

CITY ACADEMY LAW COLLEGE

SUBJECT: INTELLECTUAL PROPERTY LAW

SEMESTER: LL.B (HONS) VIIth SEMESTER

UNIT –II : PATENT

THE PATENT ACT, 1970.

INTRODUCTION TO PATENT LAW.

DEFINITIONS (S2), CRITERIA FOR PATENTS, PATENTABLE INVENTIONS.

NON PATENTABLE INVENTION(S3),

PROCEDURE FOR FILING PATENT APPLICATION(S6-53)

REVOCAION OF PATENT(S64)

LICENSING, COMPULSORY LICENCING (S82 – 92A)

PARRALEL IMPORT (S107A) & RIGHTS OF PATENTEE.

LECTURE PLAN

SUBJECT:- INTELLECTUAL PROPERTY LAW -I

UNIT-II PATENT

LECTURE	TOPIC
LECTURE 1	INTRODUCTION TO PATENT LAW
LECTURE 2	PATENTABLE INVENTION & NON – PATENTABLE INVENTION.
LECTURE 3	PROCEDURE FOR FILING PATENT APPLICATION
LECTURE 4	REVOCAION OF PATENT
LECTURE 5	COMPULSORY LICENCING
LECTURE 6	PARALLEL IMPORT & RIGHTS OF PATENTEE

UNIT : 2

LECTURE : 1

TOPIC : INTRODUCTION TO PATENT LAW

NOTE :

WHAT IS PATENT :

1. A patent is an exclusive right granted by the Government to the inventor to exclude others to use, make and sell an invention is a specific period of time, The main motto to enact patent law is to encourage inventors to contribute more in their field by awarding them exclusive rights for their inventions.
2. A patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem. To get a patent, technical information about the invention must be disclosed to the public in a patent application.
3. Under the Indian patent law, a patent can be obtained only for an invention which is new and useful. The invention must relate to the machine, article or substance produced by a manufacturer, or the process of manufacture of an article.
4. A patent may also be obtained for innovation of an article or of a process of manufacture. In respect to medicine or drug and certain classes of chemicals, no patent is granted for the substance itself even if it is new, but the process of manufacturing and substance is patentable.
5. The application for a patent must be true and the first inventor or the person who has derived title from him, the right to apply for a patent being assignable.
6. The basic aim of patent law is the balance of the interests of inventors on one hand and the interests of the public on the other hand.
7. The inventors are rewarded with a limited exclusive right on their invention, for providing technical progress to the public. The exclusive right is limited in time.

- **Rights granted by a Patent**

1. If the patent is for a process, then the patentee has the right to prevent others from using the process, using the product directly obtained by the process, offering for sale, selling or importing the product in India directly obtained by the process.
2. If the grant of the patent is for a product, then the patentee has a right to prevent others from making, using, offering for sale, selling or importing the patented product in India.

- **Term of Patent**

The term of every patent in India is 20 years from the date of filing the patent application, irrespective of whether it is filed with provisional or complete specification.

- **Current Position:**

1. The present Indian position in respect of patent law is governed by the provisions of the Patents Act, 1970 as amended by the Patents (Amendment) Act, 2005 and Patents Acts Rules, 2006.
2. The Head Patent Office is located at Kolkata and its branch offices are located at Delhi, Mumbai and Chennai. Patent system in India is administered by the Controller General of Patents, Designs, Trademarks and Geographical Indications.
3. Each office has its own territorial jurisdiction for receiving patent applications and is empowered to deal with all sections of Patent Act.

ASSIGNMENT :

1. A patent is an exclusive right granted by the _____ to the inventor to exclude others to use, make and sell an invention is a specific period of time.
2. A patent is an exclusive right granted for an _____
3. Under the Indian patent law, a patent can be obtained only for an invention which is _____
4. The inventors are rewarded with a limited _____ on their invention.
5. The term of every patent in India is _____ years from the date of filing the patent application.

