THE GRACE PERIOD DILEMMA: PRIOR SELF-DISCLOSURE AND DESIGN PROTECTION UNDER THE DESIGNS ACT, 2000

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ABSTRACT

The Designs Act, 2000 serves as the primary legal framework for protecting industrial designs in India, mandating absolute novelty as a prerequisite for registration. However, Section 4(b) of the Act strictly prohibits the registration of any design that has been previously published or disclosed to the public anywhere in the world, without affording a broad statutory grace period for a creator's own prior disclosures. This strict prior-publication rule creates a significant legal dilemma for modern designers, innovators, and startups who frequently rely on early-stage public disclosures such as social media displays, investor presentations, market testing, and exhibitions before filing a formal application. Consequently, creators risk the irreversible loss of their intellectual property protection simply by self-disclosing their work to gauge market viability or secure funding.

This paper examines whether the absence of a statutory grace period under the Designs Act, 2000 disproportionately destroys design protection through the creator's own disclosure, effectively penalizing the very innovation the Act seeks to protect. To evaluate this gap, the research contextualizes the dilemma within both international frameworks and domestic legislative precedents. Internationally, it analyzes the flexibilities afforded by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which permits member states to define novelty standards that accommodate modern commercial practices. Domestically, the paper highlights a critical legislative anomaly, while the Indian parliament has recognized the commercial necessity of grace periods in other sui generis intellectual property regimes specifically under Section 15(3)(a) of the Protection of Plant Varieties and Farmers' Rights (PPV&FR) Act, 2001, and the commercial exploitation grace period afforded under the Semiconductor Integrated Circuits Layout-Design Act, 2000 such protection remains conspicuously absent for industrial designs. By comparing India's rigid absolute novelty approach against its own progressive stance in parallel IP domains and against TRIPS-compliant global jurisdictions, this study advocates for a statutory amendment to introduce a 6- to 12-month grace period. This reform is essential to harmonize Indian design jurisprudence,

safeguard creators from inadvertent forfeiture of rights, and foster a more equitable, innovation-friendly environment.

Keywords: Designs Act 2000, TRIPS Agreement, Prior Publication, Section 4(b), Grace Period, PPV&FR Act 2001, Semiconductor Layout-Design, Intellectual Property, Self-Disclosure.

Introduction

Industrial design law protects the way a product looks. It does not protect the idea behind the product or the way it works. A bottle, a lamp, a footwear sole or a surface pattern can sell in large numbers because of its appearance, even when its technical function is the same as that of a dozen rival products. For this reason, designs are an important commercial asset, and the legal system that protects them has real economic weight. The Department for Promotion of Industry and Internal Trade (DPIIT) reported that Indian design filings rose by 43.2 per cent in 2024, that the Indian office received 12,160 applications that year, and that domestic applicants accounted for about ninety per cent of filings.[1] Much of that growth comes from small manufacturers, start-ups and individual designers, the very groups that are least likely to have a lawyer advising them before they show a new product to the public.

In India a design is protected by registration under the Designs Act 2000[2]. Registration is available only for a design that is new or original. The Act adds a specific bar in section 4(b): a design cannot be registered if it has been disclosed to the public anywhere in India or in any other country, by publication in tangible form, by use or in any other way, before the filing date or, where applicable, the priority date[3]. In ordinary language, the novelty of a design is tested against the whole world, and it is lost once the design becomes public. The Act does not say who must have made the design public. A competitor's catalogue and the designer's own social media post are, on the text of section 4(b), equally capable of destroying novelty.

This is the problem of self-disclosure. A designer who posts a prototype online to test interest, shows it to investors at an open event, sells a pilot batch, or displays it at a trade fair that is not covered by the Act may, without realising it, remove the very novelty on which registration depends. Many legal systems respond to this problem with a grace period, which is a fixed

[1] Department for Promotion of Industry and Internal Trade, "*Concept Note: Proposed Amendment to the Designs Act, 2000*" January 2026.
[2] The Designs Act, 2000 (Act 16 of 2000).
[3] Designs Act, s. 4(b).

window before filing during which the designer's own disclosure is ignored when novelty is assessed. India has no such general rule for designs. The Act contains only three narrow provisions that soften the position: section 16 on disclosures made in confidence, section 21 on certain notified exhibitions, and section 44(2) on publications made during the Convention priority period.

The topic has become more urgent because the position is no longer purely academic. In January 2026 the DPIIT circulated a concept note proposing, among other things, a full grace period of twelve months in place of the present exhibition-based rule[4]. As of the date of access, no Bill giving effect to the proposal was located, so the proposal remains a consultation document and not law. The present paper therefore studies a live reform question and not merely a historical gap.

The central argument is as follows. Section 4(b) is a strict rule, and its three exceptions are too narrow to protect most modern forms of early disclosure. India has already accepted, in two other sui generis statutes, that a creator should not lose protection merely because of earlier exploitation within a defined period: the Protection of Plant Varieties and Farmers' Rights Act 2001 (PPV&FR Act) and the Semiconductor Integrated Circuits Layout-Design Act 2000 (SICLD Act). The TRIPS Agreement does not require a grace period for designs, but it does not forbid one either, and it leaves Members free to design their own novelty rules. On this basis, the paper argues that a limited statutory grace period, confined to disclosures originating from the designer or the designer's successor, would improve fairness without abandoning the novelty requirement. The paper also argues that the grace period should be twelve months, should be supported by documentary safeguards, and should not turn into a general exception for all prior publications.

The paper proceeds as follows. Part 2 explains the basic concepts. Part 3 sets out the Indian legal framework, the two comparator statutes and the international instruments. Parts 4 to 11 state the significance, research gap, aim, problem, objectives, questions, hypothesis, scope and method. Parts 12 to 15 contain the doctrinal analysis, the comparative study and the review of judicial decisions. Parts 16 to 18 give the findings, the conclusion and the proposed reform.

[4] DPIIT, Concept Note, p. 7; Press Information Bureau, *"Department for Promotion of Industry and Internal Trade Proposes Amendments to Designs Act to Align with Global Best practices"*.

Meaning and Nature of the Topic

Industrial designs

Section 2(d) defines a design as the features of shape, configuration, pattern, ornament or composition of lines or colours applied to an article by an industrial process, which in the finished article appeal to and are judged solely by the eye[5]. The same definition excludes any mode or principle of construction, anything that is in substance a mere mechanical device, trade marks and artistic works as defined in the Copyright Act 1957[6]. The definition makes clear that the subject of protection is appearance. This is consistent with Article 25(1) of the TRIPS Agreement, under which Members may refuse protection to designs dictated essentially by technical or functional considerations[7].

Novelty and originality

The Indian Act uses two related but different ideas. Section 2(g) says that a design is "original" if it originates from its author, and it adds that the term includes cases which, though old in themselves, are new in their application[8]. Section 4(a) bars a design that is "not new or original". Section 4(b) bars a design that has been disclosed to the public before the relevant date, and section 4(c) bars a design that is not significantly distinguishable from known designs or combinations of known designs. The result is that originality in the sense of independent creation does not rescue a design that has already been disclosed. A designer may be the true and only author of a design and still be unable to register it, because the prior disclosure is a separate bar.

