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India IP Trends

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Administrative trends

- Fee reduction for university and educational institutions
- IPAB (IP appellate board) abolished – April 2021
 - All the appeals arising out of decision of the controller of patents and trademark will be before going to high court
- Formation of IP specialized courts
- File transfer from IPAB to IP court
- PPH with Japan;
 - Faster issuance of Examination report
 - Will check for sec 3(k) compliance
 - 2nd phase may happen next year

Key Highlights (PPH)



Only Japanese applicants eligible



Valid for a period of three years



Requests limited to 100 cases per year – not more than 10 requests by one applicant per year.



Only selected technical fields with specific IPC classification eligible (Electrical, Electronics, Computer Science, Information Technology, Physics, Civil, Mechanical, Textiles, Automobiles and Metallurgy)



Chemical, Pharmaceuticals, life sciences or biotechnology related applications currently not included.



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Recent Trends- IPO Published Annual Report 2019-20

- Filing of patent application has increased by 11.1% and Grant of patents increased by 63% and as compared to 2018-19
- In Designs, filing increased by 13.4% and grant increased by 29.3% as compared to 2018-19
- In Trademark, filings increased by 3.4% and registration decreased by -7.1% as compared to 2018-19
- In Copyrights, filings increased by 20% and registration increased by 7.9% as compared to 2018-19

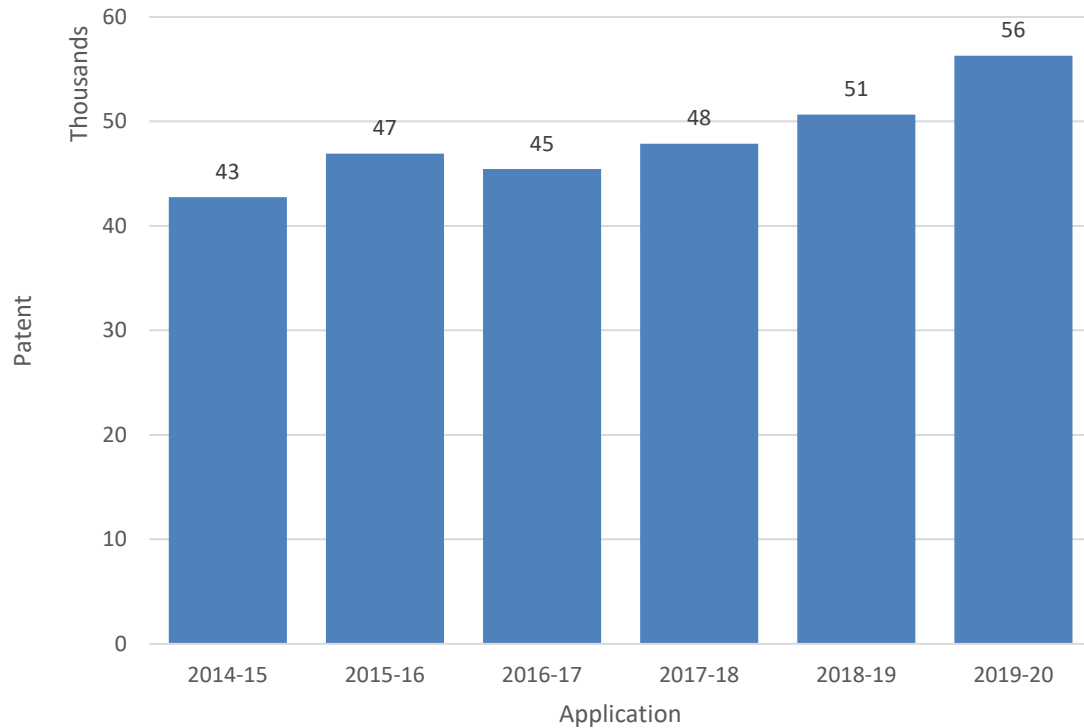


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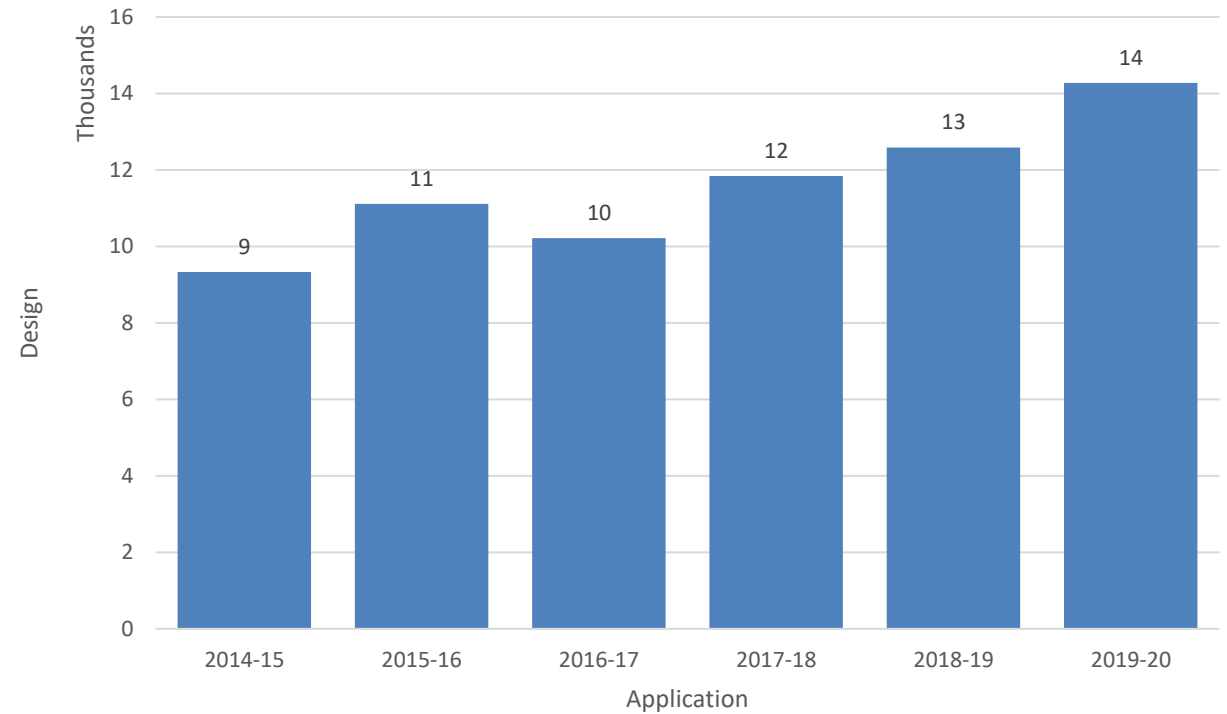
Trends in last five years in respect of filing of intellectual property applications

