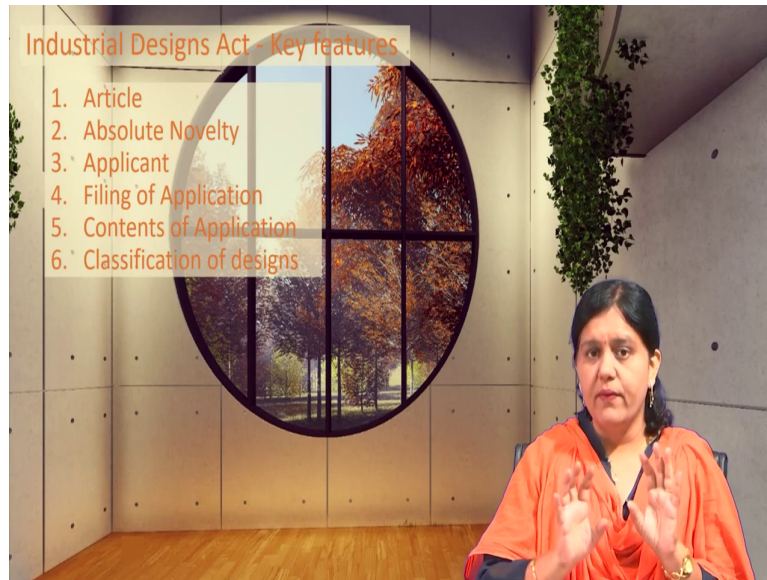


Entrepreneurship and IP Strategy
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Lecture 27
Industrial Design Act – Key Features

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A very warm welcome in the second module of week 6 of the course Entrepreneurship and IP Strategy titled, Industrial Designs Act - Key Features. So, we will see a first point related to that key features as article, then second point absolute novelty, third is applicant, fourth filing of application, fifth contents of application and the sixth classification of designs. So, we will concentrate on these six points and considering that six points we will get the little bit, the deeper information about that particular six points.

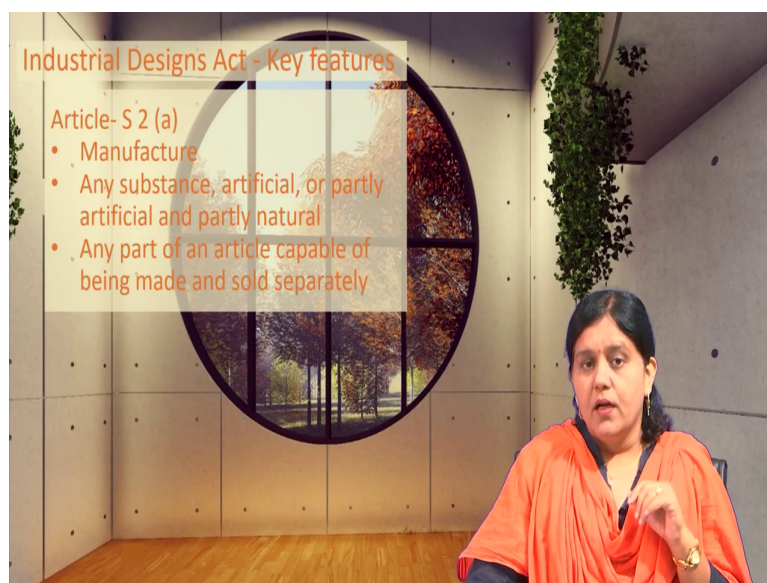
We have seen that Section 2 d is defining design as design means it is the only feature of shape, configuration, pattern, ornament. It is not, it is like related to features of shape. We have to remember that a article is there and the related to that article according to the definition, we are, when we are talking about a design we are concentrating on a feature of shape, configuration, pattern, ornament or composition of a lines or colours applied to any article.

It may be 2-dimensional, it may be 3-dimensional or it may be in both forms right. And then we have seen that it may be developed by any industrial process or any (means) any means, it may be manual, or it may be mechanical, it may be chemical, whatever it may be. And the

important thing we have seen it is that in a finished article it should appeal to the eye, or it is solely judged by the eyes that is very important.

