

# THE PATENT ACT 1970

*Discoveries such as fire or the wheel, in the primitive ages, or electricity, the radio, the car or the aeroplane not too far long ago and the electronic chip and its countless applications very recently, have moulded our ways of living. The change is very fast and mind blowing. Knowledge is always changing, it is never static and on the move it is not dogmatic. The productivity of knowledge in the field of science and technology during the years laid the foundation for the rise of industry and for today's material well being. The development of society is directly associated with the development of technology, it's a basic need of the society.*

## **What is patent?**

### **Patent**

A patent may be defined as a statutory privilege granted by the government to inventors, and to other persons deriving their rights from the inventor.

It is a legal monopoly granted to the owner of new invention, which is capable of industrial use, for a limited period of time.

The owner can sell, or grant licenses to other only to use it, its form of industrial property.

### **Origin**

The word patent is derived from the latin word '*Patere*' which means 'to open'. The Crown conferred certain rights or privileges, on one or more individuals, including monopoly rights in respect of invention.

### **Object**

Protection of the invention is the object of the Law of Patent.

- Encouragement scientific research, new technology and industrial process;
- Grant exclusive privilege to own, use, or sell the method or the product patented for a limited period.
- Stimulate new inventions of commercial utility;

## **Basic Principle**

### ***Technology –Basic strategies: -***

Technology means the discoveries and development throughout the world and along the ages, which normally aims at and result in providing to people the means of providing goods, rendering services and simply living their lives in comfortable and least consuming ways.

Patent relates to new, useful, and non-obvious process, machines, manufacturers, composition of matter, plants, or design. Another form of technology is, which is more frequent, is the undisclosed proprietary information which is superior to the ordinary level of information in the industry concerned.

## **Invention**

The fundamental principal of the Patent law is that the patent is granted only for an invention, which must be new and useful.

Invention means a new product or process involving an inventive step and capable of industrial application. Inventive step means a feature that makes the invention not obvious to a person skilled in the art.

- (i) art, process, method or manner of manufacture;
- (ii) machine, apparatus or other article;
- (iii) substance produced by manufacture,

and includes any new and useful and improvement of any of them, and an alleged invention.

### **What are not an invention?**

The following are not invention within the meaning of the Act:-

- a) an invention which is frivolous or which claims anything obviously contrary to well –established natural laws;
- b) an invention the primary or intended use or commercial exploitation of which could be contrary to public order or morality or which causes serious prejudice to human, animal or plant life or health or to the environment;
- c) the mere discovery of a scientific principle or the formulation of an abstract theory or discovery of any living thing or non-living substances occurring in nature;
- d) the mere discovery of any new property or new use for a known substances or of the mere use of a known process or machine or apparatus unless such known process results in a new product or employs at least one new reactant;
- e) a substance obtained by a mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substance;
- f) the mere arrangement or re-arrangement or duplication of known devices each functioning independently of one another in a know way;
- g) omitted by 2002 Act;
- h) a method of agriculture or horticulture;

- i) any process for the medicinal, surgical, curative, prophylactic or other treatment of human beings or any process for a similar treatment of animals or plants to render them free of disease or to increase their economic value or that of their products.
- j) Plants and animals in whole or any part thereof other than micro-organism but including seeds, varieties and species and essentially biological processes for production or propagation of plant and animals;
- k) a mathematical or business method or a computer program per se or algorithms;
- l) a literary, dramatic, musical or artistic work or any other aesthetic creation whatsoever including cinematographic works and television productions;
- m) a mere scheme or rule or method of performing mental act or method of playing game;
- n) a presentation of information;
- o) topography of integrated circuits;
- p) an invention which in effect, is traditional knowledge or which is an aggregation or duplication of known properties of traditionally known component or components.

### **Non Patent able:**

Patent of an invention relating to atomic energy shall not be granted.

## **Procedure**

### **Who can apply for patents?**

- a) True and first inventor of the invention;

- b) Assignee of the true and first inventor of the invention;
- c) Legal representative of the deceased person who immediately as entitled to make such application before his death.

An application may be made by any of the above persons either alone or jointly with any other persons.