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SEMESTER: LL.B (HONS) VIIth SEMESTER

UNIT : 2

LECTURE : 2

TOPIC : PATENTABLE INVENTION & NON PATENTABLE INVENTION.

NOTE :What Are Inventions :

1. The Act provides for the definition of the invention, the criteria for patentability of an invention are novelty, inventive step and industrial applicability.
 2. Section 2(1) (j) of the Patent Act, 2005, defines the "invention" as a new product or as process involving an inventive step and capable of industrial application.
 3. Under the Act "New invention" is defined under section 2(1) (l) of the Patents Act.
 4. "New invention" means any invention or technology which has not been anticipated by publication in any document or used in the country or elsewhere in the world before the date of filing of patent application with complete specification, i.e., the subject matter has not fallen in public domain or that it does not form part of the state of the art.
 5. Thus, according to this definition of new invention, The Act talks of absolute novelty, i.e. the invention should have neither been used anywhere in the world nor published in any part of the world.
- **WHAT IS PATENTABLE INVENTION :**

Section 03 of the act, clearly mentioned the exclusions regarding what can be patented in India. There are certain criteria which have to be fulfilled to obtain a patent in India. They are:

Patent subject:

The most important consideration is to determine whether the Invention relates to a patent subject matter. Sections 3 and 4 of the Patents Act list non-patentable subject matter. Unless the Invention comes under any provision of Section 3 or 4, it means that it consists of a subject for a patent.

Novelty:

Innovation is an important criterion in determining the patent potential of an invention. Under Section 2(1) of the Patent Act, a novelty or new Invention is defined as “no invention or technology published in any document before the date of filing of a patent application, anywhere in the country or the world”. Simply, the novelty requirement basically states that an invention that should never have been published in the public domain. It must be the newest which have no same or similar prior arts.

Inventive steps

Under Section 2(ja) of the Patents Act, an inventive step is defined as “the characteristic of an invention that involves technological advancement or is of economic importance or both, as compared to existing knowledge, and invention not obvious to a person skilled in the art.” This means that the invention should not be obvious to a person skilled in the same field where the invention is concerned. It should not be inventive and obvious for a person skilled in the same field.

- **NON PATENTABLE INVENTION :**

Section 3 and Section 4 of the Patent Act is highly debatable and deals with the list of exclusions that are non-patentable that do not satisfy the above conditions. Following are not the “inventions” under the meaning of this act:

(a) Inventions that are frivolous and contrary to natural laws.

Inventions which are frivolous or contrary to well established natural laws.

Example– Inventions that are against the natural laws that are any machine giving 100% efficiency or any machine giving output without an input cannot be considered as obvious and cannot be patented.

b) Inventions which go against public morality

Inventions in which the primary or intended use or commercial exploitation of which could be contrary to public order or morality (that is against the accepted norms of the society and is punishable as a crime) or which causes serious prejudice to human, animal or plant life or health or to the environment.

Example– As in Biotechnology, termination of the germination of a seed by inserting a gene sequence that could lead to the disappearance of butterflies, any invention leading to theft or burglary, counterfeiting of currency notes, or bioterrorism.

(c) Inventions that are a mere discovery of something that already exists in nature.

The mere discovery of a scientific principle or the formulation of an abstract theory or discovery of any living or non-living substances occurring in nature.

Explanation– Mere discovery of something that already exists freely in nature is a discovery and not an invention and hence cannot be patented unless it is used in the process of manufacturing an article or substance. For instance, the mere discovery of a micro-organism is not patentable.

ASSIGNMENT:

1. The criteria for patentability of an invention are _____
2. Section 2(1)(j) of the Patent Act, 2005, defines the _____ as a new product or as process involving an inventive step and capable of industrial application.
3. Innovation is an important criterion in determining the _____ of an invention.
4. The mere discovery of a scientific principle or the formulation of an abstract theory or discovery of any _____

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UNIT : 2

LECTURE : 3

TOPIC : PROCEDURE FOR FILING PATENT APPLICATION.

