

RELEVANCE OF PATENTS IN THE GROWING FASHION INDUSTRY

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Abstract

Design patents are always considered as not an important tool for protection of designs under the India fashion scenario. Despite the fact that India's fashion industry is one of the most primitive industries and is estimated to be at around 110 billion dollars in the present time, and also is expected to cross 200 billion dollars by 2022.

The textile and apparel industry in India is vital to economic competitiveness around the globe, as it contributes to almost 26% of India's foreign exchange earnings. Employing at least 30 million people and many more in allied activities, the sector promises to build an ever-increasing job generation scheme and accounts for around 18% of the nation's industrial employment.

In order to furnish this growing demand and supply by the consumers, the industry is constantly trying to incur changes through inventions, creations, designs through technology based advancements and also increase the productivity by lowering down the expenses for the same and achieving high generation of revenues.

Many designers do not effectively try to protect their design through the regime of intellectual property, which stands as the most crucial when considering design as an aesthetic element. Multiple efforts have been initiated by various designers, but have been mostly stalled or have caused problems in implementation may be due to lack of adequate laws in this area, but the growing space for copied designs and the relative impact of knockoffs and counterfeiting - serves as a threat to the fashion industry. As a result of which both emerging as well as established designers have to suffer and face the brunt of it. While a statue protecting fashion designers, does not find its existence under the Indian law, though there are certain laws in under the IP regime in India, where the designers are trying to sought protection and taking a legal stand against serious cases of infringement and piracy.

This paper discusses about the crucial role of patents in the industry of fashion, how knockoff goods create a serious threat in the digital world, consider why designers do not usually choose to protect their work under the existing intellectual property protection, and show how patents can serve as an effective yet feasible way for designers to protect their designs.

Keywords : Design Patents, Knock offs, Counterfeiting, Smart Clothing

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Introduction

What do designers like Coco Chanel, Louis Vuitton, Dior or even Crocs have in similarity? The challenges faced by designers are huge in numbers, whether it maybe copying of their creative innovations or the rapidly changing market of trends, in the sense that the same design is in trend these for a minimum of a month or two and the next setting comes, which consumers get hooked onto very easily. Many designers rather try to protect and promote their brands by getting their names registered as trademarks, which indeed is a safety net, but the same should be accompanied by the strategic use of patents as well. Apart from the brands or luxury houses having their trademarks in common. These brands also defend their innovative style of clothing, signature, accessories through the patent, which of course is a rarity in Indian diaspora as of now, but efforts are and should be taken by the industry insiders themselves to uplift the protection for their creations and designs.

In the United States, the copyright law in designs does not afford as much protection as a design can resort through its patent. There are two different kinds of patents: design patents and utility patents. Typically, design patents refer to how a design looks, including its shape, pattern, combination of colors, configuration, or surface ornamentation. In many jurisdictions, this type of patent is also referred to as industrial design registration. On the other hand, Utility patents safeguard an item's functionality and intended use; it sense includes the basic measures and procedures regarding its functioning. Both the design as well as utility patents can be obtained for the same article or piece. The number of registration with the US Patent Office deals with is far more in utility patent registration than the design patent registration.

1. Literature Review

An invention can only be made, sold, or used by the owner or inventor for a specific amount of time under the terms of a patent. The patent system is typically intended to promote goods and innovations that are distinctive and beneficial to society. It has to be new, novel and should have some industrial application.

It also gives an authority to others to use it under agreed terms. It brings the right to legal action against the person who must have been using it without prior consent or permission, and therefore claim damages for the same.

The research elaborated on the topic of the importance of 'patents' in the fashion industry and how designers can seek protection through this form of intellectual property. The protection of that asset directly affects the revenue of a fashion house when it creates new products or materials. A fashion line's new industrial designs can also be patent-protected. Beyond conventional items like clothing, shoes, and accessories, fashion brands may also carry a wide range of patentable products, designs, and other assets. For instance, numerous companies have created patentable fragrances, cosmetics, home goods, and other lifestyle products. A design patent is a type of legal protection given to an object's decorative design. Industrial design rights include design patents. There are also a lot of benefits for the designers to get their creations patented, some which include the lack of enough alternatives for designers in the industry, they are fast to get registered, and it also serves the element of 'confidential information' which designers have incorporated in their designs.

