EDITION ONE

RASPREP

Module 10

Previous Years' Question Papers and Mock Tests

Includes more than 20 Solved Past Year Question Papers + Mock Tests

PREFACE

From the Desk of RAS Intellect

We are immensely proud to present Module 10: Previous Years' Question Papers and Mock Tests, the **final and most crucial volume** in the RASPREP Series. This book is not just a collection of papers; it is the capstone of your preparation journey, meticulously designed to give you the competitive edge required to excel in the rigorous Patent Agent Examination.

The path to becoming a certified Patent Agent demands not only a deep understanding of Intellectual Property Law but also the tactical skill to navigate the examination format, timing, and complexity of questions. This module serves as your ultimate practice arena.

What Awaits You Inside

This definitive practice module features a comprehensive compilation of question papers from nearly two decades, offering an unparalleled insight into the evolving trends and core areas tested by the examination body.

- **Extensive Coverage:** We have curated a full list of papers, ensuring you practice across a broad spectrum of difficulty and style:
  - Paper I (Objective/Law): From **2000, 2002, 2003, 2004 (Old Format), and the modern format from 2005 through 2025.**
  - Paper II (Drafting/Interpretation): Complete coverage from **2005 through 2025.**
- **Focused Selection:** Every question included has been chosen to represent the best possible preparation material, mirroring the actual exam's complexity and scope.
- **In-Depth Explanations:** Recognizing that practice is incomplete without understanding, we have dedicated significant effort to provide very detailed explanations for the answers. These are not mere solutions but complete pedagogical tools, clarifying the underlying legal principles and best practices in drafting.

Your Strategy for Success

We strongly recommend that you practice all the papers included in this book under timed, examination-like conditions. Furthermore, make it a point to read the explanations thoroughly, treating them as a final review of the core syllabus. This systematic approach will enhance your speed, accuracy, and confidence.

This book is a testament to the dedication and comprehensive approach that defines the RASPREP Series. We believe that mastery of these questions and their detailed solutions will significantly boost your performance and readiness.

On behalf of the entire **RAS Intellect team,** we extend our sincere wishes and Best of Luck to all the students. May your hard work culminate in success and lead you to your professional goals.

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RAS INTELLECT SOLUTIONS Pvt. Ltd.
Unit 512, 5th Floor, Jubilee Walk, Sector 70,
SAS Nagar, Mohali, Punjab-160071, (India)
www.rasintellect.com

About the Company

At RAS Intellect, we turn ideas into powerful assets.

We help innovators — from solo founders to global enterprises — protect and profit from their intellectual property through expert patent, trademark, copyright and IP strategy services. Our team simplifies the complexities of IP law, guiding you from ideation to enforcement with precision and clarity. Wherever innovation happens, RAS Intellect ensures it's protected and positioned to grow.

Vision

At RAS Intellect, we envision a world where innovators and creators thrive — empowered by robust intellectual property protections that fuel creativity, drive collaboration, and support sustainable innovation.

Mission

To empower innovators and creators by safeguarding their intellectual assets through strategic, customized IP solutions and enabling them to compete, grow and lead in an innovation-driven world.

How We Protect Innovation: Our Services

Tailored IP solutions across protection, strategy, and capacity building.

- **IP Protection & Strategy**
  - Patents Filing
  - Trademark Registration
  - Copyright Filing
  - Design Filing
  - International Filing
  - Prosecution Services
  - Drafting of Technology Transfer Agreements
  - Patent Filing Support under SIPP Scheme for Startups- **No Professional cost/ hidden charges**
  - IC Layout Design
  - Plant Variety Protection
  - IP Policy Drafting
  - Licensing Agreements
  - Industry-Research Institute Collaborative Agreements
  - Confidentiality Agreement (Non-Disclosure Agreements)
  - Incubation center setup
  - Section **8 company** formation
  - Tailored training through **RASPREP** and capacity-building programs to foster IP awareness
  - Geographical Indication

Recent Milestones

Recognitions and Contributions from 2024–2025

- **National IP Outreach Mission – Viksit Bharat**

Dr. Ruchi represented RAS Intellect Solutions as a panelist in the "IPR for Women in Business" session organized by PHDCCI, contributing to the national dialogue on IP for inclusive innovation.

- **National IP Yatra 2025 – ASSOCHAM & MSME Ministry**

As co-panelist at this MSME Ministry-supported event, Dr. Ruchi addressed "Maximizing IP Value for Startups & MSMEs," underscoring the firm's expertise in IP commercialization.

- **National Intellectual Property Awards 2024 – Ministry of Commerce & CGPDTM**

Dr. Ruchi was invited to the prestigious IP Awards held at Bharat Mandapam, New Delhi, recognizing RAS Intellect's national contribution to IP literacy and strategy.

- **Leadership & Innovation Milestone – TiECON 2025**

Honoured by the Governor of Punjab, Dr. Ruchi received an award at TiECON 2025 for excellence in research and innovation leadership.

Building IP Foundations for Viksit Bharat

A visionary collaboration with Punjab School Education Board (PSEB)

In alignment with the national vision of **Viksit Bharat@2047**, RAS Intellect is collaborating with the **Punjab School Education Board (PSEB)** to introduce Intellectual Property (IP) education in schools across Punjab.

This initiative aims to embed IP awareness and foundational knowledge within the school curriculum — empowering students and educators to understand, create, and protect innovation from an early age. By nurturing IP consciousness at the grassroots level, we are shaping a generation of future-ready innovators equipped to lead India toward self-reliance and global competitiveness.

RAS INTELLECT SOLUTIONS Pvt. Ltd.
Unit 512, 5th Floor, Jubilee Walk, Sector 70,
SAS Nagar, Mohali, Punjab-160071, (India)
www.rasintellect.com

Meet the Founder

Visionary leadership driving India's IP revolution

Dr. Ruchi Singla

Director & CEO, RAS Intellect Solutions Pvt. Ltd

- Over 20 years of experience in academic research, intellectual property strategy, and innovation leadership
- Recognized among the **Top 50 Mentors in India** for contributions to national mentoring initiatives
- Serves as a **Regional Mentor of Change** under the **Atal Innovation Mission**, NITI Aayog
- Successfully guided **over 2,300 patent filings** across diverse fields, including AI, drones, and cybersecurity
- Established **three Centres of Excellence** during her academic leadership, fostering innovation ecosystems
- Licensed Indian Patent Agent (No. 5887) and Certified Canadian Patent Administrator by **the Intellectual Property Institute of Canada**
- Secured **over ₹15 crores** in funding for research, innovation, and startup incubation projects
- Empaneled as an **IP Facilitator under the Startup India Scheme (SIIP)** to support early-stage ventures
- Regular speaker and co-panelist at national forums including **TiECON, ASSOCHAM, and PHDCCI**
- Former **Director of Research & Innovation at CGC Landran** and **Director at ACIC RISE Association,** supported by NITI Aayog

At the intersection of policy, education, and intellectual property, Dr. Ruchi Singla is building a more innovation-ready India.

PYQ
PAPER I

2000: PAPER 1 (SOLVED)

The Patents Act, 1970
Qualifying examination under section 126
Paper – I: Patents Act & Rules
September, 2000
(All questions are to be answered)
(Marks of each question are indicated at the end of the question)

Time: 2½ hours **Total Marks = 100**

Q.1 Write short notes on any five (5) of the following, keeping in view the provisions under Patents Act and Rules. (Each carries equal marks.)

a) Invention
b) Complete specification
c) Term of Patent
d) Restoration of Patent
e) Medicine or Drug
f) Patent Agent
g) Exclusive Marketing Right

(Marks = 20)

Solution:

a. **Invention:** As per Section 2(1)(j), an invention means a new product or process involving an inventive step and capable of industrial application.
Novelty requires the invention not to be anticipated by prior art. Inventive step under Section 2(1)(ja) requires technical advancement or economic significance making the invention not obvious to a person skilled in the art. Industrial applicability under 2(1)(ac) means that the invention is capable of being made or used in an industry.

Further, Section 3 and Section 4 list what are not inventions.
Section 3 specifies various categories of non-patentable inventions. These include:
• inventions frivolous or contrary to natural laws (3(a))
• inventions against public order or morality (3(b))
• mere discovery of scientific principle or natural substances (3(c))
• new forms of known substances without enhanced efficacy (3(d))
• A substance that is only a simple mixture of its ingredients, where each component works just as it normally does and nothing new results,(3(e))
• Simply arranging, rearranging, or duplicating known devices,when each device works independently in the usual way (3(f))
agriculture/horticulture methods (3(h))
• methods of treatment (3(i))
• plants, animals (whole or parts), except microorganisms (3(j))
• mathematical/business methods & computer programs per se (3(k))
•a literary, dramatic, musical or artistic work or any other aesthetic creation whatsoever including cinematographic works and television productions(3(l))
•a mere scheme or rule or method of performing mental act or method of playing game (3(m))
•a presentation of information; (3(n))
•topography of integrated circuits;(3(o))
•an invention which, in effect, is traditional knowledge or which is an aggregation or •duplication of known properties of traditionally known component or components (3(p))

Under Section 4, the atomic energy-related inventions are excluded.

b) Complete specification: Under Section 10(4), a complete specification shall:

- Fully and particularly describe the invention,
- Disclose the best method of performing it known to the applicant,
- End with claims clearly defining the scope of protection, and
- Be accompanied by drawings, if required.

Where a provisional specification is filed, the complete specification must be filed within 12 months under Section 9(1), failing which the application is deemed abandoned. Only a complete specification is examined, published under Section 11A, and can lead to the grant of a patent.

c) Term of Patent: Under Section 53(1), every patent is granted for a term of 20 years from:
(i) Filing date for ordinary applications
(ii) International filing date for PCT national phase applications
There is no extension of term in India. Non-payment of renewal fee causes the patent to cease under Section 53(2) and Section 142.

d) Restoration of Patent: If a patent lapses due to non-payment of renewal fees within the time allowed under Section 53 and Section 142(4), the patentee (or legal representative) may apply for restoration under Section 60 within 18 months from the date on which the patent ceased to have effect.
Application is made in Form 15 under Rule 84.
The Controller must be satisfied that:

- Non-payment was unintentional, and
- There was no undue delay.

The application is then published under Section 61 and may be opposed. If restoration is allowed, unpaid renewal fees must be paid.
Infringement during the lapsed period is not actionable under Section 62(2).

e) Medicine or Drug: Under the Patents Act, 1970, medicines and drugs are patentable subject matter, but they are governed by special restrictions to balance public health with private rights. Section 3(d) prevents evergreening by excluding new forms, salts, polymorphs, or derivatives of known substances unless they show significant enhancement of efficacy. Further, under Section 47, patents for medicines are subject to conditions allowing the Government to import or use the invention for its own purposes.
The Act provides strong public-interest safeguards: Section 84 allows compulsory licences if patented medicines are not reasonably affordable or available to the public; Section 92 enables the Government to grant compulsory licences during national emergencies or public health crises. Additionally, Section 100 and Section 102 empower the Government to use or acquire patents for drugs in public interest.
Thus, while pharmaceutical inventions are patentable in India, the law ensures that patents do not hinder access to essential medicines, maintaining a balance between innovation incentives and healthcare needs.

f) Patent Agent: Defined under Section 2(1)(n) as a person registered under Section 125.
A person shall be qualified to have his name entered in the Register of Patent Agents if:

- He is a citizen of India,
- has completed the age of 21 years, and
- has obtained a degree in science, engineering or technology from a university established under law in India, or possesses equivalent qualifications as the Central Government may specify.
- have passed the qualifying examination prescribed for the purpose (Section 126(1)(c)(ii); details in Rule 110), or
- have, for a total of not less than ten years, functioned as an examiner or discharged functions of the Controller under Section 73, or both, and ceased to hold such capacity at the time of making application for registration (Section 126(1)(c)(iii)).
- has paid the prescribed fee (Section 126(1)(d); see Rule 115 and First Schedule).

Application for registration as Patent Agent is to be made in Form-22 under Rule 112.
Those already registered before the 2005 Amendment continue to be entitled to remain or be re-registered upon payment of prescribed fees (Section 126(2)).
Section 127 defines rights of patent agents (practice before the Controller; prepare documents, transact business under the Act).
Section 129 restricts practice as patent agent only to those registered (and prohibits companies from holding themselves out as patent agents).

g) Exclusive Marketing Right (EMR):
EMR was introduced through Chapter IVA (Sections 24A–24F) (now omitted) of the Patents Act, 1970.
These provisions were omitted after India fully implemented product patent protection in the year 2005.
EMR was applicable only to:
• Pharmaceutical products
• Agrochemical products

It did not grant patent rights, but only conferred a marketing monopoly for the product concerned.
An EMR was granted for a period of 5 years from the date of approval by the Central Government, or until the patent was granted or rejected, whichever was earlier.
The EMR holder had the exclusive right:
• To sell or distribute the product in India, and
• To prevent others from commercially marketing the product without authorization.

However, EMR did not confer full patent rights such as manufacturing rights.
All EMR provisions were repealed after introduction of product patents for drugs and agrochemicals in 2005, and alignment of Indian patent law with TRIPS obligations.
Therefore, EMR no longer exists under the present law.

Q.2 Fill in the blanks (any five (5), each carries equal marks).
a) Exclusive Marketing Right is granted for 5 years from the _____.
b) The maximum number of designation fees payable under PCT is _____.
c) Application for grant of product patent in Drug can be filed under section _____ of the Act.
d) The basic fee is USD _____ if the international application contains not more than _____ sheets.

e) Each demand for international preliminary examination shall be subject to the payment of _____ fee for IPEA and _____ fee for IB of WIPO.
f) India became bound by the Paris convention for the protection of Industrial Property on _____.
g) ARIPO stands for _____.

(Marks = 15)

Solution:

a. Exclusive Marketing Right is granted for 5 years from the **date of approval by Central Government or till grant or rejection of patent, whichever is earlier**.
Explanation: Under Section 24B (now omitted) of the Patents Act, 1970, EMR was a transitional right for pharmaceutical and agrochemical products. The duration was:
• 5 years from the date of approval by Central Government, or
• Till product patent was granted or rejected, whichever occurred earlier.
(This provision ceased after the 2005 Amendment Act.)

b. The maximum number of designation fees payable under PCT is **one**.
Explanation: The PCT moved to an all-inclusive international filing fee, and the separate designation fee system was abolished. Now, applicants pay a single international filing fee that covers all designations automatically.

c. Application for grant of product patent in Drug can be filed under section **5 (omitted)** of the Act.
Explanation: Before the 2005 amendment, Section 5 of the Patents Act, 1970 expressly prohibited product patents in:
• Food
• Drugs
• Medicines
• Chemical substances
This section allowed only process patents for drugs.
Under the pre-2005 (TRIPS-transition period) Indian Patents Act, product patents for drugs and medicines were not allowed, but applications could still be filed and kept in the "mailbox" under Section 5(2) until 1 January 2005.
After the Patents (Amendment) Act, 2005, Section 5 of the Act was repealed (omitted).
As a result:
• Product patents for drugs are now allowed in India,
• Applications for pharmaceutical product patents are governed by the general provisions of patentability under Section 2(1)(j) and Section 3(d).

d. The basic fee is USD **1,603** if the international application contains not more than **30** sheets.
Explanation: The basic fee (international filing fee) is generally paid to the receiving office in Swiss Francs (CHF), and its equivalent in USD can vary based on exchange rates. As of November 1, 2025, the base international filing fee is CHF 1,330 (approximately $1,603 for applications filed on paper with the USPTO as receiving office) if the international application contains not more than 30 sheets. An additional fee is charged for each sheet in excess of this limit.

e. Each demand for international preliminary examination shall be subject to the payment of **examination** fee for IPEA and **handling** fee for IB of WIPO.

Explanation: Under PCT Chapter II, fees for international preliminary examination are divided into:

1. Handling fee (to the International Bureau – IB), and
2. Examination fee (to International Preliminary Examining Authority – IPEA).

Indian Patent Act does not prescribe these fees; it recognises PCT compliance.

f. India became bound by the Paris convention for the protection of Industrial Property on **7 December 1998**.

Explanation: India became a signatory to the Paris Convention for the Protection of Industrial Property on 7 December 1998, thereby becoming entitled to claim priority protection.

This impacts:

• Convention applications under Section 135, and

• International filing rights.

g. ARIPO stands for **African Regional Intellectual Property Organization.**

Explanation: ARIPO is a regional IP authority serving African states, similar to:

• EPO (Europe)

• ARIPO (Africa)

• OAPI (Francophone African nations)

It administers patents and IP rights on behalf of multiple countries.

Q.3 Answer any four (4) questions of the following, keeping in view the provisions of the Patents Act and Rules. (Each carries equal marks.)

a) When is a divisional application for Patent filed?

b) What is the Official Gazette?

c) Can an applicant convert his complete specification to provisional specification? If so, how?

d) What is the difference between Licence of Right and Compulsory Licence?

e) What is the effect of acceptance of complete specification?

f) What is Register of Patents?

(Marks = 20)

Solution:

(a) A divisional application under Section 16 of the Patents Act, 1970 is filed when the claims of an earlier (parent) application relate to more than one invention and therefore lack unity of invention. The applicant may file it voluntarily if he identifies multiple inventive concepts in the parent specification, or the Controller may require such division when an objection of plurality of inventions is raised during examination. A divisional application must be based entirely on matter disclosed in the parent specification, and it cannot introduce new subject matter. It retains the same filing date (and priority date, if applicable) as the parent application, thereby preserving the original timeline for novelty assessment. Each divisional application is treated as a separate and independent application, requiring its own complete specification and prescribed fees.

(b) The Official Gazette under the Patents Act is the statutory publication through which the Patent Office communicates official actions and legal information to the public. Under Section 145 of the Patents Act, 1970, all notifications, publications, corrections, patent grants, assignment entries, compulsory licences, restorations, and other patent-related notices must be published in the Official Journal. At present, the Gazette is published in electronic form by the Patent Office, and such electronic publication is deemed to be valid publication for all legal purposes. Publication in the Official Gazette gives legal notice to the public and triggers several statutory time limits under the Act.

(c) Yes, the Patents Act, 1970 permits an applicant to convert a complete specification into a provisional specification. This is provided under Section 9(3), which states that an applicant may, if he so desires, convert a complete specification filed earlier into a provisional specification by requesting the Controller and complying with the prescribed conditions. The law then requires that a complete specification must be filed within twelve months from that original filing date. For example, if a complete specification was filed on 1 January 2024 and subsequently converted to a provisional specification under Section 9(3), the applicant must file the proper complete specification on or before 1 January 2025 (within 12-months). Thus, the conversion does not extend the statutory period; it only changes the treatment of the specification while preserving the original filing date.

(d) What is the difference between Licence of Right and Compulsory Licence?
Under the Patents Act, 1970 ***(before the 2005 amendment),*** the Act recognized two distinct mechanisms for allowing third parties to use a patented invention-Licence of Right and Compulsory Licence. A Licence of Right existed under the old Sections 87–94, where a patent could be endorsed with the words "Licence of Right". Once endorsed, any person was entitled as of right to obtain a licence to work the invention, without needing to establish any statutory grounds. The terms of the licence were either mutually agreed or were settled by the Controller under Section 90. This system essentially created an open licensing regime for an endorsed patent. ***However, this entire concept was deleted by the Patents (Amendment) Act, 2005 to make Indian patent law TRIPS-compliant. In the current law, the term "Licence of Right" does not exist in the Act.***

In contrast, Compulsory Licensing, governed by Sections 84 to 92 allows any person to apply for a licence three years after the date of grant of a patent, but only upon proving specific statutory grounds such as:

- that the reasonable requirements of the public have not been satisfied,
- that the patented invention is not available at a reasonably affordable price, or
- that the invention is not worked in the territory of India.
-

Additionally, Sections 92 and 92A allow special compulsory licences in cases of national emergency, extreme urgency, public non-commercial use, or for export of pharmaceutical products to countries with insufficient manufacturing capacity.

(e) Upon acceptance and publication of a complete specification under Section 11A, the applicant acquires provisional rights as provided under Section 11A(7). Although the patent is not yet granted, the applicant gains the right to claim reasonable damages for infringement occurring after publication once the patent is granted. However, no legal proceedings for infringement can be initiated until the patent is actually granted under Section 48 read with Section 43. Thus, acceptance and publication confer a legal status of disclosure with conditional enforceability but not full monopoly rights.

(f) The Register of Patents is a statutory record maintained by the Controller under Section 67 of the Patents Act, 1970. It contains details such as the name of the patentee, title of invention, details of assignments, licences, mortgages, renewals, and restorations. As per Section 72, the Register is open for public inspection at the Patent Office, and certified copies may be obtained on payment of the prescribed fee. Entries in the Register serve as prima facie evidence of matters required or authorised to be recorded under the Act. The Register ensures transparency and legal certainty in ownership and rights pertaining to patents.

Q.4 State True or False (each statement carries equal marks).

a) PCT, the Agreement is open only to states party to Paris convention for protection of Industrial Property.

b) Compulsory licence on Exclusive Marketing Right can be granted after 3 years from the grant of the said right.

c) For Nationals (natural and legal persons) of India the basic and designation fees are reduced by 75% payable to IB of WIPO.

d) Government cannot sell the confiscated smuggled goods, as it is infringing the right of the Patentee when the said goods are protected by patents in India.

e) The filing date of an application for Patent and its complete specification, processed by the Patent Office as designated office shall be the international filing date accorded under the PCT.

f) The annual renewal fee in respect of a Patent specification for two or more years cannot be paid in advance.

g) The Register of Patents shall be kept at the Head Office of the Patent Office and shall be open for public inspection during office hours free of charges.

h) Every person desiring to be registered as a Patent agent shall make an application in Form 23 in duplicate, which shall be filed at the Patent Office, Calcutta or its branch Offices at New Delhi, Chennai and Mumbai.

i) The continuance of a person's name in the register of Patent agents shall be subject to payment of the fee specified therefor in the First Schedule.

j) The mere arrangement or re-arrangement or duplication of known devices each functioning independently of one another in a known way is not an invention under the Patents Act, 1970.

(Marks = 20)

Solution:

a. False

Explanation: Under the PCT, membership is open to any country that is a member of the Paris Convention or a member of the United Nations. Therefore, PCT membership is not limited only to Paris Convention states.

b. True

Explanation: Under historical Chapter IVA (Sections 24A–24F, now omitted), compulsory licence on EMR could be granted after expiration of three years from EMR grant depending on conditions and failure to meet public requirement.

(EMR regime now abolished but statement is historically correct).

c. False

Explanation: The Patents Act does not prescribe any percentage fee reduction for Indian applicants under PCT. Fee reductions under WIPO depend on PCT Regulations, not Indian law, and are linked to applicant category (natural person / small entity / least-developed country), not nationality alone. Currently Nationals and residents of certain countries (including India) are eligible for a 90% reduction in PCT fees

d. False

Explanation: Under Section 157, confiscated goods may be selled or used by Government. Additionally, Section 107 of the Act protects good-faith actions. Therefore, Government sale does not amount to infringement.

e. True

Explanation: Under Section 7(1B) and PCT provisions, when an international application designates India, the international filing date is deemed to be the filing date in India once it enters national phase.

f. False
Explanation: Under Rule 80(3), renewal fees for multiple years may be paid in advance. Hence payment is permitted before expiry for more than one year.

g. True
Explanation: Under Section 67 read with Section 72, the Register of Patents is open for public inspection during office hours without fee. Fee is payable only for certified copies.

h. False
Explanation: Under Rule 112, the correct form for registration as Patent Agent is Form 22, not Form 23. Form 23 is for restoration of name after removal.

i. True
Explanation: Under Rule 115, continuation in Register requires payment of annual fee as per the First Schedule. Non-payment leads to removal under Rule 116.

j. True
Explanation: Under Section 3(f):
"Mere arrangement, re-arrangement or duplication of known devices, each functioning independently" is not an invention.

Q.5 State the period (including extensions if available) under the Patents Act, 1970 and/or under the Patents Rules, 1972 for performing the following acts. Quote relevant sections and/or rules and number of the prescribed form if any (any five (5), each carries equal marks).

a) For filing complete specification after an application for patent accompanied with provisional specification has been filed.
b) For filing opposition to the grant of a Patent after acceptance of the complete specification has been notified in the official Gazette.
c) For filing statement of inventorship.
d) For filing request for sealing after an opposition to the grant of the Patent on an application has been dismissed.
e) For filing an application for restoration of a lapsed Patent.
f) For putting a specification in order for acceptance after issuance of the first examination report.
g) For filing request for continuance of a person's name in the Register of Patent agents.

(Marks = 25)

Solution:
(a) Under Section 9(1) of the Patents Act, 1970, where an application is accompanied by a provisional specification, the applicant must file the complete specification within 12 months from the date of filing of the provisional specification. The complete specification is filed in Form 2 in accordance with Rule 13(1) of the Patents Rules, 2003. If the complete specification is not filed within the prescribed period, the application is deemed to have been abandoned under Section 9(1).

(b) Under Section 25(2) of the Act, any interested person may file a post-grant opposition to a patent within twelve months from the date of publication of the grant of the patent in the Official Journal. The procedure is governed by Rule 55A, and the opposition is to be filed in Form 7. An opposition not filed within the prescribed statutory period is not maintainable.

(c) Under the current Patents Rules, 2003, the Statement of Inventorship (Form 5) must be filed in accordance with Rule 13(6). The applicant must submit Form 5 either along with the complete specification or within one month from the date of filing the complete specification, with the Controller having discretion to extend this period upon a request in Form 4. Form 5 is not required at the provisional stage and becomes mandatory only at the complete specification stage.

(d) The procedure of sealing of patents has been abolished by the Patents (Amendment) Act, 2002. Under the present law, there is no requirement to file any request for sealing after dismissal of opposition.

(e) Under Section 60(1) of the Act, where a patent has ceased due to failure to pay renewal fee, the patentee or legal representative may apply for restoration within 18 months from the date on which the patent ceased to have effect. The application is made in Form 15 and governed by Rule 84 of the Rules. Restoration may be opposed, and the Controller must be satisfied that the lapse was unintentional and that there was no undue delay.

(f) Under Rule 24B(5) read with Section 21, the applicant must comply with all objections and put the application in order for grant within 6 months (earlier it was 12 months) from the date of issue of the First Examination Report. This period is extendable by a further 3 months upon filing Form 4 along with the prescribed fee. Failure to comply within the extended period results in the application being deemed abandoned under Section 21.

(g) Under Rule 115 of the Patents Rules, 2003, every patent agent must pay an annual renewal fee as specified in the First Schedule to continue his name in the Register of Patent Agents. If the fee is not paid, the name may be removed from the register under Rule 116. An application for restoration of the name after removal is made in Form 23 within two months from the date of such removal under Rule 117.

2002: PAPER 1 (SOLVED)

The Patent Act, 1970
Qualifying Examination under section 126 of the Patent Act
(As amended & updated)
PATENT ACT AND RULES
(All questions are to be answered)
(Marks of each question are indicated at the end of the question)
Paper-1 (Provisions of
NOVEMBER, 2002

PAPER - 1

Time- 2½ Hrs. **Total Marks- 100**

Q.1 Write a short note on any five (5) of the following, keeping in view of the Provisions under Patent Act and Rules. (Each carries equal marks).

1. **Patent Agent**
2. **Secrecy Directions**
3. **International application under PCT**
4. **Medicine or drug**
5. **Inventions as per the Patents Amendment Act, 2002**
6. **Convention Country**
7. **Register of patents**

(20)

(a) **Patent Agent:** Defined under Section 2(1)(n) as a person registered under Section 125. Under section 126, a person shall be qualified to have his name entered in the Register of Patent Agents if he fulfills following conditions:

- he is a citizen of India,
- has completed the age of 21 years, and
- has obtained a degree in science, engineering or technology from a university established under law in India, or possesses equivalent qualifications as the Central Government may specify.
- have passed the qualifying examination prescribed for the purpose (Section 126(1)(c)(ii); details in Rule 110), or
- have, for a total of not less than ten years, functioned as an examiner or discharged functions of the Controller under Section 73, or both, and ceased to hold such capacity at the time of making application for registration.
- has paid the prescribed fee (Section 126(1)(d); under Rule 115).

Application for registration as Patent Agent is to be made in Form-22 under Rule 112.

Those already registered before the 2005 Amendment continue to be entitled to remain or be re-registered upon payment of prescribed fees (Section 126(2)).

Section 127 defines rights of patent agents: A registered patent agent can practice before the Controller. They can prepare documents, transact business and perform functions related to patent proceedings.

Under Section 128, the applications and communications to the Controller may be signed by a patent agent authorized in writing by the applicant.

Section 129 restricts practice as patent agent only to those registered (and prohibits companies from holding themselves out as patent agents).

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(b) Secrecy directions: Secrecy of certain inventions, including issuance, review and consequences of secrecy directions, is dealt with under Sections 35–42 of the Patents Act, 1970. Secrecy directions are issued when an invention is considered relevant for defence purposes or national security.

Under Section 35, if the Controller finds that an invention might be sensitive, he issues an order restricting publication and communication of the patent application.

During the secrecy period, the application is not published, the grant is withheld, and the applicant cannot file abroad without Government approval. Directions are periodically reviewed under Section 36 and may be continued or revoked. If secrecy causes financial loss to the applicant, compensation may be claimed under Section 37. Secrecy directions ensure that inventions critical to defence are protected from public exposure while balancing the applicant's rights.

(c) **International application under PCT:**

An International Application under the Patent Cooperation Treaty (PCT) is a mechanism that allows an inventor to seek patent protection in multiple countries through a single filing. In India, such applications are expressly recognized under the Indian Patent Act, 1970. As per Section 7(1A) of the Patents Act, an international application designating India is deemed to be a patent application under the Act. The Act also provides a framework for handling these applications under section 138 and Rules 19–20. Section 138 states that international applications shall be filed, processed, and examined in accordance with the PCT provisions, subject to the Act.

PCT time-lines:



The PCT system does not grant a global patent; instead, it streamlines filing and defers costs. To secure protection in India, the applicant must enter the national phase within 31 months from the priority date, submit required forms and fees, and provide translations if needed. After national phase entry, the application proceeds like an ordinary Indian patent application. The PCT route offers procedural convenience and extended time for assessment of patentability and commercialization decisions.

(d) **Medicine or drug:**

Under the Patents Act, 1970, medicines and drugs are patentable subject matter, but they are governed by special restrictions to balance public health with private rights. Section 3(d) prevents evergreening by excluding new forms, salts, polymorphs, or derivatives of known substances unless they show significant enhancement of efficacy. Further, under Section 47, patents for medicines are subject to conditions allowing the Government to import or use the invention for its own purposes.

The Act provides strong public-interest safeguards: Section 84 allows compulsory licences if patented medicines are not reasonably affordable or available to the public; Section 92 enables the Government to grant compulsory licences during national emergencies or public health crises. Additionally, Section 100 and Section 102 empower the Government to use or acquire patents for drugs in public interest.

Thus, while pharmaceutical inventions are patentable in India, the law ensures that patents do not hinder access to essential medicines, maintaining a balance between innovation incentives and healthcare needs.

(e) **Inventions as per the Patents Amendment Act, 2002:**
The Patents (Amendment) Act, 2002 modernised the definition and scope of "invention" in India. It amended Section 2(1)(j) to define an invention as a new product or process involving an inventive step and capable of industrial application, aligning Indian law with TRIPS standards. The amendment also revised Section 3 to expand the list of non-patentable subject matter, including methods of agriculture, mathematical methods, business methods, and computer programs per se. It introduced uniform 20-year patent term, strengthened examination procedures, and enabled patenting of microorganisms. Overall, the 2002 Amendment brought India closer to global patent practices while preserving public-interest safeguards.

(f) **Convention Country**
A Convention Country refers to any nation that is a member of the Paris Convention for the Protection of Industrial Property and is formally notified as such by the Central Government under Section 133 of the Patents Act, 1970. This status enables applicants to benefit from the priority right provided under the Paris Convention.
When an inventor files a first patent application in a convention country, they may file a corresponding application in India for the same invention within 12 months, claiming the same priority date under Section 135. This ensures that the Indian filing is treated as if it were filed on the earlier foreign filing date, thereby protecting novelty and preventing intervening disclosures from becoming prior art.
The concept simplifies international patent protection by allowing applicants to coordinate filings, manage time-lines, and secure early rights across multiple jurisdictions. For India, notification of convention countries ensures reciprocity, legal certainty, and harmonization with global IP systems. Thus, a convention country framework strengthens international patent cooperation while safeguarding the applicant's priority rights.

(g) **Register of Patents:**
The Register of Patents, maintained under Section 67 of the Patents Act, 1970, is an official and permanent record containing all essential details related to granted patents in India. It is maintained at each Patent Office and may also be kept in electronic form. The register includes the name and address of the patentee, details of assignments, transmissions, licences, amendments, notifications of mortgages, security interests, and any other prescribed particulars.
The Register serves as prima facie evidence of the matters recorded in it, meaning that the information contained is legally presumed correct unless proved otherwise. It is open for public inspection, which promotes transparency and allows third parties, researchers, and businesses to verify ownership, legal status, and encumbrances on a patent.

Under Sections 69–71, the Controller has the authority to correct clerical errors, rectify entries, and update changes such as change of name, address, or ownership. Any person aggrieved by an incorrect entry may apply for rectification. The register also reflects the expiry, revocation, or surrender of patents.
Thus, the Register of Patents acts as a crucial legal and administrative tool ensuring clarity of patent rights, enabling due diligence, supporting IP transactions, and enhancing public notice regarding the status and ownership of patents in India.

Q.2 State True or False (Answer all questions, each carries equal marks, where it is false, give the reason/correct answer)

(a) **An application for patent for an invention may be made by any person claiming to be the true and first inventor of the invention.**

Solution: True
Reason: Under Section 6(1)(a) of the Patents Act, 1970, a patent application may be made by any person claiming to be the true and first inventor of the invention, either alone or jointly with others. This includes the actual inventor(s) who originally conceived the invention.

(b) **A patentee can not surrender his patent.**

Solution: False
Reason: Under Section 63 of the Patents Act, 1970, a patentee may surrender the patent by giving notice to the Controller. The Controller then publishes the notice and hears interested parties before accepting the surrender.

(c) **It is possible to obtain a world patent.**

Solution: False
Reason: There is no such thing as a "world patent." Patent protection is territorial in nature. Even under PCT, you only get a unified filing process but must enter national/regional phases separately.

(d) **The applicant shall not be entitled to institute any proceedings for infringement until the patent has been sealed.**

Solution: True
Reason: Under Section 11A(7), no infringement proceedings can be initiated until after the patent is granted/sealed.

(e) **There is a provision under the Patents Act, 1970 to extend the term of a patent.**

Solution: False
Reason: The term of a patent is fixed at 20 years under Section 53, and the Act does not allow extension,

(f) **Research Institutes or organizations can use patents for research purpose without any liability for infringement.**

Solution: True
Reason: Under Section 47(3) of the Patents Act, use of a patented invention for experiment, research or teaching does not constitute infringement, provided it is non-commercial.

(g) **The register of patent agents is kept at the Patent Office, Kolkata only.**

Solution: False
Reason: As per current practice, the Register of Patent Agents is maintained electronically under section 125 by the Indian Patent Office and can be accessed online. While the Kolkata Patent Office is the head office of the Controller General of Patents, Designs and Trade Marks (CGPDTM), the register is not confined to Kolkata alone.

(h) **Invention relating to Atomic Energy is not patentable.**

Solution: True
Reason: Under Section 4, inventions relating to atomic energy shall not be granted patents.

(i) **The National Phase applications for patent under PCT may be filed at the Patent Office, Kolkata only.**

Solution: False
Reason: National Phase applications under PCT can be filed at any of the four Patent Offices in India (Kolkata, Delhi, Mumbai, Chennai), or through the online filing system. Kolkata is the head office, but not the only office for such filings

(j) **All orders of the Controller are appealable at the high court.**

Solution: False
Reason: After abolition of IPAB (2021), only specific orders listed under Section 117A are appealable before the High Court. Not all Controller's orders are appealable.

(k) **Under Patents (Amendment) Act, 2002 provision regarding request for examination has been introduced.**

Solution: True
Reason: The 2002 Amendment introduced Section 11B, which established the system of filing a Request for Examination (RFE) for an application to be examined.

(l) **Under Patent (Amendment) Act, 2002 provision regarding possibility of Register of Patents in electronic form has been introduced.**

Solution: True
Reason: The 2002 Amendment added Section 67(3), enabling the Register of Patents to be maintained wholly or partly in electronic form.

Q3. Fill in the blanks (answer all questions, each carries equal marks)

(a) **Each demand for international preliminaary examination shall be subject to the payment of ……fee for IPEA and …….fee for IB of WIPO.**

Solution: Exact fee amounts vary each year; IPEA fee and handling fee.

(b) **Any person interested in opposing the grant of a patent may give notice of opposition under section……within ……months from the date of advertisement of the acceptance of the complete specification in the official Gazette.**

Solution: Section 25(1) and 3 months (however this is as per-2005 amendment)
As per current practice after 2005 amendment, Pre-grant u/s 25(1): pre-grant opposition can be filed anytime before grant; and Post-grant u/s 25(2): post-grant opposition can be filed within 12 months from publication of grant.

(c) **The patent agent should pay the continuance fee every year on or before ……..in each year.**
Solution: 31st March
As per current practice- Post -2005 amendment, the Rules now simply state that the continuance fee must be paid "every year" (without fixing a statutory calendar date)

(d) **Application for grant of exclusive right should be filed at the ……..in form ……**
Solution: Not relevant to current practice as no current form exists for Exclusive Marketing Rights (EMR). After 2005, Exclusive Marketing Rights (EMR) provisions were abolished, and product patents became fully allowed for pharmaceuticals and agro-chemicals.

(e) **IB of WIPO stands for……**
Solution: International Bureau of the World Intellectual Property Organization.

(f) **Exclusive Marketing Rights shall be granted in Form……..**
Solution: not relevant to current practice as Exclusive Marketing Rights (EMR) abolished post-2005 law; no current form exists for EMRs.

(g) **The date of every patent shall be the date of the filing of the……**
Solution: application for the patent

(h) **No……fees shall be payable in respect of patent of addition.**
Solution: renewal fee**s**

(i) **The maximum number of designation fees payable under PCT is ……..**
Solution: One
The PCT moved to an all-inclusive international filing fee, and the separate designation fee system was abolished. Now, applicants pay a single international filing fee that covers all designations automatically.

(j) **Application for the grant of product patent in drug can be filed under Section…… of the Patents Act 1970.**
Soultion: Section 5
Section 5 was deleted by the Patents (Amendment) Act, 2005. From 1 January 2005, India became TRIPS-compliant and allowed product patents in drugs, medicines, and chemicals.

(k) **Under Patent (Amendment) Act, 2002, the term of the patent shall be…… years from the date of filing of the applications for patent.**
Solution : 20 years

(l) **Under Patent (Amendment) Act, 2002 there is a provision for publication pf the application for the patent after ……months, even before acceptance.**
Solution: 18 months

Q.4 Answer any 4 questions of the following keeping in view the provisions of the Patents Act and Rules. Each carries equal marks.

1. **When is a divisional application for patent is filed?**
2. **Name the PCT fees with the amount an Indian applicant is required to pay for filing an international application for patent under PCT at the Patent Office as Receiving Office (RO/IN).**
3. **Difference between provisional and complete specification**
4. **A note on revocation of patents**
5. **What do you understand by the term Rights of Patentee as per the Act?**
6. **A note on advantage of the PCT.**

1. **When is a divisional application for patent is filed?**
Solution: A divisional application is filed when a patent application as originally filed contains more than one invention and therefore does not comply with the requirement of unity of invention under Section 10(5) of the Patents Act, 1970. If the Complete Specification discloses multiple distinct inventions, the applicant may voluntarily separate them into two or more applications by filing a divisional application under Section 16(1). A divisional application may also be filed when directed by the Controller, if during examination he finds that the parent application claims more than one invention and issues an objection on lack of unity.
A divisional application must be filed at any time before the grant of the parent application, and it must be fully supported by the disclosure of the original specification; no new matter can be added. The divisional application receives the same filing date as the parent application and is examined independently with its own request for examination and fee. Each divisional application must contain claims directed specifically to the distinct invention carved out from the original filing.

2. **Name the PCT fees with the amount an Indian applicant is required to pay for filing an international application for patent under PCT at the Patent Office as Receiving Office (RO/IN).**
Solution: When an Indian applicant files an international application under the Patent Cooperation Treaty (PCT) at the Indian Patent Office acting as the Receiving Office (RO/IN), the applicant is required to pay three main fees: (1) the Transmittal Fee, which is payable to the Indian Patent Office and is ₹3,200 for natural persons/individual applicants; (2) the International Filing Fee, which is payable to WIPO and is approximately CHF 1,330 (around USD 1,471), with reductions available for electronic filing; and (3) the Search Fee, which is payable when the Indian Patent Office is selected as the International Searching Authority (ISA) and is ₹2,000 for natural persons. Additional fees apply only if the application exceeds 30 pages, in which case a per-page fee is charged by WIPO as part of the international filing fee structure.

3. Difference between provisional and complete specification

Solution: A Provisional Specification is filed when the invention is not yet fully developed but the applicant wishes to secure an early priority date. It contains only a brief description of the invention and need not include claims. Its primary purpose is to establish priority and allow the applicant 12 months to file the Complete Specification. A provisional specification does not result in the grant of a patent by itself and is not published immediately.

A Complete Specification, on the other hand, is the full and final disclosure of the invention as required under Section 10 of the Patents Act. It must contain a detailed written description, enablement, best mode, drawings (if necessary), and definitive claims, which define the legal scope of the monopoly. Only a complete specification is examined, published under Section 11A, and can lead to the grant of a patent. It must be filed within 12 months of the provisional specification; otherwise, the provisional lapses.

Thus, the key differences lie in purpose, level of disclosure, requirement of claims, and legal effect, with the provisional securing a priority date and the complete specification enabling examination and patent grant.

4. **A note on revocation of patents**

Solution: Revocation of a patent refers to the cancellation or annulment of an already granted patent when it fails to satisfy statutory requirements or when certain legal grounds arise. Under the Patents Act, 1970, a patent may be revoked through several mechanisms, such as by the High Court or the Intellectual Property Appellate jurisdiction under Section 64, by the Controller for non-working, or by the Central Government in the interest of sovereignty, security, or public order.

The most comprehensive grounds for revocation are provided under Section 64, which include lack of novelty, obviousness, wrongful obtaining, insufficient disclosure, non-patentable subject matter (Section 3 or 4), failure to disclose foreign filings (Section 8), failure to comply with secrecy directions, or obtaining a patent on false suggestion or misrepresentation. A patent may also be revoked as a counterclaim in an infringement suit before the High Court.

Further, under Section 66, the Central Government may revoke a patent if it is mischievous to the State or prejudicial to the public, and under Section 85, the Controller may revoke a patent if it has not been worked in India even after the grant of a compulsory licence.

5. **What do you understand by the term Rights of Patentee as per the Act?**

Solution: Under Section 48, a patent grants the patentee the exclusive right to prevent third parties from using the invention without consent.

- *For a product patent,* the patentee has the right to make, use, sell, offer for sale, and import the patented product in India.
- *For a process patent,* the patentee has the right to use the process, and to prevent others from using the process and from selling, using, or importing the product obtained directly by that process.

These rights are territorial, valid only in India, and continue until the expiry of the patent (20 years), subject to payment of renewal fees. Further these rights are enforceable through infringement proceedings, but remain subject to exceptions such as government use, research/experimental use, and compulsory licensing.

6. A note on advantage of the PCT.

Solution: The Patent Cooperation Treaty (PCT) provides a unified and streamlined procedure for filing patent applications in multiple countries. The greatest advantage of the PCT is that it allows an applicant to file one international application and secure an international filing date that is valid across all PCT member countries. This significantly simplifies the initial filing process and postpones the need to file separate national applications.

Another key advantage is the International Search Report (ISR) and Written Opinion, which provide early insight into the novelty, inventive step, and patentability of the invention before entering national phases. This helps applicants make informed decisions about prosecution strategy and commercial viability. PCT also provides an optional International Preliminary Examination, allowing applicants to amend claims and strengthen their application before national entry.

Importantly, the PCT system extends the national phase entry deadline to 31 months (in most countries including India) from the priority date, giving applicants additional time to evaluate markets, find investors, and develop the technology. It also reduces duplication of effort by national patent offices through centralized search and examination procedures.

Q.5 State the period (including extension if available) under the Patents Act, 1970 and/or under the Patent Rules, 1972 for performing the following act. Quote relevant sections and/or rules and number of the prescribed form if any with fees. [any four each carries equal marks]

a. For putting a specification in order for acceptance after issuance of the first examination report.

b. For a request for the sealing of a patent.

c. For filing opposition to the grant of a patent after acceptance of the complete specification has been notified in the Official Gazette.

d. For an application for the restoration of a patent.

e. For declaration as to inventorship of the invention.

f. For filing an application for compulsory licence.

g. For request for postponement of acceptance of complete specifications.

a. **For putting a specification in order for acceptance after issuance of the first examination report.**

Solution: The time for putting an application in order for grant under Section 21 is 6 months from the date on which the first statement of objections (FER) is issued to the applicant. This period can be further extended by a maximum of 3 months on a request for extension made in Form 4 with the prescribed fee before expiry of the initial 6-month period, as provided under Rule 24B(5) and 24B(6) of the Patents Rules, 2003. If the application is not put in order for grant within this maximum 9-month period, it is deemed to have been abandoned under Section 21

b. For a request for the sealing of a patent.

Solution: Under the pre-2005 law, sealing existed. Not relevant in current practice.

c. For filing opposition to the grant of a patent after acceptance of the complete specification has been notified in the Official Gazette.

Solution: Under the pre-2005 law, sealing existed. Not relevant in current practice.

d. For an application for the restoration of a patent.

Solution: If a patent lapses due to non-payment of renewal fees within the time allowed under Section 53 and Section 142(4), the patentee (or legal representative) may apply for restoration under Section 60 within 18 months from the date on which the patent ceased to have effect.

Application is made in Form 15 under Rule 84.
The Controller must be satisfied that:

- Non-payment was unintentional, and
- There was no undue delay.

The application is then published under Section 61 and may be opposed. If restoration is allowed, unpaid renewal fees must be paid.
Infringement during the lapsed period is not actionable under Section 62(2).

e. For declaration as to inventorship of the invention.
Solution: A Declaration as to Inventorship must be filed in Form 5 under Rule 13(6) of the Patents Rules, 2003. As per the current law, Form 5 must be filed within 1 month from the date of filing the Complete Specification, whether the Complete Specification is filed directly or later in pursuance of a provisional application.
This period may be extended by the Controller upon a request made in Form 4, subject to the prescribed fee, as permitted under Rule 138 (extension of time).
Form 5 must contain the name, nationality, and address of each inventor, and it is mandatory for proceeding to grant. Failure to file Form 5 within the permitted period may result in the application not being taken up for grant until the requirement is fulfilled.

f. For filing an application for compulsory licence.
Solution: Under the current law, an application for a Compulsory Licence may be filed after three years from the date of grant of the patent, as provided under Section 84(1) of the Patents Act, 1970. Any “person interested” or an existing licensee may apply in Form 17 along with the prescribed fee. The applicant must establish one or more statutory grounds namely, that (i) the reasonable requirements of the public with respect to the patented invention have not been satisfied, or (ii) the patented invention is not available to the public at a reasonably affordable price, or (iii) the invention is not worked in the territory of India.
The Controller evaluates the application by considering factors listed under Section 84(6), including the nature of the invention, the ability of the applicant to work the invention, and whether efforts were made to obtain a licence from the patentee on reasonable terms. In cases of national emergency, extreme urgency, public non-commercial use, or anti-competitive practices, the requirement of prior negotiation does not apply.
If satisfied, the Controller may grant a compulsory licence specifying field of use, royalty rate, and terms of working in India.

g. For request for postponement of acceptance of complete specifications.
Solution: Under the present law, a request for postponement of acceptance of the complete specification may be made under Section 17 of the Patents Act, 1970. The applicant may request the Controller to postpone acceptance of the complete specification for a period not exceeding 6 months from the original date of filing patent application. This request must be made before the expiry of 12 months standard deadline to file complete specification. Postponement is typically sought when the applicant requires additional time to manage corresponding foreign filings, commercial strategy or publication timing. Once the period expires or the applicant withdraws the request, the Controller may proceed to accept the complete specification and publish it under Section 11A.

Q.6 Fill in the blanks. (Answer all, each carries equal marks)

a. **The fees for filing complete specification after provisional specification is Rs. _____.**
Solution: Nil, no separate fee is required when filing the complete specification after a provisional. since a one-time fee of Rs. 1,600 (for a natural person/start-up/small entity/educational institute) is payable either at the time of filing the provisional specification or filing of direct complete specification.

b. **For application for grant of EMR in Form 27, the amount of fees in rupees for individual(s) _____ and for legal entity other than individual(s) _____.**
Solution: Not relevant to current practice as no current form exists for Exclusive Marketing Rights (EMR).

c. **For transmittal fee for the international application for patent under PCT, the amount of fees in rupees for individual(s) _____ and for legal entity other than individual(s) _____.**
Solution: Rs. 3,500/- and 17,600

d. **The Basic Fee for filing international application for patent under PCT is USD _____.**
Solution: 1,603 USD

e. **Full form of EPO is _____.**
Solution: European Patent Office

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2003: PAPER 1 (SOLVED)

PAPER - I

Time: 2½ hours **Total Marks = 100**

Q.1 Write short notes on any five (5) of the following, keeping in view the provisions under Patents Act 1970 (as amended) and The Patents Rules, 2003. (Each carries equal marks.)

a) Invention.
b) Request for examination.
c) Provisional specification.
d) Term of patent.
e) Patent agents.
f) Inter-governmental organisation.
g) International application under PCT.

(15)

Solution:

1. **Invention:** As per Section 2(1)(j), an invention means a new product or process involving an inventive step and capable of industrial application.

Novelty requires the invention not to be anticipated by prior art. Inventive step under Section 2(1)(ja) requires technical advancement or economic significance making the invention not obvious to a person skilled in the art. Industrial applicability under 2(1)(ac) means that the invention is capable of being made or used in an industry.
Further, Section 3 and Section 4 list what are not inventions.

b) Request for examination: A Request for Examination (RFE) is a mandatory procedural requirement under Section 11B of the Patents Act, 1970. A patent application will not be examined unless such a request is filed by the applicant or any interested person within the prescribed period. As per Rule 24B, the RFE must be filed in Form 18 along with the prescribed fee.

The RFE must be submitted within 31 months (For patent applications filed on or after 15 March 2024) from either the date of filing of the patent application or the priority date, whichever is earlier. If no request is filed within this period, the application is deemed to be withdrawn by operation of law under Section 11B(4).
Note: For patent applications filed before 15 March 2024, the corresponding deadline to file the RFE is 48 months from the priority date or the date of filing, whichever is earlier.
Rule 24C provide for Expedited Examination, where applicants meeting specified criteria may file Form 18A for a fast-track examination process.

c) Provisional specification: A Provisional Specification is an initial, incomplete disclosure of an invention filed under Section 9(1) of the Patents Act, 1970. Its primary purpose is to secure an early priority date while allowing the inventor additional time (up to 12 months) to fully develop the invention before filing the Complete Specification.
A provisional specification need not contain claims, but it must adequately describe the nature of the invention and its essential features so that the subsequent Complete Specification can validly relate back to the provisional's priority date. As per Rule 13, the document must include a title, description, and drawings (if necessary), ensuring that the invention is sufficiently disclosed to establish priority. If the Complete Specification is not filed within 12 months from the provisional filing date, the application is deemed abandoned under Section 9(1). Multiple provisional specifications may also be consolidated into a single Complete Specification, provided they relate to a single inventive concept, as required under Section 9(2).

d) Term of Patent: Under Section 53(1), every patent is granted for a term of 20 years from:
(i) Filing date for ordinary applications
(ii) International filing date for PCT national phase applications
There is no extension of term in India. Non-payment of renewal fee causes the patent to cease under Section 53(2) and Section 142.

e) Patent Agent: Defined under Section 2(1)(n) as a person registered under Section 125.
A person shall be qualified to have his name entered in the Register of Patent Agents if:

- He is a citizen of India,
- has completed the age of 21 years, and
- has obtained a degree in science, engineering or technology from a university established under law in India, or possesses equivalent qualifications as the Central Government may specify.
- have passed the qualifying examination prescribed for the purpose (Section 126(1)(c)(ii); details in Rule 110), or
- have, for a total of not less than ten years, functioned as an examiner or discharged functions of the Controller under Section 73, or both, and ceased to hold such capacity at the time of making application for registration (Section 126(1)(c)(iii)).
- has paid the prescribed fee (Section 126(1)(d); see Rule 115 and First Schedule).

Application for registration as Patent Agent is to be made in Form-22 under Rule 112.
Those already registered before the 2005 Amendment continue to be entitled to remain or be re-registered upon payment of prescribed fees (Section 126(2)).
Section 127 defines rights of patent agents (practice before the Controller; prepare documents, transact business under the Act).
Section 129 restricts practice as patent agent only to those registered (and prohibits companies from holding themselves out as patent agents).

f) Inter-governmental organisation: Under the Patents Act, 1970, the concept of an Inter-Governmental Organisation (IGO) primarily appears in relation to foreign filing permissions and secrecy directions under Section 39 and Rule 71 of the Patents Rules, 2003.
An IGO refers to an international organisation formed by sovereign states, such as the United Nations, World Health Organization (WHO), World Trade Organization (WTO), or World Intellectual Property Organization (WIPO). When an inventor in India seeks to file a patent application outside India, including with any foreign government or Inter-Governmental Organisation, they must obtain a Foreign Filing Permit (FFP) from the Controller if no Indian filing has been made at least six weeks earlier.
Rule 71 specifically requires that if the inventor intends to file a patent application with an IGO (including regional patent offices such as EPO or ARIPO), and the invention originated in India, the applicant must first obtain permission under Section 39, unless the statutory six-week condition is satisfied. This ensures that inventions relevant to national security or public interest are not disclosed internationally without Government oversight.

g) International application under PCT: An International Application is a patent application filed under the Patent Cooperation Treaty (PCT), enabling an applicant to seek patent protection simultaneously in multiple countries through a single filing. Under the Patents Act, 1970, the term is defined in Section 2(1)(ia) as an application for a patent made in accordance with the PCT.
A PCT application designating India has the effect of a filing in India, with the international filing date deemed to be the Indian filing date, as per Section 138. The PCT process consists of two main phases:

1. International Phase – including International Search (ISA), Written Opinion, International Publication, and optionally the International Preliminary Examination (IPEA).
2. National Phase – where the applicant must enter India by filing a National Phase application within 31 months from the priority date, as required by Rule 20(4)(i) of the Patent Rules, 2003.

Upon national phase entry, the application is treated like any ordinary Indian application under the Act, requiring Formal Examination, RFE (Form 18/18A), and prosecution under Sections 11B, 12, 13, and 14.

The PCT system simplifies global patent filing, defers costs, harmonises formal requirements, and provides an early international search report, enabling more informed decisions on national filings.

Q.2 State True or False (Answer all questions, each carries equal marks, where it is false, give the reason/correct answer).

a. Every application for patent shall be for one invention only.

b. There is a provision under the Patents Act, 1970 (as amended) to extend the term of a patent beyond 20 years.

c. Application for grant of exclusive marketing rights can be filed at the head office of the patent office or at the branch office.

d. It is possible to obtain a world patent.

e. Research institutes or organizations can use patents for research purpose without any liability for infringement.

f. The register of patent agents is kept at the Patent Office, Kolkata only.

g. Invention relating to Atomic Energy is not patentable.

h. Every application for patent whether provisional or complete, shall be made in form 2.

i. For Nationals (natural persons) of India the basic and designation fees are reduced by 75% payable to IB of WIPO.

j. No drawing or sketch, which would require a special illustration of the inventions, shall appear in the text of the specification itself.

(20)

Solution:

a. **True**

Explanation: Under Section 10(5) and Rule 13, every application for a patent must relate to a single invention or to a group of inventions linked by a single inventive concept.

b. **False**

Explanation: Under Section 53(1), the term of every patent granted after the commencement of the Patents (Amendment) Act, 2002 is 20 years from the date of filing of the application. Once a patent completes its 20-year life, it becomes public domain, and no legal mechanism exists to prolong its validity.

c. Not relevant to current practice as Exclusive Marketing Rights (EMR) abolished post-2005 law; no current form exists for EMRs.

d. **False**

Explanation: Under the Patents Act, 1970 and global patent laws, it is not possible to obtain a world patent. No international treaty or system grants a single patent valid worldwide. Patent rights are territorial as per Section 48 of the Patents Act, a patent granted in India is enforceable only in India. International agreements like the Patent Cooperation Treaty (PCT) provide a single international filing but not a single worldwide patent. After a PCT filing, the applicant must enter national phases separately in each country (Section 138 and Rule 20). Thus, a patent can only be obtained country by country, or regionally not globally.

e. True

Explanation: Under Section 47(3), any patented article or process may be used by any person for the purpose merely of experiment or research, including imparting instructions to pupils. This creates a statutory exemption from infringement for:

- Scientific research
- Experiments
- Academic use
- Teaching and training

f. False

Explanation: Under Section 125(1) the Patents Act, 1970, the register of patent agents shall be maintained by the Controller General of Patents, Designs and Trade Marks (CGPDTM). The Register of Patent Agents is a centralized register, and not limited to being kept physically at the Head Office (Kolkata). Today, the register is maintained in electronic form, accessible across all Patent Offices (Kolkata, Delhi, Mumbai, Chennai).

g. **True**

Explanation: Under Section 4 of the Act, no patent shall be granted in respect of an invention relating to atomic energy falling within sub-section (1) of section 20 of the Atomic Energy Act, 1962.

h. **True**

Explanation: Under Rule 13, every application for a patent, whether accompanied by a provisional specification or a complete specification, must be filed in Form 2 as prescribed in the Second Schedule.

i. **True**

Explanation: Under the current PCT Regulations and WIPO fee reduction schedule, nationals or residents of India who are natural persons are eligible for a 90% reduction in the international filing fee (also referred to as the basic fee) and the designation fee payable to the International Bureau (IB) of WIPO. India qualifies as a low and middle-income country under WIPO's fee reduction framework, and therefore applicants who are Indian natural persons receive this reduced fee benefit under the PCT. The reduction does not apply to legal entities unless they also meet the criteria as small entity, micro entity, or startup as defined under specific WIPO policies. This benefit aims to lower the cost barrier for individual inventors from developing countries when filing international patent applications.

j. **True**

Explanation: Rule 15(2) specifically provides that no drawing or sketch that requires special illustration of the invention shall appear in the text of the specification itself. Instead, all drawings must be furnished on separate sheets as prescribed under Rule 15 and the accompanying formal requirements in the Second Schedule. The specification may include references to the drawings (e.g., "as shown in Fig. 1"), but the drawings themselves cannot be embedded within the written text. This separation ensures uniformity, clarity, and proper technical reproduction of patent documents.

Q.3 Fill in the blanks (answer all questions, each carries equal marks).

a. The qualifying marks for each written paper and for the viva voce examination for Patent Agent shall be_____% and _____ % respectively, and a candidate shall be declared to have passed the examination only if he/she obtains an aggregate of _____ % of total marks.

b. The patent agent should pay the continuance fee every year on or before _____ in each year.

c. Application for grant of exclusive marketing right should be filed at the _____ in form _____.

d. PEA under PCT stands for _____.

e. Application for the grant of product patent for drug can be filed under Section _____ of the Patents Act, 1970 (as amended).

f. The date of every patent shall be the date of the filing of the _____.
g. _____ fees shall be payable in respect of a patent of addition.
h. The maximum number of designation fees payable under PCT is _____.
i. The basic fee is USD _____, if the international application contains not more than _____ sheets.
j. The request for examination of application for patent under section 11B and rule 24(1) should be filed on form _____.

(20)

Solution:

a. The qualifying marks for each written paper and for the viva voce examination for Patent Agent shall be **50%** and **50%** respectively, and a candidate shall be declared to have passed the examination only if he/she obtains an aggregate of **60%** of total marks.
Explanation: The qualifying criteria for the Patent Agent Examination are prescribed under Rule 110 of the Patents Rules, 2003 (as amended). Rule 110(1) states that a candidate must secure not less than 50% marks in each written paper, and not less than 50% marks in the viva voce examination. This ensures that a candidate demonstrates minimum competence both in written knowledge and oral communication relating to patent law and practice. Rule 110(3) further requires that a candidate shall be declared to have passed the examination only if he/she obtains an aggregate of 60% of the total marks.

b. The patent agent should pay the continuance fee every year on or before the **1st day of April** in each year.
Explanation: The requirement for payment of the annual continuance fee by a registered patent agent is governed by Rule 115 of the Patents Rules, 2003 which states the continuance fee shall be paid on or before the 1st day of April each year. This fee is mandatory for the continued retention of a patent agent's name on the Register of Patent Agents maintained under Section 125 of the Patents Act, 1970.

c. *Explanation:* Not relevant to current practice as Exclusive Marketing Rights (EMR) abolished post-2005 law; no current form exists for EMRs.

d. PEA under PCT stands for **Preliminary Examination Authority**.
Explanation: Under the Patent Cooperation Treaty (PCT), the term PEA refers to the Preliminary Examination Authority, which is the authority responsible for conducting the International Preliminary Examination under Chapter II of the PCT. This authority evaluates the patentability of the claimed invention by examining novelty, inventive step, and industrial applicability based on the international application and written opinion.
In India, the Indian Patent Office acts as the International Preliminary Examining Authority (IPEA/IN), subject to specific conditions. The PEA (or IPEA) issues the International Preliminary Examination Report (IPER), which helps applicants refine their claims before entering national phases.

e. Application for the grant of product patent for drug can be filed under Section **7** of the Patents Act, 1970 (as amended).

Explanation: Originally, Section 5 of the Patents Act, 1970 prohibited product patents for drugs, medicines, and food items, allowing only process patents in these fields. However, the Patents (Amendment) Act, 2005 completely deleted Section 5, thereby permitting full product patent protection for pharmaceutical and chemical inventions in India. After the deletion of Section 5, all patent applications, including for drug products, are filed and processed under Section 7(1) which states that 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. This section is the foundational provision under which all types of patent applications, including product patents for drugs, are initially filed in India.

f. The date of every patent shall be the date of the filing of the **application for patent**.
Explanation: Under Section 45(1) of the Patents Act, 1970, the date of every patent granted in India is deemed to be the date on which the application for patent was filed.

g. **No renewal** fees shall be payable in respect of a patent of addition.
Explanation: Under Section 55(2) of the Patents Act, 1970, the patent of addition is financially tied to the main patent because it is considered an improvement or modification of the original invention. Consequently, The term of a patent of addition expires along with the main patent (Section 55(1)). No separate maintenance or renewal fees are required during its life. If the main patent is revoked, the patent of addition may continue only if the patentee requests conversion into an independent patent and pays applicable renewal fees.

h. The maximum number of designation fees payable under PCT is **one.**
Explanation: Under the Patent Cooperation Treaty (PCT), every international application automatically designates all PCT contracting states for every kind of protection available, unless the applicant expressly withdraws any designation. Although 158 PCT member countries exist, the PCT fee system does not require the applicant to pay a separate designation fee for each designated state. There is only one single designation fee, payable regardless of how many countries are designated, because all countries are automatically covered upon filing.

i. The basic fee is USD **1,603** if the international application contains not more than **30** sheets.
Explanation: The basic fee (international filing fee) is generally paid to the receiving office in Swiss Francs (CHF), and its equivalent in USD can vary based on exchange rates. As of November 1, 2025, the base international filing fee is CHF 1,330 (approximately $1,603 for applications filed on paper with the USPTO as receiving office) if the international application contains not more than 30 sheets. An additional fee is charged for each sheet in excess of this limit.
PCT Fee Tables 2025

j. The request for examination of an application for patent under Section 11B and Rule 24(1) should be filed on Form **18**.
Explanation: Under Section 11B of the Patents Act, 1970, no application for a patent shall be examined unless the applicant or any interested person files a Request for Examination (RFE) within the prescribed period. The corresponding procedural requirement is given under Rule 24B(1), which clearly provides that the request for examination must be made in Form 18, along with the prescribed fee. Form 18 triggers the examination process by requiring the Controller to refer the application to an Examiner under Section 12. Failure to file Form 18 within 48 months from the date of filing or priority date results in the application being deemed withdrawn under Section 11B(4).

Q.4 Answer any 5 (five) questions of the following (Each carries equal marks).

a) What is Register of Patents?

b) Name the PCT fees with the amount an Indian applicant is required to pay for filing an international application for patent under PCT at the Patent Office as Receiving Office (RO/IN).

c) What is an Official Gazette?

d) A note on the time for putting an application in order of acceptance.

e) What do you understand by the term "Exclusive Marketing Rights" as per the Act?

f) A note on the advantage of the PCT.

(15)

Solution:

a. The Register of Patents is a statutory record maintained by the Controller under Section 67 of the Patents Act, 1970. It contains details such as the name of the patentee, title of invention, details of assignments, licences, mortgages, renewals, and restorations. As per Section 72, the Register is open for public inspection at the Patent Office, and certified copies may be obtained on payment of the prescribed fee. Entries in the Register serve as prima facie evidence of matters required or authorised to be recorded under the Act. The Register ensures transparency and legal certainty in ownership and rights pertaining to patents.

b. The fees are paid for an International Application (IA) in three main parts. The currency and amount depend heavily on the Applicant's Category (determined by Indian Patent Rules) and the International Searching Authority (ISA) chosen.

