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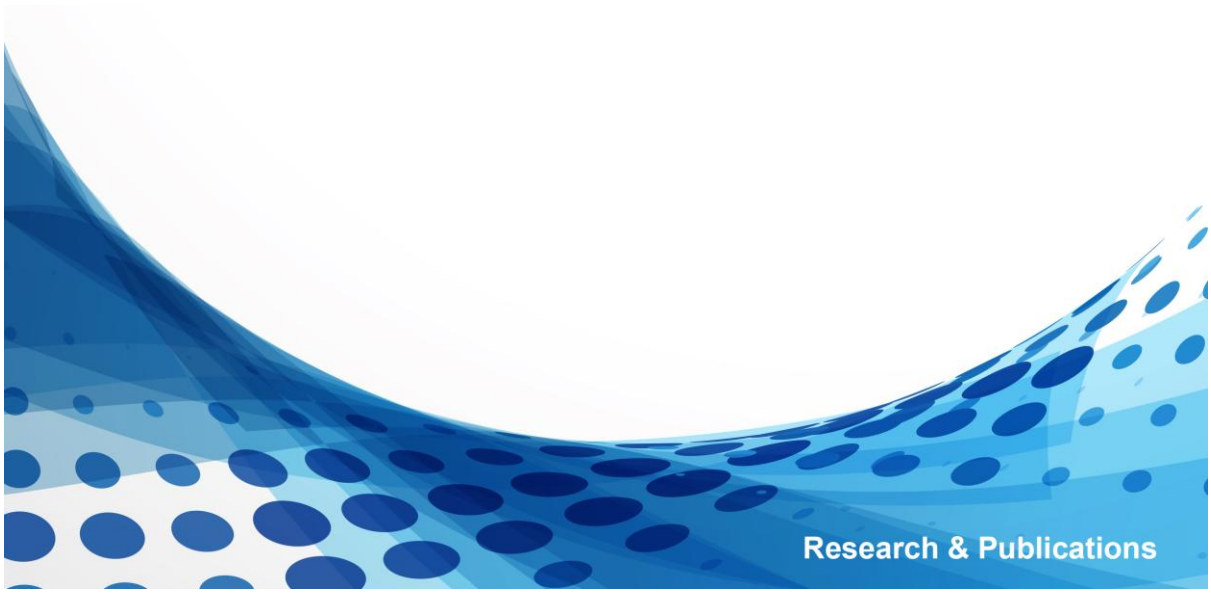

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ABSTRACT

This study explores how the regulation of gold and precious metals serves as a foundation for modern trademark laws. The contemporary trademark systems trace their lineage within the use of hallmarking and production marks within guilds to ensure quality control and accountability. This study combines historical analysis with an empirical review of 4.1 million trademark applications filed in India between 2009 and 2022, focusing on Class 14, which includes jewellery, precious metals, and watches. This study identifies 47,683 trademark applications filed during 2009-2022, corresponding to Class 14. Part 1 of the report provides the context of the study and examines how classification systems were developed, and explains their ubiquity in modern trademark law. Part 2 introduces the project on empirical assessment of trademark laws and explains the methodology and timeline for creating the dataset for the present study. It also gives the necessary context and explains the trademark prosecution process in detail. Part 3 examines the trends and statistics that emerge from the authors' dataset. It is primarily divided into three parts, which provide insights into general statistics, timelines for the prosecution process of Class 14 marks, and finally, the treatment of Class 14 marks during the examination process of the Trade Marks Registry. The findings are vital for stakeholders navigating trademark registration processes and underscore the need for providing bulk datasets to enable empirical research on trademark systems in India.

Keywords: Gold, Precious Metals, Class 14, Trademarks, Trademarks Act

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1. INTRODUCTION

The contemporary systems of trademark regulation were born from the pressing demands of early commerce. Initially, trademarks were mere indicators of origin, but they have since transformed into powerful symbols of goodwill and reputation. In today's dynamic marketplace, trademarks perform a multitude of roles. Their significance extends far beyond origin, as they have become emblems of quality, communication, advertising, and investment.[1] This evolution is particularly striking in the regulation of gold and precious metals, where the imperative for quality control, maker accountability, and standard enforcement spurred the creation of systems akin to modern trademark laws.

Being some of the oldest wares that were traded in the marketplace, the regulation of gold and precious metals provides a compelling narrative for understanding the origins of contemporary trademark systems. Industries that dealt with gold and other precious metals would often use alloys in making of wares and other products. Concerns of 'purity' and 'fineness' took center stage in these sectors. Consequently, these industries pioneered a system of hall marks and other compulsory marks, that served as a guarantee of quality and authenticity.[2] These were some of the foundational systems that led to the development of modern trademark systems.

Guilds[3] centered around the use of precious metals were amongst the first regulatory bodies to institute compulsory marketing marks. In the early 14th century, precious metals were required to be tested for fineness before they could be put to market. After the test of purity was completed, these wares would be affixed with three marks, the workman's personal mark to identify the origin of the goods in case of any defaults, the mark of the tester which confirms the 'fineness' of the metal used, and finally a state sponsored, leopard's head mark.[4] The Goldsmiths' company that

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[1] Annette Kur, *Trademark Functions in European Union Law*, *in* THE CAMBRIDGE HANDBOOK OF INTERNATIONAL AND COMPARATIVE TRADEMARK LAW 162 (Irene Calboli & Jane C. Ginsburg eds., 2020); Alvaro Fernandez-Mora, *Trade Mark Functions in Business Practice: Mapping the Law Through the Search for Economic Content*, 52 IIC 1370 (2021).

[2] Gerald Ruston, *On the Origin of Trademarks*, 45 TRADEMARK REP. 127, 141 (1955).

[3] In its most simple articulation, Guilds were organisations of merchants or craftsmen that regulated medieval industry. They were typically a tightly controlled group of artisans that regulated and controlled the production of good in a particular art or craft, See generally: Thomas D Dreshcer, *The Transformation and Evolution of Trademarks-from Signals to Symbols to Myth*, 82 TRADEMARK REP. 301 (1992); Sidney A. Diamond, *The Historical Development of Trademarks Articles and Reports*, 65 TRADEMARK REP. 265 (1975).

[4] Sidney A. Diamond, *The Historical Development of Trademarks Articles and Reports*, 65 TRADEMARK REP. 265 (1975).

was given the exclusive license to manufacture wares from precious metals, maintained copious records of the personal marks used by goldsmiths.[5] These marks were so prevalent that in Imperial England during the year 1576, the sale of precious metals without the leopard's head mark necessitated the forfeiture of the goods before the crown. Additionally, a fine equivalent to the value of the goods was also imposed in certain cases.[6]

This report situates these historical insights in tracing the development of classification systems of trademark law. An evaluation of these systems is important because not only do these system circumscribe the rights of a registered trademark, they also provide compelling insights into the institution of trademark itself. This report also curates an empirical dataset to review the treatment of marks related to precious metals and their alloys in Indian trademark law. Using a dataset of 4.1 million trademark applications filed in India between 2009 and 2022, this study delves into the trends, prosecution outcomes, and objections raised under the Trade Marks Act, 1999.

Part 1 of the study explores the reasoning and historical development of classification systems in trademark law. These systems are significant because they are exclusive to trademark law and define the rights associated with trademark registration. In Part 2, the authors introduce their Dataset and offer a detailed explanation of the methodology used to compile it. Finally, Part 3 analyses the trends and statistics that arise from examining the dataset curated for the present study. By combining historical context with contemporary data-driven analysis, this report underscores the pivotal role of trademarks in shaping markets, both as regulatory instruments and commercial assets. It provides a comprehensive review of trademarks filed in Class 14, which corresponds to goods like jewellery, precious metals, and watches. It provides essential insights to businesses and proprietors who apply for marks in relation to precious metals and jewellery.

2. TRADEMARKS AND THEIR CLASSIFICATION

Amongst the broad range of intellectual property rights available to innovators and market participants, trademarks occupy a unique space. The utilitarian logic of intellectual property requires the provision of a limited monopoly to creators and innovators in exchange of

[5] *Id.*; Ruston, *supra* note 2.
[6] Ruston, *supra* note 2 at 142.

development of science and art.[7] All forms of intellectual property protection are limited by a temporal delimitation in their scope. For example, patents are registered and protected for 20 years.[8] Similarly, copyrights are protected for the life of the author plus 70 years.[9] No such concomitant limitations can be traced in trademark law. Potentially, trademarks can be protected for an indefinite period of time, provided that the relevant renewal formalities are properly completed and the marks are continuously used in the course of trade.

Another important distinction between trademarks and any other form of intellectual property is that, while IPRs such as copyrights and patents are awarded for the protection of new art and innovation, trademarks do not invent anything new.[10] This distinction also refers in the types of requirements which determined the grant of these IP rights. Where patents and copyrights respectively require a showing of '*novelty'*[11] and '*originality,'*[12] a trademark only requires '*distinctiveness*.'[13] In order to assume protection, a mark should be applied in such a way that it is capable to identify and distinguish goods or services from other products in the marketplace as originating from a single source.[14] Trademark law primarily serves to protect the commercial identity of goods and services by distinguishing their source. Unlike copyright law, which aims to

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[7] Seana Valentine Shiffrin, *The Incentives Argument for Intellectual Property Protection*, *in* INTELLECTUAL PROPERTY AND THEORIES OF JUSTICE 94 (Axel Gosseries, Alain Marciano, & Alain Strowel eds., 2008), https://doi.org/10.1057/978-0-230-58239-2_5 (last visited Dec 15, 2023); Joseph Stiglitz, *Economic Foundations of Intellectual Property Rights*, 57 DUKE LAW JOURNAL 1693 (2008); PETER DRAHOS, A PHILOSOPHY OF INTELLECTUAL PROPERTY (2016), https://press.anu.edu.au/publications/textbooks/philosophy-intellectual-property (last visited May 22, 2024); William Fisher, *Theories of Intellectual Property*, *in* NEW ESSAYS IN THE LEGAL AND POLITICAL THEORY OF PROPERTY 168 (Stephen R. Munzer ed., 2001), https://archive.org/details/newessaysinlegal0000unse (last visited May 24, 2024); David W Barnes, *A New Economics of Trademarks*, 5 NW. J. TECH. & INTELL. PROP. 22 (2006).

[8] Article 33, The Trade-Related Aspects of Intellectual Property Rights Agreement, 1995, Section 20, Indian Patents Act, 1970.

[9] Article 12, The Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, 1995, Chapter V, The Copyright Act, 1957.

[10] Mark Lemley, *Ex Ante versus Ex Post Justifications for Intellectual Property*, 71 UNIVERSITY OF CHICAGO LAW REVIEW 22 (2004)"Unlike patents and copyrights, trademark law and the right of publicity do not exist to encourage the creation of new brand names, personal names, or likenesses. There is no affirmative social interest in encouraging their proliferation, and, in any event, the fixed costs invested in creating a new name are so minimal that it is hard to imagine that creating one would require incentives."

[11] Article 27.1, The Trade-Related Aspects of Intellectual Property Rights Agreement, 1995, Section 2(1)(j), Indian Patents Act, 1970.

[12] Berne Convention for the Protection of Literary and Artistic Works, Section 13, Copyright Act, 1957.

[13] Article 15.1, The Trade-Related Aspects of Intellectual Property Rights Agreement, 1995, Section 9, Trade Marks Act, 1999.

[14] Satyam Infoway Ltd v Sifynet Solutions Pvt. Ltd., 2004 (28) PTC 566 (SC); M. P. Ram Mohan & Aditya Gupta, *Mutation of the Trademark Doctrine: Analysing Actionable Use to Reconcile Brand Identities with Constitutional Safeguards*, 9 NATIONAL LAW SCHOOL BUSINESS LAW REVIEW 9 (2023).

foster creativity and disseminate knowledge, or patent law, which incentivizes innovation that can potentially improve lives, trademarks do not directly contribute to enriching the public domain. Instead, their focus lies in preventing consumer confusion and ensuring market efficiency, rather than adding to the repository of ideas and creations that drive scientific and artistic progress.[15]

To ensure that the monopoly offered by trademarks does not become overbroad constraining the availability of symbols available in a commercial marketplace, the entitlements afforded to trademarks are only limited to certain uses. A trademarked word or symbol is not *taken out of language: the only right is to prevent the use, in trade, of an identical or similar sign as a trademark.*[16] This is manifestly different from other forms of IP where protection is more absolute and is not delimited to the use of certain products.

Contemporary classification systems are intrinsically linked to the fundamental nature of trademarks. While trademark law has evolved to allow trademarks to be protected in their own right in certain cases,[17] conventional wisdom dictates that trademarks derive their significance primarily when associated with specific goods or services. Trademark rights are established and protected in relation to these goods or services, making it essential to limit the scope of such rights to their context. Classification systems play a crucial role in this process by defining the boundaries of trademark rights in reference to the goods or services they represent.

2.1. THE LOGIC OF CLASSIFICATION WITHIN THE GROWTH OF TRADEMARK SYSTEMS

The historical development of classification systems shares a common origin with the internal logic of trademark systems. Like trademark systems, classification systems emerged as a response to the structure of the market economy, driven by the need to delineate the rights of trademark owners. While contemporary discourse often treats classification as an inherent feature of trademark systems, this section establishes that a careful historical analysis reveals its evolution to be closely tied to the regulatory framework of trademarks.

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[15] Barnes, *supra* note 1.

[16] RUTH ANNAND & HELEN NORMAN, BLACKSTONE'S GUIDE TO THE TRADE MARKS ACT 1994 9 (1994), http://archive.org/details/nlsiu.346.0488.ann.8910 (last visited Dec 9, 2024); Ram Mohan and Gupta, *supra* note 8.

[17] The issue of protecting trademarks as property emerge from a unique set of protections affoded to trademark law. This newly developed set of protections is called "Trademark Dilution." For a review of the doctrine in India, see: Dev Gangjee, *The Polymorphism of Trademark Dilution in India*, 17 TRANSNAT'L L. & CONTEMP. PROBS. 611 (2008).

This intricate relationship is also what complicates any exhaustive examination of trademark's classification systems. The challenge in tracing this evolution stems from what Frank Schechter aptly terms the "*touching absence of curiosity*" in studying the origins of trademark law.[18] This difficulty has been bemoaned by Profs. Bently and Sherman as late as 2008, when they suggested that the history of trademark has been *"less well charted than most other areas of intellectual property, and the early developments are particularly obscure*."[19]

The relevance of systems that bear resemblance to the modern system of trademark laws has been traced atleast since the neolithic time.[20] The creation of meaning through marking and branding can be traced back to a time before reading and writing. The initial conception of denoting origin through marking can be traced back to the branding of cattle.[21] Interestingly, the word 'brand' is derived from the Anglo-Saxon verb meaning "*to burn*."[22] It survives not only in the literal sense but also as the pertinent expression, 'brand name.'[23]

Marks that are intended to designate origin have traced back to 4000 B.C. appearing across a wide range of pottery, jars, tools and bricks[24] in different parts of the world including Transylvania, Greece, Egypt and China.[25] The long provenance of the use of marks gives substance to the claim that "*few human institutions can boast a more respectable antiquity. The use of trade marks dates from the very earliest of times of which we have any knowledge*."[26]

While the use of marks and signs to denote ownership has been an integral part of human settlement, the exact timeline for the emergence of trademark systems to protect and monopolize these marks is still a subject of debate. Some scholars attempt to locate trademark law's origins in

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[18] FRANK ISAAC SCHECHTER, THE HISTORICAL FOUNDATIONS OF THE LAW RELATING TO TRADEMARKS 4 (1925); Gerald Ruston, *On the Origin of Trademarks*, 45 TRADEMARK REP. 127, 128 (1955) The history of marks is very old indeed. I have seen reproductions of soem example of stone-age pottery bearing marks of perhaps 5,000 B.C. .

[19] LIONEL BENTLY & BRAD SHERMAN, INTELLECTUAL PROPERTY LAW (3rd ed ed. 2008).

[20] Thomas D Dreshcer, *The Transformation and Evolution of Trademarks-from Signals to Symbols to Myth*, 82 TRADEMARK REP. 301, 309 (1992).

[21] Sidney A. Diamond, *The Historical Development of Trademarks Articles and Reports*, 65 TRADEMARK REP. 265, 266–267 (1975).

[22] *Id.* at 265.

[23] *Id.* at 266, 267; Dreshcer, *supra* note 14 at 309.

[24] Ruston, *supra* note 12; Benjamin G. Paster, *Trademarks - Their Early History Part I - Articles and Reports*, 59 TRADEMARK REP. 551, 552–553 (1969); Dreshcer, *supra* note 14 at 309; Edward S. Rogers, *Some Historical Matter Concerning Trade-Marks*, 9 MICHIGAN LAW REVIEW 29, 29–30 (1910); Diamond, *supra* note 15.

[25] Ruston, *supra* note 12 at 134; SCHECHTER, *supra* note 12 at 20; Diamond, *supra* note 15 at 267–269.

[26] Rogers, *supra* note 18 at 29.

Roman legal frameworks,[27] particularly citing the *Lex Cornilia's*[28] criminalization of unauthorized usage of names. They also refer to civil remedies like *action injuriarium* and *action doli* that were available to any purchaser of fraudulently marked goods.[29] However, the lack of documented instances of the application of these principles renders any claims of resemblance between these systems and the contemporary conception of trademark law merely speculative.

2.2. Emergence of trademarks as Liabilities within the Guild Economy

The present study relies on Frank Schechter's guide to excavate and understand the history of trademark laws.[30] In his highly influential treatise,[31] Schechter locates the development of trademark administration regimes around the 12th and 13th century. With the emergence of towns and urban units, trade guilds originated as organizations of specialized merchants and craftsmen that regulated medieval industry.[32] These guilds were "*professional associations that tried to monopolize a branch of trade and to promote its interests*."[33] The guilds standardized quality, size and price of its typical products across all of its members. They also prided themselves in providing an official guarantee to the consumers,[34] and therefore all the products produced by the members of a guild bore a specific mark which was referential to the guild itself.

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[27] See for example: Diamond, *supra* note 15; Ruston, *supra* note 12 at 133; Paster, *supra* note 18; Rogers, *supra* note 18 Citing to a different treatise, the author mentions that, "It is, however, doubtful whether this institution of commerce ever became a system of established law, and whether it did not rely upon commercial honesty and integrity rather than upon the law."

[28] This is a Roman Law dating back to 81 B.C. It potentially criminalized the act of "*taking the name of another for profit.*" Spyros M. Maniatis, *The Communicative Aspects of Trade Marks : A Legal, Functional and Economic Analysis.*, 1998, https://qmro.qmul.ac.uk/xmlui/handle/123456789/1659 (last visited Dec 11, 2024).

[29] Ruston, *supra* note 12 at 134.

[30] Schechter, *supra* note 12.