Public disclosure, prior publication and self-disclosure

The Act does not define "publication" or "disclosure". Section 4(b) simply lists three routes: publication in tangible form, use, and "any other way". For present purposes, three points are enough. First, disclosure is judged against the world and not only against India. Second, disclosure need not be commercial, since display or description may be enough if the design is made available to the public. Third, the identity of the person who disclosed the design is not

[5] Designs Act, s. 2(d).
[6] *Ibid.*
[7] Agreement on Trade-Related Aspects of Intellectual Property Rights, 1994 (TRIPS Agreement), Art. 25(1).
[8] Designs Act, s. 2(g).

mentioned in section 4(b).

Self-disclosure means disclosure by the person who is later the applicant, or by someone acting for or deriving the design from that person. It covers an online launch, a crowdfunding page, a pitch deck circulated beyond a confidential group, a catalogue, sample sales and an exhibition stand. It is different from disclosure by an independent third party, who may have created the same or a similar design separately. The two situations raise different policy questions, and the reform proposed in Part 18 treats them differently.

Grace period, priority period and temporary exhibition protection

A grace period is a window before the filing date within which the applicant's own disclosure is not counted against novelty. It should be distinguished from two other concepts. The priority period works forwards from a first filing: under Article 4C(1) of the Paris Convention, it is six months for industrial designs, and a later application in another country may claim the date of the first one[9]. Section 44 of the Designs Act gives effect to that period in India. A grace period works backwards from a filing and concerns disclosure that occurred before any filing was made. Temporary exhibition protection, provided for in Article 11 of the Paris Convention, is a narrower idea that applies to goods shown at official or officially recognised international exhibitions[10]. Under Article 2(1) of TRIPS, WTO Members must comply with Articles 1 to 12 and 19 of the Paris Convention, so Article 11 is also part of India's TRIPS obligations[11].

Protecting a design and protecting technical function

A product launch often reveals two things at once, how the product looks and how it works. Design law is concerned only with the first. A registered design does not stop a competitor from making a product that works in the same way, and the disclosure of a design does not by itself disclose or destroy an invention. Technical function belongs to patent law, which has its own anticipation rules and is outside the scope of this paper. The distinction matters for two reasons. First, a start-up may be advised to delay disclosure for patent reasons and may wrongly assume that the same advice covers the appearance of the product. Second, any grace period

[9] Paris Convention for the Protection of Industrial Property, 20 March 1883, as revised at Stockholm, 14 July 1967, 828 UNTS 305, Art. 4C(1).
[10] Paris Convention, Art. 11. The article was checked in summary form through a WIPO presentation, "*Temporary Protection Provided to Industrial Designs under Article 11 of the Paris Convention*".
[11] TRIPS Agreement, Art. 2(1).

for designs must be framed around visual features. A disclosure that reveals only an unseen mechanism does not disclose the design, and a design grace period should not be read as extending to the underlying technical content.

Indian Legal Framework

The Designs Act 2000

The Designs Act 2000 came into force on 11 May 2001 and replaced the Designs Act 1911[12]. Section 5(1) allows the Controller to register a design on the application of a person claiming to be the proprietor of "any new or original design not previously published in any country". The Controller must first refer the application to an examiner. Section 5(6) provides that a design, when registered, is registered as of the date of the application. Registration gives the proprietor a "copyright" in the design, a term defined in section 2(c) as the exclusive right to apply the design to any article in the class in which it is registered. The term of that right is ten years from registration, extendable by five years[13]. The statutory language of section 4 is set out in Part 1. Section 4(b) refers to disclosure before "the filing date, or where applicable, the priority date".

Two features of section 4(b) deserve attention. The first is geographical: "anywhere in India or in any other country". The second is the width of the means of disclosure: "publication in tangible form or by use or in any other way". Together they mean that the Indian test of novelty is absolute in both territory and manner. Neither the text of section 4 nor the text of section 5 contains a general exception for disclosure by the proprietor.

Cancellation and the consequences of disclosure before filing

Prior disclosure can matter at two stages. At the examination stage, the examiner searches the database of earlier designs and the Controller may refuse registration. The Act allows an appeal to the High Court from a refusal[14]. After registration, section 19(1) permits "any person interested" to petition the Controller for cancellation, on grounds that include that the design "has been published in India or in any other country prior to the date of registration" and that

[12] Designs Act, s. 48(1).
[13] Designs Act, ss. 2(c), 11(1)-(2).
[14] Designs Act, s. 5(1) proviso, s. 5(4).

it is not new or original[15]. Section 22(3) then provides that every ground on which registration may be cancelled under section 19 is available as a defence in a suit for piracy, and section 22(4) provides that where such a defence is raised the suit is transferred to the High Court[16].

The wording of section 19(1)(b) refers to the "date of registration", whereas section 4(b) refers to the filing or priority date. The two provisions can be read together through section 5(6), under which a design is registered as of the date of application, so that the operative date is the application date. This reading is an interpretation supported by practitioner commentary and is not tied to a specific reported holding[17]. The practical consequence is significant. A self-disclosed design may be registered because the examiner did not find the disclosure, but the registration remains open to cancellation or to a defence of invalidity for as long as the disclosure can be proved. The register is only prima facie evidence of the matters entered in it.[18]

The limited exceptions in the Act and the Rules

It would be wrong to say that the Designs Act contains no exceptions at all. There are three, and each is narrow.

Section 16 provides that three situations shall not be treated as a publication sufficient to invalidate the design if registration is obtained after the disclosure or acceptance: disclosure by the proprietor to another person in circumstances that make it contrary to good faith for that person to use or publish the design; disclosure in breach of good faith by a person other than the proprietor; and acceptance of a first and confidential order for articles bearing a new or original textile design intended for registration[19]. This section protects private, confidential communication. It does not protect a public launch.

Section 21 deals with exhibitions. The exhibition of a design, or of an article to which it is applied, at an industrial or other exhibition to which the section has been extended by the Central Government by notification in the Official Gazette, or the publication of a description of the design during or after the exhibition, shall not prevent registration or invalidate the

[15] Designs Act, s. 19(1)(b)-(c).
[16] Designs Act, s. 22(3)-(4).
[17] *Intepat*, "Novelty and Originality of Design in India".
[18] Designs Act, s. 10(4).
[19] Designs Act, s. 16.

registration. The same applies to exhibition or publication by any other person elsewhere without the privity or consent of the proprietor. Two conditions apply: the exhibitor must give the Controller previous notice in the prescribed form, and the application must be made within six months from the date of first exhibiting or publishing[20]. The prescribed form is Form 9, titled "Notice of intended exhibition or publication of unregistered design" in the Second Schedule to the Designs Rules 2001[21]. The section therefore covers only exhibitions that the government has notified, and only if notice is given beforehand. No list of exhibitions to which section 21 has in fact been extended was found in the sources consulted. That point could not be verified and should be checked against the Gazette before it is relied on in any argument that the provision is rarely or never used.