1. Transmittal Fee

This fee is retained by the RO/IN for the administrative handling of the application.

Applicant Category	**E-Filing Fee (INR)**	**Physical Filing Fee (INR)**
Natural Person(s), Startup(s), Small Entity, Educational Institution(s)	No Fee (WIPO/PCT Exemption)	₹ 3,500
Other (Large Entity)	No Fee (WIPO/PCT Exemption)	₹ 17,600

2. International Filing Fee (IF Fee)
This fee is determined by the World Intellectual Property Organization (WIPO) and is paid to the RO/IN, which forwards it to the International Bureau (IB). It is subject to significant reductions for Indian applicants.

Component	Currency (WIPO Rate)	Applicant Category	Fee Paid to RO/IN (INR)	Fee Reduction Detail
Basic Fee (up to 30 sheets)	CHF 1,330	All Applicants (India)	90% reduction applies. The reduced fee is then converted to INR.	The 90% reduction is available to nationals and residents of India.
Per Sheet Over 30	CHF 15	All Applicants (India)	90% reduction applies. The reduced fee is then converted to INR per sheet.	Applies to any page exceeding 30 sheets in the application.
E-Filing Reduction	CHF 100-300	N/A	This is a further reduction on the IF Fee, applied after the 90% reduction.	Varies based on the electronic format used.

3. Search Fee (ISA Fee)
This fee is determined by the ISA chosen by the applicant and is paid to the RO/IN, which forwards it to the respective ISA. India offers a few ISA options, with different fees.

ISA Chosen	Currency	Fee (non-reduced)	Fee (Reduced for Natural Person/Startup/Small Entity/Educational Inst.)
Indian Patent Office (IN)	INR	₹ 10,000	₹ 2,500
European Patent Office (EP)	EUR	EUR 1,755 (approx.)	EUR 1,755 (No general reduction by ISA/EP)
United States Patent and Trademark Office (US)	USD	USD 2,080 (approx.)	USD 2,080 (No general reduction by ISA/US)

PCT Fee Tables 2025

c) The Official Gazette under the Patents Act is the statutory publication through which the Patent Office communicates official actions and legal information to the public. Under Section 145 of the Patents Act, 1970, all notifications, publications, corrections, patent grants, assignment entries, compulsory licences, restorations, and other patent-related notices must be published in the Official Journal. At present, the Gazette is published in electronic form by the Patent Office, and such electronic publication is deemed to be valid publication for all legal purposes. Publication in the Official Gazette gives legal notice to the public and triggers several statutory time limits under the Act.

d) Under the Patents Act, 1970, once the First Examination Report (FER) is issued, the applicant must comply with all objections and put the application in order for acceptance within the prescribed statutory period. As per Section 21(1), the applicant is required to meet all requirements of the Act and Rules within 6 months from the date of issuance of the FER. This period may, on request, be extended by a further 3 months under Rule 24B(5) or Rule 24C(11) (in case of expedited examination), by filing Form 4 with the prescribed fee before expiry of the initial 6-month period. If the applicant fails to comply with all requirements within this maximum 9-month window, the application is deemed to be abandoned by operation of law under Section 21(1), and no further extension or revival is permitted. Therefore, the "time for putting an application in order for acceptance" refers to the cumulative period of 6 months + possible 3-month extension, during which the applicant must complete all prosecution requirements, failing which the application lapses irreversibly.

e) Not relevant to current practice as Exclusive Marketing Rights (EMR) abolished post-2005 law; no current form exists for EMRs.

f) The Patent Cooperation Treaty (PCT) provides several significant advantages to applicants seeking international patent protection. The foremost benefit is that the PCT allows an inventor to file a single international application that has the effect of filing in all PCT member countries, thereby simplifying procedural requirements and deferring the high costs of foreign filings. It gives applicants up to 31 months from the priority date to decide in which countries to pursue patent protection, offering more time for assessing commercial potential, securing funds, and evaluating market strategy. The PCT also provides an International Search Report (ISR) and a Written Opinion, giving an early indication of prior art and patentability, which strengthens decision-making and may improve the quality of the final applications. Optional International Preliminary Examination further refines the application before entering national phases. Additionally, centralized formalities, standardized procedures, and international publication enhance efficiency and global visibility of the invention. Overall, the PCT offers a cost-effective, time-efficient, and strategically flexible route for pursuing multi-jurisdictional patent protection.

Q.5 State the period (including extensions if available) under the Patents Act, 1970 (as amended) and/or under the Patents Rules, 1972 for performing the following acts. Quote relevant sections and/or rules and number of the prescribed form if any with fees. (Answer any five (5), each carries equal marks).

a. For filing a request for examination of an application for patent.
b. For a request for termination of compulsory licence.
c. For filing an opposition to the grant of a patent after acceptance of the complete specification notified in the Official Gazette.
d. For an application for the restoration of a patent.
e. For declaration as to inventorship of the invention.
f. For a request for sealing a patent.

(15)

Solution:

a) Under Section 11B read with Rule 24B(1), a Request for Examination of a patent application must be filed within 48 months (for patents filed before 15, March, 2024), and 31 months (for patents filed on or after 15, March, 2024), as per Patent (Amendment) Rules, 2024, from the date of filing or the priority date, whichever is earlier. The request is made in Form 18 with the prescribed fee (₹4,000 for natural persons/startups/small entities and ₹20,000 for others). No extension of this period is permitted, and failure to file the request within 48 months results in the application being deemed to be withdrawn under Section 11B(4). Rule 138 does not apply to extend this deadline.

b) A request for termination of a compulsory licence may be filed at any time after the grant of the compulsory licence, as the Patents Act prescribes no fixed statutory time limit for making such a request. Under Section 94, the patentee or any person deriving title may apply to the Controller for termination when the circumstances that justified the compulsory licence have ceased to exist and are not likely to recur. The application is filed in Form 21 as per Rule 97, along with the prescribed fee (₹2,400 for natural persons/small entities/startups and ₹12,000 for others). The Controller must provide the compulsory licensee an opportunity of being heard before terminating the licence.

c) A post-grant opposition must be filed within 12 months from the date of publication of the grant of the patent in the Official Gazette, as mandated by Section 25(2) of the Patents Act, 1970. The opposition is filed in Form 7 under Rule 55A along with the prescribed fee (₹2,400 for natural persons/startups/small entities and ₹12,000 for others). Since the 12-month period is a statutory deadline, no extension is permitted. The procedural steps thereafter are governed by Rules 57 to 63, including the filing of evidence, constitution of an Opposition Board, hearing, and decision by the Controller.

d) An application for restoration of a patent that has ceased due to non-payment of renewal fee must be filed within 18 months from the date on which the patent ceased to have effect, as mandated under Section 60(1) of the Patents Act, 1970. The request is made in Form 15 as per Rule 84, along with the prescribed fee (₹2,400 for natural persons/startups/small entities and ₹12,000 for others). The applicant must establish that the failure to pay renewal fees was unintentional, and there was no undue delay for making such request, and the Controller may require supporting evidence. Under Rules 85 and 86, the application is published and may be opposed. No extension of the 18-month statutory period is permitted under the Act or Rules.

e) A declaration as to inventorship must be filed in Form 5 under Rule 13(6), either along with the complete specification or within one month from the date of filing the complete specification. The Rule specifically states that in all applications, except (i) convention applications, and (ii) PCT national phase applications designating India, Form 5 is required to be submitted either with the complete specification or no later than one month afterward.
The Controller may extend this one-month period only upon an application made in Form 4, as permitted under Rule 13(6).

f) Under the pre-2005 law, sealing existed. Not relevant in current practice.

Q.6. Fill in the blanks. (Answer all, each carries equal marks)
a. The fee for filing a complete specification after provisional specification is Rs. _____ (750 / No fee / 3,000)
b. For application for registration as a patent agent under rule 109 or 112 is Rs. _____ (1,000/ 200 / 500)
c. For transmittal fee for the international application for patent under PCT, the amount of fees in rupees for natural person(s) is Rs. (750/ 1,000 / 1,500)
d. For application for permission for applying a patent outside India for other than natural person(s) is Rs. _____ (1000/ 1,500/ 3,000)
e. Full form of EPO is _____
f. Full form of ISA under PCT is _____
g. For filing an extension of time for one month for filing a complete specification under sec 9(1) by a natural person is Rs..... (250/ 500 / 1,000)

h. The fees for filing a declaration as to inventorship under rule 13(6) is Rs. _____ (750 / No fee / 3,000)
i. The fees for filing a statement and undertaking under section 8 is Rs. _____ (750/ No fee/ 3,000)
j. The term of every patent granted after the commencement of the Patents (Amendment), Act 2002 shall be _____years. (7/ 14 / 20)

(15)

Solution:

a. The fee for filing a complete specification after provisional specification is **No fee.**
Explanation: Under the Patents Rules, 2003, no separate fee is payable for filing a complete specification after a provisional specification, provided it is filed within 12 months under Section 9(1) of the Patents Act, 1970.

b. For application for registration as a patent agent under rule 109 is Rs. **3,200 (e-filing)**
Explanation: As per latest amendment Rules, the fee for filing an application for registration as a patent agent is prescribed under the First Schedule read with Rule 109 of the Patents Rules, 2003 is Rs. 3,200

c. For transmittal fee for the international application for patent under PCT, the amount of fees in rupees for natural person(s) is Rs. **3,500 (e-filing)**
Explanation: Under the Patents Rules, 2003, as amended (including the major fee revisions in 2014, 2016, and 2021), the fee entry for Transmittal Fee for an International Application under PCT is as follows:
Transmittal Fee (Item 49 of First Schedule):
Natural Person / Startup / Small Entity: Rs. 3,500
Others: Rs. 17,500
This applies when an applicant files a PCT international application through the Indian Patent Office acting as the Receiving Office (RO/IN) under Rule 20(1).

d. For application for permission for applying a patent outside India for other than natural person(s) is Rs. **8,000 (e-filing).**
Explanation: An applicant must obtain permission from the Controller before filing a patent application outside India, unless an Indian application has been filed at least 6 weeks earlier, and no secrecy directions are in force. This permission is requested through Form 25.
Rule 71 of the Patents Rules, 2003 prescribes the requirement and procedure for obtaining a foreign filing permit (FFP) prescribes the requirement and procedure for obtaining a foreign filing permit (FFP).
The foreign filing permission fee (Form 25) was revised upward in the 2024 Patent (Amendment) Rules to Rs. 1,600 for natural person/ startup/ small entity and Rs. 8,000 for other than natural person.

e. Full form of EPO is **European Patent Office**.
f. Full form of ISA under PCT is **International Searching Authority**.

g. Not Relevant under present law. The specific provision allowing an extension of time for filing a Complete Specification under Section 9(1) (to 15 months) was deleted by the Patents (Amendment) Act, 2005. The current statutory deadline for filing the Complete Specification is a strict 12 months from the date of the Provisional Specification, and it is not extendable under the existing law (Section 9(1)).

h. The fees for filing a declaration as to inventorship under rule 13(6) is **No fee**
Explanation: Rule 13(6) of the Patents Rules, 2003, states that a declaration as to the inventorship of the invention shall be filed in Form 5 with the complete specification. The official fees payable to the Indian Patent Office are listed in the First Schedule to the Patents Rules, 2003. The fee schedule explicitly lists the action "On filing a declaration as to inventorship under sub-rule (6) of rule 13" (for Form 5) and specifies the fee as "No fee" for all applicant categories (Natural Person/Startup/Small Entity/Other).

i. The fees for filing a statement and undertaking under section 8 is **No fee**
Explanation: Section 8 of the Patents Act, 1970, requires the applicant to furnish a statement (Form 3) listing all corresponding patent applications filed outside India relating to the same or substantially the same invention (Section 8(1)). Give an undertaking that they will keep the Controller informed of the details of these corresponding foreign applications as and when objections are raised, or details are requested by the Controller (Section 8(1) and 8(2)).
The official fees payable to the Indian Patent Office are listed in the First Schedule to the Patents Rules, 2003. The entry for filing Form 3 explicitly states that the fee is "No fee" for all applicant categories (Natural Person, Small Entity, Startup, or Other).

j. The term of every patent granted after the commencement of the Patents (Amendment), Act 2002 shall be **20** years.
Explanation: Under Section 53(1) of the Patents Act, the term of the patent is 20 years from the date of filing of the patent application.

RAS Intellect Pvt Ltd

2004: PAPER 1 (SOLVED)

QUALIFYING EXAMINATION
FOR REGISTRATION AS PATENT AGENT
[under section 126 (1)(c)(ii) of the Patent Act]

17 November, 2004

WRITTEN TEST
PATENT ACT AND RULES

PAPER - 1

Time- 2½ Hrs. **Total Marks- 100**

[Answer all the questions: Marks allotted are given against each question; sub questions carry equal Marks]

Q.1 Write the full form of the followings: **[10]**
(i) WIPO (ii) IB (iii) PCT (iv) ISA (v) IPER
(vi) R.O. (vii) FER (viii) P.A. (ix) TRIPS (x) EMR

Answer: (i) WIPO – World Intellectual Property Organization
(ii) IB – International Bureau
(iii) PCT – Patent Cooperation Treaty
(iv) ISA – International Searching Authority
(v) IPER – International Preliminary Examination Report
(vi) R.O. – Receiving Office
(vii) FER – First Examination Report
(viii) P.A. – Power of Attorney
(ix) TRIPS – Trade-Related Aspects of Intellectual Property Rights
(x) EMR – Exclusive Marketing Rights

Q.2 Describe the followings: **[15]**
(i) Qualifications for registration as Patent agent.
(ii) Disqualifications for registration as Patent agent.
(iii) Rights of Patent agent.

Answer: (i) Qualifications for registration as Patent agent.
Defined under Section 2(1)(n) as a person registered under Section 125.
A person shall be qualified to have his name entered in the Register of Patent Agents if:

- He is a citizen of India,
- has completed the age of 21 years, and
- has obtained a degree in science, engineering or technology from a university established under law in India, or possesses equivalent qualifications as the Central Government may specify.
- have passed the qualifying examination prescribed for the purpose (Section 126(1)(c)(ii); details in Rule 110), or

- have, for a total of not less than ten years, functioned as an examiner or discharged functions of the Controller under Section 73, or both, and ceased to hold such capacity at the time of making application for registration (Section 126(1)(c)(iii)).
- has paid the prescribed fee (Section 126(1)(d); see Rule 115 and First Schedule).

Application for registration as Patent Agent is to be made in Form-22 under Rule 112.
Those already registered before the 2005 Amendment continue to be entitled to remain or be re-registered upon payment of prescribed fees (Section 126(2)).

(ii) Disqualifications for registration as Patent agent.
A person shall not be entitled to be registered as a Patent Agent if he:
- Is convicted by a competent court for an offence involving moral turpitude;
- Has been removed from the register of patent agents for misconduct and is not restored;
- Fails to satisfy any of the qualifications prescribed under Section 126.

(iii) Rights of Patent agent.
Under Section 127 of the Patents Act, 1970, a registered Patent Agent is entitled to practice before the Patent Office, including:
- Making patent applications,
- Drafting specifications,
- Filing documents and responses,
- Attending hearings before the Controller.
- Prepare all documents required under the Patents Act and Rules.
- Transact business with the Patent Office on behalf of clients.
- Act as an authorized agent in all patent-related proceedings.

A Patent Agent cannot practice law in courts unless he is also a qualified advocate.

Q.3 Write short notes on any five of the followings: [25]
(i) Invention.
(ii) Inventions not Patentable.
(iii) Grounds of Opposition to the grant of Patent
(iv) Grant of EMR.
(v) Rights of Patentees.
(vi) Conditions to which grant of Patents are subjected.
(vii) Compulsory Licences.

Answer:(i) **Invention**
Under Section 2(1)(j) of the Patents Act, 1970, an invention means a new product or process involving an inventive step and capable of industrial application.
· **Novelty** means the subject matter is not anticipated by prior art (tested through examination).
· **Inventive step** is defined in Section 2(1)(ja) as a feature involving technical advance/economic significance and not obvious to a person skilled in the art.
Industrial applicability is defined in Section 2(1)(ac) as capability of being made or used in an industry.
Thus, an invention must satisfy novelty + inventive step + industrial applicability, and must also not fall under exclusions in Sections 3 and 4.

(ii) Inventions not Patentable. Section 3 and Section 4 list the inventions that are not patentable.
Section 3 specifies various categories of non-patentable inventions. These include:
• inventions frivolous or contrary to natural laws (3(a))
• inventions against public order or morality (3(b))

• mere discovery of scientific principle or natural substances (3(c))
• new forms of known substances without enhanced efficacy (3(d))
• A substance that is only a simple mixture of its ingredients, where each component works just as it normally does and nothing new results,(3(e))
• Simply arranging, rearranging, or duplicating known devices,when each device works independently in the usual way (3(f))
• agriculture/horticulture methods (3(h))
• methods of treatment (3(i))
• plants, animals (whole or parts), except microorganisms (3(j))
• mathematical/business methods & computer programs per se (3(k))
•a literary, dramatic, musical or artistic work or any other aesthetic creation whatsoever including cinematographic works and television productions(3(l))
•a mere scheme or rule or method of performing mental act or method of playing game (3(m))
•a presentation of information; (3(n))
•topography of integrated circuits;(3(o))
•an invention which, in effect, is traditional knowledge or which is an aggregation or •duplication of known properties of traditionally known component or components (3(p))
Under Section 4, the atomic energy-related inventions are excluded.

iii) Grounds of Opposition to the grant of Patent
Opposition is provided under Section 25:

- Pre-grant opposition: Section 25(1) (by any person) after publication and before grant.
- Post-grant opposition: Section 25(2) (by any person interested) within 1 year from grant.

An application for patent or a granted patent may be opposed on the following grounds:

- Wrongful obtainment: The applicant has wrongfully obtained the invention or any part thereof from the opponent.
- Anticipation by prior publication: The invention was published before the priority date in any document in India or elsewhere.
- Anticipation by prior claim: The invention was claimed in a prior patent application having an earlier priority date.
- Prior public knowledge or public use: The invention was publicly known or publicly used in India before the priority date.
- Lack of inventive step: The invention does not involve an inventive step as defined under Section 2(1)(ja).
- Not an invention / not patentable: The subject matter is not an invention under the Act or is excluded under Sections 3 or 4.
- Insufficiency of disclosure: The complete specification does not sufficiently and clearly describe the invention or the method of performing it.
- Failure to disclose information under Section 8: The applicant has failed to disclose information regarding corresponding foreign applications or has furnished false information.
- Non-disclosure or wrong disclosure of biological material source: Failure to disclose or incorrect disclosure of the source or geographical origin of biological material used in the invention.
- Anticipation having regard to traditional knowledge: The invention is anticipated by knowledge, oral or otherwise, available within any local or indigenous community in India or elsewhere.
- Non-compliance with requirement of deposit of biological material: The invention involving biological material was not deposited as required under the Act and Rules.

iv) Grant of EMR:

Exclusive Marketing Right (EMR): EMR was introduced through Chapter IVA (Sections 24A–24F) (now omitted) of the Patents Act, 1970. These provisions were omitted after India fully implemented product patent protection in the year 2005.

EMR was applicable only to:

• Pharmaceutical products

• Agrochemical products

It did not grant patent rights, but only conferred a marketing monopoly for the product concerned.

An EMR was granted for a period of 5 years from the date of approval by the Central Government, or until the patent was granted or rejected, whichever was earlier.

The EMR holder had the exclusive right:

• To sell or distribute the product in India, and

• To prevent others from commercially marketing the product without authorization.

However, EMR did not confer full patent rights such as manufacturing rights.

All EMR provisions were repealed after introduction of product patents for drugs and agrochemicals in 2005, and alignment of Indian patent law with TRIPS obligations.

Therefore, EMR no longer exists under the present law.

(v) Rights of Patentees

Under Section 48, a patent grants the patentee the exclusive right to prevent third parties from using the invention without consent.

- *For a product patent,* the patentee has the right to make, use, sell, offer for sale, and import the patented product in India.
- *For a process patent,* the patentee has the right to use the process, and to prevent others from using the process and from selling, using, or importing the product obtained directly by that process.

These rights are territorial, valid only in India, and continue until the expiry of the patent (20 years), subject to payment of renewal fees. Further these rights are enforceable through infringement proceedings, but remain subject to exceptions such as government use, research/experimental use, and compulsory licensing.

vi) Conditions to which grant of Patents are subjected.

Under Section 47, every patent is deemed to be granted subject to the following conditions:

Government use: The invention may be used by the Government for its own purposes without the consent of the patentee.

Research and experimental use: Any machine or process may be used for experiment or research, including imparting instructions to students.

Public service use: The patented invention may be used for public services such as hospitals or government institutions.

These conditions operate automatically, even if not expressly mentioned in the patent.

Payment of renewal fees – Sections 53 & 142

A patent remains in force only if renewal fees are paid as prescribed.

Non-payment of renewal fee results in lapse of the patent.

Thus, the grant is conditional upon continuous compliance with fee obligations.

Compulsory licensing – Section 84

A patent is subject to the possibility of compulsory licence if, after three years from grant:

- reasonable requirements of the public are not met, or
- the invention is not available at a reasonably affordable price, or
- the invention is not worked in India.

This acts as a statutory limitation on the patentee's exclusive rights.

(vii) Compulsory Licences

Under the current law, an application for a Compulsory Licence may be filed after three years from the date of grant of the patent, as provided under Section 84(1) of the Patents Act, 1970. Any "person interested" or an existing licensee may apply in Form 17 along with the prescribed fee. The applicant must establish one or more statutory grounds namely, that

1. the reasonable requirements of the public with respect to the patented invention have not been satisfied, or
2. the patented invention is not available to the public at a reasonably affordable price, or
3. the invention is not worked in the territory of India.

The Controller evaluates the application by considering factors listed under Section 84(6), including the nature of the invention, the ability of the applicant to work the invention, and whether efforts were made to obtain a licence from the patentee on reasonable terms. In cases of national emergency, extreme urgency, public non-commercial use, or anti-competitive practices, the requirement of prior negotiation does not apply.

If satisfied, the Controller may grant a compulsory licence specifying field of use, royalty rate, and terms of working in India.

Q.4 Fill in the blanks and complete the following sentences: [40]

(i) After filing a Patent application along with a Provisional specification, complete specification can be filed within _____ or within _____.

(ii) A PCT National Phase application can be filed within _____ from the date of _____.

(iii) An application for Patent shall not be open to the public for _____ from the date of _____ and before publication of the application for patent.

(iv) Request for examination of the application for patent can be filed within _____ from the date of _____ of the application.

(v) A request for examination of the application for patent can be filed by _____ or _____.

(vi) A request for examination can be made within _____ from the date of revocation of the secrecy direction issued Under Section _____ of the Act

(vii) The Applicant can withdraw the application at any time after _____ of the application but before _____.

(viii) An application shall not be published, if a request for withdrawing the application is made within _____ from the date of _____.

(ix) Time for putting the application in order for acceptance by the applicant is _____ and further extension of time allowed under Section 21 is _____.

(x) The normal period for putting the application in order for acceptance where FER was issued on 17.05.2003 was _____ and the last date with maximum extension allowed will expire on _____.

(xi) When claims of the complete specification relate to more than one invention the applicant can file a divisional application accompanied by _____ at any time before _____.

(xii) Request for sealing of a patent is filed on Form _____ within _____ from the date of advertisement of the acceptance of complete specification.

(xiii) The term of the patent is _____ from the date of _____.

(xiv) The first renewal fee to be paid is for _____ which should be paid before the expiration of _____.
(xv) The notice of opposition to the grant of patent can be filed by any person interested within a period of _____or within _____ with extension from the date of advertisement of the acceptance of complete specification.
(xvi) The application for patent can be filed by the inventor, within _____ after reading or publication of the paper containing the description of the invention, or in case of the invention has been publicly worked for the purpose of reasonable trial the application for patent can be filed within _____without loosing its novelty.
(xvii) A method of treatment of human being is _____under clause _____ of section 3 of the Act.
(xviii) A method of testing during manufacturing rendering the machine more efficient is patentable w.e.f. _____ because clause _____ of section 3 of the Act has been omitted.
(xix) For incorporating the name of inventors in the patent to be granted on the application made by a company request is to be made in Form _____ with a fee of Rs. _____.
(xx) A Patent application by four joint applicants:
(1) Mr. Randhir Das, Puri, Orissa, India, (2) Mr. Prakash Rathod, Nagpur, Maharashtra, (3) Mr. Ramakrishna Rao, Hyderabad, Andhra Pradesh and (4) Devinder Singh Parmar, West Patel Nagar, Delhi, all Indian Nationals can be filed at the Patent Office _____ with a Fee of Rs. _____.

Answer:
(i) After filing a Patent application along with a Provisional specification, complete specification can be filed within **12 months as per section 9(1)**.
(ii) A PCT National Phase application can be filed within **31 months** from the date of **earliest priority date under the Rule 20(4) of the Patents Rules, 2003.**
(iii) An application for Patent shall not be open to the public for **18 months** from the date of **filing of the application or the priority date, whichever is earlier under Section 11A of the Indian Patents Act, 1970 and Rule 24** and before publication of the application for patent.
(iv) Request for examination of the application for patent can be filed within **31 months** from the date of **filing or the priority date, whichever is earlier (under Section 11B of the Indian Patents Act, 1970)** of the application.
NOTE-

Application Filing Date	**RFE Deadline (from Priority/Filing Date)**
On or after March 15, 2024	31 months
Before March 15, 2024	48 months

(v) A request for examination of the application for patent can be filed by **Applicant** or **any other interested person using form 18 under Section 11B of the Indian Patents Act, 1970**.
(vi) A request for examination can be made within **6 months** from the date of revocation of the secrecy direction issued Under Section **35** of the Act.
(vii) The Applicant can withdraw the application at any time after **filing of the application** of the application but before **the grant of the patent under Section 11B(4), Proviso (i) of the Indian Patents Act, 1970.**
(viii) An application shall not be published, if a request for withdrawing the application is made within **3 months** from the date of **expiry of the period of 18 months.**
(ix) Time for putting the application in order for acceptance by the applicant is **6 months** and further extension of time allowed under Section 21 is **3 months.**

(x) The normal period for putting the application in order for acceptance where FER was issued on 17.05.2003 was **12 months** and the last date with maximum extension allowed will expire on **17.08.2004**. NOTE- After amendment, Time for putting the application in order for acceptance by the applicant is **6 months** from the date of issuance of the **First Examination Report (FER)**, and a further extension of time allowed under Section 21 is **3 months** (by filing Form 4).
(xi) When claims of the complete specification relate to more than one invention the applicant can file a divisional application accompanied by **Form 1 (Application for Grant of Patent)** at any time before **the grant of the patent**.
(xii) Under the pre-2005 law, sealing existed. Not relevant in current practice.
(xiii) The term of the patent is **20 years** from the date of **filing of the application for the patent under Section 53.**
(xiv) The first renewal fee to be paid is for the **third year**, which should be paid before the expiration of **second year.**
(xv) The notice of opposition to the grant of patent can be filed by any person interested within a period of **4 months_** or within **__1 month____** with extension from the date of advertisement of the acceptance of complete specification. (as per Pre-2005 law)
Note: *Under the current law, a pre-grant opposition may be filed any time after publication and before grant under Section 25(1), whereas a post-grant opposition must be filed within one year from the date of grant under Section 25(2) of the Patents Act, 1970.*
(xvi) The application for patent can be filed by the inventor, within **12 months under Section 31** after reading or publication of the paper containing the description of the invention, or in case of the invention has been publicly worked for the purpose of reasonable trial the application for patent can be filed within **1 Year (12 months) under Section 32** without losing its novelty.
(xvii) A method of treatment of human being is **not patentable** under clause **(i)** of section 3 of the Act.
(xviii) A method of testing during manufacturing rendering the machine more efficient is patentable w.e.f. **20*th* May 2003** because clause **(g)** of section 3 of the Act has been omitted.
Explanation: Patents (Amendment) Act, 2002 which came into effect from 20th May 2003 omitted clause (g) of Section 3 which originally excluded a method of testing applicable during the process of manufacture for rendering the machine, unit or other apparatus more efficient or for the improvement or control of manufacture.
(xix) For incorporating the name of inventors in the patent to be granted on the application made by a company request is to be made in Form **8 under Rule 66** with a fee of Rs. **No Fees under Section 28(2) and The Fifth Schedule (Fees)**.
(xx) A Patent application by four joint applicants:
(1) Mr. Randhir Das, Puri, Orissa, India, (2) Mr. Prakash Rathod, Nagpur, Maharashtra, (3) Mr. Ramakrishna Rao, Hyderabad, Andhra Pradesh and (4) Devinder Singh Parmar, West Patel Nagar, Delhi, all Indian Nationals can be filed at the Patent Office **Kolkata** with a Fee of Rs. **1600(e-filing) under Rule 4 and The First Schedule (Fees) of the Patents Rule.**

Q.5 Answer the following by writing "Yes" OR "No" [10]

(i) It is mandatory to deposit a biological material mentioned in the specification and not available to the Public, in an Authorised Depository on or before the date of filing an application.
(ii) It is mandatory to describe the prior art in the specification.
(iii) It is mandatory to disclose the source and geographical origin of the biological material in the specification, when used in an invention.
(iv) An application for patent can be filed in Tamil language, at the Patent Office Chennai.
(v) Fee payable for filing Patent application can be paid on 15th day of its filing.
(vi) Fee is required to be paid for filing complete specification after provisional.

(viii) In case request for examination is filed by any other interested person the FER with documents is sent to him.
(ix) Invention claiming a product related to medicine can be filed in India.
(x) The patent application for an invention relating to defence purpose can be filed outside India, without filing in India or without obtaining written permission from the Controller.

Answer:
(i) **Yes**
Explanation: Under **Section 10(4)(d)(ii)**, if a biological material is not available to the public and cannot be adequately described, it **must be deposited** in an **International Depository Authority (IDA) on or before the date of filing** the patent application, and details of such deposit must be included in the specification.
(ii) **No**
Explanation: The Patents Act does **not mandate disclosure of prior art** in the specification. Section 10 prescribes contents of specification, but **prior art discussion is optional**, though practically advisable. Failure to describe prior art does not invalidate the application.
(iii) **Yes**
Explanation: As per **Section 10(4)(d)(ii)(D)**, the specification **must disclose the source and geographical origin** of the biological material used in the invention. Non-disclosure can attract objections and even revocation.
(iv) **No**
Explanation: According to **Rule 9(1)(a)** of the Patents Rules, all documents and copies of the documents, except affidavits and drawings, filed with patent office, shall be typewritten or printed in Hindi or English (unless otherwise directed or allowed by the Controller).
(v) **No**
Explanation: Under **Rule 7(1)**, the prescribed fee **must be paid at the time of filing** the application. An application filed without the fee is **not accorded a filing date** unless the fee is paid the same day.
(vi) **No**
Explanation: As per the **First Schedule (Fees)**, the filing fee is a **one-time fee**, payable either at the time of filing the provisional specification or the complete specification. **No separate fee** is required for filing the complete specification after provisional if the fee was already paid.
(vii) **No**
Explanation: **Under** Section 135**, a convention application** must be filed within 12 months **from the priority date.** No extension is permissible **under the Patents Act.**
(viii) **No**
Explanation: According to Section 11B and Rule 24B, even if the request for examination (RFE) is filed by an interested person, the First Examination Report (FER) is sent only to the applicant, only an intimation of such examination is sent to such person interested who filed the RFE.
(ix) **Yes**
Explanation: After the **2005 amendment**, **product patents for medicines are allowed** in India. Section 5 has been repealed, and pharmaceutical product inventions are patentable, subject to exclusions under **Section 3(d)** and other provisions.
(x) **No**
Explanation: Under **Section 39**, prior **written permission of the Controller** is mandatory before filing a patent application abroad for inventions **relevant to defence or atomic energy**, unless the application has first been filed in India and six weeks have elapsed without secrecy directions.

2005: PAPER 1 (SOLVED)

The Patent Act, 1970
Qualifying Examination under section 126 of the Patent Act
(As amended & updated)
Paper-1 (Provisions of Patent Act & Rules)
September 2005

Time- 2½ Hrs.

Total Marks- 100

Instructions:
1. All questions are compulsory
2. Marks of each question are indicated at the end of the quest
3. Answers should be precise and to the point supported by relevant provisions of the Act and Rules.

Q1. Choose the correct option:
(1) The provisional application may be filed in case of:
(a) an ordinary application
(b) a Convention application
(c) A patent of Addition application
(d) National phase application

Solution: (a) an ordinary application

Under Section 9(1) of the Indian Patents Act, a provisional specification is specifically allowed when filing an ordinary application. Other types like patent of addition, convention application and national phase entry require a complete specification.

(2) A divisional application may be filed:
(a) Any time but within one month after grant of patent on the main patent application
(b) Any time but within 31 months from the priority date of main patent application
(c) Any time but before grant of patent on the main patent application
(d) Within 18 months from the priority date but before the grant of patent

Solution: (c) Any time but before grant of patent on the main patent application

Under section Section 16(1) of the Patents Act, 1970, a divisional application can be filed any time before the grant of the patent. Divisional application is filed when the parent application contains more than one invention. Once the main patent is granted, no divisional can be filed.

(3) For a patent application filed on 01.10.2004, the request for examination shall be filed:
(a) Within 36 months from the date of priority or date of filing whichever is earlier
(b) Within 48 months from the date of priority or 36 months from filing date
(c) Within 36 months from filing date of patent application or priority date whichever is earlier
(d) Within 48 months from priority date or filing date in India, whichever is earlier

Solution: (d) Within 48 months from priority date or filing date in India, whichever is earlier

According to recently amended Rule 24B(1)(i) of Patent (Amendment) Rules, 2024, the timeline for filing a Request for Examination (RFE) has been reduced from 48 months to 31 months from the earliest priority date, this amendment applies only to patent applications filed on or after 15 March 2024.

However for applications filed before this amendment such as in this question where the application was filed on 01.10.2004 the earlier Rule 24B(1)(i) of the Patents Rules, 2003 applies: that is RFE must be filed within 48 months from the date of priority or the date of filing, whichever is earlier.

(4) A request on Form-9 may be made for:
(a) sealing of the patent
(b) early publication U/S 11A of the patent application
(c) revocation U/S 64 of the patent application
(d) extension of time U/S 21

Solution: (b) early publication U/S 11A of the patent application

Form-9 under Rule 24A of the Indian Patent Rules is specifically prescribed for making a request for early publication under Section 11A(2) of the Patents Act, 1970. This enables an applicant to request publication of a patent application before the expiry of 18 months from the date of filing or the priority date, thereby expediting the overall process.

(5) The national phase PCT application can be examined by the Patent Office:
(a) 30 months from the priority date
(b) 48 months from the priority date
(c) 31 months from the priority date
(d) Any time on the request of the applicant [1x5= (5)]

Solution: (d) Any time on the request of the applicant

In the case of a national phase PCT application filed in India, the examination does not automatically begin upon entry. Instead, it is initiated only after the applicant files a Request for Examination (RFE) under Section 11B of the Patents Act, 1970. Once this request is made, the Indian Patent Office may begin examination at any time thereafter, depending on its work flow and queue.

Q. 2 Match Column A with Column B:

SL	Column A	Column B
1	i) Every application for patent shall be for one invention only	Sec. 3(c)
2	ii) Mere discovery of the scientific principle is not patentable	Sec. 63 (1)
3	iii) Every specification whether provisional or complete shall describe the invention and shall begin with the title sufficiently indicating the subject matter	Sec. 55 (1)
4	iv) A patent of addition shall be granted for a equal term to that of patent for the main invention.	Sec. 7(1)
5	v) A patentee may at any time by giving notice in the prescribed manner to the Controller offer to surrender the patent.	Sec. 10(1)

Solution:

SL	Column A	Column B	Explanation
1	i) Every application for patent shall be for one invention only	Sec. 7(1)	Sec. 7(1) states a patent application must relate to one invention only (unity of invention)
2	ii) Mere discovery of the scientific principle is not patentable	Sec. 3(c)	Section 3(c) states that discovery of scientific principle, discovery of living/non-living substances is not patentable.
3	iii) Every specification whether provisional or complete shall describe the invention and shall begin with the title sufficiently indicating the subject matter	Sec. 10(1)	Sec. 10(1) clearly states what a specification must contain including the title.
4	iv) A patent of addition shall be granted for a equal term to that of patent for the main invention.	Sec. 55 (1)	Sec. 55(1) confirms term of patent of addition ends with the main patent.
5	v) A patentee may at any time by giving notice in the prescribed manner to the Controller offer to surrender the patent.	Sec. 63 (1)	Sec. 63(1) explicitly provides for surrender of patent.

Q 3. State True/ False:-

A. The set of independent claims representing multiple inventions may be allowed in patent application.

B. Methods of treatment of plants to keep them free of diseases are patentable.

C. A subject matter to qualify as patentable invention must not have been published in any kind of document before fling of the application.

D. Patent of addition lapses if a renewal fee is not paid within the prescribed time limit.

E. The priority under Paris convention may be claimed if application for patent for substantially same invention is filed in India within 18 months after filing in Convention country.

F. Term of Patent in respect of Patent application filed through PCT route is counted from the filing date of international application .

G. All orders of the Controllers are appealable only in the High Court.

H. The PCT international application by Indian inventor can be filed in the Receiving Offices at Patent Office, Kolkata, Delhi, Mumbai or Chennai only.

I. Unless you pay the fees as mentioned in the fee schedule immediately for submission of any document before the Controller of Patents. the document may not be taken on record.

J. The appropriate jurisdiction for filing of a patent application by an applicant residing outside India depends on the address for service in India desired by him.

[1x10=(10)]

Solution:

A : False

Explanation: As per section 10(5) of the Patents Act, the claims must relate to a single invention or a group of inventions linked to form a single inventive concept. If multiple inventions are claimed, the Controller u/s 16 may require the applicant to divide the application (i.e to file divisional application).

B: False

Explanation: As per section 3(h) of the Patents Act, methods of agriculture or horticulture are not inventions and hence not patentable.

C: True

Explanation: According to section 29 of the Patents Act, Prior publication before the priority date can destroy novelty. Further Section 2(1)(j) Defines "invention" as a new product or process. Thus publication of invention prior to filing patent application destroys the novelty.

D: False

Explanation: A patent of addition under section 55(2)of the Patents Act, does not require a separate renewal fee. It expires with the main patent. Hence, non-payment of renewal fee does not cause it to lapse independently.

E: False

Explanation: As per section 135 (1) of the Patents Act, the priority must be claimed within 12 months from the date of filing in the Convention country. Filing after this 12-month window disqualifies the claim for Convention priority.

F: True

Explanation: According to section 53(1) of the Patents Act, for PCT applications, the term of patent shall be twenty years from the international filing date accorded under the Patent Cooperation Treaty.

G: False

Explanation: Not “all” orders of the Controller are appealable. The section 117A of the Patents Act specifies the orders that are appealable.

H: False

Explanation: For an Indian resident or national, a PCT international application may be filed with any of the four Indian Patent Offices that is Kolkata, Delhi, Mumbai, or Chennai- acting as the Receiving Office (RO/IN). However, filing is not restricted only to these offices; Indian applicants also have the option to file directly with the WIPO International Bureau (RO/IB) in accordance with Rule 19 of the PCT Regulations

Therefore, the statement that a PCT application can be filed at the four Indian Patent Offices only is not entirely correct.

I: False

Explanation: As per Section 142(3) of the Patents Act, a document is not deemed to be filed unless the prescribed fee is paid either at the time of filing or within the prescribed period (not necessarily immediately, as stated in the question).

J: True

Explanation: For applicants residing outside India, the appropriate jurisdiction for filing is determined by the address for service in India, as per Rule 4(1)(i)(b) of the Indian Patent Rules, 2003.

Q.4 Fill in the blanks:-

1. ……..is the International depository Authority in India under Budapest Treaty for the Indian applicant.
2. India joined Budapest Treaty for deposition of Microorganisms on ……..
3. The number of Claims in a Patent application for which no additional charges are required to be paid are…….
4. The opposition after grant of the Patent may be filed within a period of…….from the date of ……..of the grant of patent.
....of the
5. A request to withdraw the patent application must be made within…….. from the priority date.
6. The time for putting an application in order for grant, which has been examined before 1st day of January 2005, is……..
7. The fees for filing an express request for examination for legal entity is Rs…….
8. Third party representation for opposition U/S 25(1) can be filed within a period not exceeding……months from the date of publication U/S 11A.
9. A request for examination of the Patent application may be filed only after the……
10.An opposition Board shall consist of ……..members and……..of them shall be Chairman.

[1x10=10]

Solution:

1. Microbial Type Culture Collection (MTCC), Chandigarh- International depository Authority in India.

2. December 17, 2001 - India joined Budapest Treaty

3. 10 claims- no fee for 10 claims in patent specification.

4. Opposition after grant may be filed within **1 year** from the date of **publication** of grant of patent.

5. 15 months - The application can be withdrawn at any time before the grant of patent. If in addition to withdrawal, applicant also wish to prevent the publication of application in the Patent Office Journal, the application should be withdrawn within 15 months from the date of priority or date of filing, whichever earlier.

6. 12 months (before 1st day of January 2005)- However as per recent amendments under Rule 24B(5) of Patents (Amendment) Rules, 2003, the time to put the application in order for grant is reduced to 6 months and extendable by 3 months under Rule 24B(6).

7. Rs. 60,000/-

8. 6 months -Although Section 25(1) of the Patents Act permits pre-grant opposition anytime between publication U/S11A and the grant of the patent, but the Rule 55(1A) explicitly states that no patent shall be granted before the expiry of six months from the date of publication. This rule ensures that the application remains pending for at least six months, thereby guaranteeing a minimum six-month window for filing a third party representation for opposition U/S 25(1).

9. Publication

10. 3 members and 1

Q 5. (A) State the fees or additional fees as the case may to be paid by the legal entities to the Controller of Patents for the following:

(a) If complete specification filed contains total of 15 claims but less than 30 sheets;
(b) If the complete specification contains total of 40 pages including abstract and drawings, but less than 10 claims.

(c) For a petition under rule 138
(d) Transmittal fees for a PCT international application
(e) For extension of time for two months U/S 21 [1x5= (5)]

Solution: (a) - Rs. 8,000/-
Explanation: The basic fee covers 10 claims. An additional fee must be paid for each claim beyond 10 at ₹1,600 per extra claim. Since the total extra claims are 5, the total additional fee payable is 1,600 × 5 = ₹8,000.

(b) Rs. 8,000/-
Explanation: The basic fee covers 30 pages. An additional fee must be paid for each page beyond 30 at ₹800 per extra sheet. Since the total extra sheets are 10, the total additional fee payable is 800 × 10 = ₹8,000.

(c) Rs. 50,000/- for a petition under rule 138

(d) Rs. 16,000/-
Explanation: However there is no fee if PCT application is filed electronically via ePCT with the Indian Patent Office acting as Receiving Office (RO/IN)

(e) Rs. 1,00,000/- ; for extension of time for two months.

B. State the time limits provided under Patent Acts & Rules (as amended)
(a) For putting application in order for grant
(**b)** Filing of a national phase applications under PCT in India
(c) Filing of request for examination in respect of applications filed u/s 5(2)
(d) Filing of a proof of right to make an application
(e) Filing of an information regarding foreign filing U/S 8. [1x5= (5)]

Solution:
(a) 6 months from the date of the First Examination Report (FER) and extendable by 3 months under Rule 138 as per rule 24B(5). Earlier it was 12 months.

(b) 31 months from the priority date under rule 20(4)(i)

(c) Within 36 months from filing/priority or within **12 months from 1-1-2005**, whichever is later.
Explanation: Although Section 5 was omitted by the Patents (Amendment) Act, 2005, the pending applications filed under the erstwhile Section 5(2) were saved. To ensure smooth transition, the 2005 Amendment introduced Section 11B(3) and substituted Rule 24B, providing a special time limit for filing RFE: within 36 months from filing/priority or within 12 months from 1-1-2005, whichever is later.

(d) Proof of right must be filed either **with the application or within 6 months** from the date of filing

(e) within 6 months of Indian filing and within 3 months of FER issuance
Explanation: Under amended Rule 12, Form-3 is filed first within 6 months of Indian filing (Rule 12(1)) and then once again within 3 months of FER issuance (Rule 12(2));

Q.6. Write short notes on any (5).
(a) Rights of the patentee
(b) The opposition by way of representation U/S 25 (I)
(c) Filing of Patent application abroad by an Indian applicant
(d) Patentability of pharmaceutical products
(e) Non- patentable inventions
(i) Restoration of lapsed Patent

Solutions:

(a) Rights of the patentee:

Under Section 48, a patent grants the patentee the exclusive right to prevent third parties from using the invention without consent.

- For a product patent, the patentee has the right to make, use, sell, offer for sale, and import the patented product in India.
- For a process patent, the patentee has the right to use the process, and to prevent others from using the process and from selling, using, or importing the product obtained directly by that process.

These rights are territorial, valid only in India, and continue until the expiry of the patent (20 years), subject to payment of renewal fees. Further these rights are enforceable through infringement proceedings, but remain subject to exceptions such as government use, research/experimental use, and compulsory licensing.

(b) The opposition by way of representation U/S 25 (I) :

The section 25(1) permits any person to file a pre-grant opposition by way of representation after publication of the application and before the grant.

The grounds of opposition available include: wrongful obtaining, anticipation by prior publication, prior public use, lack of novelty, obviousness, non-patentable subject matter, insufficient disclosure, non-disclosure of information (Section 8), and failure to disclose biological material source etc.

Although the representation may be filed anytime after publication, the Controller considers it only after a Request for Examination (Form-18/18A) has been filed as per rule 55(2). Accordingly the representation is considered by the Controller, who may request a statement and evidence from the applicant and conduct a hearing. The Controller may refuse the application, require amendment, or grant the patent. Pre-grant opposition serves as a safeguard for public interest, ensuring that only valid patents are granted.

(c) Filing of Patent application abroad by an Indian applicant:

Under Section 39, a person resident in India cannot file a patent application abroad without first obtaining a foreign filing permission from the Controller. There is an exception to this: if the applicant files the invention first in India, they may file it abroad after six weeks, provided that no secrecy directions under Section 35 are in force.

The request for permission for making patent application outside India shall be made in Form 25. This request must be disposed of by the Controller within 21 days from the date of filing, as prescribed under Rule 71(2) read with Section 39(3). However, for inventions relating to defence or atomic energy, this twenty-one-day period shall be calculated from the date on which consent from the Central Government is received. Filing abroad without Section 39 compliance is an offence, punishable with fine or imprisonment. Applications filed abroad must also comply with Section 8 (disclosure of foreign filings). This provision ensures national security and prevents sensitive inventions from being communicated outside India without scrutiny.

(d) Patentability of pharmaceutical products:

Pharmaceutical products are patentable in India after 1 January 2005, when Section 5 was omitted to comply with TRIPS.

A product becomes eligible for patent protection only if it satisfies the requirements of novelty, inventive step, and industrial applicability. However, Section 3(d) restricts patenting of new forms of known substances unless they show a significantly enhanced therapeutic efficacy. This prevents “ever-greening” of drug patents. Further, pharmaceutical products must also disclose any biological material (where applicable) and comply with sufficiency of disclosure and best method requirements. In addition, post-grant use of pharmaceutical patents is regulated through compulsory licensing provisions under Section 84 and the Bolar exemption under Section 107A.

(e) Non- patentable inventions:

The Patents Act excludes several categories from patentability under section 3 & 4..

Section 3 covers:

- inventions frivolous or contrary to natural laws (3(a))
- inventions against public order or morality (3(b))
- mere discovery of scientific principle or natural substances (3(c))
- new forms of known substances without enhanced efficacy (3(d))
- A substance that is only a simple mixture of its ingredients, where each component works just as it normally does and nothing new results,(3(e))
- Simply arranging, rearranging, or duplicating known devices,when each device works independently in the usual way (3(f))
- agriculture/horticulture methods (3(h))
- methods of treatment (3(i))
- plants, animals (whole or parts), except microorganisms (3(j))
- mathematical/business methods & computer programs per se (3(k))
- a literary, dramatic, musical or artistic work or any other aesthetic creation whatsoever including cinematographic works and television productions(3(l))
- a mere scheme or rule or method of performing mental act or method of playing game (3(m))
- a presentation of information; (3(n))
- topography of integrated circuits;(3(o))
- an invention which, in effect, is traditional knowledge or which is an aggregation or •duplication of known properties of traditionally known component or components (3(p))

Section 4

This section excludes inventions relating to atomic energy. These provisions ensure only genuine technological innovations receive patents.

(i) Restoration of lapsed Patent:

A patent lapses when renewal fees are not paid within the prescribed time + six-month extension.

Under Section 60, the patentee or legal representative may apply for restoration within 18 months from the date of lapse, using Form-15, with prescribed fees. The Controller examines whether the non-payment was unintentional and may require evidence. If satisfied, the Controller publishes the application; interested parties may oppose under Section 61.

Upon restoration, rights of the patentee resume from the date of restoration, but acts committed by third parties during the lapse period may be protected under Section 62.

Restored patents cannot be enforced retrospectively during the lapse period.

Q. 7 Answer any 5 of the following :

(a) What is the jurisdiction for filing the suit for infringement and reliefs for plaintiff.

(b) What acts as mentioned in section 107-A of the Patents Act are not considered infringements of the patent Rights?

(c) What is IPAB? What are it's functions? Slate the qualifications of member of the IPAB.

(d) State the names of the International search & Examining Authorities recognized by the International Bureau. Also state the names of International Search & Examining authorities recognized by India for search & Examination of the Patent application originating from India.

(e) State in brief the grounds for the grant of compulsory licence including the terms and conditions thereof.

(f) Explain briefly about the publication of unexamined Patent applications U/S I I A.

Also state effects of such publication. Is there any method available for the applicant to stop publication of his application under the Act, if yes please state the relevant provisions?

Solution:

(a) Jurisdiction: According to section 104 of the Patents Act, a suit for patent infringement shall be filed only before a District Court having jurisdiction. If the defendant counterclaims for revocation, the suit is transferred to the High Court.

Reliefs available to the plaintiff: According to section 108 of the Patents Act, The court may grant:

- Permanent injunction
- Damages or account of profits
- Seizure, forfeiture or destruction of infringing goods and materials
- Interim injunctions

(b) Acts not considered infringement under section 107-A

This section provides two statutory exceptions to infringement.

107A(a)-Bolar Exemption: Making, constructing, using, selling or importing a patented invention solely for uses reasonably relating to the development and submission of information required under any law (Indian or foreign) regulating manufacture, use, or sale of a product. This provision enables generic drug manufacturers to conduct tests before patent expiry.

107A(b)-Parallel Import: Import of a patented product from a person who is duly authorized under the law of the country from where the product is imported. This provision permits parallel importation.

(c) IPAB: Intellectual Property Appellate Board

Intellectual Property Appellate Board (IPAB) was a specialized tribunal constituted under Sections 116 of the Patents Act to hear appeals from decisions of the Controller, revocation petitions, rectification matters, and compulsory licence appeals. It consisted of a Chairperson, Judicial Members, and Technical Members (Patents) having qualifications prescribed under Sections 116–117B. However, IPAB has been abolished through the Tribunals Reforms Ordinance, 2021, and its functions are now exercised by the High Courts.

(d) International Search & Examining Authorities (ISAs) recognized by the International Bureau

- African Regional Intellectual Property Organization (ARIPO)
- IP Australia
- Austrian Patent Office (AT)
- Canadian Intellectual Property Office (CIPO)
- China National Intellectual Property Administration (CNIPA)
- European Patent Office (EPO)
- Eurasian Patent Office (EA)
- Intellectual Property Office of Singapore (IPOS)
- Indian Patent Office (IPO)
- Israel Patent Office (ILPO)
- Japan Patent Office (JPO)
- Nordic Patent Institute
- Swedish Patent Office (SE)
- United States Patent and Trademark Office (USPTO)

International Search & Examining Authorities recognized by India

- The Indian Patent Office (IPO) is authorized to act as an ISA for patent applications originating from India.
- Other ISAs recognized by India include the Austrian Patent Office (AT), Australian Patent Office (AU), European Patent Office (EP), China Intellectual Property Office (CN), United States Patent & Trademark Office (US), and Swedish Patent Office (SE).

(e) Grounds for Compulsory Licence & Terms :

Any person u/s 84 may seek a compulsory licence after 3 years from the date of grant of patent on the following grounds:

- Reasonable requirements of the public have not been satisfied
- Patented invention is not available at a reasonably affordable price
- Patented invention is not worked in the territory of India

Special grounds (Under Section 92)

- National emergency,
- Extreme urgency,
- Public non-commercial use (Government notification)

Terms and conditions of compulsory licences u/s 90:

- Reasonable royalty and remuneration to the patentee, considering the nature of the invention and expenses incurred.
- The invention is worked to the fullest extent by the licensee and with reasonable profit to him.
- The patented product is made available to the public at reasonably affordable prices.
- The licence is non-exclusive.
- The licence is non-assignable.
- The licence normally operates for the remaining term of the patent, unless a shorter period serves public interest.
- The licence is mainly for supply to the Indian market, though export is permitted in situations covered under Section 84(7)(a)(iii).
- For semiconductor technology, the licence is only for public non-commercial use.
- Where the licence is granted to remedy anti-competitive practices, export by the licensee is allowed.
- A compulsory licence does not permit import of the patented product or a product made by a patented process if such import would otherwise infringe patent rights. However, the Central Government may direct the Controller to allow importation under a compulsory licence in the public interest, subject to conditions regarding royalty, quantity, price, and duration.

(f) Publication of un-examined Patent applications U/S 11 A:

Under Section 11A(1), every patent application is automatically published after 18 months from the date of filing or priority, unless the applicant makes a request for early publication under Section 11A(2) read with Rule 24A.

Effects of Publication (Section 11A(7))

- From the date of publication, the applicant obtains provisional rights, including:
- The right to receive damages/royalties from infringes from the date of publication, but enforceable only after grant.
- The ability for the public to inspect the complete specification.
- The invention becomes prior art against future filings.

Stopping Publication

Under Section 11A(3), an applicant may withdraw the application at any time before its publication. Specifically, clause (c) of Section 11A(3) provides that an application will not be published if it has been withdrawn at least three months before the 18-month publication period specified under Section 11A(1).

This means that if the applicant withdraws the application before the expiry of 15 months from the filing/priority date, the Controller will not publish it. This provision gives applicants a clear statutory safeguard to prevent publication if they no longer wish to pursue the patent.

2010: PAPER 1 (SOLVED)

PATENT AGENT EXAMINATION, 2010
(Under Section 126 of the Patents Act, 1970, as amended)
January 23, 2010
PAPER 1

TOTAL MARKS: 100 **Time: 11 AM to 2PM (3 hours)**

Total number of pages: 8

Instructions: *This paper consists of 2 parts. The first part (Part A) of 40 marks requires you to pick the right answer(s) from amongst given choices. This part consists of multiple choice questions (Part Al) and true/false type questions (Part A2). You must answer all questions in this Part.*
The second part (Part B) of 60 marks requires written answers. This part consists of 10 questions of 4 marks each (Part BI) and 5 questions of 10 marks each (Part B2). You may choose any five questions from Part BI (20 marks) and any four questions from Part B2 (40 marks). Please read the questions very carefully before answering them. Please also divide your time appropriately so that you are able to complete all answers in time.

PART A (40 MARKS)

PART Al (30 MARKS)

Each Question Below Carries Two (2) Marks. Please answer all the questions Instructions: Chose the right answer by indicating your choice in the answer sheet given to you against the relevant question number. If there are two good answers for a question. you must chose both. Illustratively, if the right answer to Question (1) is "c ", you must write: Question (1) = c. Similarly if question I has two right answers ("b " and "c'), then you must indicate: Question (1) = b and c. In the above example, if you pick only "b " and not "c ", you will lose half the mark for that question. However, if you chose a wrong option, you will not get any marks. Illustratively, if you chose "a ", "b " and "c " in the above example, you will not get any marks.

1. A granted patent gives the patentee the right to claim damages:
a. From the priority date of the patent
b. From the date of grant of the patent
c. From the date of filing of the complete specification
d. From the date the patent applicant has survived an opposition proceeding
e. From the date of publication of the patent application in the official journal
Answer: (e) From the date of publication of the patent application in the official journal
Under Section 11A(7), On and from the date of publication of the application for patent and until the date of grant of a patent in respect of such application, the applicant shall have the like privileges and rights as if a patent for the invention had been granted on the date of publication of the application: Provided that the applicant shall not be entitled to institute any proceedings for infringement until the patent has been granted.

2. A patent can be revoked
a. Anytime after its grant
b. Only after 1 year from the date of grant
c. Only after 3 years from the date of grant
d. Only after obtaining permission from the Controller of Patents
e. All of the above
Answer: a. Anytime after its grant

Under the Patents Act, 1970, a patent may be revoked at any time after grant through several mechanisms:

- Section 64 – Revocation by High Court (any time after grant).
- Section 25(2) – Post-grant opposition (must be filed within 1 year of publication of grant, but this is *not* the only revocation mechanism).
- Section 66 – Revocation of patent in public interest
- Section 85 – Revocation of Patent for non working(after 2 years of Compulsory Licence)

Because Section 64 allows revocation proceedings at any time after grant, therefore, option (a) is correct.

3. India is a member of the
a. Paris Convention Patent Cooperation Treaty (PCT)
b. Strasbourg Agreement
c. Substantive Patent Law Treaty
d. All of the above
Answer: b. Strasbourg Agreement
India is a member of:

- Paris Convention for the Protection of Industrial Property (since 1998)
- Patent Cooperation Treaty (PCT) (since 1998)
- Strasbourg Agreement Concerning the International Patent Classification (1971)

For more information on international treaties, please download the ebook using the link
https://rasintellect.com/rasprep-patent-agent-exam-preparation/#book

4. As per the Indian Patent Act, a complete specification must be filed within
a. 12 months of filing a provisional application
b. 18 months of filing a provisional application
c. 15 months of filing a provisional application
d. 10 months of filing a provisional application
e. None of the above
Answer: a. 12 months of filing a provisional application
Under the Patents Act, 1970, a complete specification must be filed within 12 months from the date of filing the provisional application (Section 9(1)).Section 9(1) states that where an application for a patent (not being a convention application or an application filed under the Patent Cooperation Treaty designating India) is accompanied by a provisional specification, a complete specification shall be filed within twelve months from the date of filing of the application, and if the complete specification is not so filed, the application shall be deemed to be abandoned.

5. A product may be sold in the market without destroying its novelty
a. Only after applying for a patent
b. Only after the grant of a patent
c. Only after publication of the patent application in the official journal.
d. Only if the process for its preparation is kept secret
e. None of the above.
Answer: c. Only after publication of the patent application in the official journal.
As per the Patent Act and Patent Rules, no rights can be enforced before publication of the application. Moreover, no injunction or damages can be claimed before grant of patent.

6. Prior Art does not include:
a. Knowledge disclosed in publications
b. Knowledge disclosed only orally
c. Knowledge disclosed only to members of one's family
d. Knowledge disclosed only in patents
e. Knowledge available in the public domain
Answer: c. Knowledge disclosed only to members of one's family
Section 13 deals with the examiner's search for anticipation by prior publication or prior claim.

7. A complete patent specification shall disclose
a. All the methods of performing the invention
b. All anticipated uses of the invention
c. The best method of performing the invention
d. All of the above
e. None of the above
Answer: c. The best method of performing the invention.
As per Section 10(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.
(d) be accompanied by an abstract to provide technical information on the invention.

8. As per the Indian Patent Act, a resident in India:
a. Is free to file a patent in a foreign country without first filing the said patent in India.
b. Can file a patent in a foreign country without first filing the said patent in India, only under certain special circumstances
c. Can file a patent in a foreign country only after filing a PCT application on the same subject matter.
d. Can file a patent in a foreign country only after grant of the said patent in India
e. None of the above
Answer: b. Can file a patent in a foreign country without first filing the said patent in India, only under certain special circumstances**.**
As per Section 39, no person resident in India shall, **except under the authority of a written permit sought in the manner prescribed and granted by or on behalf of the Controller**, make or cause to be made any application outside India for the grant of a patent for an invention.

9. Can the government of India use any patented invention merely for its own use?
a. Yes
b. Yes, it can do so, only when the President of India sanctions such use
c. Yes, it can do so, only if the government notifies its intention of using the said patent before two months of such use
d. Yes, only after 3 years of the date of grant of the patent
e. All of the above
Answer: a. Yes

As per Section 100. notwithstanding anything contained in this Act, at any time after an application for a patent has been filed at the patent office or a patent has been granted, the Central Government and any person authorised in writing by it, may use the invention for the purposes of Government.

10. An Indian generic company can export a drug which is patented in India to Nepal, where there is no such patent, if.
a. It obtains a compulsory license in India under section 84.
b. It obtains a compulsory license in Nepal
c. It obtains a compulsory license in both India (under section 84) and Nepal
d. The government of Nepal issues a notification on public health grounds
e. None of the above
Answer: d. The government of Nepal issues a notification on public health grounds
As per Section 92A, Compulsory licence shall be available for manufacture and export of patented pharmaceutical products to any country having insufficient or no manufacturing capacity in the pharmaceutical sector for the concerned product to address public health problems, provided compulsory licence has been granted by such country or such country has, by notification or otherwise, allowed importation of the patented pharmaceutical products from India.

11. Assume that A is the first person to discover the method of making lemon juice by combining lemon with water and sugar. A patents the method of making the juice as also the product (juice) that is made. B is a professor and teaches his students in his hotel management class how to make lemon juice. B then asks his students to taste the juice so made. Does B infringe A's patent?
a. Yes
b. No, since B `s method of teaching does not fall within the scope of the A's claim.
c. No, since the Indian Patents Act provides a specific exemption in favour of B's activity.
d. No. since the Indian Patents Act grants B a compulsory license to use the patent and teach the students
e. None of the above
Answer: c. No, since the Indian Patents Act provides a specific exemption in favour of B's activity.
As per Section 47(3), any machine, apparatus or other article in respect of which the patent is granted or any article made by the use of the process in respect of which the patent is granted, may be made or used, and any process in respect of which the patent is granted may be used, by any person, for the purpose merely of experiment or research including the imparting of instructions to pupils.

12. A sues B for the violation of his patent (granted on 1.1.2009 and covering a fungicide) in a district court in India. B wishes to invalidate the patent on 1.2.2010. B can
a. File a revocation petition at the IPAB
b. File a revocation petition at the High Court
c. File a counterclaim in the District Court asking that the patent be revoked.
d. File a post grant opposition to the patent
e. All of the above
Answer: b. File a revocation petition at the High Court
As per Section 64(1), Subject to the provisions contained in this Act, a patent whether granted before or after the commencement of this Act, may be revoked on a petition of any person interested or of the Central Government or on a counter-claim in a suit for infringement of the patent by the High Court on any of the following grounds, that is to say

(a) that the invention, so far as claimed in any claim of the complete specification, was claimed in a valid claim of earlier priority date contained in the complete specification of another patent granted in India;
(b) that the patent was granted on the application of a person not entitled under the provisions of this Act.

13. A has a process patent covering a method of making a drug to cure baldness. B sells the same drug in the market. If A sues B for infringement, on whom lies the burden of proof?
a. On A
b. On B
c. On the court
d. On the Indian patent office
e. None of the above
Answer: a. On B
As per Section 104A(1), In any suit for infringement of a patent, where the subject matter of patent is a process for obtaining a product, the court may direct the defendant to prove that the process used by him to obtain the product, identical to the product of the patented process, is different from the patented process.

14. A is granted a patent on 1.1.2006 for a drug. It proceeds to sell the drug at a very expensive price that is not affordable by the average Indian consumer. B infringes the patent and is restrained by a court of law on 1.10.2008. B then files a compulsory licensing application after 2 months, stating that A's drug is too expensive. Will B succeed'?
a. Yes
b. No
c. Yes, provided B complies with all the formalities for applying for such license
d. Yes, provided B gets a good lawyer.
e. Yes, provided B gets permission from the Controller General of Patents
Answer: b. No
One of the key requirement under Section 84(1) is that a compulsory licence can be applied for only after 3 years from the date of grant of the patent. In this case

- Patent granted: 1.1.2006
- 3-year period ends on: 1.1.2009B files the CL: December 2008, only 2 months after injunction but still before 1.1.2009

Therefore, B is NOT eligible to apply for compulsory licence at that time. B must wait for 3 years from the date of grant.

15. What grounds of opposition are not included within Section 25(1):
a. the invention so far as claimed in any claim of the complete specification has been published before the priority date of the claim.
b. the complete specification does not sufficiently and clearly describe the invention.
c. the request for examination pursuant to the filing of the complete specification has not been made by the applicant
d. the applicant has failed to disclose to the Controller the information required under section 8 of the Act.
e. None of the above
Answer: c. the request for examination pursuant to the filing of the complete specification has not been made by the applicant.

Grounds of Opposition under Section 25

1. Wrongful Obtaining
2. Prior Publication
3. Prior Claim
4. Prior public knowledge or prior public use in India
5. Obviousness/Lack of Inventive Step
6. Not an Invention
7. Section 3 & Section 4
8. Insufficient disclosure / unclear specification
9. Failure to disclose Section 8 Information
10. Wrongfully mentioned source/geographical origin of biological material
11. Failure to disclose or wrong disclosure of biological material under Section 10

PART A2 (10 MARKS)

Each Question Below Carries One (1) Mark. Please answer all questions. Instructions: Please select whether the below propositions are "true " or `false ". You can only select either "true " or `false ". You must indicate your choice in the answer sheet given to you against the relevant question number. Illustratively, if the right answer to Question (1) is "true ", you must write: Question (1) = true.