Application	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	
Patent	42,763	46,904	45,444	47,854	50,659	56,284	↑ 11.1%
Design	9,327	11,108	10,213	11,837	12,585	14,272	↑ 13.4%

'Patent' by 'Application'



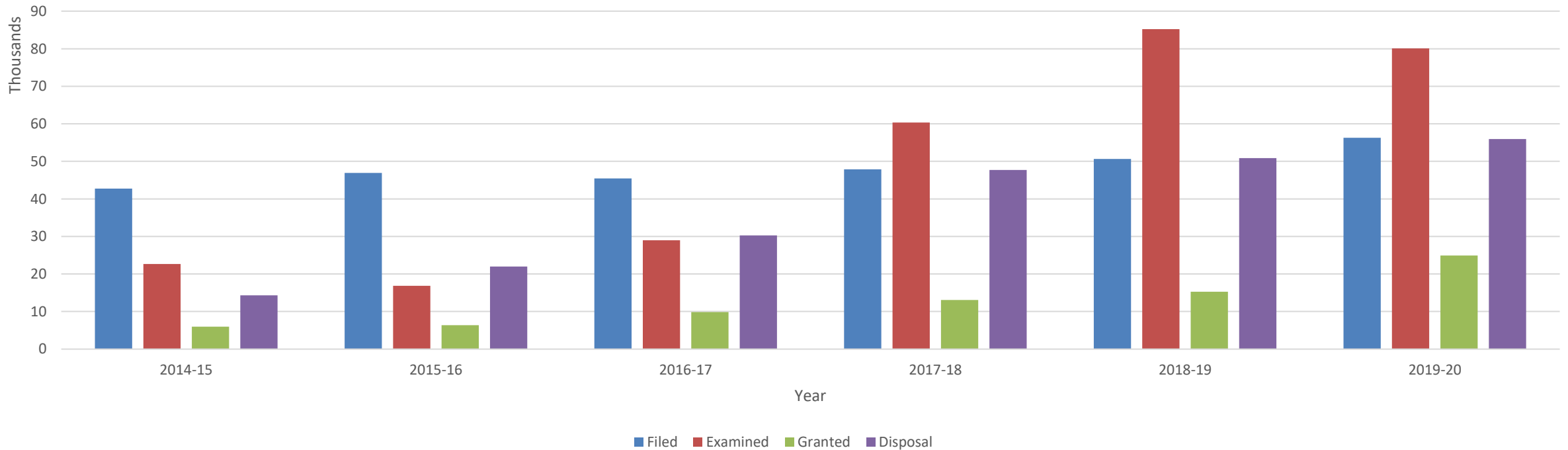
'Design' by 'Application'



Trends in Patent Application

Year	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	
Filed	42,763	46,904	45,444	47,854	50,659	56,284	
Examined	22,631	16,851	28,967	60,330	85,246	80,088	
Granted	5,978	6,326	9,847	13,045	15,283	24,936	↑ 63%
Disposal	14,316	21,987	30,271	47,695	50,884	55,945	

Multiple values by 'Year'

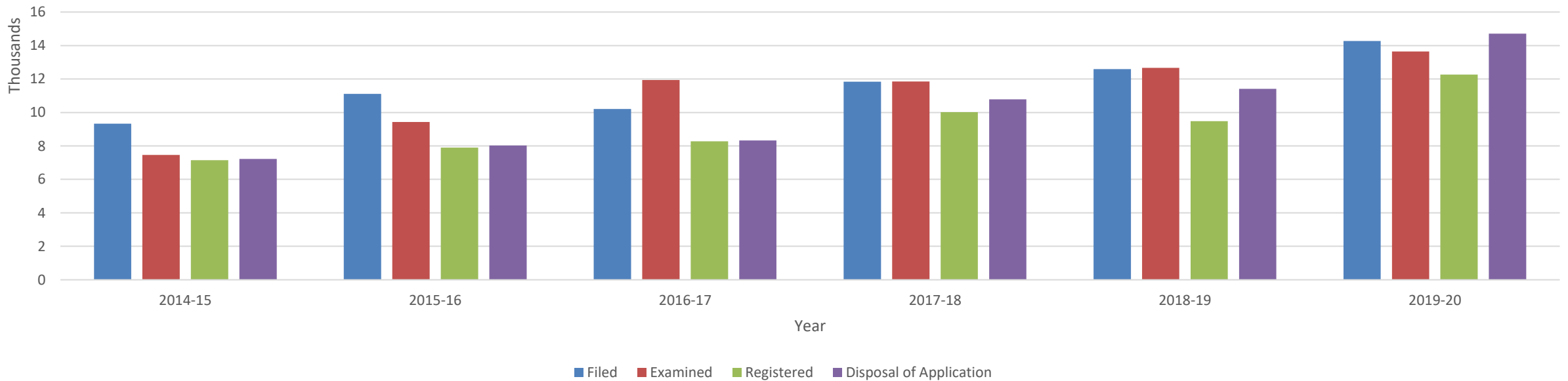


Trends in Design Application

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Year	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	
Filed	9,327	11,108	10,213	11,837	12,585	14,272	
Examined	7,459	9,426	11,940	11,850	12,661	13,644	
Registered	7,147	7,904	8,276	10,020	9,483	12,268	↑ 29.3%
Disposal of Application	7,218	8,023	8,332	10,788	11,414	14,713	

Multiple values by 'Year'