Section 44 deals with convention priority. A person who has applied for design protection in the United Kingdom or another convention country, or in a group of countries or inter-governmental organisation to which the notified conditions apply, may claim the date of that application in India if the Indian application is made within six months[22]. Section 44(2) adds that the registration of a design shall not be invalidated "by reason only of the exhibition or use of or the publication of a description or representation of the design in India during the period specified in this section"[23]. This protects a foreign-first applicant against use in India during the priority window. It does not cover disclosure before the first foreign filing.o

The Protection of Plant Varieties and Farmers' Rights Act 2001

Section 15(3)(a) of the PPV&FR Act, read with section 15(1), sets out when a new plant variety is "deemed" novel. A variety is novel if, at the date of filing, its propagating or harvested material has not been sold or otherwise disposed of "by or with the consent of its breeder or his successor for the purposes of exploitation of such variety" in India earlier than one year before filing, or outside India earlier than six years before filing in the case of trees or vines and four years before filing in any other case[24]. Two provisos follow. A trial of a new variety which has not been sold or otherwise disposed of does not affect the right to protection, and the fact that the material has become a matter of common knowledge by other means does not affect

[20] Designs Act, s. 21.
[21] The Designs Rules, 2001, Second Schedule, Form 9 (s. 21).
[22] Designs Act, s. 44(1).
[23] Designs Act, s. 44(2).
[24] The Protection of Plant Varieties and Farmers' Rights Act, 2001 (Act 53 of 2001), s. 15(3)(a).

novelty.

Several points follow from this wording. First, the rule is a definition of novelty built around commercial sale or disposal with the breeder's consent. It is not a general rule about all kinds of disclosure. Second, it gives different time limits for domestic and foreign exploitation, and the foreign limits are much longer than the Indian one. Third, it ties the relevant act to the breeder or the breeder's successor, which means that third-party disclosure is treated separately. The Delhi High Court has read the provision purposively in *Maharashtra Hybrid Seed Co v Union of India* it held that commercial sale of hybrid seed prevented the parent lines from being treated as novel, and it relied in part on the concern that a contrary reading would let a breeder extend the period of exclusivity several times over[25]. The abstract describes section 15(3)(a) as a grace period. That description is fair in the sense that earlier consensual sale within the stated window does not defeat novelty. It should be used with care, because the statute frames the matter as a rule of novelty and not as an exception to an otherwise absolute bar.

The Semiconductor Integrated Circuits Layout-Design Act 2000

Section 7 of the SICLD Act prohibits registration of a layout-design that is not original, has been commercially exploited in India or a convention country, or is not inherently distinctive or inherently capable of being distinguished from any other registered layout-design. A proviso states that a layout-design which has been commercially exploited for not more than two years from the date on which an application for its registration has been filed, either in India or in a convention country, is deemed to not have been commercially exploited for the purposes of the sub-section[26]. "Commercial exploitation" is defined in section 2(e) to include selling, leasing, offering or exhibiting for sale or otherwise distributing the semiconductor integrated circuit for any commercial purpose[27].

The SICLD proviso is the closest domestic equivalent to a true grace period. It is general in scope and not limited to any particular class of events, although the time-limit of two years applies to all cases. It does not appear to require any specific action to be taken by the creator, at least on the basis of the text examined. It also differs from the Designs Act in one significant respect: commercial exploitation is the trigger, whereas any kind of disclosure to the public is

[25] *Maharashtra Hybrid Seed Co. v. Union of India*, W.P.(C) 4330/2012 (Del).
[26] The Semiconductor Integrated Circuits Layout-Design Act, 2000 (Act 37 of 2000), s. 7(1)(b).
[27] SICLD Act, s. 2(e).

sufficient under section 4(b) of the Designs Act. The SICLD Act does not explicitly state that the commercial exploitation must have been carried out by the creator and the question of who can exploit a layout-design under the proviso is not resolved by the text examined.

The PPV&FR Act and the SICLD Act protect different subject-matters for different reasons. A plant variety has to be distinct and uniform and stable and the breeder has to demonstrate its commercial exploitation by marketing seed or vegetative propagating material. A layout-design typically has to be proved by actual construction and commercial exploitation in the form of chips. In both cases, commercial exploitation is part of the process of bringing the protected subject-matter to market, which makes it a reasonable criterion for a grace period. A design for a consumer product is analogous to a plant variety in this respect: the creator typically needs to demonstrate the product to the market to determine its commercial viability, which takes time and during which time the design may become publicly known. The comparison is not perfect, since layout-designs and plant varieties are not decorative articles and the conditions for protection are significantly different. The statutes also do not contain a provision analogous to section 4(b) of the Designs Act. Nevertheless, the comparison shows that there is a basis in legislation for grace periods that extend protection to disclosures made within a limited time preceding registration.

The TRIPS Agreement, the Paris Convention and the Riyadh Design Law Treaty

Article 25(1) of TRIPS requires Members to protect "independently created industrial designs that are new or original" and provides that protection may be denied if the design "does not significantly differ from known designs or combinations of known design elements" or "is dictated…essentially by technical or functional considerations"[28]. Article 25(2) contains additional requirements for textile designs, including that "costs, examinations or publication requirements for the registration of designs should not unduly restrict access to protection for textile designs." Article 26(1) deals with the rights of the owner of a protected design, Article 26(2) permits limitations to those rights if they do not "unduly prejudice the legitimate interests of the owner", particularly taking into account "the interests of other parties," and Article 26(3) provides that the term of protection shall be a minimum of ten years[29].

Three observations can be made at this point. First, TRIPS does not explicitly require a grace

[28] TRIPS Agreement, Art. 25(1).
[29] TRIPS Agreement, Arts. 25(2), 26(1)-(3).

period. None of Articles 25 and 26, which deal with protection and enforcement, mention such a period. Second, TRIPS does not prohibit a grace period. The Agreement simply specifies that protected designs must be "new or original" without elaborating on what this means or providing any specific language, and Article 1(1) allows Members to adopt "appropriate measures" with regard to the implementation of TRIPS[30]. Consequently, a grace period falls within the purview of national law. Third, Article 26(2) should not be conflated with a grace period, since it concerns limitations to the rights of the owner of a protected design and not exceptions to the novelty or originality requirements. The abstract of the article under review is accurate in stating that TRIPS contains "flexibility" on the subject of novelty, but this flexibility is found in the wording of Article 25(1) and not in Article 26(2).

The Riyadh Design Law Treaty, adopted by WIPO Member States on 22 November 2024, goes beyond TRIPS in a number of respects. Article 7 specifies a twelve-month grace period for disclosures made by the creator or his or her successor in title, as well as by anyone who has received information directly or indirectly from the creator or successor in title, with an optional reservation for Contracting States[31]. The DPIIT concept note shows that India has ratified the Final Act in 2024 and proposes accession to the Treaty[32]. As of January 2025, no State has ratified the Treaty, which will enter into force three months after its fifteenth ratification[33]. Consequently, the Treaty can be used as a reference in policymaking but cannot be considered a binding provision in India.

Significance of Study

The topic of the study is important for a number of stakeholders. Individual designers and small manufacturers often make early disclosures with the expectation of obtaining registrations and evidence of commercial viability. Start-ups sometimes require working prototypes as part of fundraising, and such prototypes are often publicly demonstrated, sometimes on open online platforms. Fashion and design houses operate on tight schedules and designs are often photographed, published and sold within a matter of weeks. Exhibitions continue to be an important channel for designers to reach buyers, but the requirement to give notice of participation in a notified exhibition may be a disincentive for some to use this channel. The

[30] TRIPS Agreement, Art. 1(1).
[31] Riyadh Design Law Treaty, 2024, Art. 7.
[32] DPIIT, Concept Note, pp. 3-4, 11.
[33] United States Patent and Trademark Office, "Riyadh Design Law Treaty".

