INTELLECTUAL PROPERTY LAW

Beyond Patent Expiry: Trademark-Based Evergreening and the Limits of Section 9(3) of the Trademarks Act, 1999

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Abstract

This paper deals with the encroachment of patent expiry norms upon trademark protection in India, where trademark-based evergreening has become more prevalent especially following the amendments to the Trade Marks Act, 1999. In India, the Patents Act, 1970 provides for a non-renewable 20 year term of patent protection which expires absolutely upon the expiry of the said term in order to put the invention in the public domain. However, it has been observed that the rightsholder community tries to extend the period of exclusivity by registering features of function and/or products in the form of three-dimensional marks and/or product configurations along with the accompanying packaging as trademarks under the Trade Marks Act, 1999. This paper attempts at analyzing the structure of Section 9(3) of the Trade Marks Act, 1999 vis-a-vis the aforesaid phenomenon to determine if there exists a lacuna in the statutory text so far as the textual scope, the weightage to be given to an expired patent and/or the acquired distinctiveness is concerned. It also looks at another way to achieve the same result enforcing a product shape through passing off without registering it. This avoids Section 9(3) completely. This was shown in the Delhi High Court Division Bench decision, in Crocs Inc. USA v. Bata India Ltd. (2025). A doctrinal and comparative research methodology has been adopted for this paper by way of analyzing the statutes and case laws pertaining to the Trade Marks Act, 1999, the US Lanham Act and the EU Trade Marks Directive and corresponding case laws viz. TrafFix Devices Inc. et al. and Philips Vs Lego (EUTMR Article 7(1)(e)) and the Indian decisions in Mohan Lal, Carlsberg Breweries and Crocs v. Bata. The scope of this paper however delves into the strategies of intellectual property evergreening which transition from functional technical features of expired utility patents in India to registered trademarks and does not cover trade dress disputes as well as the jurisprudence of internal evergreening under Section 3(d) of the Patents Act, 1970.

1 Introduction

A patent is an exclusive right granted for an invention. Patents protect the inventor by giving him/her legal rights over the invention [1] According to the Indian Patents Act 1970 (Section 53), the term of every patent in India shall be 20 years. One thing that is surprising for most people when they go to file their patent is that the patent term does not start from the day you aregranted the patent. It starts from the date of filing [2]. On the flip side, a trade mark is a sign capable of being represented graphically and of distinguishing the goods or services of one enterprise from those of others. It helps the consumer to identify the source of a good/service and protects the image and goodwill of a brand. A registered trade mark is valid for 10 years from the date of application. Registration may be renewed indefinitely for further periods of 10 years for this purpose by assigning the appropriate form with the appropriate fee [3]. A patent is a temporary and exclusive right granted by the government to an inventor for an invention. The patent system aims to strike a balance between protecting

the innovator's and the public, as an incentive to disclosure, to promote innovation and technological development since it allows the patent owner to benefit from his invention during the period granted [4]. However, some try to prolong their exclusivity by patenting minor variations of the original invention [5]. "Evergreening in a general sense, therefore, refers to the extension of the period of an existing temporary monopolistic or dominant position by various means or methods" [6]. Thus, the two clocks coincide in that the distinguishing feature of a patent is also used as a trademark.

Courts have long held opinions regarding actions in the event of patent expiration. More than a century ago the United States Supreme Court held that when a patent expires the public acquires the right to make the patented article in its patented form, and later reaffirmed that a competitor may not be shut out through the law of marks, though it may be required to take reasonable care to distinguish its goods [7]. The functionality doctrine is the modern vehicle for that principle. It denies trademark protection to features that are essential to the use or purpose of a product or that affect its cost or quality. A utility patent, the Court has said, is strong evidence that the features it claims are functional [8]. India's position is less developed. The Trade Marks Act, 1999 refuses registration to marks consisting exclusively of three kinds of shape: shapes resulting from the nature of the goods, shapes necessary to obtain a technical result, and shapes giving substantial value to the goods [9].

2 Research objective

The present paper attempts to critically evaluate the effectiveness of functionality doctrine as provided under Section 9(3) of the Trade Marks Act, 1999, in checking trademark based evergreening after the expiry of patents in India. The study looks into the Trade Mark Act, 1999 statute and highlights the conflict it poses with the time-bound exclusivity as provided under the Indian Patents Act, 1970. As the US and EU laws provide for perpetual rights in trademarks generally, but exclude functional aspects, the present work attempts to compare and contrast the Indian statutes as well as case laws (such as TrafFix and Philips/Lego cases) on the subject. Finally, it tries to propose certain amendments and changes in the legal, administrative and judicial frontiers in order to set out a generalized functionality bar and address issues relating to acquired distinctiveness and interim relief.

