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PATENTS - IT'S SCOPE AND ELEMENTS

INTRODUCTION

Patents have an extended history, although a number of the earliest patents are simply the grant of a legal monopoly during a particular good instead of protection of an invention from imitation. Early samples of technology-related patents are Brunelleschi's patent on a ship designed to hold marble up the Arno, issued in Florence in 1421, the Venetian jurisprudence of 1474, and various patent monopolies granted by English crown between the 15th and 17th centuries. The modern patent is prevalent from the 18th century in Britain in 1718 and the United states in 1790. Japan and many other European countries introduced patents during the 19th century. During the 20th century, the utilization of patent systems became almost universal. In the present time also the patent rights have become a basic need to protect ones invention and to Protect ideas which are worth nothing until some legal protection is given to them. Attract venture capital investment and Increase company value as the start-ups with patents are normally valued 20-50% higher than without a patent. Although getting a patent does not guarantee venture investments, the inability to get one shows likelihood of failure but the right has become a source of protection of ones invention and motivation for the new ones on the way of reaching out to the world.

PATENT- A BREIF DESCRIPTION

A patent is protection granted by a national government for an invention which is a process or a product that provides a offers a new technical solution to a problem or new way of doing something. The details on the way of acquiring patents will be provided for protecting precious intellectual properties. Patent is one of the most powerful intellectual property which enables the patent holder or patentee to exclude all others from selling, making using the subject matter of a valid patent for a term of 20 years. The patentee can prevent an independent subsequent discoverer of the same subject matter from making, using or selling it. Later when the term of protection is over, the subject matter is made known to the public.

The invention for which the patent right is seek must be new, useful, and nonobvious to a person of commonplace or of ordinary skill and diligence. In order to prove the novelty and non-obviousness of an invention, the inventor has to convince the examiners in the Patent and Trade- mark Office that the claims made for obtaining the patent of the new invention will make a new contribution to knowledge and are more than a mere variation of something already known to the public or probably result in extension of existing knowledge. Examiners or the officers have a right to reject a claim which is too broad and to grant a patent only on a narrower claim, or to reject a claim entirely.[1]

Many university researchers seek patent protection to get the research and development costs for patents related to specific genes and proteins, laboratory techniques and drugs. In order to get a patent by a granting agency such as a Patent Office, the invention must be new, useful and not obvious to others working in the same field. Many inventions which are newly patented create jobs that draws a larger population by bringing in more money to an area. Some inventions were perceived through necessity to make things easy, while others were designed to expand upon an idea. Some were created through intense research and development while others were created accidently. Part from all the rights and motivations monetary gain has proven to be a driving force for seeking patents. Specifically, large corporations like pharmaceutical companies have research scientists actively seeking patents with the motive of profitability.

The word "Invention "defined under the Patents Act 1970 as *"An invention means a new product or process involving an inventive step and capable of industrial application"* [2]

Any invention or technology which has not been used in any nation around the world before the date of filing of patent application with complete specification or anticipated by publication in any document i.e. the subject matter is not exposed in public domain is called the “new invention”.

[1] Stanley M. Besen & Leo J. Raskind, The Journal of Economic Perspectives , Winter, 1991, Vol. 5, No. 1 (Winter, 1991), pp. 3-27

[2] Sec2 (1)(j) Indian patent act,1970

These laws for patents could be related to health, safety, food, security etc. In law, A patent is a property right so it can be inherited, assigned, sold, gifted or licensed. As the right is conferred by the State, it can be revoked by the State under very special circumstances even if the patent has been sold, licensed, marketed or manufactured. The patent right is territorial in nature so a person who want to get anything patented should get it from the respected government of that nation or place along with necessary fees for obtaining patents in that nation.

CONDITIONS TO BE SATISFIED FOR OBTAINING A PATENT

In order to obtain a patent, the invention must satisfy the following three conditions for obtaining a patent right:

(i)Novelty- a completely unique invention is one, which has not been disclosed, within the prior art where prior art means everything that has been published, presented or otherwise disclosed to the public the date of patent. In this the prior art may include documents in foreign languages disclosed in any format in any nation around the world. If an invention is judged as a novel invention, it means that the disclosed information is not available in the 'prior art'. The word ‘prior art’ means that there should not be any prior disclosure of the information anywhere in the public domain, either written or in any other form contained in the application for patent before the date on which the application is first filed i.e. the 'priority date'.

(ii) Inventiveness : As the meaning of the word suggests, in order to get a patent an invention must clear the non-obviousness test. A application involves an ingenious step if the proposed invention isn't obvious to an individual skilled within the art i.e., skilled within the material of the application . The prior art shouldn't point towards the invention implying that the practitioner of the topic matter couldn't have considered the invention before filing of the application . Inventiveness can't be selected the fabric contained in unpublished patents. The complexity or the simplicity of an ingenious step doesn't have any pertaining to the grant of a patent. In other words a really simple invention can qualify for a patent. If there's an ingenious step between the proposed patent and therefore the prior art at that time of your time , then an invention has taken place.

(iii) Usefulness- An invention must be useful for a number of people in order to get patented under law of any country. An invention must have some utility as a valid patent cannot be granted for an invention devoid of utility.

