

## UNIT 4 ECONOMIC LAWS

### INDIAN PATENT LAWS

#### INTELLECTUAL PROPERTY RIGHTS

##### MEANING

Intellectual property rights are the rights given to persons over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time.

IPR is the body of law developed to protect the creative people who have disclosed their invention for the benefit of mankind. This protects their invention from being copied or imitated without their consent.

The term Intellectual property includes the following classes of Properties:

1. Patents
2. Industrial Designs
3. Copyrights
4. Trademarks
5. Trade Secret

1. Patents- In case of Patents, the property consists of the exclusive right to use the invention patented, to grant licences to others to exercise that right or to sell that right to a third party.

2. Industrial Designs- Industrial Design protection is provided for a shape, configuration, surface pattern, colour, or line (or a combination of these), which, when applied to a functional article, produces or increases aesthetics, and improves the visual appearance of the design, be it a two-dimensional or a three-dimensional article.

3. Copyrights- Copyright is a legal term describing rights given to creators for their original literary, musical or artistic works which allow them to control their subsequent use. These include for example:

- a. computer software
- b. drawings, maps, charts or plans
- c. photographs and films

4. TradeMarks- A trademark is a word, phrase, symbol, or design that distinguishes the source of products (trademarks) or services (service marks) of one business from its competitors. In order to qualify for patent protection, the mark must be distinctive. For example, the Nike "swoosh" design identifies athletic footwear made by Nike.

5. Trade Secrets-

A trade secret is a formula, process, device, or other business information that companies keep private to give them a business advantage over their competitors.

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## **THE PATENTS ACT**

### **DEFINITION OF PATENT**

The exclusive right granted by a government to an inventor to manufacture, use, or sell an invention for a certain number of years.

**Assignee** -includes the legal representative of a deceased inventor.

**Invention** means any new and useful-

- (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 improvement of any of them, and an alleged invention

**Legal Representative** means a person who in law represents the estate of a deceased person

**Patentee** means the person for the time being entered on the register as the grantee or proprietor of the patent

**True And First Inventor** does not include either the first importer of an invention into India, or a person to whom an invention is first communicated from outside India

### **ADVANTAGES OF OBTAINING A PATENT**

1. Patents are exclusive legal rights given to an inventor that prevent other individuals or businesses from profiting from their creation
2. Having a patent means that only the inventor can decide how their creation is used. They can license the invention for use by third parties or manufacture and sell it themselves.
3. Filing a patent also gives the inventor a legal monopoly on selling, using, making, distributing, importing, or exporting their creation for a specified time period.
4. It helps the inventor to obtain an official record of his invention from the government
5. The patentee can bring a suit for infringement of his patent and pray for injunction, damages or an account of profits against the person.
6. It gives him the exclusive right to use his invention.

The term of every patent is 20 years and it is maintained by paying the renewal fees at every succeeding year

## **TRIPs Agreement**

The World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) defines 'patentable subject matter' as inventions in all fields of technology provided that they:

- are new;
- involve an inventive step; and
- are capable of industrial application.