1. A pre grant opposition decision in favour of the patent applicant can be appealed to the IPAB : False

A pre-grant opposition decision cannot be appealed to IPAB (now High Court). There is no appeal provision in Sections 117A–117D.

2. A genetically modified plant is patentable : False

As per Section 3(j), plants and animals in whole or any part thereof other than micro-organisms but including seeds, varieties and species and essentially biological processes for production or propagation of plants and animals.

3. A "true and first inventor" includes a person who qualifies as the first importer of an invention into India: False

As per Section 2(1)(y) “true and first inventor” does not include either the first importer of an invention into India, or a person to whom an invention is first communicated from outside India.

4. In a successful post grant opposition, the Controller may ask the patentee to amend the patent specification: True

As per Section 25(4), On receipt of the recommendation of the Opposition Board and after giving the patentee and the opponent an opportunity of being heard, the Controller shall order either to maintain or to amend or to revoke the patent.

5. The Controller himself can revoke a patent for its non-working, after the expiration of two years from the date of the order granting the first compulsory license in relation to such patent : True

As per Section 85(1), where, in respect of a patent, a compulsory licence has been granted, the Central Government or any person interested may, after the expiration of two years from the date of the order granting the first compulsory licence, apply to the Controller for an order revoking the patent on the ground that the patented invention has not been worked in the territory of India or that reasonable requirements of the public with respect to the patented invention has not been satisfied or that the patented invention is not available to the public at a reasonably affordable price.

As per Section 85(3), the Controller, if satisfied that the reasonable requirements of the public with respect to the patented invention have not been satisfied or that patented invention have not been worked in the territory of India or that the patented invention is not available to the public at a reasonably affordable price, may make an order revoking the patent.

6. The Request for examination can be made only by an applicant: False

As per Section 11B(1), no application for a patent shall be examined unless the applicant or any other interested person makes a request in the prescribed manner for such examination within the prescribed period.

7. A patent can be surrendered even after 48 months from the date of grant : True

As per Section 63(1), a patentee may, at any time by giving notice in the prescribed manner to the Controller, offer to surrender his patent.

8. Sildenafil citrate was known to cure heart ailments. It is subsequently discovered to possess properties that can cure erectile dysfunction. This new property is not patentable in India.: True

As per Section 3(d), the mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance or the 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.

9. A patent is applied for an invention relating to an improved public drainage system. Ten months prior to the application, the system was tested by the municipal authorities in Mumbai. The patent cannot be granted, since it was anticipated: False

As per Section 32, an invention claimed in a complete specification shall not be deemed to have been anticipated by reason only that at any time within one year before the priority date of the relevant claim of the specification, the invention was publicly worked in India.

10. The Controller under section 26(1) has the power to substitute the name of the opponent, if he finds that the invention has been obtained by fraud: True

As per Section 26(1), where in any opposition proceeding under this Act the Controller finds that— (a) the invention, so far as claimed in any claim of the complete specification, was obtained wrongfully obtained, the Controller will revoke the patent on that ground.

PART B
(60 MARKS)
PART BI (20 MARKS): Each Question Below Carries Four (4) Marks

1. Your client has filed a provisional patent application on January 1st, 2006. She is unable to file her complete patent application by December 31st, 2006. As a patent agent representing her, what options would you suggest?

Answer: A provisional application filed on 1 January 2006 gives exactly 12 months to file the complete specification. Thus the last date to file the complete specification is therefore 1 January 2007 (not 31 December 2006) and the application is still alive for one more day. if she is unable to file the complete specification by this date, I would suggest her to avail the option of post-dating the application under Section 17 of the Patents Act, 1970, thereby extending the time for filing the complete specification. Post-dating can be sought for up to six months, which effectively shifts the filing date forward and correspondingly extends the deadline for filing the complete specification. However, this option comes with the consequence of losing the original priority date of 1 January 2006, meaning that any disclosures or publications made between the original filing date and the new post-dated date could become prior art against the applicant. Therefore, the applicant should either file the complete specification by 1 January 2007 or, if that is not possible, request post-dating of the provisional application to gain additional time, while carefully considering the impact of losing the earlier priority.If neither post-dating nor filing of the complete specification is done by this date, the application shall be deemed to be abandoned under Section 9(2).

2. Laila and Majnu, a happily married couple co-invent a tracking device. Using the very same tracking device, Majnu discovers that Laila was having an affair with their driver, Romeo. Thereafter Majnu divorces Laila and files a patent in his own name to cover the said tracking device. Upon learning of this, Laila approaches you to represent her. How would you advise her?

Answer: Laila is a true and first inventor under Section 2(1)(y). As per Sections 25(1)(a), 25(2)(a), and 64(1)(c), Majnu's filing of the patent solely in his name leads to wrongful obtaining of the invention. Laila should file a Pre-Grant Opposition or Post-Grant Opposition depending on the status of the patent and simultaneously apply for correction of inventorship under Section 28. The Controller has authority to substitute or add her name under Section 26. Therefore, she can apply for her rights as co-inventor and co-applicant.

3. A patent has been granted to Lily on January 1st, 2002. However, she has failed to pay the renewal fees in 2006, which she realised in January 2007. She approaches you. What would your advice be?

Answer: Lily's patent lapsed because renewal fees for 2006 was not paid. As per Section 60, she may apply for restoration within 18 months from the date on which the patent ceased. Therefore, she is still within the prescribed period. She should file Form-15 with reasons showing that the failure to pay was unintentional.

4. Manoj attended a fair in New Delhi on 25 th Jan, 2009 and displayed his newly invented device. Thereafter, he received several enquiries for the commercialisation of his device. He now wishes to file a patent in India and other countries abroad. As a patent agent representing him, what would your advise be?

Answer: Manoj publicly displayed his invention on 25 January, 2009. As per Section 31, he can file a patent application in India within twelve months from the date of display. He must produce certificate from the exhibition authorities. Once the patent application is filed in India, then Manoj should file a PCT application within 12 months to secure the international priority date.

5. Your client Sivaram has filed a patent application in Germany on January 1st 2006. He has filed a PCT application on December 31st 2007. By which date should you file his national phase application in India? Assuming you have filed his national phase application in India on January 1" 2008, what is the last date by which the request for examination is to be filed in India to keep his application live?

Answer: Priority date is 1 January 2006 for an application filed in Germany. International (PCT) filing date for the patent application is 31 December 2007. The National phase entry deadline in India is 31 months from the priority date[Text Wrapping Break]Therefore, the Indian national phase application must be filed on or before 1 August 2008.

RFE must be filed within 48 months from Priority date (for applications filed before 15, March , 2024). 48 months for RFE will be counted from date of priority i.e. Jan 2006 as per Rule 24 (B) 1

Priority date: 1 January 2006

48 months : 1 January, 2010

Therefore, RFE must be filed before 1 January, 2010.

Note: For applications filed after 15, March 2024 , the deadline to file RFE is 31 months from the priority date or date of filing whichever is earlier.

6. **A patent application was granted in India on January 1st 2008. On January 1st 2010 the applicant wishes to amend some of the granted claims. Please advise the applicant on whether he can do this, and if so, how he should proceed.**

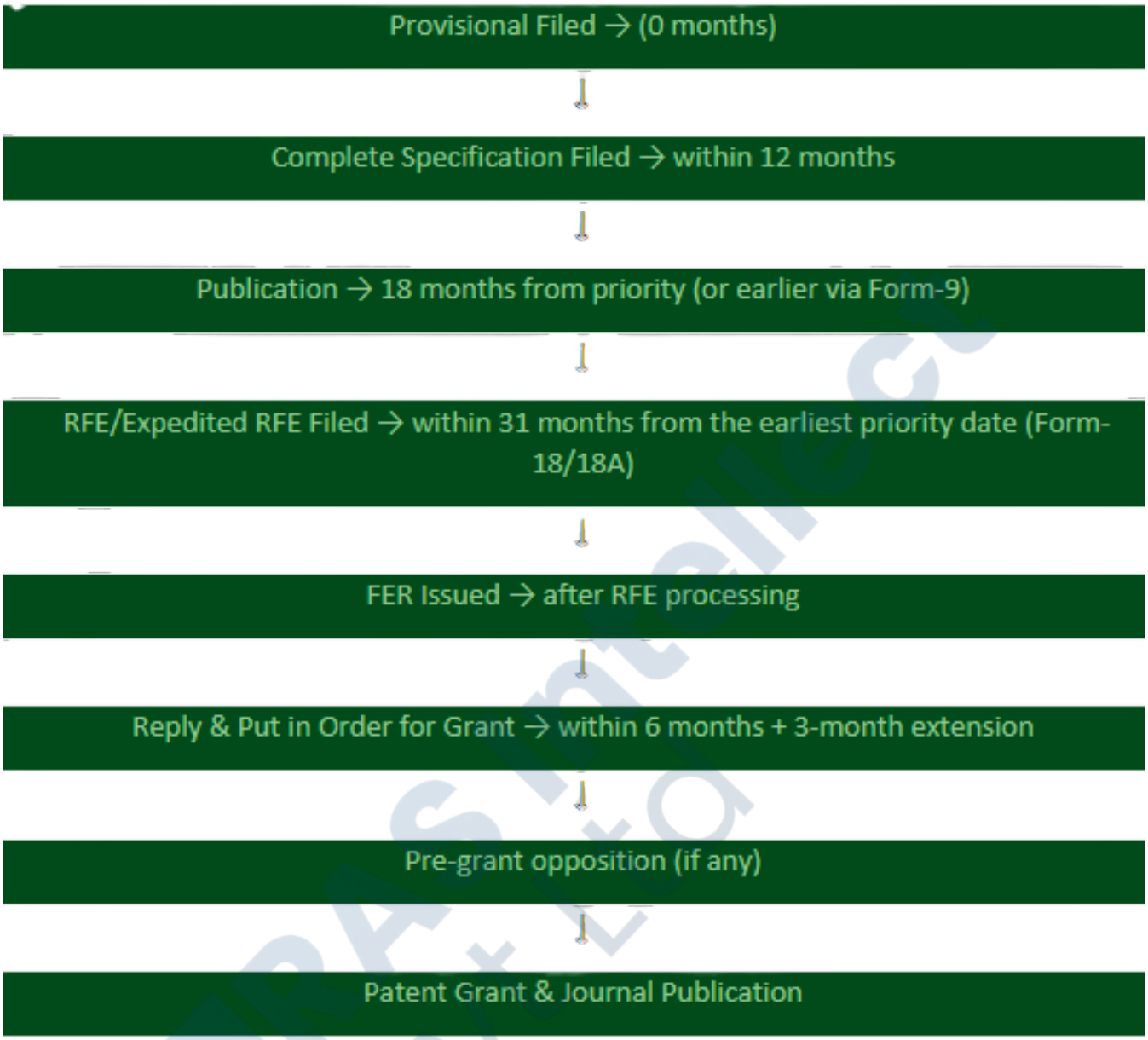
Answer: Yes, the patentee may amend the claims even after the grant, subject to statutory restrictions. Under Section 57 read with Section 59, amendments after grant are permissible only by way of disclaimer, correction or explanation, and such amendments must not broaden the scope of the granted claims. The applicant must file a petition for amendment before the Controller using Form 13, along with the prescribed fee, clearly marking the proposed changes and submitting a supporting statement explaining the necessity of the amendment.

As the amendment is sought after the grant of a patent the request must be published under rule 81(3) (a) so that the public is informed. In such cases, any interested person may file a notice of opposition in Form 14 within three months of publication. The opposition proceedings then follow the same procedure as laid out in Rules 57 to 63, which include filing written statements, reply statements, submission of evidence, hearings, and determination of costs. This provision ensures that amendments are carefully scrutinized, with opportunities for public opposition, thereby safeguarding the integrity of granted patents while still allowing patentees to make permissible corrections or clarifications. Only narrowing amendments consistent with the original disclosure and claims are allowed; no enlargement of claim scope is permitted.

7. **Your client has applied for a provisional patent application in India. Draw a time line of all the important events till the date of grant of her patent application as per the Indian Patents Act and Rules.**

Answer: When a provisional specification is filed, the applicant must file the complete specification within 12 months (Section 9). The application is accorded a filing date only after the complete specification is submitted. After filing the complete specification, the patent application gets published automatically after 18 months from the earliest filing date (Section 11A). The applicant may request early publication using Form-9. A Request for Examination (RFE) must be filed within 31 months from the earliest priority date (Section 11B). After the RFE, the Controller issues the First Examination Report (FER). The applicant has 6 months to comply with all objections (Rule 24B). Upon successful compliance and satisfaction of the Controller, the patent proceeds to grant, which is then notified in the Patent Journal (Section 43).

Timeline From Provisional Filing to Grant: (next page)



8. You have filed a provisional patent application in India and now wish to file an application under the Patent Cooperation Treaty (PCT). Draw a timeline with the important dates for actions under the PCT system.

Answer: Once a provisional application is filed in India, the applicant has 12 months to file complete specification and PCT international application claiming priority from the Indian filing, as per Article 8 of PCT and Section 135 of the Patents Act. The PCT application obtains an international filing date and enters the International Search stage, where the International Search Report (ISR) and Written Opinion are issued around 16 months from priority. At 18 months from priority, the PCT application is published by WIPO. The applicant may optionally file a Demand for International Preliminary Examination before 22 months (Chapter II). To enter the Indian national phase, the applicant must file the national phase application within 31 months from the priority date (Rule 20, Patents Rules, 2003). After national phase entry, the normal Indian examination and grant process applies.



9. A patent application was filed in the Delhi Patent Office on a new pair of jeans. The inventive concept is that the stitches are so designed that the pockets do not bulge out when the user sits on a chair. The patent was examined by the Patent Office and the examiner objected on the ground of "insufficient description" of the invention in the specification. Thereupon, the applicant argues that some of the drawings in the specification describe the kind of stitches claimed. The Controller is however not satisfied with the explanation. If you were representing the patent applicant, how would you proceed?

Answer: If I were representing the applicant, I would first examine the specification to identify the gaps that led to the objection of "insufficient description" under Section 10(4) of the Patents Act, which requires that the specification fully and particularly describe the invention and its operation, method of performing it, and the best method known to the applicant. Drawings alone are not enough unless the written description clearly explains the stitching structure, its technical effect, and how it prevents pocket bulging. Accordingly, I would file a request for amendment under Section 57 read with Section 59, via Form 13, to supplement the description with detailed technical features of the stitch design, construction method, tension pattern, and functional mechanism. The amendment must remain within the original disclosure and cannot broaden the scope.

In the amendment, I would include:

- A detailed textual description of the stitch pattern, structure, thread orientation, and method of forming the stitches;
- Reference numerals that correspond clearly to the drawings;
- An explicit explanation of how the inventive stitch prevents the pocket from bulging, thus satisfying the enablement requirement;
- Any additional drawings, if required, to clarify the construction (allowed under Rule 15 as long as they do not introduce new matter).

Next, I would request the Controller to re-examine the amended specification, demonstrating that the requirements of Section 10(4) are now fully met. Because amendments that merely clarify or explain the invention are permissible under Section 59, such amendments are allowed even during prosecution.

Thus, the correct course of action is to amend and strengthen the written description, clearly link the drawings with the text, and submit a comprehensive response addressing the insufficiency objection, thereby placing the application in order for grant. A properly supported, clarified specification will help satisfy the Controller and overcome the objection.

IRAS Intellect Pvt Ltd

10. **Rahman, a renowned artist creates a beautiful song called "Soja" that becomes an instant hit. In particular, people suffering from insomnia find that it instantly puts them to sleep. If Rahman wishes to patent his invention and approaches you, how would you advise him?**

Answer: Rahman's creation, a musical composition titled "Soja", cannot be protected by a patent under the Indian Patents Act, 1970. Under the Indian Patents Act, 1970, patent protection is granted only to inventions that satisfy Section 2(1)(j) they must be new, involve an inventive step, and be capable of industrial application. A song, however artistic or popular, is neither a technical invention nor a product or process capable of industrial application in the manner required under the Act.

A song is a musical and artistic work, which is expressly excluded from the scope of invention under Section 3(l). The fact that listeners suffering from insomnia fall asleep upon hearing the song does not impart technical character or convert it into a patentable invention.

Accordingly, a musical composition such as "Soja" is not patentable subject matter under Indian law. Rahman's protection lies entirely under the Copyright Act, 1957, which safeguards musical works, sound recordings, and artistic expressions. Copyright gives him exclusive rights to reproduce, distribute, perform, communicate, and monetize the song for the statutory period. Therefore, a patent cannot be obtained for the song, but copyright already provides full and appropriate protection for the work.

Thus Rahman's rights over the song fall exclusively under the Copyright Act, 1957, which automatically protects original musical works.

PART B2 (40 MARKS): Each Question Below Carries Ten (10) Marks Each

Instructions:

This Part contains Five (5) Questions. Please answer any Four (4) questions from amongst them. Your answer must be brief and to the point. While answering the questions, you are expected to support your answer by giving reasons and citing the relevant sections and rules in the Indian Patents Act.

1. Your client, Mr Karimeen has developed a complex electro-mechanical device for fishing in lakes. His device is able to sense the movement of fishes and then adjust the angle of the bait to effectively attract the fishes. After filing the complete specification, Karimeen realises that the mechanism and the programmed chip in the device can be used for various other applications. How would you protect all features of Karimeen's inventions?

After a few years, Mr Nettoli, a renowned fisherman from Mangalore makes an improvement on the device. Since you are the best patent attorney in India, Nettoli also approaches you to protect his invention. You find that Nettoli's invention is novel but lacks an inventive step. What will be your approach in helping protect Nettoli's interests?

Answer: Once the complete specification has already been filed, and Mr. Karimeen now discovers that the internal mechanism and the programmed chip have independent utility for multiple other applications, the correct strategy under the Patents Act, 1970 is as follows:

(a) File one or more Divisional Applications under Section 16

If the originally filed complete specification discloses more than one invention then a divisional application may be filed for each distinct invention disclosed in the parent specification. Section 16(1) permits the applicant to file a divisional application at any time before the grant of the parent application, provided that the matter sought to be claimed was fully disclosed in the parent complete specification.

(b) Consider Patent of Addition (Section 54)
If new improvements or modifications are discovered later for the same main invention, a patent of addition may be filed, provided it relates to an improvement or modification of the main invention and the applicant is also the patentee. This avoids paying a separate renewal fee under Section 55(2).
Through this combination (divisional applications + patents of addition), the entirety of Karimeen's technology can be fully protected.
Further, after evaluation, if Nettoli's improvement is novel but lacks inventive step, meaning it fails Section 2(1)(ja) requirements, then obtaining a standard patent is unlikely. The correct legal and strategic approach would be:
A patent of addition may be granted even where the improvement does not involve an inventive step, provided it is an improvement or modification of the original patented device. Section 56(1) expressly states that for a patent of addition, the requirement of inventive step is applied only in relation to the main invention, and even if the improvement is obvious over the main invention, the patent of addition may still be allowed.
Therefore, Nettoli may be advised to file a patent of addition linked to Karimeen's patent, provided he has rights or consent from the patentee (e.g., license, assignment, or contractual arrangement).

2. The "Wangdu" tribe, settled in the lush green forests of southern India, are reputed for their ability to solve complex puzzles. Several research groups visited this area to study this interesting tribe. One such group from the Imperial Institute of Technology (IIT), led by Professor Bhagat, suspected that the mental skills of these indigenous tribals was due to their consumption of the leaves of a plant called "Piya".
Sensing the potential of these leaves for a blockbuster brain power enhancing drug, they took samples to the US to do further research. After forming a company, Rancho Inc to exploit this new discovery, Prof. Bhagat's team identifies the active ingredient ("Fenon") and makes a drug based on it called "Brain-Gain". Rancho Inc files patents for the drug and its process of manufacture in the US, EU, Japan, India and other leading markets. After a lengthy examination process, Rancho Inc obtains a patent in India in May 2008.
Brain-Gain is a huge hit in the market and makes over a million dollars in the very first month of its sale. As expected, the patentee deliberately ignores the Wangdu tribals, who get nothing from the commercial exploitation of their traditional knowledge.
Virus Ltd, an Indian Company desires to introduce a similar product in the India. It therefore plans to challenge the Indian Patent. Virus Ltd approaches you for advice in March 2009. What would your advice be? (6 marks)
Answer:-
Virus Ltd seeks to invalidate Rancho Inc's Indian patent granted in May 2008. Since Virus Ltd approaches in March 2009, the patent is still within one year of grant, allowing a post-grant opposition under Section 25(2). There are multiple strong statutory grounds on which the patent can be challenged.
1. Wrongful obtaining of the invention - Section 25(2)(a) / Section 64(1)(c)
The invention is derived from the traditional knowledge of the Wangdu tribe, who have long consumed the *Piya* leaves for cognitive enhancement. Prof. Bhagat's team identified "Fenon" based on this pre-existing indigenous knowledge. Since the patentee derived the invention from a community's traditional knowledge without assignment, consent, or authority, a challenge may be mounted on the ground that the invention was wrongfully obtained, which is a valid ground under both post-grant opposition and revocation.

2. Lack of novelty or inventive step - Sections 25(2)(b)-(e), Section 64(1)(e)-(f)
If traditional use of Piya leaves for enhancing brain function was publicly known or publicly used by the Wangdu tribals before the priority date, the patent may be challenged for:

- Anticipation by traditional knowledge under Section 25(2)(k)
- Obviousness- isolating an active ingredient from a plant long known for cognitive benefits may be treated as an obvious scientific step rather than an inventive step.

3. Non-disclosure or wrongful disclosure of biological material source - Section 25(2)(j) / Section 64(1)(p)
Indian law requires disclosure of the source and geographical origin of any biological material used in an invention. If Rancho Inc failed to disclose the source (the Piya plant growing in the Wangdu region), this is an independent statutory ground for revocation and opposition. This ground is highly relevant here.
4. Traditional knowledge as non-patentable subject matter- Section 3(p)
Section **3(p)** states:
"an invention which, in effect, is traditional knowledge or an aggregation or duplication of known properties of traditionally known components."
Since the drug "Brain-Gain" is directly based on a traditionally known medicinal plant, the invention may fall squarely within Section 3(p) and thereby be non-patentable.

3. In the question above, assume that Virus Ltd fails in invalidating Rancho's patent. Consider the following circumstances and answer accordingly: i) Virus Ltd tries to make a generic version of Brain-Gain. Upon discovering that Virus was testing the drug in its lab, Rancho sues Virus. What defence can be claimed by Virus? ii) Virus creates "Zenon", an ester derivative of "Fenon" that has better bioavailability in the body than Fenon. Can Virus patent Zenon?
Answer:
(i) Defence available to Virus Ltd when sued for laboratory testing of "Brain-Gain"
If Rancho sues Virus Ltd for conducting laboratory-scale testing of the patented drug "Brain-Gain," Virus Ltd can rely on the statutory research and regulatory approval exception under **Section 107A(a)** of the Patents Act.
Virus may argue that its laboratory studies were reasonably related to generating data for obtaining DCGI approval for a proposed generic drug. Such acts constitute "Bolar-type" activities and are lawful non-infringing activities, even if they involve working the patented invention before patent expiry.
Thus, the correct legal defence is the Section 107A(a) regulatory submission exception, often called the Bolar exemption.
(ii) Virus Ltd may obtain a patent for **Zenon**, the ester derivative of Fenon, *only if* Zenon satisfies all patentability requirements- particularly **Section 3(d)** and **Section 2(1)(ja)**.

Assessment under Section 3(d)
Fenon is a known substance. Zenon, an ester derivative, is a new form of a known substance. Under Section 3(d), such derivatives are not patentable unless they demonstrate a "significant enhancement in known efficacy." Here, Zenon is described as having better bioavailability, which is generally considered a pharmacokinetic improvement, not necessarily enhancement of therapeutic efficacy.
Therefore, mere improvement in bioavailability is insufficient to escape the bar of Section 3(d).

Assessment under Section 2(1)(ja)- Inventive Step

If Zenon's structure and preparation method would be obvious to a person skilled in the art, especially given that esters are routine derivatives used to modify drug absorption, the invention may fail the inventive step requirement.

However, if Virus can demonstrate:

- unexpected properties (e.g., enhanced therapeutic effect, reduced toxicity), or
- a non-obvious synthetic pathway,

then Zenon could potentially qualify for a patent.

4. Funsuk, a young inquisitive student with a passion for travel and adventure wanders in the beautiful hills of Meghalaya and discovers "lemon" for the first time in the history of the world. He finds that it has an excellent "tangy" taste. Answer the following:

i) Can he obtain a patent for the lemon?

ii) The student finds that mixing the lemon with water and sugar makes a very refreshing drink. Is this patentable? Assume that somebody has already patented orange juice earlier, the invention essentially consisting of a combination of orange, water and sugar.

iii) Assume that Funsuk obtains a patent for lemon mixed with water and sugar. Farhan, a good friend of Funsuk's now finds that this patented combination of lemon and water is very good for curing headaches. Can Farhan patent his finding?

Answer:-

i) No, Under section 3(c), Funsuk cannot obtain a patent for a lemon. A naturally occurring plant, fruit, seed, or biological material discovered in nature is expressly non-patentable under Section 3(c) of the Patents Act. Because lemon is a naturally occurring substance and Funsuk has only discovered it, not invented it, no patent can be granted.

ii) A mixture of lemon, water, and sugar is unlikely to be patentable, because under Section 3(e) of the Act. Mixture of lemon, water, sugar produces lemonade, a simple mixture where each ingredient performs its known function, without synergy. The fact that orange juice mixed with water and sugar is patented does not help, because each invention must stand on its own patentability, and a known mixture of fruit + water + sugar would normally be rejected as a mere admixture.

iii) Farhan cannot patent this discovery. He has discovered a new property or use of an existing composition already patented by Funsuk. Under Section 3(d):

"the mere discovery of any new property or new use for a known substance" is not patentable.

Lemon mixed with water and sugar is a known substance (and here mentioned patented). Finding that this combination helps cure headaches is merely a new use of that known compound. It does not constitute a new product or a new process, nor does it meet the inventive step requirement. Therefore, Farhan's discovery is not patentable under Indian law.

5. A company, Larva Ltd has a patent in India for a process to manufacture a wonder drug that cures malaria. There is a severe epidemic of malaria in some regions in India. Larva is however unable to supply the required volume of the wonder drug in India during this crisis. A company, Proboscis Ltd approaches Larva Ltd for a licence to manufacture the wonder drug to supply during the crisis period. However the negotiations for a license fail. What options does Proboscis now have, if it still wishes to make the drug and supply it in India?

Answer:

A. Apply for a Compulsory Licence under Section 84

Proboscis Ltd may file an application for compulsory licence anytime after 3 years from the date of grant of Larva's patent on the following grounds under Section 84(1):

1. The reasonable requirements of the public have not been satisfied
2. The patented invention is not available at a reasonably affordable price
3. The patented invention is not being worked in India

A national epidemic is a clear instance where "reasonable requirements of the public" are not met. If these grounds are proven, the Controller may grant Proboscis Ltd a compulsory licence.

B. Seek a Special Compulsory Licence under Section 92 (Public Health Emergency)

In case of an epidemic, the Central Government may issue a notification under Section 92 declaring that compulsory licences shall be available immediately for:

- national emergencies,
- extreme urgency, or
- public health crises.

Once such notification is issued:

- Proboscis Ltd can apply for a licence without the usual 3-year waiting period,
- The Controller will process the application on a fast-track basis.

A malaria epidemic clearly qualifies as a public health crisis, making Section 92 highly applicable.

C. Manufacture Under Government Authorisation (Section 100)

The Central Government may authorize any person (including a private company such as Proboscis Ltd) to manufacture the patented drug for government use under Section 100.

In this case:

- The patent remains valid
- The patentee (Larva Ltd) is entitled only to reasonable royalty/compensation
- Proboscis Ltd may legally produce the drug for supply to government hospitals, public health centres, etc.

This is often used in national emergencies to ensure adequate drug supply

2011: PAPER 1 (SOLVED)

PATENT AGENT EXAMINATION, 2011
[Under Section 126 of the Patents Act, 1970, as amended]
January, 15, 2011
Paper I
Total Marks: 100
Time: 10.30 a.m. to 12.30 p.m. (Two Hours)
Total number of pages: 7

Instructions:
1. This paper consists of 2 parts.
2. The first part (Part A) of 40 marks requires you to pick the right answer(s) from amongst given choices. This part consists of multiple choice questions (Part A1) and true/false type questions (Part A2). You must answer all questions in this part.
3. The second part (Part B) has Eight (8) questions of 10 marks each and you need to answer any six questions.
4. Read the questions very carefully before answering them. No clarification or doubt can be sought on the questions to the invigilators and you need to interpret it from the questions given as it is.

Part A1 (40 MARKS)
PART A1 (15x2 =30 MARKS)
Each Question Below Carries Two (2) Marks. Please answer all the questions.
Instructions:
Chose the right answer by indicating your choice in the answer sheet given to you against the relevant question number. If there are two correct answers for a question, you must choose both. Illustratively, if the right answer to Question (1) is "c", you must write: Question (1) = c. Similarly if question 1 has two right answers ("b" and "c"), then you must indicate: Question (1) = b and c.
In the above example, if you pick only "b" and not "c", you will lose half the mark for that question. However, if you chose a wrong option, you will not get any marks. Illustratively, if you chose "a", "b" and "c" in the above example, you will not get any marks.

1. A Patent Application means
a. Provisional application
b. Complete specification
c. An application published before grant
d. An application-of patent addition
e. An application which is accompanied by a sample
f. All of the above
Answer: f
Explanation: Sections 7, 9, 10(3), 10(4A) and 54 recognize applications accompanied by provisional specifications, complete specifications, and applications for patents of addition, including those involving biological deposits. Therefore, every option listed falls within the statutory meaning of a patent application

2. The term of a patent of addition filed on 07.01.2006 and granted on 15.02.2009 in pursuance of complete specification for main invention which was filed on 23.08.2005 and granted on 30.10.2008 (if neither patent is revoked prior to term of validity) is-

a. 07.01.2026
b. 30.10.2028
c. 23.08.2025
d. 15.02.2029
e. None of the above

Correct Answer: c

Explanation: Section 55(1) requires a patent of addition to expire with the main patent. Section 53(1) fixes the term of a patent at twenty years from the filing date. Since the main patent filed on 23.08.2005 expires on 23.08.2025, the patent of addition must expire on that same date.

3. The Central Government is empowered to revoke a Patent in public interest:

a. After moving the appropriate court
b. After hearing the patentee
c. After issuing the necessary compulsory licence
d. After appealing in the IPAB
e. After allowing post grant opposition
f. None of the above

Correct Answer: b

Explanation: Under Section 66, the Central Government may revoke a patent only after providing the patentee an opportunity of being heard as required by the section. No court proceedings or compulsory licensing steps are prerequisites for this power.

4. Register of Patents will contain:

a. Names and addresses of grantees of patentee
b. Assignments and Transmissions of patents
c. Notice of any Trust effecting the Patent
d. Infringement proceedings on the Patent
e. Opposition data on the patent
f. All of the above.

Correct Answers: a, b, d, e

Explanation: Section 67(1) and Rule 65 require inclusion of patentee details, assignments, transmissions and all proceedings relating to the patent including oppositions and court matters. Section 67(2) prohibits entry of notices of trust. According to the Patent Office Manual, it also contains particulars of proceedings under the Act, whether before the Controller or in the Courts, in respect of every patent. Hence, infringement proceedings are entered in the Register of Patents.

5. A patentee whose patent is lapsed and restored can

a. File a suit of infringement during the period of lapse and restoration
b. Licence after restoration of the patent
c. Bring an injunction during the period of lapse and restoration
d. Only be entitled for royalty during the period of lapse and restoration
e. All of the above
f. None of the above

Correct Answer: b

Explanation: Under Section 62(2), the patentee cannot enforce rights against infringements occurring during the period between lapse and restoration. Section 62(1) allows the restored patent to operate prospectively, thereby permitting licensing after restoration

6. Compulsory Licence for export under Indian Patents Act is for

a. Pharmaceutical Products
b. Diagnostic Kits required for their use
c. Medicinal Plants
d. Clinical trial data
e. Genetic modified micro organism
f. All of the above

Correct Answers: a and b

Explanation: Section 92A allows compulsory licences exclusively for pharmaceutical products. The Explanation to Section 92A clarifies that diagnostic kits used for such pharmaceutical products are included.

7. A Patent Infringement Case should be initiated only in

a. In a district court
b. In any High Court
c. Directly before the IPAB
d. International Court of Justice if it is an international dispute
e. All the above
f. None of the above

Correct Answer: a and b

Explanation: Under Section 104, suits for infringement can be filed only in a court not inferior to a District Court and a High Court with original jurisdiction.

8. Once a compulsory licence is granted

a. It can be terminated by the Controller
b. The Compulsory licence holder has to be heard
c. Termination only on valid grounds
d. All of the above
e. None of the above

Correct Answer: d

Explanation: Section 94 empowers the Controller to terminate a compulsory licence, requires that the licence holder be given an opportunity of being heard under Section 94(1), and permits termination only when statutory grounds under Section 94(1) are fulfilled. Therefore all options are correct

9. When a biological material has been mentioned in a patent application it must be deposited with International Depository Authority:

a. When specifically requested by the patent office when the application comes up for examination
b. When it is not capable of being fully described in the application
c. When it is not easily available in India
d. When applicant finds that it will aid in convincing the patent office of the patentability of the invention containing the material
e. All of the above

Correct Answer: b

Explanation: Section 10(4)(ii) require deposit in an International Depository Authority only when the biological material cannot be described adequately in the specification.

10. In Post Grant Opposition, the person opposing shall submit:
a. One copy of the statement of opposition to the patent office
b. A copy to the Patentee
C. Notarized copy of the evidence
d. Through registered post with acknowledgment due
e. All the above
Correct Answers: a and b
Explanation: The notice of opposition to be given under section 25(2) shall be made in Form 7 and sent to the Controller in duplicate at the appropriate office. And, rule 57 requires serving a copy on the patentee.

11. When submitting a Patent application the drawings should be:
a. In three dimension if it relates to a molecular structure
b. In A4 size sheet
c. Without descriptive matter in the drawings except the flow diagrams
d. Without colours
e. None of the above
Correct Answers: b, c and d
Explanation: Rule 15(4) requires drawings to be submitted on A4-size sheets. Rule 15(7) prohibits descriptive matter except in flow diagrams. It is mandated that black-and-white drawings are provided unless specially permitted, making colour drawings unacceptable by default.

12. An International Application can be filed:
a. In any patent office in India
b. Only in English
c. In triplicate.
d. To be filed only in the head office
e. All of the above
f. None of the above
Correct Answers: a and c
Explanation: Under Rule 19, an international application may be filed at any appropriate patent office in India and must be filed in triplicate. English is not the only allowed language (Hindi permitted)

13. The Intellectual Property Appellate Board is:
a. A statutory body under the Indian Patent Act
b. Above the High Court and below the Supreme Court
c. Immune to a challenge in a High Court
d. Is a Board where the Controller has the right to appear before its legal proceedings
e. All of the above
f. None of the above

Correct Answers: d
Explanation: Section 117E authorizes the Controller has right to appear and be heard in proceedings before the IPAB [now High Court as IPAB abolished in 2021].

14. If the stamp of 'patent pending' is used by anyone before the grant of the patent, such an act
a. Is liable for a punishment of Rs One Lakh
b. Can be proceeded before the IPAB
c. Allowed if there is an application pending in India
d. Allowed if there is an indication it has been applied outside India
e. All the above
f. None of the above
Correct Answers: c and d
Explanation: If no patent application actually exists, the marking is false and punishable under Section 120.

15. A Request for Examination for an ordinary application can be filed:
a. Along with the complete specification
b. At anytime before publication of the complete specification
c. At anytime after publication of the complete specification
d. Anytime within 48 months of filing the complete specification
e. (b) or (c) subject to (d)
f. All of the above
Correct Answer: f
Explanation: Section 11B and rue 24B permits filing the request for examination within forty-eight months (31 months, now as per amended patent rules in 2024) from the filing or priority date.

PART A2 (10x10=10 MARKS)
Each Question Below Carries One (1) Mark. Answer all questions.

Instructions:
Select whether the below propositions are "true" or "false". You can only select either "true" or "false". You must indicate your choice in the answer sheet given to you against the relevant question number. Illustratively, if the right answer to Question (1) is "true", you must write: Question (1) = true.

1. A Model or Sample of an invention should be submitted as part of the Specification.
Answer: False
Explanation: A model may be called for only if the Controller considers it necessary under Section 10(3). Submission is therefore optional and not a requirement.

2. Any Indian Resident can file a Patent in any SAARC Country before filing it in India.
Answer: False
Explanation: Section 39 (1) prohibits an Indian resident from filing a foreign patent application unless he has either filed the application in India or obtained a foreign filing permit from the Controller. SAARC countries are foreign jurisdictions; therefore, prior filing without permission is not allowed.

3. A pre grant opposition has to be filed within six months of the publication of the invention by the Patent office.
Answer: False
Explanation:
Under Section 25(1) of The Patents Act, 1970, a pre-grant opposition (representation) can be filed by any person at any time after the patent application has been published (under Section 11A) but before the patent is granted.

4. A lapsed patent can be restored by filing a case in District Court.
Answer: False
Explanation: Restoration of a lapsed patent is governed by Section 60 read with Section 61 and is handled exclusively by the Controller, not courts. The patentee must file a restoration application in the Patent Office within the prescribed period; courts have no role in the restoration process

5. A Patent acquired by the Government for Public Purpose is not entitled for any compensation for the owner of the patent.
Answer: False
Explanation: Section 102(3) expressly states that when the Government acquires a patent for public purposes, the patentee is entitled to receive compensation determined by the Government after giving the patentee an opportunity of being heard. Therefore compensation must be paid.

6. In a Patent matter a court can give declaration or injunction against groundless threats but cannot award damages as a relief.
Answer: False
Explanation: Section 106(1) authorizes the court to grant a declaration, injunction and also to award damages where a person has issued groundless threats of infringement proceedings. All three remedies are statutorily permitted

7. Any counter claim in a suit for infringement can be brought before the Appellate Board.
Answer: False
Explanation: Section 104 and Section 64 provide that counterclaims for revocation must be filed in the **High Court** where the infringement suit is pending. The IPAB originally had revocation jurisdiction under Section 117A, but it never had jurisdiction for counterclaims and the Board stands abolished since 2021.

8. The Controller has the power to amend the abstract for providing better information to third parties.
Answer: True
Explanation: Section 10(4)(i) authorizes the Controller to amend the abstract to ensure that it provides better information to third parties. The Act allows such modification as part of the Controller's supervisory role over specifications

9. The Controller can issue a compulsory licence in circumstances of national emergency, extreme emergency and public non-commercial use.
Answer: True
Explanation: Section 92(1) authorizes the Central Government to notify national emergency, extreme urgency or public non-commercial use, after which the Controller may grant compulsory licences without applying the normal conditions of Section 84. Hence the Controller has this power once a notification is issued.

10. A legal representative of any deceased person who immediately before his death, was entitled to make an application for Patent.
Answer: True
Explanation: Section 6(1)(c) specifically provides that the legal representative of a deceased person who was entitled to apply for a patent may file the application. This preserves the rights of an inventor or applicant despite death.

PART B (6x 10=60 MARKS)

This Part contains Eight (8). Answer any Six (6) questions. While answering the questions, you are expected to support your answer by citing the relevant sections and rules in the Indian Patents Act.

I. Sigma and Theta are joint owners of a patent in an invention. Theta is independently approached by Trigonometric Ltd. which expresses its interest in commercializing the patented invention.

1) Can Trigonometric Ltd. become co-patentee along with Sigma, if Theta consents in writing to this?

Answer: No, Trigonometric Ltd. cannot become a co-patentee merely with the written consent of one joint patentee, Theta, without the explicit agreement of the other co-patentee, Sigma.

This fundamental principle is governed by **Section 50(3) of The Patents Act, 1970**, which outlines the rights of co-owners of a patent in India. In the absence of a specific contractual agreement between the joint patentees (Sigma and Theta), the Act presumes they each hold an equal undivided share in the patent. Crucially, the same section imposes a restriction on the rights of an individual joint patentee to transfer this interest: "a joint patentee shall not be entitled to grant a licence or assign any interest in the patent without the consent of the other joint patentee or patentees."

Since Section 50(3) mandates the consent of both joint patentees (Sigma and Theta) for such an assignment, Theta's individual consent, even in writing, is insufficient to effect a change in ownership. The law requires the collective agreement of all existing owners to transfer a proprietary interest. This provision safeguards the property rights of each joint patentee, ensuring that a fundamental change in the patent's ownership structure cannot be undertaken unilaterally.

2) Theta decides to commercialise the patented invention independently with financial aid from Trigonometric Ltd. for marketing the invention and getting a percentage of the profits in return. Is Sigma entitled to object on learning of Theta's business arrangement?

Answer: Yes, Sigma is entitled to object upon learning of Theta's business arrangement with Trigonometric Ltd., as the arrangement likely constitutes the granting of a licence under the patent, which requires the unanimous consent of all joint patentees under the Indian Patents Act, 1970.

The relevant provision is Section 50(3) of The Patents Act, 1970, which clearly states that a joint patentee (Theta) is not entitled to grant a licence in the patent without the consent of the other joint patentee or patentees (Sigma). While Section 50(2) permits Theta to independently use the patented invention for their own benefit without accountability to Sigma, the involvement of a third-party corporate entity, Trigonometric Ltd., which is providing financial aid for marketing and receiving a percentage of the profits in return, moves the arrangement beyond mere personal use. This agreement grants a commercial right to Trigonometric Ltd. to participate in the exploitation of the patented invention, which is legally interpreted as a licence. Since Theta proceeded without obtaining Sigma's consent for granting this licence, Sigma has a valid and justifiable legal basis to object to the arrangement under Section 50(3)

3) Theta licenses his share of the patented invention to Trigonometric Ltd. without obtaining Sigma's consent. Can Sigma object to this licence arrangement when he gets to know of it.

Answer: Yes, Sigma can object to Theta licensing his share of the patented invention to Trigonometric Ltd. without his consent.

The Section 50(3) restricts the sharing/assigning of rights in a jointly owned patent. This section mandates that a joint patentee (Theta) is not entitled to grant a licence or assign any interest in the patent without the consent of the other joint patentee or patentees (Sigma). While Theta, under Section 50(2), retains the right to use the invention independently for his own benefit, the act of granting a formal licence to a third party (Trigonometric Ltd.) constitutes a transfer of exploitation rights that falls squarely under the restriction of Section 50(3).

Since the licence was granted without the requisite collective consent, it is deemed unauthorized. Consequently, Sigma is entirely within his rights to challenge the validity of this arrangement. To resolve the dispute, Sigma may apply to the Controller of Patents under Section 51 for directions concerning the grant of the licence, enabling the Controller to invalidate or modify the unauthorized arrangement and protect the rights of all co-owners.

4) Theta independently manufactures the patented invention and without Sigma's consent sells it in the market. Trigonometric Ltd. becomes Theta's sole distributor. A gets to know of this and demands royalty from Trigonometric Ltd. for distributing/marketing the invention, as he is co-owner of the patent in that invention. Is Trigonometric Ltd. bound to pay Sigma royalty?

Answer: No, Trigonometric Ltd. is generally not bound to pay royalty to Sigma in this specific scenario. This situation involves the independent exploitation rights of joint patentees under Section 50(2) of The Patents Act, 1970. This section establishes that in the absence of a contract to the contrary, each joint patentee (Theta and Sigma) is entitled to work the patented invention for their own benefit without the consent of, or being accountable to, the other co-patentee. When Theta independently manufactures and sells the patented product, he is acting within his right to exploit the invention. Since Theta is not accountable to Sigma for the profits he derives from his own manufacturing and sales activities, the commercial transactions flowing from that independent right are likewise protected. Trigonometric Ltd., acting as Theta's sole distributor, is essentially facilitating Theta's lawful commercial exploitation. As Theta is not liable to share his profits with Sigma, neither is his distributor, Trigonometric Ltd., liable to pay a royalty to Sigma for simply handling the product that Theta was legally entitled to manufacture and sell. Sigma's right to independently exploit the patent does not translate into a right to claim profits or royalties from the business activities arising from Theta's separate and lawful exploitation of the same patent.

II. Enumerate the four key issues under the Indian Patent Act on Search for anticipation by previous publication and by prior claim.

Answer: The search for anticipation by previous publication and by prior claim is a mandatory process conducted by the examiner under Section 13 of The Patents Act, 1970, to determine the novelty of the claimed invention. This investigation involves several distinct, yet interconnected, statutory requirements, which define the scope of prior art considered.

The four key issues arising from the search under Section 13 relate to the scope of documents examined and the legal effect of different publication timings:

1. Scope of Indian Patent Specifications (Anticipation by Previous Publication)

The first issue defines the search universe for Indian Patent Specifications. Section 13(1)(a) mandates that the examiner must investigate whether the claimed invention has been anticipated by the publication of any complete specification filed in pursuance of an application for a patent in India and dated on or after January 1, 1912. The critical constraint here is the publication date of the cited document must be before the date of filing of the applicant's complete specification. This ensures that only documents publicly available before the application date are considered prior art for anticipation under this clause.

2. Scope of Prior Claim (Secret Prior Art)

The second and most distinct issue is the search for anticipation by prior claim, often referred to as "secret prior art." Section 13(1)(b) requires the examiner to investigate if the invention is claimed in any claim of another complete specification that was filed in India before the priority date of the applicant's claim, but was published on or after the applicant's filing date. The key issue here is that the earlier application, which qualifies as prior art, is assessed only on the claims and not on the entire disclosure (specification/drawings). This narrow scope is intended to prevent double patenting of the same claimed subject-matter while allowing broader disclosure that may not be claimed to remain outside the scope of anticipation until it is formally published as a full document.

3. Scope of World-Wide Publication (Anticipation by Previous Publication)
The third issue broadens the search scope beyond Indian patent specifications to encompass world-wide publications. Section 13(2) requires the examiner to conduct an additional investigation to ascertain whether the invention has been anticipated by publication in India or elsewhere in any document other than those mentioned in sub-section (1) (i.e., patents, scientific articles, books, journals, etc.) before the date of filing of the complete specification. The key issue here is the concept of absolute novelty, any non-patent publication, anywhere in the world, available to the public before the Indian filing date, can destroy novelty.
4. Continuous Examination of Amended Specifications
The final issue concerns the continuous nature of the examination. Section 13(3) specifies that where a complete specification is amended before the patent is granted, the amended specification shall be examined and investigated in like manner as the original specification. The key issue is that any amendments made to narrow or clarify the claims must be subjected to the same rigorous prior art search process to ensure the patent, as finally granted, remains novel and non-obvious in light of the prior art discovered during the entire examination period.

III. List at least Ten (10) subject matters of Inventions that are not patentable under the Indian Patents Act.
Answer: The Indian Patents Act, 1970, specifically under **Section 3**, lists various subject matters that, despite possibly involving novelty or utility, are statutorily not considered inventions within the meaning of the Act and are therefore not patentable. These exclusions are designed to serve public policy, moral, ethical, and economic interests, ensuring that fundamental knowledge, therapeutic methods, and traditional wisdom remain in the public domain.

1. **Frivolous Inventions:** An invention which is frivolous or which claims anything obviously contrary to well-established natural laws (e.g., perpetual motion machines).
2. **Inventions Contrary to Public Order or Morality:** An invention the primary or intended use or commercial exploitation of which would 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. **Mere Discovery:** The mere discovery of a scientific principle or the formulation of an abstract theory or discovery of any living thing or non-living substance occurring in nature.
4. **New Form of Known Substance (Section 3(d) Exception):** The mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance, or the mere discovery of any new property or new use for a known substance. This is particularly relevant in the pharmaceutical sector.
5. **Mere Admixture:** A substance obtained by a mere admixture resulting only in the aggregation of the properties of the components thereof, or a process for producing such substance (e.g., mixing salt and pepper).
6. **Mere Arrangement/Re-arrangement:** The mere arrangement or re-arrangement or duplication of known devices, each functioning independently of one another in a known way.
7. **Methods of Treatment:** Any process for the medicinal, surgical, curative, prophylactic, diagnostic, therapeutic or other treatment of human beings or any process for a similar treatment of animals. (However, the devices or apparatus used in such methods may be patentable).
8. **Methods of Agriculture or Horticulture:** A method of agriculture or horticulture, which excludes procedures such as new cultivation techniques or soil treatment processes.
9. **Computer Program per se, Business or Mathematical Methods:** A mathematical or business method or a computer programme per se (i.e., the code/algorithm without technical application or effect) or algorithms.
10. **Traditional Knowledge:** An invention which, in effect, is traditional knowledge or which is an aggregation or duplication of known properties of traditionally known component or components

IV. Enumerate the three Key issues relating to the Power of Controller to make orders respecting division of application under the Indian Patents Act.

Answer: The Controller's power to direct the division of a patent application is a crucial procedural aspect under the Indian Patents Act, 1970, primarily governed by Section 16. This power is intended to ensure that a single patent grant covers only one invention or a group of inventions linked by a single inventive concept.

The three key issues concerning the Controller's power to make orders regarding the division of an application are:

1. Mandatory Requirement of Unity of Invention

The primary issue is the mandatory requirement of unity of invention as defined under Section 10(5). The Controller has the power to compel division if the original application is found to claim more than one invention. If the examiner reports a lack of unity (i.e., the claims cover two or more distinct, unconnected inventive concepts), the Controller can order the applicant to file a divisional application to separate the unrelated inventions into distinct applications. This power ensures procedural compliance and maintains the integrity of the patent grant system, where each patent must correspond to a single inventive scope.

2. Time Restriction on Filing Divisional Application

A second key issue is the time restriction placed on the filing of divisional applications, which dictates when the Controller can receive or order such a division. Whether the application is filed voluntarily by the applicant or upon the Controller's order, Section 16(1) stipulate that the divisional application must be filed at any time before the grant of the patent. This time limit ensures that the examination process is finalized and concluded with respect to all claims before a patent is issued.

3. Subject Matter Restriction

The third critical issue relates to the subject matter restriction that must be maintained between the original and the divisional application. Section 16(3) explicitly states that a divisional application's claims shall not include any claim already contained in the parent application. The purpose of the divisional application is to pursue claims that were originally disclosed in the parent specification but were deemed to relate to a separate invention. The Controller must ensure that the claims of the divisional application are derived from the matter disclosed in the first mentioned application and do not duplicate any claims currently pending or already granted in the parent application, thereby preventing the double patenting of the same subject matter.

V. Patents are granted subject to certain conditions. Enumerate the conditions with reference to the relevant section of the Patents Act.

Answer:- Patents are granted under the Indian Patents Act, 1970, subject to a number of crucial statutory conditions that ensure the protection offered is justified and aligns with public interest and policy. These conditions are enumerated primarily across Section 47, which defines the rights conferred, and Section 83, which mandates general considerations for working the patent.

1. Grant of patents to be subject to certain conditions (Section 47)

Section 47 ensures that patent rights are not absolute they are subject to certain conditions as mentioned under; Government use, research/education exceptions, and public health safeguards.

- Government use (Articles): Any patented machine, apparatus, or article, or article made by a patented process, may be imported or made by/for the Government for its own use.
- Government use (Processes): Any patented process may be used by/for the Government for its own use.
- Research & Education Exception: Any patented article or process may be used by any person for experiment, research, or teaching purposes (e.g., imparting instructions to pupils).

- Medicines & Drugs: In case of patents relating to medicines or drugs, the Government may import them for its own use or for distribution in hospitals/dispensaries/medical institutions, including those notified in the Official Gazette.

2. Condition of Payment of Renewal Fees (Section 53)

A patent is also granted conditionally upon the continuous and timely payment of renewal fees. Section 53 states that a patent ceases to have effect if the prescribed fees are not paid within the specified period. This is an ongoing maintenance condition essential for the continued legal validity of the patent throughout its term. Failure to meet this condition leads to the patent becoming lapsed, though it may be subject to restoration under certain conditions.

3. Condition of Furnishing Information on Working (Section 146)

Patentees are conditionally bound to provide the Controller with periodic statements regarding the working of the patented invention on a commercial scale in India. Section 146(2) read with Rule 131 mandates the filing of a statement (Form 27) detailing the extent to which the patent has been worked. This allows the government to monitor compliance with the general working condition established in Section 83, and non-compliance can be a ground for invoking the Compulsory Licence provisions

1. **Patent Subject to Government's Power of Acquisition (Section 102)**

The Central Government may acquire the patent for public purposes on payment of compensation. Thus, ownership itself is conditional.

1. **Patent Subject to Revocation Grounds (Section 64)**

A granted patent remains subject to:

- Revocation in High Court (Section 64)
- Revocation after post-grant opposition (Section 25(2))

This means patent validity is conditional on continuing compliance with law.

VI. Rita who lives in Mumbai made an invention related to some devices and methods of deboning of Chicken to prepare chicken chops. She filed a provisional patent application on January 26th 2010 at the Indian Patents Office. She discussed her invention with Ratna who lives in Colombo. She identified that Rita's invention was applicable for chickens of over 2 KG only. Ratna then made minor modifications so that the device and the method could debone chickens from without any weight limitations. Rita and Ratna then shared their inventions with Elina a British National who lives in London. Elina made a further improvement to the invention to ensure that Rita and Ratna's invention has no limitation on the size of the chicken to be deboned.

They now wish to progress their patent application in India and also wish to have the corresponding patent filed in several countries that include Kuwait, Dubai, UK, Germany, China, Sri Lank, Bangladesh and Pakistan.

They have hired you as their patent agent in India and would also want you to take care of their foreign filings.

Give an elaborate answer to your clients with the relevant sections and rules of the Indian Patents Act and the appropriate International conventions.

1. Indian Patent Application Compliance and Inventorship: The initial filing by Rita was a Provisional Specification on January 26, 2010. The first critical step is to finalize the Complete Specification under Section 9 of the Act. This Complete Specification, which must fully disclose the final, improved invention (the deboning device/method without weight limitations), must be filed within twelve months of the provisional application date, i.e., by January 26, 2011. If this deadline is missed, the provisional application will be deemed to be abandoned. The Complete Specification must demonstrate that the claims are fairly based on the original provisional disclosure.

Crucially, the application must correctly identify the inventors and applicants. As the final perfected invention resulted from the successive inventive contributions of Rita, Ratna, and Elina, all three must be named as joint inventors in the Complete Specification. The application must include the required Declaration as to Inventorship and Proof of Right from all inventors to the applicants, in compliance with Section 7(2) and Rule 13. Since all three are applicants and owners, their rights will be governed by Section 50, which grants them an equal undivided share in the patent.

1. **Compliance under section 39:** Since Rita (an Indian resident) has already filed a provisional application in India, if they choose to file their complete specification in India first, then under Section 39(1) they must wait for six weeks from the date of filing the complete specification before filing abroad, unless they obtain a Foreign Filing Licence (FFL) through Form 25. This 6-week waiting period is mandatory to allow the Controller to consider whether a secrecy direction under Section 35 is required.3.
2. **International Filing Strategy and Conventions:** Assuming either the FFL is obtained or mandatory 6 weeks period passed ater filing of Indian patent application, the most efficient strategy for the diverse target countries is to utilize the Patent Cooperation Treaty (PCT) and the Paris Convention:

Claiming Priority Internationally (Paris Convention -Article 4): India is a member of the Paris Convention, and so are: UK, Germany, China, Sri Lanka, Pakistan, Bangladesh, Kuwait & UAE (Dubai) are also members. Thus, a foreign application filed in these countries within 12 months from 26 Jan 2010 can claim priority from the Indian provisional filing.

PCT Route: In addition to Paris filings, the applicants may also pursue protection under the Patent Cooperation Treaty (PCT), which is recommended given their desire to seek patents in multiple countries. Under the PCT, they may file a single international application through RO/IN in accordance with Rule 19A, claiming priority from the Indian provisional under PCT Article 8 and subsequently enter national or regional phases at 30/31 months from the priority date. This route provides significant procedural advantages such as centralized filing, deferred national costs and receiving an International Search Report and Written Opinion, thereby enabling informed decisions for later national phase entries. Of the countries they are targeting, the PCT route covers the UK (via the EPO), Germany (via the EPO), China (via CNIPA), Sri Lanka, Pakistan, and Bangladesh, all of which accept PCT national phase applications. However, since Kuwait and the UAE (as of 2010) were not PCT contracting states, filings in these jurisdictions must be made directly through the Paris Convention route within the 12-month priority period.

VII. Enumerate the essential grounds and procedural aspects of Post Grant Opposition under the Indian Patent Act.

Answer: The Post-Grant Opposition is a crucial mechanism under the Indian Patents Act, 1970, to challenge the validity of a patent after it has been formally granted. This provision, governed by Section 25(2), serves as a final check to ensure that the granted patent is indeed compliant with all statutory requirements.

The most essential grounds include:

1. **Lack of Novelty or Anticipation:** The invention was published or publicly used in India or elsewhere before the date of filing the application, as per Section 25(2)(b) and (e).
2. **Lack of Inventive Step (Obviousness):** The invention is obvious and does not involve an inventive step having regard to what was known or published before the priority date of the claim, as specified under Section 25(2)(e).
3. **Non-Patentable Subject Matter:** The subject matter of the invention falls under the categories excluded from patentability under Section 3 (e.g., a mere method of agriculture or a mathematical method).
4. **Wrongful Obtaining:** The patent was wrongfully obtained from the opponent or a person under or through whom the opponent claims, as per Section 25(2)(a).

5. Insufficient Description (Clarity and Completeness): The complete specification does not sufficiently and clearly describe the invention or the method by which it is to be performed, as required by Section 25(2)(g).
6. **Non-Disclosure or False Suggestion:** The patent was obtained based upon a false suggestion or representation, or the applicant failed to disclose information required under Section 8 concerning foreign filings, as per Section 25(2)(j) and (h).

Procedural Aspects of Post-Grant Opposition (Section 25(2) and Rules 55A-57)
The procedure for post-grant opposition is highly structured and quasi-judicial, designed to allow a fair hearing to both the patentee and the opponent.

1. **Who Can Oppose:** Opposition may be filed by "any person interested," which includes persons engaged in, or having applied for, the production of the same article or process, or any trade association whose members are so engaged.
2. **Time Limit and Filing:** The opponent must file a Notice of Opposition on Form 7 at the appropriate patent office at any time after the grant of the patent but before the expiry of a period of twelve months from the date of publication of the grant. This notice must be accompanied by a Statement and Evidence setting out the nature of the opponent's interest and the facts upon which the opposition grounds are based.
3. **Constitution of the Opposition Board:** Upon receiving the notice, the Controller constitutes an Opposition Board, comprising three members (Rule 56) who are usually examiners, to consider the opposition. The Board examines the notice, statement, and evidence submitted by both parties and prepares a recommendation to the Controller.
4. **Exchange of Pleadings and Hearing:** The opponent submits their evidence, which is then served on the patentee. The patentee files a reply statement and evidence which is then served on the opponent. Both parties may file rejoinder evidence. After the Opposition Board submits its recommendation, the Controller provides an opportunity for a hearing to both the opponent and the patentee, who may be represented by an agent.
5. **Final Decision:** After considering all the documents, evidence, and the recommendation of the Opposition Board, the Controller issues a final, reasoned order. The Controller can either maintain the patent, direct the patentee to amend the patent, or revoke the patent completely. This final decision is subject to appeal before the High Court

VIII. Discuss the relevant sections and rules on Amendment of Applications and Specifications under the Indian Patent Act.
1. Power of the Controller to Allow Amendment (Section 57)
Section 57 grants the Controller the power to allow an applicant or patentee to amend their application, complete specification, or any related document. This section applies both before and after the grant of the patent.

- Application Method: Any request for amendment must be made in the prescribed manner (using Form 13 under Rule 81(1)), clearly stating the nature of the proposed amendment and providing full particulars of the reasons for the application (Section 57(2)).
- Voluntary vs. Directed: Amendments can be sought voluntarily by the applicant (e.g., to narrow claims in view of prior art) or to comply with the directions of the Controller issued before the patent grant, often in response to an examination report (Section 57(6)).
- Post-Grant amendments: If the application for amendment is made after the grant of the patent and the proposed amendment is substantive, it must be published (Section 57(3) and Rule 81(3)(a)). This allows any person interested to file a notice of opposition on Form 14 within three months from the date of publication (Section 57(4) and Rule 81(3)(b)).

- Scope: An amendment under this section may also include an amendment of the priority date of a claim (Section 57(5)).

2. Mandatory Restrictions on Amendments (Section 59)

Section 59 lays down the crucial restrictions that govern *all* amendments, whether made before the Controller (Section 57) or before a Court/High Court (Section 58). This section is non-negotiable and defines the permissible nature of amendments:

- Permissible Basis: An amendment shall only be made by way of disclaimer, correction, or explanation, and only for the purpose of incorporating an actual fact (Section 59(1)).
- No New Subject Matter: The amendment shall not introduce new matter that was not disclosed in substance in the specification before the amendment. This is the most significant restriction, ensuring the patent scope is not expanded beyond the original filing date.
- No Expansion of Claims: After amendment, the scope of the claims shall not be substantially enlarged or altered and must wholly fall within the scope of the claims of the specification before the amendment. This ensures that the amended claims only narrow or clarify, but do not broaden, the protection sought.

3. Amendment During Legal Proceedings (Section 58)

Section 58 deals with amendments sought when the patent is already the subject of a legal challenge, such as a revocation proceeding before the High Court.

- Court's Discretion: The High Court, subject to the restrictions in Section 59, has the discretion to allow the patentee to amend the complete specification instead of outright revoking the patent, on such terms (e.g., costs or advertisement) as it sees fit.
- Controller's Role: The Controller must be notified of the application to amend and is entitled to appear and be heard in the court proceedings.

4. Procedural Rules (Rules 81, 82, and 83)

The procedural mechanism for amendments is detailed in the Patents Rules, 2003:

- Rule 81: Specifies the use of Form 13 for the request and the procedure for opposition to post-grant amendments (as noted above).
- Rule 82: Requires the applicant to leave an amended application or specification at the appropriate office within the time specified by the Controller, ensuring the document is formally updated.
- Rule 83: Mandates that amendments allowed after the patent has been granted shall be published in the official journal, providing public notice of the change to the scope of the patent rights

2013: PAPER 1 (SOLVED)

Patent Agent Examination, 2013
[Under section 126 of the Patents Act, 1970]
4th MAY, 2013
PAPER 1

Max. Marks: 100
Time: 10.30 a.m to 1.30 p.m
Three hours

Instructions:

1. This paper consists of 2 parts-Part A (40 marks) & Part B (60 marks).
2. All questions in Part A are compulsory.
3. Part A comprises two sections- Part A1 and A2. Part A1 is of 30 marks and consists of 15 multiple choice questions of 2 marks each. Part A2 is of 10 marks and consists of 10 true/false type questions of 1 mark each.
4. Part B consists of 8 questions out of which the candidates should answer 6 questions (10 marks each). In case a candidate answers more than 6 questions, the first 6 questions will be evaluated.
5. Candidates should read the questions very carefully before answering.
6. No clarification will be provided during the course of the examination.
7. There is no negative marking.

PART A
PART A1

15x2= 30 marks

1. The statement and undertaking regarding the filing of foreign application by an applicant shall be filed
a. Within six months of the filing of such application
b. Immediately after grant of the foreign patent
c. Simultaneously on the date of the foreign filing
d. Within one year of the filing

Solution: a. Within six months of the filing of such application
Section 8(1)(a) of the Patents Act, 1970 requires that- the applicant shall file a statement giving detailed particulars of foreign applications within six months from the date of filing the application in India. This "statement and undertaking" is filed using Form 3.
Note: As per the Patents (Amendment) Rules, 2024, Form 3 is now required to be submitted only twice: first, within six months of filing the Indian application, and second, within three months from the issuance of the First Examination Report (FER).

2. A divisional application may be filed by the applicant
a. Within six months from the date of filing provisional application
b. Within 31 months of the filing of a conventional application
c. Any time before the grant of patent on the first mentioned application
d. Before the publication of the patent application

Solution: c. Any time before the grant of patent on the first mentioned application
Under Section 16(1) of the Patents Act, a divisional application may be filed any time before the grant of the parent (first-mentioned) application, if the invention disclosed contains a plurality of inventions. There is no requirement tied to provisional filing, convention filing, or publication.

3. The appropriate court for institution of a suit for infringement of patent is

a. The District Court
b. The High Court
c. IPAB
d. Both (a) & (b)

Solution: a. The District Court

Under Section 104 of the Patents Act, a suit for patent infringement shall be instituted in a District Court having jurisdiction. Making option (a) correct. Please note, if a counterclaim for revocation is filed, the suit is transferred to the High Court. Also, IPAB no longer exists (abolished in 2021), so option (c) is incorrect.

4. In setting the terms and conditions of a compulsory license, the Controller shall endeavour to secure

a. That the licence granted is exclusive and non-assignable
b. That the licence is for a period of twenty years from the date of grant of licence
c. That the patented invention is worked to a reasonable extent
d. None of the above

Solution: c. That the patented invention is worked to a reasonable extent

Section 90(1)(a) specifically states that in settling the terms and conditions of a licence under section 84, the Controller shall endeavour to secure: "that the patented invention is worked to the fullest extent by the licensee concerned". Further this sections says that a compulsory licence is non-exclusive and non-assignable. The licence is granted for the balance term of the patent unless a shorter term is consistent with public interest. Thus making other options a,b, d incorrect.

5. Information relating to an unpublished patent application filed at the patent office can be obtained by any person

a. Immediately after filing the application
b. On payment of the prescribed fee
c. By physical inspection of the file at the patent office
d. None of the above

Solution: d. None of the above

Before publication under Section 11A(1), a patent application is kept secret. Section 11A(1) clearly states: "The application shall not be open to the public for inspection until the date of publication."