The menace of Knockoffs and Counterfeiting, which has plagued the industry not only in the present age, but has the industry has been victim of this since a long time.

The research talks about the problem of the same and how to curb it by taking appropriate measures.

Research has also been done to seek through certain laws regulating the fashion business in India, and where designers from the industry can sought relief from, which include the Copyright Act, Designs Act, and also the Trademarks Act. But with the advent of smart clothing and technological advancements in the space of fashion, 'Patent' regime is a new dimension for beneficial protection of the industry folks.



2. Statement of Problem

The author seeks to provide the importance of 'patents' in the fashion industry through this research paper and how can this form of intellectual property provide a safety net to the designers and prevent design piracy which is a vital issue for this industry. As designers try to protect their creations through securing protection under copyrights or trademarks often, the concept of 'patents' in India is still at a developing stage.

3. Hypothesis

If the patent protection is sought by designers in the industry, then the fashion industry can experience a significant boom in the coming years.

4. Chapterisation

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4. Patents and their effectiveness in the fashion industry
5. Design Patents
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8. The concept of 'Smart Clothing'
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5. How effective are patents in the fashion industry and what are they?


An invention can only be made, sold, or used by the owner or inventor for a specific amount of time under the terms of a patent. The patent system is typically intended to promote goods and innovations that are distinctive and beneficial to society. The following three requirements must be met in order for an invention to be patentable:

1. It must be original (novel);
2. It must involve a creative idea
3. It should be suitable for industrial use.

A Patent usually is given in order to stop others from using the inventions of the person who invented the product and the one who owns it. It also gives an authority to others to use it under agreed terms. It brings the right to legal action against the person who must have been using it without prior consent or permission, and therefore claim damages for the same.

The protection of that asset directly affects the revenue of a fashion house when it creates new products or materials. If a company wants to use a new material, it may need an invention patent for the finished product, the material's composition, the equipment used to make it, the manufacturing procedure, or even a refinement of an existing feature. This makes it so that others cannot produce, market, or make use of your invention without your consent. A fashion house can do this to capitalize on their inventions by licensing them and increase the return on their investment.

A fashion line's new industrial designs can also be patent-protected. This describes any product with distinguishing visual characteristics, such as the composition, pattern, adornment of other elements, or any combination of these characteristics. A design's distinctive components, such as the materials, equipment, and process, may also be covered by a patent. Beyond conventional items like clothing, shoes, and accessories, fashion brands may also carry a wide range of patentable products, designs, and other assets. For instance, numerous companies have created patentable fragrances, cosmetics, home goods, and other lifestyle products.



Patented inventions have, in fact, captured every aspect of human life, from electric heat to micro-processors to computer programmers and also Nano-technology and even fashion industry, which is the key goal to assess in this research paper.

6. The concept of 'Design Patents'

The fashion industry is a multi-billion-dollar business both in this nation and abroad. The U.S. Patent and Trademark Office ("USPTO") has only recently granted Yves Saint Laurent eight design patents. About six more design patents have been added to Louis Vuitton's portfolio. Three of them were given to Bottega Veneta. Two Balenciaga. This is undoubtedly an old strategy because companies have long relied on design patent protection, which covers "new, original, and ornamental designs for articles of manufacture." However, more companies have started to use this strategy. Simply put: the appearance of a functional object, like shoes or a purse. Because clothing and accessories are typically not covered by trademark or copyright laws, copying is largely permitted in the United States., except for the defense provided by design patents. Thus, there is a growing reliance on this type of protection, which gives the owner the right to stop others from creating, using, or selling a product that is so similar to the one covered by the patent that an "ordinary observer" might mistake it for the protected item and buy it. Depending on the filing date, this protection is valid for between 14 and 15 years. However, just like trademark and copyright protection, patents have drawbacks of their own, namely cost and turnaround time. Patents are expensive; recent reports suggest a patent (and the associated legal fees) will cost you upwards of \$10,000. By comparison, trademark and copyright protection cost less than \$500 to register. The lag time, also known as the pendency. The turnaround time, also known as the pendency, is typically between the filing and issuance of the design patent and can range from a few months to several years. A year and a half may not seem like a very long time, but it is frequently too long to wait for the majority of clothing and accessories. Given the highly cyclical and seasonal nature of the fashion industry, a design may already be considered "so last season" by the time a design patent is granted, decreasing the likelihood that it will be copied. As a result, we frequently observe that only companies with the financial means to invest thousands of dollars in each patent seek such protection for their core products. Although design patents are generally much less frequently used in the fashion industry than other types of intellectual property, such as copyright and trademarks, they are appropriate for companies that have sizable accessory businesses, such as Louis Vuitton and Bottega Veneta. A design patent is a wise investment because these companies not only have the money to pay to protect their designs, but many of their accessories, like shoes and purses, also have a tendency to become recognizable brand items. This obviously differs from, say, a top or dress that houses only items appropriate for that particular season.