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Publication and Pre-Grant Opposition

Year	Publication	Pre-grant opposition
2014-15	26,934	247
2015-16	41,752	290
2016-17	86,766	206
2017-18	46,899	260
2018-19	46,345	426



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Top 5 Indian applicants for Patents in the field of Information Technology 2018-19

Sl. No.	Name of Companies
1	TATA CONSULTANCY SERVICES LIMITED
2	WIPRO LIMITED
3	CHANDIGARH UNIVERSITY
4	CHANDIGARH GROUP OF COLLEGES
5	INDIAN INSTITUTE OF TECHNOLOGY (COLLECTIVE)

Top 10 Indian Applicants for Patents from Scientific and Research & Development Organizations

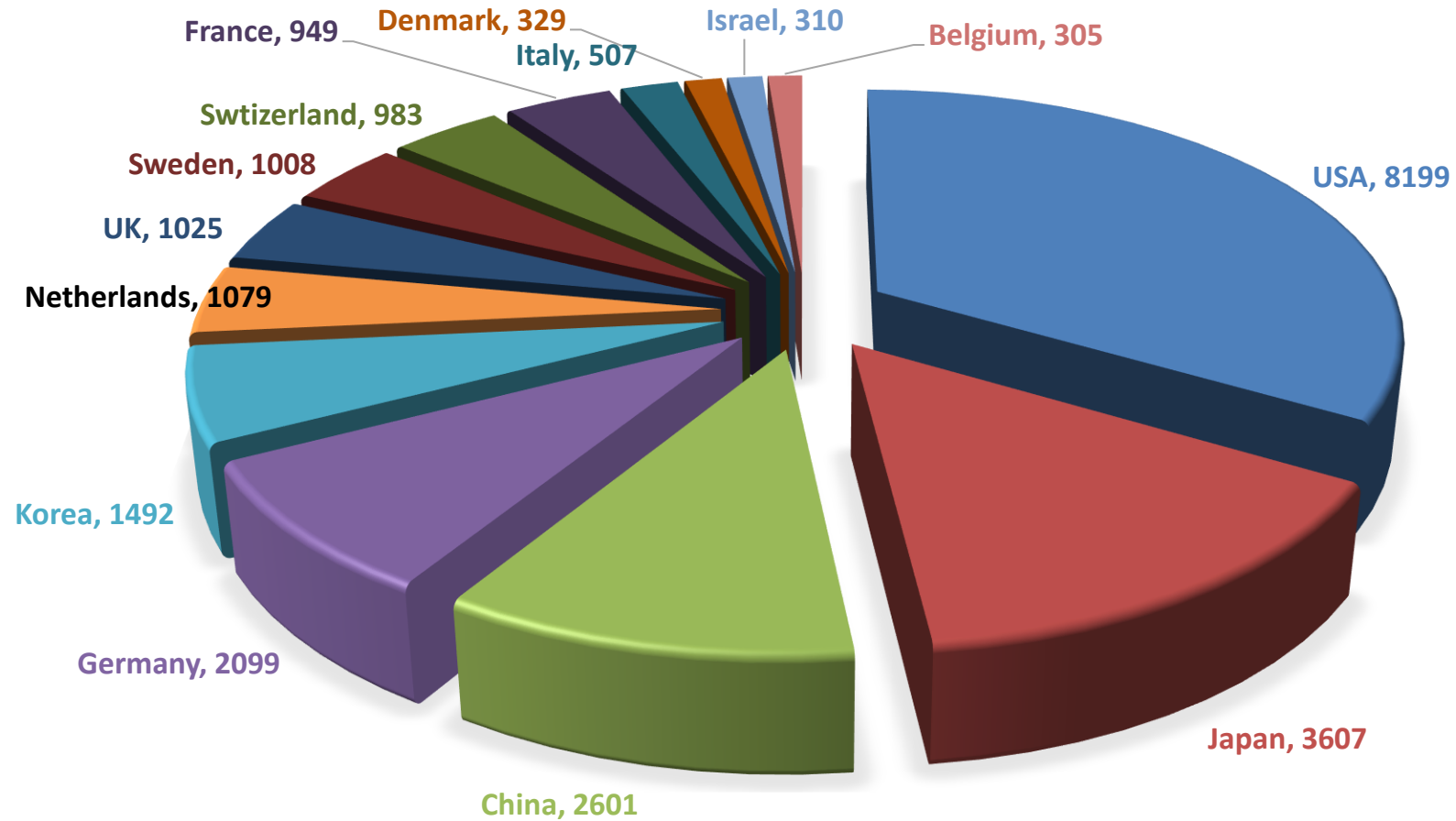
Sl. No.	Name of Scientific and Research & Development Organizations
1	COUNCIL OF SCIENTIFIC AND INDUSTRIAL RESEARCH (CSIR)
2	SAL INSTITUTE OF TECHNOLOGY & ENGINEERING RESEARCH (in Gujarat)
3	DEFENCE RESEARCH & DEVELOPMENT ORGANISATION (DRDO)
4	INDIAN INSTITUTE OF SCIENCE (IISc)
5	INDIAN COUNCIL OF AGRICULTURAL RESEARCH (ICAR)
6	SREE CHITRA TIRUNAL INSTITUTE FOR MEDICAL SCIENCES AND TECHNOLOGY
7	ADITYA BIRLA SCIENCE AND TECHNOLOGY COMPANY PRIVATE LIMITED
8	INDIAN SPACE RESEARCH ORGANISATION
9	ALLINNOV RESEARCH AND DEVELOPMENT PRIVATE LIMITED
10	WOOL RESEARCH ASSOCIATION (in Mumbai)
10	GSP CROP SCIENCE PVT. LTD. (in Gujarat)

Interestingly, entities under serial number 7, 9, & 11 are private companies.