[31] Various authors have relied on Schechter's treatise to approach an examination of the history of trademarks, See: Spyros M. Maniatis, *The Communicative Aspects of Trade Marks : A Legal, Functional and Economic Analysis.*, 1998, https://qmro.qmul.ac.uk/xmlui/handle/123456789/1659 (last visited Dec 11, 2024)"Although this was written as early as 1925, unfortunately, it describes a wider attitude of scholars and practitioners towards the history of trademarks. The work of Schechter endures as the main comprehensive study of the origins of trade marks."; Keith M Stolte, *How Early Did Anglo-American Trademark Law Begin-An Answer to Schechter's Conundrum*, 8 Fordham Intell. Prop. Media & Ent. LJ 505 (1997) The most hostile treatment of the case comes from Frank Schechter's book "The Historical Foundations of the Law Relating to Trade-Marks," which, after almost seventy- five years, remains the most comprehensive and reliable source on the subject.

[32] Dreshcer, *supra* note 14 at 311.

[33] Robert S. (Robert Sabatino) Lopez, The Commercial Revolution of the Middle Ages, 950-1350 125 (1971), http://archive.org/details/commercialrevolu0000lope (last visited Dec 11, 2024).

[34] Georges François Renard, G. D. H. (George Douglas Howard) Cole & Dorothy Terry, Guilds in the Middle Ages 32 (1918), http://archive.org/details/cu31924030086064 (last visited Dec 11, 2024).

Apart from the guild's mark, the members were required to affix marks that denoted the origin of goods to particular guildsmen. These marks were also registered in the Guild records. Members were required to use these marks on their goods to ensure accountability for quality. The guild developed internal systems for registering and protecting these marks.[35] As Dreshcher notes, "*He* (a member) *was compelled by law to choose a mark so that responsibility could be fixed on him alone for shoddy work. He neither wanted his work mistaken for that of another, nor did he want his work counterfeited by a maker of poor blades. If his mark, were found on defective work, he would be fined, and possibly, expelled from the craft*."[36]

Therefore, the earlier forms of markings and signs used by members of the guild were compulsory and were designated to ascribe liability in cases of default.[37] Schechter notes, "*The sale of wares that were shoddy in material or imperfect in workmanship constituted in certain commodities, not only a violation of criminal law or police regulations but also, from a civil standpoint an injury to the collective goodwill of the guild*."[38] Guilds would designate 'wardens' and 'searchers' to identify violators. These violators could be fined, punished by imprisonment and even excluded from practicing the craft. Similarly, anyone found misrepresenting their works as the works of another member, would also be subject to punishment.[39] Therefore, the mark did not represent an asset to any individual craftsman, they were properties of the guild.[40]

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[35] SCHECHTER, *supra* note 12 at 101–121; Paster, *supra* note 18 at 556 These guilds took root in the working and trade classes. This gave rise to two distinct organizations, the trade guild whose members were merchants and the craft guild composed of crafts-men. Each of these types of guilds promulgated regulations to control the activities of its members. By compelling the worker to use his mark, the guilds thus strengthened their control of the trade. As a rule, when one became a master craftsmen, he was required to choose a mark, obliged to use it on all goods he pro-duced, and to retain it his entire life. Use of a mark was obligatory, part of the duty to the community, and demanded by the strict social order of craft guilds of the Middle Ages.

[36] Dreshcer, *supra* note 14 at 314.

[37] SCHECHTER, *supra* note 12 at 108"Every master of the said mistery shall put his own mark upon his work, such as heads of lances, knives, and Axis, and other large work, that it may be known who made the same, if default be found therein; on the pain aforesaid. Also, that no one of the said mistery shall counterfeit the mark of another maker upon his own work; but let him use and put his own mark upon his own work, on the pain aforesaid."

[38] *Id.* at 46.

[39] Dreshcer, *supra* note 14 at 315.

[40] Philip J. Greene, *Keyword Advertising, and Other Invisible Uses of Third-Party Trade Marks in Online Advertising - a New Zealand/Australasian Perspective*, 39 VICTORIA UNIVERSITY OF WELLINGTON LAW REVIEW 1 (2008).

2.3. From liabilities to assets: Evolution of the role of a trademark in the Guild Economy

The constitution of guilds and the mandatory use of 'liability' or 'police' marks serve as the quintessential first phase in the development of a system of trademarks. The second phase witnessed marks undergoing a transformation from liability to asset. As consumers began associating specific marks with particular quality standards, these previously compulsory marks became valuable signifiers of reputation and craftsmanship.[41] These changes were most noticeable in industries like cloth and cutlery, where trademarks began to represent the individual goodwill of a particular producer.

The third phase saw the emergence of sophisticated property rights embedded within the logic of trademarks. As early as 15th century, the understanding of the ownership of trademarks had evolved significantly. A sense of property had come to be associated with marks. Schechter discusses a case from the 15th century where the question of ownership of a mark after the death of its original owner was discussed. The two competing claims to the mark came from the wife of the deceased and another member of the bladesmiths' guild. The case was decided such that the wife assumed the rights to the mark, defeating the contrary claim from another member of the bladesmiths' community.[42] This represents a development of property claims relating to marks used by the individual members.

This metamorphosis of marks from a liability to an asset is closely linked to the history of classification. The guilds, which arguably gave rise to the contemporary form of trademark laws, were organised around specific crafts and trades. Initially, guilds focused on collective marks, emphasizing its identity and authority. As trade expanded and trademarks morphed into their new role as an asset, individual craftsmen sought ways to distinguish their products within their guilds. This need for individual recognition spurred a shift from compulsory, guild-centric marks to marks that reflected individual skill and reputation.

Therefore, it can be argued that the development of classification systems closely followed the development of trademark law in general. A classification system for trademarks was indeed being conceptualized long before it was formalized into a legal framework. These systems of

[41] Schechter, *supra* note 12 at 78.
[42] *Id.* at 108, 109.

classification did not resemble the contemporary systems. They were not codified and pigeonholed as a definitive list of classes. Within a town several guilds existed, each specializing in a different craft, such as weavers, goldsmiths and cutlers. This separation established boundaries between different manufacturing disciplines, inadvertently foreshadowing a more formal system of classification.[43] In effect, the contemporary classification systems appears to have taken root in the medieval economy, an antiquity that is often ignored in the discourse on trademark law.

2.4. THE DEVELOPMENT OF FORMAL CLASSIFICATION SYSTEMS, RUN UP TO THE NICE AGREEMENT

The foregoing section makes the claim that the internal logic of classification systems emerged alongside the logic of trademark systems. It was the result of the confluence of three factors. Primarily, guild in the medieval economy required its members to use marks in order to affix liability in case of default. Such use of these marks was compulsory and they were often considered a liability. Secondly, as trade flourished and the guild control weakened, the retail chain between the manufacturer and purchaser became more elaborate. This led to the use of marks as a signifier of origin reflecting skill and reputation. Finally, as trademarks began to acquire property characteristics, there emerged a need to differentiate and protect individual marks. This eventually led to the development of legal systems of trademarks and more formal classification systems. This section traces the development of formal classification systems as they are embedded in the contemporary law on trademarks.

By the middle of the 19th century, trademark systems begun to take formal shape.[44] This formalisation also gave rise to the development of classification systems. Various trademark offices believed that "*in order to avoid congestion in their trademark registries and make it easier to locate and review marks, it was essential to classify the goods to which trademarks could be applied in some fashion."*[45]

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[43] T. ROSE, CONVENIENT PIGEON HOLES? THE CLASSIFICATION OF TRADE MARKS IN HISTORICAL PERSPECTIVE (2005), http://www.cippm.org.uk/publications/index.html# (last visited Dec 11, 2024).

[44] Lionel Bently, *The Making of Modern Trade Mark Law: The Construction of the Legal Concept of Trade Mark (1860–1880), in* TRADE MARKS AND BRANDS: AN INTERDISCIPLINARY CRITIQUE 3 (Jane C. Ginsburg, Jennifer Davis, & Lionel Bently eds., 2008).

[45] Curtis Krechevsky & Gailyc C Sonia, *The Nice Agreement Revisited: Still a Class Act*, 91 TRADEMARK REP. 1184 (2001).

These early classification systems varied significantly in structure and content between different countries. For instance, Germany employed a system with 41 classes,[46] the United Kingdom had 54 classes, and Spain utilized a system with 100 classes.[47] This lack of uniformity created significant challenges in international protection of trademarks. Krechevsky and Sonia note, *"Even if an internal classification system worked well for a particular country, serious obstacles arose when trademark owners from one country sought to obtain protection for their marks in other countries, particularly as to the proper classification and description of the goods to be covered by the registration outside the home nation."*[48]

As global trade proliferated in the 19th century, the need for a harmonized classification system emerged. One of the most important elements for the development of such a system was the international harmonization of laws related to Industrial Property through *The Paris Convention for the Protection of Industrial Property* in 1883 (Paris Convention). The Convention established a framework for the protection of industrial property rights including patents, trademarks and copyrights across all the member states. One of the primary goals of the Convention was the harmonisation of IP rights internationally. The administrative body of the treaty was called the 'International Bureau,' which became the driving force in the development of a unified and harmonized classification system for trademarks.

At the First Conference of Revision of the Paris Convention in 1886, the International Bureau joined by the host of Italian administration proposed establishing a uniform system of 36 classes for trademarks.[49] While the proposal remained unsuccessful, it constituted the first attempt at creating an internationally harmonized system of trademark classification.

Concurrently, the *Madrid Agreement Concerning the International Registration of Marks* was executed in 1891 (Madrid Agreement). The main objective of the treaty was to streamline trademark registrations across member states. Under the Madrid Agreement, trademark owners can secure protection for their marks in member countries by filing a single application through their home trademark office, which is then transmitted to the International Bureau.[50] This

[46] Some of these classes were further divided in subclasses.
[47] Krechevsky and Sonia, *supra* note 38.
[48] *Id.*
[49] *Id.*
[50] *Id.*

centralized process eliminated the need to file separate applications in each country, significantly reducing costs and administrative burdens.

Unlike the Paris Convention, the central focus of the Madrid Agreement related to trademarks. Therefore, the importance of harmonizing classification systems became even more important. While multiple discussions around this subject continued till the end of the 19th century and into the 20th century, they did not yield any substantial results. Concurrently, the International Bureau developed an unofficial 80-class system to assist its efforts for servicing and maintaining the international registration of trademarks under the Madrid Agreement and in order to facilitate its own searches. At the *Brussels Conference of Revision of the Paris Convention in 1897*, the International Bureau attempted to include this classification system into the Madrid Agreement, but their attempt remained unsuccessful.

Following the conclusion of World War 1, several groups adopted a resolution supporting the establishment of a uniform classification system. Meanwhile six countries Belgium, France, Portugal, El Salvador, Peru, and Uruguay had already adopted the International Bureau's 80-class classification system.[51] It was finally in 1925 at the *Revision Conference of the Hague for the International Convention for the Protection of Industrial Property*, that the International Conference was directed to constitute a "*Meeting of Experts*" to develop a classification system.[52] However, the task was eventually delegated to a five member Commission charged with "*(i) grouping products, for purposes of trademark registrations, into no more than 50 classes; and (ii) preparing an alphabetical list of products sufficiently comprehensive to use in descriptions of goods to be covered by applications and registrations for marks under the Madrid Agreement.*"[53]

It was through the discussion of the five member commission and the eventual approval from the Meeting of Experts that a 34-class system was developed.[54] The 34-System proposal was adopted by the five member Commission constituted in 1925 at Berne, Switzerland in April 1929, along with an "Alphabetical Index" of goods belonging to each class. In 1934, the member states to the Paris Convention, also known as the Paris Union, adopted a proposal recommending the classification system to its member states. However, owing to the World War II, the 1934 Revision

[51] *Id.* at 1190.
[52] *Id.* at 1190.
[53] *Id.*
[54] Krechevsky and Sonia, *supra* note 38.

Conference scheduled in London was delayed and for the next 19 years, the classification matrix was only adopted by 16 members of the Paris Union.[55]

It was only in 1957, during a revision conference in Nice, Italy that a preliminary draft of the classification system was presented before the diplomatic conference constituted in Nice.[56] The Nice Conference adopted the draft as a separate treaty on June 15, 1957. Thus, the '*Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks*' was created. 23 countries signed the agreement with three countries joining in quick succession. The agreement incorporated key principles of the 34 class System, emphasizing that the classification system itself should have no legal bearing on the scope of trademark protection.[57] It also stressed the need for periodic revisions and updates to the alphabetical list of goods.[58]

The Nice Agreement consisted of 11 articles, 7 of which related directly to the content of the classification system and how to modify it. The Nice Agreement has been revised only two times in its history, first at Stockholm in July 1967, then at Geneva in May 1977. The Nice Agreement was merely amended once, at Geneva in October 1979.

In contrast, the 34-System has been changed and reissued in new "editions" many times since its inception. With the publication of the First Edition in 1963, the 34 class system became known as the foundational Nice Classification. The First Edition also produced the first major change, incorporating for the first time eight new classes covering service marks, bringing the total number of classes to 42. The Agreement was then amended again in 2000 and three more classes relating to services were added, bringing the final tally to the current 45.

3. DATASET

The accessibility of publicly available bulk datasets is paramount for facilitating any data-driven and thorough review of the trademark system. These datasets empower researchers to analyze trends, examine predictabilities, pinpoint anomalies, and uncover potential biases in the application of trademark systems. This section introduces the dataset developed by authors which

[55] *Id.* at 1993.
[56] *Id.* at 1992.
[57] *Id.*
[58] *Id.*

was utilized in the current study to investigate the prosecution of trademark applications corresponding to Class 14. Additionally, it emphasizes the significance of structured and publicly accessible bulk datasets and briefly discusses the various research and optimization opportunities they present.

Petrie et.al. argue that bulk datasets of trademark data can kindle research across three praxes.[59] First, trademark data can be employed to study the operation of economy. The number of trademarks filed within a system has been associated with technology-based innovation[60] and innovation within service sectors.[61] Second, trademark data can stimulate research into the marketing and branding strategies of firms.[62] Lastly, empirical research using trademark data can be used to identify the efficiencies and deficiencies of trademark systems. Beebe and Fromer have used trademark data from the United States to study *cluttering* and *congestion* on the Trademarks Register. Their study provides cogent evidence of how existing trademark registrations serve as a barrier to entry for newer entrants.[63]

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[59] Stephen Petrie et al., *TM-Link: An Internationally Linked Trademark Database*, 53 AUSTRALIAN ECONOMIC REVIEW 254, 255 (2020); The studies can also be classified between economic and non-economic studies. For a review of the economic studies see: Philipp Schautschick & Christine Greenhalgh, *Empirical Studies of Trade Marks – The Existing Economic Literature*, 25 ECONOMICS OF INNOVATION AND NEW TECHNOLOGY 358 (2016); For a review of studies which operate in the legal spectrum see: Barton Beebe, *Empirical Studies of Trademark Law*, *in* RESEARCH HANDBOOK ON THE ECONOMICS OF INTELLECTUAL PROPERTY LAW 617 (Ben Depoorter, Peter Seth Menell, & David L. Schwartz eds., 2019).

[60] Meindert Flikkema, Ard-Pieter De Man & Carolina Castaldi, *Are Trademark Counts a Valid Indicator of Innovation? Results of an In-Depth Study of New Benelux Trademarks Filed by SMEs*, 21 INDUSTRY AND INNOVATION 310 (2014); Also see: Ulrich Schmoch, *Service Marks as Novel Innovation Indicator*, 12 RESEARCH EVALUATION 149 (2003).

[61] VALENTINE MILLOT, *Trademarks as an Indicator of Product and Marketing Innovations*, 2009/06 (2009), https://www.oecd-ilibrary.org/science-and-technology/trademarks-as-an-indicator-of-product-and-marketing-innovations_224428874418 (last visited Mar 18, 2024).

[62] Krasnikov et. al. suggest that trademarks can serve as indicators of firms' efforts to build brand awareness and associations among consumers, which in turn mitigate cash flow variability and enhance financial value Alexander Krasnikov, Saurabh Mishra & David Orozco, *Evaluating the Financial Impact of Branding Using Trademarks: A Framework and Empirical Evidence*, 73 JOURNAL OF MARKETING 154 (2009).

[63] Barton Beebe & Jeanne C. Fromer, *Are We Running out of Trademarks: An Empirical Study of Trademark Depletion and Congestion*, 131 HARV. L. REV. 945 (2017); For similar studies from other jurisdictions, see Europe: Georg von Graevenitz et al., *Trade Mark Cluttering: An Exploratory Report Commissioned by UKIPO*, WORKING PAPER, INTELLECTUAL PROPERTY OFFICE (2012), https://core.ac.uk/display/2782461?utm_source=pdf&utm_medium=banner&utm_campaign=pdf-decoration-v1 (last visited Mar 28, 2024); Georg von Graevenitz, *Trade Mark Cluttering–Evidence from EU Enlargement*, 65 OXFORD ECONOMIC PAPERS 721 (2013); Australia: Haiyang Zhang, *Does Trade Mark Cluttering Exist in Australia?*, 7 IP AUSTRALIA ECONOMIC RESEARCH PAPER (2019); For a comprehensie review of how trademark data can be employed to study trademark systems see: Beebe, *supra* note 52.

Many of these research projects have been completed due to the availability of bulk datasets provided by trademark offices worldwide. Notably, trademark offices have published bulk datasets that facilitate streamlined access to crucial information and significant data points. Examples include the USPTO Trademark Case Files Dataset,[64] the Canada Trademarks Dataset,[65] and the Australian TM-Link Dataset.[66] These datasets have become invaluable resources for conducting extensive research, providing nuanced insights that have potentially reshaped the global landscape of trademark laws.[67]

Unfortunately, comparable large-scale datasets have not been made available by the CGPTDM for the Indian trademarks data. In 2015, the CGPTDM completed the digitization of all the trademark data associated with the marks prosecuted by the Indian Trade Marks Registry. They digitized millions of trademark applications with the earliest digitized mark being Application No. 10 for the mark 'BLACK AND WHITE.'[68] A total of about 6.7 million trademarks have since been prosecuted by the CGPTDM and their digitized records are made available on the IP India website.

The CGPTDM's digital archive, containing over 6.7 million trademark records, allows for a detailed review of each trademark including its original application, examination report, opposition notice, responses, and office orders issued by the Registrar of Trade Marks. While these records

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[64] For more details see: Stuart JH Graham et al., *The USPTO Trademark Case Files Dataset: Descriptions, Lessons, and Insights*, 22 JOURNAL OF ECONOMICS & MANAGEMENT STRATEGY 669 (2013).

[65] For more details see: Jeremy N Sheff, *The Canada Trademarks Dataset*, 18 JOURNAL OF EMPIRICAL LEGAL STUDIES 908 (2021) This particular dataset was created by the author, but the bulk of underlying data is available openly from the Canadian trademarks office.

[66] For more details see: Petrie et al., *supra* note 52.

[67] In 2019, when the Supreme Court provided the judgement in Iancu v. Brunetti, the Court cited an amicus brief provided by Profs. Beebe and Fromer. This is a direct evidence of how empirical trademark research has educated judicial discourse and arguably affected trademark policy. Iancu v. Brunetti, 2019 U.S. LEXIS 2, 139 S. Ct. 782 (2019).