Contrasted with the United States, the European Union gives a lot more extensive protection to original creations of the designers. For instance, in 2002, the E.U. passed a law that gives fashioner designers as long as three years of unregistered protection for their designs and as long as 25 years of enlisted assurance. Balance this with the law in the United States, which comes up short on any law that explicitly targets design protection or security. To overcome this, fashion designers in the US as well as other parts of the country have been resorting to protect their designs through design patents. However, in India this concept of design patents in the apparel sector, is still at a nascent stage and is very less developed as compared to the regime in Asia-Pacific region.

A design patent, however, does not protect the utilitarian features of products, but rather only an ornamental manifestation of an invention.

However, the Indian Designs Act, 2000 provides protection for design patents in India. Industrial designs are creative endeavors that give a product a formal or ornamental appearance. A design from a member country is protected by the Indian Designs Act, 2000 in a manner similar to how designs in India are protected, it should be noted that India is also a member of the Protection of Industrial Property, 1883. It is significant to remember that India is a Convention member, a design in Norway would be accorded the same protection under the Indian Designs Act as well. But, registration in India is also a mandatory requirement for enforcing or claiming any right under the Designs Act.

The design patent initially has a 10-year protection period, but it can also be extended for an additional five years by paying renewal fees. Therefore, if a design is registered in India, its maximum validity is 15 years.

There are a lot of advantages of protecting a creation through getting a design patent for their creations : ¹

1. **Lack of adequate alternatives:** many designers do not fall under the ambit of copyright or trademark laws, however, copyright protection is available for any specific parts of a clothing or a garment, but does not cover the whole. While copyright protection emphasizes on little protection, most designers use trademarks to protect some of their designs which is limited to a recognizable logo or a mark. Thus if a designer chooses not to have a specific logo on the design of his garment, then trademark protection would not be a good option. Also, the conflict of constant overlap between the Design and Copyright Act in India which has been solved fully to an extent, always serves as a concern for the designers.

2. **Speed:** Designs patents are much quicker and easier to obtain than the utility patents which deal with the functional aspect of a product rather than the design of it.

3. **Secrecy:** It serves as an extremely important need for designers to keep their designs protected until they reveal at fashion shows or run-ways and display their collections fully. They are not published until they are granted which means that the designers are safeguarded from knockoffs both after and before the patent is granted. Even if a designer wants to put his designs out in the market before he has received a patent for the same, a 'patent pending' warning deters the potential counterfeiters from taking adequate steps with caution.

4. **Ideal for emerging young designers:** By obtaining a design patent for their innovative schemes, the young designer can be fully benefited in contrast to the already established designers, like Louis Vuitton, Gucci, who already have found recognition in the market and have acquired distinctiveness and are likely to be protected through trademark protection.

Recently, designers have been becoming very conscious in India of protecting their designs under the patent laws. Though there is copyright laws and trademarks in place, but the effective functioning of protecting their designs through patents is different and gives a much stronger headed protection in the sense that it serves as a clear warning to the perpetrators to think before and resort to copying any of the designs.


7. Knockoffs and Counterfeiting

Freedom to copy and 'referencing' according to the industry designers is hugely taken for granted at various levels of fashion and design world. These replica designs are literally categorized as "**Knockoffs**" and "**Counterfeiting**" and are more particularly discussed hereinafter.

Knockoffs are usually replicas of the original designs using the same design, color, style or quality of the material of a garment- and are sold at a much cheaper price rate. Increased availability and opportunity due to technological advancements and globalization has made manufacturing such garments and passing off as replicas/ knockoffs is a very easy task for the ground markets.