6. When a patent is sought to be revoked on the ground of wrongful obtaining from the true and first inventor, the Controller may

a. Direct that the patent shall stand amended in favour of the opponent
b. Direct the person wrongfully obtaining to pay penalty to the true and first inventor
c. Revoke the patent and ask the rightful inventor to apply afresh
d. Direct the Central Government to pay compensation to the inventor

Solution: a. Direct that the patent shall stand amended in favour of the opponent

When a patent is sought to be revoked on the ground that it was wrongfully obtained from the true and first inventor, the Controller has specific powers under Section 52(1) of the Patents Act, 1970. In such a situation, the Controller may direct that the patent shall stand amended in favour of the opponent, who is the true and first inventor or a person claiming through the true inventor. This means that instead of revoking the patent or requiring a fresh application, the Controller can correct the ownership by substituting the rightful inventor's name in the patent. The Act does not provide for imposing penalties, ordering compensation, or mandating a fresh filing.

7. In which of the following cases, an appeal shall not lie to the IPAB?
a. Refusal of a patent application by the Controller under section 15
b. Decision regarding post-dating of an application under section 17
c. Decision of the Controller under section 54 regarding patent of addition
d. An application is deemed to have been abandoned under section 21

Solution: d. An application is deemed to have been abandoned under section 21
As per Section 117A of the Patents Act, an appeal lies to the IPAB (Now appeals lie to High Courts, as IPAB has been abolished in 2021) only from specific orders of the Controller, such as those passed under sections 15, 16, 17, 18, 19, 20, 25(4), 28, 51, 54, 57, 60, 61, 63, etc.
Orders NOT appealable include cases where an application is deemed to have been abandoned under Section 21, because abandonment occurs automatically by operation of law for failure to comply with statutory requirements within time. Since there is no order of the Controller in a deemed-abandonment situation, there is nothing to appeal against. Therefore option (d) is the correct answer.

8. When an application for a patent is published but not yet granted any person can oppose the patent application on the following grounds;
a. Non-payment of prescribed fees.
b. Non-disclosure of financial assets by the applicant before the patent office
c. The applicant has not provided an address of service.
d. The invention is anticipated having regard to the knowledge of an indigenous community in South Africa.

Solution: d. The invention is anticipated having regard to the knowledge of an indigenous community in South Africa.
Under Section 25(1), once an application is published (but not yet granted), any person may file a pre-grant opposition on specific statutory grounds. As per clause k of section 25(1), which states that the invention so far as claimed in any claim of the complete specification is anticipated having regard to the knowledge, oral or otherwise, available within any local or indigenous community in India or elsewhere. Thus among the options given, only anticipation having regard to the knowledge of an indigenous community in South Africa qualifies as a valid ground for pre-grant opposition.

9. The Controller in any proceedings before him under the Patents Act, 1970 has the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 in respect of the following matters;
a. passing an order regarding search and seizure of infringing products of an opponent who has also filed a post-grant opposition
b. Requiring the discovery and production of any document
c. Receiving evidence by way of declaration
d. Passing an order granting interim injunction against alleged infringers

Solution: b. Requiring the discovery and production of any document
Under Section 77(1) of the Patents Act, 1970, the Controller has certain limited powers of a civil court for specific procedural matters. These include receiving evidence, administering oaths, issuing commissions for examination of witnesses, requiring the discovery and production of documents, and awarding costs. However, the Controller does not have the power to issue search and seizure orders or to grant interim injunctions, as these are judicial powers reserved exclusively for civil courts (District Courts or High Courts in infringement matters).

10. One of the following is not true in relation to a patent of addition

a. If the patent for the main invention is revoked, the patent of addition may continue as an independent patent for the remaining part of the term of the main patent

b. Renewal fee is to be paid to keep the patent of addition alive if the main patent is revoked

c. A patent of addition can be granted before the grant of the patent for the main invention

d. The term of the patent of addition is generally less than the term of the patent for the main invention

Solution: c. A patent of addition can be granted before the grant of the patent for the main invention

As per section 54(4) of the Indian Patents Act, a patent of addition shall not be granted before grant of the patent for the main invention. Thus option (c) is not true in relation to a patent of addition and is the correct answer.

a) is true: if the main patent is revoked, the patent of addition may, on request, become an independent patent for the remainder of the main patent's term.

(b) is true; normally no renewal fee is payable for a patent of addition, but if it becomes an independent patent after revocation of the main patent, renewal fees thereafter become payable as for an independent patent.

(d) is true: according to section 55(1) of the Indian Patents Act, it automatically takes on a term equal to that of the main patent, or whatever portion of that term remains unexpired at the time the patent of addition is granted. This means the patent of addition stays in force only for as long as the main patent remains in force and cannot continue beyond the life of the main patent. In practical effect, because a patent of addition is normally filed and granted later, it usually enjoys a shorter effective term than the main patent.

11. Identify the option in which both Ramesh and Suresh cannot be inventors as per the Indian Patents Act 1970

a. Ramesh and Suresh work for the identification of a novel process in the laboratory

b. Ramesh finances Suresh work for the identification of a novel process in the laboratory

c. Ramesh from US and Suresh from India work on identification of a novel process in the laboratory

d. Ramesh conceptualizes the invention and joins Suresh in reducing the invention to practice

Solution: b. Ramesh finances Suresh work for the identification of a novel process in the laboratory

Under Indian patent law, inventorship is based solely on intellectual contribution to the conception of the invention or its reduction to practice. A person becomes an inventor only if they have contributed creatively or technically to the inventive concept. In option b- Ramesh makes no inventive contribution, so he cannot be named as an inventor. Funding, supervising, or owning the work does not create inventorship.

12. One of the following is not a ground for pre-grant & post-grant opposition of a patent in India?

a. Wrongful obtaining of the invention

b. Non-disclosure or wrong mentioning of the source or geographical origin of biological material used for invention

c. Complete Specification does not sufficiently and clearly describe the invention

d. The invention was secretly used in India.

Solution: d. The invention was secretly used in India.

Under Section 25 of the Patents Act, the grounds for both pre-grant and post-grant opposition include wrongful obtaining, insufficient disclosure and non-disclosure or wrong mentioning of the source or geographical origin of biological material. However, "secret use in India" is not a ground for opposition under either Section 25(1) or 25(2); it is instead a ground for revocation under Section 64.

13. A provisional patent specification must contain
a. Description of the invention
b. Claim or claims defining the scope of inventions
c. Abstract of the technical information
d. Background and prior art

Solution: a. Description of the invention
As per section 10 of the Patents Act 1970, complete specification must contain the claims and abstract. For provisional specification, description of invention is must.

14. In case of request for permission for making patent application outside India, the Controller shall dispose of the request within a period of
a. 15 days
b. 21 days
c. 30 days
d. None of above

Solution: b. 21 days
Section 39 of the Patents Act, 1970 requires an inventor to take permission before filing a patent application abroad, if the invention is made in India. The corresponding procedural requirement is provided under Rule 71(2) of the Patents Rules, 2003. As per Rule 71(2), when a request for foreign filing permission is made to the Controller (generally via Form 25), the Controller is required to dispose of such request within 21 days, unless secrecy directions are in force.

15. A post- grant opposition may be filed
a. By any person
b. Before the expiry of a period of 12 months from the date of publication under section 43
c. Before the expiry of a period of 12 months from the date of publication under section 11A
d. Before the expiry of 12 months from the date on which the Controller writes in the file GRANTED

Solution: b. Before the expiry of period of 12 months from the date of publication under section 43
A post-grant opposition can be filed only under Section 25(2) of the Patents Act, 1970, and only by a person interested, not by "any person." Section 25(2) also clearly states that the opposition must be filed within 12 months from the date of publication of the grant of the patent under Section 43. So option b is correct answer.

PART A2

Instructions:

1. Answer All the questions. Each question carries one mark
2. Select whether the below propositions are "TRUE" or "FALSE". You can only select either TRUE or FALSE. You must indicate your choice in the answer sheet given to you against the relevant question number.
3. Illustratively, if the right answer to question(1) is TRUE you must write
Question 1= TRUE

10 × 1 = 10 Marks

1. Revocation of a patent on the ground of being mischievous to the State or prejudicial to the public can be done only by the High Court on application by any person interested.

Solution: Question 1= FALSE
The statement is false because under Section 66 of the Patents Act, 1970, the Central Government itself may revoke a patent if it considers the invention mischievous to the State or prejudicial to the public. Revocation is not limited to the High Court or to applications by "persons interested."

2. After an application which has filed a provisional specification files a complete specification, the patent is not granted to the applicant unless he requests for examination.

Solution: Question 2= TRUE
Under Section 11B of the Patents Act, 1970, a patent application will not be examined unless the applicant files a Request for Examination (RFE) within the prescribed period. The grant cannot happen without examination, and examination cannot happen without an RFE.
Therefore, even after filing a complete specification, the patent will not be granted unless an RFE is filed.

3. It is mandatory to describe the closest prior art in the patent specification.

Solution: Question 3= FALSE
Indian patent law does not mandate that the closest prior art must be described in the specification. The Patents Act requires a full and sufficient description of the invention (Section 10), but disclosure of prior art is not compulsory, except for biological material source/origin under Section 10(4)(d).

4. In order to get an assignment registered at the Patent Office, the application has to be filed for registration before expiry of six months from the date of assignment.

Solution: Question 4= FALSE
Section 68 of the Patents Act, 1970 requires that assignments must be in writing, duly executed, and registered in order to be admissible as evidence, but it does not prescribe any time limit for filing an application for such registration. Similarly, Rule 90 of the Patent Rules, 2003 lays down the procedure for registering assignments, including the use of Form 16 and the supporting documents required, yet it also does not specify any six-month deadline. Therefore, the commonly stated requirement that an assignment must be registered “within six months” is not supported by the current Act or Rules.

5. An exclusive licensee of the Patent shall also have the right to sue for infringement of patents in any District Court adding the patentee as a defendant.

Solution: Question 5= TRUE
Under Section 109(1) of the Patents Act, 1970, an exclusive licensee has the same right as the patentee to institute a suit for infringement in respect of any infringement occurring after the date of the licence. However, the subsection 2 of section 109 requires that the patentee must be made a party to the suit either as a co-plaintiff, if willing, or otherwise as a defendant. Since infringement suits are instituted in the District Court under Section 104, an exclusive licensee may validly sue for infringement in any District Court while adding the patentee as a defendant if the patentee does not join voluntarily.

6. Use of patented product for the purpose of development and submission of information before the Drugs Controller General of India is not considered as infringement.

Solution: Question 6= TRUE
Under Section 107A(a) of the Patents Act, 1970 commonly known as the Bolar exception, the use of a patented invention for the purposes of development, testing, and submission of information required under any law regulating the manufacture, use, or sale of drugs in India or in any country outside India does not amount to patent infringement. This includes activities carried out for obtaining regulatory approval before the Drugs Controller General of India (DCGI). Therefore, using a patented product solely for generating and submitting data to the DCGI is expressly exempt from infringement, making the statement true.

7. A model or sample of anything illustrating the invention or alleged to constitute an invention, submitted by an applicant to supplement the application in the compliance to a direction of the Controller shall be deemed to form part of the specification.

Solution: Question 7= TRUE

According to Section 10(3) of the Patents Act, 1970, if the applicant is required by the Controller to provide a model or sample illustrating the invention or alleged invention, and such a model or sample is submitted in compliance with that direction, it is deemed to form part of the specification. This means it becomes an integral component of the disclosure for the purposes of examination and understanding of the invention. Therefore, the statement that a model or sample submitted under the Controller's direction forms part of the specification is true.

8. A patent 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 District Court on the grounds specified under the Act.

Solution: Question 8= FALSE

Although a patent may be revoked on a petition by any person interested or by the Central Government before the Appellate Board (abolished in 2021) under Section 64, the statement becomes incorrect because a counterclaim for revocation in an infringement suit cannot be decided by a District Court. Under Section 104, once a counterclaim is filed, the entire suit is mandatorily transferred to the High Court. Therefore, the statement is false.

9. When secrecy directions are in force, Controller shall not pass an order refusing to grant the patent.

Solution: Question 9= TRUE

Under Section 37(1) of the Patents Act, 1970, when secrecy directions are in force (issued under Section 35), the Controller shall not refuse the application, shall not accept it, and shall not grant the patent until the secrecy directions are revoked. During this period, the Controller is prohibited from taking any action that would amount to refusal or grant.

10. Priority of an application filed in a convention country cannot be claimed if the application filed in the convention country is withdrawn before the date of filing of the corresponding convention application in India.

Solution: Question 10= TRUE

Priority can only be claimed in India under Section 135(1) of the Patents Act, 1970, read with Article 4 of the Paris Convention, if the earlier convention application is valid at the time of filing in India. If the foreign application is withdrawn, abandoned, or otherwise ceases to exist before the Indian filing date, there is no valid "first application" to base the priority claim on. As a result, the applicant cannot rely on that withdrawn application for priority and the Indian filing will be treated as having no convention priority.

PART – B

This Part contains Eight[8] questions. Answer any SIX [6] questions. Your answer should be supported by relevant provisions of the Patents Act and Rules.

6x10= 60 Marks

1. Rohit, the inventor of a locking mechanism for a refrigerator was invited by the Indian Institute of Science (IISc) to present a paper in a conference. He presented the paper deliniating the invention in the abstract.The industrialist who attended Rohit's presentation are now interested in commercial exploitation of the invention. Rohit has approached you for professional help in procuring patent protection for his invention Advise him.

Solution:

Rohit, the inventor of a locking mechanism for a refrigerator, has publicly disclosed his invention by presenting an abstract at a conference organized by the Indian Institute of Science (IISc). Ordinarily, any disclosure before filing an application risks destroying novelty under Sections 2(1)(j), 2(1)(l), and 13 of the Patents Act, 1970. However, the Act provides specific statutory exceptions that protect an inventor from losing patent rights due to certain types of pre-filing disclosures. One such exception is found in Section 31(d), which states that the invention shall not be deemed to have been anticipated if it was publicly read before a learned society, and the patent application is filed within twelve months of such disclosure.

IISc is recognised as a learned society for the purposes of Section 31, and therefore Rohit's conference presentation falls squarely within the scope of permissible pre-filing disclosure. As a result, the abstract he presented will not count as prior art against him, provided that he files his patent application within the statutory grace period. This protection ensures that his disclosure does not destroy novelty or inventive step for the purposes of patentability under Sections 2(1)(j) and 2(1)(ja).

Advise: I will advise Rohit to act immediately to secure his rights. He should file either a Provisional Specification under Section 9(1) or, preferably, a Complete Specification under Section 9(4) without delay. Filing at the earliest date locks in a priority date and prevents any intervening disclosures from becoming relevant prior art.

He should also ensure that no further public disclosure is made before filing, as Section 31 protects only the specific event of disclosure before the learned society and does not apply to subsequent voluntary disclosures.

Rohit must also retain documentary proof of the date and nature of the IISc presentation to demonstrate qualification under Section 31 if the Controller later questions the novelty of his invention.

Further, after filing, he may safely negotiate with industrialists and commercial partners since the act of filing grants statutory protection under Section 11A(7) from the date of publication and full enforceable rights after grant under Section 48.

In conclusion, Rohit remains fully eligible for patent protection because his presentation at IISc is expressly covered under the grace-period exception of Section 31(d). The legally correct and commercially prudent course of action is to file a patent application immediately within twelve months of the date of disclosure, thereby preserving novelty, avoiding any statutory bar, and enabling him to pursue commercialization with interested industrial partners.

2. Sheela filed a patent application accompanied by a provisional specification on 1st January , 2013 for her invention relating to a carburettor which is novel and has an inventive step. In continuation of the research, she found a new process for manufacture of the carburettor and she filed another patent application accompanied by a provisional specification, three months after the date of filing of the first patent application. She wishes to file one complete specification in which she wishes to incorporate the subject matter disclosed in both the aforementioned applications,I.e. of the carburettor as a product and the process of manufacture. She has approached you for advice and assistance. Explain to her how you will proceed with the preparation of the documentation and ensure that all the formalities are taken care of as per the Indian Patent Act.

Solution:

Sheela filed her first provisional specification on 1 January 2013 for a novel carburettor. Three months later, she discovered a new process for manufacturing the carburettor and filed a second provisional application. She now wants to file one complete specification that includes subject matter from both provisional.

Under the Indian Patents Act, 1970, this is completely permissible. Section 9(1) requires that when a provisional specification is filed, the applicant must file a complete specification within 12 months from the date of the first provisional. Thus, Sheela must file her complete specification on or before 1 January 2014. Any provisional filed thereafter but within the same 12-month period may also be incorporated into the complete specification.

Under section 9(2), a single complete specification is allowed to incorporate subject matter from multiple provisional applications filed by the same applicant, provided the inventions are linked or are improvements. This is supported by Section 10, which allows a complete specification to fully describe all embodiments and best methods of performing the invention. Here, the carburettor (product) and the process of manufacturing it are related and share technical linkage, so they may be included in one complete specification without violating unity of invention (Section 10(5)). If the Controller later objects on unity, Sheela may still file a divisional application under Section 16.

With respect to priority dates, the matter is governed by Section 11(3). When multiple provisional applications are followed by one complete specification, each claim receives the priority date of the provisional specification that first disclosed the relevant subject matter. Accordingly:

- Claims for the carburettor product will enjoy the priority date of 1 January 2013.
- Claims for the manufacturing process will get the date of the second provisional.

The complete specification must satisfy Section 10 requirements including:

- Full and sufficient disclosure.
- Best method of performing the invention.
- Clear and supported claims.
- Drawings where necessary.

Procedurally, the following steps must be completed to ensure compliance:

- Draft one complete specification covering both the carburettor product and the manufacturing process.
- Mention both provisional numbers and dates in Form 1.
- File the complete specification before 1 January 2014.
- Submit Forms 3, 5, and 18/18A within their statutory limits.
- If Controller later raises unity issues, file a divisional application under Section 16.

In conclusion, Sheela can legally and effectively consolidate both provisionals into one complete specification, with correct priority dates applied to respective claims under Section 11(3) and by ensuring compliance with Section 9, Section 10, and necessary forms. All formalities can be completed smoothly as long as the complete specification is filed within the 12-month period from the first provisional.

3. Salim holds a patent on an agricultural tool in India and in the US. Salim authorizes Bharat to produce and sell the patented tool in US. Julie buys the agricultural tool from Bharat and imports it into India. Will Julie be liable to infringement in India ? Explain.

Solution:
Patent rights are territorial, meaning a patent granted in India gives protection only within India. Under Section 48 of the Patents Act, 1970, the patentee has the exclusive right in India to prevent third parties from making, using, offering for sale, selling, or importing the patented product in India without his consent.

In this case, Salim holds patents in both India and the United States. He has authorized Bharat to produce and sell the patented agricultural tool in the US only. This authorization is valid only within the US and does not amount to an authorization for India. When Julie buys the patented tool in the US from Bharat and imports it into India, she is bringing into India a patented article without authorization from the Indian patentee, even though the sale in the US was lawful.

India follows the principle of national (domestic) exhaustion, meaning that the patent rights are exhausted only when the patented product is sold within India with the patentee's consent. A sale occurring outside India does not exhaust the Indian patent rights. Therefore, Salim's Indian patent rights remain fully enforceable against Julie.

Thus, Julie's act of importing the patented tool into India constitutes patent infringement under Section 48, because:

- The sale in the US does not exhaust Indian patent rights.
- Julie did not obtain the patented product from a sale authorized by Salim in India.

Importation of a patented product without authorization is expressly prohibited under Section 48. Accordingly, Julie will be liable for infringement in India and Salim may bring an infringement action against her under Section 104.

4. A leading natural product specialist, Leelavati on her return to India set up a new institute called Herbal Advance Research Institute (HARI), in Lucknow. Researching in natural products, she filed a patent application in India jointly withher colleague Dr. Prathiba for aherbal composition for water purification and called the product "PaniPure". They were granted a patent for "PaniPure" as inventor applicants in 2010. Dr. Pratibha left HARI and joined a Water Treatment Company "Aqua Treat" in Jammu to whom she licensed the patent. "AquaTreat" started marketing the product "PaniPure" based on this invention. Leelavati got to know this development from the local newspaper. She has approached you for advice on the steps she can take to protect her interest. Please advice appropriately.

Solution:
Leelavati and Dr. Pratibha are joint patentees of the patented herbal water-purification composition "PaniPure," granted in 2010. Under Section 50 of the Patents Act, 1970, a patent granted to two or more persons is owned jointly, and each co-owner has an equal, undivided share in the patent unless there is an agreement stating otherwise. Importantly, no joint patentee can grant a license or assign the patent without the consent of the other co-owner, unless a contrary contract exists.

In this case, Dr. Pratibha left the institute and independently licensed the patent to "Aqua Treat" without the knowledge or consent of Leelavati. Since a license of a patent affects proprietary rights, such a unilateral license is legally invalid under Section 50(3). Aqua Treat's commercialization of "PaniPure" based on an invalid license constitutes use of a patented product without the consent of all patentees, therefore amounting to patent infringement under Section 48.

Leelavati has the following options:

1. Challenge the license as invalid

She can issue a legal notice to both Dr. Pratibha and Aqua Treat asserting that:

- The unilateral license violates Section 50(2).
- The license is void and ineffective in India.
- Continued use constitutes infringement.

2. Initiate infringement proceedings

Under Section 104, Leelavati, as a co-patentee, can bring an infringement suit against Aqua Treat before a District Court / High Court having jurisdiction. Aqua Treat cannot claim to be an authorized user since proper consent of all co-patentees was not obtained.

3. Seek injunction and damages

She may request:

- Interim and permanent injunctions stopping Aqua Treat from making or selling the product.
- Damages or account of profits for unauthorized commercialization under Section 108.
- Delivery or destruction of infringing stock.

4. Demand proper licensing terms

If Leelavati wishes to commercialize the invention through Aqua Treat, she may negotiate:

- A fresh, valid license agreement signed by both joint patentees.
- Royalty sharing terms reflecting her rightful ownership.

5. Seek internal resolution if any prior agreement existed

If HARI had internal IP ownership or employment policies, she may invoke them to clarify whether Pratibha exceeded her rights under any contractual arrangement.

In conclusion, since joint patentees must act jointly, Dr. Pratibha had no authority to license the patent unilaterally. The license granted to Aqua Treat is therefore invalid, and Aqua Treat's commercialization of the product constitutes patent infringement. Leelavati can protect her interests by challenging the license, seeking injunctions and damages and negotiating a valid joint licensing arrangement going forward.

5. A patent applicant receives a First Examination Report for his application conveying the objections. Clearly explain all the possible options before the applicant while providing a brief overview of the processes that may ensue.

Solution:

When a patent applicant receives a **First Examination Report (FER)** under Section 12 & 13 read with Rule 24B, it contains all objections raised by the Controller that may relate to patentability, formal requirements, unity of invention, Section 3 issues, clarity, antecedent basis, prior art or specification defects. After receiving the FER, the applicant has several procedural options. The most important requirement is that the application must be put in order for grant within the prescribed period, failing which it shall be deemed abandoned under Section 21(1).

1. Respond to the FER Within the Time-lines

The applicant must file a detailed reply addressing every objection in the FER. The statutory period is:

- 6 months from the FER issuance date (Rule 24B(5)),
- extendable by 3 months using Form 4 (Rule 138).

Thus, a maximum of 9 months is available to comply and place the application in order for grant.

2. Amend the Specification or Claims (Sections 57&59)

To overcome objections, the applicant may:

- Amend claims to distinguish over cited prior art.
- Amend description to remove inconsistencies.
- Correct antecedent basis, clarity, unity issues, or formal defects.

Amendments must not add new matter and must remain within the scope of the original disclosure.

3. Submit Arguments and Technical Comparisons

The applicant may file:

- Technical submissions,
- Claim charts,
- Distinguishing features over prior art,
- Inventive step analysis (problem–solution approach),
- Experimental data (if needed).

These must rebut novelty, inventive step, Section 3, and sufficiency objections.

4. Request for a Hearing (Section 14)

If the applicant believes that a personal or online hearing is required to clarify technical issues or to resolve persistent objections, a hearing may be requested. After hearing, the Controller may either allow the application, allow after further amendment, or refuse it under Section 15.

5. Consider Filing Divisional Application(s) (Section 16)

If the FER objects on lack of unity of invention, the applicant may file one or more divisional applications to protect additional inventive concepts. Divisional filings must be made before the grant of the parent application.

6. Abandonment of Certain Claims (Voluntary)

The applicant may delete problem claims to focus on an allowable claim set. This is often done strategically to expedite grant when some claims face heavy objections.

7 After FER Compliance

If objections are fully complied with, the Controller may either proceed to grant the patent under Section 43, or issue a Hearing Notice if doubts remain. After hearing and final submissions, the Controller may either grant or refuse the application.

Conclusion

Upon receiving an FER, the applicant has multiple options: reply to objections within the allowed period, amend claims/specifications, request a hearing, file divisional applications. The essential requirement is to put the application in order for grant within 6 months (extendable to 9 months), failing which the application is deemed abandoned under Section 21.

6. What are the grounds to make an application for grant of compulsory license on a patent under section 84(1) ? What are the factors that the Controller is required to take into account while considering an application under this section.

Solution:

i) Grounds for Compulsory License under Section 84(1):

Under Section 84(1) of the Patents Act, 1970, any person may apply for a Compulsory License (CL) after three years from the date of grant of a patent. The applicant must satisfy at least one of the following three statutory grounds:

1. Reasonable requirements of the public have not been satisfied under Section 84(1)(a)

If the patentee has failed to meet the public demand for the patented product or process, or if supply is inadequate or limited, this condition is met. Examples include restricted availability, refusal to license, or unmet industrial demand.

2. The patented invention is not available to the public at a reasonably affordable price under Section 84(1)(b)

If the product is excessively priced or unaffordable for the relevant consumer group, the Controller may grant a compulsory license to ensure public access.

3. The patented invention is not worked in the territory of India under Section 84(1)(c)

If the patentee fails to manufacture the patented product in India or does not take adequate steps to work the invention on a commercial scale in India, a CL can be granted. Mere importation may not always satisfy "working" unless justified.

These three grounds form the core basis for any CL application.

ii) Factors that the Controller is required to take into account while considering:

While deciding an application under Section 84 (6), the Controller must take into account the following mandatory factors:

1. The nature of the invention: Whether the invention is complex, difficult to manufacture, or involves special technology or infrastructure requirements.

2. Measures taken by the applicant to obtain a voluntary license: Whether the applicant made efforts to negotiate reasonable licensing terms with the patentee and such efforts failed within a reasonable time.

3. The ability of the applicant to work the invention to public advantage: The applicant must show technical and financial capability to manufacture and distribute the invention effectively in India.

4. The capacity of the applicant to undertake risk and investment: The Controller assesses whether the applicant can comply with commercial and technical obligations after receiving the license.

5. Whether the patentee has worked the invention in India: Whether the patentee has fulfilled the obligation of local working under Section 83 and the reasons for any non-working.

6. The time elapsed since the sealing of the patent: Whether sufficient time has been available for the patentee to work the invention.

7. Availability of the invention to the public: Whether the product is available widely and at an affordable price.

All these factors guide the Controller in balancing public interest with patentee's rights.
However in a situation of national emergency, extreme urgency, public non-commercial use, or proven anti-competitive practices, the Controller is not required to consider these factor and the compulsory licence may proceed without evaluating this requirement.

7. Describe the powers of the Central Government to use inventions for the purpose of the Government along with the terms and conditions for such use.

Solution:
The Indian Patents Act, 1970 provides the Central Government with extensive powers to use any patented invention for governmental purposes. These powers are primarily contained in Sections 99 to 103, which together establish a comprehensive statutory framework enabling Government use without the patentee's prior consent in certain circumstances.

i) Section 99 : Meaning of "Use of Invention for the Purposes of Government"
The Patents Act clarifies that the use of a patented invention by any government department, by a person authorized in writing by the government, or by contractors engaged in supplying goods or services to the government, shall be deemed to be "use for the purposes of Government." This ensures that the scope of government use is broad and covers not only direct use but also indirect use through authorized agents and contractors.

ii) Section 100: Power of Central Government to Use Inventions for Government Purposes
The Central Government may authorize any person to use a patented invention for governmental purposes. The patentee must be notified of such use as soon as practicable. Importantly, the patentee is entitled to adequate remuneration for such use, which is determined by considering the economic value of the invention and the terms of any existing licenses.

iii) Section 101: Rights of third parties in respect of use of invention for purposes of Government
When a patented invention is used for Government purposes under Section 100, any private licences or agreements cannot restrict such Government use or demand payment for it. Copyright in related documents is also not infringed by Government use. Further, any remuneration payable for such Government use must be shared between the patentee, assignor, or exclusive licensee as determined by agreement or by the High Court.

iv) Section 102: Power of Central Government to Acquire Inventions
The Central Government may acquire a patent for public purposes. Once acquired, all rights in the patent vest in the government. The patentee is entitled to compensation, which is either mutually agreed upon or determined by the High Court in case of dispute. This provision enables the government to permanently secure rights in inventions critical for public welfare.

v) Section 103: Reference to High Court
Any dispute relating to the use of inventions for government purposes or the amount of compensation payable to the patentee is referred to the High Court. The Court ensures fairness by considering the interests of the patentee along with the broader public interest.

Additional Provisions Supporting Government Use:

(a) Section 47: Conditions attached to every patent: Every patent is granted subject to the condition that the Government may:

- Import or make the patented product for its own use
- Use the patented process for its own use
- Use the patented invention for research or instruction

(b) Section 92: Emergency or extreme urgency
In cases such as epidemics, natural disasters or health crises, the Government may fast-track compulsory licenses or directly authorize use.

The Central Government has wide statutory powers under Sections 99–103 and Section 47 & 92 to use patented inventions for public purposes without prior authorization from the patentee. However, such use is subject to obligations including notification, adequate remuneration, and respect for public interest. These provisions balance national needs such as public health, defense, and research with the rights of patentees under the Indian Patents Act.

8. What are the restrictive conditions that need to be avoided in the preparation of a contract or license related to patents and what are the consequences of such conditions in a contract or license as per the Patents Act.

Solution:

The Patents Act, 1970 imposes limitations on contracts, licence, and assignments relating to patented inventions to prevent anti-competitive and unfair commercial practices. Section 140 expressly declares certain restrictive conditions as void, while Section 141 lays down consequences relating to enforceability and recovery of payments.

1) Restrictive Conditions to Be Avoided [Under Section 140 (1)]

The following conditions cannot be included in any agreement, licence, or assignment concerning a patent.

i. Restriction on using products or processes not covered by the patent: A patentee cannot force the licensee or purchaser to buy or use only materials supplied by the patentee, or prohibit the use of competing products.

ii. Restriction on obtaining other technology: The licensee cannot be prevented from acquiring, using, or developing any other patented or unpatented product or process.

iii. Tie-in conditions requiring purchase of unrelated goods: A licensee cannot be compelled to purchase goods not protected by the patent as a condition for obtaining the licence.

iv. Mandating exclusivity for non-patented articles: A contract cannot impose conditions that widen the patent monopoly to unpatented items.

v. Restricting challenge to validity: Any clause that absolutely prohibits the licensee from challenging validity may be considered anti-competitive.

vi. Coercive grant-backs / restrictive improvements: Clauses that compel a licensee to assign any improvements or modifications of the patented invention back to the patentee are regarded as onerous. Such conditions are considered burdensome in nature and are prohibited.

These restrictions are designed to ensure that patent rights are not used to create monopolies beyond the scope of the patented invention.

2) Consequences of including Such Restrictive Conditions [Section 140 (2)]

As per Section 140(2) of the Patents Act, 1970, any contract, licence or assignment that contains a restrictive condition prohibited under Section 140(1) is rendered void to that extent, and such a condition is legally unenforceable.

The patentee cannot compel the licensee or purchaser to comply with the void clause, nor can any action be brought for breach of that condition.

Further, any consideration or benefit demanded on the basis of such a restrictive clause has no legal effect. However, the invalidity is limited only to the offending condition, and the remainder of the contract continues to operate if it is severable.

Thus, the Act ensures that patentees cannot enlarge their monopoly beyond the scope of the patent through tie-in arrangements or anti-competitive licensing terms, and any attempt to do so is rendered legally ineffective with no entitlement to compensation arising from such conditions.

2016: PAPER 1 (SOLVED)

PATENT AGENT EXAMINATION, 2016
[Under Section 126 of the Patents Act, 1970]
Paper I

Max, Marks: 100
TIME: 10.30 a.m. to 12.30 p.m.
Two Hours

Instructions:
1. This paper consists of 3 parts-Part A (60 marks), Part B (l0 marks) & Part C (30 marks).
2. All questions are compulsory.
3. Candidates should read the questions very carefully before answering.
4. No clarification will be provided during the course of the examination.
5. There is no negative marking.

Part A

Part A comprises of 60 marks and consists of 30 multiple choice questions with one option correct of 2 marks each

Q.1 Which section of the Patents Act refers to powers of the Controller to make orders regarding substitution of applicants
a. Section 19
b. Section 20
c. Section 21
d. Section 22
Solution: (b) Section 20
Section 20 empowers the Controller to substitute the original applicant with another person who proves a better title to the invention, such as through assignment or legal transfer of rights. This provision ensures that the patent application proceeds in the name of rightful owner before grant.

Q.2 The condoning of delay or irregularity in procedure within the powers of the Controller can be requested by way of filing
a. Form 30
b. Petition
c. Affidavit
d. Form 4
Solution: (b) Petition (petitions were often accepted by Controllers in 2016 for matters like condoning of delay or irregularity in procedure)
However, as per the current scenario and the recent amendments to the Rules in 2024, the condonation of delay and the correction of irregularities in procedure are two separate matters governed under Rule 138 and Rule 137, respectively. Under Rule 138, filing Form 4 is mandatory for seeking condonation of delay, whereas for irregularities in procedure under Rule 137, a petition is required.

Q.3 Application for revision of terms and conditions of compulsory licence can be filed under the provisions of
a. Section 88
b. Section 86
c. Section 94
d. Section 85
Solution: (a) Section 88

An application for revision of the terms and conditions of a compulsory licence is governed under Section 88(4) of the Patents Act, 1970. This provision allows the licensee, after commercially working the invention for at least twelve months, to apply to the Controller for revision if the originally-settled terms have proved more onerous than expected and the invention cannot be worked except at a loss.

Q.4 An applicant residing in UK, files a patent application in India claiming priority from the first application in UK. The term of patent granted in India will be
a. 20 years from the date of filing of the priority application
b. 20 years from the date of filing the application in India
c. 20 years from the date of grant of application in India
d. 20 years from the date of publication of the grant u/s 43(2)

Solution: (b) 20 years from the date of filing the application in India
Under Section 53(1), every patent in India has a term of 20 years from the date of filing of the application in India. The foreign priority date does not affect the patent term; it only determines novelty. Therefore, the patent term always begins from the Indian filing date.

Q.5 Ground for opposition to the restoration of a Patent can be
a. Non-working of a Patent
b. Invention is already in public domain
c. Failure to pay the renewal fee was intentional
d. None of the above

Solution: (c) Failure to pay the renewal fee was intentional
Section 61 states that an application for restoration of a lapsed patent may be opposed on the ground that the patentee deliberately or intentionally failed to pay renewal fees. This ensures that patentees cannot misuse restoration provisions when the lapse was not due to genuine oversight or circumstances.

Q.6 The time period for paying the renewal fee, without extension as per section 142 (4) after the recordal of patent is
a. 6 months
b. 3 months
C. 9 months
d. 12 months

Solution: (b) 3 months
According to Section 142(4), after the date of recordal of the patent grant, the patentee must pay the renewal fee within three months. This is the standard period without extension. If the patentee fails to pay within this window, only then late fee or extension provisions may apply.

Q.7 A new ester of a known medicine with a carboxylic acid chain is patentable if
a. It shows significantly improved therapeutic efficacy than the said acid
b. It shows higher melting point
c. It has a better solubility
d. None of the above

Solution: (a) It shows significantly improved therapeutic efficacy than the said acid
Section 3(d) restricts patenting of new forms of known drugs unless they demonstrate significantly enhanced therapeutic efficacy. Improvements in solubility, melting point, or physical properties do not qualify. A new ester is patentable only if clinical or pharmacological data shows better therapeutic results than the parent compound.

Q.8 Which form is required to be filed for expedited examination of patent application u/s 11B and Rule 24C
a. Form 18 A
b. Form18
c. Form 18 C
d. Form 19

Solution: (a) Form 18 A
Rule 24C provides the expedited examination mechanism and explicitly prescribes Form 18A for submitting such a request. Form 18 is used only for normal examination. Form 18A for expedited examination can be filed by eligible applicants such as start-ups, female applicants, or those selecting the Indian ISA/IPEA option.

Q.9 Which of the following decisions or orders or directions are appealable before IPAB
a. Section 15 and Section 16
b. Section 65
c. Section 116 and Section 117
d. Section 92A

Solution: (a) Section 15 and Section 16
Under Section 117A, decisions made under Sections 15 (refusal or amendment) and 16 (division of application) are appealable because they directly affect the prosecution and scope of the invention. These orders have substantive impact, so they can be challenged before the appellate authority.
Now appeals lie to High Courts, as IPAB has been abolished in 2021.

Q.10 The Controller neither shall refuse to grant a patent nor a patent shall be revoked by reason only of any circumstances under
a. Sections 29 and 31
b. Sections 30 and 32
c. Sections 35 and 37
d. Either (a) or (b) or both

Solution: (d) Either (a) or (b) or both
Sections 29–32 provide exceptions where certain public disclosures such as unauthorized publication, exhibition display, communication to Government, or trial use- do not count as anticipation. These disclosures are legally protected and cannot be used as the only reason to reject or cancel a patent. Therefore, disclosures under Section 29 or 31, or both, do not harm patentability.

Q.11 Grant of compulsory licence for manufacture and export of patented pharmaceutical products to any country having insufficient or no manufacturing capacity in the pharmaceutical sector to address public health problems falls under the following provision of the Patents Act
a. Section 92(A)
b. Section 91(1)
c. Section 100
d. Section 102(1)

Solution: (a) Section 92(A)
Section 92A allows compulsory licences for manufacturing and exporting patented pharmaceutical products to countries with insufficient or no manufacturing capacity. This provision aligns India with the Doha Declaration and TRIPS flexibilities, enabling affordable medicines to reach least-developed or health-crisis-affected nations.

Q.12 The information that a Patentee is required to submit regarding the extent to which the patented invention has been commercially used in India, under:
a. Section 146(2) and Rule 131(1)
b. Section 87(2) and Rule 130(1)
c. Section 89 and Rule 113
d. Section 145(3) and Rule 113(1)

Solution: (a) Section 146(2) and Rule 131(1)
Section 146(2) empowers the Controller to demand detailed information about how effectively a patent has been commercially worked in India. Rule 131(1) prescribes the format and periodic filing requirement through Form 27. This ensures transparency and supports decisions relating to compulsory licensing and public interest.

Q.13 If the Central Government is of the opinion that the patent is against the public interest, then
a. The Central Government has to pursue the patentee to withdraw the patent
b. The Central Government, after giving the patentee an opportunity of being heard, make a declaration to that effect in the Official Gazette and thereupon the patent shall be deemed to be revoked
c. The Central Government has no power to revoke the patent
d. The Central Government has to approach the IPAS

Solution: (b) The Central Government, after giving the patentee an opportunity of being heard, make a declaration to that effect in the Official Gazette and thereupon the patent shall be deemed to be revoked
Section 66 gives the Central Government power to revoke a patent if it deems the invention immoral, or prejudicial to the public. Revocation occurs after giving the patentee an opportunity to be heard. The decision is formalized through a declaration in the Official Gazette.

Q.14 How the patent application can be withdrawn once request is filed under Rule 7(4A) and 26
a. By submitting Form 25
b. By submitting Form 27
c. By submitting Form 29
d. By submitting Form 24

Solution: (c) By submitting Form 29
Form 29 under rule 7(4A) & 26 is the statutory form for withdrawal of application.
If an applicant has already filed a Request for Examination (RFE), withdrawal of the application may be done using Form 29 under 7(4A) but before the first objection is issued, This form officially communicates the applicant's intention to withdraw the application, preventing further processing and avoiding unnecessary examination by the Patent Office.

Q.15 On a successful opposition to the patent under Section 25(2) on the ground of wrongful obtaining, the opponent has to file the application for changing the name of the patentee in his favour in:
a. Form 10
b. Form 11
c. Form 12
d. Form 19

Solution: (c) Form 12
When opposition under Section 25(2) succeeds on the ground of wrongful obtaining, the true inventor can request the Controller to amend the patent to reflect their name. Form 12 is prescribed for altering the name of patentee in the Register, ensuring rightful ownership is officially recorded.

Q.16 Under section 2(1) (ja) of Indian Patents Act, 1970, inventive step means an invention that involves
a. technical advancement as compared to existing knowledge
b. Economic significance
c. 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
d. None of the above

Solution: (c) 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.
Inventive step means the invention must show a real technical improvement over what is already known, or it must have economic significance, or both. In addition, the improvement must not be obvious to a person skilled in that field. This ensures the invention is truly meaningful and not just a routine or minor modification.

Q.17 "International application" means
a. An application filed in WTO
b. An application filed under CSD
c. An application for patent made in accordance with the Patent Cooperation Treaty
d. An application for patent made in accordance with the Budapest Treaty

Solution: (c) An application for patent made in accordance with the Patent Cooperation Treaty
The term “international application” in the Indian Patents Act refers specifically to an application filed under the Patent Cooperation Treaty (PCT). This system enables applicants to seek patent protection simultaneously in multiple countries through a single unified filing process, simplifying initial procedural requirements.

Q.18 Discovery of a new galaxy is
a. A patentable subject matter subject to fulfilment of novelty and inventive step
b. Not patentable under Section 3(a) of the Patents Act 1970
c. Not patentable under Section 3(b) of the Patents Act 1970
d. Not patentable under Section 3(c) of the Patents Act 1970

Solution: (d) Not patentable under Section 3(c) of the Patents Act 1970
Section 3(c) excludes discoveries of naturally occurring non-living substances or phenomena from patentability. A galaxy is naturally existing and not created by human intervention. Since discoveries do not meet the requirement of an “invention,” such subject matter is not eligible for patent protection in India.

Q.19 Under which section of the Patents Act the examiner, to whom the application is referred, conducts the examination?
a. Section 11
b. Section 12
c. Section 13
d Section 14

Solution: (b) Section 12
Section 12 specifies that once a request for examination is filed, the Controller refers the application to an examiner. The examiner evaluates it for formality compliance, prior art, and patentability criteria. This forms the basis for the First Examination Report issued to the applicant.

Q.20 A granted patent gives the patentee the right to claim damages
a. From the priority date of the patent
b. From the date of grant of the patent
c. From the date of filing of the complete specification
d. From the date of publication of the patent application in the official journal

Solution: (d) From the date of publication of the patent application in the official journal
Under Section 11A (7), after publication, the applicant enjoys provisional rights similar to a patentee. Infringement damages or reasonable royalty can be claimed only for acts occurring after publication. Therefore, publication, not filing or grant date, is the starting point for damages.

Q.21 Which section of Patents Act refers to the mention of inventors as such in Patent certificate
a. Section 27
b. Section 28
c. Section 29
d. Section 30

Solution: (b) Section 28
Section 28 of the Patents Act, 1970 specifically provides for the mention of the inventor as such in the patent, and allows an inventor or interested person to request that the inventor's name be included in the patent certificate.

Q.22 Opposition Board is constituted
a. On the receipt of Notice of Opposition
b. On the receipt of Written statement of opposition
c. On the receipt of Reply statement of opposition
d. On the receipt of Reply Evidence of opposition

Solution: (a) On the receipt of Notice of Opposition
Under Rule 56, the Opposition Board is formed immediately after the Controller receives the Notice of Opposition. The Board examines documents, evaluates grounds, and provides recommendations to the Controller.

Q.23 The display of an invention with the consent of the true and first inventor at an industrial or other exhibition which has been notified by the Central Government in conformity with section 31 of the Patents Act shall not to be treated as an anticipation, if
a. The application for the patent is made by him not later than twelve months after the display
b. The application for the patent is made by him later than twelve months after the display
c. The application for the patent is made by him after eighteen months after the display
d. The application for the patent is made by him not later than eighteen months after the display

Solution: (a) The application for patent is made by him not later than 12 months after the display
Section 31 protects an invention displayed at a notified exhibition from being treated as anticipated, provided the patent application is filed within 12 months of the first display.

Q.24 Date of recordal is same as the date of
a. Filing of the patent application
b. Grant of the application
c. Recording the date of grant in the register of patent
d. Date of the publication of grant of patent

Solution: (c) Recording the date of grant in the register of patent
The date of recordal refers to the date on which the patent grant is formally entered into the Register of Patents. It marks the administrative completion of the grant process.

Q.25 Time limit to oppose the application for amendment of patent made after the grant of patent is

a. 2 months from the publication
b. 3 months from the publication
c. 4 months from the publication
d. None of the above

Solution: (b) 3 months from the publication

When a patentee applies to amend a patent after it has been granted, the amendment must be published so the public is aware of the proposed change. Any person interested may oppose the amendment within 3 months from the date of publication under rule 81(3b) to oppose the amendment. This rule prevents unexpected changes that could affect others' rights or ongoing activities.

Q.26 An application for termination of a compulsory licence can be filed under provisions of:

a. Section 94
b. Section 92
c. Section 91
d. Section 93

Solution: (a) Section 94

Section 94 allows the patentee or licensee to request termination of a compulsory licence if circumstances that justified granting it have ceased to exist. Upon examining the supporting evidence, the Controller may terminate the licence if it is established that the statutory grounds for compulsory licensing or the public requirements no longer remain applicable.

Q.27 As per the Indian Patents Act, a resident in India:

a. Is free to file an application for patent in a foreign country without first filing an application for patent for the same invention in India.
b. Can file an application for patent in a foreign country without first filing an application for patent for the same invention in India, only under certain special circumstances
c. Can file an application for patent in a foreign country only after filing a PCT application on same subject matter.
d. None of the above

Solution: (d) None of the above

A resident in India can file a patent application in a foreign country ONLY IF:
They have first filed in India and 6 weeks have passed with no secrecy directions;
OR They have obtained prior written permission from the Controller using Form 25 under section 39 before filing abroad. Therefore, none of the listed options correctly describe the legal requirement. Filing abroad freely without compliance would violate the Act.

Q.28 A patentee may offer to surrender his patent within a period of:

a. One year from the grant of patent
b. Anytime from the grant of patent
c. Before paying renewal fees of the patent
d. After paying renewal fees of the patent

Solution: (b) Anytime from the grant of patent

Under Section 63, a patentee may surrender their patent at any time after grant by notice to the Controller. The surrender is published, and interested persons may oppose. This provision gives flexibility to discontinue unwanted patents without waiting for a specific period.

Q.29 As per Indian Patents Act, 1970, "patentee" means
a. The person for the time being entered on the register as the grantee or proprietor of the patent
b. The applicant(s) of patent
c. The inventor(s)
d. Both the applicant(s) and the inventor(s) as named in Form-1 of second schedule

Solution: (a) The person for the time being entered on the register as the grantee or proprietor of the patent
Section 2(1)(p) defines “patentee” as the person recorded in the Register of Patents as the proprietor. This may be the original applicant or an assignee. Only the registered proprietor has legal rights and responsibilities associated with the granted patent.

Q.30 Prior Art does not include
a. Knowledge disclosed in publications
b. Knowledge disclosed only to closed group of members bound by non-disclosure agreement
c. Knowledge disclosed only in patents
d. Knowledge available in the public domain

Solution: (b) Knowledge disclosed only to closed group of members bound by non-disclosure agreement
Prior art consists of information made publicly available before the filing date. Knowledge shared within a confidential group under a non-disclosure agreement is not accessible to the public and therefore cannot be used against novelty or inventive step during patent examination.

Part B

Part B is of 10 marks and consists of 10 true/false type questions of 1 mark each.
For each question, out of four options only one option Is correct. Answer should be given as a, b, c or d as given here in below:

a. Statement 1 is true, 2 is false
b. Statement 1is false, 2 is true
c. Statement 1 and 2 both are false
d. Statement 1 and 2 both are true

Q.31
1. An applicant filed a provisional specification and filed a request for early publication before filing the complete specification, his application will be published within one month from the date of such request not withstanding his failure to file a complete specification till that time
2. His application can be published only after filing complete specification

Solution: (b) Statement 1 is false, 2 is true
Early publication under Section 11A can be requested only after filing the complete specification, because publication requires a complete specification to be available. A provisional specification alone cannot be published, and the Patent Office will not publish an incomplete application.

Further as per Manual for Patent Office Practice and Procedure, a request for ealry publication will be considered only if the Complete specification has been filed. Therefore, the application becomes eligible for publication only after the complete specification is filed, making Statement 2 true.

Q.32
1. Any person can make a request to Controller for mention as inventor in patent any time during the life of a patent.
2. The mention of any person as inventor under section 28 shall not confer or derogate from any rights under the patent.

Solution: (b) Statement 1 is false, 2 is true
Section 28 allows a request for "mention of inventor," but it must be made within a prescribed period, typically before grant or within a reasonable time during prosecution. It cannot be made "any time during the life of a patent," so Statement 1 is false. Statement 2 is correct because Section 28 clearly states that mentioning someone as inventor does not give any ownership or commercial rights, nor does it take away rights from the patentee. It is only an acknowledgment of inventorship.

Q.33
1. If the nature of the biological material is not clearly understood from the description or if it is not available publical1y available the application shall be completed by depositing the material to an international depository authority under the Budapest Treaty not later than the date of filing the patent application in India and a reference thereof shall be made in the specification within the prescribed period.
2. There is no need for deposition of biological material mentioned in the application and specification

Solution: (a) Statement 1 is true, 2 is false
According to Section 10(4)(d)(ii) of the Indian Patents Act, If the biological material described in a patent application is not clearly explained or is not publicly available, the applicant must deposit the material with an international depository authority under the Budapest Treaty no later than the date of filing the application in India. A reference to this deposit must also be included in the specification within the prescribed time. Therefore statement 1 is true.

Q.34
1. A convention application can be filed within 12 months from the earliest priority application
2. A convention application can be filed beyond 12 months from the earliest priority application by taking extension
Solution: (a) Statement 1 is true, 2 is false
A convention application must be filed within 12 months from the earliest priority date, as required by Section 135. This 12-month period is strict and cannot be extended under any circumstances, because India follows the Paris Convention which sets a hard deadline. Therefore, Statement 1 is true.

Q.35
1. An application for a patent for an invention may be made by any person claiming to be the true and first inventor of the invention
2. An application for a patent for an invention may be made by any person being the assignee of the person claiming to be the true and first applicant

Solution: (a) Statement 1 is true, 2 is false
Under Section 6(1), an application may be filed by the true and first inventor, or by an assignee of the inventor. Statement 1 is correct because any person claiming to be the true and first inventor can apply. Statement 2 is false because it incorrectly says "assignee of the true and first applicant" instead of "assignee of the true and first inventor." The assignee must derive title from the inventor, not from another applicant, which makes the second statement wrong.

Q.36
1. For the grant of compulsory licensing the reasonable requirements of public shall be deemed not to have been met, if by the reason of refusal of the patentee to grant a licence on a reasonable term the establishment or development of commercial activities in India is prejudiced
2. For the grant of compulsory licensing the reasonable requirements of public shall be deemed not to have been met, if by the reason to refusal of the patentee to grant a licence on a reasonable term the demand for the patented article has not been met to an adequate extent

Solution: (d) Statement 1 and 2 both are true
Section 84 (7) lists the grounds for compulsory licensing. Reasonable requirements of the public are considered unmet if the patentee's refusal to license prevents development of commercial industry in India (Statement 1) or if demand for the patented product is not being adequately met (Statement 2). Both situations directly harm public access and industrial growth. Therefore, both statements accurately describe situations where compulsory licensing can be granted.

Q.37
1. An applicant is entitled to file a divisional application only after issuance of FER.
2. An applicant is entitled to file a divisional application at any time before the grant of patent, if he so desires, or on the direction of the Controller

Solution: (b) Statement 1 is false, 2 is true
A divisional application can be filed any time before grant, not only after FER. Statement 1 is false because divisional filing does not depend on FER issuance; it depends on lack of unity of invention or voluntary action by the applicant. Statement 2 is true because Section 16 allows filing a divisional at any stage before grant, either voluntarily or if the Controller directs division.

Q.38
1. Application for Patent of addition shall be made before the grant of Patent for the main invention
2. Patent for main invention is granted after the grant of Patent of addition

Solution: (c) Statement 1 and 2 both are false
A Patent of Addition can be filed either before OR after the grant of the main patent. Therefore, Statement 1 is false because it says it must be filed before grant of the main patent. Statement 2 is also false because the main patent must be granted before the patent of addition is granted; it is incorrect as per section54(4) a patent of addition shall not be granted before grant of the patent for the main invention. Hence both statements are false.

Q.39
1. Request for examination for patent application can be filed by any interested person
2. Request for examination for patent application can be filed only by the applicant, inventor or his assignee and no other person

Solution: (a) Statement 1 is true, 2 is false
Under Section 11B (1), the Request for Examination (RFE) may be filed by the applicant or any interested person. Therefore, Statement 1 is true. Statement 2 is false because it incorrectly restricts RFE filing only to the applicant, inventor, or assignee. The law clearly includes "interested person," such as a potential licensee or competitor, who may lawfully request examination.

Q.40
1. Declaration of inventorship should be filed on the day of filing of the provisional specification
2. Declaration of inventorship should be filed for convention application

Solution: (b) Statement 1 is false, 2 is true
The declaration of inventorship (Form 5) is filed with the complete specification under section 10(6), and not with the provisional specification. Therefore, Statement 1 is false. Statement 2 is true because convention applications is complete specification so declaration of inventorship should be filed as required under Section 10(6).

Part C

Part C is of 30 marks and consists of 10 multiple choice questions of 3 marks each with more than one options correct (at least two options correct).

Q.41 If any person uses on his place of business, the words "Patent Office" he is punishable with
a. Imprisonment for a term which may be extendable up to six months
b. Imprisonment or fine
c. Imprisonment and fine
d. Warning by the Controller

Solution: (a) Imprisonment for a term which may be extendable up to six months, (b) Imprisonment or fine and (c) Imprisonment and fine
As per current scenario, the section 121 that previously punished a person for wrongfully using the words “Patent Office” has been officially removed from the Patents Act by the Jan Vishwas (Amendment of Provisions) Act, 2023, with effect from 1 August 2024. It was decriminalized as part of a larger effort to reduce penalties for certain offenses to improve governance and ease of doing business. As a result, this offence and its associated penalties no longer exist in the current law.

Q.42 A provisional application X was filed in India on 01.01.2010. Another provisional application Y was filed on 01.03.2010. There after due to the request of the applicant the controller allowed to cognate both the applications and allowed to file a single complete specification. Which of the followings are valid dates in regard to submission of the complete specification
a. 01.02.2011
b. 01.01.2011
c. 31.12.2010
d. 27.02.2011

Solution: (b) 01.01.2011 and (c) 31.12.2010
Two provisional applications may be combined (cognate applications), and a single complete specification must be filed within 12 months from the earliest-filed provisional application. In this case, the earliest date is 01.01.2010, so both 31.12.2010 and 01.01.2011 fall within (or on) the 12-month period counted from the first provisional filed on 01.01.2010.

Q.43 Definition of "Startup" includes an entity with following attribute
a. More than five years have not lapsed from the date of its incorporation or registration
b. The turnover for any of the financial years, within five years of its incorporation or registration, did not exceed rupees twenty-five crores
c. It is working towards innovation, development, deployment or commercialization of new Products, processes or services driven by technology or intellectual property
d. Even after expiration of five years turnover is less than 5 crores

Solution: (a) More than five years have not lapsed from the date of its incorporation or registration, (b) The turnover for any of the financial years, within five years of its incorporation or registration, did not exceed rupees twenty-five crores and (c) It is working towards innovation, development, deployment or commercialization of new Products, processes or services driven by technology or intellectual property
As per the current scenario, the definition of a startup has been broadened by the Government in terms of the age of the company and turnover limits. Under Rule 2(fb)(i)(a), a startup is an entity in India that is recognised as such by the competent authority under the Startup India initiative. According to the Startup India initiative, a startup is an entity that is not more than 10 years old from the date of its incorporation and has had an annual turnover not exceeding ₹100 crore in any financial year. It must be registered as Private Limited Company, Partnership Firm, or LLP, and should be working towards innovation, development, or improvement of products, or services, or have a scalable business model with high potential for employment generation or wealth creation.

2018: PAPER 1 (SOLVED)

PATENT AGENT EXAMINATION, 2018
[Under Section 126 of the Patents Act, 1970]
Paper I

Total Marks: 100
Time: 10.30 a.m. to 12.30 p.m. (Two Hours)

Instructions:
1. This paper consists of 3 parts-Part A (60 marks), Part B (l0 marks) & Part C (30 marks).
2. All questions are compulsory.
3. Candidates should read the questions very carefully before answering.
4. No clarification will be provided during the course of the examination.
5. There is no negative marking.

Part A

Part A comprises of 60 marks and consists of 30 multiple choice questions with one option correct of 2 marks each

Q.1 The Central Government may, if satisfied that it is necessary that a patent should be acquired from the patentee for a public purpose within the provisions of the Patents Act, then a notification is published in:
a. All leading newspapers
b. All leading newspapers and Journals
c. Official Gazette
d. All of the above

Solution: (c) Official Gazette

Explanation: Under the Patents Act, 1970, the power of the Central Government to acquire a patent for a public purpose is provided under Section 102. According to Section 102(1), when the Central Government is satisfied that it is necessary in the public interest to acquire a patent or the rights in a patent, it may do so by publishing a notification in the Official Gazette. The Act does not require publication in newspapers, journals, or any additional medium. The legal effect of such publication is that the patent and all rights therein vest in the Central Government from the date of the Gazette notification.

Q.2 Choose the correct option from the following:
Every application for a Patent shall be published under section 11A of the Act except in cases where the application-
a. In which secrecy direction is imposed under section 35 of the Act
b. Has been abandoned under sub-section (1) of section 9 of the Act
c. Has been withdrawn three months prior to the period specified under sub-section (1) of section 11A of the Act
d. All of the above

Solution: (d) All of the above

Explanation: Every application for a patent filed in India is required to be published under Section 11A of the Patents Act, 1970, upon expiry of the specified period (normally 18 months from the date of filing or priority). However, Section 11A(3) provides specific exceptions where publication shall not take place. These exceptions include:

- Applications subject to secrecy directions under Section 35, where national security considerations restrict publication;
- Applications abandoned under Section 9(1) due to failure to file the complete specification within the prescribed period after filing a provisional specification; and
- Applications withdrawn at least three months before the 18-month publication date, as expressly allowed under Section 11A(3)(c).

Q.3 In case of request for permission of making the patent application outside India as per section 39 of the Act the time frame to dispose such request by Controller is:
a. Within 30 days from the request
b. Within 6 months from the request
c. Within 21 days from the request
d. None of the above

Solution: (c) Within 21 days from the request

Explanation: Section 39 of the Patents Act, 1970 requires an inventor to take permission before filing a patent application abroad, if the invention is made in India. The corresponding procedural requirement is provided under Rule 71(2) of the Patents Rules, 2003. As per Rule 71(2), when a request for foreign filing permission is made to the Controller (generally via Form 25), the Controller is required to dispose of such request within 21 days, unless secrecy directions are in force.

Q.4 A Patent awarded by the Patent Office of India is valid in:
a. All ASEAN countries territories
b. All countries that adhere to TRIPS
c. Indian territory
d. All of the above

Solution: (c) Indian territory

Explanation: A patent granted by the Indian Patent Office is territorial in nature and is enforceable only within the territory of India. Section 48 of the Patents Act, 1970, which defines the rights of a patentee, makes it clear that the exclusive rights granted by a patent such as the right to prevent others from making, using, selling, or importing the invention operate only within India. These rights cannot be enforced outside the territory where the patent is granted, and therefore a patent granted in India provides protection exclusively within India. This statutory framework affirms the fundamental principle that patent rights are territorial in nature.

The Patents Act, 1970 does not provide any automatic extension of rights to ASEAN countries, TRIPS-member countries, or any other foreign territory. Although India is a TRIPS-compliant country, TRIPS does not grant cross-border enforceability of patent rights; it only harmonizes minimum standards.

Q.5 One PCT application with US priority is filed on 19.09.2009 and for filing National phase application in India the applicant needs to file within:
a. 19.04.2012
b. 19.09.2014
c. 19.09.2013
d. 19.04.2013

Solution: (a) 19.04.2012

Explanation: For entering the national phase in India based on a PCT application, the time limit is governed by Rule 20(4)(i) of the Indian Patent Rules, 2003, which provides 31 months from the priority date for filing the national phase application in India. In the above question, the PCT application was filed on 19.09.2009 with a US priority. Since the priority date is not separately provided, the standard interpretation is that the priority date = 19.09.2009. Therefore, the 31-month deadline is calculated from 19.09.2009. Adding 31 months to the priority date leads to 19 April 2012. Hence, the last date for filing the Indian national phase application is 19.04.2012

Q.6 A Patent applicant may file a Patent infringement suit within the provision of the Act only after:
a. Publication of the Patent application
b. Grant of the Patent application
c. Priority date of the Patent application
d. Date of filing of Complete Specification

Solution: (b) Grant of the Patent application

Explanation: Under the Patents Act, 1970, the right to institute a patent infringement suit arises only after the patent has been granted. This is expressly provided under Section 48, which defines the “rights of patentee,” stating that the exclusive rights to prevent third parties from making, using, selling, or importing the invention accrue only after the grant of the patent. While Section 11A(7) allows the patentee to claim damages or royalties retrospectively from the date of publication, the applicant cannot file an infringement suit until the patent is actually granted. Publication alone does not give the legal standing to sue; it only gives provisional rights. Therefore, the enforceable right to initiate infringement litigation begins only from the date of grant.

Q.7 As per The Patent Act, 1970 the first compulsory licence granted in India to:
a. Natco Pharma on 9th March, 2012
b. Cipla on 9th March, 2009
c. Glenmark on 27th January, 2009
d. None of the above

Solution: (a) Natco Pharma on 9th March, 2012

Explanation: The first compulsory licence in India was granted under Section 84 of the Patents Act, 1970 to Natco Pharma Ltd. on 9 March 2012. The licence was granted for the drug Sorafenib Tosylate (Nexavar), which was patented by Bayer Corporation. The Controller General of Patents held that the reasonable requirements of the public were not met, the patented drug was not available at a reasonably affordable price, and the patented invention was not worked in the territory of India as required under Section 84(1). This landmark decision marked India's first-ever compulsory licence, setting important precedents on accessibility and affordability of medicines.

Q.8 Method of committing theft is not Patentable in accordance to one of the Sections of the Patent Act, 1970. Find out the relevant section from the following:
a. Section 3(c) of the Act
b. Section 3(b) of the Act
c. Section 3(a) of the Act
d. Section 3(d) of the Act

Solution: (b) Section 3(b) of the Act

Explanation: Under the Patents Act, 1970, Section 3(b) specifically excludes inventions whose commercial exploitation would be contrary to public order or morality or would cause serious prejudice to human, animal or plant life or health or to the environment. A "method of committing theft" directly facilitates an illegal act and violates public order and morality. Hence, such subject matter is explicitly non-patentable under Section 3(b).

Q.9 As per the Patent Act, the term of a Patent of addition filed on 13.04.2012 (granted on 15.01.2015) with regard to Complete Specification of an ordinary Patent application filed on 15.07.2008 (granted on 17.09.2011) is up to [considering that neither one is revoked prior to term of validity]
a. 13.04.2032
b. 15.07.2028
c. 17.09.2031
d. 15.01.2035

Solution: (a) 15.07.2028

Explanation: The term of a Patent of Addition is governed by Section 55(1) of the Patents Act, 1970, which clearly states that a patent of addition shall expire along with the main (parent) patent, regardless of its own filing or grant date. In this question, the main ordinary patent was filed on 15.07.2008, and as per Section 53(1), its term is 20 years from the date of filing, meaning it expires on 15.07.2028, provided it is not revoked earlier. The patent of addition filed on 13.04.2012 will therefore automatically terminate on the same date the main patent expires. It does not get its own 20-year term. Hence, the term of the patent of addition lasts only up to 15.07.2028

Q.10 An appeal shall not lie to the Appellate Board as per the Patent Act for the following option:
a. Refusal decision of a Patent application under section 15 of the Act
b. An application is deemed to be abandoned under section 21 of the Act
c. Decision of Controller with regard to compulsory licence under section 84 of the Act.
d. The decision related to post grant opposition under section 25(4) of the Act

Solution: (b) An application is deemed to be abandoned under section 21 of the Act

Explanation: Under the Patents Act, 1970, certain orders of the Controller are appealable, while others are expressly excluded. Although the Intellectual Property Appellate Board (IPAB) has been abolished in 2021 and appeals now lie to the High Court, the statutory principles of what is appealable remain governed by Section 117A. As per Section 117A(2), an appeal shall lie from specific orders such as refusal under Section 15, decisions relating to compulsory licences under Section 84, and post-grant opposition decisions under Section 25(4). However, abandonment under Section 21 (failure to comply with requirements within prescribed time) is not an order of the Controller but an automatic statutory consequence, and hence is not appealable.