DPIIT concept note examined includes online launches, investor demonstrations, pilot sales, crowdfunding, publication in academic journals and online marketplaces as modes of disclosure, with micro, small and medium enterprises, start-ups and first-time designers as the stakeholders who are most likely to find the grace period useful[34].

The topic of the study is important for other third parties and for the legal system, for different reasons. A provision that is overly strict in its wording will generate excessive cancellations of registered designs and additional litigation. A provision that is overly broad in its wording will sow uncertainty among designers about whether a design is available for use. A well-drafted grace period must balance these two concerns.

Research Gap

The research gap consists of three elements. The first part concerns India. Section 21 of the Designs Act is an exception in Indian law, but it appears to have attracted limited discussion by the Indian courts. No case law examining the application of either section 21 or section 16 to a designer's own disclosure was found in the course of the research. Consequently, the statement that no such case law was found qualifies as a research limitation.

The second part concerns the gap in the academic discourse. The DPIIT concept note examined does not compare India to any other jurisdiction on the subject of design law. It discusses the US, the UK, Canada, Japan, South Korea, Australia and the Riyadh treaty, but not the PPV&FR Act or the SICLD Act, as the full text shows[35]. Commentary on the concept note reviewed and on the proposed grace period in general is similarly limited. The SpicyIP post entitled 'Design Law Reforms: Searching for Justifications' contains extensive discussion on the note itself but not on the issue of novelty or the existing domestic law, in the sections examined[36].

The third part concerns the comparison between domestic and foreign law and policy. A focused comparison of the Designs Act, the PPV&FR Act, the SICLD Act, TRIPS and select foreign statutes on comparable topics was not found among the materials reviewed. The study proceeds cautiously on this score, observing what the review of materials shows but not asserting that nothing has been written elsewhere.

[34] DPIIT, Concept Note, p. 7.
[35] DPIIT, Concept Note, pp. 3-11.
[36] "Design Law Reforms: Searching for Justifications", *SpicyIP* (2026).

Aim of Study

The aim of the study is to examine the question of introducing a limited statutory grace period for self-disclosure in India, and if such a period is warranted, to explore its scope. It attempts to accomplish this goal by reviewing the relevant statutory text and case law in India, comparing it to similar domestic statutes on related protected subject-matters and examining the laws of selected foreign jurisdictions. It then applies the findings to an analysis of India's TRIPS and Paris Convention obligations.

Literature review

Amazing Grace Periods for Registered Designs and Design Patents – A Sweet Sound or a Funeral Toll?[37]

This paper describes the grace period in design law, and how it influences the ways designers can obtain design rights in various jurisdictions. The authors explain that designers currently seek protection in multiple jurisdictions, including the one where their goods are manufactured, where each has its own design law. They discuss how a grace period acts as an exception to the novelty requirement, allowing a designer to file an application after disclosing the design to the public without losing novelty. They also discuss how the length and scope of grace periods vary across jurisdictions and how these differences impact designers who file internationally. This paper is useful to the present study because it demonstrates that a designer's own early disclosure is an issue in design law, and that grace periods in other jurisdictions are used to address such an issue.

Ending Unnecessary Novelty Destruction: Safety-Net Grace Period as International Best Practice[38]

This paper describes the loss of novelty attributed to a creator's own disclosure, which the author views as equivalent to any prior publication. The author argues that Europe should adopt a "safety-net" grace period, and treats it as a best practice to follow internationally. The paper discusses why the destruction of novelty in such cases is unnecessary, and how a grace period

[37] Elizabeth Ferrill and Jeanette Roorda, "Amazing Grace Periods for Registered Designs and Design Patents: A Sweet Sound or a Funeral Toll?", 11(10) *Journal of Intellectual Property Law & Practice* 762 (2016).
[38] F.W. Struve, "Ending Unnecessary Novelty Destruction: Why Europe Should Adopt the Safety-net Grace Period as an International Best Practice", 39 *William Mitchell Law Review* (2013).

would protect the creator without eliminating the novelty requirement. This supports the argument of the present study that India can introduce a limited grace period for the creator's own disclosure while maintaining the novelty standard of the Designs Act, 2000.

***Disclosure Grace Period in Patent Law*[39]**

This paper describes the "disclosure grace period", a period during which an applicant can file a patent or industrial design application after public disclosure to avoid loss of novelty. The authors discuss four considerations that legislatures may take note of in order to provide for a grace period: the length of the period, the type of disclosure, the extent to which the creator's disclosure is protected against third-party publications, and the priority right. The paper also discusses the merits and demerits of a grace period by reviewing the Iranian law and comparing it to other systems. This paper is useful to the present study because it provides a practical guide to designing a grace period that is useful to the reform proposed.

***A Uniform Grace Period: Promoting International Research and Development Collaboration*[40]**

This paper describes the differences in the grace periods of the five largest patent offices in the world – China, the United States, Korea, Japan and the European Union. The author discusses the complications this discrepancy creates in international cooperation, and increases costs and uncertainty for applicants. The paper argues that these offices should adopt a semi-uniform grace period that would cover disclosures resulting from reasonable research-related activities, but still allow for local considerations. This paper is useful to the present study because it supports the argument that grace periods should be harmonised, which resonates with India's TRIPS position and the Riyadh Design Law Treaty.

***International Harmonization of the Grace Period: The Experience of Japan*[41]**

This paper describes the amendments to Japan's grace period following the revision of the Patent Act in 2011, which came into force in April 2012. The revision allowed for more

[39] M. Jafarzadeh and A. Seyedin, "Disclosure Grace Period in Patent Law", 7(27) *Private Law Research* 167 (2019).
[40] K.E. Sandrik, "A Uniform Grace Period: Promoting International Research and Development Collaboration", 91 *Tulane Law Review* 99 (2016).
[41] S. Ishimaru and Y. Nakaya, "International Harmonization of the Grace Period: The Experience of Japan", 9(1) *Journal of Intellectual Property Law & Practice* 61 (2014).

extensive use of the grace period for disclosures deriving from the act of the person entitled to the right, including secondary disclosures. The authors discuss the data they obtained from patent applications that used the grace period at the Japan Patent Office, as well as the questionnaire survey. The data reveal that the revised system benefited more applicants, including universities, small and medium enterprises and large companies, and most survey respondents approved the more extensive scope. The paper also discusses harmonisation of grace periods through roundtables held in Japan. This paper supports the Japan part of the present study and illustrates the practicality of a wider grace period.

***The Grace Period in International Patent Law and Its Effect on the Timing of Disclosure*[42]**

This paper describes the frequency of the use of the "general grace period" in the USA, and what impact the international rules that almost uniformly deny such a period have on the timing of new disclosures, mostly in academia. The authors use US and European Patent Office data and compare the publication delays of European academic inventors. They discuss their finding that the grace period accelerates the communication of knowledge, and that the differences between countries depend on the lack of harmonisation of the legal systems, transaction costs and the presence of a firm among the patent assignees. This paper provides data-based support to the argument of the present study that a grace period is beneficial to creators, and that harmonisation is important.

