

Patent and procedure for patent

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Meaning of the term Patent

A patent is the legal right that is granted by the government of a country to an individual or inventor with a view to excluding other people from selling, making or using the invention for a certain period of time.

The essence of the patent system is to encourage product, design or ideas that are useful to the society. The instrument by which such grant is made is known as "Patent".

The concept of patent is very important because someone or an organisation may steal intellectual properties without paying a royalty, hence the need by various governments to protect the right of an inventor.

The person to whom a patent is granted is called "patentee".

The owner of the "patent" i.e is patentee is entitled to deal with such property in the same manner as owner of any other movable property deals with his property. This means that the patentee can sell the whole or part of his property (patent) he can also grant licence to others to use the patented property he can also assign such property to any others. such sale licence or assignment of patented property naturally has to be for valuable consideration.

Legislative provisions regulating patents in India

In India the Indian patent act 1970 and the patent rules 2003 regulate the grant, the operative period, the revocation and infringement, etc. of the patents. The patent act was amended in 2005 and the patents rule were amended in 2005 and 2006 for the purpose of contemporary adjustment in patent laws.

What is the objective behind a patent law

The patent law recognise the exclusive right of a patentee to gain commercial advantage out of his invention. This is to encourage the inventors to invest there creative faculties, knowing that there invention would be protected by law and no one else would be able to copy there inventions for certain periods during which the respective inventor would have exclusive rights.

Case Law

In *Bishwanath Prasad Radheshyam v/s Hindustan metal industries* (1979) 2 SCC 511 it has been held by Hon'ble supreme court that "the object of patent law is to encourage scientific research, new technology and industrial progress. Grant of exclusive privilege to one, use or sell the methods of the product patented for a limited period, stimulates new inventions of commercial utility.

INVENTIONS NOT PATENTABLE

S.3. What are not inventions.

The following are not inventions within the meaning of this 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 substance occurring in nature;
- (d)** the mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance or 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.

Explanation.—For the purposes of this clause, salts, esters, ethers, polymorphs, metabolites, pure form, particle size, isomers, mixtures of isomers, complexes, combinations and other derivatives of known substance shall be considered to be the same substance, unless they differ significantly in properties with regard to efficacy;

- (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 known way;
- (g)** Omitted by the Patents (Amendment) Act, 2002
- (h)** a method of agriculture or horticulture;
- (i)** 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.

- (j) 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;
- (k) a mathematical or business method or a computer programme 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.

S4. Inventions relating to atomic energy not patentable.—No patent shall be granted in respect of an invention relating to atomic energy falling within sub section (1) of section 20 of the Atomic Energy Act, 1962 (33 of 1962).

Procedure for obtaining patent

1. Submission of application (chapter 3)
2. publication and Examination of applications (chapter 4)
3. Opposition to grant of patent to the applicant and hearing of parties (chapter 5)
4. Grant and sealing of patent. (Chapter 8)

Submission of application

Step 1:- Submission of application

Section 6 to 11 of the act list the conditions which are to be satisfied by the applicant while submitting application for grant of patent.

Section 6 of the act stipulates the persons entitled to apply for patent.

Section 7 provides the form for the patent application to be filled in the patent office (for only one invention). and also provides for international application under patent Cooperation Treaty.

Section 8 lays down information and Undertaking foreign applications which are required to be furnished under the act .

Section 9 and 10 list the content of provisional and complete satisfaction to be filled with the application describing the invention methods of performing claims of invention and the provision of the technical information along with the provision for international application for invention respectively.

Publication and examination of the application

Step 2 :- Publication and examination of the application

The patent act 1970 as amended by patent (amendment) act 2005 provides that the application for patent shall ordinary be open to the public for such period as may be prescribed. However the applicant may request the controller to publish his application before the expiry of the period prescribed and subject to certain exceptions the controller shall publish such application as soon as possible.

Opposition proceedings to grant of patent

Step 3:- Opposition proceedings to grant of patent

Where an application for a patent has been published but a patent has not been granted, any person may in writing, represent by way of opposition to the controller against the grant of patent on the grounds mentioned in section 25 of the act.

The controller shall, if requested by such person for being heard, hear him and dispose of such representation in such manner and within such period as may be prescribed.

Grant of patent

Step 4 :- Grant of patent

Section 43 of the act deals with grant of patents.

Where an application for a patent has been found to be in order for grant of the patent and --

(a). The application has not been refused by the controller by virtue of any power vested in him by act or

(b).The application has not been found to be contravention of any of the provision of the act.

the patent shall be granted as expeditiously as possible to the applicant or in case of a joint application, to the applicants jointly with the seal of the patent office and the date on which the patent is granted shall be entered in the register.

On the grant of patent the controller shall publish the fact that the patent has been granted and their upon the application, specifications and other documents related thereto shall be open for public inspection.

Term of Patent

Term of patent

Section 53 of the act lays down that the term of patent, after the commencement of the patent (amendment) act 2002, shall be 20 years from the date of filing of the application for the patent.

THANK YOU.