The people who work in the knockoff markets create the majority of the large designs from different fashion houses, focusing their sales on the mass market versions of the most recent collections of the designers, which eventually become accessible to the general public - at a remarkably low cost. The days of covering magazine designs and illustrations in thick black lines to stop them from being copied are long gone. Additionally, the runway displays, which were a private affair with couture garments and only a few privileged elites being a part to get a glimpse of the season's latest trends.

¹ The Fashion Industry and Intellectual Property Rights: A Win-Win Situation ILSIJLM Aanchal K Golecha



Counterfeiting, on the other hand refers to the exact copies of the brand names and logos and is termed as the cat of copying brands. Because the fashion industry is always loomed by changing trends, mostly large business and fashion houses find themselves on the hurdle of being targeted by the counterfeited markets. Something which is in trend today can be outdated or out of fashion the other day.

In India, therefore there is a need for stricter laws and provision to be in place. Needless to say, such copying becomes a normal job for a lot out there because, first and foremost, there is confusion regarding the legal interpretations and provisions of laws, as well as among inventors regarding which laws would apply to their inventions. Knockoffs represent not only the failure of laws, but also the failure in understanding the nature of work and the degree of protection necessary for it helps the legislature and the judiciary.

8. Laws Governing Fashion industry in India

Indian fashion is heavily influenced by the rich, varied and heritage culture of our country. Modern aesthetic elements and their combination with traditional clothing has been a remarkable journey in the concept of clothing in India and is hugely seen being followed at the world level.

The Trademarks Act of 1999, the Designs Act of 2000, and the Indian Copyright Act of 1957 all offer protection under the nation's intellectual property regime. Actors, writers, and artists are protected by the Indian Copyright Act of 1957. Drawings are included in the definition of "artistic works," and this includes illustrations of clothing. Fashion clothing was included in the definition of "drawings" when the Delhi High Court ruled in 2008 that printed embroidery and patterns on fabric and accessories are considered "artistic works" protected under Section 2(c) of the Copyright Act, 1957. A work of creation in India is protected by copyright from the moment it is created, and Section 2(c)(iii) of the Copyright Act is a broad provision that protects "any other work."

Contrarily, the Designs Act, 2000 protects the non-functional components of a design, such as its shape, features, pattern, configuration, composition of lines or colors, or ornamentation, applied to any 2-dimensional or three-dimensional object, or serving both forms, with the intention of only having a visually appealing appearance. The Designs Act's Schedule 3 provides an exhaustive list of articles and products in respect of which an application may be made to the Controller General of trademarks, Patents and Designs.

It is crucial to note that an artistic work as defined in section 2(c) of the Copyright Act of 1957 is not a "design" as that term is used in the act. In contrast, Section 15 of the Copyright Act states that a design that is registered under the Designs Act of 2000 will not have copyright protection, and Section 15(2) of the Act states that a design that is capable of being registered under the Designs Act but is not so registered will have copyright protection; however, this protection will end once the designer has made 50 copies of the design. In order to provide clarity in situations where there is a possibility of overlap between the two laws, Indian legislators have attempted to make both Section 2(d) of the Designs Act, 2000 and Section 15 of the Copyright Act mutually exclusive.

9. Patenting: A new black

Intellectual property protection is always a task which seems complicated, but holds very true in the fashion industry.

Fashion designers in India are eager to sought protection for their brands and to prevent competitors from making replicas of their creations. A lot of money is spent by these designers in protecting their creative designs on registering trademarks or by protecting it through copyrighted. however, designers in India have absolutely forgotten or maybe not even thought about the idea of actually protecting the designs through other types of registered intellectual property as a viable tool to meet commercial ends meet.

An approach to protecting fashion related goods and services would be through patenting the underlying technology. One famous example of this is the patent granted to Jackson in 1993 and two other designers who created the shoes for Michael Jackson that allowed him to perform on stage and showcase his dance at a 45-degree angle while performing his famous songs, Dangerous and Smooth Criminal for his world tours.²

Though patents are rarely used to protect the clothing or designs of a designer in the industry, however it can be used to protect the technology which is used to manufacture or produce fashion.