Q.11 The period for which an application for Patent shall not ordinarily be open to public in Patent Office Journal from the date of filing or date of priority of the application, whichever is earlier as per the provision of the Act (Assume that there is no request for early publication)
a. 18 months
b. 12 months
c. 6 months
d. 8 months

Solution: (a) 18 months

Explanation: Under Section 11A(1) of the Patents Act, 1970, every patent application remains confidential and is not ordinarily open to the public until the expiry of 18 months from the date of filing or the priority date, whichever is earlier. During this period, the Patent Office does not publish the application in the Patent Office Journal unless a request for early publication under Section 11A(2) (Form-9) is filed. Since the question specifies that no early publication request has been made, the statutory confidentiality period applies in full, meaning the application will remain unpublished for 18 months.

Q.12 An Indian applicant has filed an ordinary Patent application before Patent Office by filing Provisional Specification on 12.05.2011 (assuming no postdating of application). Find out the correct option from the following:

a. The applicant filed the Complete Specification on 12.8.2012 after filing Form 4 on 11.05.2012 for three months extension
b. The applicant filed Complete Specification on 12.05.2012
c. The applicant filed a petition under 138 of the prevailing Rules and submitted the Complete Specification on 12.06.2012
d. None of the above

Solution: (b) The applicant filed Complete Specification on 12.05.2012

Explanation: When an applicant files a provisional specification, the corresponding Complete Specification must be filed within 12 months from the date of filing the provisional, as mandated under Section 9(1) of the Patents Act, 1970. This 12-month period is strict and non-extendable, and any request for extension, whether through Form 4, Rule 138, or any other provision, is not permitted for filing the Complete Specification. The applicant in this case filed the provisional on 12.05.2011, which means the Complete Specification must mandatorily be filed on or before 12.05.2012.

Q.13 As per The Patent Act, the qualification required for a Registered Patent Agent to work as the Technical Member of the Appellate Board is:
a. Master degree in Science with at least 8 years functioned as a Registered Patent Agent
b. Degree in Engineering or technology or Master degree in Science with at least 10 years functioned as a Registered Patent Agent
c. Bachelor degree in Engineering or technology or science with a law degree
d. All of the above

Solution: (b) Degree in Engineering or technology or Master degree in Science with at least 10 years functioned as a Registered Patent Agent

Explanation: Under the Patents Act, 1970, when the Intellectual Property Appellate Board (IPAB) was operational, the qualifications for appointment as a Technical Member (Patents) were prescribed under Section 116(2). As per Section 116(2)(b), a person was eligible to be appointed as a Technical Member if the person held a degree in engineering or technology, or a Master's degree in science, and had functioned as a Registered Patent Agent for at least ten years.
However, the Intellectual Property Appellate Board (IPAB) was abolished by the Tribunals Reforms Act, 2021, and the relevant provisions, Sections 116 and 117G of the Patents Act, were omitted. Consequently, there is no longer any "Technical Member (Patents)" position, and no Appellate Board exists under the present Patents Act. Appeals that were earlier filed before the IPAB now lie directly before the jurisdictional High Court under Section 117A, as modified by the 2021 amendments.

Q.14 As per the Patent Act, Register of Patents shall contain:
a. Names and addresses of grantees of Patents
b. Revocations of Patents
c. Notification of Assignments and of transmissions of Patents
d. All of the above

Solution: (d) All of the above

Explanation: The contents of the Register of Patents are specified under Section 67(1) of the Patents Act, 1970. According to this provision, the Register must contain the names and addresses of patentees, notifications of assignments, extension, and revocations of patents, and such other matters affecting the validity or proprietorship of patents as may be prescribed. The Register serves as the official record of all legal events relating to a patent, including changes in ownership and status.

Q.15 Any person interested may make an application to the Controller for granting compulsory licence on Patent as per The Patent Act, in the following grounds:
a. That the Patented invention is not available to the public at reasonably affordable price
b. That the Patented invention is reserved for noncommercial purpose
c. That the Patented invention is imported with immediate effect
d. None of the above

Solution: (a) That the Patented invention is not available to the public at reasonably affordable price

Explanation: The grounds for seeking a compulsory licence are provided under Section 84(1) of the Patents Act, 1970. Any person interested may apply to the Controller for a compulsory licence after three years from the date of grant of a patent if any of the following three statutory conditions are not met:
(1) the reasonable requirements of the public with respect to the patented invention have not been satisfied;
(2) the patented invention is not available to the public at a reasonably affordable price; or
(3) the patented invention is not worked in the territory of India.

Q.16 A researcher finds an idea on recycling of biodegradable plastic. How does he proceed for patenting his idea?
a. He needs to publish in the Scientific Journal and has to wait for invitation from Patent Office
b. He needs to submit Provisional Specification and subsequently to file Complete Specification before Patent Office
c. Both A and B
d. None of the above

Solution: (b) He needs to submit Provisional Specification and subsequently to file Complete Specification before Patent Office

Explanation: Under the Patents Act, 1970, ideas alone are not patentable; an invention must be sufficiently described and enabled. When a researcher develops a new concept, such as a method or system for recycling biodegradable plastic, the proper procedure is to file a Provisional Specification under Section 9(1) if the invention is not yet fully developed. This secures the priority date. The researcher must then file the Complete Specification within 12 months, detailing the full invention as required under Section 10.

Q.17 The "invention" as per Patent Act, 1970 incorporates:
a. Capable of Industrial application
b. An inventive step
c. A new product or process
d. All of the above
Solution: (d) All of the above

Explanation: The definition of “invention” under the Patents Act, 1970 is provided in Section 2(1)(j). According to this provision, an invention must be a new product or process involving an inventive step and capable of industrial application. Each of these three elements is mandatory. A new product or process addresses novelty, inventive step concerns technical advancement or economic significance over existing knowledge (as defined in Section 2(1)(ja)), and industrial applicability requires that the invention can be made or used in an industry (Section 2(1)(ac)).

Q.18 Identify from the following patented products, for which compulsory licence are available for export which is entitled for manufacture and export to any country having insufficient no manufacturing capacity to address public health problems as per The Patent Act:
a. Disaster management related device
b. Pharmaceutical products
c. Food products
d. All of the above

Solution: (b) Pharmaceutical products

Explanation: The Patents Act, 1970 allows compulsory licences specifically for manufacture and export of patented pharmaceutical products to countries that lack adequate manufacturing capacity to address public health problems. This provision is contained in Section 92A, which was introduced to implement the Doha Declaration on TRIPS and Public Health. Section 92A permits the Controller to grant a compulsory licence to an Indian manufacturer only for the export of pharmaceutical products to a country having "insufficient or no manufacturing capacity" in the pharmaceutical sector, provided the importing country has issued a compulsory licence or otherwise permitted importation. The provision is narrowly tailored and applies exclusively to pharmaceutical products, not to devices, foods, or other technologies.

Q.19 When a Patent completes its full term of 20 years within the provision of The Patent Act, it:
a. May be renewed for a further period of 10 years
b. May be renewed only under special circumstances
c. May be renewed for a period of 5 years
d. Shall not be renewed

Solution: (d) Shall not be renewed

Explanation: Under the Patents Act, 1970, the term of every patent is 20 years from the date of filing of the application, as provided under Section 53(1). The Act does not permit any extension, renewal, or continuation of a patent beyond this statutory 20-year period. Once a patent completes its full term, the patented invention automatically enters the public domain, and anyone may use, manufacture, or sell the invention without requiring permission from the patentee.

Q.20 A ceased Patent due to non-payment of renewal fees, may be restored by filing an application for restoration with prescribed fee as per The Patent Act:
a. Within 12 months from the date on which Patent ceased to have effect
b. Within 18 months from the date on which Patent ceased to have effect
e. Within 48 months from the date on which Patent ceased to have effect
d. None of the above

Solution: (b) Within 18 months from the date on which Patent ceased to have effect

Explanation: The restoration of a patent that has ceased due to non-payment of renewal fees is governed by Section 60(1) of the Patents Act, 1970. According to this provision, the patentee or his legal representative may apply for restoration "within eighteen months from the date on which the patent ceased to have effect." The application must be made in the prescribed manner along with the prescribed fee (Form-15 under Rule 84). The Controller will proceed with restoration only if satisfied that the failure to pay renewal fees was unintentional and that there has been no undue delay in making the restoration request.

Q.21 The submission of proof of right to make an application for a Patent made by virtue of an assignment as per the Act shall be within a prescribed period of:
a. With the application or within 3 months from date of application
b. With the application or 9 months from date of application
c. With the application or 6 months from date of application
d. With the application or 12 months from date of application

Solution: (c) With the application or 6 months from date of application

Explanation: When an application for a patent is filed by a person who is not the actual inventor, but who derives the right to apply through an assignment, agreement, or operation of law, the proof of right must be submitted in accordance with Section 7(2) of the Patents Act, 1970 and Rule 10 of the Patents Rules, 2003.
As per Rule 10, such proof of right must be furnished either with the application itself or within a period of six months from the date of filing the application, upon a request made to the Controller. This 6-month period may be extended under Rule 137 in certain circumstances, but the prescribed period remains 6 months.

Q.22 Find out from the following which is not the ground for opposition under Section 25(1) of Patent Act, 1970:
a. That the request for examination pursuant to the filing of Complete Specification has not been filed by the applicant himself
b. That the Complete Specification does not sufficiently and clearly describe the invention or the method by which it is to be performed
c. That the applicant has failed to disclose to the Controller the information required by section 8 or has furnished the information which in any material particular was false to his knowledge
d. That the Patentee or the person under or through whom he claims, wrongfully obtained the invention or any part thereof from him or from a person under or through whom he claims

Solution: (a) That the request for examination pursuant to the filing of Complete Specification has not been filed by the applicant himself

Explanation: The grounds for pre-grant opposition are listed under Section 25(1) of the Patents Act, 1970. These include lack of novelty, obviousness, wrongful obtaining, non-patentable subject matter, insufficient disclosure, failure of disclosure under Section 8, incorrect mention of source/origin of biological material, and claims not supported by the disclosure.

Option (b) is a valid ground under Section 25(1)(g), which deals with insufficient or unclear description of the invention.

Option (c) is a valid ground under Section 25(1)(h) regarding failure to disclose information required under Section 8 or furnishing false information.

Option (d) is also a valid ground under Section 25(1)(a), relating to wrongful obtaining of the invention.

However, Option (a), failure of the applicant to file a request for examination himself, is not a statutory ground for pre-grant opposition under Section 25(1). The Act allows the request for examination to be filed by any interested person under Section 11B, and this has no link to opposition proceedings.

Q.23 International application as per the Patent Act, 1970 means:
a. An application filed in WTO
b. An application filed under Hague agreement
c. An application for Patent made in accordance with the Patent Cooperation Treaty
d. An application for Patent made in accordance with the Budapest Treaty

Solution: (c) An application for Patent made in accordance with the Patent Cooperation Treaty

Explanation: The term "international application" under the Patents Act, 1970 is defined with reference to the Patent Cooperation Treaty (PCT). As per Section 2(1)(ia) of the Patents Act, an international application means “an application for patent made in accordance with the Patent Cooperation Treaty.” A PCT application allows applicants to seek patent protection simultaneously in multiple countries through a unified filing procedure.

Options (a), (b), and (d) are irrelevant in this context:
- WTO has no mechanism for filing patent applications,
- The Hague Agreement relates to industrial designs, not patents, and
- The Budapest Treaty deals with deposit of microorganisms, not the filing of applications.

Q.24 Discovery of a new galaxy is not Patentable:
a. As per section 3(c) of The Patent Act, 1970
b. As per section 3(k) of The Patent Act, 1970
c. As per section 3(d) of The Patent Act, 1970
d. As per section 3(b) of The Patent Act, 1970

Solution: (a) Not patentable under Section 3(c) of the Patents Act 1970

Explanation: The discovery of a new galaxy is not patentable under Indian patent law because it falls within the exclusions specified in Section 3(c) of the Patents Act, 1970. Section 3(c) states that “the mere discovery of a scientific principle or the formulation of an abstract theory, or discovery of any living thing or non-living substance occurring in nature” is not an invention. A galaxy is a naturally occurring astronomical formation, and discovering it does not involve any technical contribution, human-made intervention, or inventive step. Since it is purely a discovery of something existing in nature, it cannot qualify as an invention under Section 2(1)(j).

Q.25 Definition of "Capable of industrial application", in relation to an invention as per The Patent Act means:
a. That the invention is capable of being made or used in an industry
b. That the invention is capable of being manufactured in an industry
c. That the invention is capable of being sold by an industry
d. None of the above

Solution: (a) That the invention is capable of being made or used in an industry

Explanation: The definition of “capable of industrial application” is expressly provided in Section 2(1)(ac) of the Patents Act, 1970. According to this provision, an invention is considered capable of industrial application “if it is capable of being made or used in an industry.” This means that the invention must have practical utility and must be reproducible in any kind of industry, including mechanical, chemical, pharmaceutical, electrical, or biotechnological sectors.

Q.26 An appeal may be filed against decision of Controller as per The Patent Act before:
a. High Court
b. IPAB
c. District Court
d. All of the above

Solution: (b) IPAB

Explanation: Under the Patents Act, 1970 (prior to the 2021 amendments), appeals against the decisions of the Controller were filed before the Intellectual Property Appellate Board (IPAB). This was expressly provided under Section 117A, which stated that any person aggrieved by certain orders or decisions of the Controller could appeal to the Appellate Board. The jurisdiction for such appeals did not lie with the High Court or District Court under the earlier legal framework.
With the enactment of the Tribunals Reforms Act, 2021, the IPAB was abolished, and all its powers and pending matters were transferred to the respective jurisdictional High Courts. As per section 117A(2) appeal against decision of Controller shall lie to the High Court. Accordingly, under the current legal framework, all appeals against decisions of the Controller are filed before the High Court, making option (a) the correct answer as per present law.

Q.27 Three applicants applied for a Patent in India and Patent is granted to them and now there is doubt amongst them regarding their Patent Rights. As a Patent agent what will be your clarification to your clients? (Note: They are not bound by any contract)
a. All are having equal undivided share in Patents
b. First name holder in the Patent application shall get major share
c. Sharing shall be based on the alphabetical order
d. Sharing shall be based on the date of birth

Solution: (a) All are having equal undivided share in Patents

Explanation: When a patent is granted to more than one applicant, and there is no contract or agreement specifying their respective rights, the provisions of the Patents Act apply directly. Under Section 50(1) of the Patents Act, 1970, where a patent is granted to two or more persons, each patentee shall be entitled to an equal undivided share in the patent unless a contrary agreement exists.

Q.28 A Patent shall be deemed to be revoked in public interest by The Central Government:
a. After appealing in the IPAB against the Patentee and notification in the newspaper
b. After serving a notice to the Patentee and notification in the newspaper
c. After hearing the Patentee and making a declaration to that effect in Official Gazette
d. None of the above

Solution: (c) After hearing the Patentee and making a declaration to that effect in Official Gazette

Explanation: Revocation of a patent in the public interest by the Central Government is governed by Section 66 of the Patents Act, 1970. According to this provision, where the Central Government is satisfied that the maintenance of a patent is prejudicial to the public interest, it may revoke the patent. However, before doing so, the Government must give the patentee an opportunity to be heard. Only after hearing the patentee can the Central Government proceed to make a declaration of revocation. This declaration must be published in the Official Gazette, and upon such publication, the patent is deemed revoked.

Q.29 If an article is sold by a manufacturer with engraved with the word "Patent" falsely then he shall be punishable for such venture within the provision of the Patent Act by
a. Imprisonment for 2 years
b. Fine, which may extend to Rupees 1 lakh
c. Imprisonment of one year and fine of Rupees 50 thousand
d. All of the above

Solution: (b) Fine, which may extend to Rupees 1 lakh

Explanation: Falsely representing an article as patented is an offense under Section 120 of the Patents Act, 1970. The section specifically states that if any person falsely represents that any article sold by him is patented in India or is the subject of an application for a patent, he shall be punishable with a fine which may extend to one lakh rupees. The Act does not prescribe imprisonment for this offense, only a monetary penalty.
However By virtue of the Jan Vishwas (Amendment of Provisions) Act, 2023 (Act 18 of 2023), which came into force for patent provisions on 01-08-2024, the fine under Section 120 has been increased from ₹1 lakh to ₹10 lakhs.

Q.30 An applicant has filed an International application on 05.07.2012 based on a Provisional application in India on 08.08.2011 and again filed National phase application in India on 10.09.2013 and if the said National phase application is granted on 24.06.2016 then the term of the said Patent application shall be up to: [considering that patent is not revoked prior to term of validity]
a. 05.07.2032
b. 08.08.2031
c. 24.06.2036
d. None of the above

Solution: (a) 05.07.2032

Explanation: The term of a patent in India is governed by Section 53(1) of the Patents Act, 1970, which states that the term of every patent is 20 years from the date of filing of the application. In the case of a PCT (international) application designating India, the same section clarifies that the 20-year term is calculated from the international filing date, not from the national phase entry date, and not from the earlier provisional filing date.
In this question, the international application was filed on 05.07.2012, and therefore the 20-year term ends on 05.07.2032, provided the patent is not revoked earlier. The provisional application (08.08.2011) only establishes a priority date and does not determine the patent term. The national phase filing (10.09.2013) and the grant date (24.06.2016) also do not affect the calculation of the patent term.

Part B

Part B is of 10 marks and consists of 10 true/false type questions of 1 mark each. For each question, out of four options only one option Is correct. Answer should be given as a, b, c or d as given here in below:
a. Statement 1 is true, 2 is false
b. Statement 1is false, 2 is true
c. Statement 1 and 2 both are false
d. Statement 1 and 2 both are true

Q.31 Amendment of an application for a Patent or a complete specification or any document relating thereto, at any time either before or after grant of the Patent as per the provision of The Patent Act, 1970:
1. Shall be made by way of disclaimer, correction or explanation and incorporation of actual fact
2. Shall be allowed though it describes matter not in substance or shown in the specification before the amendment.

Solution: (a) Statement 1 is true, 2 is false

Explanation: Amendment of a patent application, complete specification, or related documents is governed by Section 59 (1) of the Patents Act, 1970, which states that amendments are permitted only by way of disclaimer, correction, or explanation, and only to incorporate actual facts. Therefore, Statement 1 is true. Further same section expressly restricts amendments by prohibiting any amendment that introduces matter that was not in substance disclosed or shown in the specification as filed. This means an amendment cannot add new matter or broaden the scope of the claims beyond what was originally disclosed. Therefore, Statement 2 is false.

Q.32
1. Mr. Rao is a researcher from a reputed institute of Bangalore and has filed one ordinary Patent application before Patent Office though he has published the same subject matter in an International Journal 5 years back before the filing date of the above mentioned Patent application, as he is confident regarding the fact that author of the Journal and the Patent applicant being same and his application shall not be refused within the provision of The Patent Act.
2. Mr. Rao is a researcher of reputed institute of Bangalore and has filed one ordinary Patent application before Patent Office though he has published the same subject matter in an International Journal after the filing date of the above mentioned Patent application, as he is confident regarding the fact that author of the Journal and Patent applicant being same and his application shall not be refused within the provision of The Patent Act.
Solution: (b) Statement 1 is false, 2 is true

Explanation: Mr. Rao published the same subject matter 5 years before filing the patent application. Under Section 13 read with Section 29–34 of the Patents Act, any prior publication, even if made by the inventor himself, destroys novelty, unless it falls under the narrow exceptions of Section 31 (public display, communication to learned society, etc.), which do not include journal publication. Therefore, his own earlier publication anticipates the invention and the application must be refused.
If Mr. Rao published the subject matter after filing his patent application, the publication does not affect novelty or patentability. The relevant date for determining novelty is the filing date (or priority date). Any disclosure after the filing date is irrelevant to novelty under Section 13 and cannot be used to refuse the application.

Q.33
1. An application to the Controller for the review of his own decision as per The Patent Act, within the provision of prevailing Patent Rules shall be made in Form 24 within one month from date of communication of such decision to the applicant or within such further period not exceeding one month thereafter as the Controller may on a request made in Form 4 stating all the grounds on which review is sought.
2. An application to the Controller for the review of his own decision as per The Patent Act, within the provision of prevailing Patent Rules shall be made in Form 24 within six months from date of communication of such decision to the applicant or within such further period not exceeding one month thereafter as the Controller may on a request made in Form 4 stating all the grounds on which review is sought.

Solution: (a) Statement 1 is true, 2 is false

Explanation: Applications for review of the Controller's own decision are governed by Section 77(1)(f) of the Patents Act and Rule 130 of the Patents Rules, 2003. As per Rule 130(1):
- A request for review must be filed in Form 24.
- It must be filed within one month from the date of communication of the decision
- The Controller may allow an extension not exceeding one additional month, upon request made in Form 4, with reasons.

Q.34 Company X is having place of business at US and filed initial application at USPTO and after six months from the US application, the Company has done some modification and filed another application at USPTO. Within 12 months from the date of first US filing, Company X filed an Indian application claiming priority from earlier two applications from US:
1. Company X is allowed only to claim pertaining to earlier priority and therefore Controller refused it.
2. Company X is allowed to claim both the priorities and priority date of the application is the date on which it was first disclosed.

Solution: (b) Statement 1 is false, 2 is true

Explanation: When Company X files two U.S. applications, first, and then a second application with modifications, and then files an Indian application within 12 months from the first filing, the applicable law is Section 137 of the Patents Act, 1970, which deals with multiple priorities.

Section 137(1) of the Act clearly allows an Indian application to claim multiple priorities from earlier applications filed in a convention country (such as the U.S.). The Controller cannot refuse multiple priority claims merely because they arise from separate foreign filings. Therefore, refusal on the ground that only the earlier priority can be claimed as indicated in statement 1 is incorrect.

Section 137(2) of the Act further provides that when an application claims multiple priorities, the priority date for each claim is the date on which the feature was first disclosed in any of the earlier applications. Thus making statement 2 true.

Q.35 As per Act claim or claims of a Complete Specification shall:
1. Relate to a single invention.
2. Relate to a group of inventions linked so as to form a single inventive concept.

Solution: (d) Statement 1 and 2 both are true

Explanation: The requirements for claims in a complete specification are governed by Section 10(5) of the Patents Act, 1970. This section mandates that every complete specification must end with a claim or claims defining the scope of the invention.
Under Section 10(5) Rule 13 of the Patent Rules, the claims must relate to a single invention. This ensures unity and prevents multiple unrelated inventions from being included in a single patent application.

Q.36 For any proceedings before the Controller as per The Patent Act, 1970, He shall have the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 in respect to following matters:
1. Summoning of any person and receiving evidence on affidavits.
2. Power for setting aside order passed *ex parte* on application made within the prescribed time and in the prescribed manner.

Solution: (d) Statement 1 and 2 both are true

Explanation: Section 77 states that the Controller shall have the powers of a Civil Court under the Code of Civil Procedure, 1908 in respect of several matters, and he may exercise these powers for all proceedings before him.
Under Section 77(1)(a), the Controller has the power regarding summoning and enforcing the attendance of any person, examining them on oath, receiving evidence on affidavits, etc.
Under Section 77(1)(g), the Controller has the power set aside an order passed *ex parte*, if an application is made within the prescribed time and manner.

Q.37
1. Applicant X and applicant Y file a Patent application jointly before Indian Patent Office. The application shall be examined on filing a "Request for Examination" within the prescribed time as per the provision of Act by either X or Y.
2. Applicant X and applicant Y file a Patent application jointly before Indian Patent Office. The application shall be examined on filing a "Request for Examination" within the prescribed time as per the provision of Act by any other interested person Z.

Solution: (d) Statement 1 and 2 both are true

Explanation: Examination of a patent application in India requires filing a Request for Examination (RFE) under Section 11B of the Patents Act, 1970 and Rule 24B of the Patents Rules.
When a patent application is filed jointly by applicants X and Y, the RFE may be filed by any one of the joint applicants. Section 11B clearly allows the applicant to file the request. Therefore, filing by either X or Y is sufficient for the Controller to take up examination.
Section 11B also permits a “person interested” (such as a competitor, licensee, etc.) to file the RFE even without the applicant’s consent. Thus, an interested third party Z may also file the Request for Examination within the prescribed period, and the application will be examined on that basis.

Q.38
1. As per The Patent Act, 1970 if the applicant mentions a biological material in the specification and if such material is not available to the public then the application shall be completed by depositing the material to an International Depository Authority under the Budapest Treaty not later than the date of filing the Patent application in India and reference thereof shall be made in the specification within three months from date of filing of the application.
2. As per The Patent Act, 1970 if the applicant mentions a biological material in the specification and if it is not available to the public then he does not have to deposit the biological material to any International Depository Authority under the Budapest Treaty during the proceedings of the Patent application.

Solution: (a) Statement 1 is true, 2 is false

Explanation: The requirements relating to biological material are governed by Section 10(4) of the Patents Act, 1970 and Rule 13(8) of the Patents Rules. Section 10(4)(d)(ii a) clearly states that if a biological material is mentioned in the specification and is not available to the public, and cannot be described sufficiently, then:

- The applicant must deposit the material in an International Depository Authority (IDA) under the Budapest Treaty.
- The deposit must be made not later than the date of filing of the patent application in India.
- A reference to the deposit must be included in the specification within the prescribed period (Rule 13(8): 3 months from the date of filing, extendable by request).

Q.39
1. As per the provision of The Patent Act, 1970 a Patentee may, at any time after grant, offer to surrender his Patents.
2. As per the provision of The Patent Act, 1970 a Patentee may offer to surrender his Patents, only after three years from the date of grant of Patents.

Solution: (a) Statement 1 is true, 2 is false

Explanation: The surrender of a patent is governed by Section 63 of the Patents Act, 1970. According to Section 63(1), a patentee may, at any time after the grant, offer to surrender the patent by giving notice to the Controller. There is no minimum time period such as three years required before surrendering a patent. Upon receiving such an offer, the Controller must publish the surrender offer and give an opportunity for any person interested to oppose (Section 63(2)).

Q.40
1. As per the provision of The Patent Act, a Patent of addition shall be granted before the date of grant of the Patent for the main invention.
2 As per the provision of The Patent Act, the Patent of addition shall not be refused on the ground only that the invention claimed in complete specification does not involve any inventive step having regard to any publication or use of the main invention described in the complete specification relating thereto.

Solution: (b) Statement 1 is false, 2 is true

Explanation: The provisions relating to Patents of Addition are governed by Sections 54, 55 and 56 of the Patents Act, 1970.
Under Section 54(4) a patent of addition can be granted only after the grant of the main patent. The Controller cannot grant a patent of addition before the main patent is granted.
Section 56(1) of the Act provides that a patent of addition shall not be refused or revoked merely because the invention claimed does not involve an inventive step over the main invention described in the complete specification of the main patent.

Part C
Part C is of 30 marks and consists of 10 multiple choice questions of 3 marks each with more than one options correct (at least two options correct).
Q.41 A National or Regional Patent Office grants a Patent. The following regional Patent Office operative at present is/are:
a. ARIPO
b. WIPO
c. EPO
d. EAPO

Solution: (a) ARIPO**, (c)** EPO, and **(d)** EAPO

Explanation: A national or regional patent office is an authority that has the legal power to grant patents valid within a particular country or a group of countries. Several regional patent systems currently operate and issue patents on behalf of multiple member states. These include:
ARIPO (African Regional Intellectual Property Organization), grants patents effective in designated African member countries under the Harare Protocol.
EPO (European Patent Office), grants European patents under the EPC, which can later be validated in individual member states.
EAPO (Eurasian Patent Organization), grants Eurasian patents valid across its contracting states.
In contrast, WIPO (World Intellectual Property Organization) does not grant patents. Under the PCT system, WIPO facilitates international filing procedures but the actual grant of a patent is always done by national or regional patent offices, not by WIPO.

Q.42 If any non-registered Patent agent practices before Patent Office, he shall be punishable within provision of The Patent Act:
a. With a fine of 3 lakh Rupees for first offence and 6 lakh Rupees in case of second offence
b. With one lakh Rupees only for each offence
c. With one lakh Rupees for first offence
d. With five lakh Rupees for second offence or subsequent offence.

Solution: (c) With one lakh Rupees for first offence, and **(d)** With five lakh Rupees for second offence or subsequent offence.

Explanation: Under Section 123 of the Patents Act, 1970, any person who practices before the Patent Office as a patent agent without being registered is liable for penalty. As per the pre-amendment provision , the punishment prescribed is a fine of one lakh rupees for each offence, making option (b) the correct answer.
However by virtue of the Jan Vishwas (Amendment of Provisions) Act, 2023 (Act 18 of 2023), which came into force for patent provisions on 01-08-2024, the fine under Section 120 has been increased from ₹ 1 lakh to ₹5 lakhs and an additional penalty of one thousand rupees per day will be imposed for every day after the first during which the illegal practice continues.

Q.43 India is a member of the following International treaty:
a. PCT
b. Paris Convention
c. Both A and B
d. Not a member of any International Treaty

Solution: (c) Both A and B

Explanation: India is a member of both major international treaties governing patents and intellectual property. India became a member of the Paris Convention for the Protection of Industrial Property in 1998, which provides the basis for claiming priority under Section 135 of the Patents Act, 1970. India also joined the Patent Cooperation Treaty (PCT) in 1998, which enables applicants to file international patent applications and enter national phase in designated countries, as reflected in Sections 2(1)(ia) and 135 of the Patents Act.

Q.44 An applicant has received a direction from the Controller under section 16 of the Patent Act. Find out the correct option(s) of further act by the applicant:
a. He may file divisional application before grant.
b. He may ask an oral hearing to convince the Controller that the invention comes under single inventive concept.
c. He may forego second invention.
d. He may file divisional application for the second invention after the grant of first one.

Solution: (a) He may file divisional application before grant, **(b)** He may ask an oral hearing to convince the Controller that the invention comes under single inventive concept, and **(c)** He may forego second invention

Explanation: A direction under Section 16 of the Patents Act, 1970 is issued when the Controller finds that the claims of a patent application relate to more than one invention and lack unity of invention. In such cases, the applicant has the following lawful courses of action:

Under Section 16(1), the applicant may file a divisional application any time before the grant of the parent patent if the claims relate to a plurality of inventions. Therefore, option (a) is correct.
The applicant may request an oral hearing under Section 14, to convince the Controller that the claims indeed relate to a single inventive concept. This is a legitimate procedural right. Hence, option (b) is correct.

The applicant may choose to delete claims relating to the additional invention, thereby retaining only one inventive concept in the parent application. This is also an acceptable response to a Section 16 direction. Thus, option (c) is correct.

This is not permissible under Section 16. A divisional application must be filed before the grant of the parent application. Therefore, option (d) is incorrect.

Q.45 An application for a Patent for an invention may be made by:
a. True and first inventor
b. Assignee of the true and first inventor
c. Legal representative of true and first inventor
d. None of the above

Solution: (a) True and first inventor, **(b)** Assignee of the true and first inventor, and **(c)** Legal representative of true and first inventor

Explanation: Under Section 6(1) of the Patents Act, 1970, an application for a patent may be made by any of the following persons:
The true and first inventor (Section 6(1)(a)),
The assignee of the true and first inventor (Section 6(1)(b)), and
The legal representative of a deceased true and first inventor (Section 6(1)(c)).
The Act clearly recognizes all three categories as eligible applicants. An application may also be filed jointly by any combination of these persons.

Q.46 Which of the following sections are appealable against the decision, order or direction of the Controller under the provision of Act:
a. Sections 15 and Section 16 of the Act
b. Sections 21 of the Act
c. Sections 54, 57, and 60 of the Act.
d. Sections 17, 18, and 19 of the Act

Solution: (a) Sections 15 and Section 16 of the Act**, (c)** Sections 54, 57, and 60 of the Act, and **(d)** Sections 17, 18, and 19 of the Act

Explanation: Appealable orders against the decisions, directions, or orders of the Controller are listed in Section 117A(2) of the Patents Act, 1970. This section specifies exactly which provisions allow an aggrieved party to file an appeal (now before the High Court, after the abolition of IPAB). According to Section 117A(2), appeals are permitted from Controller's decisions under Sections 15, 16, 17, 18, 19, 20, as well as post-grant opposition under Section 25(4), and decisions relating to amendments, restoration, and other matters under Sections 27, 28, 51, 54, 57, 60, 61, and 63.

Option (a) is correct because Sections 15 and 16 are explicitly appealable.
Option (c) is correct because Sections 54, 57, and 60 also appear in the list of appealable sections.
Option (d) is correct as Sections 17, 18, and 19 are specifically included in Section 117A(2).
However, Section 21 (deemed abandonment) is NOT appealable, as abandonment occurs automatically by operation of law and is not an order of the Controller. Therefore, option (b) is incorrect.

Q.47 Which of the followings is/are not Patentable as per the provision of The Patent Act:
a. A surgical instrument
b. A computer program per se
c. Discovery of any living thing
d. A clock having 10 hours and each hour divided into 100 minutes

Solution: (b) A computer program per se, **(c)** Discovery of any living thing, and **(d)** A clock having 10 hours and each hour divided into 100 minutes

Explanation: Under the Patents Act, 1970, several categories of subject matter are expressly excluded from patentability under Section 3.

Section 3(k) excludes "a mathematical or business method or a computer program per se or algorithms." Therefore, a computer program by itself is not patentable, unless it demonstrates a novel technical effect with hardware integration (which is not the case here).
Section 3(c) states that the "mere discovery of any living thing or non-living substance occurring in nature" is not an invention. Therefore, discoveries, without human intervention or creation, cannot be patented.
While a clock is generally patentable as a mechanical device, this particular subject matter would be rejected under Section 3(a), which prohibits:

"an invention which is frivolous or which claims anything obviously contrary to well-established natural laws."

A clock divided into 10 hours × 100 minutes has no technical advancement, no industrial utility beyond an arbitrary redesign, and would be considered frivolous or devoid of technical purpose. It merely changes numerical representation of time without offering a technical problem–solution improvement.
Surgical instruments are not excluded by Section 3. Only methods of treatment of humans/animals are barred under Section 3(i), not instruments. Therefore, option (a) remains patentable.

Q.48 There are various modes for the revocation of Patent within the provision of The Patent Act. They are classified as follows. Find out the correct option(s):
a. Revocation by the Appellate Board
b. Revocation by District Court
c. Revocation by Controller
d. Revocation by Central Government

Solution: (a) Revocation by the Appellate Board, (c) Revocation by Controller, and (d) Revocation by Central Government

Explanation: Under the Patents Act, 1970, a granted patent may be revoked through several statutory mechanisms, and these modes of revocation are expressly provided in different sections of the Act. A patent may be revoked by the Appellate Board (historically) under Section 64, which allowed any interested person or the Central Government to file a petition for revocation before the IPAB; However the IPAB has been abolished in 2021 and its jurisdiction transferred to the High Courts.
The Controller also has the authority to revoke a patent in specific circumstances most notably under Section 61, where a patentee surrenders the patent and the Controller, after hearing interested parties, may order revocation; and under Section 85, where a patent may be revoked if, after the grant of a compulsory licence, the reasonable requirements of the public are still not met or the invention is not worked in India. Further, the Central Government possesses an exceptional power under Section 66 to revoke a patent if it is of the opinion that the invention or its exercise is mischievous to the State or prejudicial to the public interest. In contrast, a District Court has no authority to revoke a patent under any provision of the Act. Accordingly, the correct options are (a), (c), and (d).

Q.49 Applicant 'A' has been granted a Patent as per The Patent Act. The exclusive rights would be conferred upon 'A' to prevent Third parties who do not have his consent:
a. from making
b. from selling
c. from importing
d. none of the above

Solution: (a) from making, **(b)** from selling, and **(c)** from importing

Explanation: The exclusive rights conferred upon a patentee are defined under Section 48 of the Patents Act, 1970. Once a patent is granted, the patentee has the exclusive right to prevent third parties, who do not have his consent, from acts such as:

- making the patented product or using the patented process,
- selling or offering for sale the patented product, and
- importing the patented product into India.

These rights apply to both product and process patents.

Q.50 One Patent of a reputed Company D in Steel Industry has been ceased due to nonpayment of renewal fee and D has applied for restoration with prescribed fee as prescribed in Act & Rules with reasons thereof. Suddenly another Company of the same Industry opposes the request of restoration of D in the following grounds. Find out the appropriate grounds from the following:
a. That the Patented invention is not worked in the territory of India
b. That the failure to pay renewal fee was not unintentional
c. That the Patented invention is not available to the public in reasonable price
d. That there has been undue delay in the making the application

Solution: (b) That the failure to pay renewal fee was not unintentional, and **(d)** That there has been undue delay in the making the application

Explanation: The restoration of a ceased patent is governed by Sections 60 and 61 of the Patents Act, 1970. When a patentee applies for restoration after non-payment of renewal fees, any person interested may oppose the restoration under Section 61(1). The Act provides specific statutory grounds on which such an opposition may be made:

Under Section 61(1)(a) of the Act, the opponent may argue that the failure to pay renewal fees was not unintentional.

Under Section 61(1)(b) of the Act, the opponent may argue that there has been undue delay in making the restoration application.

The Patented invention is not worked in the territory of India and the Patented invention is not available to the public in reasonable price are grounds for compulsory licensing under Section 84, not for opposing restoration.

2022: PAPER 1 (SOLVED)

PATENT AGENT EXAMINATION, 2022
[Under Section 126 of the Patents Act, 1970]
Paper I

Time: 10.30 a.m. to 12.30 p.m. (Two Hrs.) **Max. Marks: 100**

Instructions:

I. This paper consists of 3 parts-Part A (60 marks), Part B (10 marks) & Part C (30 marks)
2. ALL questions are compulsory.
3. Candidates should read the questions very carefully before answering.
4. No clarification will be provided during the course of the examination on any technical/legal matter.
5. There is no negative marking.
6. All references to "Act" and "Rules" may be read as The Patents Act, 1970 and The Patent Rules, 2003 respectively, as amended until now and their related applications.

Part A

Part A comprises of 60 marks and consists of 30 multiple choice questions with one option correct of 2 marks each.

(1) Nile Inc. is a global e-commerce major with operations in multiple countries. Nile had filed a patent application in Korea on 01.06.2020. Subsequently, Nile filed a patent application for the same invention in Canada on 01.05.2021, claiming priority of the Korean application. Finally, Nile filed a convention application in India on 01.11.2021, claiming priority of the Canadian application. The Korean application was published on 02.12.2021. Which of the following statement is true?
(a) Nile is entitled to claim the priority of the Canadian application. The claims of the Indian application are not anticipated by publication of Korean application.
(b) Nile is entitled to claim the priority of the Canadian application. The claims of the Indian application are anticipated by publication of Korean application.
(c) Nile is not entitled to claim the priority of the Canadian application. The claims of the Indian application are not anticipated by the publication of Korean application.
(d) Nile is not entitled to claim the priority of the Canadian application. The claims of the Indian application are anticipated by the publication of Korean application.
Solution: (c): Nile is not entitled to claim the priority of the Canadian application.The claims of the Indian application are not anticipated by the publication of the Korean application.

Explanation-

Nile is not entitled to claim the priority of the Canadian application. The reason is as follows;
Korean application filed on (priority application): 01.06.2020
Canadian application filed on: 01.05.2021, claiming priority of Korea (within 12 months, so valid under Paris Convention).
Indian application filed on: 01.11.2021, claiming priority of Canada.
Publication of Korean application: 02.12.2021.
Under Section 135 of the Indian Patents Act (Convention applications), India allows claiming priority from a first application (basic application) filed in a convention country within 12 months.

Here in this case, the Indian application is filed on 01.11.2021, claiming priority from Canada (filed on 01.05.2021). But Canadian application itself was not the first filing thus can not be considered as basic application. It claimed priority from Korea which is the earliest application. Priority can only be claimed from the earliest filed application (i.e. basic application). Therefore, Nile cannot claim priority from Canadian application in India.

No Anticipation by Korean Publication:

Korean application was published on 02.12.2021.

Indian application was filed on 01.11.2021.

Under Section 13 of the Indian Patents Act, anticipation is assessed against prior publications before the date of filing of the Indian application.

Since the Korean application was published after the Indian filing date (01.11.2021), it does not anticipate the Indian claims.

(2) **Your client, IP India Inc wishes to file a PCT application claiming priority from an application that they are going to file in India. If they wishes to utilize the time limits available under PCT to the fullest extent, how will you organize the following items related to his PCT application in most likely chronological order?**

(I) Filing of PCT international application
(2) Filing of Priority application in India
(3) PCT international publication
(4) Grant of patent in a designated country
(5) PCT national phase entry in designated country

(a) 2, 5, 1,3,4 (b) 2,1,3,5,4 (c) 1, 2, 3, 4, 5 (d) 2, 1,5,3,4

Solution: (b) 2 → 1 → 3 → 5 → 4

Chronological Order of items under PCT system

(2) - Filing of priority application in India
(1) - Filing of PCT international application (within 12 months of priority)
(3) - PCT international publication (18 months from priority date)
(5) - PCT national phase entry in designated country (30/31 months from priority date)
(4) - Grant of patent in a designated country (after prosecution in national phase)

(3) **Which of the following is NOT a ground of pre-grant opposition u/s 25 (1),**
(a) that applicant has failed to disclose to the Controller the information required by section 8.
(b) that the subject of any claim of the complete specification is not an invention.
(c) that the claims of the complete specification is not clear.
(d) that the invention so far as claimed in any claim of the complete specification is anticipated.

Solution: (c) That the claims of the complete specification is not clear.

Under **Section 25(1) of the Indian Patents Act, 1970**, any person may oppose the grant of a patent on specific grounds as mentioned in clauses (a to k) of sub section 1 of section 25;

(h) Failure to disclose information required under Section 8.
(f) The subject matter is not an invention or is not patentable under the Act.
(b) Prior publication before the priority date.

Claims of complete specification not clear - this is not listed in grounds mentioned in Section 25(1). Thus, it is not a ground for opposition; rather, it is an examination requirement under Section 10(4)(c).

(4) **Which of the following is NOT a requirement of the complete specification under Section 10 of the Act.**
(a) fully and particularly describe the invention and its operation or use and the method by which it is to be performed.
(b) end with a claim or claims defining the scope of the invention for which protection is claimed;
(c) a declaration by inventors that the information given in the specification is true to their knowledge
(d) None of the above
Solution: (c) A declaration by inventors that the information given in the specification is true to their knowledge.

Such declarations are not part of the statutory requirements for a complete specification under Section 10. Moreover, Section 10(6) requires only a statement of inventorship (i.e., naming the inventors); it does not require a declaration regarding the truthfulness of the contents of the specification.

(5) **An application for restoration of a lapsed patent may be filed within __ from the date on which the patent ceased to have effect**

(a) 18 months (b) 12 months (c) 6 months (d) 9 months

Solution: (a) 18 months

Section 60 of the Indian Patents Act, 1970 deals with restoration of lapsed patents. According to it, when a patent has ceased to have effect owing to non-payment of renewal fee, the patentee or his legal representative may apply for restoration within eighteen months from the date on which the patent ceased to have effect.

(6) Which section of Patents Act empowers central government to revoke a patent in public interest.

(a) 25 (b)57 (c) 66 (d) 84

Solution: (c) 66

Section 66 empowers the Central Government to revoke a patent in public interest. While rest of sections of this question deals with different provisions viz.

Section 25 → Grounds of pre-grant and post-grant opposition.

Section 57 → Amendment of applications and specifications.

Section 84 → Compulsory licensing of patents.

(7) Patent office is established under which section of the Act

(a) 1 (b) 3 (c) 138 (d) 74

Solution: (d) 74

Section 74 states that "There shall be a patent office for the purposes of this Act under the control of the Controller General of Patents, Designs and Trade Marks.

(8) **Which of the following is NOT a ground for making an application for compulsory license?**

(a) The reasonable requircments of the public with respect to the patented invention have not been satisfied

(b) The patentee is a company which has gone bankrupt

(c) The patented invention is not available to the public at a reasonably affordable price

(d) The patented invention is not worked in the territory of India.

Solution: (b) The patentee is a company which has gone bankrupt

Section 84(1) of the Patents Act, 1970 lays down the grounds for compulsory licensing. The patentee is a company which has gone bankrupt" is not listed as a ground under Section 84.

(9) **Which of the following could he minimum fees to be paid for an application for patent filed by an educational institution as on March, 2022?**

(a) 1000 (b) 1600 (c)4000 (d) 8000

Solution: (b) 1600

The Patents (Amendment) Rules, 2021 (effective September 21, 2021) introduced educational institutions as a new category of applicants eligible for reduced fees. Rule 7 was amended to include "educational institution" alongside natural persons and start-ups for concessional fees. Thus, the minimum fee payable by an educational institution for filing a patent application in March 2022 was ₹1,600.

(10) **Prarthi is an inventor for an application for patent filed by a university. If her name has to appear in the patent certificate, a request has to be made in……..**

(a) Form 7 (b) Form 15 (c) Form 8 (d) Form 11

Solution: (c) Form 8

Form 8 is the correct option because this is the prescribed form under section 28 for requesting mention of the inventor's name in the patent certificate. While other forms mentioned in question are meant for different purposes as indicated below:

Form 7 – Notice of opposition under Section 25.
Form 11 – Application for direction of the Controller under Section 51 (co-ownership issues).
Form 15 → Application for restoration of lapsed patent.

(11) **Ms. LakshmiPriya wishes to file a Patent application in India, but she came to know some of the inventions are not patentable in accordance with Indian Patents Act. Could you please help her to Match List I with list 2 and select correct code.**

List I	**List 2**
I. Section 3(l)	**(a) Presentation of an information**
2. Section 3(m)	**(b) Topography of integrated circuits**
3. Section 3(n)	**(c) Method of performing mental act**
4. Section 3(o)	**(d) Television productions**

Codes
(a) Id. 2e. 3a. 4b (b) Ia. 2b. 3c. 4d (c) Ic. 2a. 3b. 4d (d) Ib. 2c. 3d. 4a
Solution: (a) Id. 2e. 3a. 4b

I. Section 3(l)	(a) Television productions
2. Section 3(m)	(b) Method of performing mental act
3. Section 3(n)	(c) Presentation of an information
4. Section 3(o)	(d) Topography of integrated circuits

(12) Time limit under Rule 130(2), within which an application for selling aside an ex parte Order passed by the Controller shall be……. from the date of communication of the Order
(a) One month (c) three months
(b) four months (d) none of the above

Solution: (a) One month
Under Rule 130(2) of the Indian Patent Rules, 2003, an application for setting aside an ex parte order passed by the Controller must be made in Form 24 within one month from the date of communication of the order.

(13)Antony owns a small workshop in Mangalore. He has invented a new coconut grater. lie has filed a provisional specification on 01.06.2021. As the time limit for filing complete specification is only a fortnight away, Antony realizes that he needs 4 more months to complete his invention and file a complete specification. Which of the following is appropriate (as per statute) advice to Antony?

(a) The time limit for filing complete specification can be extended by 4 months by filing form 4.
(b) Antony can file the complete specification after 4 months along with a request to postdating of the application by 4 months.
(c) Antony can allow this application to be abandoned by not filing complete specification and file new application after 4 months with complete specification.
(d) Antony can file a request for post dating the current application by 4 months immediately and file complete specification within 4 months.

Solution: (d) Antony can file a request for post dating the current application by 4 months immediately and file complete specification within 4 months.

Antony filed a provisional specification on 01.06.2021, and under Section 9(1) of the Patents Act, 1970, he must file the complete specification within twelve months from that date. This statutory deadline cannot be extended and Form-4 cannot be used to seek an extension for filing the complete specification. However, under Section 17 (Post-dating of Application), the Controller may post-date the application up to 6 months from the date of filing, on request made before filing the complete specification. Therefore Antony should immediately file a request u/s 17 for post-dating the provisional application by four months. By post-dating the provisional by 4 months, the new effective date becomes 01.10.2021, and Antony gets 12 months from that new date to file the complete specification. Thus, Antony gets the extra 4 months he needs.

(14) CovidMed Ltd. wants to manufacture an anti-malaria drug in India solely for exporting to an Island nation. Accacia, a Swedish MNC holds the patent for the drug in India. Which of the following is NOT a requirement to be met by CovidMed for obtaining a compulsory licence for the export of the drug to the Island nation?
(a) that CovidMed has obtained a compulsory licence for the drug in the Island nation or by notification allowed the import
(b) that CovidMed has obtained a compulsory licence in India under section 84
(e) that the island nation do not have sufficient manufacturing facility in pharmaceutical sector
(d) that the island nation is using the importation of the drug for addressing their public health problems

Solution: (d) that the island nation is using the importation of the drug for addressing their public health problems.

Under Section 92A of the Patents Act, 1970, a compulsory licence may be granted in India for the manufacture and export of a patented pharmaceutical product to a country that lacks adequate manufacturing capacity in the pharmaceutical sector and requires the drug to address public health problems. For such a licence, it is necessary that;

- importing country has either granted a compulsory licence for the drug or has issued a notification permitting its import,
- the import is specifically for addressing public health needs,
- the importing country does not possess sufficient manufacturing capability.

However, there is no requirement that the Indian applicant must first obtain a compulsory licence under Section 84 for working the patent within India. Therefore, the condition that CovidMed must first obtain a compulsory licence in India under Section 84 is not a statutory requirement.

1. **A Danish citizen who is residing in India wishes to file first application at Denmark, whether**
2. **he has to take permission from Patent office India. before tiling in Denmark**
3. **he has to take permission from Danish Patent office. before tiling in Denmark.**
4. **he has to take permission from Denmark embassy In India. before filing in Denmark.**
5. **he has to take permission from Indian embassy In Denmark, before filing in Denmark.**

Solution: (a) he has to take permission from Patent office India. before tiling in Denmark
Under Section 39 of the Indian Patents Act, 1970, any person who is resident in India must obtain prior written permission from the Indian Patent Office before filing their first patent application in a foreign country. Since the Danish citizen is *residing in India*, he is legally considered a "person resident in India" for the purpose of foreign filing requirements. Therefore, before filing his first application in Denmark, he must seek permission from the Indian Patent Office. He is not required to obtain permission from the Danish Patent Office, Denmark Embassy in India, or Indian Embassy in Denmark.

(15) **Arrange the following items related to post-grant opposition in the most likely chronological order**
1. Revocation of patent
2. Opposition board formation
3. Filing of post grant opposition
4. Grant of patent
(a) 1,3,4,2 (b)1,2,3,4 (c)4,3,2,1 (d)1,4,2,3

Solution: (c)4,3,2,1
Chronological order
Grant of patent- A post-grant opposition can only be filed *after* the patent is granted.
Filing of post-grant opposition- Any "person interested" may file a post-grant opposition under Section 25(2) within 12 months from the date of publication of grant.
Opposition Board formation- After the Controller receives the opposition, an Opposition Board is constituted under Rule 56 to examine the opposition and prepare a recommendation.
Revocation of patent (if decided)- After hearing both parties and considering the Board's recommendation, the Controller may revoke, maintain, or amend the patent under Section 25(4).

(17) Mr. Daivam would like to know times limits generally available to meet requirements in accordance with the Patents law. Match List 1 and List 2 and select correct answers

List 1	List 2
I. Information and undertaking under section 8(1)	(a) within 31 months
2. Reply to First Examination report with extension	(b) within 48 months
3. PCT national phase entry to India	(c) within 6 months
4. Request for Examination	(d) within 9 months

Codes
1. **la,2b,3c,4d (b) 1c,2d,3a,4b (c) 1b,2e,3d,4a (d) 1d,2a,3b,4c**
Solution: (b) 1c,2d,3a,4b

List 1	List 2	Reason
1. Information & Undertaking under Section 8(1)	(c) within 6 months	Section 8(1) and Rule 12 (1A) requires submission of Form-3 within 6 months from the filing date.
2. Reply to First Examination report (FER) with extension	(d) within 9 months	Under Rule 24B(5) & (6), FER reply time is 6 months, extendable by 3 months, totaling 9 months.
3. PCT National Phase Entry in India	(a) within 31 months	Rule 20(4)(i) allows national phase entry up to 31 months.
4. Request for Examination (RFE)	(b) within 48 months	Rule 24 B mandates RFE within 48 months from priority/filing date. [Note: Now as per the Patents (Amendment) Rules, 2024 this timeline is reduced to 31 months from priority/filing date for the applications filed on or after 15 March, 2024]

(18) Minimum age limit for a person to he mentioned as inventor in a patent application shall be
(a) 18 years
(b)21 years
(c) 14 years
(d) None of the above

Solution: (d) None of the above

There is no minimum age limit prescribed under the Indian Patents Act, 1970 or Patent Rules, 2003 for a person to be named as an inventor.

(19) **Controller has which one of the following powers of a civil court:**
(a) Issue an order to arrest a person in case of infringement with the help of Police
(b) Order of imprisonment to the defaulter.
(c) Examine a person on oath and take evidence on oath
(d) None of the above.

Solution: (c) Examine a person on oath and take evidence on oath

Section 77 - Controller to have powers of a civil court, states that the Controller shall have the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters:
(a) receiving evidence
(b) administering oaths
(c) issuing commissions for examination of witnesses
(d) requiring discovery and production of documents
(e) requisitioning public records
Thus, the Controller can administer oaths and take evidence on oath as mentioned in option c.

(20) **Which of the following time limits can be extended by the controller on a petition filed under 138-**
(a) time limit for putting the application in order for grant
(b) time limit for filing the request for examination
(c) time limit for paying national phase application in India
(d) time limit for furnishing proof of right

Solution: This question is based on the legal position as it existed in 2022, when option (d) was the correct answer. However, after the Patents (Amendment) Rules, 2024, all the time limits mentioned in the question have become extendable under Rule 138.
The Patents (Amendment) Rules, 2024 have completely replaced Rule 138. Earlier, Rule 138 had a clear *exclusion list*- certain deadlines like national phase entry, request for examination and opposition deadlines could not be extended at all.
With the 2024 amendment, this exclusion list has been removed. The new Rule 138 gives the Controller broad power to extend or condone delay for any timeline under the Rules, up to six months, if the applicant files one or more Form4 requests within that sixmonth period.
As a result, deadlines that were once considered strict or "nonextendible" like the national phase entry deadline and the request for examination deadline can now be extended or condoned. However, such extensions involve high official fees and depend on the Controller's satisfaction.

(21) **Radhamani, an IPR student wishes to know the important case laws on various provisions related to Patent in India. Match List I and List 2 and select correct code**

List I	**List 2**
1. Compulsory licensc	**(a) Novartis Ag vs. union of India**
2. Section 3d	**(b) Bayers corporation vs. Natco Parma**
3. Date of grant of Patent	**(c) Bajaj Auto Limited vs. TVS Motor company**
4. Infringement	**(d) Dr. Snchalata C. Gupta vS.Union of India**

Codes
(a) 1a.2b.3c.4d.
(b) 1b. 2a. 3d. 4c
(c) 1d, 2a, 3b, 4b
(d) 1c, 2d, 3b, 4a

Solution: (b) 1b. 2a. 3d. 4c

List 1	List 2	Brief Explanation	Statutory Importance
1) Compulsory licence	**b) Bayer Corporation vs. Natco Pharma (2012)**	**First compulsory licence in India; Natco allowed to make Bayer's cancer drug at affordable price.**	**Interpreted Section 84 (grounds for compulsory licence) and Section 90 (terms of licence). Established precedent for balancing patent rights with public health.**
2) Section 3d	**a. Novartis AG vs. Union of India (2013)**	**Supreme Court rejected Glivec patent; clarified "evergreening" not allowed unless real therapeutic efficacy shown.**	**Landmark interpretation of Section 3(d) clarified "enhanced efficacy" requirement, preventing trivial modifications from being patented.**
3) Date of grant of Patent	**d) Dr. Snehlata C. Gupte vs. Union of India (2010)**	**Court held that the date of grant is the date of the Controller's order, not the later publication date.**	**Clarified Section 43 (grant of patents) and linked to Section 25(2) (post-grant opposition timelines). Ensures procedural certainty for oppositions and renewals.**
4) Infringement	**c) Bajaj Auto Ltd. vs. TVS Motor Co. (2009)**	**Dispute over DTS-i technology; highlighted how courts assess patent infringement in mechanical inventions.**	**Applied Section 48 (rights of patentee) and Sections 104–114 (infringement suits, defenses, reliefs). Demonstrated how infringement is tested against claim scope.**

(22) Assertion (A): Patent right is a negative right.
Reason(R): Patentee has exclusive right to prevent third parties, who do not have his consent, from using his invention.
Codes

1. **Both (A) and (R) arc true. and (R) is the correct explanation of (A).**
2. **Both (A) and (R) arc true, but (R) is not the correct explanation of (A).**
3. **(A) is true. but (R) is false.**
4. **(A) is false, but (R) is true.**

Solution: (a)Both (A) and (R) arc true. and (R) is the correct explanation of (A).

A patent does not give the patentee an automatic positive right to use the invention. Instead, it gives the right to exclude others from making, using, selling, or importing the invention. That's why it is called a negative right.

(23) **Arrange the following items related to pre-grant opposition procedure (section 25(1)) under Patents Act in the most likely chronological order;**

1. Filing of pre-grant opposition by way of representation
2. Publication of patent application
3. Applicant filing reply to the pre-grant representation
4. Hcaring before thc controller

(a)1, 2, 3, 4 (b)2, 1,3,4 (c)4, 3, 1, 2 (d)2, 3, 4, 1

Solution: (b) 2, 1,3,4

Chronological Order of items:

- Publication of patent application (Step 2)
- Opposition can only be filed after the application is published under Section 11A.
- Filing of pre-grant opposition by way of representation (Step 1)
- Any person may file a representation opposing the grant of patent.
- Applicant filing reply to the pre-grant representation (Step 3)
- The applicant is given an opportunity to respond to the opposition.
- Controller considers both sides and may call for a hearing before deciding. Last step will be Hearing before the Controller (Step 4)

(24) **Mr. Akhil has already filed his Patent application, but he is confused with the applicability of the forms provided. Could you please help him to Match List I with list 2 and select correct code.**

List1	List 2
1. **Request for publication**	**(a) Form 6**
2. **Request for Expedited examination.**	**(b) Form 13**
3. **Application for amendment of the application for Patent**	**(c) Form 9**
4. **Request regarding change in applicant for Patent**	**(d) Form 18 A**

Codes	1	2	3	4
(a)	(a)	(b)	(c)	(d)
(b)	(c)	(d)	(b)	(a)
(c)	(d)	(b)	(a)	(c)
(d)	(b)	(c)	(d)	(a)

Solution: b) [(c) (d) (b) (a)]

List-1	List-2	Explanation
1.Request for publication	(c) Form 9	Form 9 is used when the applicant wants early publication of a patent application before the normal 18-months period.
2.Request for Expedited Examination	(d) Form 18A	Form 18A is for accelerated/expedited examination under Rule 24C for categories like start-ups, women applicants, government applicants, etc.
3.Application for amendment of the application for patent	(b) Form 13	Form 13 is used for amending specifications, claims, or any document filed, under Section 57.
4.Request regarding change in applicant for patent	(a) Form 6	Form 6 is filed when there is a change in the name, address or details of the applicant, or for transferring the application to another applicant.

(25) **Assertion (A): Applicant does not have unconditional freedom to file a divisional application**
Reason (R): A divisional application can he filed by applicant only when there is more than one invention in the specification
(a) Both A and R are true: and R is a correct explanation for A
(b) Both A and R arc true; and R is not the correct explanation for A
(c) A is true, but R is false
(d) A is false; but R is false

Solution: (a) Both A and R are true: and R is a correct explanation for A

Under Section 16 of the Patents Act, 1970, an applicant can file a divisional application only when the parent application contains more than one invention that is when the claims lack unity of invention. This requirement arises from the principle of unity of invention, which means a divisional is permissible only when the specification discloses multiple inventions or when the Controller objects for lack of unity. Therefore, the applicant cannot freely decide to file a divisional anytime they want.

(26) You have filed an application for patent. Claim 1 of the specification recites features A,B,C and D of the invention. Claim 2 is a dependent claim reciting a feature E. Examination report cites document D1 for anticipation (lack of novelty) and has identified A, B and D in D1. Which of the following is most likely to be your response to the examination report?
(a) Amend claim 1 to add the feature E of claim 2 into claim 1 to render claim 1 novel.
(b) Withdraw application as it is likely to be refused.
(c) Retain claim 1 as such and point out to controller that D1 do not disclose feature E.
(d) Retain claim 1 as such and point out to controller that D1 do not disclose all features of claim 1
Solution: (d) Retain claim 1 as such and point out to controller that D1 do not disclose all features of claim 1

A claim is considered anticipated (that is lacking novelty), only when all of its features are disclosed in a single prior-art document. In the present case, Claim 1 contains the features A, B, C, and D, whereas the cited document D1 discloses only A, B, and D. The feature C is not found in D1. Since at least one essential feature of Claim 1 is absent from the prior art, the claim is not fully anticipated, and therefore Claim 1 remains novel over D1.

(27) Patent shall not be granted before the expiry of …… months from the date of publication of the application under Section 11 A.
(a) 6 months (b) 8 months (c) 12 months (d) 9 months

Solution: (a) 6 months

As per Rule 55 under Patents Rules 2003: "*Notwithstanding anything contained in sub-rule (1), no patent shall be granted before the expiry of a period of six months from the date of publication of the application under section 11A*."

(28) **A US citizen is a patentee in India; his patent rights arc valid in**
(a) **India (b) USA (c) India and USA (d) All of the above**

Solution: (a) India

Patent rights are territorial, meaning they are valid only in the country where the patent is granted. If a U.S. citizen has a patent granted in India, his rights exist only in India. A U.S. patent provides rights only within the USA. There is no automatic global patent and patent rights do not extend to other countries unless separate applications are filed and granted there.

(29) **Meenakshi filed an application accompanied with a provisional specification. She filed a complete specification within 6 months. Claim 1 is partially disclosed in provisional application and partially disclosed in complete specification. The priority date of the claim shall be,**
(a) Date of filing of the complete specification
(b) Date of filing of provisional specification
(c) Controller shall decide based on the disclosure of the specifications and the content of the claims
(d) As the subject matter of claims is partially disclosed. the priority date will be considered as between the date of filing of provisional and complete specification.

Solution: **(a) Date of filing of the complete specification**

According to section 11(3)(b) of the Patents Act, 1970, the priority date of a claim is the date on which the entire subject matter of that claim is first disclosed in the specification. If the entire claim subject matter is fully disclosed in the provisional, then the claim receives the provisional filing date as its priority. However, if the claim is partially disclosed in the provisional and partially in the complete specification, then the complete specification becomes the first document where the entire subject matter appears. In such a situation, the priority date shifts to the date of filing of the complete specification.

(30) **Nirmala, an Indian scientist, working in NASA, files an International Patent application (PCT) with basic application in USA on 30th Jan 2010. She plans to file National Phase application in India, which of the following is correct:**
(a) She has to file National Phase application within 31 months of the from the basic(USA) application filing date.
(b) She has to file National Phase application within 48 months of the from the basic(USA) application filing date
(c) She has to file National Phase application within 12 months of the from the basic (USA) application filing date.
(d) None of the above

Solution: **(a) She has to file National Phase application within 31 months of the from the basic(USA) application filing date.**

For a PCT international application entering India, the time limit for national phase entry is governed by Rule 20(4)(i) of the Indian Patent Rules. India allows 31 months from the priority date (or international filing date if no priority) to enter national phase.
In this question, the basic application in the USA (dated 30 Jan 2010) is treated as the priority date. Therefore, Nirmala must enter the Indian national phase on or before 31 months from 30 Jan 2010.

Part B

Part B is of 10 marks and consists of 10 true/false type questions of 1 mark each. For each question, out of four options only one option is correct. Answer should be given as a. b, c or d as given herein below:
a. Statement 1 is true, 2 is false
b. Statement 1 is false, 2 is true
c. Statement 1 and 2 both are false
d. Statement 1 and 2 both are true

(31) **1. A request for examination under Section 11B can be filed by the applicant or any interested person.**
2. **If request for examination is filed by any interested person, then the First Examination Report (FER) is issued to the interested person who has filed the request for examination.**

Solution: a. Statement 1 is true, 2 is false

Statement 1: "A request for examination under Section 11B can be filed by the applicant or any interested person."

It is True.
Reason: As per section 11B(1) of the Patents Act, 1970, which states that "No application for a patent shall be examined unless the applicant or any other interested person makes a request in the prescribed manner for such examination.

Statement 2. "If request for examination is filed by any interested person, then the First Examination Report (FER) is issued to the interested person who has filed the request for examination."

It is False.

Reason: According to Rule 24B(3) Even when an interested person files the RFE, the FER is issued only to the applicant (or their patent agent) never to the interested person.
Rule 24B(3) states that *A first statement of objections, along with any documents as may be required, shall be issued by the Controller to the applicant or his authorised agent within one month from the date of disposal of the report of examiner by the Controller: Provided that where the request for examination was filed by a person interested, only an intimation of such examination may be sent to such person interested.*

(32) **1. An application for review of decision shall be filed in Form 24 within three months from the date of communication of the decision.**

2. An application for review of decision shall be filed in Form 23 within one month from the date of communication of the decision.

Solution: c. Statement 1 and 2 both are false.

Statement 1:"An application for review of decision shall be filed in Form 24 within three months from the date of communication of the decision."

It is False

Reason: Under Rule 130(1) of the Patent Rules, 2003, an application for review of the Controller's decision must be filed in Form 24 within one month, not three months.

Statement 2: "An application for review of decision shall be filed in Form 23 within one month from the date of communication of the decision."

It is False

Reason: Although the time limit of one month is correct, the correct form is Form 24, not Form 23. Hence the statement is false.

