



## **Overview of Indian Patent Law**

### **Introduction**

Patent Law has been promulgated with the objective of promoting the progress of science and technology. It promotes the progress of science and technology by granting to inventors exclusive rights over their inventions for a limited period of time. It is believed that the grant of exclusive rights gives an opportunity to commercially benefit from an invention. The possibility of gaining commercial benefit is believed to encourage inventors to invent and investors to invest, which in turn promotes the progress of science and technology.

A patent can be defined as a grant of exclusive rights to an inventor over his invention for a limited period of time. The exclusive rights conferred include the right to make, use, exercise, sell or distribute the invention in India. The term of a patent is twenty years, after the expiry of which, the invention would fall into the public domain.

### **Requirements for a patent**

Patents are granted only after the satisfaction of certain requirements, which include the patentable subject-matter, industrial application, novelty, non-obviousness and specification.

### **Patentable subject matter**

To be patentable, an invention should fall within the scope of patentable subject matter as defined by the patent statute. To be patentable subject matter in India, the invention must either be a product or a process. With regard to medicine or drug and certain classes of chemicals no patent was granted for the product itself even if new, only the process of manufacturing the substance was patentable. After the Patents Amendment Act, 2005, the provision relating to food, drugs and other chemicals has been omitted. Both product and process patents are now available for Food and Drugs.

An invention is not eligible for patentable subject matter, if it falls within the scope of Non-patentable inventions mentioned under section 3 of the Patent Act. The following are not inventions within the meaning of the Patent Act-

- An invention which is frivolous or which claims anything obvious or contrary to well established natural laws;

- An invention the primary or intended use or commercial exploitation of which would be contrary to public order or morality or which causes serious prejudice to human, animal or plant life or health or to the environment;
- The mere discovery of a scientific principle or the formulation of an abstract theory or discovery of any living thing or non-living substance occurring in nature;
- The mere discovery of any new property or mere new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant;
- 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;
- The mere arrangement or re-arrangement or duplication of known devices each functioning independently of one another in a known way;
- A method of agriculture or horticulture;
- Any process for the medicinal, surgical, curative, prophylactic, diagnostic, therapeutic or other treatment of human beings or any process for a similar treatment of animals to render them free of disease or to increase their economic value or that of their products.
- Plants and animals in whole or any part thereof other than micro-organisms but including seeds, varieties and species and essentially biological processes for production or propagation of plants and animals;
- A computer programme per se;
- A mathematical method or a business method or algorithms;
- A literary, dramatic, musical or artistic work or any other aesthetic creation whatsoever including cinematographic works and television productions;
- A mere scheme or rule or method of performing mental act or method of playing games;
- A presentation of information; topography of integrated circuits and
- An invention which, in effect, is traditional knowledge or which is an aggregation or duplication of known properties of traditionally known component or components.

## **Industrial Application**

A patent can be obtained only if an invention is applicable in an industry.

## **Novelty**

The invention claimed must be novel indicating that it should be new at the time of conception. Novelty of invention must be considered in the light of prior art. Prior art means the technology that is relevant to the invention and was publicly available at the time the invention was made. It includes prior specifications, patents, printed and published literature and other materials relating to the invention. An invention is not novel if it can be anticipated in the light of prior art.

## **Non-obviousness/Inventive step**

An invention should not be obvious to a person having ordinary skill in the art to which it relates. If the invention is obvious and does not have any inventive step, it is not patentable. In order to be ineligible for a patent, an invention should not be obvious at the time of conception of the invention and not at the time of contention of obviousness.

## **Specification**

Specification is an essential part of a patent. It should consist of the subject-matter, description and at times the drawing of the invention indicating its scope. The specification has to enable a person with ordinary skill in the art to practice and use the invention. It should also describe the best mode of performing the invention.

## **Procedural requirements**

To obtain a patent, an application for a patent in the prescribed form along with the prescribed fee has to be filed in the appropriate patent office. Examiners of patents scrutinize the application accompanied by a specification so that it satisfies the requirements. After examination, the Patent Office may raise objections and once the applicant convinces the examiner that the invention is eligible for a patent, the Controller of Patents will put the specification in the Official Gazette and on its acceptance without any controversy, a patent will be granted.

A patent grant gives the patentee the exclusive right to make or use the patented article or use the patented process by preventing all others from making or using the patented article or using the patented process. The patentee can assign, grant licenses or deal for consideration.

## **Assignments**

A patentee may assign the whole or any part of the patent rights to the whole of India or any part thereof. There are three kinds of assignments: legal assignment, equitable assignment and mortgages. An assignment of an existing patent is a legal assignment where the assignee may enter his name as the patent owner. A certain share given to another person is called an equitable assignment and a mortgage is when patent rights are wholly or partly transferred to obtain money.

## **Licenses**

A patentee may, by a license, permit others to make, use, or exercise, the invention which otherwise would not be allowed. The license should be in writing and the terms of the license must be given in the application filed with the Controller. A license may be given in express terms or implied from the circumstances. An exclusive license excludes all other persons including the patentee from the use of invention in a limited license the limitation may arise as to persons, time, place, manufacture, use or sale.

## **Compulsory Licenses and Government use of inventions**

Under certain circumstances like when reasonable requirements are not satisfied, a very high royalty is quoted, when a patent cannot work without another related patent or on notification by the Central government, the Controller can grant a license to an interested person. The Central or State government can use for a purpose of its own all patented inventions or processes either with or without royalty.

## **Revocation of a patent**

A patent may be revoked by various modes namely revocation in the public interest by the Government or relating to atomic energy by Controller. A patent may also be revoked for non-working. The High Court may revoke a patent on noncompliance with the requirements for use of an invention or on petition by a person interested on various specified grounds.

A patentee may at any time offer to surrender his patent by giving notice to the Controller, who after hearing the parties may revoke the patent.

## **Infringement of patents**

Infringement of a patent is the violation of the exclusive rights of the patentee. Determination of infringement depends on the scope of exclusive rights of the patentee, whether the infringer's acts amount to making, using, selling or distributing a product or using a method and if in fact the acts amount to an infringement. The burden of proof is on the patent owner for proving infringement.

## **Defenses**

The defendant in a suit for infringement may plead one or more defenses. He can claim that the patent owner is not entitled to sue for infringement or deny any infringement. Any leave or license express or implied to use the invention does not amount to infringement and where infringement is invalid on certain grounds. Acts done in connection with government use, experiment, research, education and falling within the scope of innocent infringement or done after failure to pay renewal fee or before the date of amendment of the specification do not amount to infringement. A defendant may also counter claim for revocation of patent.

## **Remedies**

Injunctions act as a preventive relief to the patentees. The patent owner at the start of a trial can request for an interim injunction in order to restrain the infringer from continuing the infringement to prevent further losses. Permanent injunction is given based on the merits of the case at the end of the trial. A patent owner is entitled to the relief of damages as compensation to the patentee and not punishment to the infringer.

The patent owner may also opt for the account of profits where he has to prove use of invention and the amount of profit derived from such illegal use.