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2nd Year, BA LL.B. (Hons.)**LEGAL PERSONALITY OF PATENTS IN INDIA****Introduction**

A significant innovation or work is protected by intellectual property rights (IPR), which are intangible in nature. It's no secret that IPR has become a focal point in global commercial practises and livelihood across the globe in the age of globalisation. Creators and inventors are rewarded for their efforts by receiving recognition and financial rewards from these rights, while the absence of IPR knowledge and its improper execution may impede the nation's economic and social progress. One such way of getting IPR protected is through patents.

Patents have a long history in India. In 1911, the Patent and Designs Act was enacted in India. Patents (Amendment) Act, 2005, which expanded the scope of patent protection to include all domains of technology including pharmaceuticals, foods, chemicals, and microorganisms. It has been amended to remove the necessity for exclusive marketing rights and to allow grants for licencing.

When it comes to patents, WIPO (World Intellectual Property Organization) defines them as, "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."¹ In India, you can patent a product or a procedure that is innovative and has potential for industrial application. India is a signatory to both the PCT of 1970 and the Paris Convention of Industrial Property of 1883.

Patent acquisition and application can be a costly procedure. Before registering for a patent, anyone who comes up with something new and imaginative should perform extensive research on the newness of their 'creation.'

Requirements for a Patent

In order for someone to get their invention patentable, there must be thorough study undertaken by the patent issuing body. This can be a time-consuming and expensive procedure. Patents, on the other hand, are currently encouraged in order to reduce counterfeiting, under the condition that they have some industrial purpose.

As an industrial property right, a patent gives its owner the exclusive right to make use of an innovation, economically, for a limited period of time. Among other things, a patent entitles its

¹ WHAT IS A PATENT? WORLD INTELLECTUAL PRODUCT ORGANISATION, [HTTPS://WWW.WIPO.INT/PATENTS/EN/](https://www.wipo.int/patents/en/)

owner to prevent others from recreating, using, or selling such inventions without the patent holder's consent. For the exclusive right to commercialise it, the invention's technical specifications are released. In order for a product to achieve patentability it has to be novel, must be one of its kind or in other words, original, and there should be an industrial use for it

When an innovation or technology is protected by patent, it can be duplicated, but how it works as well as all **its components are made public** in order to spur new research and development, which are the foundation of strong economies. Currently, there are more than 80 million patents in existence around the world.

Process of Registering a Patent

The process of registering a patent in many countries involves more than just filling out the requisite documents and paying the required costs. Only after a thorough technical and legal assessment can patents be issued in these nations. As part of this process, a review of technical information that was available when the patent application was filed is conducted in order to determine if the invention is new or not.

The steps to granting a patent are listed below:

- 1) Filling- It with the filing of a patent application at the proper patent office.
- 2) Prior Art Search- The patent application is subjected to a formal review. The administrative personnel adhere to all of the formal rules and regulations.
- 3) As part of the prior art search, patent examiners look at existing technical solutions that may be related to the innovation you claimed in your patent application. A patent will not be granted if your innovation is not clearly identifiable from the prior art, or if it is obvious when compared to it.
- 4) Substantive Examination- This is a place where officials examine the application's legal as well as technical features, as well as whether or not it is clearly distinguishable from the prior art.
- 5) Publication & grant/refusal-Your innovation will not be granted patent protection if you do not remedy the faults indicated by a patent examiner in your patent application. As long as you are aware of the limitations of your patent application, you can amend it to meet the necessary conditions for a patent. A patent will then be given to you.
- 6) Appeal- It is possible to appeal the rejection of a patent application.
- 7) Provisions for Objection- For a short period of time, third parties in various countries can contest the award of a patent, either before or after the patent has been granted. Third parties may have to go to court to invalidate a patent that they believe does not meet the legal conditions after the opposition period has expired. After all objections have been removed and all conditions have been met, the patent is awarded and published in the Patent Office Journal (PTO Journal).

As a general rule, the patent application is published 18 months following the priority filing date (the "**priority date**"), sometimes along with the search report, in most countries

Depending on the country, only patents that have been approved will be made public. It is possible to understand which inventions a patent applicant is seeking protection for and what previous art the examiner has found in relation to the invention through such early publication. Certain countries allow third parties to provide prior art that the examiner may have missed during the search process if they so want. The patent will be re-published if and when it is approved.