(33) **You have filed an application on behalf of an SME client. The distinguishing feature of the invention is a hinge made of aluminum. Controller has cited a prior art for anticipation which teaches all limitations of your claim 1, except that the hinge is taught to be made of any metals.**

1. **The claims are anticipated. Even though aluminum is not specifically disclosed in the prior art, person skilled in the art readily recognizes aluminum as a metal.**
2. **The claims are NOT anticipated. Even though aluminum is readily recognized as a metal by a person skilled in the art, aluminum has not been specifically disclosed in prior art.**

Solution: b. Statement 1 is false, 2 is true

Statement 1:"The claims are anticipated. Even though aluminum is not specifically disclosed in the prior art, person skilled in the art readily recognizes aluminum as a metal."

It is False.

Reason: Under Indian patent law, anticipation requires explicit disclosure of the claimed feature. Since the cited prior art discloses only "metal" in general but does not specifically teach aluminum, the claim is not fully anticipated.

Statement 2: "The claims are NOT anticipated. Even though aluminum is readily recognized as a metal by a person skilled in the art, aluminum has not been specifically disclosed in the prior art."

It is True

Reason: The prior art fails to disclose the specific material "aluminum," which is the novel distinguishing feature.Hence, the claim is not anticipated under Section 13(1)(b), which requires the Controller to investigate whether the invention has been anticipated by prior publication. In this situation the prior art only disclosed "metal" in general. Aluminum is indeed a metal, but not specifically disclosed. Thus a generic disclosure does not anticipate a specific species ("aluminum") unless the species is directly and inevitably included.

(34) **Gita and Sita are final-year B-Tech students. They have assigned their invention to ABC Inc.**

1. **Gita and Sita can sign the declaration of inventors in Form 1 and ABC can furnish it as proof of right.**
2. **Gita and Sita can sign a deed of assignment transferring their rights to apply for patent to ABC and ABC can furnish the assignment deed as proof of right.**

Solution: d. Statement 1 and 2 both are true

Statement 1. Gita and Sita can sign the declaration of inventors in Form 1 and ABC can furnish it as proof of right.

It is True.

Reason: Section 7(2) of the Patents Act requires the applicant (if not the inventor) to furnish proof of right to apply. The Indian Patent Office (IPO) practice allows such proof to be provided in two ways:

By endorsement / declaration in Form-1 where inventors expressly state that they have assigned the right to the applicant, Or by a separate assignment deed.
Further Manual of Patent Office Practice and Procedure on page no. 15 confirms:
"Form-1 contains an endorsement by the true and first inventor assigning the right to apply… which suffices as proof of right."
Thus, an inventor-signed Form-1 is accepted as proof of right.

Statement 2. Gita and Sita can sign a deed of assignment transferring their rights to apply for patent to ABC and ABC can furnish the assignment deed as proof of right.

It is True.

Reason: Section 7(2) explicitly states that an applicant who is not the inventor must file a written assignment or other proof of right. A duly executed assignment deed clearly transferring rights from inventors to ABC fully satisfies this requirement.
Thus, a separate assignment deed is also valid proof of right.

(35) **1. A patent agent can appear for a hearing before the Controller in proceedings related to a patent application.**
2. An advocate, who is not a patent agent, can appear for a hearing before the Controller in proceedings related to a patent application.

Solution: d. Statement 1 and 2 both are true

Statement 1: "A patent agent can appear for a hearing before the Controller in proceedings related to a patent application."

It is True

Reason: Under Section 127(1) of the Patents Act, a registered patent agent is permitted to: "practice before the Controller," which includes preparing documents, filing, communicating, and appearing in hearings.
Thus, a patent agent is authorized by law to appear in hearings before the Controller.

Statement 2: "An advocate, who is not a patent agent, can appear for a hearing before the Controller in proceedings related to a patent application."

It is True

Reason: According to Section 132(b) of the Patents Act - An advocate (lawyer), even if not registered as a patent agent, can take part in hearings before the Controller and represent a party in proceedings under the Act.
Thus, an advocate may appear and take part in hearings before the Controller.

(36)**1. Renewal fees shall not be paid for the Patent of Addition.**
2. Renewal fees shall not be paid for the Patent granted for divisional application.

Solution: a. Statement 1 is true, 2 is false.

Statement 1. "Renewal fees shall not be paid for the Patent of Addition."
It is True**.**

Reason: As per Section 55(2) of the Patents Act, No renewal fees shall be payable in respect of a patent of addition; however, if the main patent ceases to exist, the patent of addition may remain in force only if the renewal fees are paid."
Thus, renewal fee is not independently payable for a patent of addition.

Statement 2: "Renewal fees shall not be paid for the Patent granted for divisional application"
It is False**.**

Reason: A divisional application is treated as a separate and independent patent under Section 16(3) (divisional is "treated as a substantive application") and after grant, renewal fees are payable under Section 53 like any ordinary patent. There is no exemption from renewal fees for divisional patents.

Therefore, renewal fees must be paid for divisional patents.

(37) **1. Patent agents shall file all documents at Patent Office only by electronic transmission duly authenticated, when acting on behalf of multinational companies.**

2. Patent agents may file physical copies of documents at Patent Office, when acting on behalf of applicants who are natural persons.

Solution: a. Statement 1 is true, 2 is false

Statement 1: "Patent agents shall file all documents at Patent Office only by electronic transmission duly authenticated, when acting on behalf of multinational companies".
It is is true.

Reason: Rule 6(1A) states: "Patent agents shall file, leave, make or give all documents only by electronic transmission duly authenticated."
Therefore, the statement is true, because it correctly reflects the mandatory electronic filing requirement for patent agents.

Statement 2: "Patent agents may file physical copies of documents at Patent Office, when acting on behalf of applicants who are natural persons."

It is False.

Reason: Rule 6(1A) does not allow patent agents to file physical documents for any applicant category. Even if the applicant is a natural person, all filings by a patent agent must be electronic.

(38) **Gautam has filed an ordinary application for his invention, later on, he came to know that he can file PCT international application within twelve months from the date of filing of Indian application. Claiming Indian Priority, he has filed a PCT application and he has filed the national phase application in India.**

1. **Gautam shall make the request for examination for both the applications filed in India.**
2. **Gautam shall make the request for examination only for one of the applications filed in India.**

Solution: b. Statement 1 is false, 2 is true

Section 135(3) of the Patents Act, applies in above mentioned situation where an applicant first files an ordinary patent application in India and later files a PCT international application designating India while claiming priority from that earlier Indian filing.
In such cases, the law treats the previously filed Indian application as the basic application for priority purposes. In such situation, request for examination under Section 11B shall be made only for one of the applications filed in India. This means that even though two applications exist in India- one being the original Indian filing and the other being the national phase application derived from the PCT filing, the applicant is not permitted to pursue both. The IPO will examine only one application, and the applicant must choose which one to request examination for.

Thus, Gautam must file RFE for only one application.

(39) **A company CoviCare Pharma, wants to change its address of service and also wants to make voluntary technical amendment in the specification of the same application.**
The above two statutory action shall be completed by

1. **Filing two Form 13.**
2. **Filing one Form 13 and one Form 6.**

Solution: a. Statement 1 is true, 2 is false

CoviCare Pharma wishes to carry out two statutory actions in respect of the same patent application: first, to change its address of service, and second to make a voluntary technical amendment in the specification. Form 6 is used for change of applicant, therefore change of address of service cannot be carried out using Form 6.
Thus Form 13 is the statutory form for any amendment to an application or specification, and under Section 57 read with Rule 81, the Controller may allow amendments to any document filed, including:

- amendment to the specification, and
- amendment relating to address for service

(because the address for service is part of the application record and can be amended using Form 13 according to IPO practice). Thus, two separate amendments for the same application may be filed using:

- One Form 13 -for voluntary technical amendment in specification
- Another Form 13 -for amendment of address for service.

(40) **Barbara, a US citizen, has been residing in India continuously for the past 2 years. She is a scientist at the global research centre of an US automobile company in Bangalore. Barbara has invented a novel airbag release mechanism for which her employer wishes to apply for patent in USA. Her employer does not wish to file any patent application in India as their products are not sold here.**

1. **Barbara and her employer can proceed with the US application without making any request for permission under Section 39 as she is a US citizen working with a US company.**
2. **Barbara has to make a request for permission to apply for patent outside India under Section 39 before proceeding with the patent application in USA.**

Solution: b. Statement 1 is false, 2 is true
Section 39(1) states that "*No person resident in India shall, except with written permission of the Controller, make or cause to be made any application outside India…*"

Section 39 applies based on where the invention is made, not the inventor's nationality or employer. Barbara has been residing in India for 2 years and is carrying out inventive work in India. Therefore, she is a person resident in India for the purpose of Section 39, and she must obtain foreign filing permission (FFP) before filing a patent application outside India.

Part C
Part C is of 30 marks and consists of 10 multiple choice questions of 3 marks each with more than one options correct (at least two options correct).

(41) **An application for a patent shall be published under section 11-A except in cases where the application (a) in which secrecy direction is imposed under section 35. (b) has been abandoned under section 9(1). (c) has been withdrawn after the issuance of FER. (d) has been withdrawn three months prior to publication u/s 11-A.**
Solution: a,b,d
As per section 11 A(3) of the Patents Act 1970, *Every application for a patent shall, on the expiry of the period specified under sub-section (1), be published, except in cases where the application—*
(a) in which secrecy direction is imposed under section 35; or
(b) has been abandoned under sub-section (1) of section 9; or
(c) has been withdrawn three months prior to the period specified under sub-section (1)].

(42) An application for patent has been filed along with filing fees of 1930 rupees. Which of the following could be true about the said application? (a) Application is filed by a startup (b) Complete specification has 31 pages and 7 claims (c) Complete specification has 24 pages and 11 claims (d) Application has been filed online
Solution : a,b
Base patent filing fee (Startup/Natural person): 1750 (physical filing)
Extra 1 page of specification: 180
Total cost : 1750 +180= 1930/-

(43) Florina is a housewife. She has made modifications on the mopping device which has made her task much easy now. If she were to approach you for applying for a patent, which of the following would be your advice to her as her patent agent? (a) Florina's invention is not patentable as it is a modification of existing device. (b) Florina can file a request for expedited examination if she is the applicant for the invention (c) Florina, being a women applicant, is entitled to waiver of application fee (d) Florina can assign her right to apply for patent to home appliances MNC

Solution: b,d
Under Rule 24C(1)(d) of the Patents Rules, a woman applicant is eligible to file a request for expedited examination, provided she is the applicant. Since Florina is a woman and intends to file the application herself, option (b) is correct.
Florina, as the true and first inventor, is legally permitted to assign her rights to apply for a patent to any person or company under Section 6(1)(b) of the Patents Act. Therefore, if she wishes, she may assign her invention to a home appliances MNC. This makes option (d) correct.

(44) **An applicant may file a request for expedited examination on the following grounds – (a) that India has been indicated as the competent International Searching Authority. (b) that the applicant is a startup (c) that the applicant is a small entity (d) that the applicant is a department of the Government.**
Solution: a,b,c,d
As per rule 24C(1) of Patent Rules 2003, following categories are allowed to apply for expedited examination;
(a) that India has been indicated as the competent International Searching Authority or elected as an International Preliminary Examining Authority in the corresponding international application; or
(b) that the applicant is a startup; or
(c) that the applicant is a small entity; or
(d) that if the applicant is a natural person or in the case of joint applicants, all the applicants are natural persons, then the applicant or at least one of the applicants is a female; or
(e) that the applicant is a department of the Government;

(45) **Kavya is a teacher residing in Thrissur, Kerala. She wishes to file an application for patent in physical mode. Which of the following is correct means for her to pay the fee payable as per rule 7? (a) in cash at the appropriate patent office (b) in the form of DD drawn in favour of Controller General of Patents, payable at Mumbai. (c) in the form of DD drawn in favour of the head of office, Patent office payable at Chennai (d) in the form of DD drawn in favour of Controller of Patents, Payable at Chennai.**
Solution: a,d
As per rule 7(2) (a) (a) of the Patents Rules, 2003, *the fees payable under the Act or these rules may be paid at the appropriate office either in cash or through electronic means or may be sent by bank draft or banker's cheque payable to the Controller of Patents and drawn on a scheduled bank at the place where the appropriate office is situated and if the draft or banker's cheque is sent by post, the fees shall be deemed to have been paid on the date on which the draft or banker's cheque has actually reached the Controller.*
Thus Kavya can pay fee in cash at the appropriate patent office or can pay fee in the form of DD drawn in favour of Controller of Patents, Payable at Chennai.

(46) The claim or claims of a complete specification shall relate to (a) a single invention. (b) a group of inventions linked so as to form a single inventive concept. (c) shall be clear and succinct. (d) shall be fairly based on the matter disclosed in the specification.
Solution: a,b,c,d
All options are correct, as per section 10(5) of the Patents Act 1970, which states that *The claim or claims of a complete specification shall relate to a single invention, or to a group of inventions linked so as to form a single inventive concept, shall be clear and succinct and shall be fairly based on the matter disclosed in the specification.*

(47) **In reliefs in suits for patent infringement under section 108 of the Act – (a) Court may grant Injunction (b) Court may grant either damages or an account of profits. (c) Court may order to arrest the infringer. (d) Court may order to forfeit or destroy the infringing goods.**
Solution: a,b,d
Options a,b,d are correct as per section 108 of the Patents Act 1970, which deals with Reliefs in suits for infringement and states that
(1) *The reliefs which a court may grant in any suit for infringement include an injunction (subject to such terms, if any, as the court thinks fit) and, at the option of the plaintiff, either damages or an account of profits.*
(2) The court may also order that the goods which are found to be infringing and materials and implement, the predominant use of which is in the creation of infringing goods shall be seized, forfeited or destroyed, as the court deems fit under the circumstances of the case without payment of any compensation.

(48) **Who are the persons entitled to apply for patents? (a) Any person claiming to be true and first inventor of the invention. (b) 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) Any legal representative of any deceased person who immediately before his death was entitled to make such an application. (d) Importer of the invention.**

Solution: a,b,c

As per section 6(1) the Patents Act 1970, A patent application may be made by:
- Any person claiming to be the true and first inventor
- Any person being the assignee of the true and first inventor
- The legal representative of a deceased person who was entitled to apply

Importers are NOT included. Therefore options a,b,c are correct.

(49) **The patent application can be treated as withdrawn under which of the following circumstances? (a) In the case the applicant or any other interested person does not make a request for examination of the application for patent within the prescribed period as specified. (b) Under the condition that the applicant may at any time after filing the application but before the grant of patent withdraw the application by making a request in prescribed manner. (c) Response to first examination for the patent application is not filed within prescribed time. (d) Pre-grant opposition has been filed for the patent application.**

Solution: a,b

A patent application may be treated as withdrawn under specific circumstances provided in the Patents Act. First, under Section 11B(4), if the applicant or any interested person fails to file a request for examination (RFE) within the prescribed period, the application is treated as withdrawn, making option (a) correct.
Second, an applicant may voluntarily withdraw the application at any time before grant, which is permissible under Section 11A(3)(c) and processed through the prescribed request, making option (b) correct.

(50) Aditya has filed two applications for patent with provisional specification. Which of the following conditions ought to be met, for the controller to allow Aditya to file one complete specification in respect of the two provisional specifications? (a) Invention of the two provisional specifications is cognate or one is a modification of the other. (b) The complete specification shall be filed within 12 months from the date of filing of the last filed provisional specification. (c) Inventors for both the application should be same. (d) The complete specification shall be filed within 12 months from the date of filing of the first provisional application.

Solution: a,d

Under Section 9(2) of the Patents Act, a single complete specification may be filed in respect of two or more provisional applications only if the inventions disclosed therein are cognate or one is a modification of the other.
Further, the same section clearly states that when multiple provisional applications exist, the 12-month deadline for filing the complete specification is always calculated from the date of filing of the earliest provisional application, not the last one.

RAS Intellect Pvt Ltd

2023: PAPER 1 (SOLVED)

PATENT AGENT EXAMINATION, 2023
(Under Section 126 of the Patents Act, 1970)
Part A

Part A comprises of 60 marks and consists of 30 multiple choice questions with one option correct of 2 marks each.

1.Sagar who is an applicant of an invention drafted the specification himself and fIled the patent application. and asked his advocate who is not a patent agcnt to appear for the hearing. Is it allowed in accordance with the Patents Act?

a) Sagar can draft the specification but only a patent agent can attend the hearing.
b) As Sagar has drafted and filed the application himself, only he himself can appear for hearing
c) Sagar can draft the specification and advocate is allowed to attend the hearing.
d) Only patent agent is allowed to draft the specification and attend the hearing proceedings

Solution: c) Sagar can draft the specification and advocate is allowed to attend the hearing.
As per Patent Act and Rules, Sagar can draft an application and an advocate can attend the hearing.

2. Students of Easwari Institute of Technology invented a new stabilizer, and designed a particular shape to make it attractive, they have given a name for that stabilizer as 'PASSION'. Further they made an operating manual for the operation of the stabilizer. They need IPR protection for entire stabilizer. Could you please help them by matching exact legislation?

List 1	List 2
1. Invented stabilizer	(a) Copyright Act
2. Shape of stabilizer	(b) Trademark Act
3. PASSION	(c) Patent Act
4. Operating manual	(d) Design Act.

Codes
a) la, 2b, 3c, 4d **b) lc, 2d, 3b, 4a** **c) lb, 2a, 3c, 4d** **d) lc, 2d, 3a, 4b**
Solution: (b)
1(c), 2(d), 3(b), 4(a)

S. No.	Subject Matter	Type of Intellectual Property
1. Invented stabilizer	As per Patent Act 1970, this is a new functional invention with technical advancement.	Patent
2. Shape of stabilizer	As per Design Act, 2000, this is an aesthetic design applied to an article.	Design
3. PASSION (name)	As per Trademark Act, 1999, PASSION is a brand name/mark used to identify goods.	Trademark
4. Operating manual	As per Copyright Act, 1957, It is a literary work.	Copyright

3. Ms. Manisha wishes to fIle a patent application in India, but she came to know that some of the inventions are not patentable in accordance with Indian Patents Act, Could you please help her to Match List 1 and List 2 and select correct code.

List 1	List 2
1. Method of cultivating Rose flower	(a) Section 3(e)
2. Method of treating brain tumor.	(b) Section 3(f)
3. Bucket fitted with torch	(c) Section 3(h)
4. Solution of sugar and salt	(d) Section 3(i)

Codes a) Id, 2c, 3a, 4b b) Ic, 2d, 3b, 4a c) la, 2b, 3c, 4d d) 1b, 2c, 3d, 4a
Solution: b) Ic, 2d, 3b, 4a
Refer table below to match the options

Section 3	Description
3(a)	An invention which is frivolous or which claims anything obviously contrary to well-established natural laws
3(b)	An invention whose primary or intended use would be contrary to public order or morality or causes serious prejudice to human, animal, or plant life, health or environment
3(c)	Mere discovery of a scientific principle, abstract theory, or discovery of any living/non-living substance occurring in nature
3(d)	Mere discovery of a new form of a known substance which does not enhance efficacy; or new use of a known substance
3(e)	Mere admixture resulting only in aggregation of properties of components
3(f)	Mere arrangement or rearrangement or duplication of known devices each functioning independently
3(h)	A method of agriculture or horticulture
3(i)	Any process for medicinal, surgical, curative, prophylactic, diagnostic, therapeutic treatment of humans or animals
3(j)	Plants and animals in whole or part thereof (other than microorganisms), including seeds, varieties, and species, and essentially biological processes for their production
3(k)	A mathematical or business method, computer program per se, or algorithm
3(l)	A literary, dramatic, musical, or artistic work or any aesthetic creation whatsoever, including cinematographic works and television productions
3(m)	A mere scheme, rule, or method of performing mental act or playing game
3(n)	A presentation of information
3(o)	Topography of integrated circuits
3(p)	Traditional knowledge or aggregation/duplication of known properties of traditionally known components

TRAS Intellect Pvt Ltd

4. As part of the PCT procedure, an Indian applicant can receive an international search report and written opinion from?
a) any International Searching Authority under the PCT
b) any International Searching Authority declared competent by the Receiving Office of India
c) the International Bureau of WIPO
d) Both (b) and (c)
Solution: b) any International Searching Authority declared competent by the Receiving Office of India. Under the Patent Cooperation Treaty (PCT) and Indian Patent Rules, an Indian applicant who files a PCT international application can choose the International Searching Authority (ISA) from among those declared competent by the Indian Receiving Office (RO/IN).

5. PRINT INC. is a large corporation having a sizeable portfolio of patents for a single product. The product is very popular in the Indian market and some of the patents have been licensed to other companies. Choose the correct option regarding Form-27-
a) Form 27 should be filed by PRINT INC. but not by the licensees.
b) PRINT INC. can file a single Form 27 for multiple patents that are related to the said product.
c) The Form 27 should be filed before the expiry of a time period of 3 months counted from the end of the previous financial year in respect of which the form is being filed.
d) PRINT INC. cannot file a single Form 27 for multiple patents that are related to the said product.
Solution: b) PRINT INC. can file a single Form 27 for multiple patents that are related to the said product. After the Patents (Amendment) Rules, 2020, a single Form 27 can be filed for multiple related patents if they are interrelated and cover the same product.

6. Your client being a MNC filed a patent application and paid all the fees applicable. Your client later on becomes uninterested in the patent application and wishes to seek refund. Please select the options available to your client
a) Your client can assign the application to a natural person and claim refund of 'the difference' in the scale of fees between the fees charged from your client and the fees chargeable from the natural person with regard to all the fees paid previously.
b) Your client can assign the application to a natural person and claim refund of 'the difference' in the scale of fees between the fees charged from your client and the fees chargeable from the natural person with regard to only the fees paid for request for examination.
c) Your client can make a request for withdrawal of patent application before the issuance of first statement of objection and claim a refund of 90% of fee paid for request for examination.
d) Your client can make a request for withdrawal of patent application before the issuance of first statement of objection and claim a refund of 50% of fee paid for request for examination.
Solution: c) Your client can make a request for withdrawal of patent application before the issuance of first statement of objection and claim a refund of 90% of fee paid for request for examination.
Under Rule 7(4A) of the Patents Rules, upon the withdrawal of an application in respect of which a request for examination has been filed, but before issuance of first statement of objection, the fee may be refunded to the extent prescribed in the First Schedule on a request made by the applicant in Form 29.If an applicant withdraws a patent application before the issuance of the First Examination Report (FER), then 90% of the official fee paid for Request for Examination (RFE) is refundable.

7. An inventor living in Shimla, Himachal Pradesh wants to file his patent application along with a demand draft for the amount of fee payable.
Please select the correct options available to the inventor
a) The inventor may send his application by a courier company.
b) The inventor may send his application by speed post.
c) Both (a) and (b).
d) Only (a).
Solution: b) The inventor may send his application by speed post.

Under Rule 6(1) of the Patents Rules, 2003, a patent application may be filed by post or registered post or speed post or by electronic transmission duly authenticated, it shall be deemed to have been filed, left, made or given at the time when the mail containing the same would have been delivered in the ordinary course of post or registered post or speed post, or by electronic transmission duly authenticated, as the case may be. In proving such sending, it shall be sufficient to show that the mail was properly addressed and transmitted.

8. Your client a startup, which is facing existential challenges, filed a patent application 6 months ago which has not yet been published. Your client recently came to know that a competitor has started selling a product which is based on the invention disclosed in its patent application. The startup seeks your advice on the way forward that ought to be adopted. Please select the most prudent option(s)-
a) Your client should file a request for expedited examination along with a request for early publication at the earliest.
b) Your client should send a legal notice to the competitor that he will have to pay the damages, calculated from the date of filing of patent application.
c) Your client should send a legal notice to the competitor that he will have to pay the damages, calculated from the date of grant of patent.
d) Your client should file a request for expedited examination, a request for early publication and a request to the Controller of Patents to stop the competitor from infringing his rights.
Solution: a) Your client should file a request for expedited examination along with a request for early publication at the earliest.
As mentioned in the question, your client has filed an application, which is not yet published, and the patent is not yet granted. As per the Patent Act and Patent Rules, no rights can be enforced before publication of the application. Moreover, no injunction or damages can be claimed before grant of patent. Therefore, the first priority should be Early publication and Expedited examination.
Once published, the applicant becomes entitled to claim damages from the date of publication after the patent is granted.

9. A patent was granted within one year from the date of filing of patent application. The patentee will have to pay the renewal fee, without taking any extension:
a) before the expiration of the 2nd year from the date of patent in respect of 3rd year;
b) before the expiration of the 1st year from the date of patent application in respect of 2nd year;
c) before the expiration of the 3rd year from the date of patent in respect of 3rd year;
d) None of the above.
Solution: a) before the expiration of the 2nd year from the date of patent in respect of 3rd year
Under Section 53 of the Patents Act, 1970 and Rule 80 of the Patents Rules, 2003, to keep a patent in force, the renewal fees specified in the First Schedule shall be payable at the expiration of the second year from the date of the patent or of any succeeding year and the same shall be remitted to the patent office before the expiration or the second or the succeeding year.

10. Marco files a patent application in Colombia on 09.01.2021 and thereafter claiming priority from said application he files a PCT International Application on 09.01.2022. Marco is interested to file a national phase patent application in India. The deadline to file in India would be:
a) 09.08.2023
b) 09.01.2025
c) 09.08.2024
d) 09.07.2022
Solution: a) 09.08.2023
Marco's priority date is 09.01.2021 (Colombia filing). The time limit to enter National Phase in India is 31 months from the priority date (In this case 09.01.2021).

11. Nilesh filed a patent application on 24.03.2019 upon which a patent was granted. The fact of grant of patent was published in the Official Journal on 03.01.2022. Nilesh develops a further improvement of the said invention. Upon conducting a patent and non-patent literature search, Nilesh finds out that the 'improvement' is novel as compared to his own patent. However, the 'improvement' was disclosed in someone else's patent application which was published on 23.01.2022. Nilesh is in a position to file the application for patent of addition on 04.01.2023. What should Nilesh do?

a) Nilesh should file an application for a patent of addition as the improvement is novel vis-a-vis his own patent.
b) Nilesh should not file an application for a patent of addition as his patent application would be devoid of novelty.
c) Nilesh should not file an application for a patent of addition as the same cannot be filed beyond the expiry of one year from the date of publication of grant of a patent.
d) None of the above.
Solution: b) Nilesh should not file an application for a patent of addition as his patent application would be devoid of novelty.
As per Section 54, a Patent of Addition must relate to an improvement or modification of the main invention by the same applicant, but it must still satisfy novelty and inventive step. Since a third-party patent application was published on 23.01.2022, and Nilesh wants to file his Patent of Addition on 04.01.2023, the third-party document becomes prior art against Nilesh's Patent of Addition application. Therefore, Nilesh's improvement is not novel as on the filing date, and hence not patentable, including as a Patent of Addition.

12. A post grant opposition is filed against the patent owned by the company Shelf Life Pvt. Ltd., the patentee does not desire to contest opposition or leave his reply and evidence within the prescribed time limit, the patent shall be
a) deemed to have been abandoned
b) deemed to have been revoked
c) deemed to have been withdrawn
d) deemed to have been terminated
Solution: b) deemed to have been revoked
Under Section 25(2) of the Patents Act, 1970 and Rule 59–63 of the Patents Rules, 2003, when a post-grant opposition is filed, the patentee is required to file a reply statement and evidence within the prescribed time. If the patentee fails to respond or does not contest the opposition, the Controller proceeds with the case ex-parte. If the opposition is found to have merit and remains unrebutted, the Controller may order revocation of the patent. Thus, in effect, non-contestation in post-grant opposition generally leads to revocation, not abandonment or withdrawal.

13. Your client PatBio wishes to file a patent application in Indian patent office for an invention which uses a biological material from India. Arrange the following steps for protection of said invention in the most likely chronological order-
(1) filing of patent application
(2) deposition of biological material in recognized depository
(3) submitting permission from National Biodiversity Authority
(4) publication of patent application
(5) grant of patent
Codes
a)1,2,3,4,5
b)2,1,4,3,5
c)2,3,1,4,5
d)I,3,2,4,5
Solution: b)2,1,4,3,5

When an invention uses a biological material, the following are the steps followed:
Step 1 – Deposition of biological material in recognized depository :Before filing a patent, the biological material is deposited in an International Depositary Authority (IDA) under the Budapest Treaty.

Step 2 – Filing of patent application **:** After the deposition, the applicant files the patent application at the Patent Office. The specification must mention:

- The accession number
- The name of the depository
- Date of deposit

Step 3 – Publication of patent application
Step 4 – Submission of NBA permission : The permission from the National Biodiversity Authority (NBA) must be submitted before grant and not at the time of filing.
Step 5 – Grant of patent : Patent is granted only after NBA approval is submitted and verified.

14. Patent application filed by Rajesh is refused by the Controller and said decision communicated on 02/05/2023, Rajesh can file an application for the review of Controllers decision by
a) 02/08/2023
b) 01/06/2023
c) 01/11/2023
d) 02/05/2024
Solution: b) 01/06/2023
An application for review of the Controller's decision is governed by Rule 130(Application for review of decisions or setting aside of orders of the Controller) of the Patents Rules, 2003. An application for review shall be made within one month from the date of communication of the decision.

15. Number of members in an opposition board is
a) 2 including chairman
b) 3 including chairman
c) 4 including chairman
d) 5 including chairman
Solution: b) 3 including chairman
The composition of the Opposition Board is governed by Rule 56 of the Patents Rules, 2003 (Constitution of Opposition Board and its proceeding). The Controller shall constitute an Opposition Board consisting of three members, of which one shall be the Chairman.
The Opposition Board is constituted to:
- Examine the notice of opposition
- Consider reply statement and evidence
- Make recommendations to the Controller

The final decision is taken by the Controller and not by the Opposition Board.

16. James, a citizen of Norway
a) can file a patent application directly in India.
b) can file a patent application in India only after filing same in Norway.
c) can file a patent application in India only through PCT route.
d) can file application only in Norway and not in India.
Solution: a) can file a patent application directly in India.
As per Section 6 of Patent Act, the following persons are entitled to apply for patents.—
(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.
(2) An application under sub-section (1) may be made by any of the persons referred to therein either alone or jointly with any other person.

17. George Sebastian is a US citizen residing at Bangalore and working at a multinational company having offices throughout the world. As part of the research team, George invented a mosquito repellent. However as per the Company policy, the application for patent should be first made at US Patent Office. George approached you for getting advice as to whether he has to do any formalities with Indian Patent office
a) As George is a US citizen and company is a multi-national one, there is no requirement from Indian Patent office side.
b) As George is residing at Bangalore, he has to obtain permission from Indian Patent office to file first application in US.
c) As George is residing at Bangalore, he has to obtain permission from US embassy in India to file first application in US.
d) As George is a US citizen, he has to obtain permission from Indian embassy in USA for filing first application in US.

Solution: b) As George is residing at Bangalore, he has to obtain permission from Indian Patent office to file first application in US.
As per Section 39, a person who is resident in India shall not apply for the grant of a patent outside India unless:
(a) A patent application has been filed in India first, OR
(b) Written permission has been obtained from the Controller of Patents.

18. Three applicants applied for a patent and patent was granted to them. Which of the following is true? (Note: there is no specific contract between them)
a) all are having equal undivided share in patent.
b) first name holder in the Patent application will get major share.
c) sharing will be based on the alphabetical order.
d) sharing will be based on the date of birth.
Solution: a) all are having equal undivided share in patent.
As per Section 50(1) of the Patents Act, 1970, where a patent is granted to two or more persons, each of those persons shall, unless an agreement to the contrary is in force, be entitled to an equal undivided share in the patent.

19. Mr. Suresh has two inventions related to tabletop grinder: He filed patents for both inventions in the Indian Patent office. Patent was granted for one of the inventions and the other was pending. Mr Suresh assigned all rights in both the cases to MIs Birdfly Industries, now which forms are required to update the same in Patent Office records.
a) Form 16 and Form 13
b) Form 16 and Form 6
c) Form 6 and Form 13
d) Two Form 13
Solution: b) Form 16 and Form 6
Form 6 will be filed to Claim or Request regarding change of applicant in a patent.
Form 16 will be filed for the registration of title/interest in a patent

20. An application for patent is open to public
a) Just after filing of application.
b) Just after publication of application.
c)Just after filing of pre-grant opposition in the application.
d) Just after FER is issued in the application.
Solution: b) Just after publication of application.
As per Section 11A of the Patents Act, 1970, every patent application shall be published after the expiry of 18 months from priority date, or earlier if requested, and on and from the date of publication, the application shall be open for public inspection.

21. Mohan went to London, where he found a bicycle which works without chain. He realized that this bicycle is not available in India and wishes to import this bicycle to India and to file a patent for it in India. He approaches for your advice as per the Patents Act, 1970.
a) Mohan can be considered as true and first inventor in India because this bicycle is not available in India.
b) Mohan can be considered as true and first inventor because he is the first person from India to know about this bicycle.
c) Mohan can be considered as true and first inventor if he is the first importer of the invention to India.
d) Mohan cannot be considered as true and first inventor.
Solution: d) Mohan cannot be considered as true and first inventor.
As per Section 2(1)(y), “true and first inventor” does not include either the first importer of an invention into India, or a person to whom an invention is first communicated from outside India

22. Styl & Co., a US company, was granted a patent for a sewing machine in the US. Joe is an entrepreneur engaged in manufacture and distribution of sewing machines in India. Joe came to know that Styl & Co. has not filed a patent application in India, in that case
a) Joe will get a patent in India.
b) Joe will get a patent in Europe.
c) Joe can freely manufacture the invention and sell it in India.
d) Joe cannot manufacture the invention in India;
Solution: c) Joe can freely manufacture the invention and sell it in India. A patent granted in the US provides protection only in the United States, not globally. Since Styl & Co. has not filed or obtained a patent in India, the invention is not protected in India and is free for public use within India.

23. Mydhili invents a food processor that can chop vegetables and knead flour. Since the work was not complete, she first flied a provisional application on 20.01.2022. She filed complete specification for her invention on 15.04.2022. Later, she invented a fruit juicer unit that can be connected to the food processor. She applied for a patent of addition for the fruit juicer on 15.4.2023. Assuming that both patents will be granted, the patent term will expire on:
a) 20.01.2042 for both the patents.
b) 15.4.2043 for both the patents.
c) 15.04.2042 for the first and 15.04.2043 for the second patent.
d) 20.01.2042 for the first and 15.04.2043 for the second patent.
Solution: a) 20.01.2042 for both the patents.
Under Section 53 of the Patents Act, the term of a patent is 20 years from the date of filing of the application, not from the date of complete specification. In this case, the first filing (provisional application) was made on 20.01.2022, so the term of the patent expires on 20.01.2042. A Patent of Addition (Section 54) does not have an independent term. It always expires along with the main patent, regardless of when it is filed.

24. Gopal has filed a patent application along with necessary fees. But the application was not published. What could be the reason?
a) Gopal did not file a request for Examination.
b) Gopal did not file a request for publication.
c) A pre-grant representation was filed against the application.
d) Gopal filed only a provisional specification.
Solution: d) Gopal filed only a provisional specification.
Under Section 11A of the Patents Act, 1970, publication of a complete patent application takes place automatically after 18 months from the date of filing or priority date. Gopal has to file complete specification within 12 months of filing the provisional application, after which the complete application will be published automatically after 18 months.

25. Gautham made a model of the speed boat which he invented. He files for a patent for the speed boat. Which of the following statements is correct?
a) Model is part of complete specification and is to be filed at the time of filing of complete specification.
b) Model is not a part of the complete specification but it has to be filed along with the complete specification.
c) Model is not a part of the complete specification but has to be furnished if required by the Controller.
d) The Controller cannot ask for a model.
Solution: c) Model is not a part of the complete specification but has to be furnished if required by the Controller.
As per Rule 16, Models or samples shall be furnished under section 10 only when required by the Controller.

26. Shiva was a great inventor for solar batteries and he filed five patent applications. Though the patent were granted for all the five inventions. Shiva died before the date of grant of patents due to sudden cardiac arrest. Shiva's only son Gana approached you for advice. Which section of the Patents Act will you refer to?
a) Section 21
b) Section 44
c) Section 50
d) Section 53
Solution: b) Section 44
As per Section 44, where, at any time after a patent has been granted in pursuance of an application under this Act, the Controller is satisfied that the person to whom the patent was granted had died, or, in the case of a body corporate, had ceased to exist, before the patent was granted, the Controller may amend the patent by substituting for the name of that person the name of the person to whom the patent ought to have been granted, and the patent shall have effect, and shall be deemed always to have had effect, accordingly.

27. Raju Gomaz, a US citizen, filed two applications with USPTO on 28.04.2017. He filed a convention application in India on 27.04.2018, claiming priority from one of the US applications. He filed a PCT international application on 25.04.2018 claiming priority from the other application and entered PCT national phase in India on 31.03.2019. The date of patent for convention application and the national phase application are respectively.
a) 27.04.2018 and 25.04.2018
b) 28.04.2017 and 31.03.2019
c) 27.04.2018 and 31.03.2019
d) 28.04.2017 and 28.04.2017
Solution: a) 27.04.2018 and 25.04.2018
The convention application was filed in India on 27.04.2018, so its date of patent is 27.04.2018.
For a PCT application, the international filing date is treated as the filing date in India.
The PCT international application was filed on 25.04.2018, so the national phase entry was on 31.03.2019.

28. Your client who filed a PCT international application, received the international search report from the international Searching Authority. In the search report, category code X is mentioned against a prior art document. Category code X means that when this document is taken alone, the claimed invention is:
a) not novel but inventive
b) novel but not inventive
c) either not novel or not inventive
d) not industrially applicable
Solution: c) either not novel or not inventive

In a PCT International Search Report (ISR), prior-art documents are classified using category codes and a single “X” document concludes that the claimed invention is not novel, or not inventive

29. Dr. Karan got a patent for a surgical equipment. Dr. Vimala used that patented surgical equipment for research purpose. Dr. Karan issued a legal notice to Dr. Vimala for infringement. Dr. Vimala approached for your advice. Which one of the following is correct?
a) Dr. Vimala can use it freely for research.
b) Dr. Vimala can use it for research but has to pay royalty to Dr Karan.
c) Dr. Vimala can use it for research but has to take written permission from Dr Karan.
d) Dr. Vimala need not take permission from Dr Karan, but has to inform the Patent Office about it.
Solution: a) Dr. Vimala can use it freely for research.
As per Section 47(3), any machine, apparatus or other article in respect of which the patent is granted or any article made by the use of the process in respect of which the patent is granted, may be made or used, and any process in respect of which the patent is granted may be used, by any person, for the purpose merely of experiment or research including the imparting of instructions to pupils.

30. Limera is a start-up in the field of space engineering. They have applied for patents and wish to get them granted at the earliest so that they can carry out their business.
a) Limera should file request for early publication and request for expedited examination.
b) Limera being a startup is not eligible for expedited examination.
c) Limera need not file request for early publication and request for expedited examination as they are startup.
d) Limera should file request for early publication along with recommendation from ISRO.
Solution: a) Limera should file request for early publication and request for expedited examination.
As a recognized start-up, Limera is eligible for Expedited Examination under Rule 24C by filing Form 18A.

Part B

Part B is of 10 marks and consists of 10 true/false type questions of 1 mark each. For each question, out of four options only one option is correct. Answer should be given as a, b, c or d as given here in below:
a. Statement 1 is true, 2 is false
b. Statement 1 is false, 2 is true
c. Statement 1 and 2 both are false
d. Statement 1 and 2 both are true

31.1. Time for putting an application in order for grant under section 21 shall be six months from the date of first statement of objection issued to the applicant.
2. Time for putting an application in order for grant may be further extended for a period of six months on a request of extension made in Form-4.
Answer: a. Statement 1 is true, 2 is false
Statement 1 is True
Statement 2 is false. As per Rule 24B(6) The time for putting an application in order for grant under section 21 as prescribed under sub-rule (5) may be further extended for a period of three months on a request in Form 4 for extension of time along with prescribed fee, made to the Controller before expiry of the period specified herein.

32. Company X is h
aving place of business at US and filed initial application at USPTO and after six months from the US application, the company has done some modification and filed patent application for the same at Japan. Within 12 months from the date of US filing, Company X filed an Indian application claiming priority of earlier two applications from US and Japan.
1. Company X is allowed to claim priority of US application only.
2. Company X is allowed to claims both the priorities.
Answer: b. Statement 1 is false, 2 is true
Statement 1 is false. Priority can be claimed only from the first foreign application for the same invention (Paris Convention). Japan application is a separate patent application, so the priority cannot be claimed.

33. 1. The term of every patent starts from the date of filing of the patent application.
2. No suit or other proceeding shall be commenced or prosecuted in respect of an infringement committed before the date of publication of the application.
Answer: d. Statement 1 and 2 both are true
The patent term is 20 years from filing date (Section 53).
The Infringement action can arise only after publication (Section 11A).

34. Sandip has filed a patent application on 01/01/2019 for his invention missile tracking device and the application is considered to prejudice to defence, subsequently on 25/12/2022 said secrecy direction is revoked.
1. The request for examination shall be made within forty eight months from the date of filing.
2. The request for examination shall be made within forty eight months from the date of revocation of secrecy direction.

Answer: a. Statement 1 is true, 2 is false
After the revocation of the Secrecy Directions, as per Section 38, the Controller may extend the time in case the applicant requests for the extension.

35. Gautami filed a patent application and wishes to get her application examined at the earliest
1. She should file an expedited request for publication.
2. She should file an express request for examination.
Answer: c. Statement 1 and 2 both are false
Statement 1 & 2 are incorrect: Gautami should file for expedited request for examination and not for expedited request for publication or express request for examination.

36. 1. The claims lack inventive step due to prior art disclosure in a single document combined with common general knowledge.
2. The claims lack inventive step due to combination of prior art disclosure in two or more citations.
Answer: d. Statement 1 and 2 both are true
Both the statements are true with respect to the Claims.

37. In a case where an application processed by a startup is partly transferred to a multinational company
1. The new applicant is not required to pay the difference in the scale of scale of fees between the fees charged from a startup and the fees chargeable from multinational company.
2. The new applicant shall file a request for change in name of applicant.
Answer: b. Statement 1 is false, 2 is true
When ownership is transferred from Startup to a Large Entity, then the difference in official fees must be paid to the Patent Office. As per Rule 7(3) of the Patents Rules, 2003, where an entity status changes, the difference in scale of fees shall be paid.
The new applicant shall file a request for change in name of applicant. Whenever there is change in Ownership, Applicant or Assignee is substituted, a formal request is required for recording the change.
Bottom of Form

38. While doing amendments in the specification
1. Applicant shall provide a marked copy clearly identifying the amendments carried out.
2. Applicant shall provide a statement clearly indicating the portion of the specification or drawing being amended along with the reason shall filed.
Answer: d. Statement 1 and 2 both are true.
As per Rule 82 of the Patents Rules, 2003, an application for amendment shall include marked copy showing changes and a statement of amendment specifying what is amended, where it is amended and reasons for amendment.
39. An application for patent is refused by the Controller. The applicant wishes to challenge the refusal.
1. Applicant can approach Intellectual Property Appellate Board.
2. Applicant can approach District Court.
Answer: c. Statement 1 and 2 both are false
As per Section 117A of the Patents Act, 1970, an appeal against orders of the Controller (including refusal of a patent) lies to The High Court.
40. 1. Legal representative means a person who in law represents the estate of a deceased person
2. Legal representative means a person who files an application on behalf of the applicant.
Answer: a. Statement 1 is true, 2 is false
A person who files an application on behalf of an applicant is called Patent Agent, or Authorized Agent / Attorney and not "legal representative".

Part C

Part C is of 30 marks and consists of 10 multiple choice questions of 3 marks each with more than one options correct (at least two options correct).

41. Rajesh a patent agent registered with Patent Office may be disqualified on the grounds that

a) He is an undischarged insolvent.

b) He has been adjudged by competent court to be of unsound mind.

c) He being a chartered accountant has been guilty of negligence.

d) He has been convicted by a competent court outside India of an offence to undergo a term of imprisonment.

Answer: a,b,c,d

As per Section 130, the Controller may remove the name of any person from the register when he is satisfied, after giving that person a reasonable opportunity of being heard and after such further inquiry, if any, as the Controller thinks fit to make— (i) that his name has been entered in the register by error or on account of misrepresentation or suppression of material fact; (ii) that he has been convicted of any offence and sentenced to a term of imprisonment or has been guilty of misconduct in his professional capacity which in the opinion of the Controller renders him unfit to be kept in the register.

42. Mr. Ujjwal would like to know times limits generally available for extension of time using form-4 in accordance with the Patents law

a) Extension of three months is allowed for filing of declaration of inventorship.

b) Extension of six months is allowed for filing renewal fees.

c) Extension of three months is allowed for filing reply to first examination report.

d) Extension of one month is allowed for filing review petition.

Answer: b, c, d

Correct timeline for Part a: As per Rule 10, where, in an application for a patent made by virtue of an assignment of the right to apply for the patent for the invention, if the proof of the right to make the application is not furnished with the application, the applicant shall within a period of six months after the filing of such application furnish such proof.

As per Rule 80(1A), The period for payment of renewal fees so specified in sub-rule (1) may be extended to such period not being more than six months if the request for such extension of time is made in Form 4 with the fee specified in the First Schedule.

As per Rule 24B, applicant must reply to FER within 6 months extendable by 3 months using Form-4.

As per Rule 130, review petition must be filed within 1 month from date of communication and the extension may be allowed by filing Form-4.

43. After receiving the international search report and written opinion of ISA, the applicant maya) Enter national phase. b) Submit informal comments to IB. c) Amend claims and file a demand for international preliminary examination. d) Submit reply to ISR and written opinion to ISA.

44. Patent office has objected Novelty based on a cited document and issued First statement of objection to you, you can do following acts

a) Shows to the satisfaction of the Controller that priority date of the claim of your complete specification is not later than the date on which cited document was published. ;

b) You can amend claims of the complete specification to overcome the citation.

c) You can withdraw your application.

d) You can challenge the objection of novelty in Court.

Answer: a, b, c

When novelty is objected in the First Examination Report (FER), the applicant is given statutory options to respond before grant.

(a) If your priority date is earlier than the cited prior art, then the cited document is not prior art.

(b) Amend claims to overcome citation: You may narrow the claims or remove overlapping claims.

(c) Withdraw the application: You may withdraw the application voluntarily, if you find the objection is fatal.

45. Term of the Patent application starts from
a) Date of filing of Provisional specification.
b) Date of filing of Complete specification, if the Provisional specification is followed by the complete specification.
c) Date of entry in India in case of PCT national Phase application.
d) Date of filing In India in case of Convention application.
Answer: a,d
As per Section 53, the term of patent is 20 years from the date of filing of provisional specification. In case the complete specification is filed without filing a provisional specification, then the term of patent starts from the day on which complete specification was filed.
For a Convention application, Patent term begins from date of filing in India, not priority date.

46. Who are eligible for Expedited Examination of applications?
a) Natural persons as applicants wherein at least one of them is a female.
b) Natural persons as applicants wherein at least one of them is an Indian citizen.
c) Start up but not Small entity.
d) Start up or Small entity.
Answer: a,d
As per Rule 24C, a and d are the correct options.
Eligible categories for expedited examination are:
1. Female applicant (natural person)
2. Startup
3. Small entity
4. Government department
5. Government-supported institution
6. International Search Authority (India as ISA / IPEA)
7. Patent under bilateral arrangements

47. Which is true about statement and under taking regarding foreign applications
a) Statement and undertaking under Section 8(1) shall be filed within six months from the date of filing the application.
b) Applicant shall keep informed the Controller regarding details of same application or similar applications filed outside India within 3 months from the date of filing of such application under section 8(1).
c) Applicant shall furnish information relating to objections, in respect of novelty and patentability of the invention within six months from the date of requirement by the Controller.
d) Applicant shall furnish information relating to objections, in respect of novelty and Patentability of the invention immediately as and when required by the Controller.
Answer: a, c
A statement and undertaking (Form 3) must be filed within 6 months from the date of filing of the Indian application, or along with the application, as per Rule 12(1A).

48.Rohan happened to visit Himalaya along with a trekking team. While staying there he wrote a book related to Himalayan mountain ranges, took some video, made a novel and attractive device for easy trekking and discovered a stone naturally occurring there. He wishes to get IP rights on all of them and approached you for filing the application. He can apply/register for –
a) copyright for the book and video.
b) design for the stone and copyright for the book.
c) patent for the device, but not design for the device.
d) patent and design for the device.
Answer: a,d
Book and video are Literary work & Cinematograph work protected under Copyright Law. If the trekking Device satisfies novelty, inventive step, industrial use it can be patented. Additionally, the design features of the trekking device can be protected by Design registration.

49. A patent application was filed by a company A on 01.01.2021 and was published in the Patent Office Journal on 01.07.2022. The first statement of objections was issued by the Patent Office on 03.08.2022 and the applicant filed a response complying with all the objections on 05.10.2022. On 10.10.2022, the applicant. noticed that a competitor, company B, is selling a product which utilises the applicant's invention that was disclosed in the patent application. Choose the correct options

a) The company A may send a legal notice to the company B.

b) The company A may file an infringement suit in Court.

c) Upon the grant of a patent, the company A is entitled to seek damages from 01.01.2021.

d) Upon the grant of a patent, the company A is entitled to seek damages from 01.07.2022.

Answer: a,d

After publication, the applicant acquires “provisional rights.” Company A can send a legal notice warning Company B and putting them on notice of potential liability upon grant.

After grant, the patentee can claim damages from the date of publication, provided the defendant had notice of the published application and infringed claims as granted.

50. A company X files a patent application which upon examination was objected on the ground that the application contains a plurality of distinct inventions. X files a further application in response to the objection raised in the examination report. Choose the correct options

a) The complete specification of the further application should include only that matter which was not in substance disclosed in the complete specification of the first mentioned application as otherwise it would amount to double patenting.

b) The Controller may require such amendment of the complete specification filed in pursuance of either the original or the further application as may be necessary to ensure that neither of the said complete specifications includes a claim for any matter claimed in the other.

c) The complete specification of the further application should not include any matter not in substance disclosed in the complete specification filed in pursuance of the first mentioned application.

d) Both (a) and (b).

Answer: b, c

Option (b) The Controller may require amendments to avoid overlapping claims. As per Section 16(1), the Controller can ensure that the Claims do not overlap and there is no double patenting.

Option (c) Divisional should not include new matter as per Section 16(2).

2024: PAPER 1 (SOLVED)

PATENT AGENT EXAMINATION, 2024
(Under Section 126 of the Patents Act, 1970)
Part A

1. In a revocation proceeding in Court, Dr. Desai was able to prove that a patent granted to one of his students Mr. Rohan was wrongfully obtained. Post Court's revocation order and permission of grant of the whole patent to him, Dr. Desai files a petition before the Controller to grant the said patent in his name. What would be the date of patent granted to Dr. Desai after such proceeding:
A. Date on which controller revokes the patent
B. International filing date
C. Same as revoked patent
D. Date on which controller grant a new patent
Solution: C. Same as revoked patent
According to Section 52(3), when a court or the Controller finds that a patent was wrongfully obtained and orders it to be granted to the true inventor or rightful applicant, the newly granted patent shall bear the same date as the patent that was revoked and shall be deemed to have been granted on that earlier date.

2. Ms. Ragini has composed an interesting and soothing Raga composition. This Raga composed can be used in yoga, meditation, medication to relax or treat patients suffering from anxiety and depression. She would like to protect her IP rights. Which is the most appropriate IP Act for her to apply for protection:
A. The Copyright Act, 1957
B. The Trade Marks Act, 1999
C. The Patents Act, 1970
D. The Designs Act, 2000
Solution: A. The Copyright Act, 1957
Raga Composition is a musical work, which falls under the category of literary and artistic creations protected by copyright law. As per Section 13(1)(a) of the Copyright Act, 1957, copyright shall subsist throughout India in the following classes of works, that is to say,— (a) original literary, dramatic, musical and artistic works; (b) cinematograph films; and (c) sound recording.

3. A novel sunscreen formulation 'AlZo' is made of by mixing jojoba oil and Almond oil in a certain ratio along with other excipients. The sunscreen formulation is patentable if:
A. SPF value of jojoba oil= SPF value of Almond oil =SPF value of sunscreen 'AlZo'
B. (SPF value of jojoba oil +SPF value of Almond oil) =SPF value of sunscreen 'AlZo'
C. (SPF value of jojoba oil+ SPF value of Almond oil) < SPF value of sunscreen 'AlZo'
D. (SPF value of jojoba oil+ SPF value of Almond oil) > SPF value of sunscreen 'AlZo'
Solution: C. (SPF value of jojoba oil+ SPF value of Almond oil) < SPF value of sunscreen 'AlZo'
Jojoba oil and almond oil individually have certain SPF (Sun Protection Factor) values. If the combination of the two oils simply adds up to the same SPF as their sum, there is no inventive step. However, if the SPF value of "AlZo" is greater than the sum of the SPF values of its individual components, it will show a synergistic effect and the combination performs better than expected.

4. Under the Doctrine of National treatment, as regards to the protection of industrial property, each country must grant the same protection as it grants to its own nationals, to

1. **Nationals of the other member countries of Paris Convention**
2. **Nationals of all member countries of United Nations**
3. **Nationals of all the countries of Paris Convention but and the same legal remedy against infringement of their rights is not available to nationals of those countries with which it fought wars in the past**
4. **Nationals of countries that are not party to the Paris Convention and if they are domiciled in a member country or if they have a real and effective industrial or commercial establishment in such a country.**

A. Only (i)
B. Only (i) and (iii)
C. Only (iii)
D. Only (i) and (iv)

Solution: D. Only (i) and (iv)
Under Article 2(1) of the Paris Convention for the Protection of Industrial Property (1883), the Doctrine of National Treatment is a key principle which states:
"Each country of the Union shall grant nationals of the other countries of the Union the same protection as it grants to its own nationals with regard to the protection of industrial property."
This protection also extends under Article 3 to certain non-member nationals if they have a domicile or a real and effective industrial or commercial establishment in a country that is a member of the Paris Convention.

5. **Mr. Ramayuna filed an application for the grant of patent with provisional specification on 06/11/2012 in Patent Office, Delhi. Subsequently, complete specification was filed on 05/11/2013. As per the provisions of section 13, the examiner after conducting the prior art search shall report:**

i.Patent literatures anticipating the claims and published before 05/11/2013
ii.Patent literatures wherein the invention as claimed in Mr. Ramayuna's application is claimed in any claim of complete specification published after 05/11/2013 but having priority before 06/11/2012 and filed in India
iii. Non-Patent literatures anticipating the claims and published before 05/11/2013
A. Only (i)
B. Only (i) and (ii)
C. Only (ii) and (iii)
D. All of the above

Solution: D. All of the above
Section 13 deals with search for anticipation by previous publication and by prior claim. When the Examiner examines a patent application, he/she conducts a prior art search and searches for patent literatures anticipating the claims and published before 05/11/2013 and non-patent literatures anticipating the claims and published before 05/11/2013.
As per Section 13(2), the Examiner also investigates whether the invention is claimed in any claim of another complete specification published after the date of filing of the applicant's complete specification, but having an earlier priority date.
Therefore, all three (i), (ii), and (iii) are part of the Examiner's report under Section 13.

6. **Over the years in the field of IPRs significant Indian Jurisprudence has got created with regard to various aspects of patenting in India.**
Match the following(s) case laws with their relevant focus:

Case Law	Main Jurisprudence Subject-matter
1. Biswanath Prasad Radhey Shyam	**a. Post Dating Vs Hindustan Metal Industries Ltd**
2. Standipack Pvt. Ltd. Vs M/s Oswal Trading Co. ltd.	**b. Person skilled in the art and Inventive Step**
3. Novartis AG Vs Union of India	**c. Software related Patents**
4. Ferid Allani Vs Union of India	**d. Therapeutic Efficacy**

A. 1-b, 2-a, 3-c, 4-d
B. 1-d, 2-a, 3-c, 4-b
C. 1-a, 2-b, 3-d, 4-c
D. 1-b, 2-a, 3-d, 4-c
Solution: D. 1-b, 2-a, 3-d, 4-c

- Biswanath Prasad Radhey Shyam vs Hindustan Metal Industries Ltd (1979 AIR 1440)

This landmark Supreme Court case discussed "inventive step" and the standard of a "person skilled in the art."
Jurisprudence Focus: *Inventive step and person skilled in the art.*

- Standipack Pvt. Ltd. vs Oswal Trading Co. Ltd. (2000)

This case is concerned with post-dating of patent applications and procedural aspects under Section 17 of the Patents Act, 1970.

- Novartis AG vs Union of India (2013, SC)

Inventions related to new forms of known substances are patentable only if they show enhanced therapeutic efficacy. (clarification to Section 3(d).

- Ferid Allani vs Union of India (2019, Delhi HC)

This case recognized that computer-related inventions (CRIs) involving technical contribution or technical effect may be patentable.

Case Law	Jurisprudence Focus
1. Biswanath Prasad Radhey Shyam	**b. Person skilled in the art and Inventive Step**
2. Standipack Pvt. Ltd.	**a. Post Dating**
3. Novartis AG	**d. Therapeutic Efficacy**
4. Ferid Allani	**c. Software related Patents**

7. Match the following(s) examples which are not patentable under relevant clauses of the Act:

Clauses of Section 3	Example Not Patentable
1. Section 3(j)	a. Turmeric aqueous extract for pimple care
2. Section 3(h)	b. Method of aerating soil for improved yield in agriculture
3. Section 3(i)	c. Method of surgical removal of teeth
4. Section 3(p)	d. Isolated insulin gene
5. Section 3(c)	e. Mouse cell

A. 1-a, 2-c, 3-b, 4-d, 5-e
B. 1-e, 2-b, 3-c, 4-a, 5-d
C. 1-a, 2-b, 3-d, 4-e, 5-c
D. 1-c, 2-a, 3-d, 4-b, 5-e
Solution : B. 1-e, 2-b, 3-c, 4-a, 5-d

Section 3(j) plants and animals in whole or any part thereof other than micro-organisms but including seeds, varieties and species and essentially biological processes for production or propagation of plants and animals.

3(h) a method of agriculture or horticulture.

3(i) any process for the 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.

3(p) an invention which, in effect, is traditional knowledge or which is an aggregation or duplication of known properties of traditionally known component or components.

3(c) the mere discovery of a scientific principle or the formulation of an abstract theory or discovery of any living thing or non-living substance occurring in nature;

8. Dr. Sunita wants to file a patent application involving gene and protein data in India. As a patent agent, you advice her that she also needs to file the sequence listing of nucleotides or amino acid sequences. The correct way for filing sequence listing of nucleotides or amino acid sequences in India is:

A. the sequence listing of nucleotides or amino acid sequences shall be filed in computer readable text format along with the application, and no print form of the sequence listing of nucleotides or amino acid sequences is required to be given
B. the sequence listing of nucleotides or amino acid sequences shall be filed in normal format same as the application, and no print form of the sequence listing of nucleotides or amino acid sequences is required to be given
C. the sequence listing of nucleotides or amino acid sequences shall be filed in computer readable text format along with the application, and print form of the sequence listing of nucleotides or amino acid sequences is required to be given
D. the sequence listing of nucleotides or amino acid sequences shall be filed in same format as that of the application, and print form of the sequence listing of nucleotides or amino acid sequences is required to be given.
Solution: 8-A**.**

The sequence listing of nucleotides or amino acid sequences shall be filed in computer readable text format along with the application, and no print form of the sequence listing of nucleotides or amino acid sequences is required to be given.
Rule 9(3) of the Patents Rules, 2003 (as amended) says that where the application for a patent discloses sequence listing of nucleotides or amino acid sequences, such sequence listings shall be filed in computer-readable text format along with the application, and no print form of such listings is required.

9. Mr. Madhav is a plant science researcher and specialized in developing transgenic rice. After he quits from his organization, his organization has filed a patent application based on Madhav's work and the same was granted with several of his colleagues as inventors. Mr. Madhav came across this news in a newspaper that a patent has been granted this month for the transgenic rice developed by him. But Mr. Madhav's name is not mentioned as inventor. He is not happy about it. He consults you. What among these options will be your correct advice as per the provisions of the Act:

A. Madhav can file a post grant opposition u/s 25(1) with form 7 and fee
B. Madhav can file a post grant opposition u/s 25(2) with form 7A and without any fee
C. Madhav can file a post grant opposition u/s 25(1) with form 7A and fee
D. Madhav can file a post grant opposition u/s 25(2) with form 7 and fee

Solution: 9-D
As per Section 25(2), at any time after the grant of patent but before the expiry of a period of one year from the date of publication of grant of a patent, any person interested may give notice of opposition to the Controller in the prescribed manner on any of the following grounds, namely:—

- that the patentee or the person under or through whom he claims, wrongfully obtained the invention or any part thereof from him or from a person under or through whom he claims;

Since the patent is already granted, the only opposition Madhav can file is a post-grant opposition under Section 25(2).
He must use Form 7 and pay the prescribed fee.
There are two kinds of opposition proceedings under the Patent Act:

Type	Section	Timing	Form	Fee
Pre-grant opposition	**Section 25(1)**	**After publication but before grant**	**Form 7A**	**No fee**
Post-grant opposition	**Section 25(2)**	**After grant but within one year from the date of publication of grant**	**Form 7**	**8000(small entity)/40,000(large entity) – e filing**

Alternate Option: Madhav may also approach the Controller under Section 28(1) for correction of inventorship.

10. Dr Sita filed a provisional application for an innovative beeper technology on 01/01/2018. The timeline to file the complete application is near, however the same is not complete and she needs few more months. Dr. Sita consults you for professional advice. The possible correct option is:

A. Dr. Sita can post date the application for a maximum of 3 months at once if she files the request for post-dating before 01/04/2019

B. Dr. Sita could file petition under rule 138 for extension of period for filing complete specification by 1 more month

C. Dr. Sita can post date the application for a maximum of 6 months by applying for it anytime before the term of patent expires

D. Dr. Sita can post date the application for a maximum of 6 months, provided she requests for postdating the application before 01/01/2019

Solution: 10-D

Dr. Sita can post-date the application for a maximum of 6 months, provided she requests for post-dating the application before 01/01/2019.

The provisional application was filed on 01/01/2018. As per Section 9(1) of the Patents Act, 1970, the complete specification must be filed within 12 months from the date of filing the provisional specification. Therefore, deadline to file complete specification is 01/01/2019.

11. Mr. John and Ms. Prakshi jointly made an invention and wish to file a PCT international application. Mr. John is a resident of PCT contracting state but Ms. Prakshi is not. What would be a situation permitted under PCT:

A. They cannot file any PCT international application jointly as Ms. Prakshi is not a national/resident of PCT contracting state

B. They can file jointly as Mr. John is a resident/national of PCT contracting state

C. Ms. Prakshi need to sign an affidavit about non-resident of PCT-State and then they can jointly file

D. They both can make a joint declaration under PCT Rule 34 bis(i) to become eligible to file joint PCT international application

Solution: 11-B. They can file jointly as Mr. John is a resident/national of a PCT contracting state.

Under the Patent Cooperation Treaty (PCT) as per PCT Article 9(1) any resident or national of a Contracting State may file an international application. In case there are joint applicants, the condition is satisfied if at least one applicant is a national or resident of a PCT Contracting State.

12. Company Hassium found that a patent filed by its rival company Rhenium is a copy of its patented invention. It approached a patent agent and asked to file a pre-grant opposition. Match the following grounds with relevant section/sub-section/clauses:

Grounds	Section/Sub-section/Clauses
1. Publicly known/used in India	**a. 25(1)(f)**
2. Obviousness	**b. 25(1)(b)**
3. Prior anticipation	**c. 25(1)(a)**
4. Claims not patentable	**d. 25(1)(e)**
5. Wrongfully obtained	**e. 25(1)(d)**

A. 1-a, 2-b, 3-d, 4-e, 5-c

B. 1-b, 2-c, 3-e, 4-a, 5-d

C. 1-e, 2-d, 3-c, 4-a, 5-b

D. 1-e, 2-d, 3-b, 4-a, 5-c

solution: 12-D. 1-e, 2-d, 3-b, 4-a, 5-c

Section 25(1) – Ground and Relevant Clauses

Ground	Relevant Clause	Explanation
1. Publicly known or publicly used in India	**25(1)(d)**	**If the invention was publicly known or used in India before the priority date**
2. Obviousness / Lack of inventive step	**25(1)(e)**	**If the invention is obvious or does not involve any inventive step.**
3. Prior anticipation by publication	**25(1)(b)**	**If the invention has been anticipated by publication before the priority date**
4. Claims not patentable under the Act	**25(1)(f)**	**If the subject matter of the claim is not patentable under the Act (e.g., Sec 3 & 4)**
5. Wrongfully obtained	**25(1)(a)**	**If the applicant wrongfully obtained the invention from the opponent**

13. Mr. Neelesh started a business of making sports shoes. He realized that some companies used patented technologies to claim higher price for their product. Being fancied, he decided to put a stamp 'patented' on his article without actually filing any patent. What would be possible consequences as per the provisions of the Act:
A. He shall be punishable with imprisonment
B. He shall be liable to fine/penalty
C. He may be punishable with both fine and imprisonment
D. He will be warned by patent office first for first offence without any fine/penalty and then for subsequent offences shall be liable for fine or imprisonment or both.
Solution: 13- B. He shall be liable to fine/penalty.
As per Section 120 of the Patents Act, if any person falsely represents that any article sold by him is patented in India or is the subject of a patent application in India, he shall be punishable with fine which may extend to one lakh rupees.

14. Mr. Alpha has two patent applications filed on valve structure of an IC Engine. The first application A was filed on 01/04/2019 and the second application B, which actually is an improvement on first application was filed on 31/03/2019. Both the applications proceeded to grant of patents individually. Application A was granted on 01/07/2022 and application B was granted on 30/10/2022. However, Mr. Alpha later on came to know about the provisions and related benefits of patent of addition and requested the controller to revoke the patent B and convert the same as patent of addition of patent A. In this context, select the correct option:
A. It is possible to convert B to a patent of addition of A
B. It is not possible to convert B to a patent of addition of A
C. It is possible to convert B on condition that the patent term of B will co-terminate with A
D. None of the above
Solution: 14- B - It is not possible to convert B to a patent of addition of A.