[68] THE OFFICE OF CONTROLLER GENERAL OF PATENTS, DESIGNS AND TRADEMARKS, *Annual Report 2013-14*, https://ipindia.gov.in/writereaddata/Portal/IPOAnnualReport/1_91_1_1_29_1_annual-report-13-14-.pdf (last visited Apr 13, 2024) The first digitized record traced by the authors dates back to June 1, 1942. The application corresponds to the mark "BLACK & WHITE" and bears Application No. 10. ; For a review of the initial trademark applications filed in India, see: WC Smith, *Recent Developments in Indian Trade-Marks Practice*, 41 TRADEMARK REP. 202 (1951)"The first applications were made on June 1st, 1942 and by September 30, 1950, over 145,000 applications had been made for registration and more than 1,650 Oppositions had been filed during the same period. These figures should give some idea of the immense pressure of work at the Trade-Marks Registry during these years."
Application No. 10., This is the first digitized application, it is not clear why are the applications filed prior to this not available in the digitized databased. For a review of the initial load of applications filed before the Trade Marks Registry see: *Id.*"The first applications were made on June 1st, 1942 and by September 30, 1950, over 145,000 applications had been made for registration and more than 1,650 Oppositions had been filed during the same period. These figures should give some idea of the immense pressure of work at the Trade-Marks Registry during these years."

are accessible, the website's design restricts users to viewing one record at a time and requires completing a captcha for each search, making large-scale empirical studies challenging. Despite this vast digitized resource, CGPTDM has not yet provided bulk datasets to facilitate broader research and analysis beyond individual access.

Given the lack of large-scale datasets, empirical research studying questions related to the regulatory structure of trademark law in India remains scarce.[69] Apart from some individually created datasets, the efficacy and functioning of trademark systems in India has not been examined empirically. To alleviate this lacuna and contribute to the empirical examination of Indian trademark law, the authors previously curated a dataset comprising of 1.7 million applications filed between June 2018 and July 2022. This dataset was curated by downloading and collecting examination reports from the online portal of the IP India website.[70]

For the present study, the last dataset has been revised, updated and expanded. The dataset employed for the present study examines 4.1 million applications filed between 2009 and 2022. The dataset was updated between October and December 2024 and an additional 2.4 million examination reports were downloaded.[71] The authors have omitted downloading applications filed in 2023 and 2024 to incorporate a two-year window for the applications to be prosecuted. This allows the present study to reflect a more robust review of the Trade Mark Registry's practices.

After accumulating the examination reports, the authors auto-coded the dataset to identify applications which correspond to Class 14. A total of 47683 applications corresponding to Class 14 were identified. After identifying the trade mark applications, the authors downloaded further

[69] The authors have created a smaller yet comparable dataset in the past. M. P. Ram Mohan, Aditya Gupta & Vijay V Venkitesh, *An Empirical Analysis of 'Scandalous' and 'Obscene'Trade Marks in India*, VIJAY, AN EMPIRICAL ANALYSIS OF 'SCANDALOUS' AND 'OBSCENE'TRADE MARKS IN INDIA (APRIL 1, 2024) (2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4845074 (last visited Oct 14, 2024); Apart from the author's dataset, there are smaller individually curated datasets, but they remain few and far. For example see: Mohit Yadav, *Who Watches the Watchmen? – Empirically Examining Examination Reports (Part 1)*, SPICYIP (Nov. 2, 2021), https://spicyip.com/2021/11/who-watches-the-watchmen-empirically-examining-examination-reports-part-1.html (last visited Mar 28, 2024); Mohit Yadav, *A Decade of Madrid Protocol: Learnings from the Indian Experience*, 7 JOURNAL OF INTELLECTUAL PROPERTY STUDIES 54 (2023).

[70] Ram Mohan, Gupta, and V Venkitesh, *supra* note 62.

[71] The data collection process involved downloading of examination reports from the IP India website. Due to various technical constraints such as server timeouts, temporary connection failures, and occasional changes in the website's response format, we estimate that up to 5% of the examination reports may not have been successfully retrieved. This potential missing data should be considered when interpreting the results. However, given the large sample size and random nature of these technical failures, we believe this limitation does not significantly impact the overall patterns and conclusions drawn from the analysis.

information about the identified trademarks, including the proprietor's name and address, goods descriptions, application date, date of advertisement, certificate date, prior user claim and the trademark office where the application was filed. In the corpus of 4.1 million, the authors used text analysis to pinpoint and catalogue all raised objections pertaining to a specific application. A detailed review of the 'regular expressions' used and the results from this analysis are included in the next chapter of the study.

The applications were also classified on the basis of trade mark type. The following table provides the details of the different types of trademark applications intercepted in the dataset:

Type of mark under Class 14	**Total Applications**
Device Marks	33766
Color Marks	248
Shape of Goods	44
Three-dimensional marks	68
Word marks	13555
Sound Marks	2
Total	**47683**

To conduct a comparative analysis of the device marks, the authors used either the marks essential textual features[72] or their textual depiction as presented in the trademark application.[73] The creation of the entire trademark dataset was started in May 2023 and completed in December 2024. The different attributes of the dataset employed in the current project including the relevant information downloaded from the IP India's website is updated till October 2024, and any changes

[72] S.M. Dyechem Ltd. v. Cadbury (India) Ltd., (2000) 5 SCC 573 In this case, the Supreme Court suggested that "A mark is said to be infringed by another trader if, even without using the whole of it, the latter uses one or more of its 'essential features.'" Such an interpretation essentially means that the grant of registration for a mark not only protects the composite mark, but it also protects the essential features of the mark individually. ; For more details see: Aqa Raza & Ghayur Alam, *Theoretical Underpinnings of Trademark Law: Decisions of the Supreme Court of India*, 27 JOURNAL OF INTELLECTUAL PROPERTY RIGHTS 351 (2022); Also see: Aqa Raza & Ghayur Alam, *Trademark Law Declared by the Supreme Court of India in Twenty-First Century (2000–2009) — I*, 28 JIPR (2023), https://or.niscpr.res.in/index.php/JIPR/article/view/3016 (last visited Mar 19, 2024).

[73] Rule 23 of the Trade Mark Rules 2017 mandates that if an applicant files for a device mark, he is required to "*explain with sufficient precision, a description of words, of the trademark.*" Where required, the authors have used these descriptions as the essential features of the subject marks.

after the said date have not been incorporated. The next section details some important trends and statistics which emerge from examination of the author's dataset.

4. PROSECUTION PROCESS AND DESCRIPTIVE STATISTICS

The preceding section provided a clear understanding of how the dataset was curated. This section provides with a clear understanding of the trademark prosecution process, and then details some statistics and trends concerning those datasets.

The Trade Marks Rules, 2017 specify the prescribed format within which an application for the registration of a mark is filed. The application form requires an applicant to provide various details including the relevant class, registered address of the proprietor along with various other details.[74]After a trademark application is filed, it undergoes 'a pre-examination processing' where all the applications filed, whether online or offline, are merged and given unique application numbers. After application numbers are allotted, the application is reviewed by the Registrar of Trade Marks. The Registrar ensures that the application complies with the relevant criteria, including the various provisions included in the Trade Mark Act, 1999. After such an examination is conducted, the Registrar publishes an Examination Report.

During the examination process, the Registrar can either accept the application as filed by the applicant[75] or he can raise certain objections to the registration of the mark.[76] If the Registrar raises any objections to the registration of the mark, the applicant is required to file a reply within 30 days. In case the applicant fails to file a reply within the stipulated timeline, the application is deemed 'Abandoned' by the Trade Marks Registry.[77]

- In the present dataset concerning applications related to Class 14, 4939 applications were 'Abandoned,' while 123 were 'Deemed to be Abandoned.' Amongst the cumulative 5062

[74] See, The Second Schedule, Trade Marks Rules, 2017.

[75] Section 20(1), Trade Marks Act, 1999: "When an application for registration of a trade mark has been accepted whether absolutely or subject to conditions or limitations, the Registrar shall, as soon as may be after acceptance, cause the application as accepted together with the conditions or limitations, if any, subject to which it has been accepted, to be advertised in the prescribed manner"

[76] Sections 9 & 11, Trade Marks Act, 1999.

[77] Rule 33, Trade Marks Rules, 2017 stipulates "*If, within one month from the date of the receipt of the examination report, the applicant fails to respond to the communication, the Registrar may treat the application as abandoned.*" An application can also be abandoned at later stages of the trademark prosecution process. For example, Rule 46 stipulates that a trademark can be Abandoned if the applicant fails to provide any evidence in support of his application during an opposition. Similarly, Rule 50 stipulates that if an applicant fails to appear in the second adjournment of an opposition hearing, their application shall be deemed to be Abandoned.

applications, 3489 applications were Abandoned before the completion of the examination process, while 1573 were Abandoned after the examination process was completed.[78]

If an applicant responds to the Examination Report but the Registrar finds the reply unsatisfactory a Show Cause Hearing is scheduled. Such a hearing can also be scheduled on the explicit request of the applicant. This hearing allows the applicant to present arguments supporting their application and address the concerns raised in the Examination Report.[79] Until such hearing concludes and the Registrar issues a corresponding decision, the application status remains 'Objected.' Applicants also have the choice to withdraw their application within 30 days of receiving the Examination Report.[80] The applicant is also allowed to exercise the option to withdraw his application at any time during the prosecution process.

- In the dataset concerning Class 14 applications, 383 applications were withdrawn before conclusion of the examination process.

After the reply to the Examination Report is filed and the Show Cause hearing is conducted, if the Registrar is satisfied with the submissions made therein, the objections are waived and the application is advertised in the Trade Marks Journal.[81] Alternatively, if the Registrar is not convinced with the submissions made, the objections are sustained, and the application for registration is 'Refused.' In the authors' dataset, an advertised mark is denoted 'Accepted' or 'Accepted and Advertised,' and if the application is refused, the status reflects 'Refused.'

- In the dataset, amongst the 47683 applications filed corresponding to Class 14, 4446 have been Refused, while 2089 continue to remain Objected.

[78] The authors establish this distinction by analysing the current state of an application and determining whether it was published in the Trade Marks Journal. For instance, if an application indicates its status as 'Abandoned' and there's a record of its advertisement in the Trade Marks Journal, it's evident that the application successfully addressed the objections raised in the examination report, leading to its abandonment after the examination process concluded.

[79] Rule 33, Trade Marks Rules, 2017, "If the response to the examination report is not satisfactory or where the applicant has requested for hearing, the registrar shall provide an opportunity of hearing to the applicant and the same shall be conducted as per rule 115."

[80] Rule 35, Trade Marks Rules 2017: "A notice of withdrawal of an application for the registration of a trademark under sub-section (2) of section 133, for the purpose of obtaining repayment of any fee paid on the filing of the application, shall be given in writing within one month from the date of the receipt of communication mentioned in sub-rule (2) of rule 33."

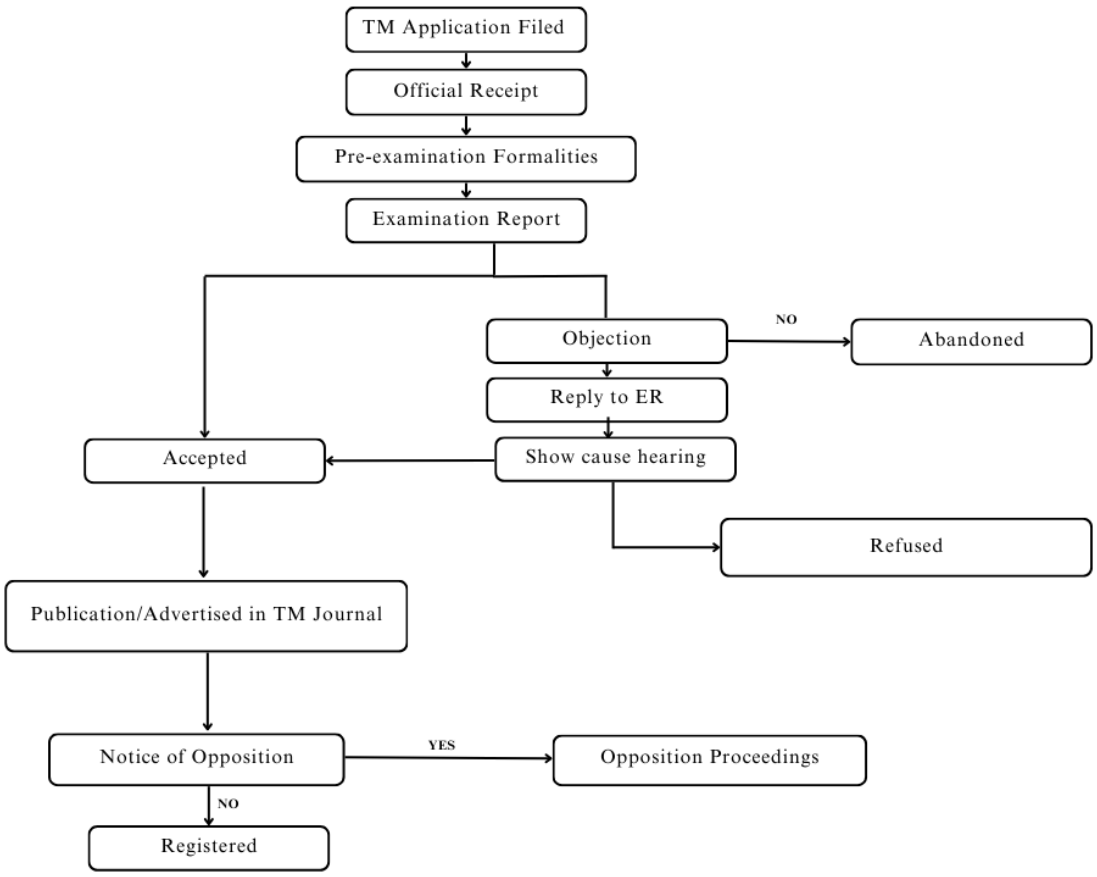
[81] Section 20(1), Trade Marks Act, 1999 read with Rule 33, Trade Marks Rules, 2017.

After a trademark has been Accepted and Advertised in the Trade Marks Journal, there is a period of 4 months during which any concerned party may file an opposition to the application. [82] While the opposition is under review, the application status in the author's dataset is marked as 'Opposed.' If no oppositions are lodged within this timeframe, the application proceeds to 'Registered' status.

- In the Class 14 dataset, 1450 applications are presently Opposed while 33534 applications have been duly Registered.

Borrowed from the author's previous study,[83] Figure 1 visually explains the prosecution process for registering a trademark in India.[84]

Figure 1: Prosecution process



[82] Rule 43, Trade Marks Rules, 2017.

[83] Ram Mohan, Gupta, and V Venkitesh, *supra* note 62.

[84] A detailed review of this process has been included in the author's previous study. The information included in this section is a truncated version of the prosecution process explained in For further details, see: *Id.*

With a clear understanding of the trademark prosecution process, this section has been divided into three parts and proceeds to examine the trends and statistics that emerge from the dataset.

- The first part focuses on presenting trends and statistics derived directly from the dataset. Here, the authors simply collect and visually represent the data, ensuring minimal interpretation or subjective input.
- The second part analyses the various timelines for the present dataset. The authors create this analysis on the basis of four dates, i.e., the date of application, the date of the examination report, the date on which the relevant trademark is advertised in the Trade Marks Journal and the date on which the certificate of registration is granted.
- The third part examines the objections raised against applications corresponding to Class 14. In this analysis, the authors actively interpret the language used in examination reports, aligning it with the statutory language to categorize and represent objections meaningfully. This distinction is important as it separates objective data representation from analytical interpretation, ensuring clarity in methodology and reinforcing the reliability of insights drawn from the study.

4.1. Trends and Visual Representation of the Dataset

Before dealing with the insights from the author's dataset, Figure 2 provides the overall context for the study. The number of trademark applications filed before the Trade Marks Registry has been steadily increasing at an annual rate of 8.66%.[85] According to the Annual Reports published by the CGPTDM, in the year 2000-01, a total of 84,275 trademark applications were filed for registration.[86] This number has effectively quintupled, with 466,580 applications filed in the year 2022-23.[87] Therefore, examining trends and statistics solely based on a temporal distribution may not provide the appropriate insights, as the number of applications has been consistently rising each year. To address this concern, whenever this study discusses the temporal distribution of the

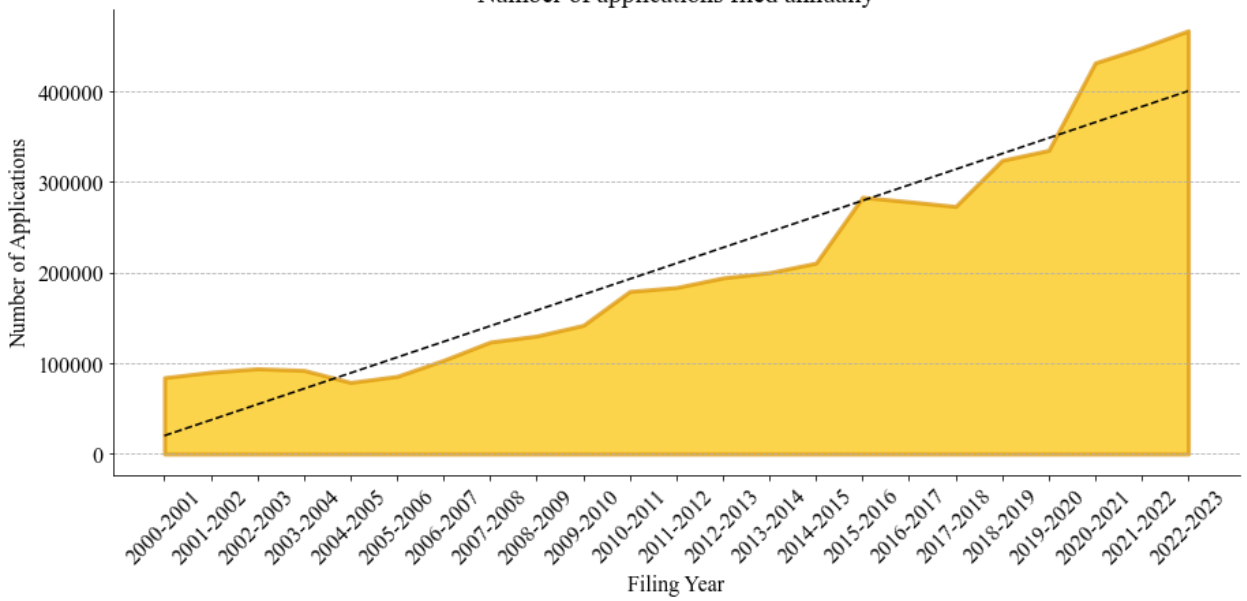
[85] The highest year-on-year growth was during 2015-16, where a 34.47% growth was witnessed which is significantly higher than other years.

[86] Intellectual Property Office India, *Annual Report 2002-2003 of the Controller General of Patents, Designs, Trade Marks and Geographical Indications*, https://ipindia.gov.in/writereaddata/Portal/IPOAnnualReport/1_114_1_ANNUAL_REPORT_202223_English.pdf.