3 Research methodology

This study uses a doctrinal and comparative legal research methodology to analyze the intersection between patent expiry and trademark functionality. The main analysis focuses on the relevant statutory provisions of the Indian Patents Act, 1970, Trade Marks Act, 1999, Designs Act, 2000 and Copyright Act, 1957, as well as case law. The study then compares India's laws with the US, which represents a wide common law jurisdiction (Lanham Act, TrafFix Devices), and the EU, which reflects a more codified, shape-specific approach (EUTMR, Article 7(1)(e), Philips/Lego Juris). In addition to the primary sources of information, this study also uses secondary sources such as academic literature, examination guidelines of various intellectual property offices, comparative law reviews, and doctrinal analyses of product design protection in order to identify relevant procedural and structural mechanisms that can prevent trademark-based evergreening.

4 Research questions

1. To what extent can the functionality doctrine under the Trade Marks Act, 1999 check trademark-based evergreening after patent expiry in India, and what reforms are needed?
2. To what extent does registering the functional features of patented products as trademarks indirectly extend the patent term in India beyond twenty years, and can Section 9(3) of the Trade Marks Act, 1999 effectively prevent this?

5 Conceptual background: Patent, trademark and public domain

5.1 Bounded and renewable monopolies

The conventional economics of trademark law is that it reduces consumer search costs by providing that a mark will always indicate a uniform source [10]. That theory supports protection of source identifiers but not of product features which competitors must imitate in order to compete on the merits, as such exclusivity will raise search costs by reducing consumer information [11]. Patent law, by contrast, deliberately grants exclusivity on features which are useful, but only for a limited time and only against disclosure. That is, the boundary between the two regimes is one of time. Courts in America have repeatedly refused to allow other areas of law to provide perpetual protection for unpatented or formerly patented articles, and have warned against use of the Lanham Act [12] to create what the Supreme Court called a "mutant" form of another right. India's TRIPS obligations also suggest the same line of reasoning: the Agreement allows Members to adopt appropriate measures to prevent the abuse of intellectual property rights by right holders [13].

5.2 Evergreening in patent law and in trademark law

India's section 3(d) of the Patents Act, 1970 [14], and the Supreme Court's ruling in Novartis AG v. Union of India, are the most celebrated legislative and judicial solutions [15]. Trademark-based evergreening seeks to accomplish the same goal by different means. It does not prolong the patent term, but replaces the patent with a mark-based right in the same feature, so that the expiration of the patent no longer means the end of exclusivity. Typical targets are the shape of the tablet or capsule, the configuration of the closure, handle or dispenser, a distinctive colour also functional, and the packaging mechanism of a product.

An illustration properly shows the issue. Assume that Company X patents a bottle closure whose geometry allows one-handed dosing. It is the only supplier of this closure for twenty years. Two years before expiry it applies to register the closure's three-dimensional shape as a trademark, supported by extensive sales and advertising. If the registration is granted and upheld, every competitor must use a different closure design after expiry, which is costly and may mean a worse product, and the patent's disclosure bargain has been undone.

5.3 The functionality doctrine: Types and rationale

The functionality doctrine takes two forms. Utilitarian functionality asks whether the feature is essential to the use or purpose of the article or affects its cost or quality. Aesthetic functionality asks whether the exclusive use of it would put the competitors in a significantly disadvantaged position for non-reputation-related reasons [16]. Both forms rely on the same rationale: a competition on the merits requires that competitors be free to use the features that make a product work or appealing. Two clarifications are needed for what follows. First, functionality is different from distinctiveness. A

shape can be highly distinctive in the consumer's mind and still be functional, and the European Court of Justice has ruled that the mere existence of alternative shapes does not, of itself, defeat the functionality ground [17]. Secondly, the functionality doctrine is a rule about registrability and enforceability and not about consumer deception. A functional feature is not protected even if consumers have associated it with a particular manufacturer; the law's response to the resulting confusion is labelling and distinguishing, and not exclusivity [18].