And we have seen that there should not be, when we are talking about this design we have excluded the things which are considered in trademark like. And we have given the details of that which is the section of trademark which is the section of a property mark which is the section of a copyright. So we have excluded that thing. So, we are very pretty well clear about the definition of a design. Now, related to design the six points we have to see. So we will move further and we will see the first point that is the article.

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When we are talking about article which is defined in Section 2 (a), of this Industrial Design Act, we will see the definition but these are related, the definition is like that article when we are talking about it is a manufacturing, it is a manufactured thing. The next thing is like any substance, artificial or partly artificial and partly natural whatever it may be then any part of an article capable of being made or sold separately.

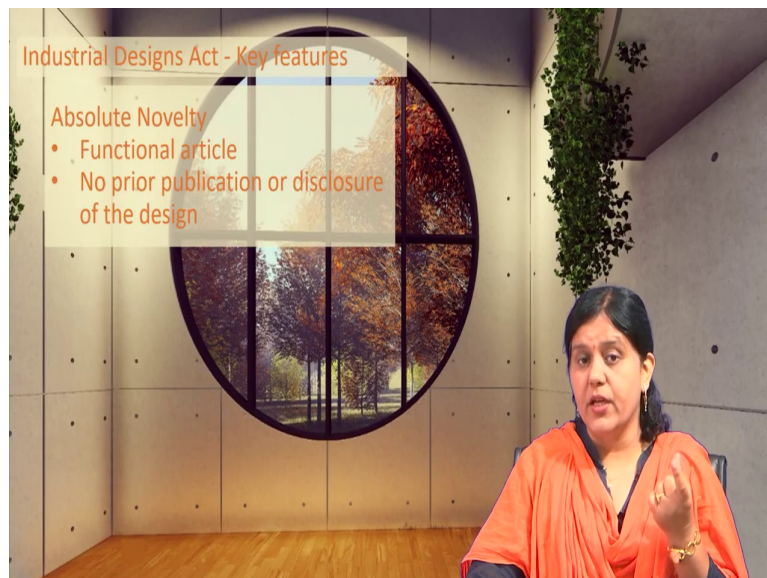
So when we say that Section 2 (a), which is defined article, it says that it is article is nothing but it may be developed by some manufacturing process and any substance, it may be artificial, or it may be partly artificial and partly natural, so that combination is possible. And the most important is that, that article is capable of being made or sold separately. So it has a unique or a what unique standing and that article is a separately sold, that uniqueness is there to that article that is very important. So the, the it is like a shape, configuration and all that thing.

Then we have seen that it should appeal to the eyes and then this is very important point that it should be sold separately, that unique standing that, that is there to that article, that is very important when we talk about the article. Now, this when we are considering that registration of that article what we are saying that as already we have seen that it is a selling or made separately and it should be original, it should be original. And we have seen that novelty aspect is everywhere, when we are talking about IP, novelty aspect is everywhere.

And then it should be purely distinguishable form of other designs means, when we say novelty obviously what we are saying that it should be distinguishable from the, any other article which is present. Now, there are certain things which are prohibited and there is a list of, a list of that articles or list of the designs which, which cannot be considered for the designs and the design which is a when we are talking about, it is not new or original definitely we are not considering it as, considered for the design registration, or it has been disclosed in the public, obviously its novelty is lost.

Then if it is not significantly distinguishable then obviously it will not be considered for a design registration. Or if it contains some scandalous or obscene matter, we will not consider that for the design registration. Now, the next when this is about the article, now the next is absolute novelty.

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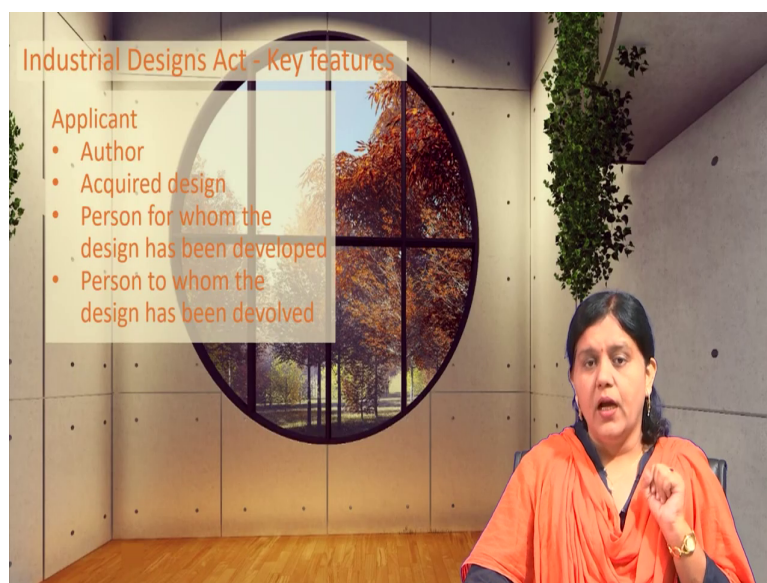


