

## Intellectual Property Rights

If you are planning to do business in India or if you are already trading there, it is essential to know how to use, guard and enforce your right to your company name, logo, design or your invention.

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This article is prepared by The Trade Council of Denmark-India in collaboration with the Danish Patent and Trademark Office.

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### **1. Why is protecting your Intellectual Property Rights (IPR) one of the most important things you have to do when entering a foreign market?**

A registered trademark, a patent or a registered design gives you the exclusive right to export/import, manufacture and distribute your products in a market, and gives you the right to prevent others from using your trademark, patented technology or design. Furthermore you can license your trademark, patent, or design to third parties, and obtain royalty fees or use it as a business asset when negotiating joint ventures, R&D partnerships, exclusive distribution agreements etc.

This article intends to provide Danish companies considering initiating business in India with ideas on how to handle IP challenges. For more information on the matter, contact [The Danish Trade Council](#) in India.

Protecting your IP rights are, of outmost importance for your company in order to uphold or defend your exclusive rights to produce and distribute your products.

### **2. Description of the different intellectual property rights you can obtain.**

#### **Trademark**

A trademark is a sign that distinguishes the goods and services of one trader from those of others, and can be words, personal names, letters, figurative elements, the packaging etc.

A logo is a popular way of explaining what a trademark is in non-legal terms. You can try to register the logo you use for your company, and/or the logo that you put on your goods or use when providing services. Keep in mind that logos can both be simple words, or a figurative mark containing letters.

Trademarks are registered in India on a “first-to-file” basis, which means that the one that registers a trademark can prevent others from using the. The period of protection of a registered trademark is perpetual. However, its registration has to be renewed after every ten years.

Find more information [here](#).

### **Invention Patent**

A patent protects your invention by giving you, the patent owner, a legal right to prevent others from manufacturing, using, selling or importing your patented invention. A patentable invention must be considered globally new. “New” is a legal definition, and it is important to contact the relevant registration office to make sure that your invention meets the criteria for protection.

India operates on a “first-to-file” system giving 20 years protection for invention patents. A renewal fee has to be paid every year, to keep the patent valid.

Find more information [here](#).

### **Utility Model Patent**

It is not possible to register utility models in India

### **Industrial Design**

A design registration protects the appearance of the product, e.g. a glass, a chair, a lamp. A registration of the design does not protect the way in which the product works, i.e. the technical parts of the product, but this might be available under patent law.

Industrial designs are given protection for a period of ten years and further five years after renewal.

### **Copyright**

Copyright can be obtained for a variety of things i.e. books, musical, drawings, sound recordings, films. Copyright protection arises automatically, this means that the protection begins when a work is created. It is not necessary to register a copyright in order to get a protection for your creation, but it can be an advantage if it should ever come to a dispute since a registration provides evidence for your right in India.

### **3. Before initiating activities.**

Before deciding to do business in or with India, it is necessary to have your IP rights registered in India.

The key is to have a strategy on how to proceed before entering the Indian market and for most companies that means that IPR should be regarded as part of the costs of starting a company in India. This includes legal help and registration fees, and afterwards having an agent protect your rights.

There are a number of things you can do both in Denmark and in India.

- For example you can buy a trademark scan in Denmark. This gives you an overview of identical or similarly marks already registered in India. After registering a trademark you can initiate international trademark surveillance, in order to be informed if anybody tries to register a trademark similar to yours.
- There is also inspiration to be found at the [Danish Patent and Trademark Office](#) where you can read about how other companies have registered their IP rights. (in Danish)

There is also the possibility of doing your own searches on the internet. You can search for already registered IP rights in India here:

- [Trademarks](#)
- [Patents](#)
- [Design](#)

Important information before entering in India

- Register your IP right and make sure that the registration covers India. Also consider if there are any of the countries in close connection to India where having a registration could be useful.

- Foreign individuals whose business is not based in India are required by the Indian authorities to use a lawful representative in India, when applying for registration of an IP right. The application can either be English or Hindi.
- Register your IP right with Custom authorities. Consequently they will be able to withhold infringing products.

#### **4. Where do you register your IP-rights in India?**

##### **Patents, Trademarks and Design**

Government of India

Controller General of Patents, Designs & Trade Marks

Bhoudhik Sampada Bhavan,

Antop Hill, S.M. Road, Mumbai-400037,

Phone: 022-24132735

Fax: 022-24123322

E-mail: [cgooffice-mh@nic.in](mailto:cgooffice-mh@nic.in)

Web site: [www.ipindia.nic.in](http://www.ipindia.nic.in)

The office has branches in Mumbai, Delhi, Chennai, Ahmedabad and Kolkata, and the registration has to be filed in the office based on the territorial jurisdiction which can be found [here](#).

