



INTELLECTUAL PROPERTY RIGHTS: THE PATENT ACT 1970

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ABSTRACT

Thus, Intellectual property is any music, literary work, art, invention, symbol, name, picture, design, copyright, trademark, patent etc. created by any person or organization. ... In this way, due to the right to intellectual property, it is protected and people are excited and eager to discover and innovate. The purpose of the paper is to throw light on the right of intellectual property and to provide necessary information on this subject. However, in this first we will try to define the right to intellectual property and we will also try to understand the Intellectual Property and Intellectual Property Rights in today's present society as well as mainly focus on the patent act 1970.

KEYWORDS: *Meaning & Category of Intellectual property rights, The Patent Act 1970, History of Patent, Challenges, Violation & Impact of Patents.*

INTRODUCTION

Though, since time immemorial, human beings have a tendency to discover something new by their understanding nature and learning from it. In ancient times, where primitive man used to live by using the basic facilities of nature, in today's present era man has acquired all kinds of facilities for the society through various inventions. All these inventions and achievements are the result of individual efforts of an individual or collective effort of an identified group of persons. A person, who creates a new invention or idea after his intensive efforts, in fact, the original credit for that invention or idea should be given to him. But at present, many such examples have come to the fore. The Right to Intellectual Property basically seeks to control such irregularities and to provide its rights to the able-bodied person.

Intellectual property rights are the product of the mind and the most important of these are patents. A patentee may have a court stop the manufacture of a method or product infringing the patent. Many people say that patents advance technology, but many people also say that patents are hindering the progress of technology in this era. That is why it is important that we understand patents and see that they do not hinder the progress of our country.

INTELLECTUAL PROPERTY RIGHTS

Hence, Intellectual property rights are the rights provided to individuals in the context of their intellectual creation. In fact, it is understood that if a person creates any kind of intellectual creation (such as the creation of a literary work, research, invention etc.), then first of all that person should have an exclusive right on it. Since this right is given only for intellectual creation, hence it is called as Intellectual Property Right. Intellectual property means intellectual creation that is

ethically and commercially valuable.¹ Grant of Intellectual Property Rights should not be taken to mean that only and only the creator of such intellectual creation will have the right forever. It is necessary to mention here that Intellectual Property Rights are given for a certain period of time and in view of a specified geographical area.² The basic purpose of granting Intellectual Property Rights is to encourage human intellectual creativity. Due to the wide scope of Intellectual Property Rights, it was considered necessary that the relevant rights and related rules etc. should be arranged for the particular area.³

MEANING OF INTELLECTUAL PROPERTY RIGHTS

According to Jeremy Phillips, Intellectual property in the general sense refers to things that arise from the use of intelligence by a person. In a broad sense, intellectual property includes ideas, concepts, practical knowledge and other creative ideas on the one hand. On the other hand, there is also a combination of literary, dramatic, musical, artistic or such mechanical expressions, which give shape to such ideas, concepts etc.⁴

According to Salmond, "Those non-material goods are intellectual property which is recognized by law as a non-material product of human proficiency and labour."

¹ What is Intellectual Property? (wipo.int)

² Intellectual Property Definition (investopedia.com)

³ Intellectual property rights in India (publishing.service.gov.uk)

⁴ Intellectual Property Rights - an overview | ScienceDirect Topics



According to Black Stone, “Intellectual property, like other tangible assets, which is intangible in nature, is recognized by state law within the general definition of property.”⁵

“When a person by his discretionary capacities produces an original work, he wishes to have the right to dispose of the original work, and any attempt, other than the arrangement made by him, appears to be an infringement of his rights.”