When we are talking about absolute novelty two important things we have to consider that it should be a functional article and second thing that no prior publication or disclosure of that design. So, prerequisite for a design to qualify for protection that novelty as we have already

seen that every IP should be novel, we are appreciating that particular thing, obviously for design, it should be novel.

And there should not be a prior publication or disclosure. So that functionality is important and it should be visible to that whatever its features are there that are visible to the finished article and it should not be published. So, the design it should not be published anywhere. It is, it is when if it is published, obviously it will not be considered for the design registration it will be in the examination, objections will be raised. Also we have to keep the secrecy about that particular thing.

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Next is a applicant, who can apply for the registration. Now that is very important, who, who is what we can say eligible to apply for that registration. So, applicant may be author. And author definition we have seen a something about author when we are, we were dealing in a copyright. So we will see what that one is author. Then if design is acquired design, then third is like a person for whom the design has been developed, for whom the design has been developed and then the fourth person to whom the design has been devolved, there is a difference we will see in the deep, what is the difference in that.

So, any proprietor who is seeking registration of the design which is original and unpublished and it is not published anywhere. And it is not contrary to any of law that will be registered and proprietor as per Section 2 (j) means we have just seen, which are the four types. So, when we say that who are the applicants, Section 2 (j) is giving the details and these are the

four categories who are eligible to do the application. So, here it is it should be author that that is very important.

So in case there, if there is more than one author, author is like a creator who has developed that design. So if there is one author obviously he will be the applicant he can do the application. And if there are more than one, one individuals are involved in development of that design it will be a joint authorship will be there. Then second we have seen that is acquired design for a valid consideration.

So, where any person it acquires the design or the right to apply to the design to any article, either exclusively or exclusively of other person or otherwise, in the respect and then the extent in and to which the design on right has been acquired the person by whom that design or a right is acquired. So, this is like a legal language so we have to just understand that. If I have given, I have given some consideration to somebody and in return of that I have acquired that design and then now what I have done, I have given that particular amount to the author and I have acquired that thing, I have taken it in my, it is now my design because I have given the consideration and now I will apply the design for that particular article.

So now I will be the like a applicant for that particular design. This is the second category. Now, what is the third category we have seen, that is a person or for whom the design has been developed by the author. So here again, if, if I give some intellectual input and I will ask somebody to develop that thing, so my intellectual inputs are there, but under my direction somebody is developing that particular thing. And the person who is developing that thing I am giving some consideration kind of thing.

So a person for whom the design has been developed by author. So I am a person, for me somebody is developing that particular design and then what will happen, as I have given him the consideration and my intellectual inputs are there obviously I will be the owner of that thing and I will be applicant for that thing. So this is the third point. And the fourth point is like, any person to whom the design has been devolved from the original proprietor.

So it is like somebody already developed that particular thing and now he is giving or giving that right to somebody else and there may not be consideration or something, it is not necessary that consideration will be there. But I have said that okay, you can do now the registration. If owner gives that registration rights to somebody else, that is it is devolved to the, devolved to somebody what will happen, that person to whom that right is given, he can do the registration. So these are the four types.

Like a, first is like author who, who himself has created that thing. There may be a joint authorship, acquired because somebody has developed it I have given that consideration, some mergers acquisitions happen so I have acquired that thing. Then the third category is like a person whom I have given some consideration and I am giving intellectual inputs accordingly the person is developing because I do not have capacity to develop that design, but I have a imagination so I am giving that intellectual input. So that is a third category.