As discussed above, the fashion industry is evolving and design protection as well as patent protection may become critical for a successful design venture.

Fashion and designs do not necessarily fall under the ambit of 'patent protection' per se, however, the time is quickly changing.³ There are various aspects of a design which can be protected through patents, such as :

1. Regulation of supply chain management, such as reduction in the production cycle or tracing the supply chain
2. Automating the design process or aesthetic elements, determine customer's preferences.
3. Innovative functional designs such as some enhancements relating to technicalities or improvements in the same.
4. Sustainability including fabrics and materials, and ethical work conditions of labor and manufacturing.

And also because in the US, trademarks and copyrights does not apply to the designs who have just initiated with their brand ventures, therefore resorting to protecting their designs through design patents.

Design patents usually protect the way a product looks rather than utility patents, which safeguard how something is put to use and functions. In recent years, design patents have gained a lot of recognition, because of the alleged fight between the two giant competitors in the smartphone industry, i.e. Samsung and Apple.

Patent protects new technologies which can be incorporated into products. Examples of such patented include the production of CROCS shoes, UV-filtered textiles or fabrics, fabrics which are wrinkle free and also that are resistant to fire to water repelling textiles.⁴ They are essential to those products, in which investment of a large sum of money is required in order to complete its development to the commercial stage. Since the idea of smart clothing, which is discussed later in the paper, is a new technology, it is advantageous to consider filing patents for novel devices and processes.

10. The concept of smart clothing

Companies ranging from Microsoft to Google and also User Armour are under talks in order to launch smart-tech wearable clothes. As, fashion designers run for technology know-how and detailing, the clothing trends in abroad is amalgamating together unlikely partners- in an attempt to reshape the fashion industry.⁵


One such recent partnership can be seen within two Giant firms like Google and Levi's , in which they have brought to the market a \$300 Commuter X, a denim jacket that lets the consumer use their gestures alone in order to control their smartphones.

² Anti-gravity illusion creation method and means, n.d. Dennis Tompkins, Michael L. Bush, and Michael J. Jackson are all named in U.S. Patent No. 5,255,452 from October 26, 1992.

³ **Griffith Hack - Jennifer Wyndham-Wheeler**

⁴ *Intellectual property and the fashion industry. (2013, July 30). Lexology.*

⁵ *Google Patents: Human-to-Computer Textile Interface for Smart Clothing*



Studies also suggest the coming of years in the modern era, is also going to see a variety of ‘interesting and out-of-the-box partnerships’ between fashion companies and technology specialists.

In addition to the normal self-adjusting clothes, smart clothing involves internet connected clothing and apparel. According to the reports of Juniper research, smart clothing is the fastest growing segment in the wearable-tech sector. For now, Apple smartwatch as well as Fitbit, an activity tracker dominates the entire market relating to wearable-tech. As the fashion industry is on a rise, smart clothing as a concept is no fiction anymore. Smart clothes also differ from the normal wearable, in the sense that they will have longer accuracy and range to sustain, unlike the other fast fashion clothes which almost all consumers in the world are a victim of.

The smart clothing market had shipments of about 800,000 units in 2016, according to the US-based global market research and management consulting firm Global Market Insights Inc. By 2024, the market is anticipated to grow to be worth over \$4 billion, with shipments expected to increase at a rate of over 50% CAGR. In recent years, smart t-shirts have become one of this market's most well-liked and frequently used categories. These smart clothes, which are expected to expand at a CAGR of over 50% between 2017 and 2024, can provide biometric information like heart rate, breathing rate and volume, muscle activity, etc. that is used to optimize performance and workout schedules in the workplace. Smart coats are expected to be anticipated to grow over the coming years as a result of these products' ability to let users control their mobile devices and connect to services like music and cameras, device charging, etc. directly from their jackets. Over the anticipated period, the market for smart clothing in Asia and the Pacific is anticipated to expand significantly. This can be attributed to the expanding use of different wearable technology and the rising demand for cutting-edge features in the products. Additionally, it is anticipated that there will be a significant increase in demand for these products due to rising security concerns and rising military and defense budgets in nations like China and India.