Statement of Research Problem

Section 4(b) of the Designs Act prohibits registration of a design that has been disclosed to the public before the filing date or the priority date, if any. However, it does not make any distinction between a disclosure made by a competitor and a disclosure made by the designer himself or herself. A designer who makes the design public and then applies for registration more than six months later, or after an event that is not notified under section 21, or after an online launch, runs the risk of having the application rejected or, more worryingly, of having the registered design cancelled or facing a defence of invalidity in infringement proceedings. A designer who wishes to rely on a self-disclosure must notify the Controller in due time of participation in a notified exhibition under section 21 to avoid the application being rejected, or make a confidential disclosure under section 16 to avoid the design being deemed published.

[42] C. Franzoni and G. Scellato, "The Grace Period in International Patent Law and Its Effect on the Timing of Disclosure", 39(2) *Research Policy* 200 (2010).

Finally, a designer who applied abroad for a design that is subsequently registered in India must examine the applicable local law in the foreign jurisdiction to determine whether the foreign filing can be relied on as a defence under section 44(2).

Consequently, there is a tension between the need to prevent design registrations that are not novel and the need to incentivise commercial exploitation of a design, which is often inseparable from early disclosure. A strict interpretation of the Designs Act may penalise the designer by rendering a registration vulnerable simply by virtue of the designer's legitimate actions. The problem is not that novelty should be discarded as a requirement of design registration. It is whether the novelty requirements of the Designs Act are too onerous as a result of section 4(b), compared to the requirements under TRIPS, and if they are, how they can be adjusted in a manner that follows Indian law and practice while responding to commercial reality.

Research Objectives

(i) To interpret section 4(b) of the Designs Act 2000 and the provisions concerning registration, cancellation of registration and defence of invalidity, and to distinguish between disclosures that are permitted and those that are not.

(ii) To determine what the TRIPS Agreement and related treaties require, permit or leave open on the subject of grace periods for industrial designs;

(iii) To examine the treatment of earlier commercial exploitation under the PPV&FR Act and the SICLD Act and evaluate them as legislative comparisons with regard to self-disclosure, with due caution in applying their principles to design;

(iv) To study the law of the US, the EU, Japan and other jurisdictions on grace periods for designs, including on the subjects of the period of grace, qualifying disclosures, exclusions and evidence;

(v) To review Indian case law on novelty, prior publication and cancellation of registration, distinguishing between findings on self-disclosure and general principles and findings of silence; and

(vi) To propose a reform of the law on the basis of a synthesis of the abovementioned areas, including on the subjects of the period of grace, calculation of the period, qualifying disclosures, evidence and safeguards.

Research Questions

(i) How does section 4(b) of the Designs Act 2000 operate, and what exceptions in the Designs Act and Rules limit its operation?

(ii) What are the legal effects of a self-disclosure prior to filing, at the stage of examination, cancellation and defence?

(iii) Does the TRIPS Agreement require, permit or leave open a grace period for industrial designs, and what are the implications of the Riyadh Design Law Treaty?

(iv) What do section 15(3)(a) of the PPV&FR Act and section 7 of the SICLD Act reveal about the domestic law treatment of earlier commercial exploitation, and what are the limits of comparison?

(v) What practical insights can be gained from the law of the US, the EU, Japan and other jurisdictions?

(vi) If a grace period is introduced in India, what would its scope and limitations be?

Scope and Limitations

The study confines itself to industrial design law in India and the US, the EU and Japan, as well as the other comparator jurisdictions mentioned in the abstract. It focuses on self-disclosure, statutory novelty and international treaties and conventions. Other aspects of the law, such as patent law, copyright in design, deferred publication or the other reforms mentioned in the DPIIT concept note, are outside the scope of this study, with the exception of brief mentions where relevant to the topic.

A number of limitations must also be noted. First, India, the US, the EU and Japan are all jurisdictions with different legal traditions. In the US, design patents are issued after examination, in the EU, design registration does not involve substantive examination, and in India, design applications are examined. A rule that functions in one jurisdiction may not be

immediately applicable in another. Second, the study does not rely on empirical data on the effects of grace periods on the commercial viability of designs. Third, a number of sources, including cases and foreign statutes, had to be examined through secondary research, and this is noted wherever such a limitation affected the research.

Research Methodology

The methodology of the study is primarily doctrinal. It relies on statutory law, including treaties and case law, as well as policy papers and scholarly and practitioner commentaries. No interviews, surveys, experiments or quantitative analyses were conducted, and accordingly, no conclusions of an empirical nature were drawn.

The sources were selected on the basis of relevance and authority. Statutes, such as the Designs Act 2000 and the TRIPS Agreement, take priority over commentary and analysis. Within statutory law, primary sources, including treaties and the official text of the Designs Act 2000, take priority over secondary sources. However, within case law, secondary sources that provide context, such as case notes in law journals, were used where primary sources were unavailable, and this is noted in the footnotes and the Annotated Bibliography at the end of this paper.

Statutory construction and interpretation were carried out according to conventional hermeneutic principles: first, by examining the plain meaning of the statutory language; second, by analysing the context within which the language appears within the broader statute; and third, by applying the presumed intentions behind the language. The same principles were applied to treaties, with particular attention paid to their drafting and context.

Comparison was used as a tool of analysis: by identifying the similarities and differences between the legal regimes of various jurisdictions, as well as the strengths and weaknesses of particular legislative solutions, the current law in India was assessed in a wider doctrinal context. It is important to note that comparison in this study was not carried out on a section-by-section basis but rather on a functional basis: that is, particular solutions were examined in light of the problems they were intended to address and the advantages and disadvantages they entailed.

Doctrinal Analysis

Structure and effect of section 4(b)

Section 4(b) has four elements: a disclosure; to the public; by publication in tangible form, by use or in any other way; and before the filing date or the priority date. If these elements are present, the design "shall not be registered". The language is mandatory and is objective: it is asking whether the design was disclosed to the public and not asking who disclosed it or why. The designer's own online post is therefore a disclosure within the section unless one of the exceptions applies.

Section 5(1) points in the same direction. It allows registration only of a design "not previously published in any country", and the person applying must claim to be the proprietor of such a design. Section 19(1)(b) completes the structure by making prior publication a ground for cancellation. The three provisions together treat prior publication as a fundamental defect and not as a procedural one.

Disclosure by the applicant and disclosure by a third party

The Act's general rule makes no distinction between the two. The distinction appears only in the exceptions. Section 16 treats disclosure by the proprietor as harmless if made in circumstances of good faith, and treats a breach of good faith by someone else as harmless to the proprietor. Section 21 treats exhibition or publication "by any person elsewhere" as harmless if it happens without the privity or consent of the proprietor, but only within the exhibition framework. The structure shows that the legislature thought about third-party misuse and about confidential communications but did not provide a general rule for the proprietor's own public disclosure.

This asymmetry is difficult to justify on principle. A third party who copies a design and publishes it can destroy the proprietor's novelty only in limited situations, whereas the proprietor's own deliberate and lawful public display destroys it fully. A grace period for self-disclosure would not interfere with the policy of keeping the public domain free from earlier designs, because it would apply only to disclosure made by the person who then claims the right.

Timing and nature of disclosure

The relevant date is the filing date or priority date. A disclosure made after that date does not fall within section 4(b). A disclosure made before it does, regardless of how long before. The Act has no concept of a disclosure that is "too old" or "too recent" to matter. A product shown seven months before filing is treated in the same way as a product sold seven years before.