PREVIOUS YEAR QUESTION :

1. Who can file application for patent? Discuss the procedure for grant of patent? **2021**

- **NOTE :**

Section 6 of the patent act provides for the persons entitled to make an application for a patent.

Any person who is the first and true inventor of an invention can apply for a patent in regards to that invention in the patent office.

Procedure for Filing an Application :

According to Section 7 of the Act, the application for a patent shall be filed in the Patent Office in the prescribed form. Every application for a patent shall be accompanied by a provisional or complete specification.

What Constitutes a Specification?

Every specification, whether provisional or complete shall contain the following:

- A description of the invention, beginning with the title indicating the subject matter of the invention;
- A detailed drawing of the invention (if required by the Controller)
- A model or sample of anything that illustrates the invention or anything alleged to constitute an invention

Publication of Application

Section 11A of the Act provides for the publication of an application for a patent. Ordinarily, no application is made open to the public for a time period specified by the Controller. However, the applicant before the expiry of such term may request the Controller to publish the application.

Examination of Application

According to Section 11B of the Act, the applicant or any other person interested shall make a request for examination of the application in the prescribed manner within the prescribed time period. If no such request is made, then the application shall be treated as withdrawn by the applicant.

Opposition to the Patent : Section 25 of the Act states that any person may object to the application for patent after it has been published.

There are two types of objections:

- Pre-grant objection
- Post-grant objection

Grant of Patent

- According to Section 43 of the Act, the patent may be granted to the applicant or in case of joint application, to the joint applicants, as expeditiously as possible if the Controller is satisfied that the application of patent is in order for the grant of the patent and is not in contravention of any provisions of the Act.
- The patent shall have the seal of the patent office and the date on which the patent was granted shall be recorded in the register. On grant of the patent, a notice of such grant is published and the application and other documents related are made open for public inspection.

ASSIGNMENT :

1. Any person who is the _____ of an invention can apply for a patent in regards to that invention in the patent office.
2. According to Section 7 of the Act, the application for a patent shall be filed in the _____
3. Every application for a patent shall be accompanied by a _____
4. There are two types of objections: _____
5. On grant of the patent, a notice of such grant is published and the application and other documents related are made open for _____

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UNIT : 2

LECTURE : 4

TOPIC : REVOCATION OF PATENT

PREVIOUS YEAR QUESTIONS :

1. DISCUSS THE GROUNDS FOR REVOCATION OF PATENT? 2021

NOTE : Revocation of patents

1. Revocation means the act of taking back something that has already been granted.
2. The same happens to the patent, which even though once granted can't be treated as permanent. People, other than the patent holder, are provided with a right of filling a revocation petition if they have issues due to someone's patent right.
3. Here the people include any interested person who has legally acceptable grounds for revocation of the patent and the Central Government. However, such a person may only raise their voice by filing a petition.
4. The final decision related to the revocation relies on the Intellectual property appellate board (IPAB).

The following are the sections that provide ground for revocation of the patent :

- **Section 64 (Revocation of patents):** The following grounds come under the ambit of Section 64 of the Patent Act, 1970.
 - If an identical invention has already been protected by the patent right with an earlier filing date.
 - If the person provided with the patent is not the original owner and has by misrepresentation or fraud obtained the patent protection, the original owner can seek the remedy of patent revocation.
 - An obvious invention can't be shed by patent protection.
 - A patent can be revoked if granted to a person who is not entitled under the patent act 1970.
 - If the invention fails to provide the service as specified in specification while applying for the patent.
- **As per Section 8 of the Patent Act 1970,** the inventor is bound to disclose all the information required by the section and if such inventor fails or misrepresent any of the asked information, the patent shall be revoked.