6 Literature review

6.1 Marks and shapes

The Trade Marks Act, 1999 defines a "mark" to include the shape of goods, packaging and combinations of colours, and defines a "trade mark" as a mark capable of being represented graphically and of distinguishing the goods of one person from those of others [19].Shape marks are therefore registrable in principle. The question is where the statute stops them.

6.2 Section 9(3)

Section 9(3) provides that the mark shall not be registered if it consists exclusively of (a) the shape of goods which results from the nature of the goods themselves, (b) the shape of goods which is necessary to obtain a technical result, or (c) the shape which gives substantial value to the goods [20].Limb (a) bars shapes inherent to the goods, such as a ball for a ball. Limb (b) is the technical-functionality limb, and the closest Indian analogue to the European ground, which was applied to the expired-patent LEGO brick [21]. Limb (c) captures aesthetic functionality.

Three features of the text limit its reach as a check on evergreening. First, the text it covers only *shapes*. Colour, texture, surface pattern and the operating configuration of a product are not mentioned. Second, the word "exclusively" means that a shape which includes any arbitrary, non-functional addition may escape the bar. Third, nothing in the text refers to patents. The Act does not say that an expired patent claiming the shape is evidence that the shape is functional, and it does not say who must prove functionality.

6.3 Acquired distinctiveness

The proviso to section 9(1) provides that a mark shall not be refused registration if, before the date of application, it has in fact acquired a distinctive character as a result of use, or is a well-known mark [22].Section 32 protects a registration against certain challenges on the ground of acquired distinctiveness [23]. The proviso is textually attached to section 9(1), not section 9(3), but the Act does not indicate that section 9(3) is exempt from it, and I have not been able to find any Indian authority making that connection definitive for the purpose of evergreening. That uncertainty may be critical to evergreening because a former patentee will normally have had twenty years of undisputed sales of the contested shape.The contrast with other systems is sharp. The European Union Trade Mark Regulation explicitly excludes the shape ground from the acquired-distinctiveness rule [24]. The Lanham Act also carves functional matter out of the provision allowing registration on proof of secondary meaning [25].

6.4 Neighbouring regimes

The Patents Act has a maximum term of twenty years. The Designs Act, 2000 provides a period of protection of ten years which may be renewed once for an additional five years, but explicitly excludes trademarks from the definition of design [26]. Finally, the Copyright Act, 1957 provides that a design used on more than fifty copies of an article made by an industrial process is not protected [27]. Taken together, these provisions represent a tacit acknowledgement by Parliament that different aspects of an article may be subject to different degrees of monopolisation: technical innovations may be protected for a period up to twenty years, while visual aspects for no more than fifteen years. A perpetual trademark would completely override these limits, and so the functionality doctrine is a necessary counterweight.

I have read that the Indian courts have not yet considered an attempt to extend a patent through trademark registration. The closest analogue came from the Harpic bottle dispute. In Reckitt Benckiser (India) Pvt. Ltd. V. Godrej Consumer Products Ltd [28] (Cal. HC, 25 Feb 2026) a single judge granted an injunction because a trademark registration covered a bottle shape whose design registration had expired. The court said that the end of a design monopoly does not automatically stop a trademark monopoly for the shape. The court also said that a registration is prima facie evidence of validity and that invalidity can be argued later in proceedings [paras 9 11]. The order did not look at Section 9(3) or, at functionality. A division bench later set aside the injunction saying that no prima facie case of infringement was presented. The decision shows that the burden of challenge falls on the competitor and that the interim stage is where harm can happen.

6.5 The design–trademark overlap: Crocs v. Bata (2025)

Section 9(3) controls what the Registrar will register. It does not govern what a court will protect in an action for passing off which the Trade Marks Act expressly saves (§ 27(2)). Crocs Inc. USA v. Bata India Ltd [29]., decided by a Division Bench of the Delhi High Court on 1 July 2025 shows how this gap can operate. Crocs held a registered design (No. 197685 2004) for its clog. No trademark registration for the shape and sued competitors in passing off asserting the shape as a source identifier carrying perpetual common-law rights [paras 15–16]. The learned Single Judge dismissed the suits reasoning that the Designs Act confers protection for a period and that protecting the same features as a trademark after expiry would convert that limited period into protection in perpetuity [para 17.2].