As per Section54(1), where an applicant has made an application for a patent for an improvement or modification of an invention described or disclosed in the complete specification of an earlier patent for which he has applied or has been granted, he may, at any time after the filing of the main application but before the grant of the improvement, apply for a patent of addition. The improvement (patent of addition) must be filed after the main patent application.
Even though B is an improvement over A, it was filed earlier (31/03/2019) than A (01/04/2019). Therefore, B cannot be treated as a patent of addition to A, since a patent of addition must be filed after the main application.

15. Which of the following statements regarding WIPO services are correct:
i. WIPO DAS is an electronic system to access priority document to be securely exchanged between participatory countries
ii. WIPO CASE enables different patent offices to securely share priority document and translation thereof
iii. WIPO CASE is an arrangement for work-sharing between offices
iv. India is a participating country to WIPO DAS and but not WIPO CASE
A. Only (i) and (ii)
B. Only (i) and (iii)
C. Only (i), (ii) and (iii)
D. All are correct
Solution: 15 – B: Only (i) and (iii)
WIPO DAS (Digital Access Service) : WIPO DAS is an electronic system allowing priority documents to be securely exchanged between participating patent offices.
WIPO CASE (Centralized Access to Search and Examination reports): WIPO CASE enables different patent offices to securely share priority documents and translation thereof.

16. Mr. Akram is a student from Central college, Jaipur. He has invented innovative AI Nanobot which can be designed to take any form in a swap of a finger and is indestructible. He filed a patent application in Indian patent office. The controller identified the potential of the invention in defence and immediately placed it under secrecy direction. What are the possible consequences of this move:
i. the Controller shall not pass an order refusing to grant the same
ii. any order of the Controller passed in respect thereof is appealable
A. Only (i)
B. Only (ii)
C. Both (i) and (ii)
D. None of the above
Solution: 16 – A: Only (i)
As per Section 35 which deals with Secrecy directions for inventions relevant for defence purposes, If the Controller considers that an invention is relevant for defence purposes, the Controller may issue secrecy directions to prohibit or restrict publication or communication of the invention.
When secrecy directions are imposed, the application is kept pending; it cannot be refused or granted while secrecy directions are in force. The Controller's actions under secrecy provisions are not appealable while the directions remain effective, because they are taken in the interest of national security and under Government discretion (Section 35–37

17. Mr. Vikrant was granted a patent for a novel coating over the photovoltaic cell to enhance its light absorption capacity in 2016. The granted patent lapsed and Mr. Vikrant filed an application for the restoration of the lapsed patent. His opponent Mr. Pran who is also working in the same field, can file opposition to the application for restoration of the lapsed patent on which of the following ground(s):

i. Failure to pay the renewal fees by Mr. Vikrant was intentional
ii. There was undue delay in making of the application for restoration
iii. Propriety of the patentee is questionable
iv. The patent was wrongfully obtained
A. Only (i) and (ii)
B. Only (iii) and (iv)
C. Only (i), (ii) and (iii)
D. All of the above
Solution: 17- A. Only (i) and (ii)
A patent is lapsed when the renewal fee is not paid within the prescribed period (with grace period under Section 53(2). As per Section 60, the patentee or legal representative can apply for restoration within 18 months from the date of lapse.
In accordance with Rule 84(3) of the Patents Rules, 2003, an opposition to the restoration of a patent may be filed only on the following grounds:
(a) That the failure to pay the renewal fee was intentional, or
(b) That there has been undue delay in making the application for restoration.

18. Over years in the field of IPRs various Treaties/Agreements/Conventions have been entered by many countries. Match the following(s) with the relevant subject matter of such Treaties/Agreements/Conventions:

Treaties/Agreements/Conventions	**Subject-matter**
1. PCT	**a. Registration of Marks**
2. Hague	**b. Copyright**
3. Berne	**c. Patent**
4. Madrid	**d. Industrial Design**
5. Budapest Treaty	**e. Deposit of Micro-organization**

A. 1-c, 2-b, 3-d, 4-a, 5-e
B. 1-c, 2-d, 3-a, 4-b, 5-e
C. 1-c, 2-d, 3-b, 4-a, 5-e
D. 1-a, 2-d, 3-b, 4-c, 5-e
Solution: 18-C. 1-c, 2-d, 3-b, 4-a, 5-e

Patent Cooperation Treaty (PCT), 1970
India: Acceded in 1998
Contracting Parties/Signatories Patent Cooperation Treaty (Total Members: 158)
The Patent Cooperation Treaty (PCT) makes it possible to seek patent protection for an invention simultaneously in each of a large number of countries by filing an "international" patent application. Such an application may be filed by anyone who is a national or resident of a PCT Contracting State. It may generally be filed with the national patent office of the Contracting State of which the applicant is a national or resident or, at the applicant's option, with the International Bureau of WIPO in Geneva.

It allows filing of a single international patent application effective in multiple countries.

Hague System – The International Design System(1925)

India is not a part of Hague system

Contracting Parties/Signatories Hague Agreement (Total Members: 82)

The Hague System for the International Registration of Industrial Designs provides a practical business solution for registering up to 100 designs in 99 countries by filing a single international application.

Berne Convention for the Protection of Literary and Artistic Works (1886)

India: Member since 1928 (British India), continued post-independence
Contracting Parties/Signatories Berne Convention (Total Members: 182)

To ensure that creators (authors, artists, musicians, etc.) from one member country enjoy the same copyright protection in all other member countries as nationals of those countries.

Madrid Agreement Concerning the International Registration of Marks (1891) and Madrid Protocol (1989)

India: Joined the Madrid Protocol in 2013

Contracting Parties/Signatories Madrid Protocol: 115

Allows international registration of trademarks through a single application. The Madrid System for the International Registration of Marks is governed by the Madrid Agreement, concluded in 1891, and the Protocol relating to that Agreement, concluded in 1989. The system makes it possible to protect a mark in a large number of countries by obtaining an international registration that has effect in each of the designated Contracting Parties.

Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (1977)

India: Acceded in 2001
Contracting Parties/Signatories Patent Cooperation Treaty (Total Members: 91)
International Depository Authority (IDA)till 2024: 51

Adopted in 1977, the Budapest Treaty concerns a specific topic in the international patent process: microorganisms. All states party to the Treaty are obliged to recognize microorganisms deposited as a part of the patent procedure, irrespective of where the depository authority is located. In practice this means that the requirement to submit microorganisms to each and every national authority in which patent protection is sought no longer exists.

19. A company Novel Corporation has got patent for a water purifier technology that auto adjusts the water quality. Novel Corporation comes to know that another company Inventive Corporation has flooded the market with similar products. Novel Corporation files infringement suit in the district court. Inventive Corporation in response files a counter-claim for revocation of the patent of Novel Corporation. In the matter, the future course of action will be:

A. The infringement suit shall proceed in the District Court and revocation proceedings at the Patent office simultaneously

B. The infringement suit shall proceed in the District Court and revocation proceedings at the concerned High Court simultaneously

C. The infringement suit along with the counter claim for revocation shall be transferred to the concerned High Court

D. The District Court shall appoint a Scientific advisor and shall proceed in line with such advice

Solution: 19-C. The infringement suit along with the counter-claim for revocation shall be transferred to the concerned High Court.

A suit for infringement as per Section 104 can be instituted in a District Court having jurisdiction. However, if a counter-claim for revocation of the patent is filed, the case is treated differently. According to Section 64(1), when the defendant in this case, it is Inventive Corporation in an infringement suit files a counter-claim for revocation of the patent, the jurisdiction automatically shifts to the High Court.

Bottom of Form

20. Hafnium Corporation filed a PCT international application and received an International Search report (ISR) and Written opinion (WO) from ISA-India. Based on the ISR/WO report, Hafnium Corporation wishes to file amendments. Which of the following option is correct:

A. Amendment is possible in description and claims anytime during the international phase under PCT Article 6

B. Only Claims can be amended under article 34 within 2 months from transmission of ISR/WO

C. Claims can be amended under Article 19 within 3 months from transmission of ISR/WO

D. None of the above

Solution: 20- D None of the above

On receiving the International Search Report (ISR) and Written Opinion (WO) from the International Searching Authority (ISA), the applicant may amend the claims of the international application once under Article 19, within 2 months from the date of transmittal of the ISR or 16 months from the priority date, whichever expires later.

Key points under Article 19:

- Only claims may be amended.
- No amendments to the description or drawings are allowed at this stage.
- Amendments must be filed with the International Bureau (IB).
- Must be accompanied by a statement explaining the amendment.

Under Article 34, both description and claims can be amended, but only if the applicant demands International Preliminary Examination (IPEA).

The 2-month timeline mentioned in Option B is incorrect — Article 34 does not specify such a strict 2-month limit.

21. If A = Technical advance as compared to the existing knowledge
B = Having economic significance
C = That makes the invention not obvious to a person skilled in the art;
Then, Inventive Step under the Patents Act, 1970 means a feature of an invention that involves:
A. (A and B) or C
B. A or B or C or (A and B)
C. (A or B or (A and B)) and C
D. A or B or C
Solution: 21 - Correct answer: C. (A or B or (A and B)) and C
As per Section 2(1) (ja) of the Patents Act, 1970, "Inventive step" means a feature of an invention that involves technical advance as compared to the existing knowledge or has economic significance or both, and that makes the invention not obvious to a person skilled in the art.

22. Bharat Institute of Engineering and Technology (BIET) is a privately run educational institute. Their student/faculty invented an air purifier and wants to file a patent application at Indian Patent Office by exploiting all the benefits extended to an educational institute by the Govt. of India. Which of the following option would be correct:
A. BIET can file expedited examination request and a reduction in fee in filing application
B. BIET can take advantage of fee reduction but cannot file expedited request for examination
C. BIET is not eligible for any fee reduction being a privately owned educational institute but can file expedited request for examination
D. BIET can take advantage of both fee reduction and expedited examination after getting an approval from UGC/AICTE
Solution: 22- B. BIET can take advantage of fee reduction but cannot file expedited request for examination
As per Rule 2(ca) and First Schedule, the term "educational institution" means an institution established by a Central, Provincial or State Act, or owned/controlled/financed by the government.
As per Rule 24C(1)(j), an "educational institution" (as defined above) is eligible to file a request for expedited examination.

23. Dr. Kavya is a scientist of one of the Government Research Laboratories in India. She got a research funding from Department of Research, Govt of India. As per the agreement, she communicated her research updates regularly to the funding agency, which were consequently reported in their internal departmental periodic proceedings. Later on, her research turned out to be having huge market potential and the Laboratory applied for a patent at Indian Patent Office. Which of the following is true while considering prior anticipation:
A. The patent application is liable to be refused on ground of prior anticipation due to internal departmental periodic proceedings.
B. Dr. Kavya's laboratory, being a government organization is relaxed from the consideration of prior anticipation.
C. Inventor, Dr. Kavya may apply for relaxation in prior anticipation under a special scheme in this regard for women.
D. Patent application is not deemed to have been anticipated by communication to Government agency.

Solution: 23- D. Patent application is not deemed to have been anticipated by communication **Under** Section 29(1) states:
An invention claimed in a complete specification shall not be deemed to have been anticipated by reason only that the invention was published in any document by or with the consent of the applicant or the patentee after the communication of the invention to any Government.

24. Mr. Daivam filed an application for the grant of patent for an innovative operating instrument, which was granted and published on 19/02/2018. Later the specification and claims were amended by the patentee, which was published on 19/05/2018. Under the provisions of the Patents Act, 1970 and Rules made therein, which of the following statement(s) is/are correct:
i. Post-Grant Opposition can be filed by any person till 19/02/2019
ii. Post-Grant Opposition can be filed with regard to amended portion by any interested person till 19/05/2019
iii. The whole application can be opposed till 19/05/2022 by any interested person
A. Only (i)
B. Only (i) and (ii)
C. All (i), (ii) and (iii)
D. None
Solution: 24- D : None
As per Section 25(2) — *Post-grant opposition* can be filed by any person interested within 12 months from the date of publication of grant of the patent.

25. Mr. Hirva wants to correct few mistakes which are there in his patent specification. He asks his friend, who tells him that there are different ways prescribed under the Patents Act, 1970 and Rules made therein to correct such mistakes in his specification. Which of the following statement(s) is/are correct in this regard:
i. Clerical mistakes may be corrected under section 78 without paying any fees
ii. Amendment by way of correction under section 57 by filing Form-13 and prescribed fees
iii. Both correction under sections 78 as well as section 57 are considered as amendment under the Patents Act, 1970
A. Only (i)
B. Only (ii)
C. All (i), (ii) and (iii)
D. None
Solution: 25 - B. Only (ii)
As per Section 57, amendments in application, specification, or drawings are done on request made in Form 13 along with prescribed fees. Such amendment must not add new matter or extend the scope of the claims.

On application for amendment of application for patent or complete specification or other related documents under section 57—	13		
before grant of patent;		800	4000
after grant of patent;		1600	8000
where amendment is for changing name or address or nationality or address for service		320	1600

26. An application for grant of patent for an invention was filed on 19/05/2014. The invention uses a biological material which is not commonly available to the public and the same was deposited in the depository institution on 19/02/2014. The application got published on 26/11/2015 and granted on 19/05/2018. In provisions of the Act
i. The depository institution shall make the biological material mentioned in the specification available to the public 19/05/2014 onwards
ii. The Patent office shall make the specification and drawing of the application available to the public 26/11/2015 onwards
iii. Applicant shall be entitled to institute any proceedings for infringement 19/05/2014 onwards
iv. The applicant shall have the like privileges and rights as if the patent for the invention had been granted on 26/11/2015
A. Only (i)
B. Only (ii) and (iv)
C. Only (iii) and (iv) D.
D. Only (iv)
Solution: B. Only (ii) and (iv)
As per Rule 13(8) and Section 10(4)(d), the biological material is made available to the public only after the date of publication of the application and not from the filing date.
As per Section 11A(6), once an application is published under Section 11A(1), the specifications, drawings, and documents become open to public inspection.
Under Section 11A(7), after publication, the applicant has privileges and rights as if the patent were granted, but cannot institute infringement proceedings until the patent is actually granted.

As per Section 11A(7), from the date of publication (26/11/2015), the applicant enjoys similar rights as a patentee but cannot sue for infringement until grant.

27. Ms. Ritu has genetically modified a microorganism from Goa sea beach which has the capacity to degrade petroleum. She has drafted the complete specification and would like to protect the microorganism too. What are the correct options with respect to disclosure requirements:
i. the deposit of the material shall be made not later than the date of filing the patent application in India and a reference thereof shall be made in the specification within the prescribed period;
ii. the deposit of the material shall be made not later than date of publication the patent application in India and a reference thereof shall be made in the specification within the prescribed period;
iii. all the available characteristics of the material required for it to be correctly identified or indicated are included in the specification including the name, address of the depository institution and the date and number of the deposit of the material at the institution;
iv. disclosure of the source and geographical origin of the biological material in the specification is not required even if used in an invention.
A. Only (i)
B. Only (ii) and (iv)
C. Only (i) and (iii)
D. All of the above
Solution: 27 C. Only (i) and (iii)

As per Rule 13(8), If the biological material is not available to the public and cannot be described adequately, the material shall be deposited with an International Depository Authority not later than the date of filing of the application in India. Also, reference to the deposit must be given in the specification within the prescribed period (3 months).
The details must be included in the specification for proper disclosure in accordance with Rule 13(8).
As per Section 10(4)(d)(ii) and Rule 13(9), it is mandatory to disclose the source and geographical origin of any biological material used in an invention.

28. Which of the following is/are patent classification system(s):
i. International Patent Classification
ii. Cooperative Patent Classification
iii. File Index and File Forming Term
iv. European Classification System
A. Only (i) and (ii)
B. Only (i), (ii) and (iii)
C. Only (i), (ii) and (iv)
D. All of the above

Solution: D. All of the above
International Patent Classification (IPC): Administered by WIPO under the *Strasbourg Agreement (1971)* and is used by all PCT contracting states.
Cooperative Patent Classification (CPC): A joint system by the EPO and USPTO and is based on the International Patent Classification but provides finer granularity.
File Index and File Forming Term (FI/F-terms): Used by the Japan Patent Office (JPO). It provides detailed technical indexing beyond IPC for Japanese patent documents.
European Classification System (ECLA): The former EPO classification system, now integrated into CPC, but still recognized historically as a classification scheme.

29. As an authorized patent agent, you just received a controller's refusal under section 15 on an application prosecuted by you. However, after careful scrutiny of the order, your client observed that the controller did not consider one important document filed during prosecution and asked you to file a review petition. The same may be filed on form _____ and within _____ from the date of communication of order.
A. 24, one month
B. 25, three months
C. 14, twelve months
D. 22, six months
Solution: A. 24, one month
A review petition against the Controller's decision is governed by Section 77(1)(f) of the *Patents Act, 1970* and Rule 130 of the *Patents Rules, 2003*.

Rule 130(1) states:
(1) An application to the Controller for the review of his decision under clause (f) of sub-section (1) of section 77 shall be made in Form 24 within one month from the date of communication of such decision to the applicant or within such further period not exceeding one month thereafter as the Controller may on a request made in Form 4 allow and shall be accompanied by a statement setting forth the grounds on which the review is sought. Where the decision in question concerns any other person in addition to the applicant, the Controller shall forthwith transmit a copy of each of the application and the statement to the other person concerned.

30. Mr. Swamy filed a patent application which was granted on 31/03/2023. Unfortunately, just before the grant, Mr. Swamy passed away on 25/02/2023. You, as the authorized patent agent, are now requested by his only son (who is the legal heir) to change the name in the patent. You are required to file form _____ under section _____.

A. 11, 42

B. 10, 44

C. 10, 45

D. 11, 46

Solution: B. 10, 44

The patent granted on 31/03/2023. Mr. Swamy, the patentee died before the grant of the patent (25/02/2023). His legal heir (son) wants the name changed in the patent register

Section 44 covers Registration of assignments, transmissions, etc. It covers transmission of rights due to death, bankruptcy, or operation of law. Rule 90(1) states that application for registration of such transmission must be made in Form 10(fee(e filing)-2400 small entity/12000 large entity).

PART B

Part B comprises of 10 Multiple Choice Questions each of 1 mark with only ONE Option is correct. Select the most appropriate Option

Questions 31 to 35 relate to "Assertion and Reasoning".

Only one option A, B, C or D should be marked as given below:

A. When Both (A) and (R) are True, and (R) is a correct Explanation of (A)

B. When Both (A) and (R) are True (R), but (R) is NOT a correct Explanation of (A)

C. When (A) is true but (R) is False

D. When (A) and (R) both are False

31. Assertion (A): The Examination process under the Act warrants the validity of the Patents granted under the Act.

Reasoning (R): The Examination of patent application under section 12 and 13 ensures the above validity of the patent.

Solution: D. When (A) and (R) both are False

The examination process ensures that the application meets the requirements of patentability at the time of examination, but it does not guarantee or warrant the validity of the granted patent. The validity can still be challenged through opposition or revocation proceedings.

Sections 12 and 13 relate to examination and investigation for anticipation, but they do not ensure the validity of a patent — the examiner's report is not conclusive.

32. Assertion (A): In India, an applicant who is not an inventor must submit Proof of Right/Assignment from the inventor(s).

Reasoning (R): Under Section 6 of the Act, true and first inventor or his assignee or his legal representative only are entitled to apply for patent.

Solution: A. When Both (A) and (R) are True, and (R) is a correct Explanation of (A)

As per Rule 10 of the Patents Rules, 2003, when the applicant is not the inventor, a proof of right (e.g., assignment deed or employment contract clause) from the inventor must be submitted — either with the application or within 6 months of filing.

As per Section 6(1), the true and first inventor, his assignee, or legal representative may apply if the inventor is deceased.

The requirement for Proof of Right arises directly because only those specified under Section 6 can apply, so a non-inventor must prove their entitlement.

33. Assertion (A): The claims define in technical terms the extent, i.e. the scope, of the protection conferred by a patent, or the protection sought in a patent application.
Reasoning (R): Product claims specify the characteristics and features of a particular invention, On the other hand, process claims outline the methods or steps involved in creating or using the invention.
Solution: B. When Both (A) and (R) are True (R), but (R) is NOT a correct Explanation of (A)
Claims define the scope of invention. The claims determine that what is protected by the patent and what constitutes infringement.
Reason (R): This is a correct description of types of claims but it does not explain how claims define the scope of protection.

34. Assertion (A): Every patentee and licensee has to furnish a statement regarding working of the patented invention on commercial scale in India at regular intervals.
Reasoning (R): Patents are not granted merely to enable patentees to enjoy a monopoly for the importation of the patented articles rather patents are granted to encourage inventions and to secure that the inventions are worked in India on a commercial scale.
Solution: A. When Both (A) and (R) are True, and (R) is a correct Explanation of (A)
Section 146(2) of the Patents Act, 1970, and Rule 131 states that every patentee and licensee must file Form 27, a statement regarding the working of the patented invention in India on a commercial scale, typically once every financial year.
Reason (R): The statement of reasoning reflects the object and purpose of the Indian patent system as stated in the working requirement(Section 83).
(R) correctly explain (A)
The reason explains why patentees and licensees are required to furnish the statement of working, to ensure that patents are worked in India and not merely held for import monopoly.

35. Assertion (A): The Patent Facilitators Scheme, introduced by the Government of India, involves engaging professionals and organizations to assist startups in preparing and filing patent applications.
Reasoning (R): The remuneration to be paid to the facilitator varies as per the field of technology in which the patent application has been filed.
Solution: C. When (A) is true but (R) is False
Under the Startup Intellectual Property Protection (SIPP) scheme launched by DPIIT in collaboration with CGPDTM, facilitators (registered patent/trademark/DM agents) help startups in filing and prosecuting their IPR applications. The government bears the facilitator's fee for startups.
The renumeration paid to the facilitator does not depend on the field of technology. It is fixed by the government as per type and stage of IP service (e.g., ₹10,000 for filing, ₹15,000 for final disposal, etc.), not on the technology domain.

Questions 36 to 40 relate to True/False type questions. Only one option A, B, C or D should be marked as given below:
A. When Statement 1 is True, and Statement 2 is False
B. When Statement 1 is False, and Statement 2 is True
C. When Both Statements 1 and 2 are True
D. When Both Statements 1 and 2 are False

36. Statement 1: The timeline for filing a request for expedited examination can be extended by the Controller in response to a petition filed by the applicant to do so.
Statement 2: The extension of time given to applicant by Controller under section 81 is not appealable.
Solution: B. When Statement 1 is False, and Statement 2 is True
As per Rule 24C, an applicant may file a request for expedited examination in Form 18A along with the fee as specified in the first schedule only by electronic transmission duly authenticated within the period prescribed in rule 24B (thirty one months).
Section 81 states : "Where under the provisions of this Act or the rules made thereunder the Controller may extend the time for doing any act, nothing in this Act shall be deemed to require him to give notice to or hear the party interested in opposing the extension, nor shall any appeal lie from any order of the Controller granting such extension."

37. Statement 1: In a PCT application, applicant name may be different for different designated states at national phase.
Statement 2: In a PCT national phase application designating India, the complete specification filed in the international application, shall be taken as complete specification in India.
Solution: C. When Both Statements 1 and 2 are True
For each designated State, the applicant for that State must satisfy the law requirements of the designated state regarding who can be an applicant. The PCT Request (Form PCT/RO/101) allows indicating different applicants for different States, such as different applicants for the US and EP designations.
As per Section 138(4) and Rule 20(6) of the Patents Rules, 2003, when an international application is filed designating India and it enters the national phase, the complete specification filed with the international application is deemed to be the complete specification for the purposes of the Indian application.

38. Statement 1: In India, Term of Patent has been 20 years ever since the Patents Act, 1970 came into force on 20/04/1972.
Statement 2: Irrespective of the field of invention, the term of patent has been uniform since 1999 in India.
Solution: D. When Both Statements 1 and 2 are False
Originally, for inventions claiming a method or process of manufacture, the term was 7 years from the date of filing or 5 years from the date of sealing, whichever was shorter and for other inventions (product patents), the term was 14 years from the date of filing. It was only after the Patents (Amendment) Act, 2002 (effective 20 May 2003) that the term of every patent for all types of inventions was made uniform at 20 years from the date of filing. The uniform 20-year term was introduced to comply with TRIPS Agreement (Article 33).
The uniform 20-year term for all patents came into effect only from 20 May 2003 (via the 2002 Amendment, which came into force then).

39. Statement 1: The date of priority once decided for an application may not be amended.
Statement 2: It is not possible to derive priorities from more than five earlier applications in a single application for grant of patent.
Solution: D. When Both Statements 1 and 2 are False
As per Rule 137 and Rule 20(1) , the Controller may allow correction of clerical errors or mistakes relating to the priority date, provided it is justified and does not affect the substance of the application. Rule 121 of the Patents Rules allows for correction of clerical errors in documents, including those related to priority claims.

There is no limit under the Indian Patents Act or Rules on the number of priority applications that can be claimed in a single patent application. Section 11 of the Patents Act, 1970 allows claiming priority from one or more earlier applications filed in or for convention countries.

40. Statement 1: An exclusive licensee can institute infringement proceedings on his own.
Statement 2: An exclusive licensee can be awarded damages/compensation in an infringement suit by the Court.
Solution: C. When Both Statements 1 and 2 are True
As per Section 109 (1) The holder of an exclusive licence shall have the like right as the patentee to institute a suit in respect of any infringement of the patent
committed after the date of the licence, and in awarding damages or an account of profits or granting any other relief in any such suit the court shall take into consideration any loss suffered or likely to be suffered by the exclusive licensee as such or, as the case may be, the profits earned by means of the infringement so far as it constitutes an infringement of the rights of the exclusive licensee as such.

PART C

Part C comprises 30 marks with 10 questions, each of 3 marks. Out of four options only ONE option is correct. Select the Most appropriate Option.

41. In view of the provisions of the Patents Act, 1970, which of the following entities may file a petition for revocation of a granted patent:
i. Any person
ii. Any interested person
iii. Central Government
iv. State Government
v Controller of Patent
vi. Defendant in any infringement suit by way of a counter-claim
A. Only (i), (ii) and (iii)
B. Only (ii), (iii) and (iv)
C. Only (ii), (iii) and (vi)
D. All of the above
Solution: C. Only (ii), (iii) and (vi)
As per Section 64(1), Subject to the provisions contained in this Act, a patent, whether granted before or after the commencement of this Act, 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.

42. Requirement of proper enablement of a patent specification is the basis of patenting regime philosophy of quid pro quo. However, this requirement is judged differently at different stages of the prosecution of a patent application/granted patent which is evident from different phrases used by the legislature in different sections dealing with various aspects of Patent Prosecution. In view of the same, which of the following sections are correctly matched with the relevant phrases:

i. Section 10(4)(a) - fully and particularly
ii. Section 25(1)(g) - sufficiently and clearly
iii. Section 25(2)(g) - fully and sufficiently
iv. Section 64(1)(h) - sufficiently and fairly

A. Only (i) and (ii)
B. Only (i), (ii), and (iii)
C. Only (i), (ii), and (iv)
D. All of the above
Solution: C. Only (i), (ii), and (iv)
As per Section 10(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.
As per Section 25(1) Where an application for a patent has been published but a patent has not been granted, any person may, in writing, represent by way of opposition to the Controller against the grant of patent on the ground-(g) that the complete specification does not **sufficiently and clearly** describe the invention or the method by which it is to be performed.
As per Section 25(2) At any time after the grant of patent but before the expiry of a period of one year from the date of publication of grant of a patent, any person interested may give notice of opposition to the Controller in the prescribed manner on any of the following grounds, namely:— (g) that the complete specification does not **sufficiently and clearly** describe the invention or the method by which it is to be performed;
As per Section 64(1) Subject to the provisions contained in this Act, a patent, whether granted before or after the commencement of this Act, 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, that is to say— (h) that the complete specification does not **sufficiently and fairly** describe the invention and the method by which it is to be performed, that is to say, that the description of the method or the instructions for the working of the invention as contained in the complete specification are not by themselves sufficient to enable a person in India possessing average skill in, and average knowledge of, the art to which the invention relates, to work the invention, or that it does not disclose the best method of performing it which was known to the applicant for the patent and for which he was entitled to claim protection;

43. Mr. Tanaka a national and resident of Japan filed a patent application in Japan on 25/07/2015. He assigned his right to Ms. Oto. Now Ms. Oto, taking priority of the said application wants to file a conventional application in India on 24/07/2016. While doing so, she wants to take her friend Ms. Meenakshi as the co-applicant in India. What could be the correct option(s) related to this
i. The applicant is free to choose any other applicant and Ms. Meenakshi can surely be a co-applicant without any further legal procedures
ii. Only the applicant in priority application can be the applicant in conventional application in India and Ms. Meenakshi cannot be a co-applicant in this case
iii. Ms. Oto may assign her partial rights to Ms. Meenakshi before she can be taken as coapplicant
iv. None of the above shall work as the timeline is breached
A. (i) and (ii)
B. (ii) and (iii)
C. (i) and (iv)
D. All of the above
Solution: B. (ii) and (iii)
Under Section 135 of the Patents Act, 1970 and Rule 15, the convention application must be filed within 12 months from the date of the first filing in the convention country.

- **Japanese filing date: 25/07/2015**
- **12 months expires on 25/07/2016**

As per Section 135(1), the applicant in the Indian application must be the same person who filed the first application in the convention country, or his/her legal successor or assignee at the time of filing. In this case, the original applicant is Mr. Tanaka and the assignee is Ms. Oto. Ms. Oto can file in India on the basis of assignment.
Under Indian patent law and the Paris Convention, only the original applicant(s) or their successor(s)/assignee(s) are entitled to claim priority. Therefore, unless Ms. Oto assigns part of her rights to Ms. Meenakshi before filing, Ms. Meenakshi cannot be a co-applicant entitled to claim that priority. If Ms. Oto partly assigns her rights before filing in India, then both could be co-applicants.

44. Provisions under the Patents Act, 1970 and Rules made therein provide various timelines for different actions. Which are the places where these timelines are mentioned:
i. Timeline to file Complete Specification after filing Provisional Specification
ii. Term of Patent
iii. Period under which restoration can be filed after the patent has lapsed
iv. Time period under which Post-Grant Opposition is to be filed
v. Time for filing Request for Examination
vi. Time to file review petition after the decision of Controller
A. Under Patents Act - (i), (ii) and (iii); Under Patents Rules – (iv), (v) and (vi)
B. Under Patents Act - (i), (ii); Under Patents Rules – (iii), (iv), (v) and (vi)
C. Under Patents Act - (i), (ii), (iii) and (iv); Under Patents Rules – (v) and (vi)
D. Under Patents Act - (i), (ii), (iii), (iv) and (v); Under Patents Rules – (vi)
Solution: C. Under Patents Act - (i), (ii), (iii) and (iv); Under Patents Rules – (v) and (vi)
(i) Timeline to file Complete Specification after filing Provisional Specification: Section 9(1) of the Patents Act
(ii) Term of Patent: Section 53(1) of the Patents Act, 1970
(iii) Period under which restoration can be filed after patent has lapsed : Section 60(1) of the Patents Act
(iv) Time period under which Post-Grant Opposition is to be filed: Section 25(2) of the Patents Act
(v) Time for filing Request for Examination: Rule 24B(1)(i) of the Patents Rules, 2003
(vi) Time to file review petition after decision of Controller: Rule 130(1) of the Patents Rules, 2003

45. Recently at National IPR Conference 2023 in Delhi, WIPO IP Diagnostics – Indian Adaptation was launched, which is a collaborative effort of WIPO and the Government of India, executed through the Office of the Controller General of Patents, Designs and Trademarks (CGPDTM). In this context, the correct statement(s) is/are:
i. It is a software-based tool that enables SMEs and MSMEs to undertake the self-assessment of their IP Assets
ii. The tool generates reports based on targeted questions related to Intellectual Property Rights
iii. It provides a Global Perspective of IPR including the Indian Context with Illustrative Local Examples
iv. It also enables exchange of search reports between patent examiners of different countries to diagnose the deficiency in their searching technique
v. It also includes information regarding Plant Varieties and Farmer's rights as it is crucial to Indian Aspect

A. Only (i), (ii) and (iii)
B. Only (ii), (iii) and (iv)
C. Only (i), (ii) and (v)
D. All are correct
Solution: A. Only (i), (ii) and (iii)

46. In the context of filing Form 27 on working of patents, which of the following is true
i. Every patentee is required to file Form 27
ii. Exclusive licensee should file Form 27, but it's not mandatory for non-exclusive licensee
iii. For joint applicants, all such patentees may file Form 27 jointly
iv. Different licensee of same patent may file jointly
A. Only (i), (ii) and (iii)
B. Only (i) and (ii)
C. Only (i), (ii) and (iv)
D. Only (i) and (iii)
Solution: D. Only (i) and (iii)
As per Rule 131 of the Patents Rules, 2003 (as amended in 2020), regarding Form 27 – Statement regarding the working of patented invention on a commercial scale in India:
Every patentee must submit Form 27 once in respect of every financial year, within six months from the end of that year.
The obligation applies to patentees and exclusive licensees. Non-exclusive licensees are not required to file Form 27.
Where a patent is granted to two or more persons, they may file Form 27 jointly.
Each exclusive licensee must file separately for the part of the patent they are working; joint filing by different licensees is not allowed.

47. Look at the table below:

Topic	Form	Relevant Section and Rules
1. Restoration of Lapsed Patents	I. Form 3	A. Section 57, Rule 81(1)
2. Statement and Undertaking regarding foreign application	II. Form 7	B. Section 8, Rule 12
3. Notice of Opposition	III. Form 13	C. Section 60, Rule 84
4. Application for Amendment of application/complete specification/other related documents	IV. Form 15	D. Section 25(2), Rule 55A

With reference to the table above, which of the following options is NOT matching the provisions of the Act correctly?
A. 1-IV-C
B. 2-I-B
C. 3-IV-A
D. 4-III-A
Solution: C. 3-IV-A **(Refer forms)**

48. Jack and Jill ventured up the hill and encountered the welcoming Oompa-Dumpa tribe, who graciously offered them a revitalizing root to chew. Overwhelmed by its unique and refreshing flavor, they expressed their gratitude and took the opportunity to gather plant samples before returning home. With great care and respect, they developed this extraordinary find into a delightful chocolate product, patented it, and introduced it to the market where it received an overwhelmingly positive response. They request your professional advice regarding how to proceed with sharing the benefits with the tribe. Which among the following are appropriate option(s):
i. To partnership with the tribe, ensuring fair compensation for their cultural knowledge and contribution
ii. A percentage of the profits from the chocolate's success may be directed back to the tribe, for supporting their community and preserving their traditions
iii. Profits may be used to uplift the lives of the tribal community that had shared their wisdom
iv. To keep all profits for themselves, acknowledging the tribe privately
v.Share a percentage of profits with the Oompa-Dumpa tribe as fair compensation
vi.Make a one-time charitable donation unrelated to the tribe's contribution
vii. Disregard any obligation to share benefits with the tribe due to the discovery process
A. Only iv, vi and vii
B. Only i, iv, v and vii
C. Only iv, v, vi and vii
D. Only i, ii, iii and v
Solution: D. Only i, ii, iii and v
When a community (like the Oompa-Dumpa tribe) provides biological resources or associated traditional knowledge, any commercialization should be based on fair and equitable benefit sharing.

49. Mr. Allu's name was removed from register of Patent Agent on 25/03/2023. Now, Mr. Allu wants to file an application for restoration of his name in the register of Patent Agents. Regarding this:
i. Application for restoration of name in the register of Patent Agents can only be made after 25/05/2023
ii. Application for restoration of name in the register of Patent Agents can only be made within 25/05/2023
iii. Application for restoration of name in the register of Patent Agents can be made on Form-23 by Mr. Allu
iv. Application for restoration of name in the register of Patent Agents can be made on Form-22 by Mr. Allu
A. Only (ii) and (iii)
B. Only (i) and (iii)
C. None are correct
D. All are correct
Solution: A. Only (ii) and (iii)

As per Rule 117(1), Where the name of any person has been removed from the register of patent agents under sub-section (2) of section 130, the Controller may, on an application made in Form 23 within two months from the date of removal, restore his name to the register.

50. Dr. Sudha is unable to exploit her patent commercially. None of the dealers or companies in the same field approached her for commercial deals and assignments. She is unable to maintain the patent nor file renewal fee. What among the following options are correct with respect to surrendering her patent:

i. Dr. Sudha could give notice to controller offering to surrender her patent u/s 63

ii. By surrendering her patent under section 63 by which she could claim refund of fees paid to patent office

iii. The controller based on her surrender request under section 63 may accept the offer and, by order, revoke the patent following due procedure of opposition proceedings, if any

iv. The controller based on her surrender request under section 62 may accept the offer and, by order, revoke the patent following due procedure of opposition proceedings, if any

v. The controller based on her surrender request under section 62 may accept the offer and she could claim refund of fees paid to patent office

A. Only (ii) and (iii)

B. Only (i) and (iii)

C. Only (iv) and (v)

D. None are correct

Solution: Only (i) and (iii)

Section 63 of the Patents Act, 1970 allows a patentee to surrender a patent. The patentee can offer to surrender his patent by giving notice to the Controller. The offer to surrender the patent should be published by the Controller, and every person interested in the patent must also be notified of the same.

RAS Intellect Pvt Ltd

2025: PAPER 1 (SOLVED)

PATENT AGENT EXAMINATION, 2025
(Under Section 126 of the Patents Act, 1970) Paper I
Time: 10.30 a.m. to 12.30 p.m. (Two Hrs.) Max. Marks: 100

Instructions:

1. *This paper consists of 5 parts: Part A (30*2=60 marks),*

*Part B1 (5*1=5 marks), Part B2 (5*1=5marks), and Part C1 (5*3=15 marks), Part C2 (5*3=15 marks)*

1. *ALL questions are compulsory.*
2. *Candidates should read the questions very carefully before answering.*
3. *No clarification will be provided during the course of the examination on any technical/legal matter.*
4. *There is no negative marking.*
5. *All references to "Act" and "Rules" may be read as The Patents Act, 1970 and The Patents Rules, 2003 respectively, as amended until now and their related applications, except when it is specifically referred to The Designs Act, 2000 and The Designs Rules, 2001, as amended.*
6. *All situations/scenarios given in the questions are hypothetical.*
7. *Wherever date is mentioned, it shall be treated to be in dd/mm/yyyy format.*
8. *No candidate should leave or will be allowed to leave the Examination Hall (i) till the completion of the half of the time for the examination; (ii) without signing the Attendance Sheet; and (iii) without properly handing over her/his OMR sheet / Answer Booklet to the Invigilator.*
9. *In case any candidate wants to leave the examination hall before completion of the prescribed time of the examination then she/he can do so by surrendering the question paper.*

PART A

Part A comprises of 30 Multiple Choice Questions of 2 marks each where only one Option is correct. Select the most appropriate answer

1. **Mr. Shatrughan is an Associate Professor in Eminent College of Engineering. He filed two patent applications, A1 on 19/02/2024 and A2 on 20/03/2024. On 05/11/2024, during an IPR Awareness Program in his college, he came to know that for a patent application to be examined, a request for examination must be filed. What would be the prescribed timeline for filing Request for Examination for both his patent applications:**
2. Before 19/09/2026 for A1 and Before 20/10/2026 for A2
3. Before 19/02/2028 for A1 and Before 20/03/2028 for A2
4. Before 19/09/2026 for A1 and Before 20/03/2028 for A2
5. Before 19/02/2028 for A1 and Before 20/10/2026 for A2

Answer: D (Before 19/02/2028 for A1 and Before 20/10/2026 for A2)

Explanation: The deadlines for filing a Request for Examination (RFE) for Indian Patent Applications are governed by **Rule 24B(1)** of the **Patents Rules, 2003**. Before the **Patents (Amendment) Rules, 2024** (effective from **March 15, 2024**), the deadline for filing the RFE was **48 months** from date of priority of the application or from the date of filing of the application, whichever is earlier. After the amendment, it was reduced to **31 months** priority of the application or from the date of filing of the application, whichever is earlier to align with the PCT national phase entry deadline.

2. Innovate Pharmaceuticals patented a drug which is immensely important for public health in India. Medvate Corporation, after three years of grant of the patent, was successful in getting a compulsory license for the same product. However, another company PharmaWonders Inc. which is also into drug manufacturing business and willing to enter into the same product market gathered the data that even after the Compulsory License to Medvate Corporation, the invention in the patent in question has still not been worked in India and the reasonable requirement of the public has not been met. Which of the following could be a possible situation under the provision of the Act?
A. PharmaWonders Inc. can only apply for a second CL but may not request for revocation of the patent
B. PharmaWonders Inc. can file a request for revocation of the patent only after the expiration of two years from the date of the order granting the first compulsory license.
C. Only Central Govt. is eligible to apply for revocation of a granted patent for which one CL is already granted.
D. Both PharmaWonders Inc. and Central govt. may file a request for revocation of the patent but only after three years from the date of the order granting the first compulsory license.
A. Only 1 **B.** Both 2 and 4 **C.** Only 2 **D.** None

Correct Answer: C (Only 2)
Explanation: Under Section 85(1) of the Patents Act, 1970, any person interested, including PharmaWonders Inc., may apply for revocation of a patent only after two years from the date of the order granting the first compulsory licence, if the invention is still not worked or public requirements remain unmet. The Act does not require three years, does not restrict revocation to the Central Government, and does not bar PharmaWonders from seeking revocation

3. **Dr. Chinnappa Swaminathan is an ex-employee of Hydra Power Technology (HPT) and was involved in development of Hydrogen technology. He recently came to know about a granted patent obtained by HPT, in which he made a substantial contribution towards the claimed subject matter during his employment. However, his name was not included as an inventor in the granted patent register and complete specification. Dr. Chinnappa Swaminathan is willing to explore the possibilities in the Patents Act to include his name as an inventor in the said granted patent. He does not expect any support from the applicant HPT as their relationship is no longer friendly. In this context which of the following is possible**
A. Dr. Chinnappa Swaminathan can file a Form-8 to include his name as an inventor in the said patent with a statement setting out the circumstances under which this application is made.
B. Only the applicant/patentee HPT can make a request on form 8 to include Dr. Chinnappa Swaminathan and no other person.
C. Dr. Chinnappa Swaminathan must seek an approval/consent from the patentee HPT before applying to include his name in the patent
D. Dr. Chinnappa Swaminathan's name in the patent register and complete specification cannot be included now
Correct Answer: D (Dr. Chinnappa Swaminathan's name in the patent register and complete specification cannot be included)

Explanation: Section 28(2) and 28(3) allow a request or claim for inclusion of an inventor's name either by the applicant or by the inventor himself; however, Section 28(4) expressly mandates that any such request or claim **shall be made before the grant of patent**. This timing requirement is absolute and operates as a statutory bar. Further, Section 28(5), which earlier permitted post-grant correction of inventorship, has been omitted, leaving no mechanism under Section 28 to add an inventor after grant. Therefore, even though Dr. Chinnappa contributed to the invention, he cannot now invoke Form 8 or Section 28 to seek inclusion of his name in either the complete specification or the register.

4. **Which of the following ground(s) may NOT be used for availing "Grace period" provision under the Patents Rules:**

1. the display of invention occurred with the consent of the true and first inventor or a person deriving title from him at an industrial or other exhibition to which the provisions of the Patents Act have been extended by the Central Government by notification in the Official Gazette
2. the publication of any description of the invention happened in consequence of the display or use of the invention at any such exhibition
3. the description of the invention in a paper read by the true and first inventor before a learned society or published with his consent in the transactions of such a society,

A. Only (i) and (ii) **B.** Only (i) and (iii) **C.** Only (iii) **D.** None of the above

Correct Answer: D (None of the above)

Explanation: Under the Patents Act, all the three grounds listed in (i), (ii) and (iii) fall squarely within the grace-period exceptions provided in Section 31. Clause 31(a) protects the display of an invention at an industrial or other exhibition notified by the Central Government, which corresponds to statement (i). Clause 31(b) protects any publication arising as a consequence of such display or use of the invention, which matches statement (ii). Clause 31(d) further protects disclosures made through papers read before a learned society or published with the inventor's consent in the society's transactions, corresponding to statement (iii). Since each of these forms of disclosure is expressly recognized as a statutory grace-period exception, none of them is excluded, making "None of the above" the correct option.

5. **Your client comes to you and expresses his willingness to file an international application. According to the laid down procedure, for international phase of the application, your client (an Indian applicant) needs to choose a competent international searching authority. Govt. of India had recognized few ISA as competent authority for Indian applicants. Which is NOT a competent International Searching Authority under the Act for an Indian Applicant:**

1. Australian Patent Office
2. Japan Patent Office
3. Austrian Patent Office
4. Swedish Patent Office

Correct Answer: None of the above

Explanation: As per the latest official notification published on 7 October, 2025 on WIPO website, the competent ISAs available to Indian applicants are: the Indian Patent Office (ISA/IN), the Australian Patent Office (ISA/AU), the Austrian Patent Office (ISA/AT), the European Patent Office (ISA/EP), and the Swedish Intellectual Property Office (ISA/SE), China National Intellectual Property Administration (ISA/CN), United States Patent and Trademark Office (ISA/US) and Japan Patent Office (ISA/JP). Accordingly, all the offices mentioned above are competent ISAs for Indian applicants.

6. If

X: Known substance; **Y:** New form of a known substance;

P: New property or new use of a known substance;

A: Known process, machine, or apparatus;

C: Enhancement of known efficacy;

Cc represents the complement of C (meaning no enhancement of efficacy);

Thus, the set of Patentable and Non-patentable inventions under section 3(d) of the Patents Act, 1970 (as amended) can be summarized as:

1. Non-Patentable = $(Y \cap Cc) \cup (P \cup A)$;

Patentable = $(Y \cap C) \cup (A \cap (\text{New Reactant})) \cup (A \cup (\text{New Product}))$

1. Patentable = $(Y \cap Cc) \cup (P \cup A)$;

Non-Patentable = $(Y \cap C) \cup (A \cap (\text{New Reactant})) \cup (A \cup (\text{New Product}))$

1. Patentable = $(Y \cap Cc) \cup (P \cup C)$;

Non-Patentable = $(Y \cap C) \cup (A \cap (\text{New Reactant})) \cup (A \cup (\text{New Product}))$

1. None of above

Correct Answer: A

Non-Patentable = $(Y \cap Cc) \cup (P \cup A)$;

Patentable = $(Y \cap C) \cup (A \cap (\text{New Reactant})) \cup (A \cup (\text{New Product})$

Explanation: For an Indian applicant filing an international application under the PCT, only those International Searching The answer is based on the exclusions specified under **Section 3(d) of the Patents Act, 1970**.

- **Non-Patentable Set:**
- This set is formed by combining the statutory exclusions:

1. **(**$Y \cap Cc$**):** A new form of a known substance (Y) that provides **no** enhancement of known efficacy (Cc).
2. **P:** A mere discovery of a new property or use of a known substance.
3. **A:** A known process/machine/apparatus that is merely used without yielding a new product or using a new reactant.

- Therefore, Non-Patentable = $(Y \cap Cc) \cup (P \cup A)$.
- **Patentable Set (Exceptions):**
- This set represents the exceptions where the exclusion is overcome:

4. **(**$Y \cap C$**):** A new form of a known substance (Y) that *does* show an **enhancement of known efficacy** (C).
5. $(A \cap (\text{New Reactant})) \cup (A \cup (\text{New Product}))$**:** A known process (A) which is made patentable because it either results in a **New Product** or uses a **New Reactant**.

7. **Under the Designs Act, who is eligible for filing:**

1. A petition for cancellation of a registered design	a. Any person
2. Application for rectification of register of design	b. Any person interested
3. Information regarding the existence of registration in respect of design	c. Any person
4. Inspection of and extracts from registers	d. Any person aggrieved

A. 1-c, 2-a, 3-b, 4-d **B.** 1-b, 2-d, 3-a, 4-c **C.** 1-d, 2-b, 3- a, 4-c **D.** 1-a, 2-d, 3-c, 4-b

Correct Answer: B (1-b, 2-d, 3-a, 4-c)
Explanation:
Under **Section 19** of the Designs Act, 2000, a **petition for cancellation of a registered design** may be filed by **"any person interested"**, so item 1 corresponds to **b**.
Under **Section 31** of the Designs Act, 2000, an **application for rectification of the register of designs** may be made by **"any person aggrieved"**, so item 2 corresponds to **d**.
Under **Section 26** of the Designs Act, 2000, the **register of designs is open to public inspection**, and certified copies or information regarding the existence of registration may be supplied to **any person** on payment of the prescribed fee; therefore both items 3 and 4 correctly correspond to **a** and **c**, each of which denotes "any person".

8. **In the journal publication of IPO, a company InnoSol Corporation found that a design is registered which is prejudicial to their business operation. The company therefore approached you for help in order to file a petition for cancellation of the registered design. In this context, which of the following statement(s)/ground(s) is/are applicable for such a petition?**

1. Your client should be a person interested
2. The design has been published in some publication in USA and not in India prior to the date of registration
3. Design is not new or original
4. The design contains a property mark

A. Only 2 and 3 **B.** Only 1 and 3 **C.** Only 3 and 4 **D.** All of the above

Correct Answer: D (All of the above)
Explanation:
Under **Section 19 of the Designs Act, 2000**, a petition for cancellation of a registered design may be filed **only by a "person interested,"** which includes any entity whose business interests are affected, such as InnoSol Corporation; therefore Statement **1** is correct. Section **19(1)(b)** explicitly provides that a design may be cancelled if it has been **published in India or in any other country prior to the registration**, so prior publication in the USA is a valid ground, making Statement **2** correct. Section **19(1)(a)** allows cancellation if the design is **not new or original**, so Statement **3** is also correct. Further, under **Section 19(1)(d)** read with Section **2(d)**, a design is not registrable if it consists of a **property mark**, and such registration is liable to be cancelled, therefore Statement **4** is correct as well.

9. **Mr. Sunil designed a beautiful piece of jewellery and registered a design for the same on 01/01/2023. Few months later, Mr. Kamal came up with a substantially similar design, and is willing to apply it on a different article of same class. Mr. Kamal sees a huge market and business for the upcoming product and is desperate to obtain the design IP. In this context, which of the following is possible under the Design Acts 2000**

A. Mr. Kamal can register the same/substantially same design for a different article of same class where a previous design is already registered by Mr. Sunil
B. Mr. Kamal will have to become a registered proprietor of the design previously registered by Mr. Sunil, then only the second design as mentioned above may be registered.
C. Irrespective of proprietor of the registered design, the earlier registered design will always be prejudicial to the newness or originality of any later applied similar design.
D. All of the above

Correct Answer: B (Mr. Kamal will have to become a registered proprietor of the design previously registered by Mr. Sunil, then only the second design as mentioned above may be registered)
Explanation: Under the Designs Act, 2000, a substantially similar design cannot be registered for another article in the same class **unless the applicant becomes the registered proprietor of the earlier design** under **Section 6**. Therefore, Mr. Kamal must first obtain ownership of Sunil's registered design, making **Option B** the legally correct choice.

10. **Prof. Ranganathan found that one of his students had patented his research work without including his name. You, as his Patent Agent successfully proved during a post-grant opposition proceeding that the invention so far as claimed in any claim of the complete specification was wrongfully obtained from Prof. Ranganathan in a manner set out in clause (a) of sub-section (2) of section 25. Hence the controller ordered for revocation of the granted patent. Now, in order to amend the patent in the name of Prof. Ranganathan, you are required to file form within months.**
A. 10, 6 **B.** 12, 3 **C.** 17, 3 **D.** 15, 6

Correct Answer: B (12, 3)
Explanation: When a patent is found to be wrongfully obtained under Section 25(2)(a), the Controller may revoke the patent and allow the true and first inventor (here, Prof. Ranganathan) to request that the patent be amended in his name. This situation is governed by Section 26(1) & 26(2), which permit the true inventor to request substitution within the prescribed period, and under the Patent Rule 63A this request is made using Form 12, which is the prescribed form for recording or altering the name of the person in the patent after revocation for wrongful obtaining. The time limit prescribed is 3 months from the date of the order of the Controller.

11. **A patent having a priority date 01/06/2023 was filed in patent office on 01/01/2024. The controller had marked the application for secrecy u/s 35 and sought central govt. permission. A communication was sent to the central govt.. Central govt., however, declared the application to be non-prejudicial and consequently the secrecy direction was removed by the controller on 06/06/2024. In the given situation, when can the application be published:**
A. Normally within Three months of 06/06/2024
B. Normally within One month of 01/06/2024
C. Normally within One month of 01/12/2024
D. Normally within Three months of 01/01/2025

Correct Answer: C (Normally within One month of 01/12/2024)
Explanation: A patent application is ordinarily published only after the expiry of 18 months from the date of priority as mandated by Section 11A(1), which in this case places the earliest publication date at 01/12/2024. Because secrecy directions were issued under Section 35, publication was barred during the period of restriction. Once the Central Government declared the invention non-prejudicial and the secrecy directions were withdrawn, Section 38 applies, which states that, upon revocation of secrecy directions, the Controller shall act "in accordance with the provisions of this Act", meaning the application resumes its normal processing cycle, including the statutory 18-month publication timeline. As per Patent Office practice under Rule 24, publication ordinarily occurs within one month after the completion of the 18-month period; therefore, the application will be published normally within one month of 01/12/2024, making Option C correct.

12. A foreign based MNC Enervate Corp filed a patent application on renewable energy systems. During examination, the controller had a doubt that such a device is against the well established law of nature and hence may not be industrially applicable. In order to clear his doubt that the claimed device is not a perpetual motion machine (PMM), the controller asked the applicant to supplement the complete specification with a working model illustrating the alleged invention. In this context what would be permissible under the provision of the Act:

A. A complete specification is always a written document and controller may not ask for additional model or sample to supplement it.

B. Controller may ask for model or sample, but that shall not be deemed to form part of the complete specification

C. Controller can ask for model/sample only from the domestic applicants and not from the foreign applicants.

D. None of the above is true as per the provisions of the Act

Correct Answer: B (Controller may ask for model or sample, but that shall not be deemed to form part of the complete specification)

Explanation: Under Section 10(3) of the Patents Act, 1970, while a complete specification is ordinarily a written document, the Controller is expressly empowered to require the applicant to provide a model or sample if such additional material is necessary to understand or verify the invention but such a model or sample does not form part of the complete specification; it is only supplementary for examination purposes. This power applies equally to foreign and domestic applicants, and therefore the Controller's request is valid. Hence, Option B is correct.

13. **Which of the following is true in respect of registration of design of particular article under the Designs Act:**

1. A design may be registered in respect of any or all of the articles comprised in a particular class
2. Controller is the appropriate authority to decide the class of any article
3. A design application shall be invalidated on the ground of the design not being new, as the same design was previously registered in respect of another article belonging to a different class of articles.
4. There are 31 different classes and a miscellaneous class in the classification system for design registration.

A. All are true **B.** Only 1, 2 and 3 are true **C.** None is true **D.** 1, 2 and 4 are true

Correct Answer: D (1, 2 and 4 are true)

Explanation: Under Section 6(1) of the Designs Act, 2000, a design may be registered in respect of any or all articles in a prescribed class, making Statement 1 true. Statement 2 is also correct because Section 6(2) expressly provides that any question regarding the class of an article shall be determined by the Controller, whose decision is final. Statement 3 is not correct as novelty is judged across all classes. If the same design is already registered for one article, it cannot be registered again for another article even in a different class. But the statement says "shall be invalidated as the same design was previously registered in respect of another article belonging to a different class." This is misleading as novelty is absolute, not class-specific. So the ground is not "different class," but "already registered.". Statement 4 is correct because the Third Schedule to the Designs Rules prescribes 31 classes plus a miscellaneous class (Class 99). Thus, the correct answer is Option D.

14. Under the Patents Act, 1970, the provision of revocation of a granted patent in public interest is an important aspect to balance the monopolistic rights with public interest. In reference to the same, which of the following is the Correct option:

A. Where the Central Government or State Government is of opinion that a patent or the mode in which it is exercised is prejudicial to the public, it may make a declaration to that effect in the Official Gazette and thereupon the patent shall be deemed to be revoked.

B. Where the Central Government is of opinion that a patent was wrongly granted overlooking the provisions of section 3 of the Patents Act, it may direct the Controller to revoke the same and make publication to that effect.

C. Where the High Court is of opinion that a patent or the mode in which it is exercised is mischievous to the State or generally prejudicial to the public, it may, after giving the patentee an opportunity to be heard, make a declaration to that effect in the Official Gazette and thereupon the patent shall be deemed to be revoked.

D. Where the Central Government is of opinion that a patent or the mode in which it is exercised is mischievous to the State or generally prejudicial to the public, it may, after giving the patentee an opportunity to be heard, make a declaration to that effect in the Official Gazette and thereupon the patent shall be deemed to be revoked.

Correct Answer: D (Where the Central Government is of opinion that a patent or the mode in which it is exercised is mischievous to the State or generally prejudicial to the public, it may, after giving the patentee an opportunity to be heard, make a declaration to that effect in the Official Gazette and thereupon the patent shall be deemed to be revoked)

Explanation: The power to revoke a granted patent in public interest is provided under Section 66 of the Patents Act, 1970, which states that where the Central Government is of the opinion that a patent or the mode in which it is exercised is mischievous to the State or generally prejudicial to the public, it may, after giving the patentee an opportunity to be heard, make a declaration in the Official Gazette, upon which the patent shall be deemed revoked. State Governments have no such power, and High Courts do not exercise revocation under Section 66. The ground is not limited to wrongful grant under Section 3 but strictly tied to public interest considerations. Therefore, Option D correctly reflects Section 66.

15. **A patent was granted to an invention titled "Storage facility" on 19/05/2022. On 22/08/2023, the Central Government is satisfied that the granted patent is disguised in its title and in reality it is for an invention relating to atomic energy for which no patent can be granted under sub- section (1) of section 20 of the Atomic Energy Act, 1962 (33 of 1962). In this regard, which of the following(s) is/are correct statement(s):**

1. Central Government may direct the Controller to revoke the patent,
2. On direction of Central Government the Controller, after giving notice to the patentee and every other person whose name has been entered in the register as having an interest in the patent, and after giving them an opportunity of being heard, may revoke the patent.
3. The Controller may allow the patentee to amend the complete specification in such manner as he considers necessary instead of revoking the patent.

A. Only (i) **B.** Only (i) and (ii) **C.** All (i), (ii) and (iii) **D.** None of the above

Correct Answer: C (All (i), (ii) and (iii))
Explanation: Under Section 65(1) of the Patents Act, 1970, if the Central Government is satisfied that a granted patent is in fact for an invention relating to atomic energy, for which no patent can be granted under Section 20(1) of the Atomic Energy Act, 1962, it may direct the Controller to revoke the patent, making statement (i) correct. Under Section 65(1), upon receiving such a direction, the Controller must give notice and opportunity of hearing to the patentee and all interested persons before revoking the patent, making statement (ii) correct. Crucially, Section 65(2) provides that, instead of revoking the patent, the Controller may allow the patentee to amend the complete specification to remove matters relating to atomic energy, if such amendment is possible, making statement (iii) correct. Therefore, all three statements are true, and the correct answer is Option C.

16. **If a patent application fails to disclose or wrongly mentions the source or geographical origin of biological material used for the invention, which of the following action is NOT possible:**

1. A pre-grant opposition may be filed against such application for patent on this ground
2. It can be used as a ground for filing post-grant opposition
3. A petition for revocation can be filed on this ground
4. Controller can suo-moto revoke such patent, if already granted

A. Only (iv) **B.** Only (i) and (ii) **C.** Only (i), (ii) and (iii) **D.** None of the above

Correct Answer: A (Only (iv))
Explanation: Failure to disclose or wrongful disclosure of the source or geographical origin of biological material is expressly included as a ground for pre-grant opposition under Section 25(1)(j) and for post-grant opposition under Section 25(2)(j) of the Patents Act, 1970. It is also a valid ground for revocation under Section 64(1)(p). However, there is no provision in the Act that authorises the Controller to suo motu revoke a granted patent for this reason; revocation must occur only through proceedings initiated under Section 64 or special provisions such as Sections 65 or 66, none of which apply here. Therefore, statement (iv) is the only action not possible, making Option A correct.

17. **A patent was granted on 10/06/2022 to CanSonPvt. Ltd. On 03/08/2022, they issued a cease-and-desist notice to its competitor Alma Private Limited, stating that the latter's planned product "KONDUCT" infringes on their patent for the composition sold under the name "REWIRE". CanSon asserts exclusive rights granted under the Patents Act, 1970, which of the following statements is correct?**

A. Alma Private Limited has sufficient time to file a post grant opposition on the grounds of the cease-and-desist notice dated 03/08/2022
B. Alma Private Limited has sufficient time to file a post grant opposition under section 25(2) of the Act on the grounds listed in clauses (a) to (k), and on no other grounds
C. Alma Private Limited has sufficient time to file a post grant opposition under section 25(1) of the Act on the grounds listed in clauses (a) to (k), and on no other grounds
D. None of above

Correct Answer: B (Alma Private Limited has sufficient time to file a post grant opposition under section 25(2) of the Act on the grounds listed in clauses (a) to (k), and on no other ground)
Explanation: A post-grant opposition under Section 25(2) of the Patents Act, 1970 may be filed “at any time after the grant of the patent but before the expiry of one year from the date of publication of the grant”, and only on the statutory grounds listed in clauses (a) to (k) of that subsection. Since the patent was granted on 10/06/2022, and the notice was issued on 03/08/2022, Alma Private Limited is still well within the one-year opposition period. A cease-and-desist notice does not affect the opposition timeline, and Section 25(1) (pre-grant opposition) is not applicable once the patent is granted. Therefore, the only correct statement is Option B.

18. In an infringement suit, your client managed to convince the court that part of the claims of the Patentee is wrongfully obtained from him. What could be the possible consequences of the above situation under the provision of the Act:

1. The patent shall be revoked in totality
2. The patent shall be amended excluding the claims in contest
3. The entire Patent right may be shifted/granted to your client in a petition
4. A Patent may be granted to your client for the claims wrongfully obtained by the patentee.

A. Only i and iii **B.** Only ii and iv **C.** Only ii and iii **D.** Only i and iv

Correct Answer: B (Only ii and iv)

Explanation: Under Section 52(1), when a court or the Appellate Board finds that only part of a patent has been wrongfully obtained, it may direct amendment of the complete specification by exclusion of the wrongfully obtained claim(s), which corresponds to statement (ii). Additionally, under section 52(2) the same section empowers the court to permit the grant of a patent to the true and first inventor for the part that was wrongfully obtained, which is exactly statement (iv). Section 52 does not mandate full revocation of the entire patent when only some claims are tainted (so statement i is incorrect), nor does it allow transfer of the entire patent to the true inventor (statement iii is incorrect). Therefore, based strictly on Section 52, the correct answer is Option B.

19. **An Indian resident Dr. Pandit filed a patent application with the European Patent Office (EPO) on January 1, 2022. The application entered into India through the conventional route on December 23, 2022. After receiving a First Examination Report (FER), the applicant received an objection related to the written permission under Section 39, which requires prior permission for filing patents outside India. In response to this objection, the applicant submitted a request for post facto permission under Section 39 by filing form 25 after receiving the FER. Which of the following statements is correct?**

A. Post facto permission under Section 39 can be obtained by filing Form 25 when the application has entered India through the conventional route.
B. Permission under Section 39 by filing Form 25 is required only for PCT applications.
C. His application for a patent under this Act shall be deemed abandoned under Section 40.
D. There is no need to obtain permission under Section 39 when the application has entered India through the conventional route.

Correct Answer: C (His application for a patent under this Act shall be deemed abandoned under Section 40)

Explanation: Under Section 39(1) of the Patents Act, an Indian resident must not file a patent application outside India unless (a) he has first filed the application in India 6 weeks earlier, or (b) he has obtained prior written permission from the Controller. Dr. Pandit filed directly with the EPO on 01/01/2022 without filing first in India and without prior permission, which constitutes a violation of Section 39. Under Section 40, if a resident files abroad in contravention of Section 39, then “the application for a patent under this Act shall be deemed to have been abandoned.” Importantly, the Act does NOT allow post-facto permission after filing abroad unless a prior Indian filing existed. Therefore, filing Form 25 after receiving the FER cannot cure the violation. Thus, Option C is correct.

20. Ms. Shivagami Devi has qualified the patent agent exam and wants to get her name registered in the Patent Agent Register. She will file her details by filing . Later after 4 years, due to not filing of the fee, her name was removed from the register. She rectified the mistake and wants her name to be restored in the register. She needs to apply for the same on

A. Form-22, Form-23 **B.** Form-23, Form-22 **C.** Form-22, Form-20 **D.** From-21, Form-20

Correct Answer: A (Form-22, Form-23)
Explanation: For registration as a Patent Agent, Rule 111 and 112 of the Patents Rules, 2003 requires filing an application in Form-22 along with the prescribed fee, making Form-22 the correct form for Ms. Shivagami Devi to enter her name in the Patent Agent Register. If a patent agent's name is removed from the register due to non-payment of renewal fee, restoration is governed by Rule 117, which states that an application for restoration must be made in Form-23 within two months from date of removal. Therefore, she must first file Form-22 for initial registration and later file Form-23 for restoration, making Option A correct.

