

RULES OF THE INTELLECTUAL PROPERTY APPELLATE BOARD

**Intellectual Property Appellate Board (Procedure),
2003**

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Flow of Power



Trade Marks (Application and appeals to the Intellectual Property Appellate Board) Rules, 2003

Notification

- Notification - G.S.R. 928 (E)
- Rules Made by - Ministry of Commerce and Industry
- Power Conferred to Central Government by - Section 157 of the Trade Marks, 1999.
- Object of the Notification - to frame the Rules for making application and appeals to Intellectual Property Appellate Board.

Rules at a Glance

- Application for Rectification to the IPAB shall be made in Form 1.
- Appeals from the decision or order of the Registrar, for goods or services falling in one class - In Form 2
- Appeals from the decision or order of the Registrar, for goods or services falling in two or more - In Form 3
- Appeals from the decision or order of the Registrar, in regard to Registration or Removal of Trade Mark Agent from the Register - In Form 4
- Application for condoning the delay in filing appeal - Form 5

- Part I - Intellectual Property Appellate Board (Procedure) Rules, 2003

Intellectual Property Appellate Board (Procedure) Rules, 2003

Object of IPAB:

Speedy disposal of Appeals and Rectification Application.

Rules made by IPAB:

The Intellectual Property Appellate Board (Procedure) Rules, 2003 were made by Intellectual Property Board to regulate its procedures in exercise of powers conferred upon it by **Section 92** of the Trade Marks Act, 1999. These Rules were notified vide **Notification No. G.S.R. 929(E)**

Jurisdiction of Intellectual Property Appellate Board

The Appellate Board has two types of Jurisdiction:

a) **Original Jurisdiction** : in matters of rectifications of the register of trade marks under Sections 47, 57 and 125 of the above Act.

b) **Appellate Jurisdiction** : in as much as it can hear and decide appeals from an order or decision of the Registrar under Rule 162 of the Act.

The decision of the Board shall be final and binding.

c) According to Section 31 of the Geographical Indications of Goods (Registration and Protection) Act, 1999, any person aggrieved by the decision of the Registrar can file an appeal to IPAB.

d) According to sub section 2 of section 117A of the Patents Act, 1970 an appeal against the order of the Controller should be made to the IPAB.

Who Can Appeal to IPAB

An application under section 47, 57 and 125 or an appeal against any order of the registrar can be made to the Appellate Board by any **aggrieved person**.

Aggrieved Person : any person who -

a) is in some way or the other **substantially interested** in having the mark removed from the register