This is, in substance the evergreening objection that this paper advances in relation to patents. The Division Bench disagreed. Reading Mohan Lal v. Sona Paint (Full Bench, 2013) and Carlsberg Breweries v. Som Distilleries (Full Bench, 2018) together it held that a passing-off action is maintainable where the subject matter is also the subject of a design registration provided the plaintiff proves that the shape is used as a trademark and has acquired goodwill [paras 20–21]. The Supreme Court dismissed the leave petitions on 14 November 2025 observing that the High Court had only restored the suits for trial and so left the question open.

For purposes the decision matters in three ways. First it concerns a design than a patent but the structure of the problem is the same: a statutory monopoly of fixed duration (ten years extendable to fifteen) is followed by a claim of indefinite exclusivity in the same feature. Second the route taken, passing off is outside Section 9(3). Therefore outside any functionality check in the Trade Marks Act; the Indian courts have not yet said whether functionality operates as a defence in passing off. Third comparative law points the way. The US Supreme Court has held that product design is never

inherently distinctive and requires proof of meaning (Wal-Mart v. Samara Bros., 529 U.S. 205 (2000)) And applies the functionality bar to unregistered trade dress (TrafFix, which itself arose under § 43(a)). Commentators have argued that permitting shape to ground passing off sits uneasily with aesthetic functionality and risks conferring an enduring right, over a popular design.

6.6 Procedure: Who challenges, when and at what cost

A third party against registration can oppose within the statutory period, seek rectification of the register, or raise invalidity as a defense in an infringement suit, the court of which may stay the suit pending rectification proceedings [30]. Registration, however, is prima facie evidence of validity, so the challenger usually bears the burden of proving functionality, and evidence of functional design (engineering evidence, patent specifications, expert witness) is expensive to gather. This places the cost of the check on the very parties, usually smaller competitors, least able to bear it.

7 Comparative analysis

7.1 United States

The American doctrine is general and common-law like. A feature is functional if it is indispensable to the use or purpose of the article, or affects its cost or quality; it is aesthetically functional if its exclusion would cause the competitor to be significantly disadvantaged, not in reputation. In TrafFix Devices, Inc. v. Marketing Displays, Inc., the Supreme Court ruled that an expired utility patent is strong evidence that the features claimed in it are functional, and that a party seeking to obtain trade dress protection for the features claimed in the expired utility patent bears a burden of showing that they are nonfunctional. The Federal Circuit has affirmed this ruling in Valu Engineering, Inc. v. Rexnord Corp. and further held that the Morton-Norwich factors are still relevant in determining functionality: the existence of a utility patent, advertising emphasizing the utility of the feature, the availability of alternative products, and the ease of manufacturing or low cost of production [31].

According to these two rulings, the claimant must prove non-functionality, and for a registered mark, functionality is a ground for cancellation at any time and a defence even to an incontestable registration [32]. Functionality, therefore, does not disappear with the passage of time or commercial success.

7.2 European Union

The EU approach is based on certain specific provisions. First, according to Article 7(1)(e),the sign which is formed by the nature of the goods itself or is necessary to obtain a technical result or which gives substantial value to the goods cannot be registered. Second, Article 7(3) provides that signs with acquired distinctive character are not exempt from any of the foregoing grounds. In Philips v. Remington, the Court of Justice ruled that a shape which essential characteristics perform a technical function could not be registered even if there are alternative shapes available, and thus, the availability of alternatives does not undermine the ground. Lego Juris A/S v. OHIM affirmed that decision and extended to it the case of LEGOs bricks with an expired patent, noting that the ground prevents trademark law from creating a perpetual right in a technical solution. The Court applied the exclusions in Hauck v. Stokke to the case of the Tripp Trapp children's chair and discussed the separate issue of the ground concerned with aesthetic value [33].

The European Union's approach, however, contains a limitation, which is particularly pertinent to the discussion of India. In Louboutin v. Van Haren, the Court of Justice ruled that a red-coloured sole of a shoe is not a 'shape', and therefore the registration of the shoe was not prohibited under the shape exclusion [34]. The ruling demonstrates that signs that consist of a colour feature are not subject to the same limitations as signs that consist of a "shape" exclusively.

7.3 Lessons for India

There are three lessons that can be drawn. Firstly, the United States deals with the issue with a generic bar covering any functional feature, whereas the European Union and India use a limited bar of shapes. Secondly, the United States views an expired utility patent as conclusive evidence of functionality, which the Indian law does not state. Third, both systems bar acquired distinctiveness from curing functionality, while India's position is unsettled.