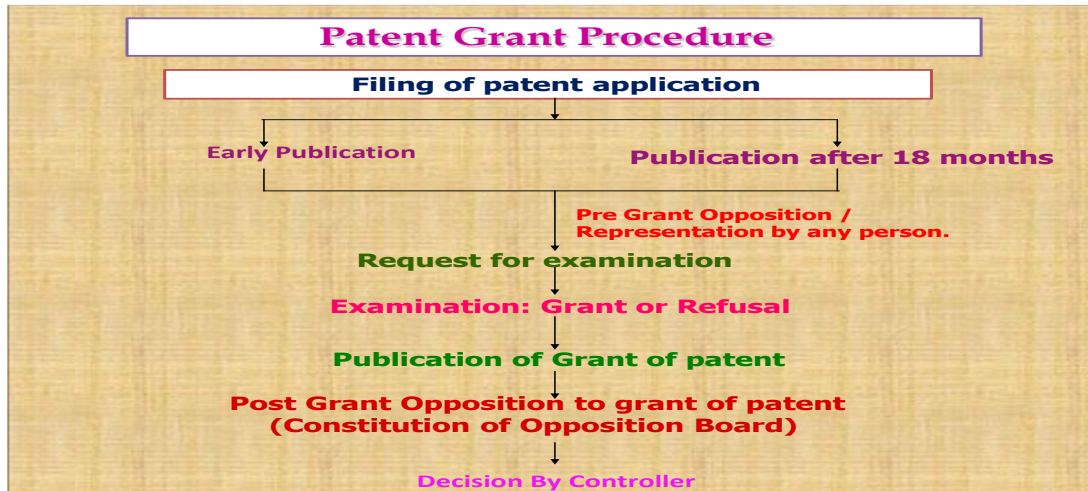
## **INVENTIONS NOT PATENTABLE**

### **(Section 3 of the (Indian) Patents Act, 1970)**

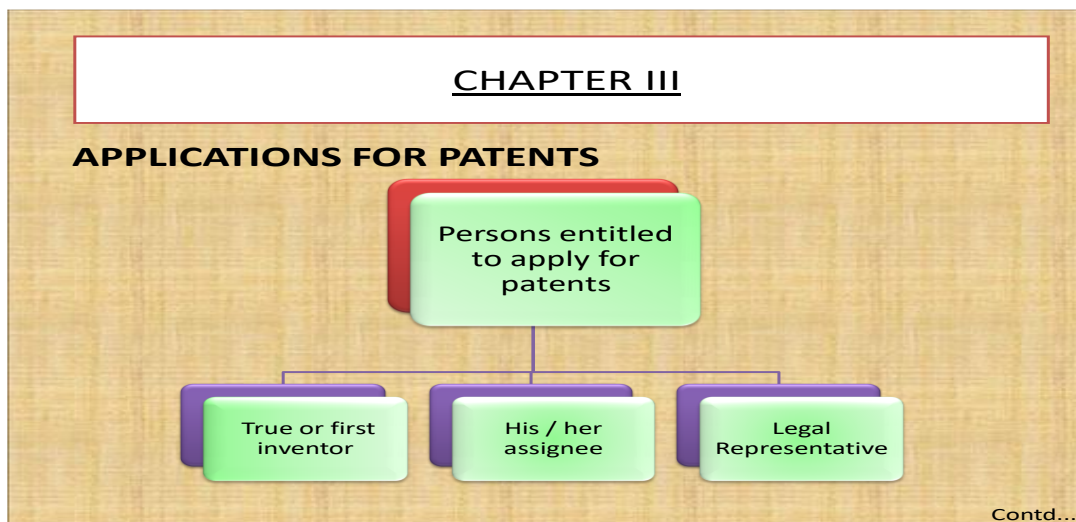
The following are not patentable in India:-

1. An invention, that is frivolous or that claims anything obviously contrary to well established natural laws;
2. An invention, the primary or intended use of which would be contrary to law or morality or injurious to public health;
3. The mere discovery of a scientific principle or the formulation of an abstract theory;
4. The mere discovery of any new property or 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;
5. 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;
6. The mere arrangement or rearrangement or duplication of known devices, each functioning independently of one another in a known way;
7. A method of agriculture or horticulture;
8. Inventions relating to atomic energy.
9. Any process for the medicinal, surgical, curative, prophylactic or other treatment of human beings or animals.
10. Plants and animals in whole or any part thereof other than microorganisms.
11. Mathematical or business method or a computer program per se or algorithms.
12. Literary, dramatic, musical or artistic works, cinematographic works, television productions and any other aesthetic creations.
13. Mere scheme or rule or method of performing mental act or playing game.
14. Presentation of information.
15. Topography of integrated circuits.
16. An invention which in effect, is traditional knowledge or is based on the properties of traditional knowledge.

## PROCEDURE TO APPLY FOR PATENTS



1.



### Ground for Opposition of patents

Post-grant Opposition can be filed at the appropriate office by any interested person within 12 months from the date of publication of the grant of patent in the Indian Patent Journal. The grounds of opposition as provided under section 25 (2) of the Patent Act 1970, are as follows:

- The patentee or the applicant wrongfully obtained the invention from the opponent or a person from whom the opponent derives title;
- The invention was published before the priority date, subject to the limitations on anticipation under section 29 Patents Act, 1970;
- The invention was previously claimed in an Indian application having an earlier priority date;
- The invention was publicly known or publicly previously used in India and if an invention relates to a process then it shall be deemed to publicly known or publicly

used in India when a product made by that process had already been imported into India before the priority date;

- The invention lacks any inventive step over any prior publication or over any prior use in India;
- The subject matter of the invention is not patentable under the Patent Act 1970;
- The disclosure of the invention or the method by which it is to be performed is not sufficient and clear;
- The patentee has failed to disclose or has furnished false information regarding foreign applications;
- There is no disclosure or wrong mentioning of the source and geographical origin of the biological material used for the invention;
- The invention is anticipated by the tradition knowledge in India or elsewhere.

The Controller shall notify the applicant and shall give to the applicant and the opponent any opportunity to be heard before deciding the case.