OR

b) would be **substantially damaged** if the mark remained

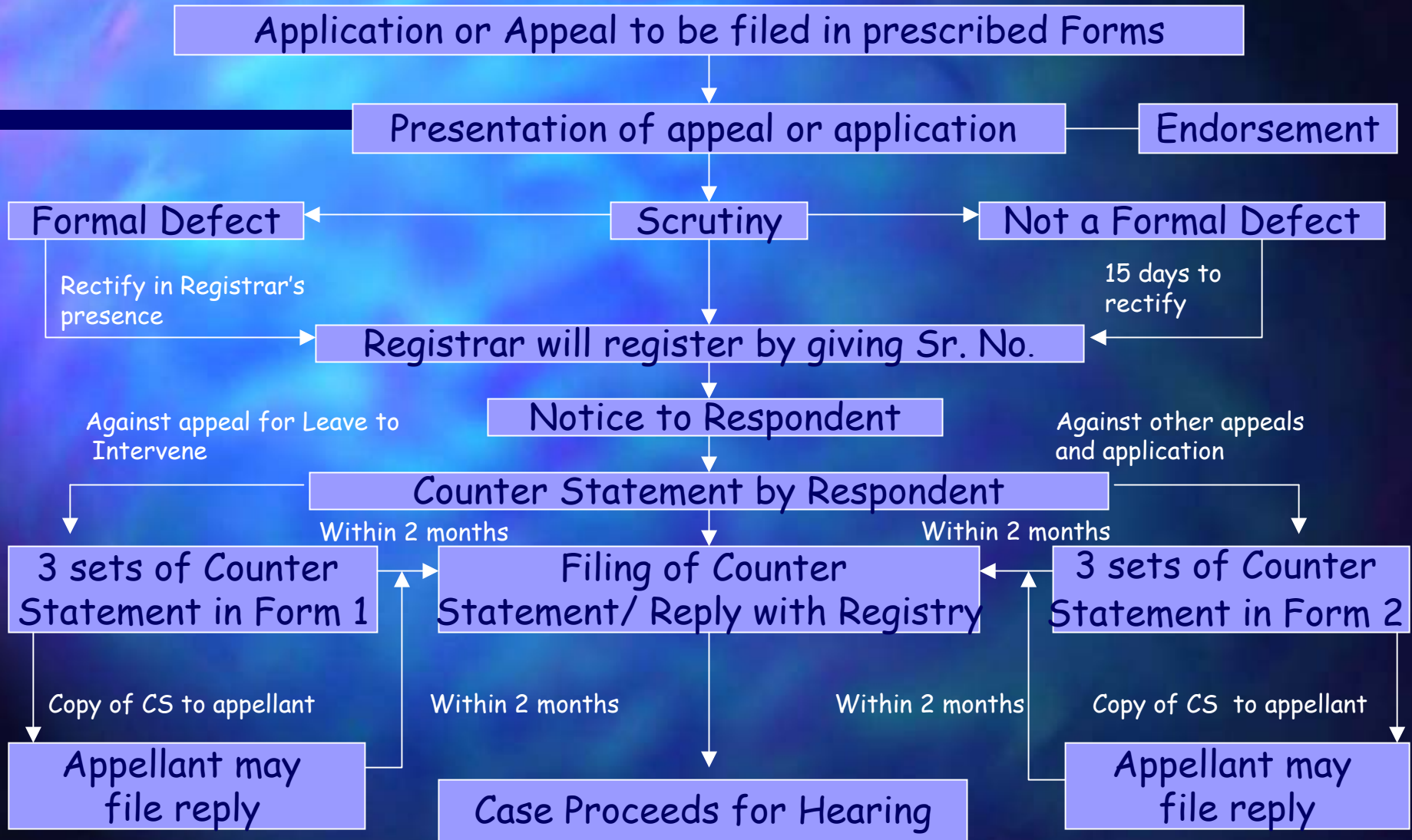
Note: The meaning of the word should be liberally construed but at the same time it should be made sure that there should be a direct link between the person and the grievance.

Procedure for Appeals & Applications before to IPAB

- a) The application shall be file in the Form 1.

- b) An appeal from any order or decision of the Registrar of the Trade Mark shall be filed in the Forms 2, 3 or 4

Flowchart of the Procedure



Following are the points which should be noted while filing the application or appeal:

a) the application or appeal sent by the post shall be deemed to have been presented before the Registry on the day it was received by the registry.

b) the prescribed fees shall be paid through Bank Draft payable at Chennai in favour of Deputy Registrar, Intellectual Property Appellate Board.

c) the application or appeal shall be filed in:

- in 3 sets;
- in a paper book form;
- alongwith empty file size envelope bearing full address of the respondent

d) if the defect (not formal) is not rectified in 15 days the application shall deemed to be abandoned.

Filing Protocols for Application or Appeals

A] In case of Application for Rectification or Removal from Register

1. Applicant

- Full Name of the Applicant
- Address of place of business in India or
- Address for service in India if the above is not there.
- Authorization in favour of the representative of the applicant

2. Registered Trade Mark

- Official No. of the Trade Mark
- The name and address of the owner of the Registered TM
- Class in which the TM is registered.

3. The manner in which the registered mark is to be rectified.

4. Grounds of application.

B] In case of Appeal filed against the order of the Registrar:

Appellant

- Full name
- Nationality
- Address
- Address of Registered Office of the appellant, in case of a Company

