

ONLINE CHAT • GLOBAL BUSINESS OPPORTUNITIES • TRADEWINDS

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Mr M Rafeeqe Ahmed, President, FIEO shaking hand with the President of France H.E. Mr Francois Hollande at the banquet hosted by the President of India Mr Pranab Mukherjee in honour of French President on 14th February, 2013 at Rashtrapati Bhawan, New Delhi

03 Union Budget
2013-14

06 Doing Business
with Maghreb
Countries

09 Exports
to China



Chat

ON LEGAL ISSUES

Every Tuesday, other than holidays, from 4:00 pm to 5:00 pm Ms Aparna Jain, Partner & Advocate, KnowledgeGentia 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 have a registered SSI unit and I manufacture products under my own brand name. Am I eligible for registration of my brand name as a trademark?

Ans. Yes, trademark shall give you an exclusive right of the brand name/trademark to be used over the manufacture and selling of the specific kinds of goods you are manufacturing in your industry. However, it is subject to the factum that there is no other person/entity who has the same mark as a registered trademark.

Q) How do I apply for a trademark?

Ans. Initially you have to earmark the kinds of services/products and find out which is the relevant class as per the trademark classification. Thereafter, a search of the proposed brand name in the specific class is to be done. Then relevant forms are to be filed with the applicable Government fees in the trademark office as per jurisdiction of the applicant. The information can be accessed at www.ipindia.nic.in.

Q) I have my own software consulting venture. Can the software be patented or protected?

Ans. Software per se is not patentable as per the patent laws applicable in India. However, in case the software is clubbed with a product/device where a tangible output can be derived, the same can come within the

ambit of a process patent. In other cases, the software concept can be protected under the Copyright Act.

Q) What is difference between design and patent?

Ans. A design protects the aesthetic appearance of an article/product only, merely its unique external appearance. However, a patent protects the functions of the article/product as well as the process to manufacture the same.

Q) Can software be patented in any country?

Ans. Yes, software can be patented in the USA as well as in Singapore. However, the same should be more than abstract concept.

Q) What is the meaning of Advance Payment?

Ans. Advance Payment has not been defined under any statute per se. However, the same means a pre-payment or payment which is made in anticipation of delivering any services/goods or liability. The transfer of title is not a pre-requisite or a parameter of considering a payment as an advance payment.

However, as per Section 59 of the Indian Contract Act, 1872: Application of payment where debt to be discharged is indicated - Where, a debtor, owing several distinct debts to one person, makes a payment to him, either

with express intimation, or under circumstances implying that the payment is to be applied to the discharges of some particular debt, the payment, if accepted, must be applied accordingly.

Q) Is payment received against an export consignment after the date of shipment but before the delivery is obtained by the buyer considered Advance Payment?

Ans. Yes, the same can be considered Advance Payment or the payment can be termed Part Payment, depending upon the terms and conditions of the payment as agreed between the parties.

Q) The shipment made to the consignee and the documents for the invoice was sent through the bank while consigning the AWB to the consignee. Will it be treated as DP basis?

Ans. Yes, the same shall be treated as DP basis as the terms between the exporter bank and that of the consignee are clear that the payment shall be credited to the exporter by the consignee bank on receipt of the documents and only then they shall be entitled to collect the shipment. ■

Attention Members !!!

Are you receiving communication from FIEO on a regular basis? If not, update your correct e-mail address with FIEO's Regional Office today. Also, include the following e-mail addresses on your mailing safelist to ensure that you receive all email communication from FIEO:

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