[87] Intellectual Property Office India, *Annual Report 2022-2023 of the Controller General of Patents, Designs, Trade Marks and Geographical Indications*, https://ipindia.gov.in/writereaddata/Portal/IPOAnnualReport/1_114_1_ANNUAL_REPORT_202223_English.pdf.

data, they also provide the distribution based on 100,000 applications. Figure 2, borrowed from the authors' previous study,[88] visualizes the remarkable increase in the number of applications filed since the turn of the century.

Figure 2:
Number of applications filed annually

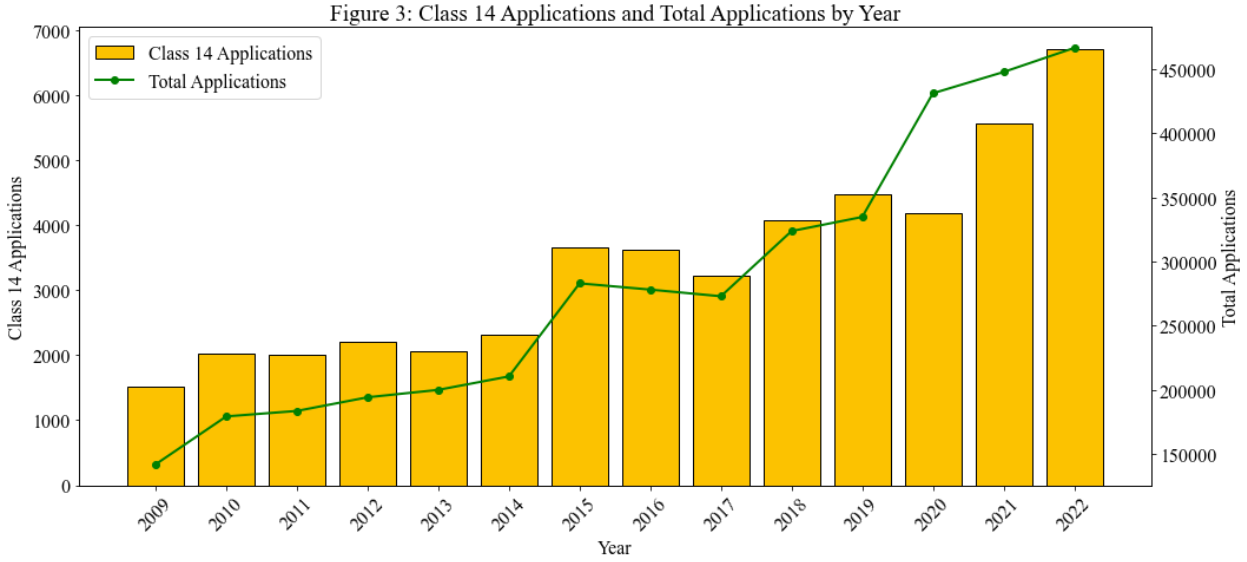


As discussed in Part 2 of the study, the dataset comprises of almost 4.1 million applications filed between 2009 to 2022. On auto-coding the dataset, this study identified 47683 applications corresponding to Class 14. These applications were filed to assume rights in reference to precious metals and certain goods made of precious metals or coated therewith, as well as jewellery, clocks and watches, and component parts therefor.

Figure 3 provides the temporal distribution of the applications filed corresponding to Class 14. According to the CGPTDM's annual reports the compound annual rate of growth for the applications filed between 2009-22 has been 9.59%. Therefore, the overall growth in the number of trademark applications corresponds to the growth of trademark applications filed in reference to Class14, which has increased between 2009-22 at a compound annual growth rate of 12.16%.

[88] Ram Mohan, Gupta, and V Venkitesh, *supra* note 62.

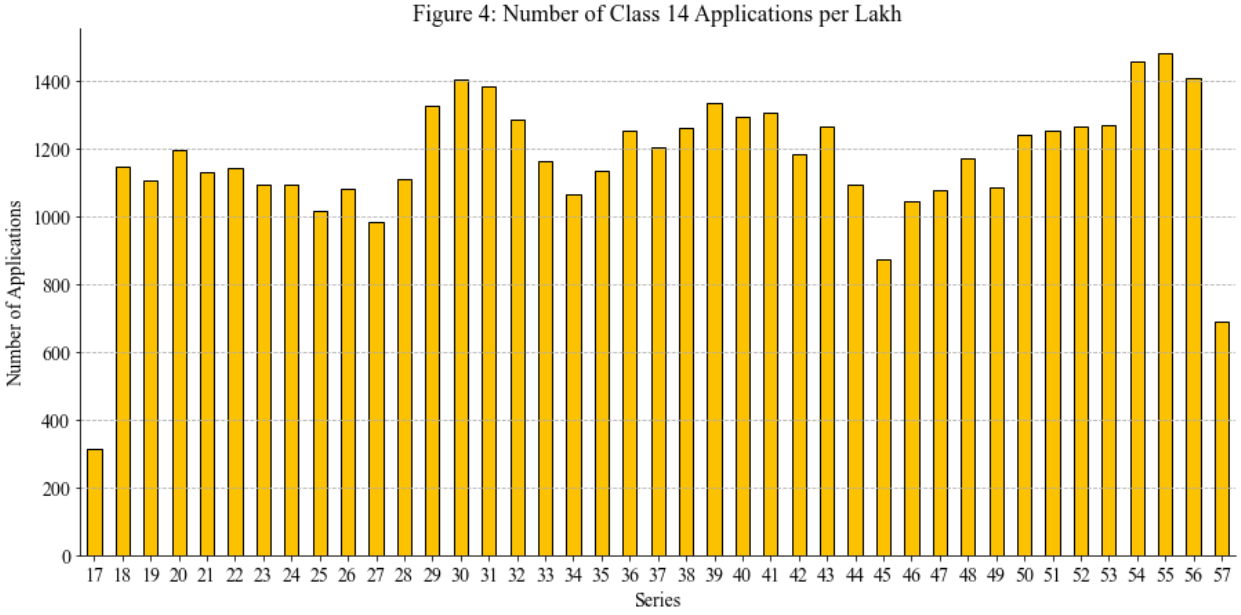
Figure 3: Class 14 Applications and Total Applications by Year



As Figure 2 represents, the overall number of trademark applications has been steadily increasing. Therefore, any statistics that represent the temporal distribution of the dataset would need to accommodate the overall growth in the number of applications. In order to accommodate the annual increase in the number of applications, Figure 4 represents the number of applications for Class 14 in intervals of 100,000 applications.[89] This signifies that although the year-on-year growth of Class 14 applications has shown a steady increase, their contribution to the overall number of trademark applications filed has remained relatively constant.

[89] The horizontal axis in Figure 4 corresponds to the series of applications numbers. For example, series 42 covers marks with application number between 4200000 and 4299999. Also important to note here is that the extremes in the Figure i.e. applications corresponding to Series 17 and 57 are relatively smaller because the authors' dataset has been curated by year. The first application in Series 17 i.e. 1700001 corresponds to a trademark application filed before 2009. Therefore, Series 17 and 57 have not been downloaded completely and are reflected in Figure 4 as such.

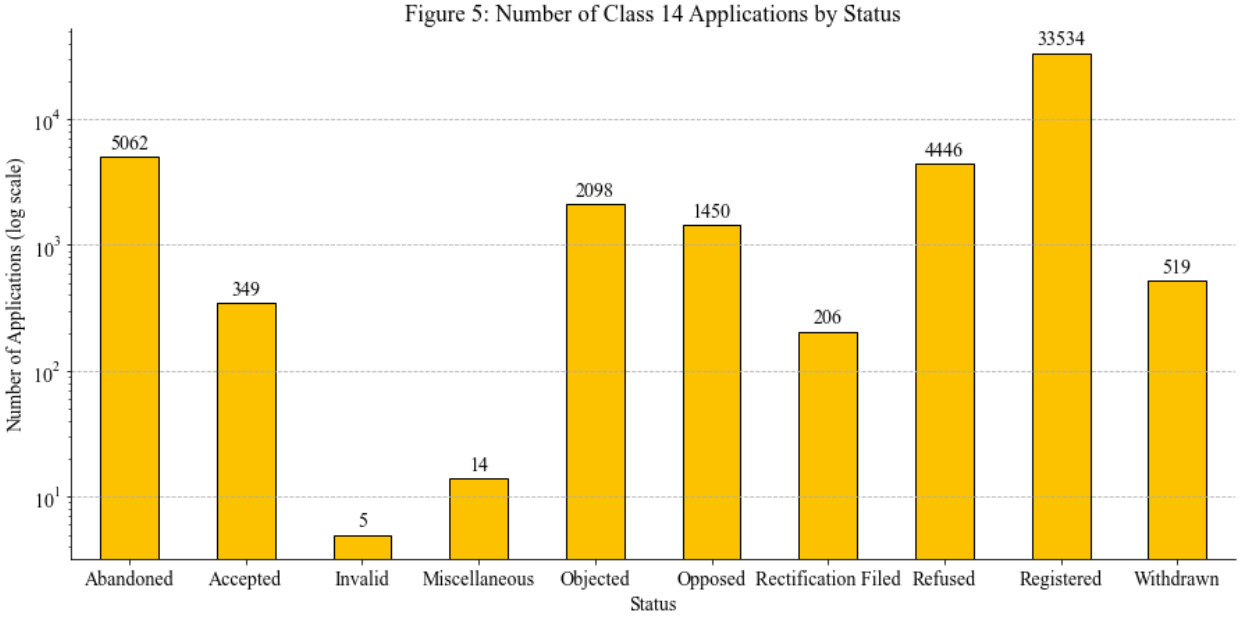
Figure 4: Number of Class 14 Applications per Lakh



In the original dataset captured by the authors, a total of 20 different statuses were captured.[90] For ease of reference and visualization, these statuses have been categorized into 10 broad categories and presented in Figure 5.

Based on the authors' approximation, Figure 5 visually presents the status of all Class 14 applications filed between 2009 and 2022.

Figure 5: Number of Class 14 Applications by Status



[90] Refer to Appendix 1 for a list of all the different statuses captured in the dataset.

It is important to reiterate that the last application included in the dataset dates back to December 2022. The study purposefully included a two-year hiatus to ensure that applications are given significant time to be processed before being included in the dataset.

Despite the two-year hiatus, 2089 applications continue to remain 'Objected.' This represents over 4.38% of the entire dataset. Further, within the 2089 applications, 695 were filed before 2021, meaning that numerous trademark applications have languished in the examination system for over 4 years, without any further prosecution.

At the same time, 3366 applications were abandoned and 383 were withdrawn before the examination process was completed. This suggests that over 7.86% of applicants did not pursue the prosecution process and surrendered their claim to statutory rights under Trade Marks Act, 1999. Notably, 2352 of such abandoned or withdrawn applications came from applicants who claimed prior use of the mark before filing for registration. Assuming these prior use claims are genuine, it appears that a considerable number of applicants seem to prefer to forgo their statutory trademark rights rather than engage in the prosecution process, even for marks they have actively used and may already protect under common law under Section 27 of the Trade Marks Act, 1999.[91]

Figures 6 and 7 present data on Class 14 applications filed across the five different trademark offices in India. Figure 6 illustrates the total number of Class 14 applications filed while Figure 7 categorizes these applications by their status, showing the distribution of applications across the different offices.

[91] Section 27, Trade Marks Act, 1999, "*Nothing in this Act shall be deemed to affect rights of action against any person for passing off goods or services as the goods of another person or as services provided by another person, or the remedies in respect thereof."*

Figure 6: Number of Class 14 Applications by Office

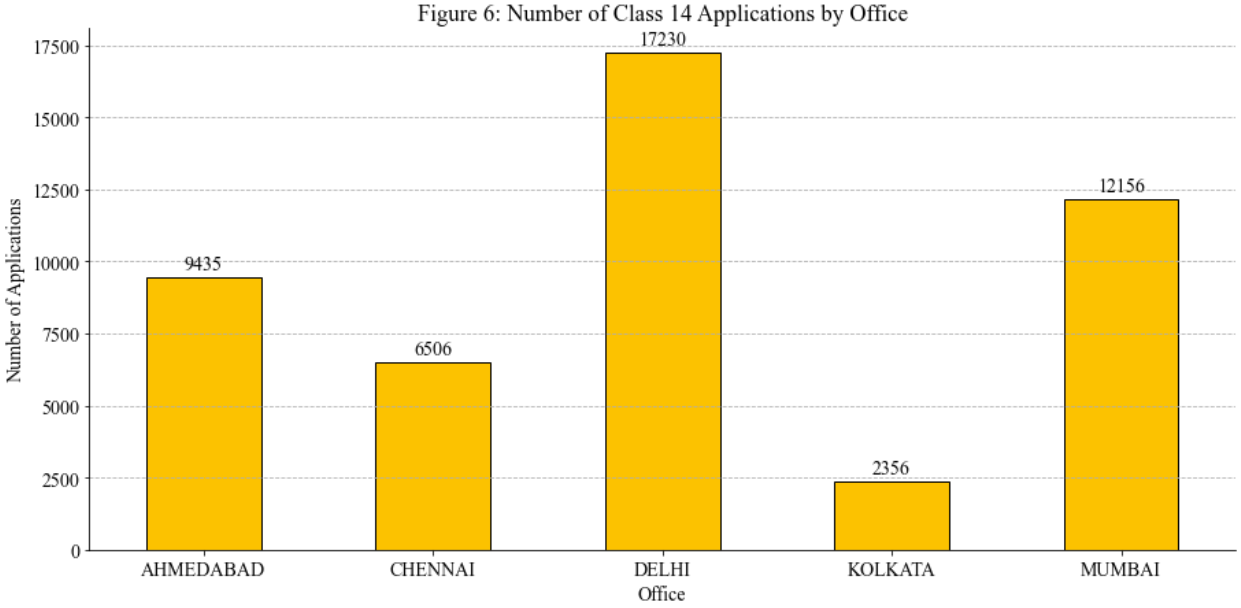


Figure 7: Status of Class 14 Applications by Office

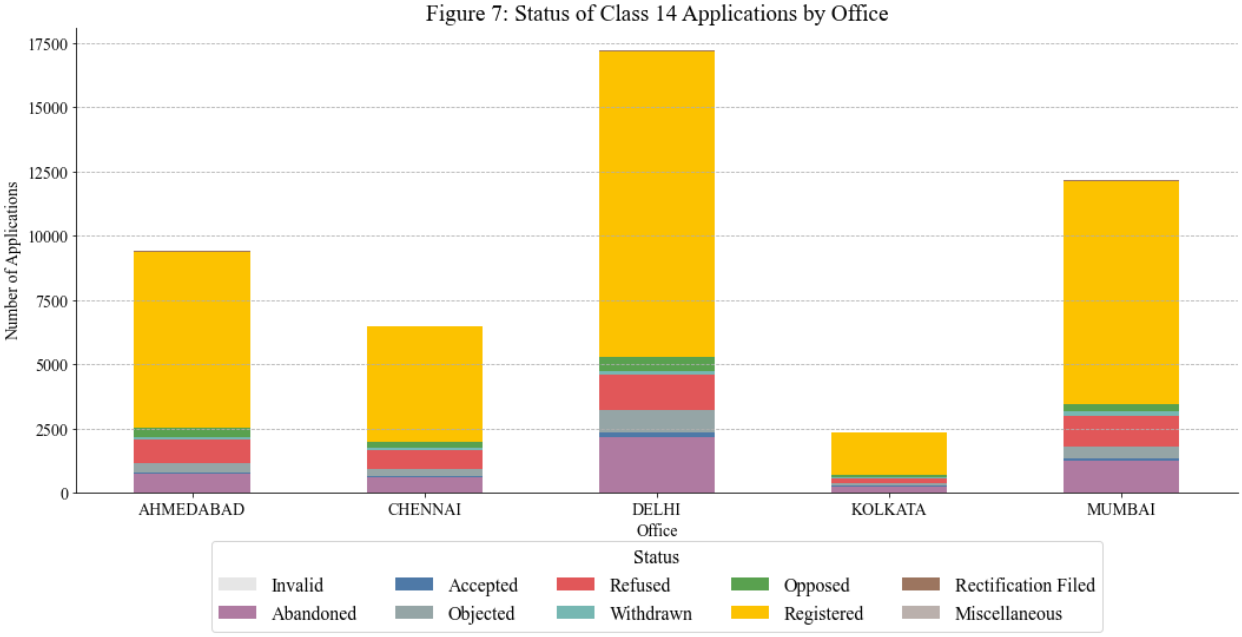
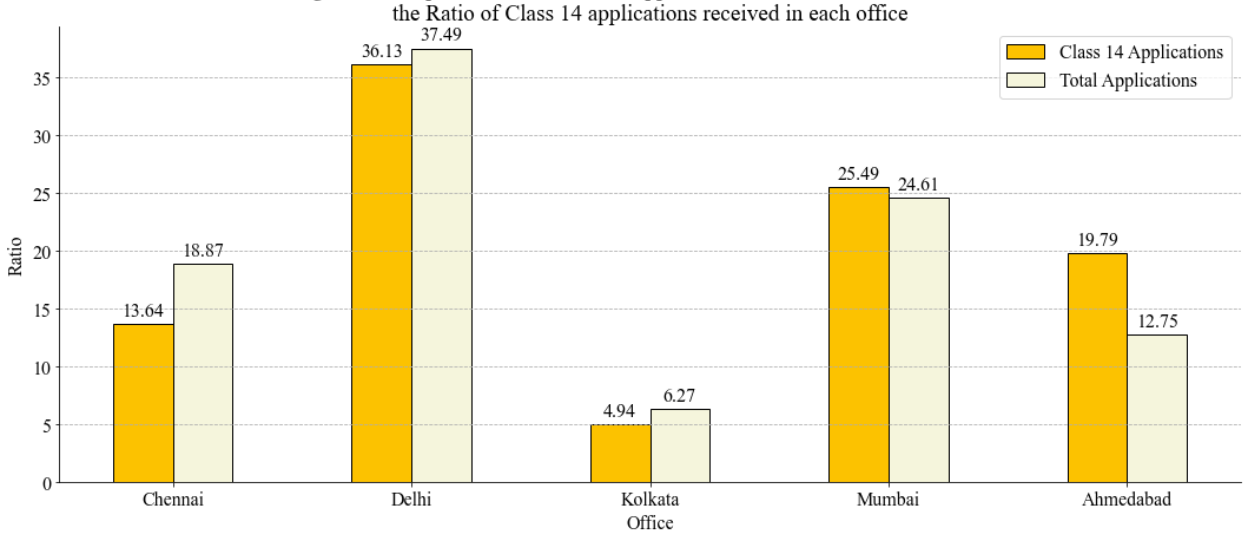


Figure 8 compares the ratio of Class 14 applications received by each Office to the ratio of total applications received in each office.