Top 10 Indian Applicants for patents from Institutes and Universities

Sl. No.	Name of Institutes/Universities
1	INDIAN INSTITUTE OF TECHNOLOGY (COLLECTIVELY)
2	CHANDIGARH UNIVERSITY
3	SHOOLINI UNIVERSITY (in Himachal Pradesh)
4	AMITY UNIVERSITY
5	SRM INSTITUTE OF SCIENCE AND TECHNOLOGY
6	CHANDIGARH GROUP OF COLLEGES
7	BHARATH UNIVERSITY (in Chennai)
8	INDIAN INSTITUTE OF SCIENCE
9	GALGOTIAS UNIVERSITY (In Noida)
10	LOVELY PROFESSIONAL UNIVERSITY (In Punjab)

Top ten applicants for PCT National Phase (country-wise)



Top 10 Foreign Resident Applicants

Sl. No.	Name of Organisation
1	QUALCOMM INCORPORATED
2	SAMSUNG ELECTRONICS CO., LTD.
3	HUAWEI TECHNOLOGIES CO., LTD.
4	TELEFONAKTIEBOLAGET LM ERICSSON (PUBL)
5	GUANGDONG OPPO MOBILE TELECOMMUNICATIONS CORP, LTD.
6	KONINKLIJKE PHILIPS N.V.
7	HONDA MOTOR CO., LTD.
8	TOYOTA JIDOSHA KABU SHIKI KAISHA
9	mitsubishi electric corporation
10	BASF SE

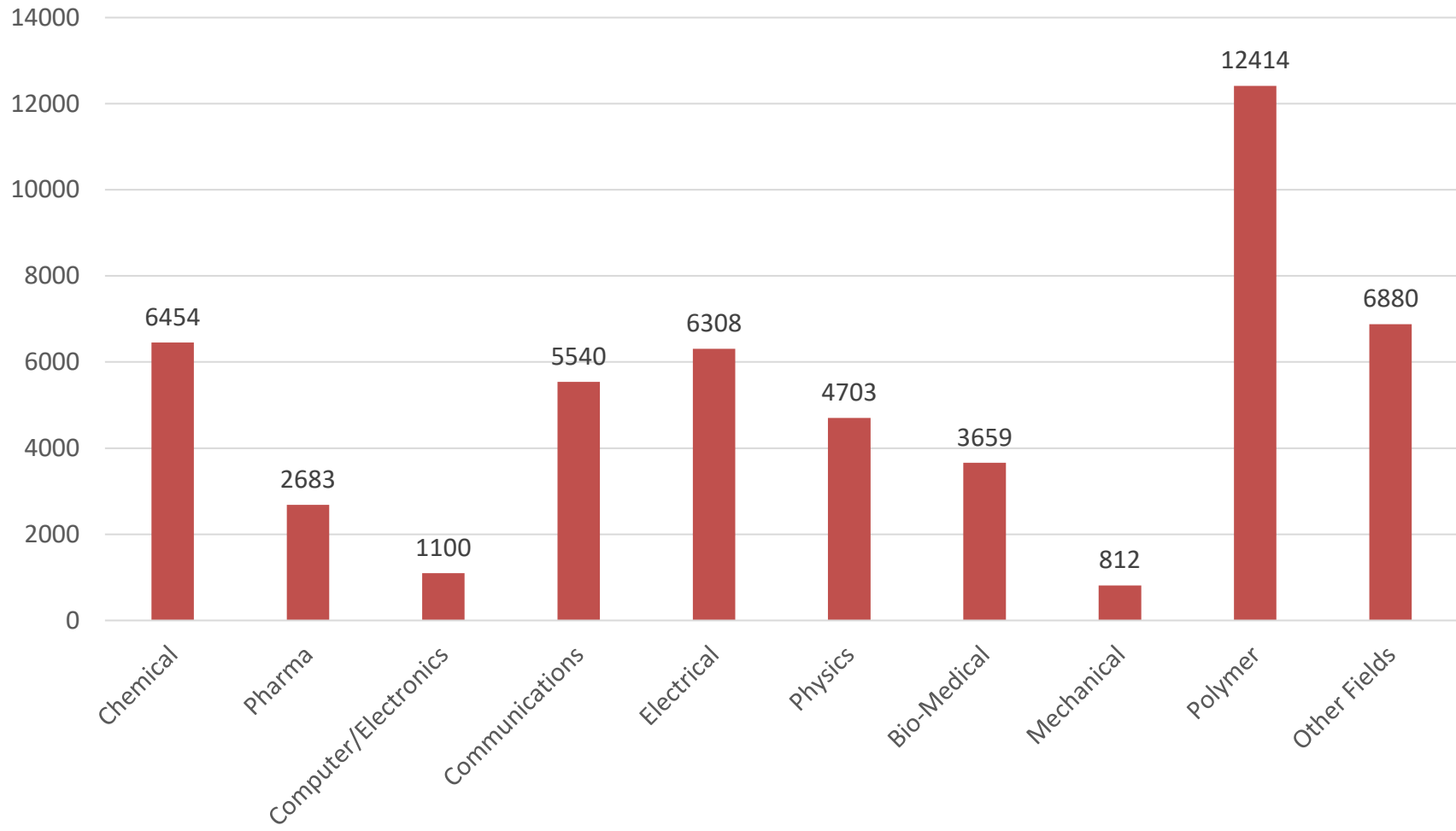
Working of Patents (Under Section 146)

	2014-15	2015-16	2016-17	2017-18	2018-19
Patents in force	43,256	44,524	48,765	56,764	64,686
Form-27 received	31,990	39,507	42,870	46,618	51,104
Reported as working	7,900	8,589	11,318	12,246	14,277

