



ORIGINAL RESEARCH PAPER

Chemistry

INTELLECTUAL PROPERTY RIGHT - PATENT: GENERAL REVIEW

KEY WORDS: Intellectual Property Right, Patent, Process, Basmati

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ABSTRACT

Patents is a monopoly right granted to a person who has invented a new and useful article or made the improvement of an existing article or a new process of making an article. It consists of exclusive right to manufacture an article to the invented process for limited period. After the expiry of the duration of patent, anyone can make use of the patented invention or process. Patent is a form of industrial property (Kankanala 2012).

Introduction:

Intellectual Property Rights are legal and enforceable rights provided to any particular person/organization for their new creations based on their minds for a certain period of time with an exclusive right over the use of their creation. Intellectual activity in the fields like industrial, scientific, literary, and artistic. Intellectual Property aims to safeguard creators and other producers of intellectual goods and services by granting them certain rights to exploit the productions.

The owner of the patent can sale or grant licence to others to exploit. A patent granted in one State*, cannot be enforced in another State* (Here State* means country), unless patented in the State*.

The term of every patent granted is 20 years from the date of filing of application. However, for application filed under national phase under Patent Cooperation Treaty (PCT), the term of patent will be 20 years from the international filing date accorded under PCT (Section 53) (Prabu.S.L.et.al.2017).

OBJECTIVES OF TRIPS Objectives stipulated in the preamble of the TRIPS agreement are as .

1. Prevention of the distortion and independent in the international trade.
2. Availability of adequate and effective means of protection of intellectual property rights.
3. Need to create minimum uniform rules to ensure the standard availability scope of intellectual property rights.
4. Creation of viable, sound technological base to the development of least developed countries. (LDC).
5. Provision of adequate and effective means of enforcement of IPRs.
6. Creation of mutual supportive relation between WTO and World intellectual property Organization (WIPO).
7. Promotion of co-operation in the prevention of international trade in counterfeit goods.
8. Recognition of IPR's as the private rights
9. Recognition of the objective of public policy of the national interest to develop socio, economic and technological developmental needs (MANISH ARORA 2007)

Basic definitions of elements of patentability

Section 2(1) (f) "exclusive licence" means a licence from a patentee which confers on the licensee, on the licensee and persons authorised by him, to the exclusion of all other persons (including the patentee), any right in respect of the patented invention, and exclusive licensee shall be construed accordingly.

Section 2(1) (j) "invention" means a new product or process involving an inventive step and capable of industrial application;

Section 2(1) (ja) "inventive step" means a feature of an invention that involves technical advance as compared to the existing knowledge or having economic significance or both and that makes the invention not obvious to a person skilled in the art;

Section 2(1) (l) "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.

Section 2(1) (m) "patent" means a patent for any invention granted under this Act;

Section 2(1) (o) "patented article" and "patented process" means respectively an article or process in respect of which a patent is in force;

Section 2(1) (p) "patentee" means the person for the time being entered on the register as the grantee or proprietor of the patent;

Objectives of Patent Law:

1. Encourage and develop new Technology and Industry,
2. Induce an inventor to disclose his discoveries,
3. Reward for the expenses of developing inventions
4. Inducement to invest capital
5. To encourage research and invention

An invention is patentable subject matter if it meets the following criteria – i) It should be novel. ii) It should have inventive step or it must be non-obvious iii) It should be capable of Industrial application. iv) It should not attract the provisions of section 3 and 4 of the Patents Act 1970.

Novelty or non-obvious or non-conventional: It is the quality of being new, or following from that, of being striking, original and unusual. This term covers a range of manufactured goods, such as collectables, gadgets, and executive toys. **Novelty** items are devices that have a practical function.

An invention may satisfy the condition of novelty, inventiveness, and usefulness but it may not qualify for a patent under the following situations section (3):

1. An invention which is frivolous or which claims anything obviously contrary to well established natural laws;
2. 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;

3. Any process for 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;

4. Plants and animals in whole or any part thereof other than microorganisms but including seeds, varieties and species and essentially biological processes for production or propagation of plants and animals;

5. A mathematical or business method or a computer program per se or algorithms;

6. A literary, dramatic, musical or artistic work or any other aesthetic creation whatsoever including cinematographic works and television productions;

7. Topography of integrated circuits;

8. An invention which, in effect, is traditional knowledge or which is an aggregation or duplication of known properties of traditionally known component or components or a method of agriculture or horticulture;

9. Inventions relating to atomic energy, Section (4);
Industrial Application: Section 2(1) (ac) "capable of industrial application", in relation to an invention, means that the invention is capable of being made or used in an industry. It should satisfy definition 2(1) j, 2(1) ja and 2(1) l, not contrary to section 3 or 4.

Registration procedure:

Person entitled to apply for patent Section (6), (a) by any person claiming to be the true and first inventor of the invention; (b) by any person being the assignee of the person claiming to be the true and first inventor in respect of the right to make such an application; (c) by the legal representative of any deceased person who immediately before his death was entitled to make such an application.