TERM OF A PATENT

The term of patent is 20 years from the date of the appliance in respect of all the patents including those which haven't expired on 20/05/03, when Patents (Amendment) Act 2002 came into force as long as the

renewal fee is paid per annum on maturity or extended period (maximum six months). To keep the patent effective renewal fee should be paid at the expiration of the second year from the date of patent or of any succeeding year before the expiration of the succeeding year (Rule 80 (1)). The annual fee payable in respect of two or more years could also be paid before hand . The fee to be paid is listed under entry number 18 of the primary Schedule whereas renewal fee, which has become due after the grant of patent, shall be governed by the provisions of Sec. 53. The renewal fee, which has become due at the time of grant of patent, are going to be governed by Section 142(4). It states that when the patent is granted later than two years from the date of filing of complete specification, the fee that has become due in the meantime might be paid within three months from the date of recording of the patent within the Register or within the extended period not later than nine months from the date of recording [3]. In the cases where the renewal fee, which have became due at the time of grant and which became due after the grant are very close, these may be paid together along side required extension under Section 53.

NON-PATENTABLE INVENTIONS IN INDIA

As defined under Section 3[4] of the Act An invention may satisfy the conditions of novelty, inventiveness and usefulness but it may not qualify for a patent and are not considered as valid inventions. These quite inventions are those inventions which are:

- An invention which is frivolous in nature or which claims the invention to be contrary to well established natural laws. For example- different differing types of motion machines.
- Inventions that are intended for the commercial exploitation , use of which could be against public morality or might be harmful to human, animal, plants, or the environment in general.
- Discovery of a scientific principle or any living thing or non-living substance in nature
- The mere discovery of a new form of a known substance and which does not result in increased efficiency in any way of that substance.[5]
- A mere new use of known substance or the mere use of a known process, machine or apparatus unless such a known process results in a new product or employs at least one new reactant[5].

[3] Section 142(4) patents act, 1970.
[4] Available at: http://www.ipindia.nic.in/writereaddata/Portal/IPOAct/1_31_1_patent-act-1970-11march2015.pdf
[5] AIR1983Delhi496, 1983(3)PTC 245(Del)

- New property or use of a known substance.[6]
- A method of agriculture or horticulture etc.
- Section 4 of the Indian Patent Act,1970 The patent relating to an invention dealing with atomic energy shall not be granted. Hence, concerning nuclear energy are often patented.
- Any process for medical, surgical, curative, prophylactic or other treatment of human beings, or any process for a similar treatment of animals.
- The mere discovery of a scientific principle or formulation of an abstract theory cannot be patented e.g., Raman Effect.

PATENT OPPOSITION AND REVOCATION

Under section 25 [7]A patent, post grant are often opposed on the grounds mentioned thereunder, as well as a petition for revocation of patent or a counterclaim. In the case of *Aloys Wobben and Ors Vs. Yogesh Mehra and Ors* [8] the Court held that if any person interested initiates proceedings under section 25(2) of the Patents Act, 1970 than the right of the person would be eclipsed to file a revocation petition under section 64(1) of the Act and also the right to counter claim would be eclipsed. *"The above situation, in our considered view, is unlikely to ever arise. This is because, Section 25 of the Patents Act, inter alia, provides for the procedure, for the grant of a patent. The procedure commences with the filing of an application. The second step contemplates publication of the details of the patent sought. The next step envisages the filing of representations by way of opposition (to the grant of the patent). This advances into a determination by the "Controller," to grant or refuse the patent. The decision of the "Controller," leads to the publication of the grant (of the patent). This process finalizes the decision of the grant of the patent. All the same, it does not finally crystalize, the right of the patent holder. After the grant is published, "any person interested," can issue a notice of opposition, within one year of the date of publication of the grant of a patent. If and when, challenges raised to the grant of a patent are disposed of favorably, to the advantage of the patent holder, the right to hold the patent can then and then alone, be stated to have crystallized. Likewise, if no notice of opposition is preferred, within one year of the date of publication of the grant of a patent, the grant would be deemed to have crystallized. Thus, only the culmination of procedure contemplated Under Section 25(2) of the Patents Act, bestows the final approval to the patent. Therefore, it is unlikely and quite impossible, that an "infringement suit" would*

[6] 2014-2-LW874, MIPR2014(2)57
[7]Available at: http://ipindia.nic.in/writereaddata/Portal/ev/sections/ps25.html
[8] Available at: https://www.sci.gov.in/judgments# C.A. No.-006718-006718 - 2013

be filed, while the proceedings Under Section 25(2) are pending, or within a year of the date of publication of the grant of a patent".

CONCLUDING THOUGHTS

There is a rise in interest in the economics of intellectual property .In the last few decades ,The high pace of technological change has forced intellectual property law to spread across unknown areas and hard cases, straining the capabilities of courts and legislatures. There are many issues which have forced a re-examination of the many premises of the intellectual property system during the last decade like How should innovations associated with semiconductor chip or computer software be protected?, genetically engineered life forms be patented or not ? how does the videotaping a television shows for home use infringe the rights of program producers? . There are many questions which are raised by many authors about the essentials underpinnings of the law in this area, while others feel that the system is fundamentally sound. Patent is an intellectual property right which has become a necessary subject as a nation's command on intellectual property law establishes the incentives for innovation and technological change.