Significance of Patents in Corporate World

Patents and citations are growingly becoming useful instruments for understanding inventive activity inside a firm and are becoming the new way of bringing in creativity in the corporate world. Its growing usage in corporate finance research is evident. Patent data has been used in a growing number of articles in finance, accounting, and related fields in recent years. As a result of this expansion, corporate finance scholars are now studying a wider range of topics.

A quote by a famous author Zingales says

“The wave of initial public offerings of purely human capital firms, such as consultant firms, and even technology firms whose main assets are the key employees, is changing the very nature of the firm.... The changing nature of the firm forces us to re-examine much of what we take for granted in corporate finance.”²

The failure of corporations like Kodak, Motorola, and Xerox to innovate successfully³ highlights the importance of innovation to firm survival, as well as the difficulties that inspire corporate finance theory in general. When it comes to financing creative enterprises and initiatives, topics such as uncertainty, knowledge asymmetries, and the intangibility of assets are crucial. Patent data covers most of these aspects of corporations, therefore it epitomizes the need for proper storing of information. Patents are what bring innovations, and that is essentially how patents influence big corporations.

Importance of Patent Data

A country's intellectual activity is reflected in its patents, and under the patent lies its inventiveness. Patents help demonstrate a country's ability to capitalise on knowledge and turn it into prospective economic gains through the use of technology. Statistics on patents are commonly used to analyse the innovative performance of countries and regions in this regard.

An invention must satisfy the requirements of novelty, usefulness and ingenuity in order to be eligible for a patent. To measure R&D production, patent data is used. Patent documents contain specific information including the year of invention, technical classification, country of application, country of inventor, etc., with data dating back many years.⁴ Patent data are readily available from the various national and regional patent offices.

Advantages of Patent Data

²LUIGI ZINGALES, 2000, *THE IMPACT OF INTANGIBLE ASSETS ON FINANCIAL AND ...*,
[HTTP://WWW.SCIENPRESS.COM/UPLOAD/JAFB/VOL%204_1_4.PDF](http://www.sciencypress.com/Upload/JAFB/VOL%204_1_4.PDF).

³WHY DID KODAK, MOTOROLA, AND NORTEL FAIL? INFORMATION WEEK
[HTTPS://WWW.INFORMATIONWEEK.COM/STRATEGIC-CIO/WHY-DID-KODAK-MOTOROLA-AND-NORTEL-FAIL-](https://www.informationweek.com/strategic-cio/why-did-kodak-motorola-and-nortel-fail-)

⁴WHY COLLECT DATA ON PATENTS? GENERAL INFORMATION I ...,
[HTTPS://EC.EUROPA.EU/EUROSTAT/CACHE/METADATA/ANNEXES/PAT_ESMS_AN4.PDF](https://ec.europa.eu/eurostat/cache/metadata/annexes/pat_esms_an4.pdf).

To prevent others from profiting from a creator's invention, a patent gives the inventor exclusive legal rights(s). With a patent, only the creator may decide how their invention will be used in the future. They have the option of licencing the idea to third parties or manufacturing and selling it on their own dime. Patents have both advantages and downsides.

The government and the general public must be informed about an inventor's invention in order to get a patent. The process of obtaining a patent might be difficult due to geographical restrictions and costs. Obtaining exclusive legal rights to their products, designs, and concepts is crucial for some established companies. But for small enterprises, start-ups, and single proprietorships, the cost and difficulty of acquiring a patent can be more hassle than it's worth. Prior to filing for a patent, inventors should thoroughly weigh the merits and downsides of doing so.

Patent Infringement- Doctrine of Equivalents

Copies may not be precise replicas of a claimed patent, but they may achieve the same result. The awarding of patents is rendered meaningless by such blatant copying. This would allow anyone to make slight adjustments to the innovation and then claim a patent for it, earning more money than the creator himself. It was for this reason that the theory of equivalents was developed. Although there is no direct imitation in the claims, the court ruled that infringement could occur.

Patent infringement occurs when a patent holder's patent rights are violated without his consent. Patent infringement is governed by sections 104 to 114 of the Indian Patent Act, 1970 (the "Act"). Two types of patent infringement are defined: Direct and Indirect (Doctrine of Equivalents).⁵ A literal or direct violation may be implied by similarity to a device's patent claim. Claim infringement or imitation may be indirect if it meets the 'triple test' of equivalents and equivalents holds when the stand-ins for elements perform exactly the same functions as the original invention/discovery and achieve the same result.

An "All Elements Test" means that all elements of the discovery/invention must be compared separately, rather than comparing the discovery as a whole. To prove that the accused product or procedure contains and imitates every element of the claimed invention or its subsequent equivalent, this is critical. Only after a claim has been lodged should equivalency be considered. The patenting of an innovation should not result in such an issue.

