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HISTORY AND EVOLUTION OF PATENTS IN INDIA

Management

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ABSTRACT

The study of history and evolution of a subject matter is important to gain deep knowledge of the specific area of study and the same has been explored as a part of the study on IPR management system in India. This paper presents in a short and concise manner the history and evolution of patents in India.

INTRODUCTION

Patent is a monopoly right granted to the inventor of a new and novel product or for the improvement of an existing product or for a new and novel process of making a product. In short Patent can be for a Product or for a Process or both. It consists of an exclusive right to manufacture the product or manufacture a product with the new invented process for a limited period of time, 20 years. The object of granting a patent is to encourage and develop new technology and industry. An inventor may disclose the new invention if he is rewarded, or otherwise it may remain a secret. The patent holder has the legal right to exclude others from commercially exploiting his invention for the duration. In return for exclusive rights, the applicant is obliged to disclose the invention to public in a manner that enables others to replicate the invention. After the expiry of this time period the invention can be open for others to improve upon it if not renewed. The patent system in India is governed by the Patents Act, 1970.

Meaning of 'Invention' under Patent Law is defined under Sec.2 (1) (J) as: a new product or process involving an inventive step and capable of industrial application.

Things which cannot be considered as 'Invention' are explained in Sec 3 as:

- Frivolous inventions
- Inventions contrary to well established natural laws
- Commercial exploitation or primary use of inventions,
  - which is contrary to public order or morality
  - which causes serious prejudice to health or human, animal, plant life or to the environment
- Mere Discovery of a Scientific Principle
- Formulation of an Abstract Theory
- Discovery of any living thing
- Discovery of non–living substance occurring in nature
- 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.*
- Substance obtained by mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substance
- Mere arrangement or re-arrangement or duplication of known devices, each functioning independently of one another in a known way
- Method of Agriculture or Horticulture
- Any process for medicinal, surgical, curative, prophylactic, diagnostic, therapeutic or other treatment of human beings or a similar treatment of animals to render them free of disease or to increase their economic value or that of their products
- Plants & animals in whole or any part thereof other than micro-organisms, but including seed varieties and species, essentially biological process for production or propagation of plants & animals
- mathematical method
- business method
- algorithms
- computer programme *per se*
- A literary, dramatic, musical or artistic work or any other aesthetic creation including cinematographic work and television productions
- Presentation of information
- Topography of integrated circuits.
- Inventions which are Traditional Knowledge or an aggregation or duplication of known properties of traditionally known component or components

The concept of "New" in Patent system has been explained as: an invention to be patented must not be published in India or elsewhere, or in prior public knowledge or prior public use with in India or claimed before in any specification in India

HISTORY OF PATENTS IN INDIA

Civil Engineer George Alfred DePenning of Calcutta made the first application for a patent in India in the year 1856. On 28 February 1856, the Government of India publicized legislation to grant "exclusive privileges for the encouragement of inventions of new manufactures" i.e. the Patents Act. On 3 March 1856, George Alfred DePenning petitioned the Government of India for grant of exclusive privileges for his invention "An Efficient Punkah Pulling Machine". On 2 September, DePenning, submitted the specifications of his invention along with drawings to illustrate its working. These were accepted and the invention was granted as the first ever Intellectual Property protection in India. Thus began patenting in India.

The first legislation in India relating to patents was the Act VI of 1856. The objective of this legislation was to encourage inventions of new and useful manufactures and induce inventors to disclose secret of their inventions. The Act was subsequently repealed by Act IX of 1857 since it had been enacted without the approval of the sovereign. Fresh legislation for granting 'exclusive privileges' was introduced in 1859 as Act XV of 1859. This legislation contained certain modifications of the earlier legislation, namely, grant of exclusive privileges to useful inventions only and extension of priority period from 6 to 12 months. The Act excluded importers from the definition of inventor. The 1856 Act was based on the United Kingdom Act of 1852 with certain departures including allowing assignees to make application in India and also taking prior public use or publication in India or UK for the purpose of ascertaining novelty. The Act of 1859 provided protection for invention only and not for designs whereas UK had been protecting designs from 1842 onwards. To improvise this, the 'Patterns and Designs Protection Act' (Act XIII) was passed in 1872. This Act amended the 1859 Act to include any new and original pattern or design or the application of such pattern to any substance or article of manufacture within the meaning of 'new manufacture'. The Act XV of 1859 was further amended in 1883 by XVI of 1883 to introduce a provision to protect novelty of the invention, which prior to making application for their protection were disclosed in the exhibitions of India. In 1888, new legislation was introduced to consolidate and amend the law relating to invention and designs in conformity with the amendments made in the UK law.