Every application for a patent shall be for one invention only and shall be made in the prescribed form and filed in the patent office (Section 7). Every specification, whether provisional or complete, shall describe the invention and shall begin with a title sufficiently indicating the subject-matter to which the invention relates (Section 9 & 10). Patent Controller may accept or refuse the application or may require the application, specification or the other documents, as the case may be, to be amended to his satisfaction before he proceeds with the application and refuse the application on failure to do so. If the Controller is satisfied, upon a request or claim made in accordance with the provisions of this (Section 43). The date of patent will be the date granted patent (section 45).

Rights of patentees. (Section 48)—A patent granted under this Act shall confer upon the patentee— (a) where the subject matter of the patent is a product, the exclusive right to prevent third parties, who do not have his consent, from the act of making, using, offering for sale, selling or importing for those purposes that product in India; (b) where the subject matter of the patent is a process, the exclusive right to prevent third parties, who do not have his consent, from the act of using that process, and from the act of using, offering for sale, selling or importing for those purposes the product obtained directly by that process in India:

Duties of Patentees: (Section 10) (1) Every specification, whether provisional or complete, shall describe the invention and shall begin with a title sufficiently indicating the subject-matter to which the invention relates. (2) Subject to any rules that may be made in this behalf under this Act, drawings may, and shall, if the Controller so requires, be supplied for the purposes of any specification, whether complete or

provisional; and any drawings so supplied shall, unless the Controller otherwise directs be deemed to form part of the specification, and references in this Act to a specification shall be construed accordingly. (3) If, in any particular case, the Controller considers that an application should be further supplemented by a model or sample of anything illustrating the invention or alleged to constitute an invention, such model or sample as he may require shall be furnished before the application is found in order for grant of a patent, but such model or sample shall not be deemed to form part of the specification. (4) Every complete specification shall— (a) fully and particularly describe the invention and its operation or use and the method by which it is to be performed; (b) disclose the best method of performing the invention which is known to the applicant and for which he is entitled to claim protection; and (c) end with a claim or claims defining the scope of the invention for which protection is claimed.

Assignment and Licence: Assignee is the one (person/ organization) whom patent is granted while licensee is the one (person/ organization) who is exploiting the patent for industrial use. For assignment of the right, to apply for a patent for the invention shall be furnished with the application with proof of the right. The application shall contain a declaration that the applicant believes the person so named to be the true and first inventor (Section 7 (2)). The patent assignment will be entered in the register kept at the patent office (Section 67).

When the Controller is satisfied that there is no dispute between assignee and licensee, established by the applicant, he may make an order on such terms as he thinks fit granting a licence of patent, if so requested by the proprietor of the patent or his licensee (Section 84). After completion of process and satisfying all condition for patents, controller may grant patent licence to licensee (Section 91).

Restoration of lapsed Patents: Where a patent has ceased to have effect by reason of failure to pay any renewal fee within the period may be allowed to apply for the restoration of the patent (Section 60). The Controller may restore the patent and make entry in the register of patent under the provisions of this Act. Where a patent is restored, the rights of the patentee shall be provided as prescribed. No suit can be filled by patentee in respect of an infringement of a patent committed between the date on which the patent ceased and the date of the publication of the application for restoration of the patent.

Surrender (Section 63) and Revocation of Patents (64): A patentee may, at any time by giving notice in the prescribed manner to the Controller, offer to surrender his patent. 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.

A patent, whether granted may, be revoked on a petition of any person interested or of the Central Government by the Appellate Board or on a counter-claim in a suit for infringement of the patent by the High Court on any of the following grounds such as fraud, coercion, threat, incomplete details, non payment of fees, infringement, non-disclosure, novelty, wrong information claim about geographical claim. A notice of any petition for revocation of a patent under this section shall be served on all persons appearing from the register to be proprietors of that patent or to have shares or interests therein and it shall not be necessary to serve a notice on any other person.

Infringement, Remedies & Penalties: Infringement is violation of a patent owner's rights with respect to some invention. Unless permitted by the patent owner, one commits patent infringement by making, using, offering to sell, or selling something that contains every element of a patented claim or its equivalent while the patent is in effect.

The suit for infringement, the patent owner can claim damages from the date of publication of patent application or date of infringement whichever is earlier. However the suit for infringement can be filed only after a patent is granted. Suit for a declaration for infringement of a patent shall be instituted in any court superior to a district court having jurisdiction. The burden of proof lies with the claimant. Court have power to make declaration as to non-infringement/ infringement (Section 105, 106)

Remedies: The reliefs which a court may grant in any suit for infringement include an injunction either damages or an account of profits. The court may also order that the goods which are found to be infringing and materials and implements shall be seized, forfeit or destroyed, as the court deems fit under the circumstances of the case without payment of any compensation (Section 108).

If any person makes, or causes to be made, a false entry in patent register or produces or tenders, or causes to be produced or tendered, in evidence any such writing knowing the entry or writing to be false, shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both (Section 119).