In this way, intellectual property is such things, which are immaterial and intangible, which the law considers to be the subject matter of rights. It is the product of the intellectual labor of the individual. For example, the invention of the author’s works and inventions is intellectual property.⁶

CATEGORY OF INTELLECTUAL PROPERTY RIGHTS

In general, intellectual property rights include industrial property and copyrights. But apart from this, there are many such rights which have been included in this in principle. Rights related to the following points are included in the right of intellectual property-⁷

1. Literary, artistic and scientific work
2. An artist’s performance
3. Inventions made in different endeavor areas of man
4. Scientific Discovery
5. Industrial Design
6. Trade mark or trade mark and service mark etc.⁸

Intellectual property rights can be divided into the following categories on the basis of points related to intellectual property rights-

- a. All rights to intellectual property that provide information to a consumer. It includes patent, industrial design, copyright, right of plant breeder, layout or design of integrated circuit etc.
- b. All rights to intellectual property that provide information to a consumer. It includes trade -marks and geographical indications.⁹

THE PATENT ACT 1970

A patent or patent is a contract between an inventor and a state, in which the inventor or applicant gets a monopoly by the state for a certain period of time in return for furnishing complete details related to his invention. The main purpose of determining this arrangement of patents or patents is to encourage public use of various information related to different

⁵ WTO | intellectual property (TRIPS) - what are intellectual property rights?

⁶ Intellectual Property Rights: Definition and Examples - St Francis School of Law (stfrancislaw.com)

⁷ MLIS Paper-I Unit-22.pdf (nou.ac.in)

⁸ ibid

⁹ WTO | intellectual property (TRIPS) - what are intellectual property rights?

types of new inventions for different technical, economic and development purposes and to try to eliminate secrecy.¹⁰

PATENT OR PATENT TERM

Generally, the time limit for a patent granted by the state is 20 years. But this right continues for 20 years only when the maintenance fee related to the said patent is deposited by the applicant on time at the end of every year.

TRANSFER OF PATENT

Once a person has received a patent by the state, he has the sole right to use it according to himself or sell the research to another person for a certain period of time.

PATENT SYSTEM IN INDIA

The exertion of controlling the patent system in India, be accountable the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India, working under the ‘Controller General of Patents, Design, Trademarks and Geographical Indications’ Department of Industrial Policy, In which the head office is located in Kolkata and other offices are located in Delhi, Mumbai and Chennai. Apart from these, the ‘Patent Information System’ (PIS) there is a database of various patents of the country located at Nagpur.¹¹

SECTION-3(D)

Under Section 3(D) of the Indian Patent Act, there is a provision not to grant patents for pharmaceutical substances and chemical formulations already in use. Thus, most of the patent applications rejected by the Indian Patent Office (IPO) were based on the grounds that they were merely variants of the formulations in use as well as their therapeutic value no increase was found. However, as a direct benefit of this section, it is being said by the experts that by questioning the applications in Section-3(d) to I Patent Office itself, the long and complicated court process can be avoided and a transparent patent system can be ensured.¹² On the other hand, it is also raising concerns that Section-3(d) may negatively affect the interests of pharmaceutical companies, thereby affecting their investment in research and development (R&D) in the country.¹³

HISTORY OF PATENT LAW IN INDIA

The first phase of patents in India was Act VI of 1856. However, the history of patent law in India dates back to 1911 when the Indian Patent and Design Act, 1911 was enacted. The present Patents Act, 1970 came into force in 1972. This Act amended and consolidated all existing laws relating to patents in India. The Patents Act, 1970 was further amended by the Patents (Amendment) Act, 2005, which extended product patents to all

¹⁰ MLIS Paper-I Unit-22.pdf (nou.ac.in)

¹¹ Intellectual property rights in India (publishing.service.gov.uk)

¹² https://rb.gy/6uc40a

¹³ ibid



areas of technology, including food, drugs, chemicals and microorganisms. Provisions relating to pre-grant and post-grant protests are also presented.¹⁴

Again, the Patents Act, 1970 was amended by the Patents (Amendment) Act, 2005 with regard to the extension of product patents to all areas of technology including food, pharmaceutical, chemical and micro-organisms. The Patents (Amendment) Act, 2005 repealed the provisions relating to Exclusive Marketing Rights (Exclusive Market Rights/EMR) and introduced a provision for grant of compulsory licenses. Provisions related to pre-grant and anti-grant protests have also been introduced.¹⁵