## **FORM OF APPLICATION**

- 1) Every application for a patent shall be for one invention only, in prescribed form and filled at patent office only.
- 2) Where an application is made by assignee or legal representative he shall furnish the proof of right to make the application in limited period.
- 3) Every application shall state that the applicant is in possession of the invention and name the owner claiming to be the true and first inventor;
- 4) If the application is made by one of the applicant, then the application shall contain a declaration that the applicant believes the person so named to be the true and first inventor.
- 5) Every application shall be accompanied by a provisional or a complete specification.

**Application Form 1:** An application is to be made in triplicate and shall be accompanied by three copies of the provisional specification in **Form 3**, or the complete specification in **Form 3A**.

Provisional specification should describe the invention and that it should begin with a title sufficiently indicating the subject matter of the invention.

Complete specification should fully and particularly describe the invention and the method by which it is to be performed.

## **PROVISIONAL SPECIFICATION**

When an application for a patent is accompanied by a provisional specification, a complete specification shall be filed within 12 months from the date of filling of the application; the applicant shall be abandoned if the complete specification is not filled.

The act has also provided for an exception where the complete specification may be filed at any time after 12 years but within 15 months from the date of filing of the application.

- a) It should begin with title & describe the invention.
- b) An applicant is not bound to detail the advantages of his invention in the provisional specification.
- c) Description of the general nature of the invention, its field of application and the anticipated result.
- d) It need not contain the claims.

It enables the inventor to record a priority of his invention to test and develop his invention to the interested person so that he may secure financial or other assistance for prosecuting the invention.

The inventive idea requires a gestation period for the development and perfection of an invention. It enables the inventor to record a priority of his invention to test and develop it.

## **ADVANTAGE**

The Applicant gets a maximum period of 15 (fifteen) Months to file complete specification after filling the application. During this period he may conduct further research on the subject matter of his invention

and perfect the method of carrying out the invention or introduce further developments or addition to the invention, which may incorporate in the complete specification and the claims there under.

## **COMPLETE SPECIFICATION**

A Complete specification filed after a provisional specification may include claims in respect of development of, or additions to, the invention which was described in the provisional specification, being developments or additions in respect of which the applicant would be entitled to make a separate application of patent.

**The complete specification must contain the following points:**

- 1) it must begin with the title;
- 2) indicate the subject matter of the invention;
- 3) the method how it is performed, describe the invention;
- 4) drawing may be supplied which would form part of the specification,
- 5) applicant to furnish models or samples illustrating the invention,
- 6) it should end with the claim, define scope of the invention for which protection is sought, should be clear and succinct and should be fairly based on the matter disclosed in the specification.

## **Examination of Application (under section 12)**

When complete specification has been filed by the applicant, the examiner makes a report and submits to the controller within 18 months;

- a) application and specification relating to Acts and rules;

- b) lawful ground of objection;
- c) result of investigation made under section 13.
- d) any other matter as may be prescribed.

The Examiner to whom an application for patent is referred makes search for investigation by previous publication and by prior claim.

### **Advertisement and Acceptance**

On acceptance of complete specification the controller shall give notice to the applicant and advertise in the official gazette and even open to public inspection.

#### **Effect of acceptance:**

Until the sealing of patent, applicant shall have right and privilege if a patent for invention has been sealed on the

Date of advertisement.

Exception, how ever, is the abridgement of the right to institute proceeding for infringement until the patent has been sealed.

The true and the first inventor or his legal representative may submit an application (**Sec6**) in the prescribed form and manner to the Patent Office (**Sec7**) .

- \* one invention has to be filled for one invention only,
- \* that the applicant is in possession of an invention,
- \* about the name of the owner claiming to be the true and first inventor,

### **JURISDICTION**

Head office and Branch office:-

The head office of patent office is in Calcutta

The branch offices for registration of patent is in Bombay, Delhi, Madras.



The Controller General of Patents, Design and Trademarks, is the controller of Patents for the purpose of the Act.

In respect of all other proceeding under the act the jurisdiction is determined by the location of principal of business of the applicant for a patent. The head office or the branch office within whose territorial jurisdiction the principal place of business is located will be the appropriate office.