Patent office and Appellate Board.

1. The Controller General of Patents, Designs and Trademarks appointed under sub-section (1) of section 3 of the Trademarks Act, 1999 (47 of 1999), shall be the Controller of Patents for the purposes of this Act (Section 73).

2. The head office of the patent office shall be at such place as the Central Government may specify, and for the purpose of facilitating the registration of patents there may be established, at such other places as the Central Government may think fit, branch offices of the patent office. (Section 74).

3. Appellate Board shall exercise the jurisdiction, power and authority conferred on it by or under this Act. Possessing qualifications specified in sub-section (Section 116). The officers and other employees of the Appellate Board shall discharge their functions under the general superintendence of the Chairman of the Appellate Board in the manner as may be prescribed. (The Appellate Board established under section 83 of the Trademarks Act, 1999).

Patents filing in India: The number of patent filings increased from 42,763 in 2014-15 to 2021-22 due to steps taken by the Government and awareness in public to strengthen intellectual property rights (IPR) regime to the country, the commerce and industry ministry said on Tuesday. It also said India granted 30,074 patents in 2021-22 as compared to 5,978 in 2014-15.

There has also been a reduction in the time of patent examination from 72 months in 2016 to 5-23 months at present. "For the first time in the last 11 years, the number of domestic patent filing has surpassed the number of international patent filing at Indian Patent (IP) office in January-March 2022 quarter," it said. Of the total 19,796 patent applications filed 10,706 were filed by Indian applicants and 9,090 by non-Indian applicants, it added.

The coordinated efforts by the department for promotion of industry and internal trade (DPIIT) and IP office has led to increased awareness among all strata of the society, it said. These efforts have on one hand led to increase in the number of IPR filings and on the other hand, reduced the pendency of patent applications.

Trends in last five years with respect to filing of IP applications:

Application	2015-16	2016-17	2017-18	2018-19	2019-20
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Patent	46904	45444	47854	50659	56267
Design	11108	10213	11837	12585	14290
Trade mark	283060	278170	272974	323798	334805
Geographic Indication	14	32	38	32	42
Copyrights	Copyright administration shifted to DIPP/ CGPDTM in 2016-17	16617	17841	18250	21905
Semiconductor integrated Layout Designs (SCILD)	SCILD administration shifted to DIPP / CGPDTM in 2016-17	Nil	02	Nil	Nil
Total	355898	350467	350546	405324	427309

• Annual report 2019-2020 Intellectual Property India

Case Study: India US Basmati (Rice) Dispute, Case No. 493, 1997

Citation used: The Geographical Indications of Goods (Registration and Protection) Act, 1999. The patent Law 1970, TRIPS agreement 1994.

Basmati rice means "queen of fragrance or the perfumed one" and is also acclaimed the "crown jewel" of South Asian rice. APEDA (Agricultural and Processed food products Export Development Authority) states India to be the second largest exporter of rice after China accounting to 80 million tonnes of rice annually. U.S.A is a major importer of Basmati rice totaling 45,000 tonnes, accounting for 10 percent of the total exports of India. Thus, the year 1997 marked the most important case in the history of geographical indication (bio-piracy). Royal

Rice Tec Inc., American rice company, constituted a small fraction of the world's (Basmati like) rice production, with names 'Kasmati' and 'Texmati'. On September 2, 1997, Rice Tec Inc. was issued a patent of the same by USPTO (United States Patent and Trademark Office) bearing patent number 5663484, on Basmati rice lines and grains. Cultivation of rice is not merely a life sustainer but also a part of socio-culture even before British India (India, Pakistan and Bangladesh).

The patent was challenged on the ground that the plant varieties and grains already existed in India and Pakistan and is the staple food of these countries. Also that the rice imported cannot be grown in the U.S. because of varied climatic conditions. The Indian attorneys put forth that using 'Basmati' as a name in conjunction with the patent and in the marketing of the rice is not lawful.

Thus, as a result of the re-examination form filed by the Government of India, Rice Tec Inc. agreed to withdraw its claims in parts. On 29th January, 2002, a re-examination certificate was issued by the USPTO cancelling claims 1-7, 10, 14-20 out of its 24 claims, (15/24 claims cancelled).

It also introduced IP and Geographical Indication legislation and the importance of agricultural products. The Act, The Protection of Plant Varieties and Farmers' Right Act, 2001 was created (Gurjar L.R. et al. 2015).

Conclusion: Intellectual property rights exist primarily by virtue of national laws. So called global intellectual property rights are a bundle of nationally enforceable rights. There are number of multilateral, bilateral and regional obligations for Intellectual Property Rights. International intellectual property laws play an important role in harmonizing national

substantive and procedural rules. International regime for intellectual property rights plays a vital role in providing procedures and modalities for negotiating the norms and standards of domestically enforceable intellectual property rights and in the harmonization of national and regional intellectual property norms.

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