, despite my repeated reminders, neither is the other party proposing an arbitrator nor resolving the issue. What remedy do I have?

Ans: You can approach the High Court u/s 11 of the Arbitration Act for appointment of arbitrator in pursuance to your agreement. The award of the arbitrator is final and binding on both the parties, subject to the exceptional stipulations.

Q: I want to launch a company in India which shall be providing Servicing, Repair, Installation and Maintenance for an extremely super specialized product manufacturing field. What are the compliances under Indian law?

Ans: In India, at the outset, you have to decide the form of entity which will be incorporated. The different forms are Sole Proprietorship, Partnership,

LLP, Private Limited Company or Public Limited Company. The statutory requirements shall depend upon the same. Further, various tax statutes like Income Tax, Sales Tax, Value Added Tax, etc shall also be attracted depending upon the scope of activity. However, at the initial stage we would advise a proprietorship concern wherein the assets as well as liability would be of the owner only and there are limited compliances.

Q: I have developed a business methodology which is extremely unique, innovative and novel. Can I get protection under patent for the same?

Ans: No, the Patent Act does not provide for protection of a mathematical, business method or a computer program per se. However, in case the same involves a product due to which the efficacy or improvement can be enhanced, the same can be applied for patent. ■

Last Date of Filing of Application

Representations were received that absence of explicit provision in HBP regarding Last date of filing of application has left scope of ambiguity in the matter. Earlier there was a provision that wherever last date of filing of an application falls on a holiday/Saturday/ Sunday, next working day shall be the last date of filing of such application. The issue was examined and a request was made to DGFT Office that a similar explicit provision in HBP/FTP may be made for universal application of the facility by the RLAs to the trade.

In response, DGFT Office has clarified that it does not make a difference when one has to file electronically whether it is a working day or a holiday? One has to decide his priority. With this clarification it is now clear that application filed on the last working day (happens to be holiday/Sunday) will be treated in time even if the file number is generated by RLA on the next working day.