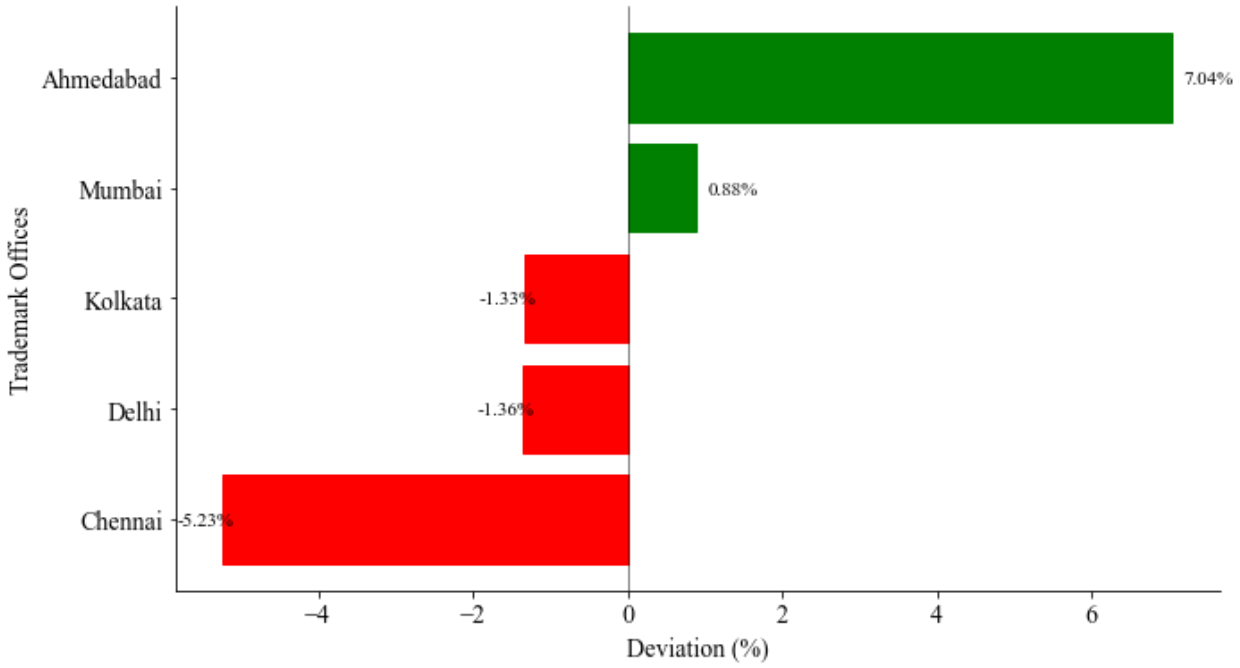
Figure 8: Comparison of the Ratio of applications received in each office with the Ratio of Class 14 applications received in each office



A preliminary examination of Figure 8 suggests that certain offices, such as Ahmedabad, receive a higher proportion of Class 14 applications compared to Chennai. Further, Figure 8 shows the Ahmedabad registry receives 19.79% of all the Class 14 applications filed across all offices, even though the office receives only 12.75% of all the applications, accommodating all the trademark classes. While 1.9% of all applications prosecuted by the Ahmedabad registry is filed in reference to Class 14, this proportion is reduced to 0.9% in the case of Chennai. While the underlying reasons for this disparity are beyond the scope of the current study, it is crucial to identify the offices that process more Class 14 applications per application received.

Figure 9 illustrates the percentage deviation of Class 14 applications handled by trademark offices from the average percentage across all offices, effectively showing which offices handle disproportionately more or fewer Class 14 applications. Ahmedabad stands out with the highest positive deviation of 7.04%, indicating a notable focus on Class 14 applications. Mumbai also shows a slight positive deviation, suggesting that its share of Class 14 applications is marginally above average. On the other hand, Chennai, Delhi, and Kolkata exhibit negative deviations, with Chennai handling significantly fewer Class 14 applications compared to the average, showing a negative deviation of 5.23%. These findings suggest regional disparities in the prosecution of specific trademark categories, which could be influenced by industrial, economic, or administrative factors.

Figure 9: Deviation of Class 14 Applications from Expected Share



4.2. TIMELINES FOR THE CLASS 14 APPLICATIONS

The preceding section provided a preliminary analysis of the 47683 trade mark applications corresponding to Class 14 filed between 2009 and 2022. It analyzed the present dataset across various parameters, including the current status of the applications, the different offices where the applications were filed, and the temporal distribution of the applications. This section identifies four different dates which are extracted from either the Examination Reports or the Status Page as published on the IP India's website.[92] A detailed explanation of these dates is incorporated in the table below:

[92] The authors have utilized auto-coding to extract dates, which have not been cross-verified with the original trademark application records. If incorrect dates appear on the status page or examination report, the authors do not alter them. For example, the examination report for application number 2077290 was published on 24/02/2012 while the application date was 27/03/2012. It is logically inconsistent for an application to be examined before it is filed. Upon manual review, the authors discovered discrepancies between the recorded dates on the Status Page and those in the relevant trademark application forms. The actual filing date, as retrieved from the Trademark Application, was 29/12/2010. However, due to the extensive volume of data, it is impractical to manually verify each date. Therefore, to maintain consistency, the authors have retained the dates as they appear on the status pages and examination reports.

Date of Application	The date of application as published on the Status Page of the trademark application and refers to the date on which the applicant files his application for registration of a trademark.
Date of Examination	The date on which the Examination Report was published by the Registrar of Trade Marks. This date has been extracted from the Examination Reports.
Date of Advertisement	The date on which a trademark application is publicly advertised. As per Section 20 of the Trade Marks Act, 1999, the Registrar must publish the trademark in the Trade Marks Journal to notify the public of its acceptance. If anyone believes that the application infringes upon their statutory or common law rights, they must file an opposition proceeding against the registration within four months of the date of the relevant application's advertisement.[93] This date has been extracted from the status page of the trademark application.
Date of Registration Certificate	This date reflects that day on which the Registration Certificate is granted to a trademark applicant in line with Section 23(2) of the Trade Marks Act, 1999.[94] This date has been extracted from the status page of the trademark application.

Figure 10 illustrates the average time taken between the aforementioned dates in the trademark prosecution process. It shows the time from the application date to the issuance of the examination report, along with the time from the examination report's issuance to when the trademark application is advertised, and finally, from when the application is advertised to when the certificate of registration is issued. This provides a comprehensive view of the timeline involved in the trademark registration process.

[93] Section 21(1), Trade Marks Act, 1999, "Any person may, within four months from the date of the advertisement or re-advertisement of an application for registration, give notice in writing in the prescribed manner and on payment of such fee as may be prescribed, to the Registrar, of opposition to the registration."

[94] Section 23(2), Trade Marks Act, 1999, "On the registration of a trade mark, the Registrar shall issue to the applicant a certificate in the prescribed form of the registration thereof, sealed with the seal of the Trade Marks Registry."

Figure 10: Average Processing Timelines of Class 14 Applications by year

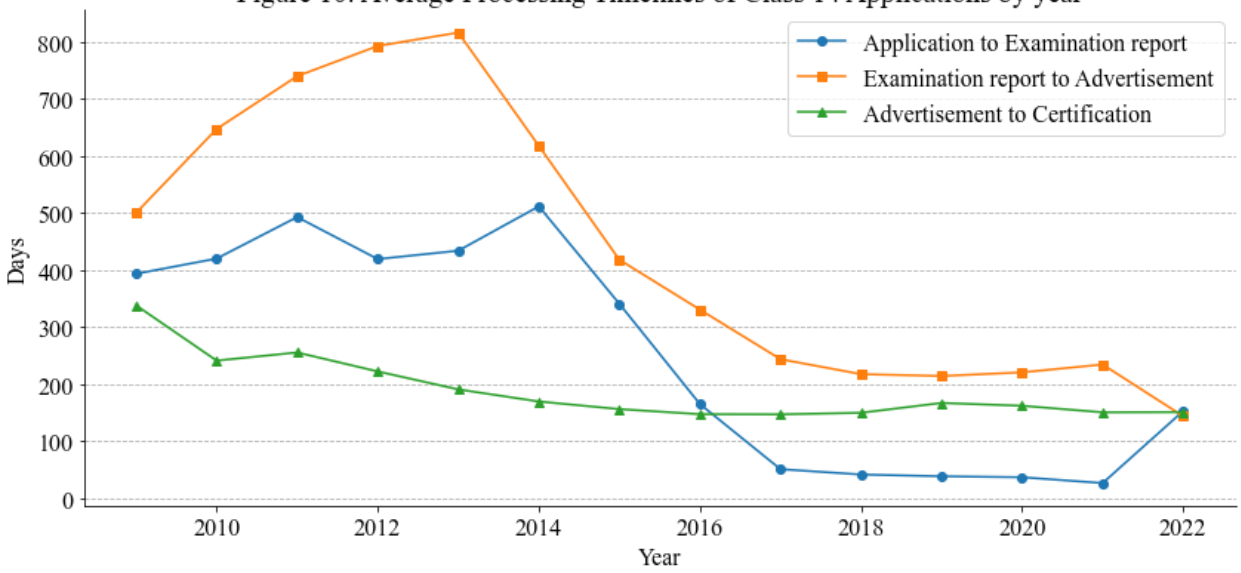
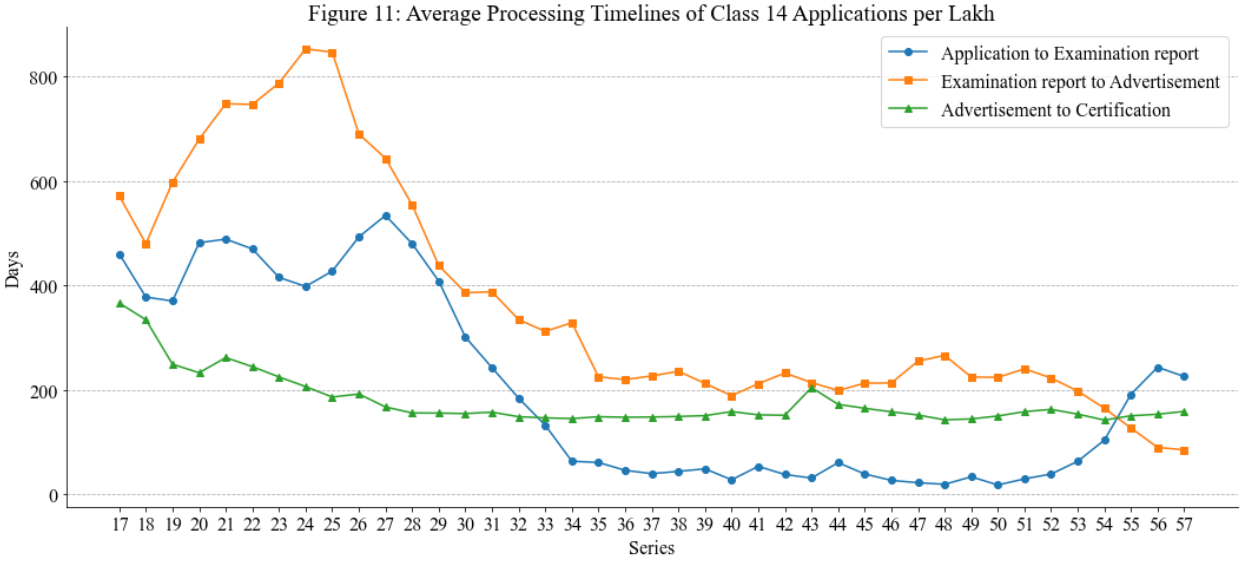


Figure 11 accommodates for the overall increase in the number of applications filed each year and presents the timelines on the basis of 100,000 applications.

Figure 11: Average Processing Timelines of Class 14 Applications per Lakh



Cumulatively, Figures 10 and 11 indicate a significant reduction in processing times across various stages of the examination process over the years. Initially, the issuance of an examination report took an average of 492 days in 2010-11, which increased to 511 days in 2013-14. However, this duration significantly decreased to merely 27 days during 2020-21 and 37 days in 2019-20. A

similar downward trend is observed in the time taken from the issuance of the examination report to its advertisement, which serves as an indicator of the total time taken by a successful application to navigate the examination process. This duration decreased from 739 days in 2010-11 and 816 days in 2012-13 to 220 days in 2019-20 and 234 days in 2020-21. Furthermore, the average time between the advertisement date and the issuance of the Registration Certificate, originally at 647 days between 2009-2015, was reduced to 206 days between 2018-22. Figure 12 explains the timelines by distributing them on the basis of the trademark offices.

Figure 12: Average Time Lag Between Processes by Office

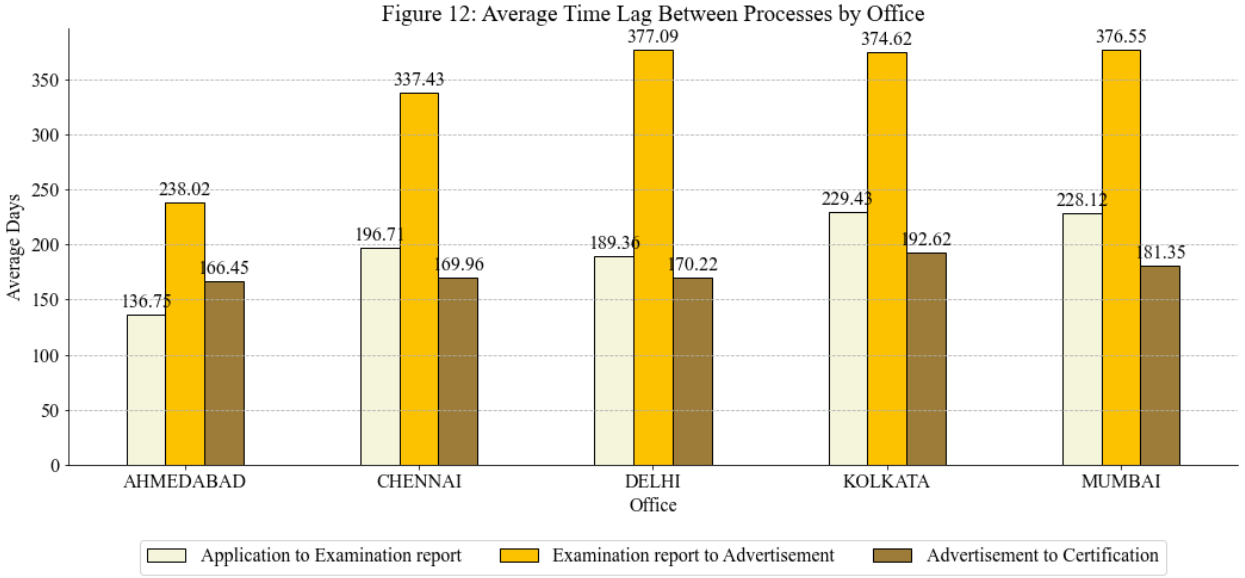


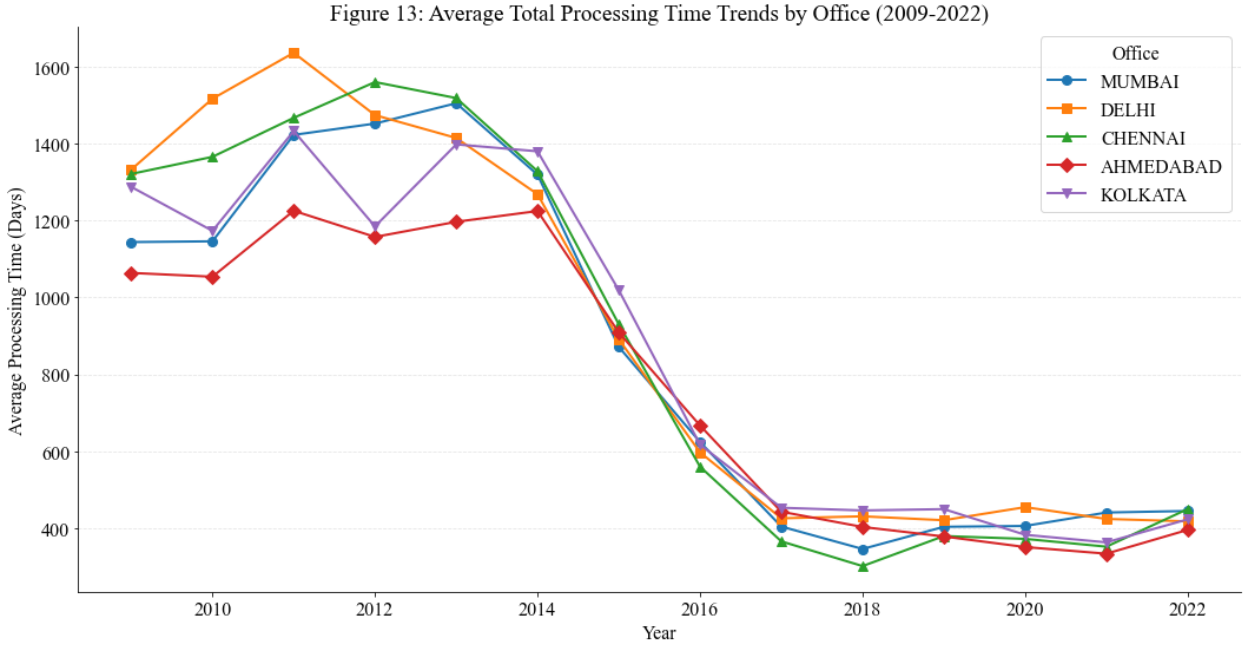
Figure 12 reveals significant variations in administrative efficiency and consistent patterns in procedural bottlenecks. The data demonstrates that the time taken between the issuance of the Examination Reports and the advertisement in Trademarks Journal consistently represents the most substantial delay across all offices, with processing times ranging from 238 days in Ahmedabad to 377 days in Delhi. The initial Application to Examination stage also exhibits considerable regional variation, spanning from 136 days in Ahmedabad to 229 days in Kolkata, while the Advertisement to Certificate stage shows relatively more consistent processing times across offices, ranging from 166.45 to 192.62 days.

Delhi emerges as the office with the most pronounced delays, particularly in the delay between Examination and Advertisement in the Trademarks Journal, while Ahmedabad generally demonstrates more efficient processing across all stages. These patterns can potentially suggest systematic inefficiencies in examination process which is represented by the time taken between

the issuance of the Examination Report and the subsequent acceptance and advertisement of a trademark in the Trade Marks Journal.

Figure 13 provides an in-depth analysis of the total time taken by each office to process applications. It is important to note that total processing times are only available for applications that have been either Abandoned, Refused or Registered. For applications with other statuses, it is assumed that they are still undergoing the prosecution process and have yet to reach a conclusion. However, in creating the Author's dataset, the date of abandonment orders and the date of refusal orders were not recorded. The only date recoded for calculation of the total processing time was the date on which the Registration Certificate was issued. Consequently, Figure 13 exclusively displays the total processing time taken by each office for Registered applications.