CHALLENGES IN PATENT

In most jurisdictions, there are ways for third parties to challenge the validity of a patent granted or issued at the National Patent Office; these are called opposition proceedings. It is also possible to challenge the validity of a patent in court. In any case, the challenging side seeks to prove that the patent should never have been granted. There are several grounds for challenges: the claimed content is not patentable content; The subject matter claimed was not in fact new, or obvious to a person proficient in the art, at the time of filing the application; or that any fraud was committed in the course of the prosecution in respect of the list of inventors, representations as to when the discovery was made, etc. For any of these reasons a patent may be held invalid in whole or in part.¹⁶

VIOLATION IN PATENT

Patent infringement occurs when a third party, without the authorization of the recipient of the patent, creates, uses, or sells a patented invention. Patents, however, are enforced on a national basis. For example, manufacturing an item in China that would infringe a US patent would not be infringing under US patent law, unless that item was imported into the US.

Infringement includes a literal infringement of a patent, which means they are performing a prohibited act that is protected by a patent. There is also the principle of equivalence. This principle avoids making a product that is basically, by all rights, the same product that is protected with only certain modifications.¹⁷ Some countries, like the United States, have liability for the other two forms of infringement. One is a contributory infringement, participating in the infringement of

another.¹⁸ This can be a company helping another company to make a patented product or selling a patented product made by another company. There is also inducement to infringe, which occurs when one party induces or aids another party to infringe a patent. An example of this would be a company paying another party to produce a patented product in order to reduce the market share of its competitors.¹⁹ This is important when it comes to gray market goods, which is when a patent owner sells a product in country A in which they have a patent for the product, without the permission of the other party owner, country B Buys and sells in., in which the owner also holds the patent for the product. Country B being the law with either national or regional exhaustion, the owner may still be able to enforce his patent rights; however, if Country B has a policy of international exhaustion, the patent owner would have no legal basis to enforce the patent in Country B because it was already sold in a different country.²⁰

ENFORCEMENT OF THE PATENT

Patents can generally only be enforced through civil lawsuits (for example, for US patents, by an action for patent infringement in a United States federal district court), although in some countries (such as France and Austria) there are criminal penalties for blatant violations.²¹ Typically, the patent owner seeks monetary compensation (indemnity) for past infringement, and seeks an injunction that prevents the defendant from engaging in future acts of infringement, or seeks either damages or an injunction.²² To prove infringement, the patent owner must establish that the accused infringer satisfies all the requirements of at least one claim to the patent. In many jurisdictions the scope of a patent may not be limited to what is stated literally in claims, for example because of the principle of equivalence.²³ An accused infringer has the right to challenge the validity of the patent which is allegedly being infringed in a

¹⁸ The principle of equivalence". LII / Institute of Legal Information. Retrieved 2020-12-16.

¹⁹ "Contributory Violation". LII / Legal Information Institute. Retrieved on 2020-12-16.

²⁰ Temptation to infringe". LII / Legal Information Institute. Retrieved 2020-12-16.

²¹ DLA Piper Rudnik Gray Carey (2005). "Patent Litigation Across Europe". cecollect.com. Archived from the original on 2007-10-06.

²² "Name of the Assignee (Company)". Help page. US Patent and Trademark Office (USPTO). Archived from the original on 14.08.2007. retrieved 2007-07-25 . See Section 39 of the UK Patent Act Archived 2009-02-25 on the Wayback Machine as an example. Laws across Europe vary from country to country but are generally consistent. In the Australian context, see *University of Western Australia v Gray* [2008] FCA 498 AUSTLII

²³ Sonemaker, Tyler. "No, an artificial intelligence cannot legally invent something - only 'natural persons' can, says the US Patent Office". business Insider . Retrieved 26 August 2020.