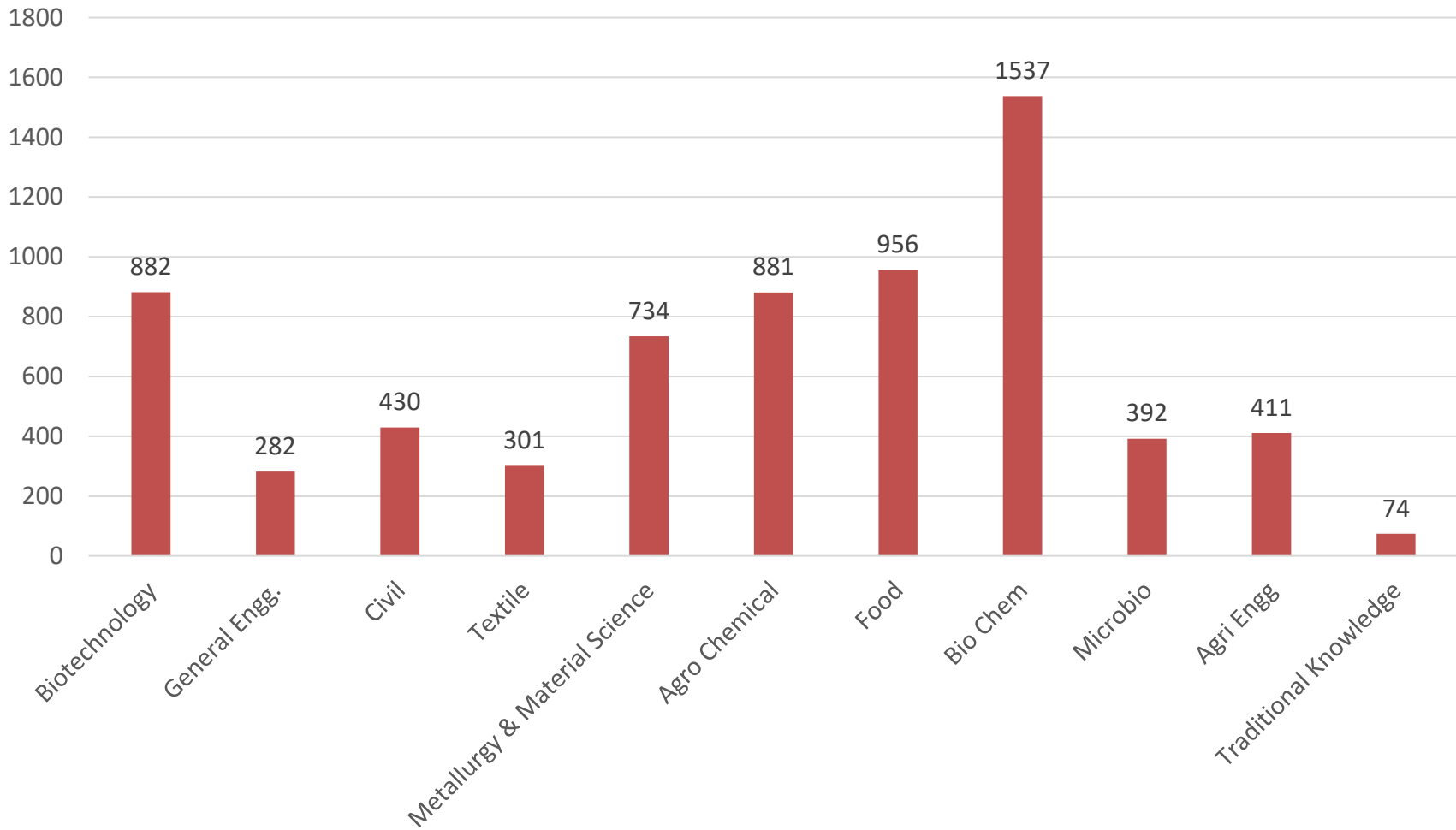
Compulsory license (under Section 84, Section 92 & 92-A)

No application for compulsory license was received during the reporting year

Bar chart - Number of Patent Applications Filed Under Major Fields of Invention 2018-19



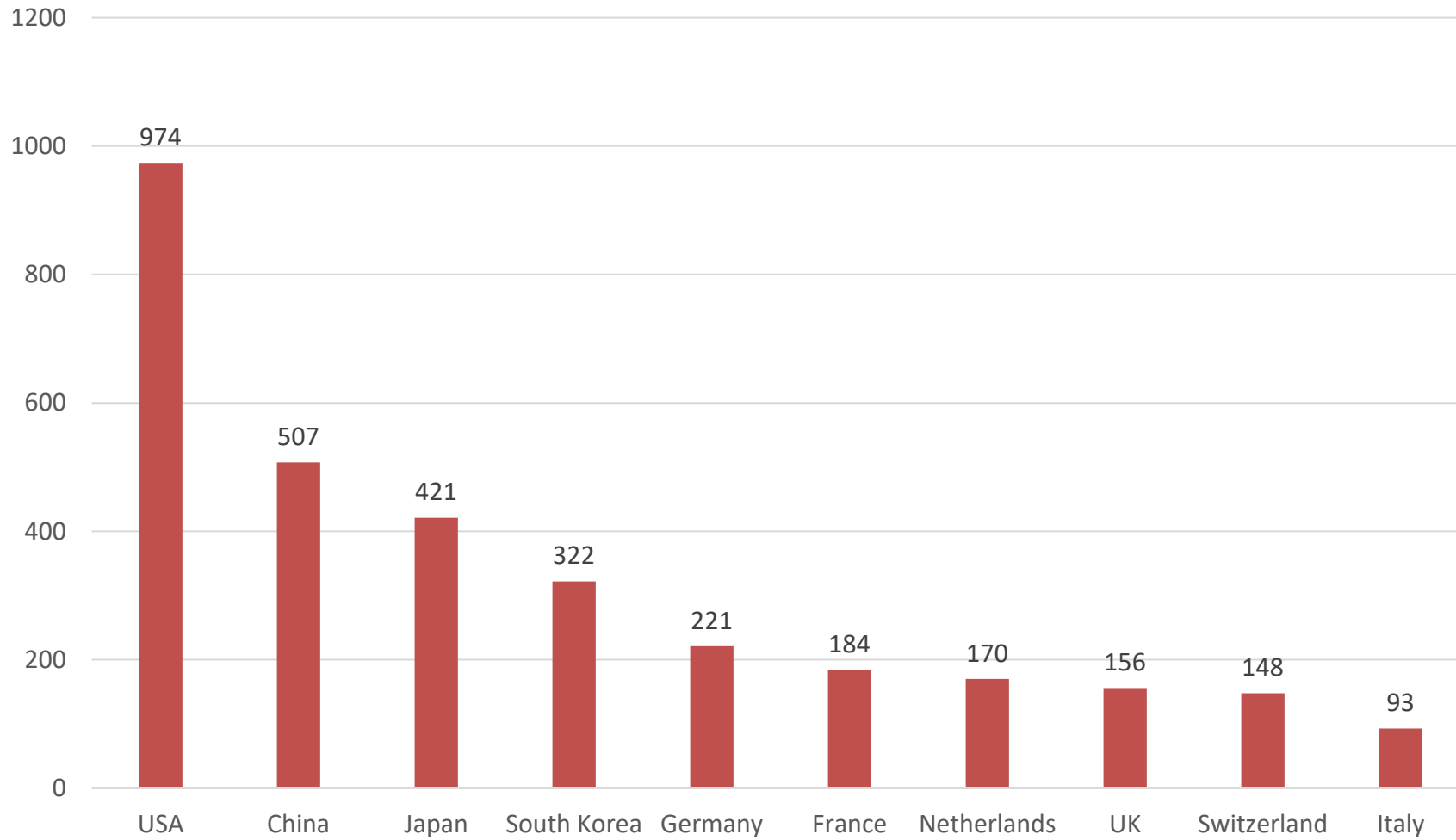
Bar chart - Number of Patent Applications Filed Under *Other Fields of Invention 2018-19