Figure 13: Average Total Processing Time Trends by Office (2009-2022)



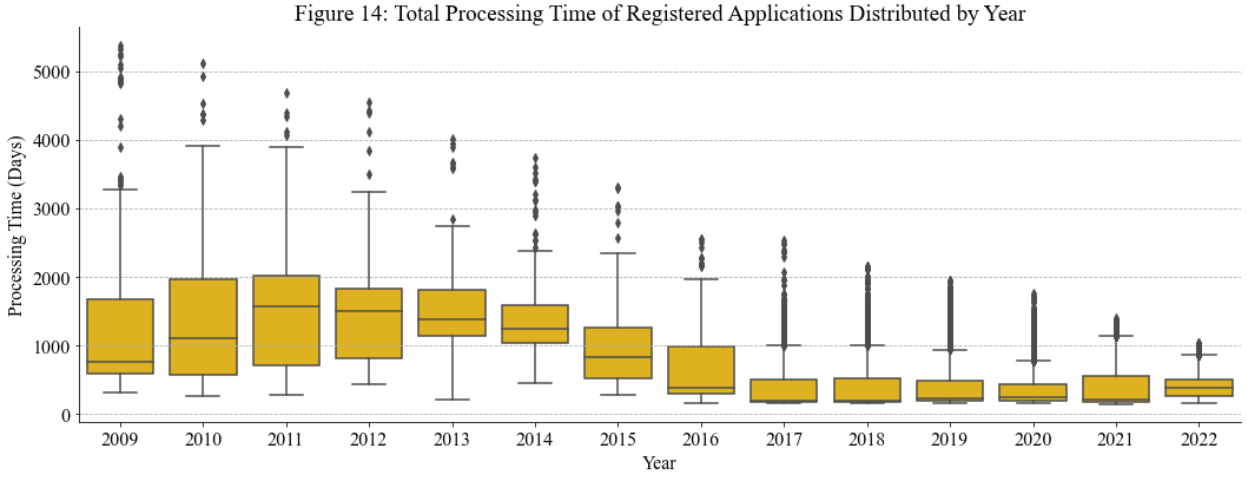
The data depicted in Figure 13 illustrates the trends in trademark registration processing times from 2009 to 2014 across various offices. During this period, processing times were notably high, with the Delhi office experiencing the longest durations, reaching a peak of 1635 days in 2011. The average processing time for all offices during this time was 1331 days. Specifically, the Delhi and Chennai offices had average processing times of 1439 days and 1426 days, respectively.

However, there have been remarkable improvements in efficiency since then. Efficiency in this context refers to the time taken between the application and registration of trademarks, with a decreasing average processing time indicating an improvement. Between 2015 and 2022, the

average processing time reduced substantially to 493 days. Among the offices, Kolkata recorded the highest processing time, which was 519 days. This data clearly indicates significant efficiency gains in trademark registration processes over the years.

Figure 14 explores these efficiency gains in more detail. It presents the total processing time for registered applications distributed temporally. It shows that the average processing time has consistently decreased from 1229 days in 2009 to 426 days in 2022.

Figure 14: Total Processing Time of Registered Applications Distributed by Year



The temporal analysis of total processing times from 2009 to 2022 reveals a clear downward trend in both median processing durations and variability. The data exhibits notably high variability in the earlier years (2009-2011), with extreme outliers reaching processing times of approximately 5,000 days and more typical cases taking around 900-2,000 days. A significant transformation in processing efficiency becomes apparent from 2015 onwards, characterized by a steady decline in both average processing times and their variations. The most recent years (2020-2022) demonstrate markedly improved efficiency, with median processing times stabilizing at approximately 500 days and substantially reduced outliers. The reduction in outliers and the narrowing of median processing time indicates that the processing timeframes have arguably become more predictable, signalling increased systematic efficiency.

Figure 15: Total Application Processing Time Patterns Across Year

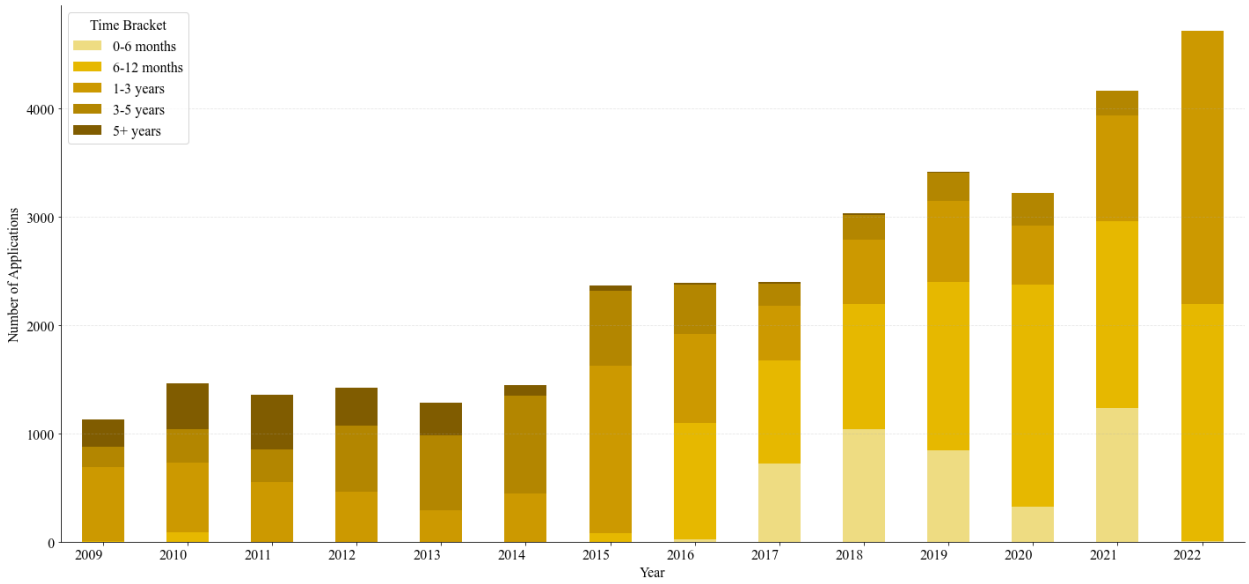
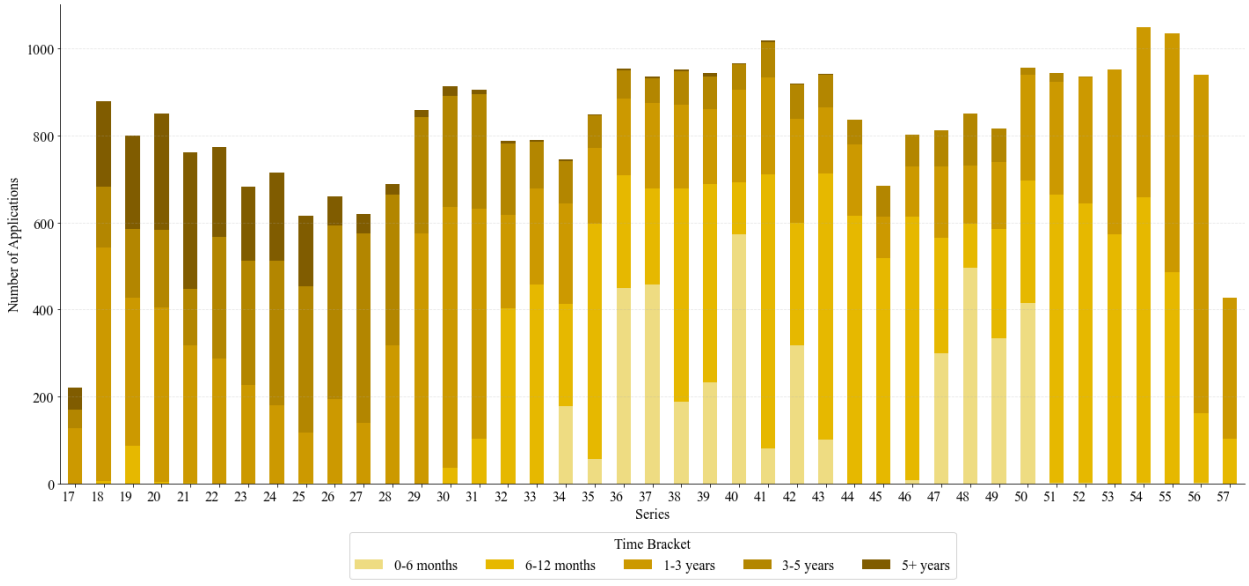


Figure 15 does not accommodate the overall increase in the number of application filed each year. With an increase in the overall number of applications it is only predictable that the number of registered applications, as represented in Figure 15, would also increase. To accommodate this increase in the number of registered applications, Figure 16 presents the data in intervals of 100,000 applications.

Figure 16: Total Application Processing Time Patterns per Lakh



Cumulatively, Figures 15 and 16 reveal a marked shift toward faster processing speeds. The data shows a significant transformation in processing efficiency, with a notable increase in applications

processed within shorter time brackets in recent years. In the period between 2009-14, a considerable portion of the application took 3-5 years or more than 5 years to process. This has dramatically changed post 2015. The years 2021-2022 demonstrate sustained progress, with majority of registered applications being processed within 1-3 years or less. Particularly striking is the substantial increase in registered applications processed within 6-12 months, as evidenced by the growing shade of light-yellow segments in recent years. This trend suggests improved processing efficiency. The near elimination of applications taking more than 3 years (red and purple segments) in recent years further elaborates the improving efficiency in the more recent years.

Some interesting statistics emerge from this analysis and are discussed below:

- In April 2011, an application for the trademark 'HCO' was filed. The Examination Report for the mark was published on August 18, 2023, after a delay of 4,505 days from the date of application. The report cited no objections, and the mark was subsequently registered, with the Certificate of Registration published on February 10, 2024.[95]
- Similarly, the application for the trademark 'PRAMUKHPUJAN JEWELS' was filed in June 2009. Its Examination Report was published in August 2010, and an objection was raised in November 2010. The opposition proceedings spanned 4,872 days and concluded in March 2024. The Registration Certificate for this mark was published the same month, 4,874 days after the application was originally filed.[96]
- A total of 433 Examination Reports were issued more than 1,000 days after their respective applications were filed. Of these, only 131 applications were filed post-2014.
- Among all registered trademarks, 8,384 applications took over 1,000 days to complete the registration process. These represent 25% of all registered applications. Of the 8,384, a total of 3,156 applications were filed after 2014, accounting for 9.4% of all registered applications.

Before concluding this section with the various claims of efficiency it is important to note a caveat that emerges from the limitations of the dataset. As we move towards the later years in the dataset (closer to 2022), it is natural that the recorded processing times for trademark applications will

[95] Application No. 2131356.
[96] Application No. 1834181.

appear lower. This is simply because many applications filed in the later years are still under prosecution and have not yet completed the registration process. For example, the trademark 'HCO,' applied for in 2011, faced extraordinary delays and was only registered in February 2024, taking over 4,500 days in total. Similarly, some marks applied in the later years of the dataset may also experience significant delays, which will only be reflected in future analyses, potentially challenging the claim of increased efficiency.

However, it should be noted that the number of registered marks between 2009 and 2022 has consistently increased subject to a few exceptions.[97] If the ratio of registered marks to total applications remains constant over time, it can be argued that efficiency has improved. For example, the ratio of Class 14 marks registered to the total number of Class 14 applications filed in 2009 is comparable to the same ratio from 2022, but the average processing time in 2022 is significantly lower, suggesting that the system has become more efficient.

However, if the ratio of registrations to applications increases—meaning that more marks applied for towards the end of the dataset eventually proceed to registration—then the claims of efficiency would need to be revisited. In such cases, the lower average processing times observed in the later years may simply reflect incomplete data, as many applications from those years are still under prosecution.

Therefore, while analysis of the present dataset suggests improved efficiency, this conclusion is contingent on the assumption that the registration-to-application ratio remains stable. If this ratio changes, the claims of efficiency would need to be reevaluated in light of the extended timelines for marks applied in the later years.

4.3. Analysis of the Examination Reports in Class 14 Applications

With a clear understanding of the various timelines and processing times included in the dataset, this section delves into the examination process in further detail and offers valuable statistical insights into how the Trade Marks Registry conducts the examination of Class 14 applications.

[97] See Appendix 2 and 3 for more details.

Before delving into the insights from the dataset, it is crucial to analyse the examination process of a trademark application. As previously discussed in Part 4, after a trademark application is duly filed, it is examined by the Trade Marks Registrar. During this process, a Trade Marks Examiner reviews whether the application violates the statutory conditions outlined in the Trade Marks Act, 1999. While there can be other conditions that are reviewed by an Examiner, the focus of the present study is limited the statutory conditions outlined in Sections 9 & 11 of the Trade Marks Act, 1999.

Section 9 represents the 'absolute grounds' for the refusal of a trademark. These provisions can be invoked when certain inherent qualities of a mark render it objectionable. For instance, S. 9(2)(c) prohibits the registration of marks that contain 'scandalous' or 'obscene' matter. Therefore, if the mark that is sought to be registered, includes any matter that can potentially be considered scandalous or obscene, an Examiner would object to the registration of the mark under Section 9(2)(c) of the Trade Marks Act, 1999. The following table provides a detailed list of all the objections enforced by the various subsections of Section 9:

Section 9(1)(a)	Marks that are devoid of *distinctive character* i.e. not capable of distinguishing the goods and services of one person from those of another person. For example: 'INDIAN ONCOLOGY FOUNDATION' for charitable trust for cancer management[98]
Section 9(1)(b)	Marks that consist exclusively of indications to designate kind, quality, quantity, intended purpose, values, geographical origin, or the time of production of goods or rendering of the service or other characteristics of the goods or service. For example: SIMLA for manufacturing Tobacco[99]
Section 9(1)(c)	Marks which have become customary in current language or in the *bona-fide* and established practices of the trade. For Example: FRISBEE for toys
Section 9(2)(a)	Mark that is likely to deceive the public or cause confusion

[98] Indian Oncology Foundation v. The Registrar of Trademarks MANU/DEOR/12897/2022

[99] Imperial Tobacco Co. Of India Ltd. v. Registrar Of Trade Marks & Anr., AIR 1968 CAL 582 (1968).

	For example: 'NORWEGIAN SARDINES' was not allowed registration claiming that Sardines never came from Norway and the mark was therefore calculated to deceive the public[100]
Section 9(2)(b)	Marks that contain matter which is likely to hurt religious susceptibilities of any class or section of citizens of India For Example: RAMAYANA for incense sticks[101]
Section 9(2)(c)	Marks that comprise of scandalous or obscene matter. For Example: KÜNT for clothes[102]
Section 9(2)(d)	Marks which are prohibited under the Emblems and Names (Prevention of Improper Use) Act, 1950 (12 of 1950).
Section 9(3)(a)	Marks that consist exclusively of the shape of goods which results from the nature of the goods themselves.
Section 9(3)(b)	Marks that consist exclusively of the shape of goods which is necessary to obtain a technical result. For example: the shape of a NESPRESSO Pod[103]
Section 9(3)(c)	Marks that consist exclusively of shape which gives substantial value to the goods.

Relative grounds for refusal, governed by Section 11, arise when the potential registration of a mark could cause confusion in the marketplace and infringe upon the rights of other proprietors. For instance, Section 11(1) prohibits the registration of marks that are similar or identical to existing marks on the Trade Marks Register and are intended to be applied to goods that are also similar or identical.[104] Section 11(2) extends this protection to well-known marks, even when applied to dissimilar goods.[105] Section 11(3) prohibits the registration of a mark that encroaches

[100] PETER MEINHARDT, CONCISE TRADE MARK LAW AND PRACTICE 21 (1983), http://archive.org/details/concisetrademark0000mein (last visited Dec 23, 2024).

[101] Lal Babu Priyadarshi v. Amritpal Singh, (2015) 16 SCC 795.

[102] Kuntstreetwear Pty Ltd's Trade Mark Application, (2007) 73 I.P.R. 438.

[103] Federal Act on the Protection of Trademarks, Art. 2(b), *"Nespresso": Decision of the Federal Supreme Court of Switzerland (Bundesgericht) 7 September 2021 – Case No. 4A_61/2021*, 53 IIC 434 (2022).

[104] Section 11(1), Trade Marks Act, 1999:

[105] Section 11(2), Trade Marks Act, 1999:

upon the common law rights of a proprietor,[106] or the rights available to a proprietor by virtue of the law of copyrights.[107]

This part studies the use and implementation of these provisions in reference to applications filed in Class 14. To understand the implication of these provisions, the authors auto-coded the examination reports of individual marks to identify which objections were issued in reference to these marks. This exercise was conducted by coding the dataset to identify the use of statutory provisions across all the examination reports included in the dataset.

However, in conducting this exercise, the authors realized that the Trade Marks Registry does not always invoke individual provisions when issuing the Examination Report. In some cases, the Examination Reports refer to language that is unique to the individual statutory provisions without invoking the relevant provision from the statute. Thus, they omit direct references to specific provisions, yet they incorporate language that is exclusive to these provisions.

For instance, when the authors coded the Examination Reports to identify the occurrence of '9(3)(b),' it appeared only twice throughout the dataset. On the other hand, the statutory language underpinning Section 9(3)(b), which includes the term "technical result," was found in three Examination Reports. For instance, in the examination report related to Application Number 2081802, there was no reference made to the provision, specifically '9(3)(b).' However, the Examination Report indicated that the mark was subject to objection because it consisted of "*the shape of the goods necessary to obtain a technical result*." A similar treatment was witnessed when studying Section 9(2)(d). The provision, i.e. '9(2)(d)' only appeared in 30 Examination Reports. However, the term 'Emblems' appeared 53 times in overall corpus of Examination Reports. Neither of the two terms, 'technical result' and 'emblems,' appear throughout Sections 9 and 11. Consequently, they have no reason to be included in the Examination Reports unless they are used to refer to the corresponding sub-sections and provisions.

Therefore, to identify the objections issued within the dataset, it was crucial to create equivalencies between the language used in the Examination Reports and the statutory provisions incorporated

[106] Section 27 of the Trade Marks Act, 1999, acknowledges the common law right of passing off. It prohibits any proprietor from using a mark that infringes upon the common law rights of another proprietor who has been using an unregistered mark and has built up substantial goodwill in relation to that mark. Section 11(3) encapsulates these provisions within the trademark prosecution process and safeguards the unregistered rights of an earlier proprietor.