- If the invention does not meet the standard of Section 2(1) (j) of the Patent Act 1970, the patent granted on such invention can be revoked.
- If an invention lacks newness about prior public use or prior knowledge in such a scenario the patent can be revoked.
- **Section 65: Revocation of patent or amendment of complete specification on directions from Government in cases relating to atomic energy.**
- **SECTION 85 : Revocation of patents by the Controller for non-working.**
- That the patented invention has not been worked in the territory of India.
- That the reasonable requirements of the public concerning the patented invention have not been satisfied.
- That the patented invention is not available to the public at a reasonably affordable price.
- **SECTION 66 : Revocation of patent in the public interest.**
- Under Section 66 of the Patent Act, 1970 “the Central Government believes that something that holds the patent protection is harmful or the mode in which it is exercised is injurious i.e., it may cause prejudice to the general public, may revoke patent protection over such discovery after allowing the patentee to be heard, make a declaration to that effect in the Official Gazette”.

ASSIGNMENT :

1. Revocation, means the act of taking back something that has _____
2. The final decision related to the revocation relies on the _____
3. A patent can be revoked if granted to a person who is not _____
4. If the invention does not meet the standard of Section 2(1) (j) of the Patent Act 1970, the _____
5. If an invention lacks newness about prior public use or prior knowledge in such a scenario the _____
6. Revocation of patents by the Controller for non-working IS MENTIONED under which section? _____
7. What is mentioned under 66 of the act _____

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UNIT : 2

LECTURE : 5

TOPIC : COMPULSORY LICENCE IN PATENT

PREVIOUS YEAR QUESTION :

1. Discuss the provisions relating to compulsory licenses under the patents act, 1970. **2021**

NOTE : COMPULSORY LICENCE.

1. Compulsory licenses are authorizations given to a third-party by the Government to make, use or sell a particular product or use a particular process which has been patented, without the need of the permission of the patent owner.
2. Although this works against the patent holder, generally compulsory licenses are only considered in certain cases of national emergency, and health crisis.
3. There are certain pre-requisite conditions which need to be fulfilled if the Government wants to grant a compulsory license in favor of someone.
4. Under the Indian Patent Act, compulsory license can be granted after the expiration of a period of three years from the date on which the patent has been granted.
5. The grounds include: The reasonable requirements of the public with respect to the patented invention have not been satisfied.

Section 84 :

- As per Section 84, any person who is interested or already the holder of the license under the Patent can make a request to the Controller for grant of compulsory license on expiry of the three years, when the above conditions are fulfilled.
- At any time after the expiration of three years from the date of the grant of a patent, any person interested may make an application to the Controller for grant of compulsory license on patent on any of the following grounds, namely:
- That the reasonable requirements of the public with respect to the patented invention have not been satisfied, or
- that the patented invention is not available to the public at a reasonably affordable price, or that the patented invention is not worked in the territory of India.

Section 92A of Indian Patent Act, states that Compulsory license shall be available for manufacture and export of patented pharmaceutical products to any country having insufficient or no manufacturing capacity in the pharmaceutical sector for the concerned product to address public .

- Controller under section 92, pursuant to a notification issued by the Central Government if there is either a "national emergency" or "extreme urgency" or in cases of "public non-commercial use" c health problems.
- **Section 92 A**- For exports, under exceptional circumstances.
- **Section 92A**- In case of national emergency, extreme urgency of public non-commercial use by notification of the Central Government
- **Section 92 A (1)** – To a country which has insufficient or no manufacturing power in the pharmaceutical sector to address public health.