The website is in English and Hindi and describes, among many other things, the procedures for application.

##### **Copyright**

Copyright Division.

Department of Higher Education

Ministry of Human Resource Development

4th Floor, Jeevan Deep Building

Parliament Street

New Delhi - 110001

Telephone No.: (Office) 91-11-23362436

Email Address: [copyright@nic.in](mailto:copyright@nic.in)

Webpage: <http://copyright.gov.in>

Copyrights do not have to be registered to create a legal right covering your work. Even though it is not necessary to register your copyright it could be a good idea doing it because the registration can be a useful way of providing evidence for your right in a copyright dispute.

#### **5. Obtain your IP rights in India through an international registration**

It is possible to register your Indian IP rights in Denmark. This is done through an international registration.

The Danish Patent and Trademark Office.

Helgeshøj Allé 81

2630 Taastrup

Phone: +45 43 50 80 00

E-mail: [pvs@dkpto.dk](mailto:pvs@dkpto.dk)

Webpage: <http://www.dkpto.dk/>

For more information on the application process, and the application criteria for international registrations, please see the following webpages:

- [Trademark Guidelines](#). (In Danish)
- [Design Guidelines](#). (In Danish)
- [Patent Guidelines](#). (In Danish)

#### **6. Surveying your rights while in India.**

After having established a business in India it is important to follow the market very carefully. This involves paying attention to whether a customer suddenly stops buying your products. This could reflect that the customer has started copying them or can acquire your products from someone that is copying them. The same goes for distributors, and agents.

Also, it is useful to check the background of potential distributors, agents and suppliers in detail. Some companies have benefited from having a clause in contracts with distributors saying that penalties will have to be paid if copies are being sold and that collaboration can be terminated immediately.

In relation to trade secrets and inventions, it can be an advantage to make sure that important information are kept only on special computers without USB ports and without e-mail connection. It is also advisable to ensure that knowledge is distributed among local employees in a way so that a given individual does not obtain a full overview of the technology.

It is important to be very careful about disclosing information to potential partners or other entities in India, since this information can be used to copy your products.

#### **7. After having experienced infringements.**

When experiencing an infringement it is important to collect as much evidence as possible.

Companies facing counterfeiting have different choice of actions in India.

#### **Non official and non-legal methods**

A way of handling an infringement is to establish contact with the company or person that is wrongfully using your products, and try to solve the differences through negotiation.

It can be a very productive way, and less time consuming to settle out of court, but it is important to do something immediately to protect and enforce your right, hence the statute of limitation for taking your claim to court.

#### **Legal enforcement methods**

There are three levels at which rights may be enforced: civil action (or litigation) criminal prosecution and seizure by customs.

### **Civil litigation**

Upon a dispute over IP rights, the proprietor might initiate a civil lawsuit in the District Court or in the High Court against an infringer of their IP rights.

### **Criminal prosecution**

A criminal procedure is between the state, and the infringer. The right holder therefore only has a limited role to play in the court proceedings of initiating criminal proceedings by filing complaint/giving information.

### **Seizure by customs**

The right holder can record their registered rights with custom authorities, and the Custom officials can seize the infringing goods without the courts having to be involved

## **8. What the Trade Council can do**

The Trade Council has in recent years assisted Danish companies with IPR infringements in relation to trademarks in particular. The services include:

- General information as to how to navigate the complex Indian enforcement system and how to protect your IPR
- Contact to patent and trademark bureaus to secure registration of IPR
- Contact to law firms and consultants specialised in IPR
- Encouraging central and local authorities to enforce existing rules and regulations.

It is important to bear in mind that our assistance can only be effective if the Danish company has a good case. This typically means that the IPR has in fact been well protected in India, as well and also that the case is well described. The Trade Council cannot interfere in the judicial process.

This assistance provided by The Trade Council complements the services being provided by lawyers, private investigators and consultants specialised within the IPR area.

The activities conducted by The Trade Council are one element in Denmark's interaction with Indian authorities in regard to IPR.

### **Legal disclaimer**

Whereas every effort has been made to secure that the information found here is correct, The

Trade Council of Denmark and the Danish Patent and Trademark Office does not accept responsibility for errors, omissions or misleading statements.

The purpose is to provide an introduction to the Indian IPR landscape and this text should not substitute legal or other advice.