And fourth category, okay somebody has developed it and then that that person is giving right to somebody else and he is like registration, registering that particular thing. So this is what about the applicant is. I guess it is very clear now and we have seen the section also, which is that section which is dealing with that applicant? Section 2 (j).

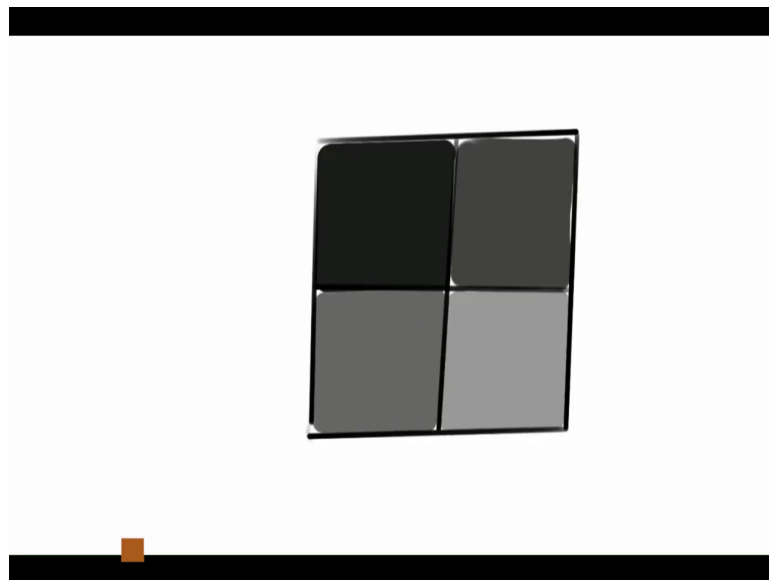
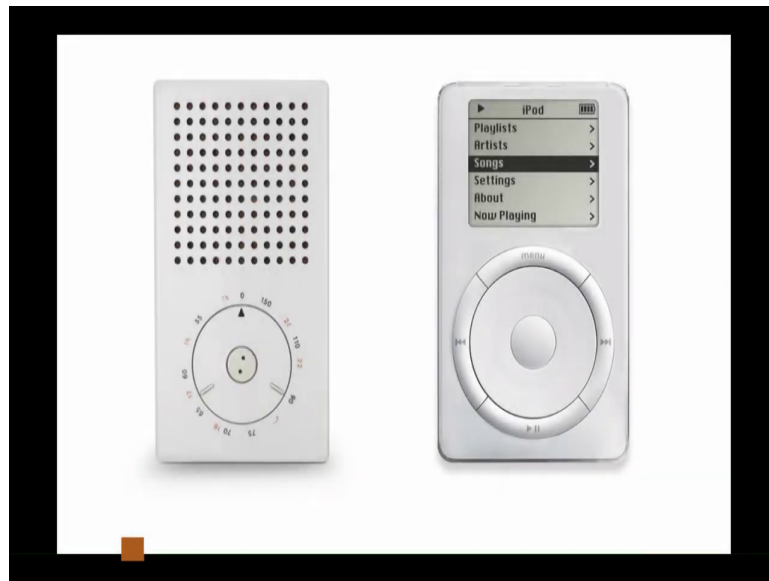
Now, moving further we can just now see, when we are talking about applicant or the third category that I am giving direction and somebody is dividing, so just watch this video that how designer develops industrial design means how they think about a, because this is very interesting to know that industrial design when we have to develop, we have to see the main, the functional, the capability or functional features, these are very important.