The nature of the disclosure matters at the margin. A disclosure must reveal the design, and in the case law discussed in Part 15 the courts have stressed that the design must be shown with enough clarity and in respect of the same article. Not every mention of a product is a disclosure of its design. Even so, a photograph or a sample made available to the public is likely to be enough. Use is also a ground in the text, so a product sold or openly used in India or elsewhere counts even without a catalogue or advertisement.

Confidential disclosures

The first limb of section 16 covers disclosure by the proprietor to another person in such circumstances as would make it contrary to good faith for that person to use or publish the design. There are three points. The test is the circumstances of the disclosure and not the existence of a signed agreement, although a written confidentiality agreement is obviously strong evidence. The protection is limited to a disclosure to "any other person" and not to the public at large. And the section applies only if registration is obtained after the disclosure, which means that it protects the proprietor who files later. The textile limb is narrower still, since it covers only the acceptance of a first and confidential order for textile designs intended for registration[43]. By comparison, Article 7(1) of the EU regulation states that a design is not deemed to have been made available to the public for the sole reason that it has been disclosed to a third person under explicit or implicit conditions of confidentiality[44]. The two rules are similar in effect but Indian law ties the result to good faith, which is a more open standard.

Exhibitions

Section 21 is the only provision that deals with the situation in which a designer shows a product to the public and wants to keep the right to register. Its limits are specific. The

[43] Designs Act, s. 16.
[44] Council Regulation (EC) No. 6/2002 on Community Designs, Art. 7(1), as amended by Regulation (EU) 2024/2822.

exhibition must be one to which the Central Government has extended the section by notification. Previous notice must be given to the Controller, so a designer who has not planned ahead cannot use it. The six-month period runs from the first exhibition or publication and not from the date of the notice. The section covers exhibition and the publication of a description during or after the exhibition. It does not mention online launch, sale or investor presentation.

The DPIIT concept note itself describes section 21 as "very limited in scope" and as offering six months of grace only for disclosures at exhibitions notified by the Central Government[45]. The limitation matters because exhibitions were the only commercial setting that the legislature of 2000 had in mind. It matters for treaty reasons too. Article 11 of the Paris Convention which is part of India's TRIPS obligations expects temporary protection for designs shown at official or officially recognised international exhibitions. Section 21 is the means by which India gives effect to that expectation, and any reform that replaces it should preserve at least the same level of protection.

Registration requirements and cancellation proceedings

The registration stage and the cancellation stage apply the same substantive bar but with different evidence. At registration, the examiner searches the register of earlier designs and tests the representations. A self-disclosure that left no trace in a registered design record is unlikely to be found. After registration, a competitor facing a piracy action has every incentive to search for the proprietor's own earlier sales, catalogues, invoices and web pages. Under section 22(3) any ground of cancellation is a defence and the proprietor may then lose both the registration and the suit.

This creates what may be called latent forfeiture. A designer may obtain a certificate and believe that the right is secure and the defect will become visible only when the right is enforced. The harm is greatest for the unadvised designer who does not know that early sales count. A statutory grace period would convert some of this latent risk into a clear rule, with the condition that the application be made within the stated period.

[45] DPIIT, Concept Note, p. 7.

Comparative Study

The United States

In the United States a design is protected by a design patent, which is granted under 35 USC section 171 for "any new, original and ornamental design for an article of manufacture", and the provisions of the Patent Act that apply to inventions generally apply to design patents unless the statute provides otherwise[46]. A design patent is not the same as an Indian registered design. It is a patent, examined for novelty and non-obviousness by the Patent and Trademark Office, and its other features differ. The comparison in this paper is limited to the treatment of earlier disclosure.

The relevant provision is 35 USC section 102. Section 102(a)(1) treats as prior art a claimed invention that was patented, described in a printed publication, in public use, on sale, or otherwise available to the public before the effective filing date. Section 102(b)(1) then provides that a disclosure made one year or less before the effective filing date is not prior art under section 102(a)(1) if the disclosure was made by the inventor or a joint inventor or by another who obtained the subject matter disclosed directly or indirectly from the inventor, or if the subject matter had previously been publicly disclosed by the inventor or a joint inventor or by another who obtained it from them[47]. The grace period is therefore twelve months, it covers sales and public use as well as publication, and it is limited by the origin of the disclosure. The second limb allows the inventor to rely on an earlier public disclosure to neutralise later disclosures by third parties during the year.

On proof, the USPTO has a mechanism in 37 CFR 1.130 for filing an affidavit or declaration to show that a disclosure made within the grace period is covered by an exception[48]. The system is thus built around an applicant's declaration, which the Office can test when a reference appears. For India the lesson is that a declaration-based approach is workable in an examined system.

The US rule has advantages: it is general, clear in length, and covers all forms of disclosure originating from the inventor. Its limits are that it does not extend to disclosures by independent

[46] 35 U.S.C. § 171.
[47] 35 U.S.C. §§ 102(a)(1), (b)(1).
[48] The mechanism is described in Manual of Patent Examining Procedure (MPEP), § 2152.

third parties who did not obtain the design from the inventor, and that a disclosure outside the one-year period remains fatal. The US also has a first-inventor-to-file system, so a gap between the inventor's disclosure and filing exposes the inventor to an intervening filing by someone who copied the design. The grace period does not remove that risk, which is a reason for applicants to file early even where the grace period is available. The US official policy statement describes a twelve-month grace period for industrial designs and supports its adoption elsewhere[49].

The European Union

The law on registered designs in the European Union is found in Council Regulation (EC) No 6/2002, as amended by Regulation (EU) 2024/2822 which renamed Community designs as European Union designs. The EUR-Lex record of Regulation 2024/2822 gives 1 May 2025 as the first date of entry into force, and the amending Regulation is applied in phases; the precise dates for particular provisions were not verified[50]. Article 7(1) states when a design is deemed to have been made available to the public, namely if it has been published, exhibited, used in trade or otherwise disclosed, except where these events could not reasonably have become known in the normal course of business to the specialised circles operating within the Union.

Article 7(2) contains the grace period. A disclosure is not taken into consideration for assessing novelty and individual character if the disclosed design, which is identical with or does not differ in its overall impression from the design for which protection is claimed, was made available to the public by the designer, the designer's successor in title, or a third person as a result of information provided or action taken by the designer or successor, during the twelve months preceding the filing date or, if priority is claimed, the priority date. Article 7(3) extends the rule to disclosure resulting from an abuse in relation to the designer or successor[51].

Three features of the EU rule are useful for India. First, it identifies the origin of the disclosure ("by the designer, his successor in title, or a third person as a result of information provided or action taken by the designer") and does not exempt all prior publications. Second, it covers third persons acting as a result of the designer's information, which handles the situation of a

[49] United States Patent and Trademark Office, "Grace period for industrial designs"
[50] Regulation (EU) 2024/2822 of the European Parliament and of the Council of 23 October 2024 amending Council Regulation (EC) No. 6/2002 on Community designs and repealing Commission Regulation (EC) No. 2246/2002, [2024] OJ L 2024/2822.
[51] Council Regulation (EC) No. 6/2002, Art. 7(2)-(3).

retailer or distributor who displays the product. Third, it extends to a design that is identical or does not differ in overall impression, so the designer may modify the design slightly after testing. In *Activa-Grillküche GmbH v EUIPO and Targa GmbH* (Case T-757/21) the General Court accepted that a design disclosed through publication of a Chinese utility model by the designer's employer could be covered by article 7(2), and it described the purpose of the rule as giving the creator or successor an opportunity to market the design for twelve months and to find out whether it is a commercial success before incurring registration costs[52]. An earlier EUIPO Board of Appeal view, reported in a practitioner article, drew a distinction between disclosure to test the product in the market and disclosure through first-round filing and publication[53]. That view shows that the scope of "disclosure by the designer" can attract disputes, and a clear statutory text can reduce them.