¹⁴<https://ipindia.gov.in/history-of-indian-patent-system.htm#:~:text=Brief%20about%20Indian%20Patent%20System,disclose%20secret%20of%20their%20inventions.>

¹⁵ <https://www.mondaq.com/india/patent/125766/patents-law-in-india-everything-you-must-know>

¹⁶ Silverman, Arnold B. (1990). "Evaluating the Validity of a United States Patent"

¹⁷ Mallor, Jane (5 January 2012). *Business Law: The Ethical, Global and E-Commerce Environment* (15th ed.). McGraw-Hill/Irwin. p 266. ISBN 978-0-07-352498-6.



counterclaim. A patent can be found to be invalid on the grounds described in the relevant patent laws, which vary between countries. Often, the grounds are a subset of the requirements for patent qualification in the relevant country. While a violator is generally free to rely on any available grounds of invalidity (such as a prior publication, for example), some countries have restrictions in place to prevent questions of similar validity from being re-applied. An example is the UK Certificate of Validity of the Contest.²⁴ Patent licensing agreements are contracts in which the patent owner (licensor) agrees to grant the licensee the right to make, use, sell or import the claimed invention, usually in exchange for royalties or other compensation. It is common for companies engaged in complex technology areas to enter into multiple license agreements involving the production of a single product. In addition, it is equally common in such fields for competitors to license each other patents under cross-licensing agreements in order to share the benefits of using each other's patented inventions.

IMPACT OF THE PATENT

A patent does not confer a right to make or use or sell an invention. Rather, a patent provides the right, from a legal standpoint, to exclude others from making, using, selling, selling, or importing a patented invention for the term of the patent, which is usually 20-year-old from the date of filing subject to payment of maintenance fee. However, from an economic and practical point of view, a patent is preferable and perhaps more accurately regarded as giving its owner "the right to try and assert the patent in court", since many given patents are not a single patent. Bars become invalid after the effort of their owner to claim them in court.^{25,26} A patent is a limited property right granted by the government to inventors in exchange for an agreement to share the details of their inventions with the public. Like any other property right, it can be sold, licensed, mortgaged, assigned or transferred, given

away, or simply given up.²⁷ A patent, being an exclusionary right, does not entitle the patent owner to take advantage of the invention subject to the patent. For example, many inventions are an improvement to prior inventions that may still be covered by someone else's patent. If an inventor obtains a patent on an improvement to an existing invention that is still under patent, they may legally use the improved invention only if the patent holder of the original invention gives permission, which they refuse, can do.²⁸

Some countries have "working provisions" that require the invention to be exploited in the jurisdiction it covers. Consequences of an invention not working vary from country to country, from revocation of patent rights to compulsory licenses granted by courts to a party wishing to exploit a patented invention. The patentee has the opportunity to revoke or challenge the license, but is usually required to provide evidence that the work of the invention has met the reasonable requirements of the public.²⁹

CONCLUSION

Finally, we say that any work of a person or a group of persons, which is useful to the society and is also economically important for the creator, is called Intellectual Property and any creator should be given to protect this property. Those rights are called Intellectual Property Rights. These rights are granted by a legal process within a country with certain time periods and conditions. Protection of intellectual property, granting someone an exclusive right to use sell or manufacture an invention for a specified period of time... Governments grant patents to inventors as a way to keep others from making or selling inventions for a period of time. It is to be known that in India, it is necessary to simultaneously address the challenges like lack of expenditure by the government and the needs of public health. For this, in the Indian patent system, the work of balancing between good and beneficial patents for public interest and corporate patents filed only for commercial interests is a remarkable initiative.

²⁴ Sonemaker, Tyler. "No, an artificial intelligence cannot legally invent something - only 'natural persons' can, says the US Patent Office". *business Insider*. Retrieved 26 August 2020.

²⁵ Article 28.2 TRIPS Archived on 22.06.2017 Wayback Machine : " Patent owners shall also have the right to allot or by succession, transfer, patent and contract to terminate the license."

²⁶ abc "is not a grant of the right to make or use or sell a patent. It does not imply, directly or indirectly, any such right. It merely gives the right to exclude others. The assumption that the right to make is a patent grants is clearly inconsistent with the established distinctions between general and specific patents, and with the well-known fact that a substantial proportion of a patent granted is in the area covered by a prior relatively general or original patent, are tributary to the first such patent, and may not be exercised unless under license." - *Harman Vs Youngstown Car Mfg. Co.*, 191 F. 579, 584-85, 112 CCA 185 (6th Circle. 1911)

²⁷ a b Article 33 of the Agreement on Trade Relating to Aspects of Intellectual Property Rights (TRIPS).

²⁸ *ibid*

²⁹ *ibid*