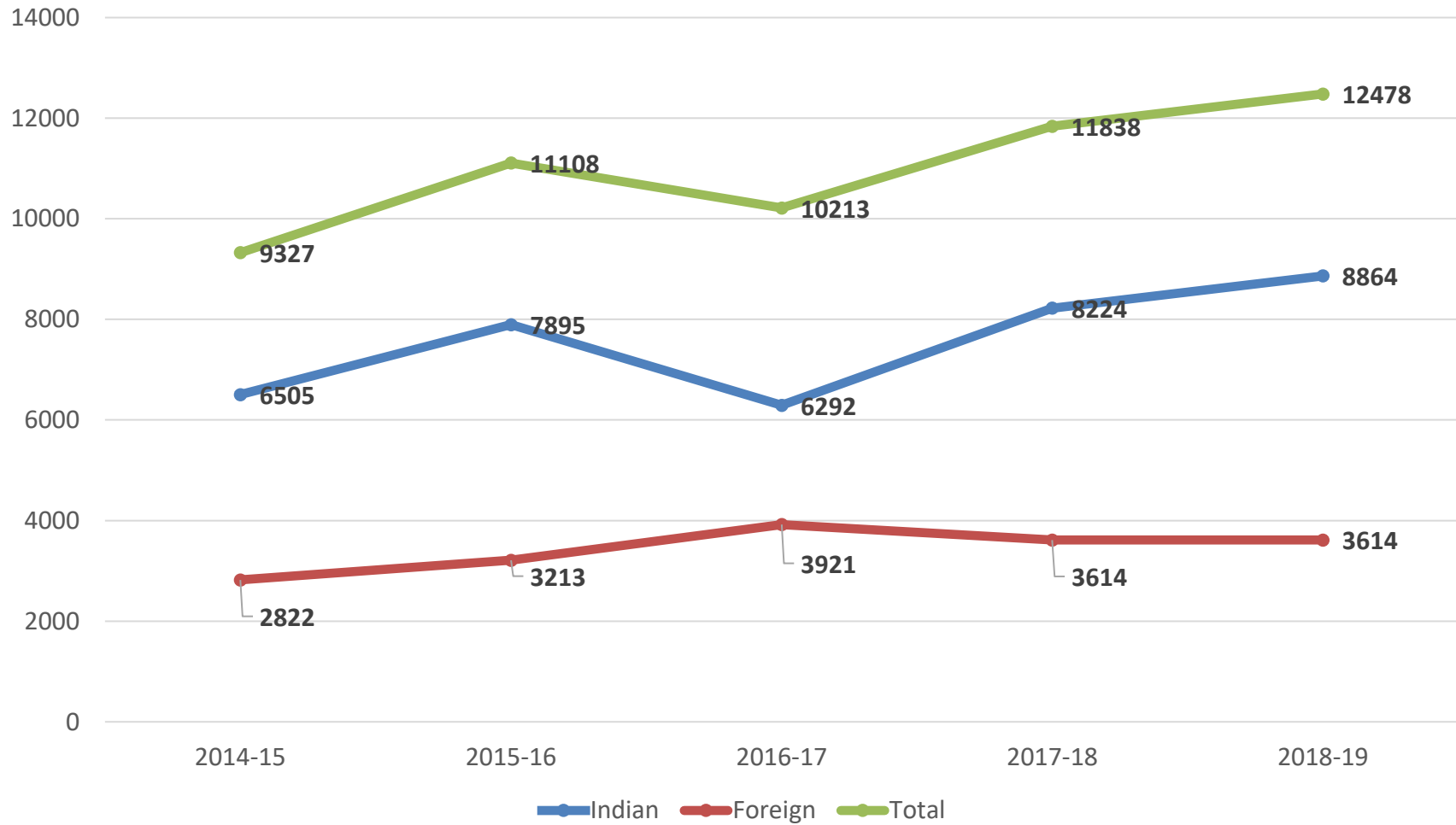
Design Applications from Indian and Foreign Origin

- The leading foreign applicants that filed applications were Samsung Electronics Co. Ltd. (166), Koninklijke Philips N.V. (120), Huawei Technologies Co., Ltd (77), Beijing Xiaomi Mobile Software Co., Ltd. (75), Ethicon LLC (60), Apple Inc. (41), Juul Labs, Inc. (39), Guangdong Oppo Mobile Telecommunications Corp., Ltd. (38), Honda motor Co., Ltd. (37), SMC Corporation (36), etc.
- Similarly, leading Indian applicants were Sabyasachi Couture (467), Biba Apparels Private Limited (250), Siddhi Vinayak Knots & Prints Pvt. Ltd. (240), Mr. Khemchand Khatri (123), Relaxo Footwears Limited (116), Ma Design Indian Private Limited (93), Renault S.A.S. (74), Nayasa Superplast (65), Hero MotoCorp Limited (64), Siddharth Bindra (40), etc.