### **The territorial Jurisdiction of Branch office**

q)

### **Infringement of patents**

The scope of the monopoly rights conferred on the patentee; for infringement is the violation of those rights.

The law confer upon the Patentee certain right, doing anything by anyone else that the patentee without the authority of law, which the patentee alone has the right to do, is infringement.

A Patent granted under the provisions of the Patents Act confers upon the patentee exclusive right to make, use, exercise, sell or distribute the patented article or substance, and to use or exercise the patented process.

### **The Determination of Infringement involve following question;**

1.The extent of monopoly right conferred by the patent which has to be ascertained by a construction of the specification;

2.whether the alleged acts amount to making, using,exercising,selling or distributing a product; a product in the case of a process patent;

3. whether what the alleged infringer is doing amounts to an infringement of the monopoly conferred by the patent grant.

In essence what the law of patents is about is stopping people from using things.

To prevent so happening, the law provides a remedy. He can file a suit in a civil court, section 108 deals with reliefs in suits for infringement. Under section 109 and 110, exclusive licensee can also take proceedings against infringement. The relief could be claimed and limitation with regard to deal in section 111, 112, 114. Section 113 deals with the cost, in case the validity has been certified by the High court and section 106 relief in cases of groundless threats of infringement proceedings. Section 107 deals with defense in suits for infringement.

### **Ground of Defense**

On the ground making, using the patented article, or importation of any machine or apparatus or other article or medicine or drug, or using of any process was done by the Government or on its behalf any person for purpose of experiment or research including imparting instruction to pupils. The suit could be resisted on the ground that the defendant was not aware of the patent, or had no reasonable means of making himself aware of its existence.

If the defendant could show that alleged infringement is not novel at the date of the patent, it would be a good defense, its known as "Gillette defense" (Razor Co. V American Trading Co. Ltd 30 RPC 465 (HL)) :-

The defense was that the alleged infringement was not novel at the date of the plaintiff's letters of patent is a good defense in law.

### **Infringement -Relief**

- 1 An injunction; and at the option of the plaintiff;
- 2 Damages or account of profits.

## Preventive & Temporary relief

Specific relief given by preventive party from doing that, which he is under an obligation not to do, is called a preventive relief.

For temporary injunction court applies following tests:-

- \* Whether plaintiff has prima-facie case;
- \* Whether the balance of convenience is in favour of the plaintiff;
- \* Plaintiff would suffer irreparable injury.

## **Jurisdiction**

The Suit is governed under the C.P.C., 1908, The cause of action has arisen in a place within the jurisdiction of the court where the suit is to be filed. The High court has ordinary jurisdiction to entertain the suit.

The procedure to be followed in a suit is contained in sec 26 to 35A of the C.P.C. and in rules of first schedule. When the suit is filed before the High court, these provisions will apply subject to any rule by the High Court under the Section 158 of the Act.

## **Pleading:-**

Every pleading should contain a statement in a concise form of the material facts on which the party pleading relies for his claim or defense, as the case may be, but not the evidence by which they are to be proved (order 6. rule 2).

## **Plaintiff not entitled to sue:-**

The right to sue for infringement belongs to the registered proprietor of a patent and registered exclusive licensee. Any alleged unregistered

assignment before granting the license or before action is irrelevant. The defendant will therefore succeed on this ground only if the plaintiff's name is not registered as proprietor of the patent or as the exclusive licensee. If the defendant wants to challenge the correctness of the entry in the register, he must move for rectification of register under section 71.

### **Denial of infringement:-**

Where the defendant had denied infringement but admitted having imported the substance concerned and denied knowledge of the process used for making it, an application by the plaintiff for particulars of the method used in making the material so imported was refused.

### **Leave or license to use the invention:-**

The defendant should state the full particulars of the leave or license under which he is using the invention. Where the permission to use is based on some written document, he should give particulars of the document. If the use is made on the basis of an oral permission, the particulars of the time and place when such permission was given should be stated. In either case, the burden of proving the existence of the leave or license is on the defendant.