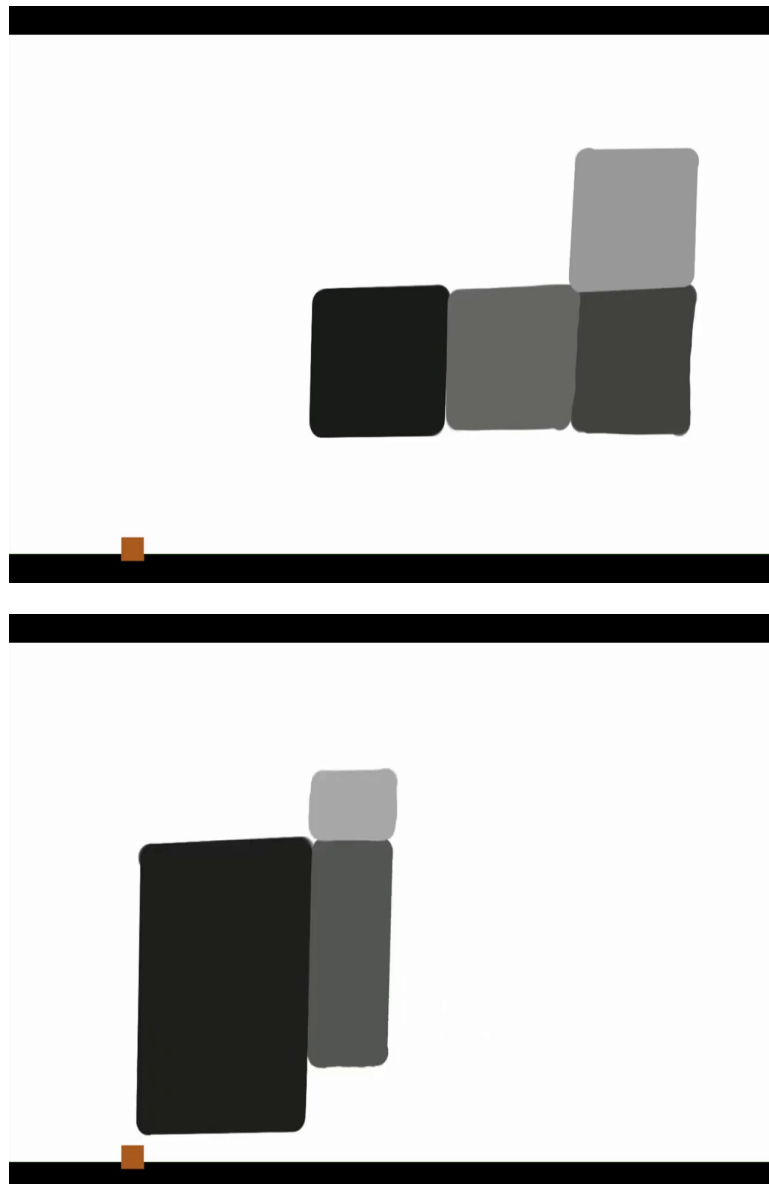
And considering that functional features and so many other things, then based on that we have to develop that particular design. It is not generally other way around that design is first prepared and then the particular that functional things or (mechanical) mechanical things within that particular thing is developed, it will never happen. So, just watch this video you will get the idea how exactly it works.

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Narrator: One of the biggest determining factors in a successful design is proportion. It is the fundamental building block. Now, if we start with a square and just divide it up into evenly sized pieces, it can feel a little bit static. It is challenging to arrange these similarly sized shapes in an interesting way. You are just going to end up with a bunch of tetras pieces basically and there is just really not a whole lot going on.

Now, if you take that same square and divide each piece into proportionally smaller thirds, you certainly have much more interesting designs. This breaking up into thirds is based on the golden ratio. I am not going to get into the golden ratio, really at all in this video. But basically it is a proportion that is very commonly found in nature and it is very pleasing to the eye.

Professor: So, this I guess gives you the idea who exactly the design is developed. So, we have seen that article, then absolute novelty second point and third is like a applicant.

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Now, we will see the filing of application, key features which is related to that particular filing of application. So, the important things when we are talking about a filing of application is Form 1, then representations, then Form 21 and then Form 24, we will see details of that. So, when we say we are applying for the design, which form you are going to use, Form 1. In copyright which was that form? It was a Form XIV. So, here it is a Form 1.

Now, this Form 1 that is a prescribed format is there and by using that form you can apply for the design, design registration. Now, representation. Now, representation is very important because we, for which article, which article you are taking that protection, we have to represent that. So it should be prepared as per the prescribed rules it is 12, 13, we will not go in details of that, it is not necessary for you to know.

But it is like that, you have to follow the certain guidelines which are given in the act and accordingly you have to prepare the representation. Now, what will happen? Who can apply actually, we have seen that four categories. So, whether you yourself as a author can apply, yes if you are applying that is no problem. But now you are giving this application task to somebody else then what will happen, you have to give a power of authority and that is a Form 21.