Design Application Originating from Abroad



Design filing trends of Indian and foreign origin



Top ten PCT filing by Indian applicants (RO/IN) in 2018-2019

SI No	Applicant Name [EN]	Total filing
1	COUNCIL OF SCIENTIFIC AND INDUSTRIAL RESEARCH	53
2	INDIAN INSTITUTE OF TECHNOLOGY	48
3	TELEFONAKTIEBOLAGET LM ERICSSON [PUBL]	45
4	INDIAN INSTITUTE OF SCIENCE	17
5	MERIL LIFE SCIENCES PVT LTD	15
6	CIPLA LIMITED	14
7	MSN LABORATORIES PRIVATE LIMITED, R&D CENTER	13
8	SAINT-GOBAIN GLASS FRANCE	11
9	MUNIYAL AYURVEDIC RESEARCH CENTRE (in Karnataka)	10
10	HINDUSTAN PETROLEUM CORPORATION LIMITED/ MYLAN LABORATORIES LIMITED	8



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INDIAN JUDICIARY DURING COVID-19

Ministry of Law and Justice

DEPARTMENT OF JUSTICE: YEAR END REVIEW-2020

Video Conferencing equipment provided to all Court Complexes including Taluk level courts

Funds sanctioned for additional VC equipment for 14,443 court rooms

VC facilities are already enabled between 3240 court complexes and corresponding 1272 jails

Cases heard till 28.10.2020:

District Courts : 35,93,831 cases

High Courts : 13,74,048 cases

Supreme Court : 30,000 hearings

Tele-law free legal advice service is now available in 285 Districts to marginal sections

Source: <https://pib.gov.in/PressReleaseDetailm.aspx?PRID=1684945>

ON-LINE COUNTERFEIT ISSUES

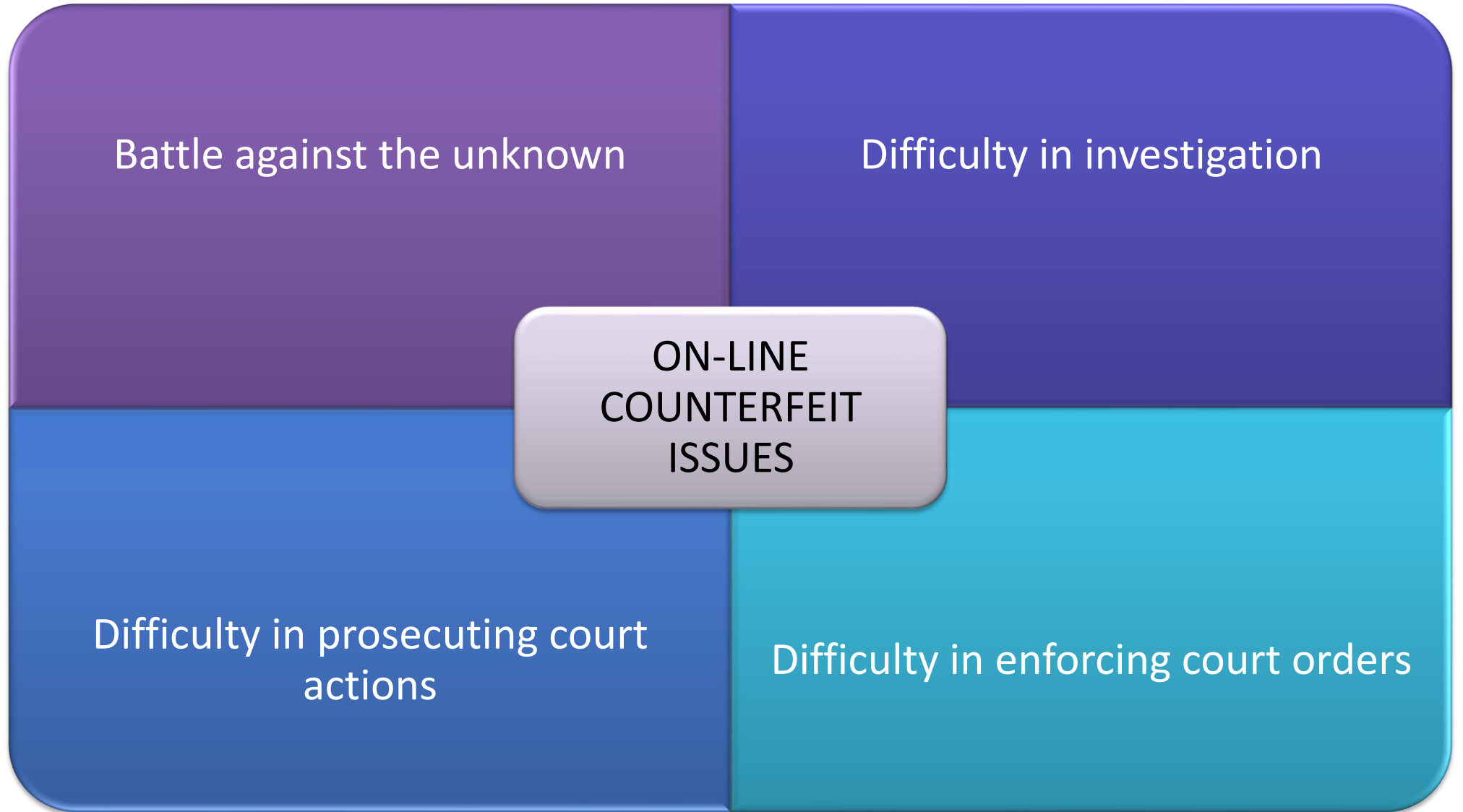
Seller on an online portal is a primary infringer and the portal is an 'Intermediary'

Section 79 of the Information Technology Act (akin to E-Commerce Directive 2000/31/EC in Europe) immunizes intermediaries from liability for any third-party information, data, or communication link made available by them on proof of its function as:

- An access provider of third party information to a communication system for its transmission or temporary storing or hosting.
- as a conduit where it does not initiate the transmission / select the receiver / select or modify the information.