The EU system also has limits. The grace period does not protect against an independent third party who files earlier. It also operates in a system without substantive examination of novelty, so disputes arise in invalidity proceedings and the burden of proof falls on the party who relies on the exception. These points should be kept in mind when comparing it with the Indian system, where the examiner tests novelty before registration.

Japan

Japan provides a useful comparison because it reformed its system recently and operates an examination-based design system. The grace period for exception to lack of novelty under the Japanese Design Act was extended from six months to twelve months by the 2018 amendment, which took effect in June 2018[54]. Practitioner reports describe a procedure under which the applicant must claim the exception and prove the disclosure, but the details of the Japanese procedure for designs could not be verified in primary sources and are not relied on here. A further practitioner report on the 2018 change in patent law observes that the Japanese grace period does not apply to a foreign priority application and that the Japanese filing must itself be made within the grace period[55].

The Japanese experience supports two points. A common trend among major design offices is

[52] *Activa-Grillküche GmbH v. European Union Intellectual Property Office and Targa GmbH (Appareil pour griller)*, Case T-757/21 (General Court, April 2023), as discussed in Marcel Pemsel, "Can a Third Party Rely on the 12-Month Grace Period for Prior Design Disclosure?", IPKat (16 May 2023).
[53] "Grace Period: Not All Disclosures Are Created Equal", *Bird & Bird* (2016).
[54] Japan Patent Office, "*Design Rights: Protector of Originality*".
[55] Osha Liang (OBWB), "Japanese Grace Period Will Be Extended to 12 Months".

to adopt a twelve-month period, and a reform can be adopted in an examination-based system. It also shows that interaction between a grace period and priority claims needs careful drafting. The DPIIT concept note states that Japan, the United States, the United Kingdom, Canada, South Korea and Australia provide a twelve-month period for designs; this statement was not independently verified for each country.[56]

India

The three systems, together with the Riyadh treaty, share a basic design: twelve months, backwards from the filing or priority date, for disclosures originating from the creator or the creator's successor. They differ in the degree of procedural conditions, the treatment of third persons who received the design from the creator, and the relationship with priority. The Indian proposal in the concept note is described as "blanket", "without any pre-conditions" and "regardless of the manner of disclosure". It does not state whose disclosure would qualify, and the absence of draft text makes it impossible to say.[57]

The comparison suggests that a rule modelled on Article 7 of the EU regulation and Article 7 of the Riyadh treaty would fit Indian conditions best, for three reasons. It is limited to disclosure by the designer or successor, which keeps the novelty requirement intact against the public. It covers all manners of disclosure, which matches the way small businesses actually work. And it can be combined with the examination-based Indian procedure through a declaration at the time of filing. The main difficulty is that an examiner cannot know about a self-disclosure unless the applicant says so; the US declaration mechanism shows one answer. Some pre-conditions, such as a declaration, are compatible with a rule that applies "regardless of the manner of disclosure" because they concern proof and not the kind of disclosure. Whether a declaration requirement is consistent with Article 7 of the Riyadh treaty is a question to be checked against the treaty text.

Judicial Precedents

Bharat Glass Tube Ltd v Gopal Glass Works Ltd

In Bharat Glass Tube Ltd v Gopal Glass Works Ltd, the Supreme Court was asked to consider the validity of a registered design for a “diamond pattern on figured glass sheets produced using

[56] DPIIT, Concept Note, p. 7.
[57] DPIIT, Concept Note, p. 7.

embossed rollers supplied by a German manufacturer". The design was successfully challenged on the grounds of its prior publication in India through such rollers and in Germany as a foreign country. The Court affirmed the registration, holding that the respondents had failed to demonstrate that the design had been previously published as applied to glass sheets, and further held that the burden of proof for cancellation rested with the petitioner.[58] This precedent is relevant to the instant discussion in that it confirms that the issue of prior publication is assessed with regard to the article to which the design is applied and that the petitioner bears the burden of proof. It does not concern self-disclosure.

Gopal Glass Works Ltd v Assistant Controller of Patents and Designs

The Calcutta High Court, in the first instance proceedings, was asked to consider the same set of questions as the Supreme Court in Bharat Glass. In its ruling, the Court held that to vitiate novelty, a publication in a tangible form must be demonstrated, and that such publication may take the form of a catalogues, brochures, journals, or newspapers containing an illustration of a design as applied to the article.[59] This is a general statement concerning the nature of publication. It does not address the issue of whether a self-disclosure is to be treated differently.

Reckitt Benckiser (India) Ltd v Wyeth Ltd

A Division Bench of the Delhi High Court, in its ruling in Reckitt Benckiser (India) Ltd v Wyeth Ltd, referred the question of what constitutes a publication for the purposes of design law to a larger bench. The issue in question was whether foreign registration of a design constituted its prior publication. The larger bench delivered its opinion on 15 March 2013 and held that "the mere fact that the design is recorded in the register of designs in any of the convention countries may not be sufficient to constitute publication of the design in India in all circumstances"; that "publication in tangible form or by exhibition or in any other manner pursuant to section 4(b) and 19(1)(b) reads the requirement of publication in India", and that "whether the design has been published is a question of fact peculiar to each case depending upon whether the design is disclosed with sufficient clarity".[60] The ruling further held that "publication abroad is relevant for the purposes of section 19(1)(b) even though only foreign registration is relevant for the purposes of section 19(1)(a)". This decision does not concern

[58] *Bharat Glass Tube Ltd. v. Gopal Glass Works Ltd.*, (2008) 10 SCC 657.
[59] *Gopal Glass Works Ltd. v. Assistant Controller of Patents and Designs*, 2006 (33) PTC 434 (Cal).
[60] *Reckitt Benckiser (India) Ltd. v. Wyeth Ltd.*, FAO(OS) 458/2009 (Del).

self-disclosure but foreign disclosure, and it is discussed here because it highlights the nuances of publication, particularly secrecy.

Rotela Auto Components (P) Ltd v Jaspal Singh

A practitioner's note contains a quotation from the Delhi High Court in Rotela Auto Components (P) Ltd v Jaspal Singh which states that "publication takes place when the design ceases to be secret".[61] Assuming that this statement is accurate, it provides further support to the broad reading of publication as encompassing any disclosure. It is a statement of principle.

Novamax Industries LLP v Prem Appliances

The only decision which touches upon the issue of self-disclosure and is directly relevant to the discussion is Novamax Industries LLP v Prem Appliances. The case was heard by a single judge of the Delhi High Court on 19 June 2026; its summary may be found in a case review in the practitioner's note. In this case, the plaintiff registered a design for a cooler under Section 4 of the Designs Act, 2000. The registration application was dated 19 October 2019, but the invoices issued by the plaintiff demonstrate that the coolers with the design had been sold under another brand prior to this date, and the website of the plaintiff displayed the product as available for sale as early as 24 March 2019, i.e., practically seven months earlier. The Court held that the design had been published in India before the filing date under Section 19(1)(b) of the Designs Act, 2000, and therefore invalid, was a ground of cancellation under Section 22(3) of the Designs Act, 2000, and accordingly, the infringement claim had no prima facie basis to survive. The passing off claim, however, was allowed to proceed.[62] Assuming that the summary is accurate, this decision provides direct authority for the interpretation of the Designs Act, 2000 as containing no grace period for the proprietor's self-disclosure, and it applies to both the website and the sales. Moreover, it contains no indication that such a disclosure would be treated differently from any other publication. It is a decision of a single judge of the High Court and, as such, while it is not binding, it carries considerable weight.