### **Scientific advisers:-**

In any suit for infringement or in any proceeding before a court under this Act, the court may at any time, and whether or not an application has been made by any party for that purpose, appoint an independent scientific adviser to assist the court or to inquire and report upon any such question of fact or of opinion as it may formulate for the purpose.

### **Innocent infringement:-**

Section -111(1) provides that if the infringement was committed during the period when the renewal fee was due but remain unpaid, the Court reuse to grant any damages or account of profits in respect of such infringements.

Failure to pay renewal fee – Section 111(2) provides that if the infringement was committed during the period when renewal fee was due but remained unpaid, the Court any refuse to grant any damages or account of profits in respect of such infringements.

The court has discretion in the matter. This does not affect the power of the Court to grant an injunction.

### **Patent offences –**

Section 124 of the Act makes provision with regard to offences committed by a company. The person who is in charge, of and is **responsible** for it for the conduct of the Business at the time when the offences is committed without his knowledge or that hew had exercised all due diligence to prevent the commission of such offence.

If it is proved that offence has been committed with the knowledge of the director, company secretary, manager such person is guilty and shall liable proceed against that person.

Under the patent Act omission or commission of the certain Act are punishable . These are discussed below.

### Contravention of secrecy provision - Section 118

Where an application for a patent relates to an invention which is consider relevant for defense purposes, the Controller may under Sect 35(a) give directions prohibiting or restricting the publication or communication of information relating to such invention. A person failed to obey, liable for the fine and imprisonment of 2 year or with both.

A person resident in India can directly make application in foreign country, without controller permission. If similar application has already file then by controller order you are prohibited for 6 week period. If contravention application is made then punishable for 2 years or with fine.

#### Failure to supply certain information

Every patentee and every licensee is required to furnish to the controller similar periodical statement about the commercial working of the patent . Failure to supply the forgonong information is an offence punishable or with fine which extend to one thousand rupee.

#### Falsification entry in the registrar :-

If any person makes any false entry in the registrar or tender false evidence liable to punishable term of 2 year or with fine.

#### Wrongful use of the words “Patent Office” :-

Sec 121, If any person uses of his place of business or in any document or in any manner the words “patent office” or any other word officially connected with the Patent office, liable to punishable up to 6 month with fine or with both.

#### Unauthorized claim of patent right :-

Making a false representation by a person that any article sold by him is patented in India or is the subject of an application for a patent in India is an offence punishable with fine up to five hundred rupee, or with both.

#### False trade description :-

A false indication that the goods are the subject of an existing patent amount to a false trade description, under section 2(1) (f) and Section 1(1) (u) of the Trade Merchandise Mark Act, 1958, punishable for fine and imprisonment or with both.

#### Practice by non-registered patent agent :-

A person cannot describe himself or hold as a patent agent unless he is registered as agent under the Act.

A company or corporation completely prohibited from describing itself or holding out itself as patent agent. Every partnership member must be registered as a patent agent.

#### Offences by companies

Section 124, A company committing any offence under this Act, the company as well as the person in charge is liable for punishment.

### **Power of the controller, Registrar of Patents and Patent office**

Chapter XIII deals with Registrar of Patents (Section 67 to 81)

Chapter XV deals with the powers of the Controller generally (Section 77 to 81)

#### The Controller of Patent Act 1970 (Section 73(1,2,3,4,5))

The Central Government appoints examiners and other officers as a controller as he may authorise them, to discharge the functions under his superintendence.

The Controller has power to withdraw or transfer by his special order.

Disqualifies the officers and the employees of the patent office from acquiring or taking, directly or indirectly, except by inheritance

or bequest, any interest in any patent issued by that office, during the period for which they hold their appointments.

Require the employees of the patent office to observe secrecy introspect of the confidential information and documents to which they may have access in the discharge of their duties>

## **Register of Patents**

Under Section 72(1),Section (2)

Register of Patents is kept at the Patent office, under the Control and management of the Controller, the register is open to public inspection.

- the names and addresses of the guarantors of the patents;
- notification, licenses, amendment, extension, revocation of patent;

## **validity**

under section 69

the assignment of patent or share in a patent a mortgage, license, or the creation of other interest must be in writing. The application of such document filled in a prescribed manner within 6 months, the agreement of parties reduced in a prescribed form.