ASSIGNMENT:

1. Compulsory licenses are authorizations given to a _____
2. compulsory license can be granted after the expiration of a period of _____
3. As per Section 84, any person who is interested or already the holder of the license under the Patent can make a request to the _____
4. Controller under section 92, pursuant to a notification issued by the Central Government if there is either _____

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UNIT : 2

LECTURE : 6

TOPIC :

1. **PARALLEL IMPORT OF PATENT, &**
2. **RIGHTS OF PATENTEE.**

PREVIOUS YEAR QUESTION :

1. RIGHTS OF PATENTEE. 2021

NOTE :

1. **PARALLEL IMPORT.**

- Parallel import means that patented or marked goods are purchased in a foreign market and resold in the domestic market. "Parallel imports are allowed when authorized under the law. The expression "under the law" in section 107A (b) of the Patents Act should be interpreted as the law of the country where a person is duly authorized under the law to produce, sell or distribute the product.
- **As per Patents (Amendments) Act (2000), Section 107 (b) recites:**
- "Certain acts not to be considered as infringement. - For the purposes of this Act,-
- **(b)** Importation of patented products by any person from a person who is **duly authorized by the patentee** to sell or distribute the product, shall not be considered as an infringement of patent rights.

2. **RIGHTS OF PATENTEE :**

Who is a Patent Holder: A Patent holder invents a procedure or product whose exclusive Rights and Obligations of Patentee are given to the Patent holder as an inspiring force for investment in creative or inventive exercises and for the spread of such exercises in public at large for learning. However, these exclusive Rights and Obligations of Patentee are not unending and can revocation of such rights can be done in certain exceptional circumstances where is need to balance the interest of the Patent holders and with others.

What are the Rights of Patentee as per the Patent Act, 1970:A grant of Patent in India gives the Patentee the exclusive model to utilize or make the patented invention or utilize the patented procedure related to the invention. Certain Rights and Obligations of Patentee are enshrined under the Patent Act, 1970. The various kinds of Rights of Patentee are as follows:

- Where the grant of Patent is done for a product, the exclusive right to prevent any third party, who is not having his/her consent, from any act of offering, using, making for sale, importing or exporting for such products in the territory of India;
- Where the subject matter associated with the Patent is a process, the exclusive right to prevent any third party, who is not having his/her consent, from any act of offering, using, making for sale, importing or exporting for such products that are directly obtained from the process in the territory of India;

1. Right to exploit the Patent

When the new invention is a product, the Patentee has the exclusive rights to use, make, import, or sell for these purposes related to an invention in India. On the other hand, when the invention of the inventor is a procedure or process of manufacturing of any article or substance, the right to exploit means the exclusive right exercise or use the procedure or method in the territory of India.

2. Right to Grant License

The Patentee of a Patent is given the right to grant license or transfer rights or enter into some arrangement for some consideration. The assignment or license to be valid and legitimate it is required to be in writing and should be registered with the Controller of Patent.

3. Right to Surrender

By giving notice in the prescribed manner, the Patentee of a Patent has the right to surrender a Patent at any time and at his/her own discretion. The advertisement for such an offer of surrender is required to be done in the Journal. The publication is done to give an opportunity to the people to oppose the offer of surrender of the Patentee. This is done when the Patentee apprehends his/her non-performance of the Patent in the future and upon which he/she decides to surrender the Patent.

4. Right to sue for Infringement

The Patentee has the right to sue for Infringement of Patent in District Court has the jurisdiction to try the suit.

5. Right to Use and Enjoy Patent

The Patentee of the Patent has the exclusive right to exercise, make, utilize, convey or offer or the patented substance or article in India or to practice or utilize or the process or techniques associated with the invention. Such rights can be exercised either by the Patentee himself/herself or by his/her licensees or agents.

ASSIGNMENT:

1. Parallel import means that patented or marked goods are purchased in a foreign market and resold in the _____
2. "Parallel imports are allowed when _____"
3. In section 107A (b) of the Patents Act should be interpreted as the law of the country where a person is duly authorized under the law to _____
4. A Patent holder invents a _____ or _____ whose exclusive Rights and Obligations of Patentee are given to the Patent holder.
5. The product produced by the Patentee should not be such that it cannot be patented in India as per Section _____