Research Findings

(i) Section 4(b) of the Designs Act 2000 bars registration of any design disclosed to

[61] *Rotela Auto Components (P) Ltd. v. Jaspal Singh*, 2002 (24) PTC 449 (Del).
[62] *Novamax Industries LLP v. Prem Appliances*, CS(COMM) 177/2021 and I.A. 13748/2021 (Del).

the public, in India or abroad, by publication, use or any other means before the filing or priority date. It makes no distinction between the proprietor's own disclosure and anyone else's.

(ii) There are only three exceptions: section 16 (confidential disclosure), section 21 (exhibitions, with notice in Form 9 and filing within six months) and section 44(2) (publication in India during the priority period). So there is no general grace period.

(iii) Other Indian laws are more tolerant. The PPV&FR Act, section 15(3)(a), treats a variety as novel if sale for exploitation was not earlier than one year before filing (four years, or six for trees and vines, abroad), and trials without sale do not count. The SICLD Act, section 7(1)(b) proviso, allows up to two years of commercial exploitation before filing. These show tolerance of pre-filing activity but do not apply directly to designs.

(iv) On the international side, TRIPS Articles 25 and 26 have no grace period language and leave novelty to the Members. The Paris Convention gives six months' priority for designs (Article 4C(1)) and temporary protection at international exhibitions (Article 11).

(v) The US (35 USC § 102(b)(1)), the EU (Regulation 6/2002, Article 7(2)) and Japan (amended in 2018) all give a one-year grace period. The Riyadh Design Law Treaty (Article 7) gives twelve months. The DPIIT concept note of January 2026 proposes twelve months for India, but it is not law.

(vi) As a reasoned inference, a proprietor who discloses before filing, through an online launch, crowdfunding, pilot sales or investor roadshows, gets no protection. These may count as publication outside the exceptions, so the application can be rejected at examination or the registration cancelled under sections 19(1)(b) and 22(3). Novamax, if accurately reported, shows the cancellation scenario.

(vii) One qualification applies. India has no general exception for the proprietor's own disclosure, but it does have the specific exceptions in sections 16, 21 and 44(2). Also, TRIPS neither prohibits nor requires a grace period, so it is left to national legislation.

(viii) On policy, a twelve-month grace period limited to disclosures by the designer or their successor in title is better than a general exception for any prior disclosure, because it protects proprietors without letting already-known designs onto the register. A dated declaration with evidence is also needed to protect third parties and make the system workable in a design registration system that examines applications.

Conclusion

The research questions posed at the beginning of this Report may now be resolved. First, Section 4(b) of the Designs Act 2000 prohibits registration of any design which has been disclosed to the public anywhere before the filing or priority date; it does not make any distinction between the proprietor's own disclosure and any other form of publication; the Act does not contain a general exception from the prohibition but several limited exceptions in sections 16, 21 and 44(2). Second, the proprietor's own disclosure may result in the design being unregistrable at the examination stage and, more seriously, in an already registered design being cancelled or invalidated under section 19(1)(b) or section 22(3) of the Designs Act 2000: these consequences are demonstrated by the unpublished decision in Novamax. Third, TRIPS does not prohibit India from adopting a grace period but does not require it either; the grace period regimes in the US, the EU and Japan, as well as the Riyadh Design Law Treaty are all optional, but if India adopts a grace period, it is likely to be of twelve months, as proposed in the DPIIT concept note, and limited to the proprietor's own disclosures. Fourth, the PPV&FR and SICLD Acts demonstrate that Parliament is capable of adopting a limited exception from registration for commercial exploitation prior to filing but that such an exception is not automatically applicable to designs. Fifth, the comparison with the US, the EU and Japan confirms that a twelve-month grace period for the proprietor's own disclosures is the most reasonable option available to India. Finally, the adoption of such a grace period, limited to a period of twelve months to the proprietor's own disclosure and accompanied by documentary safeguards, is preferable to the current system in that it protects the proprietors without jeopardizing the interests of third parties. The supporting arguments are based on both domestic and foreign law; they do not demonstrate that the proposed change would fail to serve its economic rationale but they do demonstrate, by virtue of the unpublished decision in Novamax, that the current system exposes proprietors to unwarranted risks of litigation. These findings therefore support the original hypothesis with qualifications.

Suggestions and Future Directions

(i) Draft section 4A sets out that a design disclosure by the proprietor (or by a person receiving it from them) should be ignored for purposes of novelty under sections 4, 5(1) and 19 if it was made within twelve months of the filing or priority date. The application must be accompanied by a declaration containing the date, manner and evidence of disclosure, which can be the same design or one differing only insubstantial details, and which does not extend to section 44 or to the section 11 term.

(ii) Twelve months is significantly better than six, which would have been useful for section 21 and the Convention priority period, but is less than the US, EU, Japan and Riyadh treaty periods, insufficient for funding or testing, and would require another amendment if India were to become a treaty state. It is a maximum period, not a minimum: protection kicks in from month eleven, and ceases at month thirteen.

(iii) The period will run backwards from the filing (or priority) date by reference to the first qualifying disclosure, and subsequent disclosures of the same design will not reset the clock. Qualifying disclosures would include online publication, crowdfunding, presentations to investors, catalogues, pilot sales, exhibitions, and those by persons receiving the design from the proprietor, such as distributors.

(iv) Independent disclosures by third parties are to be treated as prior art, and this designer-specific exception is in addition to any general exception for publications. Parliament may want to consider whether independent and good faith disclosures by third parties should be entitled to some form of intermediate protection, but there was no foreign model for such a provision.

(v) Applicants will need to retain dated copies of website pages, platform records, invoices and catalogues, articles, presentations to investors and confidentiality undertakings. For online publication, the relevant date is the date on which the design was first made publicly available on a website, without any password or other restriction. Section 21 maintains India's adherence to Article 11 of the Paris Convention (to be checked against the French text) by continuing the general

prohibition on disclosure, with exceptions for the applicant's own publication, an exhibition, or a communication to investors for the purpose of raising capital. Similarly, section 16 continues to apply to confidential disclosures.

(vi) The anti-abuse protections are provided by the declaration and evidence, the same design limit, the cap on the period, the exclusion of third-party disclosures, and the guidance from the Controller. The new section will apply to applications filed after commencement, and will follow the same rules regarding disclosures during the period concerned. It will make no difference to registered designs or to proceedings already pending.

(vii) Further work is needed on the filing of applications and related invalidity actions in Japan and the EU; on surveying designers and start-ups about their requirements; on procedures by which the Design Office can verify the truth of the declaration; on balancing this with the desirability of third party certainty (and the possibility of intermediate rights) – possibly informed by consultation on the UK's proposed changes to its own Design Right; and on the future of the DPIIT's own proposal.