Developers these days are even trying on developing smart clothing practical, in the sense that Google and Levi's jacket is a machine-washable clothing and can also go in a dryer. But a ‘tag’ that contains the tiny electronic pieces and a battery must be removed in order to wash it properly without it facing any damages.

Nike's self-adjust smart footwear called ‘Back to the Future’ is inspired by self-tying laces and has recently got a patent protection by the US patent office, and stars like Serena Williams and Ronaldo prompted the first edition of the shoes.

Google is also making a system that blends into the very fabric of clothing and aims at empowering the existing fashion market. Managing partner of Doug Clinton, Loup Ventures believes that the complex relation between the two, will help the fashion industry to be several billion dollars in the next few years.

But the most important question in regards to smart clothing, is the fact will anyone even buy the products without any fear of hesitation or anxiety? For one, the battery-powered clothes like phones, will always carry a risk of exploding. But given the universality of smartphones all around the world, consumers have shown that they can live with that risk. Also, the smart clothing is not cheap medium. The Ralph Lauren's self-heating jacket went on to sale for \$3000 and was put in to auction on Ebay at \$6000. But Google's CEO believes that smart clothing is an attractive feature for a consumer to explore and they might even see it as a practical investment. In the next few years, it would be more comfortable to get consumers experimenting with it in terms of designs and aesthetic features.

Novozymes, a Danish technology based company specializing in micro-organisms and enzymes, has fortunately made it's way successfully to the treatment of fabrics using enzymes. Although the company had no prior experience in the fashion industry, in 1987 it patented a method for mending jeans with a "stoned washed" texture. The process relies on an enzyme called cellulase, which strips some indigo dyes from denim to give the fabric a worn appearance.. For almost over 3 years, most of the companies involved in the manufacturing of denim business were using the enzymes developed by Novozymes under its license. Today, The company has more than 4200 active patents and applications,



and it also employs a successful proactive licensing strategy to maximize royalty income from IP support. A cork fabric called "Suberis" made by the Italian company Grindi Srl. is said to be as smooth as velvet and as light as silk. It is also washable, waterproof, stain-resistant, and fireproof. In 1988, the business also submitted an application for an international patent to safeguard its distinctive product across a wide range of nations. Along with many other uses, the fabric is made into clothing, athletic wear, and footwear. In comparison to its counterparts in the Asia Pacific, the idea of "smart clothing" is still in its infancy in India. While the initial focus is primarily on the fitness and healthcare sectors, there is a lot of room for innovation in the current product line, including gamification, introducing social incentives to encourage community / group adoption, as well as building an augmented product by providing a comprehensive set of services and charging based on usage and the Indian ecosystem is just beginning to experience the advent of wearable technology as well. The opportunities are enormous in the other sectors as well. Here is a look at some of the top Indian businesses that are leading the way in the smart clothing sector:

11. Conclusion

The author supports the view of the hypothesis, that the presence of patents in the fashion industry, definitely serves as the boom to the designers and their creative elements and hence designers without any hesitation apart from resorting to the copyright and trademark registration for their designs, should also be giving in for 'patent registration', because in the near future through technological advancements and growth of new inventions in the market and even 'smart clothing' which is going to serve the Indian diaspora by 2024 or in the coming years in an exponential manner, as elaborated by the author the future of patents in the industry of fashion, cannot be denied.

12. Suggestions

In India, the registration of designs is gradually gaining importance as the number of purposes increases, but it is still a much less popular low-profile IP protection. The Indian fashion industry is expanding quickly. As a result of its growing importance to the global economy, it needs adequate intellectual property rights protection to continue expanding. The Indian fashion industry is currently struggling with issues such as insufficient laws, design piracy, the never-ending business of knockoffs and counterfeiting, and as a result, the industry's growth is severely hindered. The majority of designers are reluctant to register their designs in order to protect them. It should be remembered that under Indian law, unregistered designs are in no way protected. Despite being more accessible than patents, design registration is a type of IP right that is less frequently used in India. Only 10,213 novel functions for diagram registration were submitted in India between 2016 and 2017, compared to 45,444 patent applications. The entry of top filer designers like Sabyasachi into the Indian sketch IP market would undoubtedly spur businesses to use sketch IP to stem losses from piracy. In order to protect fashion, the current intellectual property regime needs to be improved.