7.4 Analysis: How far does the Indian doctrine check evergreening, through registration and passing off?

The Indian check can be assessed along five axes, summarised in the table below.

Table 1. Comparison of the functionality check in India, the United States and the European Union.

Axis	Indian position	United States	European Union	Strength of Indian check
What does the law cover?	Only the Shape of goods (s. 9(3))	Any functional feature: shape, colour, design, anything	Shapes only (art. 7(1)(e))	Partial
Does an expired patent count as proof the feature is functional?	The law does not say so, and did not find any Indian case that does	Yes. A patent is *strong evidence* of functionality (*TrafFix*)	Patent documents can help show a feature is functional	Weak
Can long use and fame save a functional feature?	Unclear. Nobody has clearly decided	No. Fame cannot save it	No. Article 7(3) says so expressly	Uncertain
Burden and procedure	Registration prima facie valid; costly rectification	For unregistered features the claimant must prove it is *not* functional. A registration can be cancelled at any time	The registry checks this ground itself. A mark can be declared invalid at any time	Weak
What happens in court while the case is pending?	Triple test; functionality rarely examined at interim stage	Functionality a defence even against a long-registered mark	Invalidity counterclaim available	Weak
Can an unregistered shape be enforced through passing off bypassing the registration bar?	Yes, in principle (Crocs, DB 2025) if goodwill is proved. Whether functionality is a defence is undecided. SC left the issue open.	Functionality applies to trade dress (TrafFix); design needs secondary meaning (Wal-Mart)	Unregistered rights depend on national law	Weak

A comparison of the provisions set out in Table 1 reveals that the Indian check is strongest on paper and weakest in operation. On textual scope, section 9(3) of the Trade Marks Act, 1999 bars only

shapes, which matches the European Union's article 7(1)(e) but is narrower than the United States' general bar on any functional feature; a claimant can therefore try to recast a functional characteristic as a colour, a texture or a configuration that is not a 'shape' On the evidence, American courts treat an expired utility patent as strong evidence that the features it claims are functional, and European practice allows patent material to inform the inquiry, but the Indian statute is silent and, subject to confirmation by a full case search, no Indian decision adopts the inference. The same pattern appears on acquired distinctiveness: both the United States and the European Union bar commercial success from curing functionality, whereas in India it is unsettled whether the proviso to section 9(1) reaches section 9(3). The result is the most successful patents, those that generate the longest record of exclusive sales, are the ones best placed to be converted into trademarks.

The procedural rows reveal crucial practical differences that affect the fate of such disputes in court. Because of the difference in the legal treatment of registrations as either prima facie evidence of validity or not, the parties have to expend different amounts of resources on proving or defending against functionality. In India, because registration is prima facie evidence of validity, the challenger has to prove functionality, which can be very costly, whereas in the European Union, the registry is responsible for examining the grounds for invalidity, which can be raised at any time. By contrast, in the U.S., functionality can be raised as a defence to an incontestable registration. In addition, at the interim stage, Indian courts are likely to grant or refuse an injunction based on the well-known test of prima facie case, balance of convenience, and irreparable injury, with little consideration given to the issue of functionality, which means that a competitor may be shut out of the market for a considerable period of time before the dispute is resolved.

8 Suggestions

8.1 Replace the shape-only bar with a general functionality bar

Section 9(3) [35] should be redrafted so that it reaches any characteristic of goods beyond merely the shape. An illustrative formulation is:

"A mark shall not be registered as a trade mark and no exclusive right shall be recognised in it under this Act to the extent that it consists of or contains a shape, colour, configuration, packing feature or other characteristic of goods which (a) results from the nature of the goods themselves; (b) is necessary to obtain a technical result or affects the cost or quality of the goods; or (c) gives substantial value to the goods."

The phrase "to the extent that" and "or contains" closes the "exclusively" loophole in Section 9(3) while at the same time allowing for a mark which is otherwise registrable as a whole as long as its non-functional elements are distinctive, with the functional element open for use by others. The danger of over-breadth could catch legitimate product-design branding. The rebuttable and element-by-element structure is the safeguard.