In the case of *Ravi Kumar Bali versus Kala Tech & Ors*,⁶ a case law was used to establish this theory. To prevent Kala Tech from selling locks and seals that are impervious to tampering, the petitioner, Ravi Kumar, filed a preliminary injunction (provisional ban) against Kala Tech. According to the petitioner, by performing basically the same function and in the same manner, the respondent infringed his patent claim indirectly. An injunction was denied, but the doctrine of equivalents was explored for the first time, taking this case into account.

After approximately 150 years, a linguistic framework has yet to be developed. As a result, there is ambiguity and difficulties in implementing them. People who invent things that fall outside a patent's actual scope may later be found to have violated that same patent under the law of equivalents. Equivalence is determined by fact, and proof can take many forms, such as expert testimony or a document that is authoritative on the issue.

Key Provisions key provisions of the Indian Patent Act, 1970

⁵ A WALK THROUGH KEY PROVISIONS OF THE ..., IPLEADERS BLOG, [HTTPS://BLOG.IPLEADERS.IN/ELABORATION-IMPORTANT-SECTIONS-INDIAN-PATENT-ACT-1970/](https://blog.iplers.in/elaboration-important-sections-indian-patent-act-1970/).

⁶ RAVI KUMAR BALI VERSUS KALA TECH & ORS (2008) 6 AIR

This section of the Intellectual Property Act 1970 provides recommendations on patent infringement in the form of sections 104-114.

Section 104(A)- A court inferior to a district court having jurisdiction to try the suit may not institute a suit for declaration under section 105 or for any relief under section 106 or for infringement of a patent, provided that the suit, along with the defendant's counterclaim for revocation of the patent, shall be brought in a court inferior to a district court having jurisdiction to try the suit. It is the defendant's burden to prove that his/her invention is different from the infringing patent in question, according to Section 104 (A).⁷

Section 105- This section grants courts the authority to declare that a patent has not been infringed. Whatever is in section 34 of the Specific Relief Act, 1963 can be challenged by any individual who believes that any procedure or implied indirect imitation is not infringing on the patent relating to guidelines as mentioned in the act. Any time following the publication of the award of a patent, a suit for a declaration may be instituted under this section.

Section 106- This section states that a person who threatens someone with proceedings for patent infringement by circulars, advertisements, or oral or written correspondence may sue that person.

Section 107- When it comes to patent infringement, it can be utilised as a defence in any case where the patent was infringed upon by the manufacture, use, or importation of a machine or device, or by the use of a process.

Section 108- This section discusses the reliefs available in an action for infringement of a third party's rights. For example, the court may order an injunction, and the plaintiff may want damages or a profit account. Any infringing items may be confiscated, forfeited or destroyed at the court's discretion without payment of compensation.

Section 109- When awarding damages or an account of profits or granting any other relief in any such suit, the court shall take into account any loss suffered or likely to be suffered by the exclusive licensee as such.⁸

Section 110- In this section, a licensee's right to take legal action against an infringer is explained. When a patent infringement occurs, the patentee has the right to sue.

Section 111- This section discusses the limitations on a court's ability to award damages or account for profits resulting from infringements. Anyone who applies the word "patent" to an article without also including the patent number will not be considered to have known or had reasonable grounds to believe that a patent exists.

Section 113- Appellate Boards and High Courts may certify that a claim was contested in proceedings for revocation of a patent under section 64 or section 104, as the case may be, and the Appellate Board or High Court found that claim valid. The Appellate Board or High Court may certify that the validity of that claim was contested in those proceedings.⁹

Section 114- Relief for partial specification infringement is discussed here. Should it be determined that one of the specification's claims, the claim in question, is legal but that any other claim is invalid, the court may award damages for the infringement of any valid claim.

⁷ SECTION 104, ORIGIN IP SOLUTIONS., [HTTPS://WWW.ORIGIN.COM/2020/09/21/SECTION-104/](https://www.origin.com/2020/09/21/section-104/).

⁸ SECTION 109 IN THE PATENTS ACT, 1970, INDIAN KANOON, [HTTPS://INDIANKANOON.ORG/DOC/533139/](https://indiankanoon.org/doc/533139/).

⁹ MERCK SHARP AND DOHME CORP & ANR VS VINOD JADHAV & ORS, INDIAN KANOON., [HTTPS://INDIANKANOON.ORG/DOC/47403165/](https://indiankanoon.org/doc/47403165/).