In patent there is also you are giving a, this power to the patent agent. So which is that form if you remember, it is a Form 26. So here it is a Form 21. Ok. Now, here when you will give that power of authority to the patent agent, patent agent is also eligible to do the design

registration, so if you are giving that authority to that some expert, you have to give a Form 21. Now, next is like a Form 24. When, when you will require a Form 24?

We have seen that there are different categories when we are talking about a registration individual start-up MSME and other and that categories we have seen. So it is always there when you think of a patent or when you think of a trademark that categories always are there. So, here what happen, Form 24 you will require if you are a small entity, and when you are a small entity you have to give a Form 24.

So, it is according to MSME that Udyog Aadhar certificate is there and along with that Udyog Aadhar certificate you will give that form 24. So, this is about that important, a few forms are there. Now, the what the thing is happen, suppose you are (file) that design or something is in other language, then you have to translate is into the English and then you have to a submit that particular thing, So that is one thing.

This is possible because suppose you the application is like from European some European individual is applying in India, probably in local language they have done that particular registration there, so if they want to do registration in India, they have to do the registration in English and they have to translate it and then, then only it will be accepted here. Then the, the next is like a contents of application, so next point when we are talking it is a content of application.

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Now, when you say content of the application there is a similar drawings if it is there, then photographs, then tracings including computer graphics and then the last one is a specimens

of the design. So these four types may be, may be there when you are talking about a application. So, here what the thing happened that you are probably, will give in the representation a sheet that particular drawings related to that particular article, or you may give a photograph directly.

So maybe you can take a photograph and you can give that photograph. Then if it is something like a tracings including computer graphics you can give that tracings. Or sometimes it is possible that you may also, may give the specimens of the designs, obviously that representation on the sheet you will do and you will get that particular specimen or tracings of that specimen and that will be given as a, in the representation sheet.

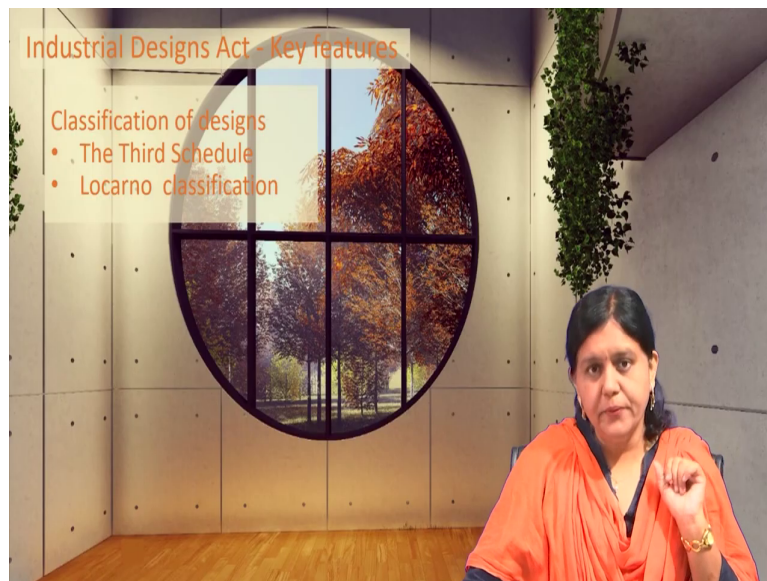
Now, sometimes means it is not required to show that article to the examiner, in very rare case there is a possibility that examiner may ask you to a show the, that particular article at the time of examination, but it is generally not asked. Now, where you have, when, where you have to, you are going to apply? So we have seen that this is the content, or this is what is article, or what is absolute novelty, or what, what is a filing that you come to know now.

Now, where exactly you are going to apply for that? And we have seen that there are four patent offices. You can do, means application anywhere in that four of the patent offices. But, the processing of application will happen in the Kolkata office only. So, in the head office only industrial design will be handled, that examination will be handled only in the Kolkata office. So, you can apply anywhere, but it will, we go to the head office only and all processing will be done in that.