8.2 Acquired distinctiveness cannot cure functionality

The proviso to section 9(1), and section 32, should be amended to say expressly that they do not apply to the functionality bar. This follows the European rule and the American carve-out. It removes the most dangerous uncertainty in the current law, which is that a successful patent's twenty-year sales history would itself supply the proof needed to rescue the shape. The only real cost is that it denies a registration to a shape that consumers genuinely treat as a source identifier. That cost is

acceptable because the shape's competitive value to others outweighs it, and because the brand name and logo remain protected.

8.3 Strengthen examination and lower the cost of challenge

Three administrative measures would make the substantive reforms described work in practice. First, the Registry should issue examination guidelines for shape and trade dress marks, including a functionality checklist modelled on the Morton-Norwich factors, with a requirement for applicants to declare any patent that claims the feature, with a duty of candour. Second, a third party observation procedure should allow competitors and the public to submit patent and engineering material to the Registry for registration. Third, since the abolition of the Intellectual Property Appellate Board shifted rectification petitions to the High Courts, a low cost and fast track cancellation route before the Registrar for functionality grounds would keep the check within reach of small competitors [36].The risk is Registry capacity, which would need to be addressed with training and technical support.

8.4 Judicial guidance on interim relief

Courts, by way of practice directions from the Delhi High Court's Intellectual Property Division, or through reasoned judgments, should adopt three working rules. A plaintiff claiming exclusive rights in a shape or feature which was once patented should be required to make a prima facie showing of non-functionality before an interim injunction issues. A credible functionality defence backed by the patent specification would, as a matter of course, weigh against an injunction at the interim stage. And where confusion is a genuine concern, courts should have a preference for distinguishing remedies (such as clear labelling or house-mark use) over a prohibition on copying the feature [37].

8.5 Closing the passing-off route: Functionality and 'something more'

Reform that only affects Section 9(3) would keep the passing-off option. Courts should decide, either through a change to § 27(2) or through court explanations that a person bringing a passing-off claim based on the shape or look of goods must (i) show that there is a good reputation connected to the shape as a sign of where the goods come from not just to the brand name, (ii) prove something beyond just the shape of a design or patent that has already had limited protection and (iii) deal with a defense that the feature is useful with an expired patent or design registration being strong proof of usefulness. When there is a worry about confusion using labels and house marks should be better, than banning the copying of the shape. This follows the way things were handled in Wal-Mart and TrafFix and respects the decision made in § 3.D to let different features have limited times of protection.

9 Conclusion

The fundamental exchange of the patent bargain rests on a limited time horizon; in return for twenty years of market exclusivity, an inventor must disclose the technical details of her invention for the market to freely appropriate post-expiration. Trademark based evergreening circumvents this patent bargain by transmuting statutorily-granted temporary monopolies into perpetual ones through the backdoor of trademark law. As illustrated in our comparative analysis, India's current statutory framework (under Section 9(3) of the Trade Marks Act, 1999) contains critical textual and procedural loopholes that allow evergreening - through its limitation of functional elements to only 'shapes', leaving its other features vulnerable to perpetual rights claims, and its failure to create a clear rule of

thumb that expired patents constitute strong evidence of functionality. India's current law does not treat features consistently. Section 9(3) prevents the registration of shapes but only shapes. There is no guidance on whether long-standing commercial use as allowed under the proviso to Section 9(1) can fix or overcome functionality issues. Also the law does not extend to passing off claims. After the Crocs v. Bata (2025) case passing off actions can now be brought based on the shape of goods without registration. This creates a gap, in how functionality's handled across different legal routes. There is no clarification on whether long-standing commercial use under Section 9(1) can cure functionality. Such an approach, we submit, creates an unlevel playing field for the competition, favoring established players with greater resources to conduct extensive R&D in the patent thicket, while smaller companies with fewer resources must resort to reverse engineering of products. The Delhi High Court decision in Crocs, v. Bata (2025) which the Supreme Court did not overturn highlights that the same issue of evergreening continues to arise after statutory protection ends. This happens when product shapes are protected through passing off claims. Reform that only touches Section 9(3) would not be enough. A functionality limit must also be applied to claims to make the reform complete.

India must update its functionality doctrine, by adopting a functionality bar that encompasses any functional feature (and not just 'shapes'), enacting a conclusive rule that acquired distinctiveness cannot cure functionality, requiring patent disclosure at registration, and adopting balanced tests for interim relief, in order to ensure that its national laws are in harmony with international standards, effectively plugging the evergreening loopholes to preserve incentives for innovation, while ensuring that the Indian market remains a level-playing field for competition.

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