## **RESTORATION OF LAPSED PATENT**

### **Applications for restoration of lapsed patents**

The patentee or his legal representative, and where the patent was held by two or more persons jointly, then with the leave of the Controller, one or more of them without joining the others, may, within one year from the date on which the patent ceased to have effect, make an application for the restoration of the patent.

An application for restoration of the patent shall contain a statement verified in the manner fully setting out the circumstances which led to the failure to pay the prescribed fee. The Controller may also require from the applicant such further evidence as he may think necessary.

The controller examines the information provided by the patent holder for the restoration of patent. If the controller is convinced that the evidence supported that non payment was unintentional and there has been no undue delay in making the application, the application along with the patent will be published in the official gazette.

The restoration application can be opposed by any person interested by filling Form 14 along with the fee within two months from the date of publication of the application for restoration. Once the notice of opposition is filed, the controller will notify the patentee and would provide him with a copy of notice. The controller will also give the patentee and the opponent an opportunity to be heard before deciding the case.

If there is no notice of opposition filed, the controller rules the decision in favour of the applicant to restore the patent. Thereafter, upon paying the unpaid fees and additional fees within one month from the date of order of the controller allowing the application for restoration, the said decision is published in the official gazette.

**Rights of patentees of lapsed patents which have been restored-Same right as given to original patentee.**

## **SURRENDER AND REVOCATION OF PATENTS**

### **Surrender of patents Sec 63**

(1) A patentee may, at any time by giving notice in the prescribed manner to the Controller, offer to surrender his patent.

(2) Where such an offer is made, the Controller shall publish the offer in the prescribed manner, and also notify every person other than the patentee whose name appears in the register as having an interest in the patent.

(3) Any person interested may, within the prescribed period after such publication, give notice to the Controller of opposition to the surrender, and where any such notice is given the Controller shall notify the patentee.

(4) If the Controller is satisfied after hearing the patentee and any opponent, if desirous of being heard, that the patent may properly be surrendered, he may accept the offer and, by order, revoke the patent.

### **REVOCAION OF PATENTS**

As per Section 64 of the Patent Act, 1970, the following persons can file the petition in the High Court:

- any person interested
- the Central Government
- the person making the counter-claim in a suit for the infringement of a patent

Under Section 64, the following are the said grounds:

1. the invention, so far as claimed in any claim of the complete specification, was claimed in a valid claim of earlier priority date contained in the complete specification of another patent granted in India;
2. the patent was granted on the application of a person not entitled to apply therefor;
3. the patent was obtained wrongfully in contravention of the rights or the petitioner or any person under or through whom he claims;
4. the subject of any claim of the complete specification is not an invention;
5. the invention so far as claimed in any claim of the complete specification is not new, having regard to what was publicly known to publicly used in India before the priority date of the claim or to what was published in India or elsewhere in any of the documents referred to in Section 13;
6. the invention so far as claimed in any claim of the complete specification is obvious or does not involve any inventive step, having regard to what was publicly known or publicly used in India or what was published in India or elsewhere before the priority date of the claim;
7. the invention, so far as claimed in any claim of the complete specification, is not useful;
8. that the scope of any claim of the complete specification is not sufficiently and clearly defined or that any claim of the complete specification is not fairly based on the matter disclosed in the specification;
9. that the patent was obtained on a false suggestion or representation;
10. that the subject of any claim of the complete specification is not patentable under this Act;
11. that the invention so far as claimed in any claim of the complete specification was secretly used in India, otherwise than as mentioned in sub-section (3), before the priority date of the claim;

12. that the applicant for the patent has failed to disclose to the Controller the information required by section 8 or has furnished information which in any material particular was false to his knowledge;
13. that the applicant contravened any direction for secrecy passed under section 35
14. that leave to amend the complete specification under section 57 or section 58 was obtained by fraud.
15. that the complete specification does not disclose or wrongly mentions the source or geographical origin of biological material used for the invention;
16. that the invention so far as claimed in any claim of the complete specification was anticipated having regard to the knowledge, oral or otherwise, available within any local or indigenous community in India or elsewhere.

Revocation of patent from Central government in cases relating to atomic energy Sec 65

Revocation of patent in Public Interest Sec 66

Where the Central Government is of opinion that a patent or the mode in which it is exercised is mischievous to the State or generally prejudicial to the public, it may, after giving the patentee an opportunity to be heard, make a declaration to that effect in the Official Gazette and thereupon the patent shall be deemed to be revoked

#### PATENT INFRINGEMENT

Patent infringement is the commission of a prohibited act with respect to a patented invention without permission from the patent holder.

It occurs when someone violates the patent rights an inventor has in his invention by making, using or selling the invention without the patent owner's permission (or if the patent has been licensed), in a way not permitted by the license.