EVOLUTION OF PATENTS IN INDIA

In 1911, the Indian Patents and Designs Act, 1911, (Act II of 1911) was brought in replacing all the previous legislations on patents and designs. This Act brought patent administration under the management of Controller of Patents for the first time. This Act was amended in 1920 to provide for entering into reciprocal arrangements with UK and other countries for securing priority. In 1930, further amendments were made to incorporate, *inter-alia,* provisions relating to grant of secret patents, patent of addition, use of invention by Government, powers of the Controller to rectify register of patent and increase of term of the patent from 14 years to 16 years. In 1945, another amendment was made to provide for filing of provisional specification and submission of complete specification within nine months.

After Independence, it was felt that the Indian Patents & Designs Act, 1911 was not fulfilling its objective. It was found desirable to enact comprehensive patent law owing to substantial changes in political and economic conditions in the country. Accordingly, the Government of India constituted a committee under the Chairmanship of Justice Dr. Bakshi Tek Chand, a retired Judge of Lahore High Court, in 1949, to review the patent law in India in order to ensure that the patent system is conducive to national interest. The Committee submitted its interim report on 4 August 1949 with recommendations for prevention of misuse of patent right in India and or amendments to sections 22, 23 & 23A of the Patents & Designs Act, 1911 on the lines of UK Acts of 1919 and 1949. Based on the recommendations of the Committee, the 1911 Act was amended in 1950 (Act XXXII of 1950) in relation to working of inventions and compulsory licence/revocation. In 1952, an amendment was made to provide compulsory licence in relation to patents in respect of food, medicines, insecticide, germicide/fungicide and a process for producing substance or any invention relating to surgical or curative devices, through Act LXX of 1952. The compulsory licence was also available on notification by the Central Government. Based on the recommendations of the Committee, a bill was introduced in the Parliament in 1953 (Bill No.59 of 1953). However, the bill lapsed on dissolution of the Lok Sabha

In 1957, the Government of India appointed Justice N. Rajagopala Ayyangar Committee to examine the question of revision of the Patent Law and advise government accordingly. The report of the Committee, in two parts, was submitted in September, 1959. The first part dealt with general aspects of the patent law and the second part gave detailed note on the several clauses of the lapsed bill of 1953. The first part also dealt with evils of the patent system and solution with recommendations in regard to the law. The committee recommended retention of the patent system, despite its shortcomings. This report recommended major changes in the law which formed the basis of the introduction of the Patents Bill, 1965. This bill was introduced in the Lok-Sabha on 21st September, 1965, which, however, lapsed.

In 1967, an amended bill was introduced which was referred to a Joint Parliamentary Committee and on the final recommendation of the Committee, the Patents Act, 1970 was passed. This Act repealed and replaced the 1911 Act so far as the patents law was concerned. However, the 1911 Act continued to be applicable to designs. Most of the provisions of the 1970 Act were brought into force on 20th April, 1972 with the publication of the Patents Rules, 1972. This Act remained in force for about 24 years till December 1994 without any change. An ordinance effecting certain changes in the Act was issued on 31st December 1994, which ceased to operate after six months. Subsequently, another ordinance was issued in 1999. This ordinance was later replaced by the Patents (Amendment) Act, 1999 that was brought into force retrospectively from 1st January, 1995. The amended Act provided for filing of applications for product patents in the areas of drugs, pharmaceuticals and agro chemicals though such patents were not allowed. However, such applications were to be examined only after 31 December, 2004. Meanwhile, the applicants could be allowed exclusive marketing rights to sell or distribute these products in India, on certain conditions. The second amendment to the 1970 Act was made through the Patents (Amendment) Act, 2002 (Act 38 of 2002). This Act came into force on 20th May, 2003 with the introduction of the new Patents Rules, 2003 by replacing the earlier Patents Rules, 1972. The third amendment to the Patents Act, 1970 was introduced through the Patents (Amendment) Ordinance, 2004 with effect from 1st January, 2005. This Ordinance was later replaced by the Patents (Amendment) Act, 2005 (Act 15 of 2005) on 4th April, 2005 which was brought into force from 1st January, 2005. Subsequently the rules under the Patent Act have been amended in 2006, 2012, 2013, 2014 and the latest is the 2016 amendment, effective from 16 May 2016.

After India became a signatory to the TRIPS agreement forming part of the Agreement establishing the World Trade Organization for the purpose of reduction of distortions and impediments to international trade and promotion of effective and adequate protection of intellectual property rights, the Patents Act, 1970 has been amended several times to meet its obligations under the TRIPS agreement. The Patents Act, 1970 has been amended keeping in view the development of technological capability in India, together with the need for integrating the IPR system with international practices and IPR regimes. The amendments also aimed at making the Act a modern, harmonized and user-friendly legislation to adequately protect national and public interests while simultaneously meeting India's international obligations under the TRIPS Agreement.

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