Respondent

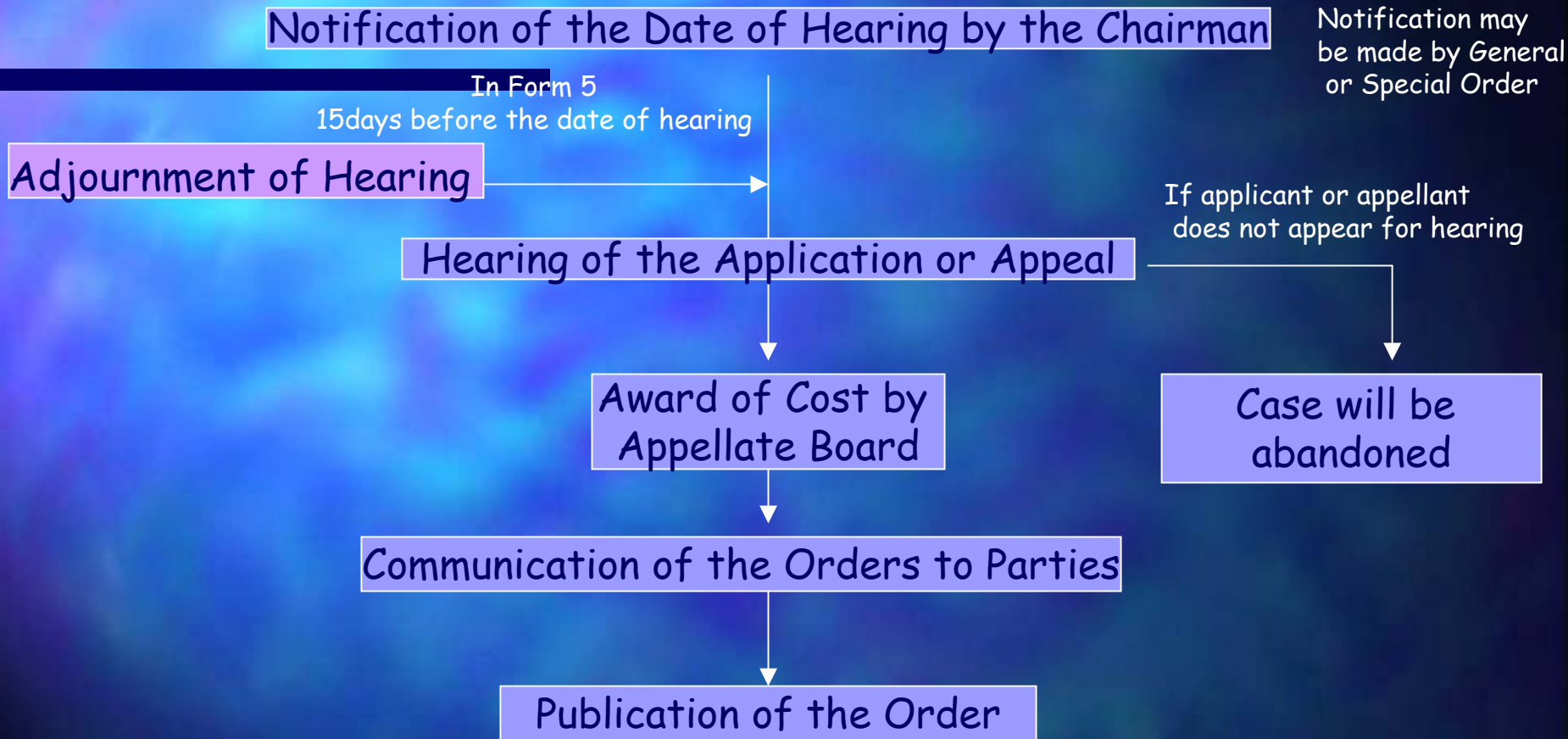
- Full name
- Nationality
- Address
- Registered Office of the respondent or official address for service of notice

Details of Appeal :

- **Number, Date and Authority** which passed the order against which appeal is filed
- **Declaration** by the appellant about the **Jurisdiction** of the Board
- **Declaration** by the appellant that the appeal is within **Limitation period**

- Grounds for relief with legal provisions
- Declaration by the appellant that the matter is not previously pending before any court
- Prayer Clause
- Particulars of the Bank Draft through which the fees is paid
- List of enclosures
- Verification

Flowchart of Procedure with regard to the Hearing



Note : The Orders of the Board maybe released for any Report of Press on terms and conditions of the Chairman

Review of an Order

- Review can be made from the order of the IPAB.
- Review petition:
 - should be in Triplicate.
 - in Form 6
 - within 2 months of the communication of the order to parties
 - should be accompanied by the grounds of the review.

Procedure for Review

- Registry shall forward the petition and statement to the respondents to the petition
- Respondents may file counter statement within 2 months
- Review petition shall be posted for hearing, before the bench of Chairman.

■ Part II

Powers of Intellectual Property Rights Board

Powers of IPAB

- a) Not bound by CPC.
- b) Natural Justice.
- c) Make own rules.
- d) All powers of High Court in respect of the following matters
 - receiving evidence
 - issuing summons
 - requisitioning any public record
 - any other matter which may be prescribed
- e) Will have exclusive jurisdiction in matters under section 91 of the Trade Marks Act, 1999.

Thank You