Now, there may be ordinary applications, just two types of applications are there, just I will give you information about that also, it there is no any claim priority and all that thing. We call it as a ordinary application and there is a reciprocity application in patent we say conventional application or PCT application, so here we call it as a reciprocity application. Now, what is that here priority claim is there and maybe there is in conventional country you are in that convention country, you have your application and now you are applying in India. Timeline is six months.

For patent, what is the timeline it is, convention application? It is a 12 months. So, when we are talking about a convention application about patent, it is a 12 months. If you are talking about this industrial design it is a six months. So, within six months from the application in any convention country, you have to apply in India, that time period is a six months. So, this is about the content of the application. So, last one that is a classification of a designs.

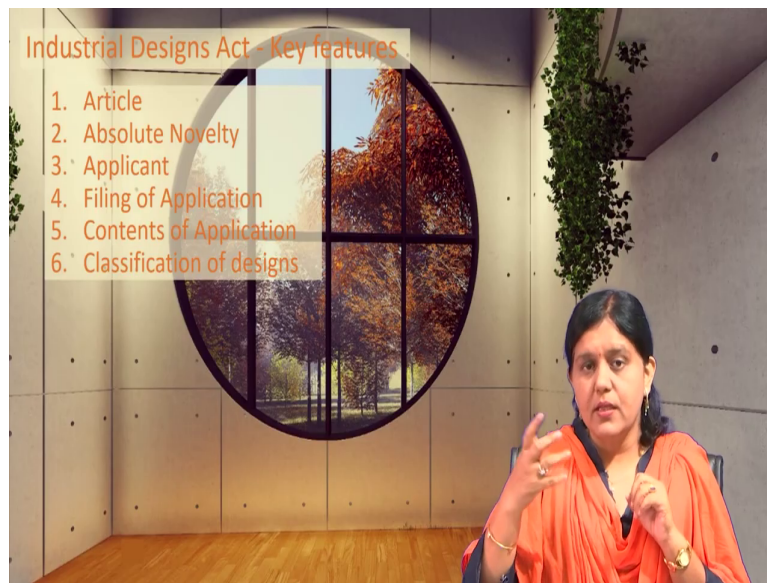
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When we, when we say designs are the, there is a classification of design also. So, when we say there is a classification of a design that classification of design is like a Locarno classification. It is followed there and it is giving in the, given in the third schedule of the Industrial Designs Act. Now, this what Locarno classification, just like in a trademark, we are going through a nice classification, or we are going through a Vienna classification, Similarly, here we are following the Locarno classification.

And there they have given the nice classification of all the types of articles probably which may be and we have to register in that particular class. As we are doing in a trademark we are limiting it to the class, means for every class you have to do a separate application, you cannot say that this is the good and I am applying in 1, 2, 3, 4, 5 you classes, it never happen, you have to give a separate application for each class. So, similarly in industrial design, you have to do that particular thing and you will give the separate application for each class. So this is about a classification.

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So, when we see that, the key features, so the key features are like article, absolute novelty, applicant, filing of application, contents of application and a classification of design. So, we have seen that Section 2 that is mostly related to all definitions. Here that article is defined, what that article is then. Then we come to know what is absolute novelty and how you have to keep the secrecy. Then what are the different four types of applicants are there that we have seen.

Then filing of application how exactly it is done, which office is there where exactly it is processed that is a filing of application and types of application. Then content of application we have seen and that representation sheet is there and then how exactly you are doing the representation. And then the last is a classification of a design that is a Locarno classification is there. So, these are the six points when we are talking about a industrial design registration.

Now, I will suggest you if you are in a, in your activity in a venture, if there is any product, you just think of that six points related to your article which you are offering now, it will be a product obviously and you just think of this six points and you can just, according to this six points you can you, you yourself can prepare the application, Form 1 is available. And on the website you just visit that thing, you can get that Form 1. And you yourself can do the application for industrial design.

It is a very simple, this Act is also very small act it is, and the procedure is also simple that, with that only one form you can easily do take a photograph, prepare that representation sheet, fill that Form 1 and you can apply it in the relevant jurisdiction, whatever it maybe, it

is going to the Kolkata office for the examination. And it is a very, generally it is a very fast process and you can get the, easily that industrial design registration. So, with this we come to the end of this module. And I hope you can use this effectively for your venture. See you in the next session. Thank you.