## **Power of Controller**

The Controller is not a court while exercising jurisdiction, for limited purposes he has power i.e.,:

- 1) Summoning and enforcing attendance of any person and examining him on oath, requiring discovery and production of documents;
- 2) Issuing commissions to examine witnesses and evidence;
- 3) To consider and order various matters raised before him;
- 4) to decide matters effectively in a judicial manner;



5) Controller take oral evidence or he may allow any party to Cross Examine any person on the contents of his affidavit, if he thinks.

6) some discretionary power means something to is to be done according to law and not humor.

6) to extend the time on any application.

Clerical error :- The Power of review under the aforesaid provisions has definite limitations. All error cannot be rectified. Only of the clerical in nature could be done. Mistakes are not covered. its wrong of action, an error is a wrong of omission. Both produce unintended result. An error may arise out of or occur from an accidental slip or omission or it may be inadvertent. A clerical error is a writing or typing or is obvious and patent.

The law of evidence, law of limitation, principal of res-judicata not applicable to him, thereby it not converted in to court of judicature, Only such power enable him to decide matter effectively in judicial manner.

## **Review & Rectification**

There are two circumstances where an authority has the occasion to reconsider his order, by way of

### **Review**

Review means judicial re examination of a case, in certain circumstances. It is undertaken to rectify mistake of the parties or of their attorneys or of the courts or of the Tribunal in particular proceedings. It is also exercised on the discovery of new and important matter of evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made.

## **Review used in two different sense**

- 1) a procedure review which is either inherent or implied in a court or tribunal to set aside a palpably erroneous order under the misapprehension by it.
- 2) A review on merits when error sought to be corrected is one of the law and is apparent from the face of the record.

Normally a tribunal does not have the power to review or reverse its own order. But the Patent Act, 1970 provides to the controller to review his own decision made with in prescribed time and manner.

## **Appeal**

Review on merits is an appeal and its rehearing, reconsideration of the order of the lower authority by the higher authority. The prayer of modification of an order of the inferior authority is an appeal. Appeal is a strict legal remedy and its depend on facts and laws.

**Section 8** requires the applicant who is a foreign national also to declare all relevant information a respects invention for which has already applied for patent in the foreign country.

    **Body of specification**

Contain details of particular art, meaning of technical expressions used to describe the invention. Drawing may form time to time an essential part of specification, it is not necessary to describe manner in which it performed with wealth or of detail.

**The following sections proceeding always take at head office**

| <b>Sr</b> | <b>Proceeding's</b>  | <b>Section</b> |
|-----------|--|----------------|
| 1         | Grant and sealing of Patent  | Section 43     |
| 2         | Amendment of patent granted to diseased applicant  | Section 44     |
| 3         | Application for controllers direction to co-owners   | Section 51     |
| 4         | Application for grant of patent to true and first inventor pursuant to court order in a revocation proceeding. | Section 52     |
| 5         | Application for restoration of lapsed patent   | Section 60     |
| 6         | Revocation of patent or amendment of complete specification pursuant to central governments directions         | Section 65     |
| 7         | Application for registration of documents relating to assignment etc.  | Section 68     |
| 8         | Maintenance of register of patent agents   | Section 125    |
| 9         | Requests for information relating to patents   | Section 153    |
| 10        | Application for a duplicate patent   | Section 154    |

The Branch offices of the patent office at Bombay and Madras, and also specifies offices of patent office.

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|--|--|
| Branch Office of the Patent Office at Bombay | The States of Gujarat, Madhya Pradesh and Maharashtra and Goa,Daman,Diu and Dadra,Nagar Haveli   |
| Branch Office of the Patent Office at Madras | The States of Andra-pradesh ,Karalla, My sore and Tamil nadu and Union territories of Laccadive,Miniocoy and Amindivi Islands and Pond cherry    |
| Branch Office of the Patent Office at Delhi  | The States of Haryana, Himachal Pradesh, Jammu & Kashmir, Punjab, Rajasthan and Uttar Pradesh and the Union Territories of Chandigrah and Delhi. |