[107] Section 11(3), Trade Marks Act, 1999:

in Sections 9 & 11. The authors therefore, created a matrix of unique terms and language which refer to specific provisions within Section 9 & 11. The following table provides details of the equivalencies created by the authors. These are unique terms which only appear in reference to the specific subsections, and do not appear in different sub-sections of Section 9 & 11.[108]

Relevant Provision	Terms analysed
Section 9(1)(a)	'distinctive' appearing within 3 words of the term 'character'
Section 9(1)(b)	'designate' appearing within 3 words of the term 'kind' OR 'designate' appearing within 4 words of the term 'quality' OR 'designate' appearing within 4 words of the term 'quantity' OR 'intended' appearing within 2 words of the term 'purpose' OR 'intended' appearing within 3 words of the term 'values'
Section 9(1)(c)	'customary' appearing within 3 words of the term 'current' OR 'current' appearing within 3 words of the term 'language' OR 'established' appearing within 3 words of the term 'trade' OR 'established' appearing within 3 words of the term 'practices' OR 'trade' appearing within 3 words of the term 'practices'
Section 9(2)(a)	'deceive' appearing within 2 words of the term 'confusion' OR 'cause' appearing within 2 words of the term 'confusion'
Section 9(2)(b)	'religious' appearing within 3 words of the term 'susceptibilities'
Section 9(2)(c)	'scandalous' appearing within 3 words of the term 'obscene'
Section 9(2)(d)	'emblems' appearing within 2 words of the term 'names'
Section 9(3)(a)	'nature' appearing within 3 words of the term 'goods'

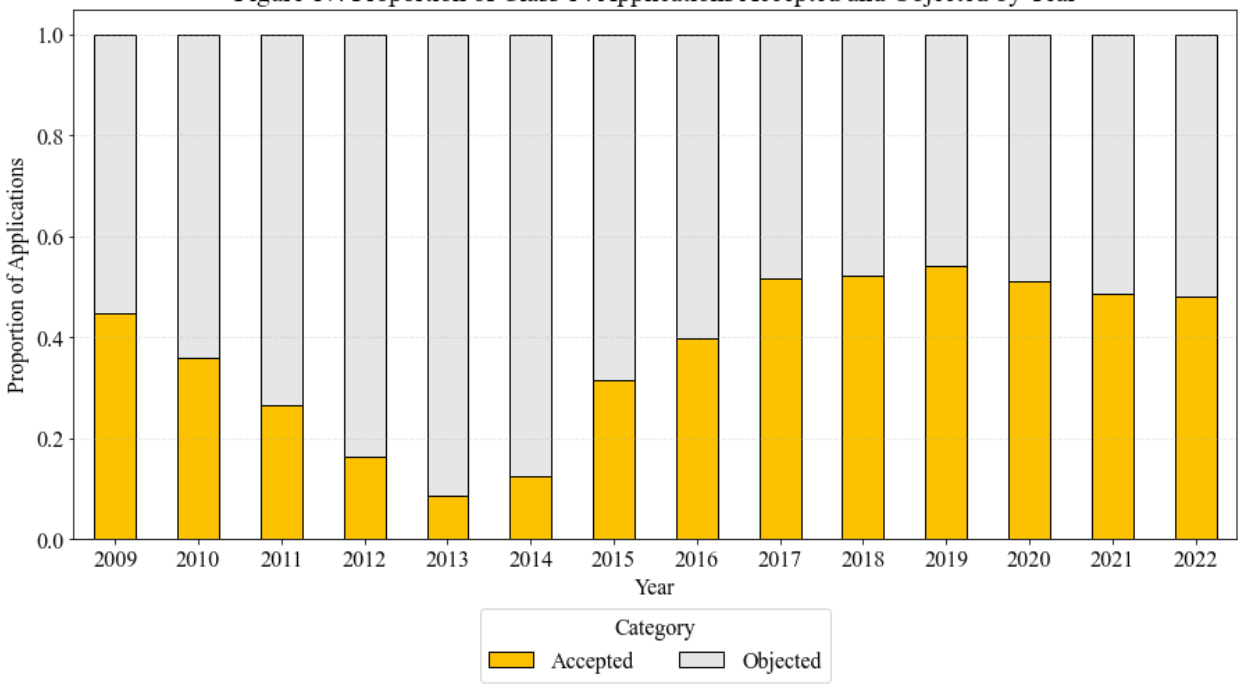
[108] One of the limitations of using such language-based identification is that the term coded to identify a specific objection can appear anywhere in an Examination Report. While it can rightfully appear as an objection to the application, it can also appear in other parts of the Examination Report. Whenever the Trade Marks Registrar cites an objection under S. 11, he publishes a 'Search Report' as an addendum to the Examination Report. This Search Report includes details about the cited mark, the relevant proprietor, its application date and the goods and service description. Therefore, it is possible that when the authors code their dataset to identify unique words and phrases, these do not find mention in the language of the Examination Report, but appear in the cited Search Report. However, the authors have taken necessary precautions to avoid this situation, and wherever possible, have used the terms as phrases, specifically coding for them to appear close to each other within a certain string of words.

Section 9(3)(b)	'technical' appearing within 2 words of the term 'result'
Section 9(3)(c)	'substantial' appearing within 2 words of the term 'value'
Section 11[109]	'likelihood' appearing within 3 words of the term 'confusion' OR 'likelihood' appearing within 3 words of the term 'association' OR 'well' appearing within 2 words of the term 'known' OR 'passing' appearing within 3 words of the term 'off'
Accepted as Applied	'advertised' appearing within 3 words of the term 'acceptance' OR 'as' appearing within 2 words of the term 'accepted'

Figure 17 provides an overview of Class 14 trademark applications, categorizing them into two distinct groups: those that faced objections and those allowed to proceed without any objections. As explained earlier in Part 3, as a Registrar reviews an application for the registration of the trademark, he can either object to the registration under provisions outlined in the Trade Marks Act, 1999, or he can accept the application in its current state and order it to be advertised in the Trade Marks Journal. The following Figure effectively divides all the Class 14 application intercepted in the Authors' dataset into these two categories. If an application encounters even a single objection at any stage, it is classified as 'Objected.' To maintain consistency and avoid overlaps, the authors focus solely on coding the first instance of objection. This approach ensures that the yearly count of Class 14 applications aligns with the combined total of objected and accepted applications, presenting a clear and accurate picture of the Author's Dataset.

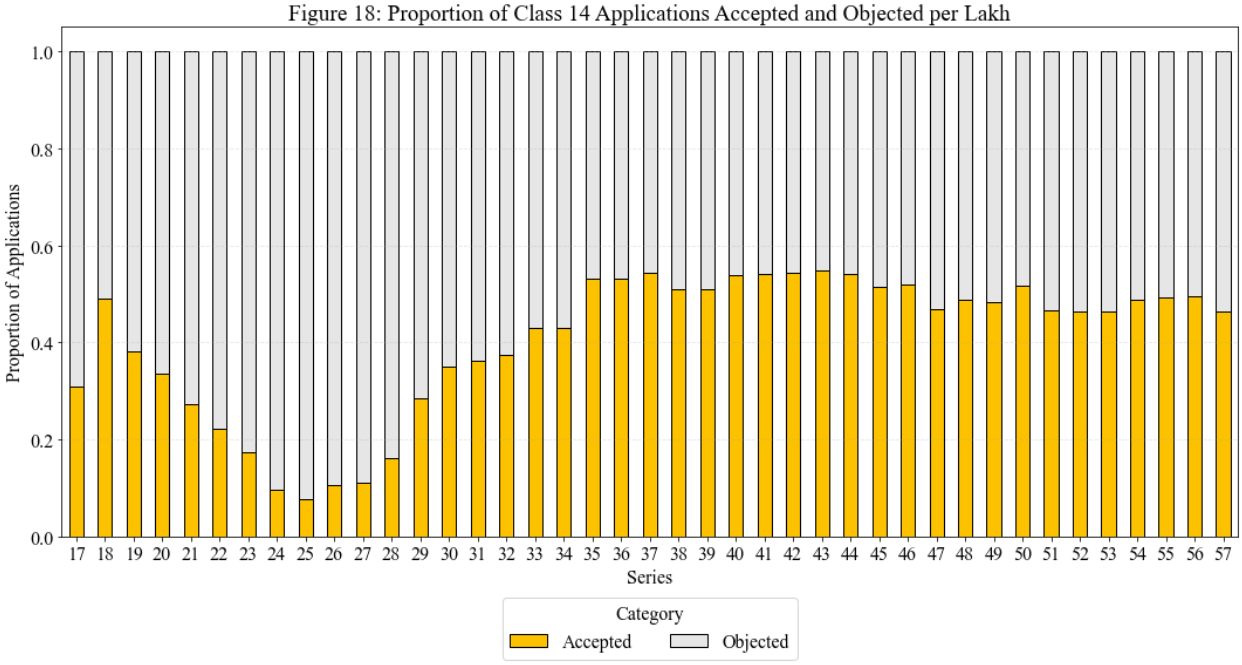
[109] In creating the matrix of terms relevant for Section 11, the authors could not identify unique terms which singularly refer to Section 11(1)(a) of the Trade Marks Act, 1999. Therefore, the use of individual sub-sections within Section 11 could not be included in the present study.

Figure 17: Proportion of Class 14 Applications Accepted and Objected by Year



To accommodate the absolute increase in the number of applications filed each year, Figure 18 represents the number of objections and acceptances issued for Class 14 applications in intervals of 100,000 applications.[110]

Figure 18: Proportion of Class 14 Applications Accepted and Objected per Lakh



[110] The horizontal axis in the figure corresponds to the series of applications numbers. For example, series 42 covers marks with application number between 4200000 and 4299999.

Figure 19 depicts the ratio of objections to the total number of Class 14 applications filed on an yearly basis. Between 2009 and 2022, an average of 60% of these applications faced objections. Interestingly, there was a marked increase in objections during the 2010–2015 period, with 75.6% of applications receiving at least one objection from the Registrar of Trade Marks. However, this surge was temporary, as the ratio gradually returned to a more typical level, stabilizing at around 48% in subsequent years. While this trend can be intriguing, identifying the reasons behind the possible heightened scrutiny during this period would require a more comprehensive dataset and a deeper analysis, which are beyond the scope of this study.

Figure 19: Ratio of Objections to Total Class 14 Applications by Year

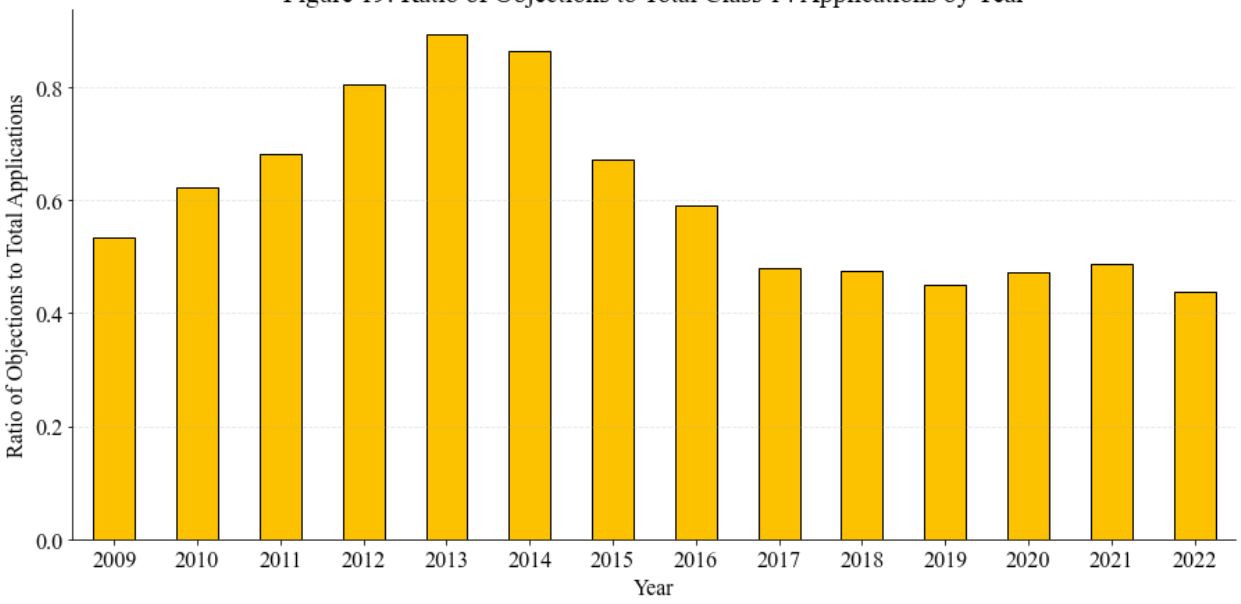
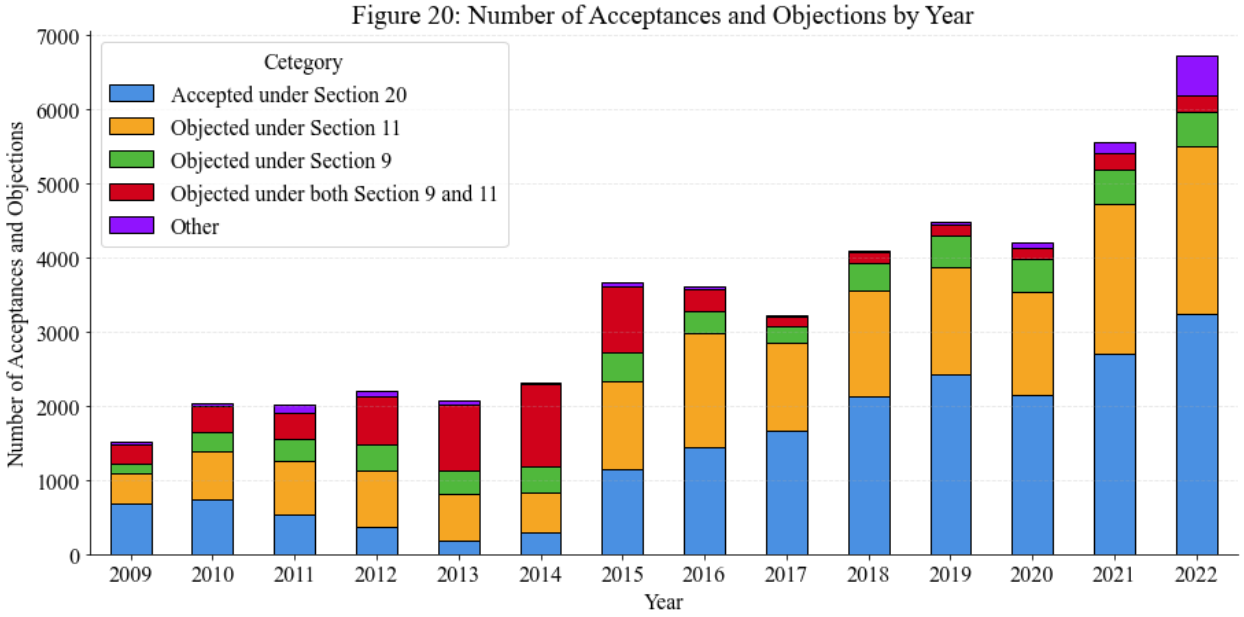


Figure 20 builds on the findings of Figures 17 and 18, categorizing objected applications into four distinct groups based on the grounds for objection. The first group comprises 4,816 applications objected solely under Section 9, while the second group includes 16,166 applications objected exclusively under Section 11. The third group, consisting of 5,811 applications, faced objections referencing both Sections 9 & 11 concurrently. Lastly, during the coding process, the authors identified 1,220 applications where no statutory provisions or related terms were cited in the Examination Reports. These applications have been collectively categorized as 'Others.'[111]

[111] It is difficult to categorize the applications classified as others in any categories. Many of these examination reports do not detail any objections that are being raised. They confirm that the concerned application is being objected, without providing any details as to why are the objections being issues or under which provision. For example see: Application no. 1821774 with Examination Report dated 10/06/2010 confirms that the mark has been objected but does not provide any explanation for why such an objection. This problem appears to be very insidious and the

Figure 20: Number of Acceptances and Objections by Year



To accommodate the absolute increase in the number of applications filed each year, Figure 21 represents the further classification of objections issued for Class 14 applications in intervals of 100,000 applications.[112]

Registrar's unreasoned orders, albeit in the context of Opposition proceedings, have been criticized by the Bombay High Court in Metso Outotec Corporation v. Registrar of Trade Marks, Commercial Appeal (L) No. 18137 of 2021, order dated 6 October, 2021.

[112] The horizontal axis in Figure 5 corresponds to the series of applications numbers. For example, series 42 covers marks with application number between 4200000 and 4299999.

Figure 21: Number of Acceptances and Objections per Lakh

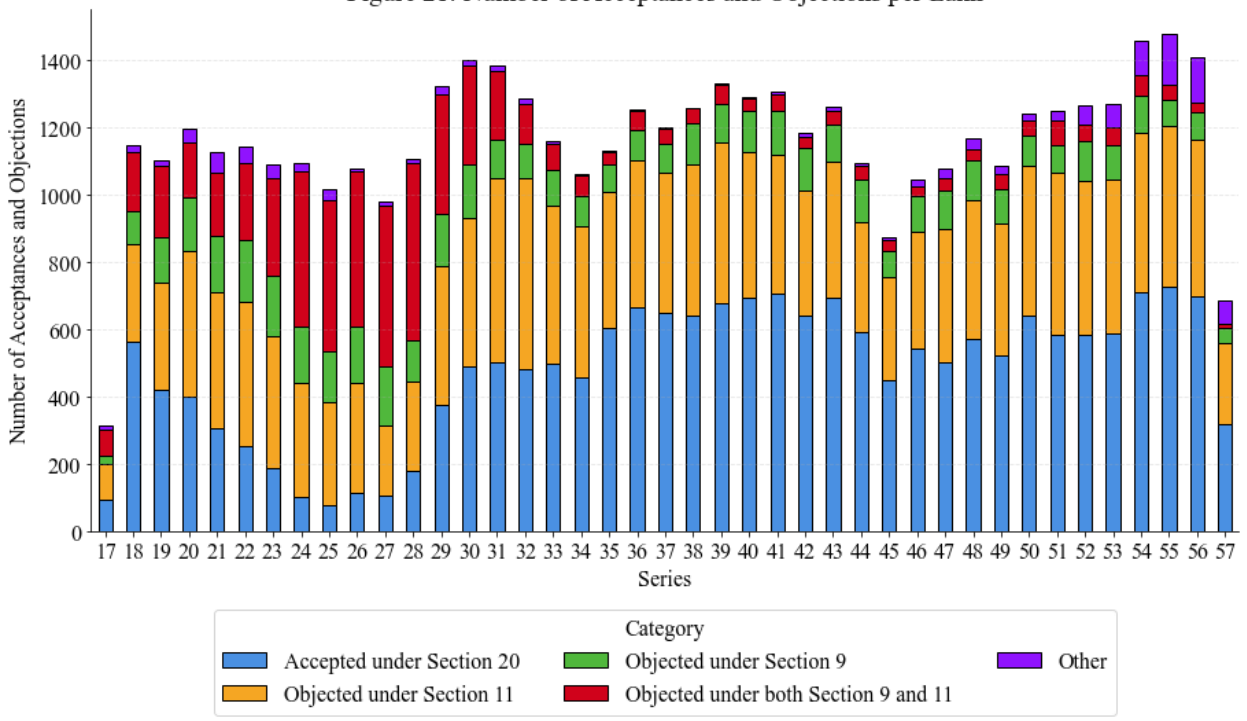


Figure 22 offers a detailed analysis of objections raised under Section 9, categorizing them by specific terms and mapping them to each subsection. In cases where a single examination report cites multiple objections within Section 9, each objection is counted individually, as the focus is on the frequency of invocation rather than the number of reports. The analysis reveals that the majority of objections, totalling 7,651, originate from Section 9(1)(a), which addresses the absence of a '*distinctive character*.' In contrast, objections under Section 9(3)(b), which challenges the registration of shape marks essential for achieving a technical result, are exceedingly rare, with only 3 instances recorded for Class 14 applications between 2009 and 2022. In fact, Section 9(3), which corresponds to objections owing the shape of the marks, was invoked only 12 times across the entire dataset. Figure 14 identifies the three major objections issued within Section 9 and cumulatively refers to the remaining objections as 'Other objections under S. 9.'[113]

[113] Appendix 4 provides a more detailed enumeration of the frequency of objections that appear across each subsection within Section 9, Trade Marks Act, 1999.