Safe harbor / immunity is conditional

- Intermediary follow notice and take down procedure contemplated under Section 79(3)
- No active participation such as offering guarantee as to genuineness of the products



INITIATIVES TAKEN BY LEGISLATURE

CONSUMER COURTS ACTS, 2019 AND CONSUMER PROTECTION (E-COMMERCE) RULES, 2020

The Rules mandate that the e-commerce sites shall

- provide all details of the product and the seller;
- in case of imported goods, e-commerce sites mention the name and details of the importer from whom it has purchased such goods, or who may be a seller on its platform;
- maintain a record and identify all sellers who have repeatedly offered goods/services that have previously been removed or access to which has previously been disabled;
- not refuse to take back goods, or withdraw or discontinue services purchased or agreed to be purchased, or refuse to refund consideration, if paid, if such goods/services are defective, deficient or spurious;

Appointment of Grievance Officer

- Acknowledge the complaint within 48 hours
- Redress it within one month

INITIATIVES TAKEN BY LEGISLATURE

THE INFORMATION TECHNOLOGY (INTERMEDIARY GUIDELINES AND DIGITAL MEDIA ETHICS) RULES, 2021 CHALLENGED BEFORE THE DELHI HIGH COURT

The 2021 Rules seek to regulate three classes of content carriers:

- Intermediaries, Over the Top (OTT) Video Streaming Platforms and Digital News Media

Intermediaries are classified as:

- ‘Social Media Intermediary’ and
- ‘Significant Social Media Intermediary’

The 2021 Rules requires that all SSIMs appoint Indian origin Compliance Office, and a nodal officer who is available 24x7

INITIATIVES TAKEN BY COURTS

Service through modes like e-mail/SMS etc.:

- Some High Courts like Delhi and Bombay recognize service through service through e-mail/ SMS/ WhatsApp and even social media handles

UTV Software Communication Ltd., v. 1337X.TO and Ors. (2019):

- The **Delhi High Court** passed a one of its kind “dynamic injunction” against “rogue websites” hosting pirated content, and in particular the “hydra headed” ones.
- The Court permitted the plaintiffs to implead the mirror websites in the suit instead of filing fresh suits against them

TRADEMARK LIABILITY AND INTERMEDIARIES

Amazon Seller Services Pvt Ltd v. Amway India Enterprises (2019)

- Single Judge of DHC issued a common order against online platforms, restraining them from displaying, advertising, offering for sale, selling, facilitating repackaging of any products of **Direct Selling Entities (DSE- Amway, Oriflame, Modicare)**, without their written permission/ consent.

On Appeal, Division Bench overruled the decision of the Single Judge on the basis that:

- DSG (*Direct Selling Guidelines*) is yet to be enacted into law
- The DSG is advisory in nature and therefore, it is not binding
- The IT Act does not make any distinction between active and passive intermediaries
- Value added services by such e-commerce enterprises does not dilute safe harbor protection granted to them under section 79 of the IT Act
- The knowledge of Code of Ethics of DSE and contractual stipulations imposed by them are insufficient grounds for laying a claim of tortious interference



Image credits- iprmentlaw

INFRINGEMENT - WORD MARK



Defendant's restrained from using the mark **DEVTOL** for hand sanitizer



The court imposed Rs. One Lakh costs

RB Health (US) LLC and Ors. v. Dabur India Ltd.

RB alleged that:

- Dabur’s shape of the soap was similar to RB’s [registered design](#)
- Dabur’s tagline was similar to RB’s tagline - “Be 100% sure”

Decision: The Delhi HC denied interim injunction:

- **Regarding infringement of registered designs:** In the light of prior design registered by Unilever, it was held that there was considerable challenge to the validity of RB’s claimed design
- **Regarding passing-off:** The tagline and ‘+’ sign used by Dabur were not protected trademarks; taglines and indications/signs used by RB were found to be “customary” in the “current language” of the trade for the purpose of designating hygiene-products. Dabur had no intention to pass off its soap bar as ‘Dettol’ as it’s packaging boldly bore the mark of ‘Dabur’ and colour of the packaging was different from that of RB’s



Nature of Relief in Domain Name disputes

Hindustan Unilever Limited (HUL) v. Endurance Domains Technology LLP & Ors.

HUL pleaded that:

- unknown persons had registered fraud and fake domain names
- .IN registry, National Internet Exchange of India (NIEL) be directed to 'de-register' and 'block access' to such websites
- domain registrars be restrained from granting such domain names

The Bombay High Court held that:

- The reliefs prayed by HUL cannot be granted because .IN registry and NIEL cannot 'block access' as they are not Registrars
- The direction to block a website or a URL can be given only to Internet Service Providers
- The registration of domain name is an automated process, and it does not involve any human intervention. Therefore, a dynamic / prospective injunction against the domain name Registrars not to register similar domain names cannot be issued
- But HUL granted liberty to file Affidavits



Prior Use of Trademark cannot be Sporadic

Peps Industries Pvt Ltd v Kurlon Limited [FAO (OS)
(COMM) 94/2020, C.M. Appl. Nos.18937-
18938/2020]

Peps is a registered proprietor for 'NO TURN'

Kurlon claimed the vested rights U/S 34 of the TM Act since it has been using the mark since 2007

The court rejected the defense of vested (prior) use as Kurlon's sales were intermittent and the use was neither voluminous nor continuous



Image credits – taxguru.in

Phonetically Generic- ‘DELHIVERY’

Delhivery Private Limited v Treasure Vase Venture Private Limited

Issue – Could a Plaintiff enforce the rights in the mark that is descriptive of services for which it is used?

- Delhivery is engaged in transportation and logistical services
- Defendant adopted the mark ‘DELIVER-E’ for its business of electrical vehicles for passengers
- Defendant argued that Delhivery’s mark was descriptive of its services

The DHC held that:

- the mark is ‘phonetically generic’ and, therefore, it is incapable of statutory protection or being monopolized
- the services offered and clientele for both the companies are different and, therefore, the marks can be easily differentiated





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Thank You