Figure 22: Number of Objections by Year for Subsections of Section 9

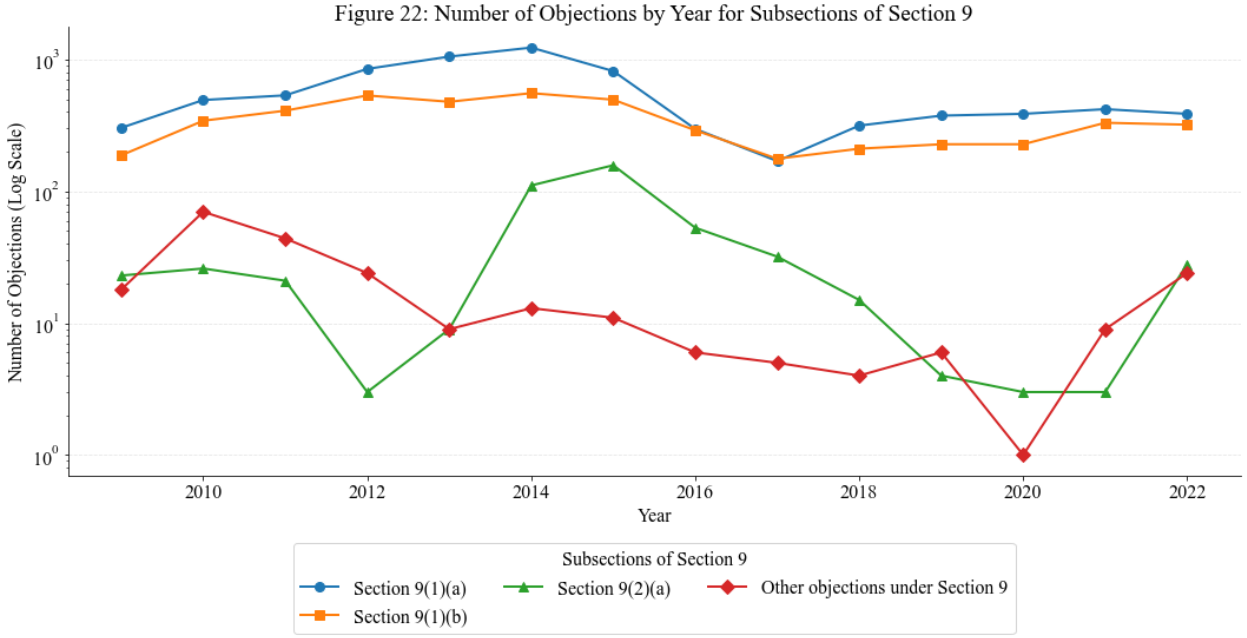


Figure 23 and 24 respectively represents the total number of objections received by Class 14 applications and looks at ratio of objections received to the total applications filed in each of the five regional trademark offices.

Figure 23: Number of Objections by Office

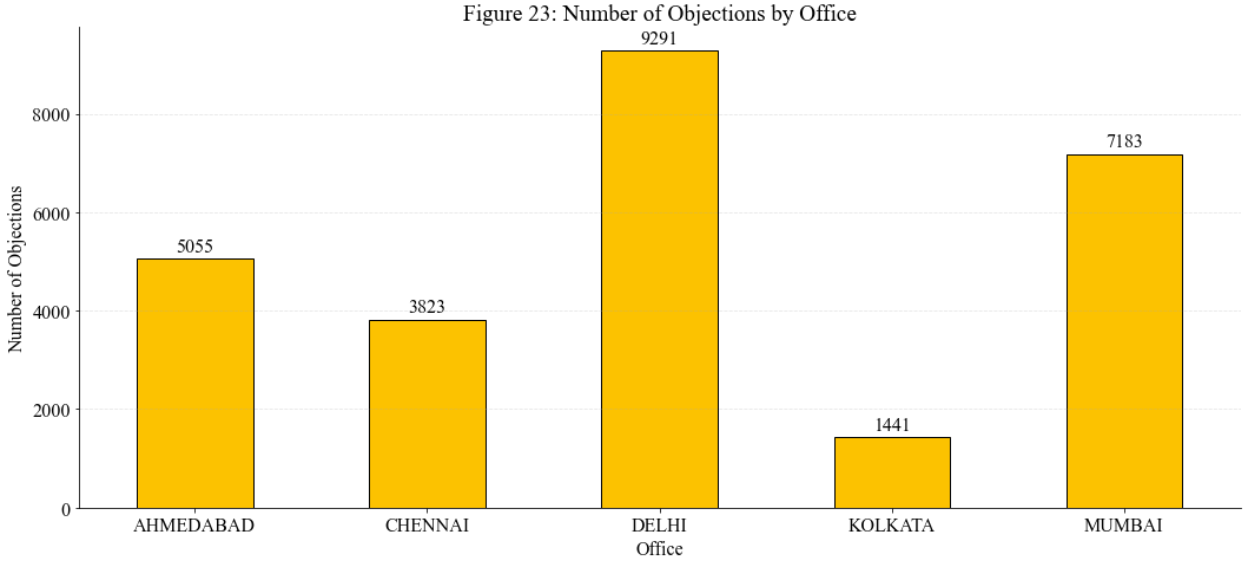
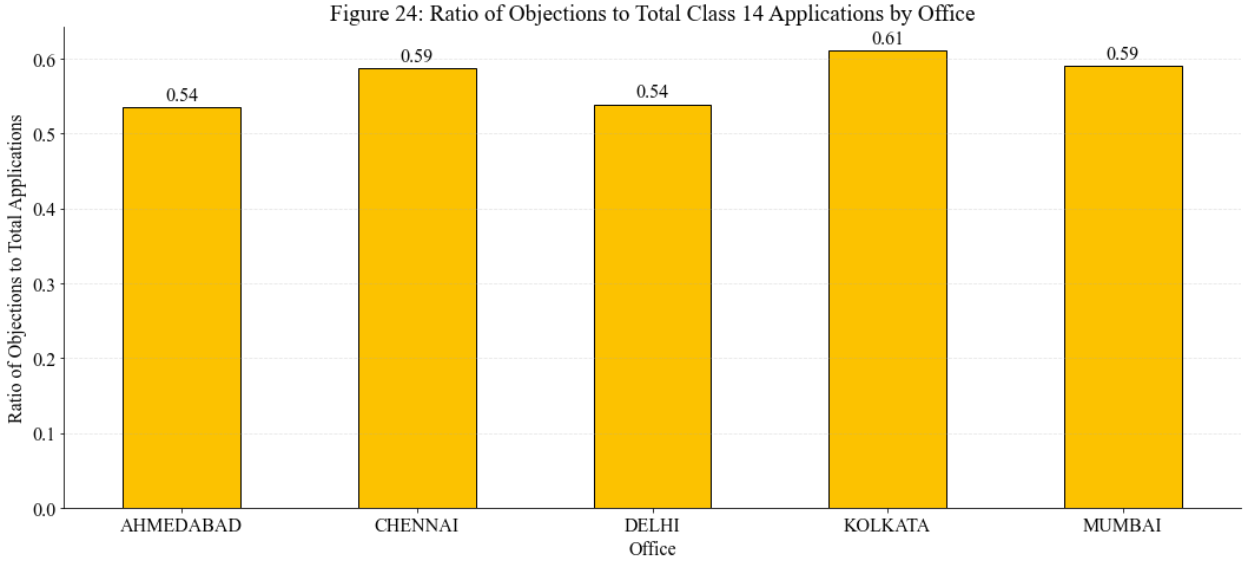


Figure 24: Ratio of Objections to Total Class 14 Applications by Office



A review of Figure 23 indicates that a substantial portion of objections for Class 14 applications come from Delhi. However, this corresponds to Figure 6 which clarifies that the majority of applications for Class 14 also accumulate in Delhi. Figure 24 adjusts for the volume of Class 14 applications submitted to each office prior to the issuance of objections. Together, these figures suggest that the distribution of objections for Class 14 applications remain consistent across the five trademark offices.

5. DISCUSSION AND SUMMARY

This study focuses on analysis of trademarks related to precious metals, circumscribed by Class 14, which covers jewellery, precious metals, and horological equipment. Building on a robust dataset of 47,683 trademark applications filed between 2009 and 2022, the report highlights critical trends, procedural bottlenecks, and systemic inefficiencies while also showcasing improvements in processing times for trademark applications over the years. The findings emphasize the value in enabling the development and publication of bulk trademark datasets that can potentially offer valuable insights for policymakers, legal practitioners, and business proprietors navigating trademark registration.

- **Historical Foundations of Trademarks**: Trademarks evolved from guild-era liability marks into assets symbolizing quality and reputation. The classification systems, which form a quintessential part of contemporary trademark law, emerged alongside trademark systems, rooted in medieval trade guilds and later formalized through international agreements like the Nice Agreement.

- **Dataset Overview:** The dataset utilised for the present study comprises of 6.7 million applications. These applications were then auto-coded to identify 47,683 corresponding to Class 14. Applications corresponding to this class grew at a compound annual rate of 12.16%, slightly outpacing the overall trademark application growth of 9.59%. Over 70% of the analyzed applications correspond to device marks, while approximately 28% of the applications correspond to word marks. Other types of marks including color, shape, sound and three-dimensional marks cumulatively account for less than 1% of the trademark applications.
- **Procedural Trends:** The majority (70.4%) of Class 14 applications achieved registration, while 10.5% were abandoned, 4.4% refused, and 4.3% remained objected. Significant disparities in processing times were observed across different trademark offices, with Ahmedabad being the most efficient and Delhi the least.
- **Processing Times:** Average timeframes for registration have improved dramatically, from over 1,300 days in 2009 to approximately 500 days in 2022. A continued delay in the examination process is witnessed in the dataset. The time taken between the issuance of the examination report and the advertisement of the trademark in the Trade Marks Journal consistently constitutes the maximum delay in processing time for applications.
- **Objection Trends:** Nearly 60% of Class 14 applications faced objections, with a temporary peak of 75.6% between 2010–2015. Most objections were raised under Section 9 (absolute grounds), particularly for lack of distinctive character (Section 9(1)(a)), followed by an objection for marks designating the kind, quality, quantity, intended purpose, values, geographical origin or the time of production of the goods or rendering of the service or other characteristics of the goods or service (Section 9(1)(b)).
- **Regional Disparities**: The highest number of Class 14 applications were prosecuted by Delhi, followed by Mumbai, Ahmedabad, Chennai and Kolkata. In terms of proportion of Class 14 applications compared to the total number of applications, Ahmedabad and Mumbai handled a higher proportion of Class 14 applications compared to Chennai, which lagged significantly. The ratios of objections to total Class 14 applications are consistent across offices.
- **Efficiency Gains:** Systematic improvements were observed post-2015, with increased predictability and reduced variability in processing times. Applications processed within 6-12 months rose sharply in recent years, indicating possible improvements in administrative efficiency.

6. APPENDIX AND SUPPLEMENTAL DATA

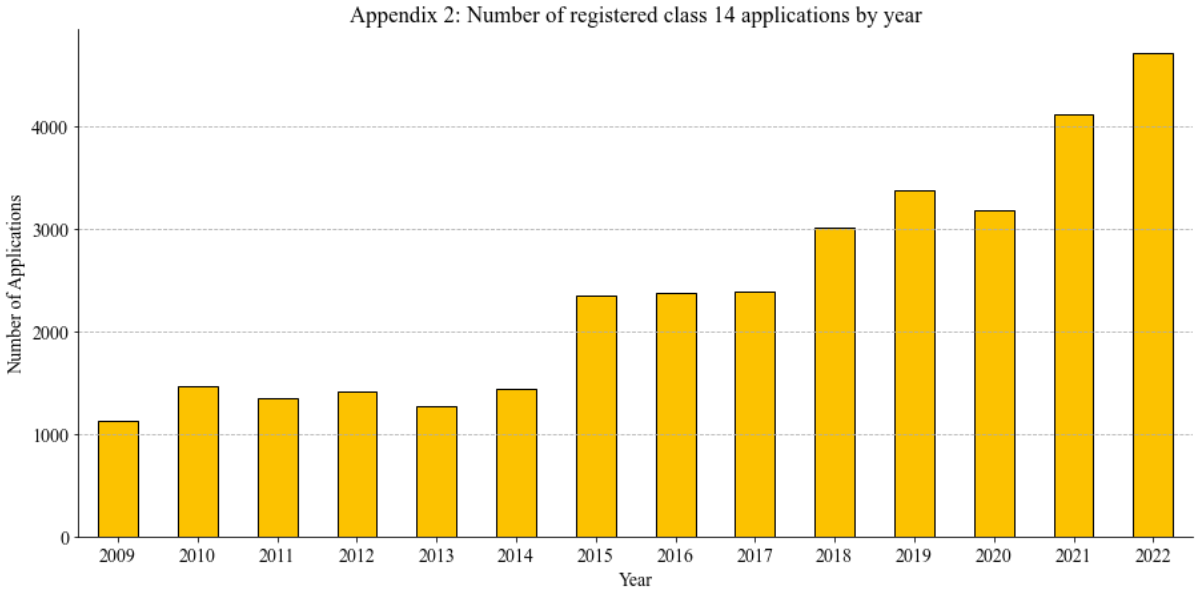
Appendix 1: Original Status of Class 14 Applications as reflected in the dataset

Status as reflected in the dataset	**No. of applications**	**Status as reflected in Figure 5**	**No. of applications**
Formalities Chk Fail	2	Invalid	5
INVALID (No fee received)	3		
Abandoned	4939	Abandoned	5062
Deemed to be Abandoned	123		
Accepted	24	Accepted	349
Accepted & Advertised	323		
Advertised bef acc	2		
Objected	2089	Objected	2098
Marked for Exam	6		
Exam Report Issued	3		
Refused	4446	Refused	4446

Withdrawn	519	Withdrawn	519
Opposed	1443	Opposed	1450
Opposed*	7		
Registered	33534	Registered	33534
Rectification Filed	206	Rectification Filed	206
Review	1	Miscellaneous	14
Stay of Registration	2		
Removed	1		
Cancelled	10		

Appendix 2: Number of Registered Class 14 Applications classified by year

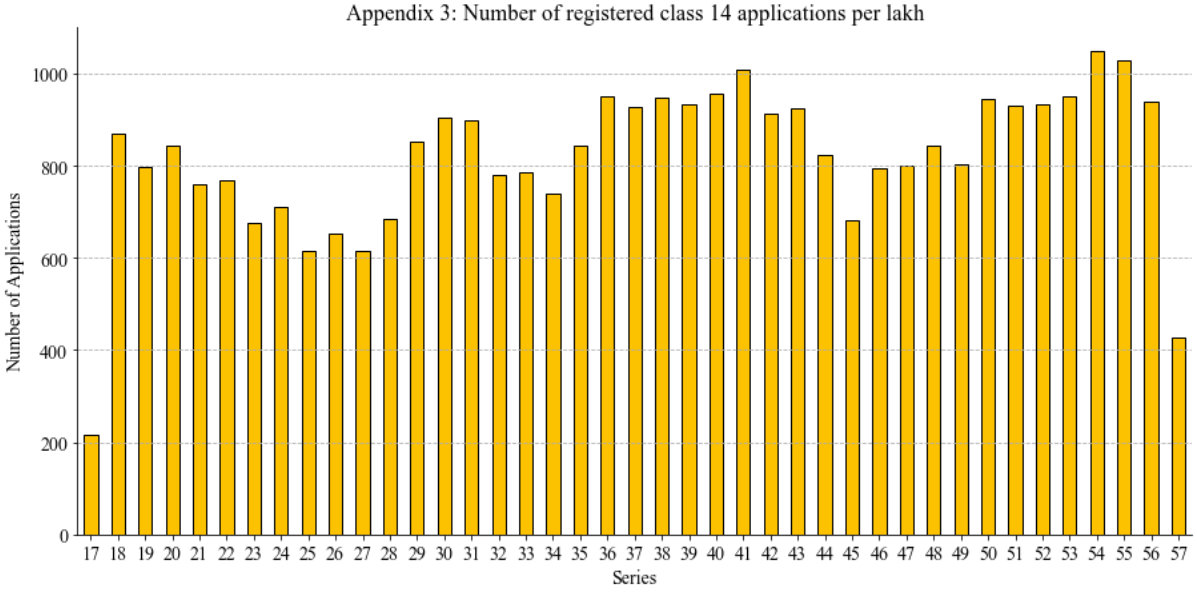
Year	No. of applications
2009	1120
2010	1461
2011	1345
2012	1417
2013	1270
2014	1435
2015	2349
2016	2371
2017	2382
2018	3007
2019	3378
2020	3182
2021	4114
2022	4703



Appendix 3: Number of Registered Class 14 Applications classified per-lakh applications

Series	No. of applications
17	217
18	871
19	798
20	845
21	759
22	768
23	676
24	712
25	614
26	654
27	615
28	686
29	852
30	904
31	898
32	781
33	786
34	741
35	843
36	950
37	928
38	947
39	933
40	956
41	1008
42	912
43	926
44	824
45	683
46	796
47	801
48	844
49	802
50	944
51	932
52	933
53	952
54	1048
55	1028
56	940
57	427

Appendix 3: Number of registered class 14 applications per lakh



Appendix 4: Frequency of objections across different subsections within Section 9.

Year	9(1)(a)	9(1)(b)	9(1)(c)	9(2)(a)	9(2)(b)	9(2)(c)	9(2)(d)	9(3)(a)	9(3)(b)	9(3)(c)
2009	304	188	15	23	1	0	0	2	0	0
2010	494	344	45	26	10	0	3	6	0	6
2011	536	410	24	21	9	2	5	3	1	0
2012	851	535	13	3	4	0	4	2	0	1
2013	1055	479	3	9	2	0	3	1	0	0
2014	1235	557	5	111	1	0	6	1	0	0
2015	819	497	2	158	3	0	1	1	0	4
2016	298	291	0	53	2	1	3	0	0	0
2017	170	177	0	32	0	0	4	1	0	0
2018	316	211	0	15	0	1	2	1	0	0
2019	376	228	1	4	0	0	3	2	0	0
2020	388	228	0	3	0	0	0	0	1	0
2021	421	332	0	3	2	0	4	2	1	0
2022	388	321	0	28	8	1	15	0	0	0