21. **Mr. Sundaram makes an application for registration of a design under certain class. However, due to some negligence on the part of the applicant, the application got abandoned. However, he decides to make a fresh application again for the same design. In this context, which of the following is/are true**

1. The first application shall become a prior art for the fresh application.
2. Once abandoned, it was not possible to make a fresh application for the same design.
3. It is possible to make a fresh application on the same design if the earlier application is abandoned, and the earlier one may not be a prior art.
4. It is not possible to make the fresh application in the same class.

A. All of the above **B.** Only 3 **C.** Only 3 and 4 **D.** Only 1, 2 and 3

Correct Answer: B (Only 3)
Explanation: Under the Designs Act, 2000, an abandoned design application does not proceed to registration and does not become prior art, because only registered designs or published designs constitute prior publication under Section 19(1)(b). An abandoned application is never published and therefore cannot anticipate a subsequent application for the same design. The law also does not prohibit filing a fresh application for the same design after abandonment, making statement 3 correct.

22. **Which of the following ground of revocation is not a ground of post grant opposition?**
A. that the subject of any claim of the complete specification is not an invention within the meaning of this Act;
B. that the invention so far as claimed in any claim of the complete specification is obvious or does not involve any inventive step, having regard to what was publicly known or publicly used in India or what was published in India or elsewhere before the priority date of the claim;
C. that the applicant contravened any direction for secrecy passed under section 35 or made or caused to be made an application for the grant of a patent outside India in contravention of section 39;
D. None of above

Correct Answer: C (that the applicant contravened any direction for secrecy passed under section 35 or made or caused to be made an application for the grant of a patent outside India in contravention of section 39)

Explanation: The grounds for post-grant opposition are exhaustively listed in Section 25(2)(a)–(k) of the Patents Act, 1970. Grounds such as “not an invention” under Section 25(2)(f) and “obviousness or lack of inventive step” under Section 25(2)(e) clearly appear within this list and are therefore valid grounds for post-grant opposition. However, contravention of secrecy directions under Section 35 or filing abroad without permission under Section 39 does not appear in any of the clauses of Section 25(2). Instead, these violations are grounds for revocation under Section 64(1)(m) and Section 64(1)(n), not opposition. Therefore, the only option that is not a ground for post-grant opposition is Option C.

23. **As per the definition provided in the Patents Act, 1970 (as amended), "capable of industrial application", in relation to an invention, means that the invention is capable of being**
or in;

1. manufactured, used, an industry
2. made, utilised, an industry
3. produced, exported, an industry
4. made, used, an industry

Correct Answer: D (made, used, an industry)
Explanation: The definition of “capable of industrial application” is provided in Section 2(1)(ac) of the Patents Act, 1970, which states that an invention is industrially applicable if it is “capable of being made or used in an industry.” Accordingly, the correct wording is made and used in an industry, making Option D the correct answer.

24. A demand for international preliminary examination may be filed at any time prior to the expiration of:

1. 3 months from the date of transmittal of the ISR and WO of the ISA, or 22 months from the priority date, whichever time limit expires later
2. 3 months from the date of transmittal of the ISR and WO of the ISA, or 22 months from the priority date, whichever time limit expires earlier.
3. 6 months from the date of transmittal of the ISR and WO of the ISA, or 22 months from the priority date, whichever time limit expires later
4. 3 months from the date of transmittal of the ISR and WO of the ISA, or 20 months from the priority date, whichever time limit expires later

Correct Answer: A (3 months from the date of transmittal of the ISR and WO of the ISA, or 22 months from the priority date, whichever time limit expires later)
Explanation: Under PCT Rule 54bis.1(a), a demand for International Preliminary Examination (IPE) must be filed before the later of: (i) 3 months from the date of transmittal of the International Search Report (ISR) and Written Opinion (WO), or (ii) 22 months from the priority date. This ensures that applicants have adequate time either after receiving the ISR/WO or before the 22-month deadline, whichever provides more time. Therefore, Option A correctly reflects the PCT time limits.

25. According to the prevailing major classification systems observed in patent publications globally, match the system of the classification to that of the example

Classification system	Example
1. IPC	**(a) 57/224**
2. CPC	**(b) Y02A 10/00**
3. FI/F-Term	**(c) G06F 1/16**
4. US Classification	**(d) G06F 1/16 312M 5E322**

A. 1-c, 2-a, 3-d, 4-b **B.** 1-c, 2-b, 3-d, 4-a **C.** 1-c, 2-b, 3-a, 4-d **D.** 1-b, 2-c, 3-a, 4-d

Correct Answer: B (1-c, 2-b, 3-d, 4-a)
Explanation: The symbol G06F 1/16 is in standard IPC format, so it corresponds to IPC (1-c). The code Y02A 10/00 belongs to the CPC "Y" section for climate-change related technologies, so it matches CPC (2-b). The extended form G06F 1/16 312M 5E322 is a typical Japanese FI/F-Term combination, so it is FI/F-Term (3-d). Finally, 57/224 is in the numeric US Classification format (class/subclass), so it matches US Classification (4-a).

26. **Xeronious Corporation is willing to start working on a 6G technology. It came to know that Yashobhav Inc. has filed a patent application on a similar technology. However, the patent office is yet to examine the application as no Request for Examination (RFE) was filed by Yashobhav Inc. yet. In order to decide whether to enter into working in that particular technology, Xeronious Corporation decides to file a request for examination for the patent application filed by Yashobhav Inc.. In this context, which of the following is true:**
A. Xeronious Corporation is not eligible to file RFE for an application filed by company Yashobhav Inc.
B. Xeronious Corporation can file RFE, however, the examination report will be sent to the applicant, i.e. Yashobhav Inc..
C. Xeronious Corporation can file an expedited RFE for an application filed by company Yashobhav Inc., but it cannot file a normal RFE.
D. None of the above is true

Correct Answer: B (Xeronious Corporation can file RFE, however, the examination report will be sent to the applicant, i.e. Yashobhav Inc)
Explanation: Under Section 11B(1) of the Patents Act and Rule 24B(2)(i) of the Patent Rules, a Request for Examination (Form 18) may be filed by the applicant or by any "interested person." An entity evaluating freedom to operate or assessing whether a competing technology affects its business qualifies as a person interested, and therefore Xeronious Corporation is eligible to file the RFE. However, the First Examination Report (FER) must still be issued only to the applicant, i.e., Yashobhav Inc., because the Act provides no mechanism for sending the FER to the person who filed the RFE.

27. Dr. Ramaswamy has obtained an exclusive license for a patent from the original patentee, Ms. Priya. After a few months, Dr. Ramaswamy notices that a third party is infringing the patent rights covered under his exclusive license. He decides to take legal action. Based on provisions of the Patents Act, 1970, which of the following is/are true about Dr. Ramaswamy's legal rights in this situation?

1. Dr. Ramaswamy can sue the infringer and has the same right as Priya (the patentee) to take legal action.
2. The court will ignore any potential losses Dr. Ramaswamy may have incurred due to the infringement when awarding damages.
3. Ms. Priya may be added as a defendant in the lawsuit, unless she is already part of the case as a plaintiff.
4. Ms. Priya, once added as a defendant, will automatically be liable for the legal costs, regardless of her participation in the case.

A. Only (i) and (ii)
B. Only (i), (iii) and (iv)
C. Only (i) and (iii)
D. Only (ii) and (iv)

Correct Answer: C (Only (i) and (iii))

Explanation: Under Section 109(1) of the Patents Act, 1970, an exclusive licensee has the same right as the patentee to institute a suit for infringement, making statement (i) true. When such a suit is filed, Section 109(2) requires that the patentee be made a party, and if the patentee does not voluntarily join as a plaintiff, the court may add them as a defendant, which makes statement (iii) true. Statement (ii) is incorrect because, under Section 109(1), the court must consider both the patentee's and the exclusive licensee's losses when awarding damages. Statement (iv) is also incorrect because the Act does not impose automatic cost liability on the patentee merely for being added as a defendant, 109(2). Therefore, the correct answer is Option C.

28. **An invention relates to an ophthalmic solution container with a laminate structure consisting of an inner layer of cyclic olefin interpolymer with a thickness of 500 µm and an outer layer of polyethylene resin with a thickness of 1,500 µm. Prior art document D1 discloses a squeeze bottle with a layered structure, including an inner layer of cyclic olefin interpolymer of 500 µm thickness and an outer polyethylene layer. The total thickness of the bottle is 2,000 µm. Which of the following is most accurate regarding the novelty of the claimed invention under Section 2(1)(j) of the Patents Act?**

A. The invention lacks novelty over D1 because D1 discloses all the essential features of the claimed ophthalmic solution container.
B. The invention is novel over D1 because D1 does not disclose the exact thickness of the outer polyethylene layer.
C. The invention is novel over D1 because D1 does not disclose the total laminate thickness.
D. None of the above.

Correct Answer: A (The invention lacks novelty over D1 because D1 discloses all the essential features of the claimed ophthalmic solution container)

Explanation: Under Section 2(1)(j), an invention is not novel if a prior art document discloses all essential features, either explicitly or inherently. Here, the claimed invention defines a laminate with an inner cyclic olefin interpolymer (COI) layer of 500 µm and an outer polyethylene layer of 1,500 µm, totaling 2,000 µm. Prior art D1 explicitly discloses the exact same inner layer thickness (500 µm) and the same layer materials, and it discloses a total thickness of 2,000 µm, which inherently and unambiguously implies an outer polyethylene layer of 1,500 µm. Since all structural features are either explicitly or implicitly disclosed in D1, the claimed container lacks novelty, making Option A correct

Candidates must go through the following scenario and answer questions 29 and 30 based on the same:

Dr. Bhuvan has invented a cradle made of titanium which has a swing and five or more supporting structures, wherein the fifth support is strategically positioned to provide better stability and safety. The cradle has provisions for hanging toys and it can be folded up. Claim 1 of Dr. Bhuvan's patent application as filed reads:

"A cradle comprising a plurality of supporting structures and a provision for hanging toys". Patent Office has found the following documents in prior art search:

D1: describes a foldable wooden cradle with four supporting structures having hanging hooks for toys

D2: describes a non-foldable titanium cradle with four supporting beams

D3: describes a non-foldable aluminium cradle with four supporting beams having plurality of hanging hooks

Dr. Bhuvan has amended his claim and has drafted the following three versions of claim:

1. *"A titanium cradle comprising a plurality of supporting structures and a provision for hanging toys"*
2. *"A foldable titanium cradle comprising at least five supporting structures and a provision for hanging toys"*
3. *"A foldable titanium cradle comprising a plurality of supporting structures and a provision for hanging toys"*

29. **Which of the above version(s) of amended claim would be new over the above mentioned documents?**

A. 1 only **B.** 1 and 2 only

C. 2 and 3 only **D.** All above claim versions are new

Correct Answer: D (All above claim versions are new)

Explanation: All three amended claim versions are new because novelty requires that a single prior art document disclose all claimed features together. D1 lacks titanium and five supports, D2 lacks foldability and toy-hanging provision, and D3 lacks foldability and titanium. Since none of the prior art documents individually contain the full combination of features recited in any of the three amended claims.

30. **Which of the above version(s) of amended claim would be non-obvious over the above mentioned documents?**

A. 2 only **B.** 1 and 2 only

C. 2 and 3 only **D.** All above claim versions are non-obvious

Correct Answer: A (2 only)

Explanation: Claim Versions 1 and 3 are obvious because a skilled person could readily combine the teachings of D1, D2, and D3 to arrive at embodiments including titanium, foldability, and toy-hanging provisions. However, no prior art suggests adding five or more supporting structures to achieve improved stability. This additional structural feature provides a technical advance and is not derivable from the prior art, making Claim Version 2 the only version that satisfies the inventive step.

PART B

Part B1 comprises of 5 marks and consists 5 Multiple Choice Questions related to "Assertion and Reasoning" with 1 mark each. Only one option A, B, C or D should be marked as given below:

1. ***When Both (A) and (R) are true, and (R) is a correct explanation of (A)***
2. ***When Both (A) and (R) are true, but (R) is NOT a correct explanation of (A)***
3. ***When (A) is true but (R) is false***
4. ***When (A) is false but (R) is true***

31. **Assertion (A):** In India, for filing a divisional application existence of plurality of inventions is not a sine qua non.
Reasoning (R): A patent applicant may *suo-moto* file a divisional application in respect of an invention disclosed in the provisional or complete specification or an already filed divisional application.

Correct Answer: D (When (A) is false but (R) is true)
Explanation: The Assertion (A) is false, because the settled legal position after Boehringer Ingelheim v. Controller (Delhi High Court, 2023) is that plurality of inventions is a mandatory statutory requirement for filing a divisional application under Section 16. A divisional can only be filed when the parent application contains more than one invention, whether raised by the Controller or identified by the applicant. Therefore, plurality is a sine qua non. The Reason (R) is true, because Section 16(1) expressly allows an applicant to file a divisional application suo motu for an invention disclosed in the provisional, complete specification, or any already filed divisional application, so long as it is based on matter disclosed in the earlier application. Thus, R is a true statement of law.

32. **Assertion (A):** In India, a sequence listing must be submitted as part of the patent application when the invention involves a nucleotide or amino acid sequence.
Reasoning (R): The requirement for a sequence listing is intended to ensure that the patent office can properly assess the novelty and inventiveness of biotechnological inventions based on specific sequences.

Correct Answer: A (When Both (A) and (R) are true, and (R) is a correct explanation of (A))
Explanation: The Assertion (A) is true because Indian Patent Rules (especially Rule 9(3) read with the Sequence Listing requirements under WIPO ST.25/ST.26) mandate submitting a sequence listing in computer readable text format when a patent application involves nucleotide or amino acid sequences. The Reason (R) is also true, as the purpose of requiring a standardized sequence listing is to enable the Patent Office to accurately examine novelty, inventive step, and sufficiency of disclosure for biotechnology inventions by comparing sequences in a searchable, consistent format. Therefore, R correctly explains A, making Option A the right answer.

33. **Assertion (A):** A stamp or label can be considered an article for the purpose of registration of design under the Designs Act, 2000
Reasoning (R): Article must have its existence independent of Design applied to it.

Correct Answer: D (When (A) is false but (R) is true)
Explanation: The Assertion (A) is false because under Section 2(a) read with Section 2(d) of the Designs Act, 2000, a stamp, label, token, card or similar article cannot be considered an "article" for design registration since it does not have independent existence and is excluded by statute. The Reason (R) is true, because the definition of "article" requires that it must have an independent existence and must not be merely a design applied to a non-independent medium. Since A is false and R is true, the correct answer is Option D.

34. Assertion (A): The TRIPS agreement is often seen as both a protector of intellectual property and a tool for equitable access.
Reasoning (R): The design of TRIPS agreement, while promoting a global standard for protection of intellectual property rights, also provides countries with the flexibility to prioritize essential goods, public health and economic development based on local needs.

Correct Answer: A (When Both (A) and (R) are true, and (R) is a correct explanation of (A))
Explanation: The Assertion (A) is true because the TRIPS Agreement establishes minimum global standards for protecting intellectual property while simultaneously being viewed as a mechanism to ensure fairness in access to essential technologies, especially in developing countries. The Reason (R) is also true and correctly explains A, since TRIPS includes built-in flexibilities, such as compulsory licensing, parallel importation, transition periods, and exceptions for public health (affirmed by the Doha Declaration), allowing member countries to prioritize public health, essential goods, and socioeconomic needs even while upholding IP protection standards. Thus, R accurately explains why TRIPS can function as both a protector of IP and a tool for equitable access, making Option A correct.

35. **Assertion (A):** The publication of a patent application is an important step in the patent administration system.
Reasoning (R): The publication of a patent application provides the public with information about the invention before the grant of a patent with the option for opposition as per the Act.
Correct Answer: A (When Both (A) and (R) are true, and (R) is a correct explanation of (A))
Explanation: The Assertion (A) is true because publication under Section 11A is a key step in the patent system, as it formally discloses the invention to the public and triggers several legal rights and timelines. The Reason (R) is also true, since after publication, the public gains access to the complete specification and may file a pre-grant opposition under Section 25(1) based on this disclosure. Because the publication enables transparency, public scrutiny, and opposition before grant, R correctly explains A, making Option A the correct answer.

Part B2 comprises of 5 marks and consists 5 Multiple Choice Questions related to True/False type questions with 1 mark each. Only one option A, B, C or D should be marked as given below:
A. ***When Statement 1 is True, and Statement 2 is False***
B. ***When Statement 1 is False, and Statement 2 is True***
C. ***When Both Statements 1 and 2 are True***
D. ***When Both Statements 1 and 2 are False***

36. **Statement 1:** No suit or other proceedings shall be commenced in respect of an infringement committed before the date of grant of the application for patent.
Statement 2: It shall not be competent for any person in a suit or other such proceeding to take any objection to a patent on the ground that a patent has been granted for more than one invention.
Correct Answer: C (When Both Statements 1 and 2 are True)
Explanation: Statement 1 is true because Section 11A(7) of the Patents Act expressly states that no suit for infringement may be instituted for acts committed before the date of grant of the patent, although reasonable royalty may later be claimed for post-publication, pre-grant use. Statement 2 is also true, as Section 46(2) bars defendants from challenging a patent on the ground that it relates to more than one invention, preventing invalidation merely on the basis of lack of unity. Therefore, both statements are true, making Option C correct.

37. Statement 1: Only the registered proprietor of a design may obtain a certified copy of any registered design.
Statement 2: In one particular design application, a design can be registered for more than one class.
Correct Answer: D (When Both Statements 1 and 2 are False)
Explanation: Statement 1 is false because under Section 26 of the Designs Act, 2000, any person may obtain a certified copy of an entry in the Register of Designs upon payment of the prescribed fee; the Act does not restrict this right to only the registered proprietor. Statement 2 is also false because a single design application cannot be registered in more than one class; as per Section 5 read with Section 6, a design is registered in respect of articles in one prescribed class, and a separate application is required for registration in another class. Therefore, both statements are false, making Option D correct.

38. **Statement 1:** In India, the duration of grace period in Designs Act is same as is the Patents Act, when exhibited in the Govt. notified exhibitions.
Statement 2: In a registered design, the registered proprietor of the design has copyright of the design for 10 years which is extendable for a further period of 5 years.
Correct Answer: B (When Statement 1 is False, and Statement 2 is True)
Explanation: Under Section 21 of the Designs Act, 2000, the grace period for filing a design after exhibiting it in a Government-notified exhibition is six months, whereas the Patents Act under Section 31 provides a twelve-month grace period for notified exhibitions. Therefore, the grace periods under the two Acts are not the same, making Statement 1 incorrect. Statement 2 is correct because Section 11(1) and 11(2) of the Designs Act provide that the registered proprietor enjoys copyright in a registered design for ten years, which is extendable by an additional five years upon payment of the prescribed fee. Thus, Statement 2 is true and the correct option is B.

39. **Statement 1:** As per definition provided in the Patents Act, a “patented article” includes the article which utilizes patented ingredients.
Statement 2: As per definition provided in the Patents Act, a “patentee” includes non-exclusive licensee.
Correct Answer: D (When Both Statements 1 and 2 are False)
Explanation: Statement 1 is false because Section 2(1)(o) defines a "patented article" as "an article in respect of which a patent has been granted. Statement 2 is false because Section 2(1)(p) defines a "patentee" as "the person for the time being entered on the register as the grantee or proprietor of the patent."

40. **Statement 1:** A patent of addition application can be filed on another patent of addition application.
Statement 2: A patent of addition can only be granted after the main application is granted.
Correct Answer: B (When Statement 1 is False, and Statement 2 is True)
Explanation: Section 54 of the Patents Act permits a patent of addition only when the improvement or modification relates to the main invention. In contrast, Statement 2 is true, as Section 54(4) explicitly states that a patent of addition shall not be granted before the grant of the main patent, meaning the main patent must exist before the patent of addition can be granted. Accordingly, Statement 1 is incorrect and Statement 2 is correct, making Option B the right choice.

PART C

Part C1 comprises 15 marks with 5 questions, each of 3 marks.

1. **With reference to various schemes/programmes related to intellectual property, match the following and select the right option below-**

1. CIPAM	a. WIPO support programme for innovators in developing countries
2. NIPAM	b. IP programme for Higher Educational Institutes
3. TISC	c. IP Awareness mission programme
4. IP Saarthi	d. Professional Body for IP promotion
5. KAPILA	e. Technology enabled IP Assistant

A. 1-d, 2-c, 3-a, 4-e, 5-b **C.** 1-c, 2-d, 3-b, 4-e, 5-a
B. 1-d, 2-c, 3-e, 4-a, 5-b **D.** 1-c, 2-d, 3-e, 4-b, 5-a

Correct Answer: A (1-d, 2-c, 3-a, 4-e, 5-b)

Explanation: CIPAM (1) is the Cell for IPR Promotion and Management, which functions as a professional body for IP promotion, so it matches (d). NIPAM (2) stands for the National IP Awareness Mission, hence it is an IP awareness mission programme, matching (c). TISC (3) refers to Technology and Innovation Support Centers, a WIPO support programme for innovators in developing countries, so it matches (a). IP Saarthi (4) is a technology-enabled IP assistant tool of the Indian IP office, matching (e). KAPILA (5) is the Kalam Program for IP Literacy and Awareness aimed at higher educational institutes, so it corresponds to (b).

42. **The Patents Act, while extending certain rights to the patentee, also includes certain exceptions and limitations to balance the exclusive rights. In this context, match the subject of exclusion/limitation to the appropriate availability and sections as given below-**

Subject	Availability of provision in the Act/Rules
1. Acts for making a patented product for obtaining regulatory approval from authorities, not an infringement	a. No Explicit provision
2. Experimental use and/or scientific research not meaning infringement	b. Section 107A(b)
3. Use of articles on foreign vessels, aircrafts and land vehicles without infringing the patent rights, not an infringement	c. Section 107A(a)
4. Exhaustion of patent rights when imported by any person from a duly authorized person under the law	d. Section 47(3)
5. Exceptions and limitations related to farmers' and/or breeders' use of patented inventions	e. Section 49

A. 1-c, 2-d, 3-e, 4-b, 5-a B. 1-b, 2-d, 3-e, 4-c, 5-a
C. 1-d, 2-c, 3-e, 4-b, 5-a D. 1-d, 2-a, 3-e, 4-b, 5-c
Correct Answer: A (1-c, 2-d, 3-e, 4-b, 5-a)
Explanation:

1. **c:** Acts involving the making or use of a patented invention solely for purposes reasonably relating to the acquisition of regulatory approval fall squarely within the Bolar exception under Section 107A(a) of the Patents Act.
2. **d:** Experimental use or scientific research is expressly permitted under Section 47(3), which excludes such acts from the scope of infringement.
3. **e:** The use of patented articles aboard foreign vessels, aircraft, or land vehicles that temporarily or accidentally enter India is exempted from infringement liability under Section 49.
4. **b:** Importation of patented products by any person from a duly authorized source is allowed under the doctrine of international exhaustion contained in Section 107A(b).
5. **a**: Finally, although the Act recognizes several statutory exceptions, it contains no explicit provision addressing exceptions relating to farmers' or breeders' use of patented inventions, making option A the correct match for subject 5.

43. **Match the following case laws and related subject matter that was highlighted in them:**

1. Microfibres Inc. v. Girdhar & Co	(a) Regulating Conduct of Patent/TM Agents for negligence
2. Saurav Chaudhary v. Union of India & ANR	(b) Indian Jurisprudence related to Standard Essential Patents (SEP)/ Fair Reasonable and Non-Discriminatory (FRAND)

3. Syngenta v. Controller of Patents	(c) Copyright and Design overlap, exclusivity and 50 times rule
4. Telefonktiebolaget Lm Ericsson (Publ) v. Lava International Ltd.	(d) Divisional application contents and condition of filing
5. Reckitt Benckiser (India) Ltd. v. Wyeth Ltd.	(e) Newness and originality of designs
6. Whirlpool of India Ltd. v. Videocon Industries Ltd.	(f) Right to owner of design for application to articles

A. 1-c, 2-a, 3-d, 4-b, 5-e, 6-f **B.** 1-e, 2-a, 3-d, 4-b, 5-f, 6-c
C. 1-a, 2-c, 3-b, 4-d, 5-f, 6-e **D.** 1-d, 2-c, 3-a, 4-b, 5-e, 6-f
Correct Answer: A (1-c, 2-a, 3-d, 4-b, 5-e, 6-f)
Explanation: In Microfibres Inc. v. Girdhar & Co., the Delhi High Court dealt with the overlap between copyright and design protection, including the "50 times" rule and loss of copyright after design registration, so it matches (c).
Saurav Chaudhary v. Union of India & ANR concerned the regulation and discipline of Patent/Trademark Agents for negligence, hence (a).

In Syngenta v. Controller of Patents, the Court examined the requirements for filing and maintaining divisional applications, thus (d).
Telefonktiebolaget LM Ericsson (Publ) v. Lava International Ltd. is a leading Indian case on Standard Essential Patents and FRAND obligations, matching (b).
Reckitt Benckiser (India) Ltd. v. Wyeth Ltd. focused on newness and originality in design law, so it corresponds to (e).
Whirlpool of India Ltd. v. Videocon Industries Ltd. addressed the right of the design owner to apply the registered design to articles, aligning with (f).

44. **Under the provision of the Patents Act and Rules, failure to comply certain requirements may lead to possible consequences with patent application/granted patents. In this context, match the following**

Action	Possible Consequence
1. Complete Specification not followed within 12 months of Provisional Specification	a. Deemed to be revoked
2. Contravention to any direction of secrecy	b. Deemed to be withdrawn
3. Govt. opines patent as generally prejudicial to public after due procedure	c. Deemed to be abandoned
4. International application not entering in national phase in India within prescribed time	d. Deemed to have been abandoned
5. The patentee does not desire to contest or leave his reply and evidence against post grant opposition within prescribed time	e. Deemed to have been revoked

A. 1-b, 2-c, 3-d, 4-a, 5-e **B.** 1-c, 2-b, 3-d, 4-a, 5-e
C. 1-c, 2-d, 3-a, 4-b, 5-e **D.** 1-d, 2-c, 3-a, 4-b, 5-e
Correct Answer: C (1-c, 2-d, 3-a, 4-b, 5-e)
Explanation: If a complete specification is not filed within twelve months of the provisional specification, the application is deemed to be abandoned under Section 9(1), so item 1 matches (c). Contravention of any direction of secrecy under Sections 35 and 39 attracts Section 40, which provides that the application shall be deemed to have been abandoned, hence item 2 matches (d). Where the Central Government forms the opinion that a patent is generally prejudicial to the public interest and follows the procedure in Section 66, the patent “shall be deemed to be revoked”, so item 3 corresponds to (a).
If an international application does not validly enter the national phase in India within the prescribed time under Section 7(1A) read with Rule 20 and 22, it is treated as deemed to be withdrawn, giving item 4 the consequence (b).
Finally, under Rule 58(2), if the patentee does not desire to contest, or fails to file reply and evidence in a post-grant opposition within the prescribed time, the patent is deemed to have been revoked, so item 5 matches (e).

45. The Designs Act, 2000 prohibits certain designs to be registered/published under various sections of the Act. In this context, match the subject-matter to the appropriate section:

1. a chair design that is nearly identical to a classic iconic chair design that is protected in multiple countries and has won international awards	a. Section 4(b)
2. a camouflage pattern applied to outdoor apparel having application in defense	b. Section 46(a)
3. a design application for a footwear which has a religious symbol engraved	c. Section 35(1)
4. a design application for fibre glass model of the Taj Mahal	d. Section 4(a)
5. a design for luxury kitchenware featuring abstract shapes that subtly resembles nude human body parts	e. Section 4(d)

A. 1-c, 2-a, 3-d, 4-b, 5-e
B. 1-e, 2-a, 3-d, 4-b, 5-c
C. 1-a, 2-c, 3-b, 4-d, 5-e
D. 1-a, 2-b, 3-c, 4-d, 5-e
Correct Answer: D (1-a, 2-b, 3-c, 4-d, 5-e)
Explanation: A chair design nearly identical to a famous, internationally protected chair fails the **novelty/originality requirement**, which is prohibited under **Section 4(b)**, so item 1 corresponds to **(a)**.
A camouflage pattern used for defence apparel relates to **official or government-used designs**, falling under the bar in **Section 46(a)**, making item 2 match **(b)**.
A footwear design containing a **religious symbol** violates public order or morality, prohibited under **Section 35(1)**, and therefore item 3 aligns with **(c)**.
A fibreglass model of the **Taj Mahal**, being a national monument, is barred under Section **4(a),** so item 4 links with (d).
Finally, a kitchenware design subtly resembling nude human body parts is prohibited for being obscene or immoral under Section 4(d), matching item 5 with **(e).**

Part C2 comprises 15 marks with 5 questions, each of 3 marks.

46. **You have a foreign client which is a company of small scale. While applying for patent in India, the company wishes to take advantage of reduced fee being a small entity (as per the definition in India). Which among the following is/are true?**

1. Small entity fee benefit can only be taken by Indian SMEs as per MSME Act
2. Your client can take the advantage by filing any other supporting document in support of their claim of being a small entity.
3. The foreign company can avail fee reduction benefit if they meet the criteria as defined for SME in India
4. They need to file evidence of registration under MSME Development Act 2006

A. Only 1 **B.** Only 2 **C.** Both 2 and 3 **D.** Both 1 and 4
Correct Answer: C (Both 2 and 3)

Explanation: A foreign company can claim the small entity fee benefit in India provided it satisfies the financial criteria prescribed in the Patents Rules, namely the investment or turnover limits defined for Indian small entities. There is no requirement that a small entity must be registered under the Indian MSME Act, and therefore Statements 1 and 4 are false. Instead, Rule 2(fa) of the Patents Rules permits any applicant, Indian or foreign, to claim small entity status by submitting appropriate supporting documents establishing that they fall within the prescribed financial limits, making Statement 2 true. Likewise, Statement 3 is true because foreign SMEs are eligible for the reduced fee if they meet the SME criteria applicable in India, regardless of nationality.

47. **In the prevailing Patents Act and Rules made thereunder, for which of the following act(s), no fee is prescribed:**

1. Application for withdrawing a application
2. Filing a statement regarding working of a patented invention on a commercial scale in India
3. For preparation of certified copy of priority document and e-transmission through WIPO DAS
4. Transmittal fee for international application (for ePCT filing).
5. Surrendering a patent

A. Only (i), (ii) and (iii) **B.** Only (i), (ii) and (iv)
C. Only (i), (ii), (iii) and (iv) **D.** All (i), (ii), (iii), (iv) and (v)

Correct Answer: D (All (i), (ii), (iii), (iv) and (v))
Explanation: Withdrawing a patent application does not require payment of any fee, as no such charge appears in the First Schedule. Similarly, filing the statement of working (Form 27) under Rule 131 is expressly treated as a no-fee compliance requirement. The preparation and electronic transmission of a priority document through the WIPO DAS system is also listed in the fee schedule as NIL, confirming that no fee is payable. For international applications filed through the ePCT system, the transmittal fee is likewise NIL, as reflected in the PCT-related entries of the First Schedule. Finally, surrendering a patent under Section 63 involves only a written request to the Controller and is not associated with any prescribed form or fee. Since all five acts attract no fee, Option D is the correct choice.

48. **After due examination process, a patent for efficiently cleaning polluted air and water was granted to Mr. Samayveer on 19/05/2024. Mr. Samayveer comes to you for professional advice regarding payment of renewal fees. Which of the following is/are correct advice to Mr. Samayveer regarding payment of renewal fee:**

1. To keep the granted patent in force, renewal fees shall be payable at the expiration of the second year from the date of the patent or of any succeeding year and the same shall be remitted to the patent office before the expiration of the second or the succeeding year.
2. Since the patent is of the nature wherein it solves the public health related issues by efficiently cleaning polluted air and water, there is no need to pay renewal fees for its maintenance.
3. Where the renewal fees payable in respect of two or more years is paid in advance through electronic mode for a period of at least 4 years, a 20% per cent reduction in fee shall be applicable for such renewal.
4. There is only 10% reduction in fee shall be applicable in case of advance payment of renewal fees for at least 4 years when the fee is paid through physical means of bank draft.

A. Only (i) and (ii) **B.** Only (iii) and (iv) **C.** Only (ii) **D.** Only (i)

Correct Answer: D (Only (i))

Explanation: Statement (i) is correct because under Section 53(2) of the Patents Act read with Rule 80, renewal fees must be paid at the expiration of the second year from the date of the patent and every succeeding year, and such fees must be remitted before the expiration of the respective year to keep the patent in force. Statement (ii) is incorrect because the Act provides no exemption from renewal fees even for inventions relating to public health or environmental welfare. Statements (iii) and (iv) are also incorrect because the Patents Rules provide for 10% reduction in renewal fees only when paid in advance for at least four years and only through electronic mode; no provision grants 20% reduction or any reduction for offline payments such as bank drafts. Therefore, only Statement (i) is correct.

49. **Which of the following act or order or power of controller as provided in the Patents Act or the Designs Act and Rules is/are NOT appealable?**

1. Controller may refuse to register a design being contrary to public order or morality under the Designs Act, 2000
2. Disposal of applications for extension of time by the Controller
3. Controller terminates a granted compulsory license under section 84 on an application by the patentee when the circumstance that gave rise to the grant of compulsory license no longer exists
4. Controller may, on application by an eligible person, order for rectifying the register of design
5. Controller may give directions for prohibiting or restricting the publication of information with respect to the invention when it appears to the controller that the invention is relevant for defence of India

A. Only (i) and (ii) **B.** Only (iii) and (iv) **C.** Only (ii) and (v) **D.** Only (iv) and(v)

Correct Answer: C (Only (ii) and (v))

Explanation: Under the Patents Act and Designs Act, several orders of the Controller are appealable to the High Court under Section 117A of the Patents Act and Section 36 of the Designs Act. A refusal to register a design under Section 5 read with Section 19 of the Designs Act is expressly appealable, and similarly, rectification of the Register of Designs under Section 31 is also appealable. Termination of a compulsory licence under Section 95 (for licences granted under Section 84) is also included within the scope of appealable orders under Section 117A(2). By contrast, disposal of extension-of-time requests under the Patents Rules is a procedural order and is not appealable. Likewise, directions restricting publication of inventions relating to defence under Section 35 constitute a security measure of the Central Government and are not appealable. Therefore, the only non-appealable actions are (ii) and (v), making Option C correct.

50. **Recently WIPO Member States adopted WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge. Which of the following is/are NOT correct statement(s) with regard to the same:**

1. The Treaty aims to enhance the efficacy, transparency and quality of the patent system with regard to genetic resources and traditional knowledge associated with genetic resources, and prevent patents from being granted erroneously for inventions that are not novel or inventive with regard to genetic resources and associated TK
2. It is first WIPO Treaty to include provisions specifically for Indigenous Peoples as well as local communities
3. The Treaty establishes an optional patent disclosure requirement for patent applicants to disclose the country of origin of the genetic resources and/or the Indigenous Peoples or local community providing the associated TK, if the claimed inventions are 'based on' genetic resources and/or associated TK.

4. Patent offices would have obligation to verify the authenticity of such disclosures.
5. Patent applications filed prior to the entry into force of this Treaty would have a grace period of twelve month to comply with the obligations of the treaty.
6. This Treaty is open for signature by any eligible Party for one year after its adoption, i.e. up to May 23, 2025. The Treaty will enter into force three months after 15 eligible Parties have deposited their instruments of ratification or accession.

A. Only (ii) and (iv) **B.** Only (iii) and (iv) **C.** Only (iii), (iv) and (v) **D.** Only (vi)

Correct Answer: C (Only (iii), (iv) and (v))
Explanation: Statements (i) and (ii) are correct because the 2024 WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge explicitly aims to improve transparency and prevent erroneous patents involving genetic resources and traditional knowledge, and it is indeed the first WIPO treaty to include dedicated provisions for Indigenous Peoples and local communities. However, Statement (iii) is incorrect because the treaty establishes a mandatory, not optional, disclosure requirement for patent applicants whose inventions are based on genetic resources or associated TK. Statement (iv) is incorrect because patent offices are not required to verify the authenticity of disclosures; they only ensure that disclosures are made, not substantively examined. Statement (v) is also incorrect because the treaty does not impose a 12-month grace period for already-filed patent applications; it applies only to applications filed after the treaty enters into force for that contracting party. Finally, Statement (vi) is correct, as the treaty is open for signature until May 23, 2025 and enters into force three months after 15 ratifications.

RAS Intellect Pvt Ltd

PYQ
PAPER II

2005: PAPER 2 (SOLVED)

The Patents Act, 1970
Qualifying Examination under section 126 Of the Patents Act (As amended & updated)
Drafting and Interpretation of Patent Specification and other Documents
SEPTEMBER. 2005

PAPER-II

Time -2 Hrs
Total pages- 4+1

Total Marks -100

Instructions:
1. All questions are compulsory.
2.Marks or each question are indicated at the end Of the question.
3.Answers should be precise and to the point supported by relevant provisions of the Act and Rules.

Q1. Answer any 5 of the following.

(a) Your client PASCO LTD, which is a detergent manufacturing Company and having tough competition from rival company SAUSCO LTD, interested to get a Patent on its latest invention relating to detergent composition as soon as possible preferably within one year from the date of filing the application in India. Advise your client the possible procedure to obtain the Patent right within the expected minimum time to grab the monopoly in the field.

Solution: In order to secure patent protection on its newly developed detergent composition at the earliest, preferably within one year from the date of filing in India, PASCO LTD must adopt all available mechanisms under the Patents Act, 1970 and Patent Rules aimed at accelerating publication, examination, and grant. The following strategic steps are recommended:
1. File a Complete Specification at the Outset (U/S 10): To avoid delays associated with provisional filing, PASCO LTD should directly file. Filing a complete specification along with all necessary forms viz. Form 1, Form 26, Form 3, Form 5 allows immediate processing for publication and examination without waiting for the 12-month period applicable to provisional applications.
2. Request for Early Publication – Form 9 (Section 11A(2), Rule 24A): Ordinarily, a patent application is published after 18 months from the filing or priority date. To compress the timeline, PASCO LTD should file request for Early Publication in Form 9 and pay the prescribed fee. On acceptance of this request, the application is typically published within 1 month. Early publication is essential because examination can start only after publication.
3. Request for Examination at the Earliest –Form 18 or Form 18A: Under Section 11B, examination begins only upon filing of a Request for Examination (RFE). Here the PASCO LTD has two options:
(a) Regular Examination (Form 18): This proceeds in a normal queue and may not meet the one-year expectation.
(b) Expedited Examination (Form 18A) – Rule 24C: To achieve grant within a year, PASCO should opt for Expedited Examination, if eligible. Eligibility categories include applicants who are female, startups, small entities, government organizations, or applicants who have selected India as the ISA/IPEA in a PCT application.
If PASCO LTD falls under small entity or has corresponding PCT with India as ISA/IPEA, it may qualify for Form 18A. Expedited examination ensures early FER issuance.

4.Prompt Response to Examination Reports (Section 21): To maintain the accelerated timeline, PASCO must file a comprehensive and prompt reply to the First Examination Report (FER), attend hearings promptly if scheduled. Efficient prosecution may reduce the time between FER and grant to just a few months.

5. Possible Use of PCT Route with Demand for Early National Phase (Optional): If the invention is already filed abroad or intended for global protection, PASCO may use the PCT system and enter India early. Selecting India as ISA/IPEA supports eligibility for Expedited Examination and further reduces time-lines.

6. Pre-Grant Opposition Management (Section 25(1)): After publication, the application becomes open to pre-grant opposition. PASCO must ensure that the specification is robust to avoid delays caused by oppositions. Proper drafting and prior-art analysis will reduce risks.

By combining early publication and expedited examination, along with active prosecution, PASCO LTD can realistically achieve patent grant within 9–12 months,

(b) Your client Mr. AMRIT LAL invented a novel molecule for treatment of diabetes two years ago while doing his Ph.D and published the same in journal of medicinal chemistry. Now as a result of further extensive research work the molecule has been found to have potential therapeutic values for the treatment of Cancer. He now wants to have patent protect for the same molecule with anticancer properties in India and USA. Advise your client the provisions available in Indian Patents Act for protection of invention as mentioned by the client. What are his chances in USA?

Solution:

Mr. Amrit Lal invented a novel molecule two years ago and subsequently published it in the Journal of Medicinal Chemistry.

Under the Indian Patents Act, 1970, this prior publication destroys novelty of the molecule per se in terms of Sections 2(1)(j), 13 and 29. No grace period u/s 31 exists for journal publications (except government-notified exhibitions or learned society readouts). Consequently, a product claim for the molecule is not patentable.

Further, seeking protection for the newly discovered anti-cancer therapeutic use is also not permissible in India because Section 3(d) expressly prohibits the "mere new use of a known substance," while Section 3(i) bars patenting of methods of treatment of humans; additionally, after the Supreme Court's decision in Novartis AG v. Union of India (2013), Swiss-type second medical-use claims are not allowable.

Therefore, the only possibility for securing patent protection in India is if the inventor develops a new form, derivative, composition, or pharmaceutical formulation of this molecule and demonstrates enhanced therapeutic efficacy as required under the Explanation to Section 3(d), supported by experimental data.

Further in the United States, however, a different legal position applies. Under 35 U.S.C. §102(b)(1), the inventor's own disclosure is protected only for one year; since the publication occurred two years prior, Product (molecule) claim is not patentable in USA.

Nevertheless, U.S. patent law permits claims on new therapeutic uses and methods of treatment under 35 U.S.C. §101, provided the requirements of novelty (§102), non-obviousness (§103), and enablement/written description are satisfied.

Accordingly, Mr. Amrit Lal stands a strong chance of obtaining U.S. patent protection for the newly discovered anti-cancer application, for example if claim is directed to a "method of treating cancer by administering a therapeutically effective amount of the compound," whereas no such protection is available in India unless a therapeutically superior new form or formulation is developed.

(c) Your client JOSOMAHA CORPORATION based in Tokyo, Japan filed a PCT international application in Japanese language in receiving office, Japanese Patent Office, on without claiming any priority. After receiving good search report from the International searching Authority on 30.10.2004 it is interested to enter the national phase in India to obtain a patent as early as possible. Advise your client the relevant provisions available in Indian patent law to file a national phase application in above mentioned circumstances. Also advise client about the provisions in the Indian Patents Act for getting early examination of the national phase application.

Solution:

JOSOMAHA CORPORATION filed a PCT international application in Japanese language at the Japanese Patent Office (as receiving office) without claiming priority and after receiving a good International Search Report, the corporation now wishes to enter the national phase in India at the earliest. Under Section 7(1A) of the Indian Patents Act read with Rule 20 of the Patents Rules, a PCT application must enter the Indian national phase within 31 months from the international filing date, which now acts as the priority date since no priority was claimed. During the national phase filing, the applicant must file Form 1 (Application for Patent), Form 2 (Complete Specification—English translation), Form 3 (Statement & Undertaking under Section 8), Form 5 (Declaration of inventorship), Form 26 (Power of Agent, if filed through agent), and pay the national phase fee as prescribed. Further as the PCT application was filed in Japanese -a language not accepted by the Indian Patent Office, the applicant must submit an English translation of the complete specification, claims, abstract, and drawings in accordance with Rule 20(3). Once the national phase application is filed, it becomes an Indian patent application. To accelerate publication, the applicant should file a request for Early Publication through Form 9 under Section 11A(2) so that examination may commence without delay.

Since the applicant is based in Japan and the corresponding PCT application has been favourably searched by the Japan Patent Office (JPO), the applicant can further leverage the India–Japan Patent Prosecution Highway (PPH) programme.Under the PPH framework, the applicant may request expedited examination in India based on the fact that the corresponding Japanese application (filed with JPO for the same invention family) has received a positive examination result, allowing at least one claim. To utilise the PPH, the applicant must follow the procedural requirements prescribed under the "Guidelines for Patent Prosecution Highway (PPH) between the Indian Patent Office (IPO) and the Japan Patent Office (JPO)", which include filing:

- A PPH request (separate from Form 18A), identifying the allowed claims in Japan;
- Copies of the allowed claims issued by JPO;
- English translation of the allowed Japanese claims;
- Copies and English translations of all office actions issued by JPO that relate to the allowed claims;
- A claim correspondence table, mapping the allowed Japanese claims to the claims presented in the Indian national phase application to establish substantial equivalence; and
- A declaration that the Indian claims for which PPH is requested sufficiently correspond to the JPO-allowed claims.

When the Office of Later Examination (OLE) decides that the request is acceptable, the application is assigned a special status for an expedited examination under the PPH. Now the applicant becomes eligible to file Form 18A under Rule 24C for Expedited Examination. Under Rule 24C, once the request is admitted, the IPO follows accelerated time-lines that is the examiner prepares the examination report within 1 month (extendable to 2 months) as per Rule 24C(6); the Controller disposes of the report within 1 month according to Rule 24C(7); and the First Examination Report (FER) is ordinarily issued within 15 days thereafter under Rule 24C(8). After issuance of the FER, the applicant has 6 months to place the application in order for grant under Rule 24C(10), extendable by 3 months through Form 4 under Rule 24C(11).

(d) Due to malnutrition, lots of people in LOBANG, a least developing country, are suffering from tuberculosis. LOBANG has no manufacturing capacity for the manufacturing of SIMTADIN. a PHARMACEUTICAL COMPOUND, very effective and cheap for the treatment of tuberculosis. However, it authorizes by notification M/S CIPLA LTD in India to manufacture and export the said pharmaceutical compound to LOBANG. M/S CIPLA LTD informs that the pharmaceutical compound is patent protected in India by LIZA [NC USA and therefore unable to manufacture and export due to fear of possible infringement. Advise your client M/S CIPLA LTD about various relevant provisions available under the Patents Act 1970 as amended in order to enable the said company to manufacture and export the said product to LOBANG without any infringement.

Solution:

M/s CIPLA LTD has been authorized by the Government of LOBANG, a least-developed country suffering from tuberculosis and lacking pharmaceutical manufacturing capacity, to supply the patented drug "SIMTADIN." Since SIMTADIN is patented in India by LIZA INC (USA), any manufacture or export by CIPLA without authorization would ordinarily amount to infringement under Section 48. However, the Act includes a special mechanism permitting Indian companies to manufacture and export patented medicines to countries facing public health crises. The governing provision is Section 92A, introduced in the 2005 amendments to implement the Doha Declaration on TRIPS and Public Health. Under Section 92A(1), the Controller may grant a compulsory licence specifically for manufacture and export of a patented pharmaceutical product to any country that:

- has insufficient or no manufacturing capacity in the pharmaceutical sector, and
- has granted a compulsory licence, or has by notification or otherwise permitted importation of the patented product from India to address public health needs.

Since LOBANG has officially authorized CIPLA to import SIMTADIN and is an LDC with no manufacturing capacity, the statutory conditions are satisfied.

Under Section 92A(2) read with Rule 96, CIPLA must apply for compulsory licence using Form 17. The application should include a certified copy of the authorization/notification issued by LOBANG permitting import of SIMTADIN;evidence that LOBANG lacks manufacturing capacity; details of efforts made to obtain a voluntary licence from LIZA INC (unless the Controller waives this due to "national emergency" or "extreme urgency," consistent with Section 92(3). The section 92 A also requires the Controller to ensure that the licence is limited only to the quantity necessary to meet the needs of the importing country and to impose conditions necessary to prevent diversion of the product to other markets. Once the compulsory licence under Section 92A is granted, CIPLA's manufacture and export of SIMTADIN is not an infringement, because statutory authorization overrides the patentee's exclusive rights under Section 48.

Therefore, by applying for and obtaining a Compulsory Licence for Export under Section 92A, following Rule 96 and filing Form 17, CIPLA can legally manufacture and export SIMTADIN to LOBANG without infringing the Indian patent held by LIZA INC.

(e) You have filed a patent application for your client ABC INC, USA 011 12.06.2005 in Indian Patent office. Your client could not provide a proof of the assignment of the invention in the name ABC INC, US from the inventor at the time or filing the application. Advise your client about the provisions regarding filing a proof of right to make an application as per Indian Patents Act & Rules. Quote relevant rules and sections.

Solution:

ABC INC., USA filed a patent application in the Indian Patent Office on 12.06.2005 without submitting proof that the company was entitled to file the application on behalf of the inventor. Under the Indian Patents Act, the filing of proof of right is mandatory when the applicant is not the inventor, but an assignee or a person claiming through the inventor.

Requirement under Section 7(2) of the Patents Act, 1970: Section 7(2) expressly states that:

- where the applicant is not the inventor, the application must contain a declaration that the applicant has the right to apply for the patent; and
- the proof of right shall be furnished within the prescribed period.

Thus u/s 7 (2) the application must contain a declaration that the applicant derives the right to apply for the patent from the inventor and the actual proof of right may be filed later within the period prescribed.

Rule 10 of the Patents Rules, 2003: The prescribed period is given in Rule 10 of the Patents Rules, 2003, which states that:

- The proof of right must be filed within six months from the date of filing the application.
- This period is extendable under the Rules as applicable.

Since ABC INC did not file proof of assignment at the time of filing, it still has time (within 6 months of 12.06.2005) to file the necessary document confirming the assignment or transfer of rights from the inventor.

If this period has lapsed, ABC INC may request the Controller to condone the delay under Section 138 of the Patents Act, 1970.

If the proof of right is not filed within the allowed period, the Controller may treat the application as defective and may refuse it unless the deficiency is rectified.

Therefore, ABC INC. should promptly file the assignment document or other proof of right within the six-month time limit under Section 7(2) read with Rule 10 to regularise the application and maintain its validity.

(f) Your client ITC Company, Kolkata has filed an application through you on 1.05.2005. On 16.06.2005 the ITC Company assigns the rights of invention to another company CBZ Pvt. Ltd. Mumbai. CBZ Pvt. Ltd also wants to pursue the patent application through you. What will be the formalities to be done by you to record the above-mentioned change in the Patent Office? Also draft a power or authority on behalf of CBZ Pvt.Ltd, Mumbai in your Favour.

Solution:

a) The ITC Company, Kolkata filed the patent application on 01.05.2005 and subsequently assigned the rights of the invention to CBZ Pvt. Ltd., Mumbai on 16.06.2005. To continue the prosecution of patent application though the same patent agent, the CBZ Pvt. Ltd. Must comply with section 68 & 69. That is the assignment must first comply with Section 68, which requires that all assignments be in writing, duly executed, and properly stamped. To record this change of applicant in the Patent Office, the assignee must apply for registration of title under Section 69 read with Rule 90, by filing Form-16 along with a certified copy of the assignment deed.

Once Form-16 is filed and accepted, the Controller will enter CBZ Pvt. Ltd. as the new applicant in place of ITC Company. Since the prosecution must now continue on behalf of the new applicant, CBZ Pvt. Ltd. must also execute a fresh authorization in favour of the patent agent by filing Form-26 as required under Rule 135, authorising the agent to act, correspond, sign and submit documents on their behalf.

Upon completion of these formalities viz. submission of a valid assignment, filing of Form-16 and filing of Form-26, the assignment will be formally recorded and prosecution may continue in the name of CBZ Pvt. Ltd. through the same patent agent.

b) The draft of a power or authority on behalf of CBZ Pvt.Ltd, Mumbai in favor of patent agent is as under :

FORM 26
THE PATENTS ACT, 1970
(39 of 1970)
&
The Patents Rules, 2003
FORM FOR AUTHORISATION OF A PATENT AGENT/OR ANY PERSON IN A MATTER OR PROCEEDING UNDER THE ACT
[See sections 127 and 132; and rule 135]

I/We, **CBZ Pvt. Ltd.**, a company incorporated under the Companies Act, having our registered office at [Full Address], Mumbai, hereby authorize and appoint:

Ms _____, Patent Agent,
Regn. No. _____,
Address: _____,

to act on our behalf in connection with the patent application titled "_____", originally filed by ITC Company, Kolkata on **01.05.2005**, and subsequently assigned to us.

The Patent Agent is hereby authorized to to act on our behalf in connection with all inventions and in all matters and proceedings concerning patent applications and patents before the Controller of Patents or the Government of India including opposition proceedings; filing of divisional applications; patent of addition; renewals; filing of statements of working; amendments to applications, specifications or any other documents filed in respect thereof; restorations, registration of any licenses, mortgages, assignments, transfers or other interests; recordal of change in our name, address or address for service, appointment of a substitute or substitutes; and in general to do all acts or things as necessary or expedient including obtaining foreign filing permission for making patent application outside India and request that all notices, requisitions and communications relating thereto may be sent to such person at the above address unless otherwise specified.
We hereby revoke all previous authorization, if any made, in respect of same matter or proceedings.
We hereby assent to the action already taken by the said person in the above matter.

Dated this the _____ day of _____, 2025

For CBZ Pvt. Ltd.
(Authorized Signatory)

Name: _____

Designation: _____

Seal of Company:

To
The Controller of Patents
The Patent Office
At Mumbai

2010: PAPER 2 (SOLVED)

PATENT AGENT EXAMINATION, 2010

(Under Section 126 of the Patents Act, 1970, as amended)

January 23, 2010

PAPER II

TOTAL MARKS: 100 **Time: 3 PM to 6 PM (3 hours)**

Total number of pages: 7

Instructions: This paper consists of 2 parts. The first part (Part A) of 40 marks requires you to answer four questions of 10 marks each. The second part (Part B) of 60 marks requires you to answer two questions of 30 marks each. You must attempt all questions. Please read the questions very carefully before answering them. Please also divide your time appropriately so that you are able to complete all answers in time.

PART A
(40 MARKS)

Instructions: Each Question Below Carries 10 (Ten) Marks. Please answer all the questions. Your answer must be brief and to the point. While answering the questions, you are expected to support your answer by giving reasons and citing the relevant sections and rules in the Indian Patents Act

1.A research team working with company CRO completed a very difficult R&D project. CRO has filed a provisional patent application on October 10, 2009 in its name. Since then, its researchers have worked further on the invention and are now in a position to file a complete specification. The complete specification is expected to have 61 pages and 113 claims. There are 3 new inventors, of which 2 are foreigners from another institution "CRY" whose names have to be included in the patent application. There is an understanding between "CRO" and "CRY" that the patent application will be filed jointly in the names of the two institutions. Suggest a plan of action for the filing of the relevant patent application including the timelines, the essential forms to be filled, fees to be paid and associated formalities to be completed to ensure that the application is in order.

Answer: CRO has already filed a provisional application on 10 October 2009, therefore the complete specification must be filed within 12 months, i.e., on or before 10 October 2010, to retain the priority date under Section 9(1). Since three new inventors—including two foreign inventors from institution CRY—have contributed to the further development, the application must now be filed jointly in the names of CRO and CRY, and all inventors must be correctly mentioned at the time of filing the complete specification in accordance with Section 10 and Rule 13.The applicants from both the organisations must file Form-1 indicating both institutions as joint applicants and all inventors including the newly added ones. Since new inventors need to be added, the filing of Form-1 at the complete-specification stage is permissible because inventorship is determined on the date of filing the complete specification. Each inventor must sign the declaration of inventorship in Form-5, which must be filed along with the complete specification or within one month under Rule 13(6). Form 26 is required to be filed by a patent agent who will be filing on behalf of CRO and CRY. CRY is a foreign institution; the applicant must also indicate a service address in India under Section 128.

The complete specification will be filed in Form-2, containing 61 pages and 113 claims. Since the specification exceeds the statutory limit of 30 pages and 10 claims, additional fees are payable under Schedule I:

- Additional pages: 61 – 30 = 31 extra pages (₹160 per extra page)
- Additional claims: 113 – 10 = 103 extra claims (₹320 per extra claim)
-

Total additional fee = (31 × 160) + (103 × 320) = Rs. 37,650/-

2. You receive a letter dated November 25, 2009 from the TATAS asking you to represent them in respect of "Snano ", their invention relating to a car which guarantees sound sleep to any person travelling within it, barring the driver. The letter informs you that the client first filed a US application in respect of the "Snano" on May 1, 2007. They later filed a PCT application on December 1, 2007. Now they wish to file a national phase application in India:

i) What information do you require from the client to assess whether the Snano can be protected in India?

ii) You receive the client 's letter on November 29, 2009. It will take you at least 5 days to get documents ready and file the papers at the Patent office. What steps would you take to protect your clients interest?

iii) Assume in (ii) above that the letter reaches you only on December 5, 2009. What would your advice be?

Answer: (i) Information required to assess whether "Snano" can be protected in India

To determine whether a national phase entry for the PCT application relating to "Snano" can be validly filed in India, the following essential information must be obtained from the client:

1. The PCT International Application Number and International Filing Date (given as 1 December 2007).
2. Confirmation that India was designated in the PCT application.
3. A copy of the full PCT specification, including claims, drawings, abstract, and latest published pamphlet.
4. The International Search Report (ISR), Written Opinion, and any amendments under Article 19 / Article 34.
5. Details of the priority application filed in the US on 1 May 2007, including priority number and certified priority documents.
6. Whether any foreign filings exist (for Section 8 compliance).
7. Applicant details, inventor details and a Power of Attorney (Form-26).

(ii) Steps to take upon receiving the letter on 29 November 2009 and steps to protect Client's Interest:

The PCT application was filed on 1 December 2007, so the 31-month national phase deadline expires on 1 July 2010. To protect the client's interest, send the client a written acknowledgement and request missing documents. File Form-26 (POA) as soon as possible. Drafting Form-1, Form-2, Form-3, and prepare translations if required. Inform the client clearly that there is no lapse because the national phase deadline is still far away.

(iii) If the letter reaches you only on 5 December 2009, what is your advice?

Even if the letter reaches on 5 December 2009, the advice remains the same because the national phase deadline is 1 July 2010.

NOTE: The paper was set up at the time when the timeline for National Phase Entry was 30 months. The answer has been prepared as per the present timeline, according to which the timeline for NPE is 31 months.

3. Your client "X" writes to you as follows: Our Indian patent issued in December 2009 describes and claims a process of reacting A with B under certain specified conditions to obtain product C. It is also essential that catalyst Q be present in order that product C may possess the desirable characteristics outlined in our disclosure. Unfortunately, none of the claims in the patent make any reference to catalyst Q at all, even though catalyst Q and the manner in which it is used in the process is clearly described in our disclosure. We would like to take action in the near future against a competitor of ours who has been using our process since the last one year. Do you think we will have difficulty enforcing our patent and, if so, is there anything you can do to improve our prospects for success against our competitor?"

i) Advise X.
ii) Assume that X's invention above has not yet been patented, but is merely the subject of a patent application before the Indian patent office. Would your advice be different? Consider both situations where the application has been published in the official journal as well as situations where it has not been so published?
iii) Assume now that the letter above is worded differently. It indicates that X's addition of the catalyst is an improvement not included anywhere in the specification. What would your advice be?
Answer: (i) Advice when the patent is already granted (issued in December 2009)
X's patent claims a process of reacting A with B to obtain product C, but none of the granted claims mention catalyst Q, although the complete specification describes it. Enforceability in infringement proceedings depends entirely on the scope of granted claims, not on the disclosure in the description. As per Section 48, a court will enforce only what is claimed. Since the patent is already granted, amendments are governed by Section 57 and Section 59. Post-grant amendment is allowed only to correct mistakes, or to clarify, not to expand scope. Adding catalyst Q to the claim broadens or alters the scope because it introduces an additional technical feature, which is not permissible under Section 59. Therefore, X cannot amend the granted claims to include catalyst Q if such inclusion changes the scope.

(ii) If X's invention is still only a patent application
Answer: In case the application has not been published, the applicant can still file for an amendment to include catalyst Q. Therefore, where the case is still an application, X can correct the claim and strengthen enforceability, which is not possible once the patent is granted.
In case the application has been published the applicant may seek amendment of the claims under Section 57, provided the amendments do not broaden the scope, are supported in the original disclosure and are consistent with Section 59.
Since catalyst Q is described in the specification, claims may be amended to include catalyst Q.
Therefore, X should file a request for amendment (Form-13) immediately, inserting catalyst Q into appropriate claims.

(iii) If catalyst Q is not disclosed anywhere in the specification
Under Section 59, no amendment may introduce new matter not originally disclosed. Catalyst Q cannot be inserted into the claims if the specification does not contain any mention of Q.
Available options
1. File a Patent of Addition (Section 54).
2. File a separate independent patent application

4.Motu wishes to license Chotu's patent relating to a slimming device. Chotu is already selling the product in India, by itself and through various other licensees. Motu hopes to manufacture the same device and sell in remote parts of India. He approaches you to find out if he should go ahead with the licensing deal. What are the aspects you would look into in order to protect your clients interest, including ensuring that Chotu's patent is a good one and that he has complied with all the requirements under the Indian Patents Act? If a license is finally taken, what are the various requirements under the Patents Act that Motu must comply with?

Answer: Motu must ensure that Chotu's patent is not nearing expiry, is not under a compulsory-licensing risk under Section 84 (non-availability, non-affordability, or non-working in India). The license agreement must also clearly define royalty terms, field of use, territorial scope and sublicensing permissions. Because Chotu is already selling products and has other licensees, it must be verified whether Motu's license is exclusive, sole, or non-exclusive.

If Motu finally takes a license, several statutory requirements under the Patents Act must be complied with. First, the license agreement must be in writing and must be registered with the Patent Office under Section 69 by filing Form-27 (recordal of title/licence) along with the prescribed. Motu must also file his own Form-27 (working statement) every year to report whether the patented invention is being commercially worked in India. He must ensure that manufactured devices comply with the terms of the licence and avoid engaging in any trade practices prohibited by Section 140. Motu must also respect the patentee's rights under Section 48, fulfil royalty obligations, and maintain accurate records of manufacture and sales for audit or statutory submissions. If Motu wishes to later sublicense, he must ensure the license contract expressly permits it; otherwise, such sublicensing may be void.

2011: PAPER 2 (SOLVED)

PATENT AGENT EXAMINATION, 2011
[Under Section 126 of the Patents Act, 1970, as amended]
January 15, 2011
Paper II
Total Marks: 100
Time: 02.30 a.m. to 05.30 p.m. (Three Hours)
Total number of pages: 11

Instructions:

1. This paper consists of 2 parts.
2. Part A of 40 marks requires you to answer all four questions of 10 marks each.
3. Part B has two sections (Part B1 and B2).
4. Part B1 is compulsory of 30 marks.
5. Part B2 has two questions and you are required to answer any one of them for 30 marks
6. If there is a word limit in the question it should be followed strictly or else the answer can be rejected.
7. Read the questions carefully before answering them. No clarification or doubt can be sought on the questions to the invigilators and you need to interpret it from the questions given as it is.

PART A (4x10 = 40 MARKS)

Question 1

Rahman Roshan, a student of one of the IITs came up with an invention which is a cylindrical slide which can be installed in the balcony of high rise apartments. In case of any emergency of fire or earthquake, the inmates roll the cylindrical slide to the ground floor and can slide to safety.
He shared his views with his brother in a private conversation who is an editor of journal 'Safe Houses' in February 2010.
He conducted a trial of his invention from the ninth floor of his hostel to assess the effectiveness in March 2010.
He wanted to know the feedback of this invention and exhibited the same in an exhibition 'New Millennium Designs' at Raffles Centre in Singapore on July 2nd of 2010.
In the meanwhile he learnt that his brother published the details he shared in "Safe Houses" journal issue dated August 2010.
In September 2010 he filed a provisional application in the Indian Patent office and complete specification in January 2011.
Rahman Roshan approaches you with the above facts and seeks your consultation on whether any of these events will impact the granting of the patent.
Give your written statement with the relevant sections of the Patent Act to this client and explain the position of the issues stated that will have an impact on granting of the patent

Answer: The effect of the various events must be examined under the anticipation provisions of Sections 29 to 32 of the Patents Act, 1970. The disclosure made privately to his brother in February 2010 does not constitute anticipation since it is not a public disclosure and confidentiality is presumed in a private family conversation. The experimental trial conducted from the ninth floor of his hostel in March 2010 is protected under Section 32, which provides that public working of an invention for the purpose of “reasonable trial” without commercial intent does not anticipate the invention.

The exhibition of the invention on 2nd July 2010 at "New Millennium Designs" in Singapore is not protected under Section 31(a), because the exception applies only to exhibitions notified by the Central Government in the Official Gazette. Since this foreign exhibition is not a notified exhibition, the public display constitutes an anticipatory, the Singapore exhibition amounts to anticipation.

With respect to the publication in the August 2010 issue of Safe Houses journal, Section 29(1) states that prior publication anticipates an invention. However, Section 29(2) introduces an important exception: where the publication is made without the consent of the applicant and the applicant files the patent application as soon as reasonably practicable, such a publication does not anticipate. Since Rahman disclosed the information privately and did not authorize his brother to publish it, this publication may fall under Section 29(2), provided Rahman files the patent application within a reasonable time. Therefore, this publication may be protected under Section 29(2) and may not necessarily defeat novelty.

In conclusion, the confidential discussion and the experimental trial are protected under the Act, and the journal publication is potentially protected under Section 29(2). However, the exhibition in Singapore is not protected under Section 31, and because the provisional application was filed only in September 2010, the exhibition constitutes a disclosure that anticipates the invention. Therefore, the foreign exhibition is the event that most significantly impacts patentability and is likely to bar the grant of a patent.

Question 2

Sumathy an R&D Scientist is married to Anand. After few years of marriage she found her husband snoring which disturbed her sleep.

She found the anti-snoring devices in the market not very effective and convenient and came up with her own invention which is a mask which will transmit the noise to a small box kept under the bed, thereby reducing the snoring noise by about 90%. She filed a patent for the same and was granted in December 2007.

Later, in July 2010 she came up with a new idea wherein the snoring noise is transmitted from the mask to the box which is now connected to a small electronic device with a key board which converts it as to soothing background music. She seeks your advice on to how best to protect this improvisation.

Based on the relevant sections of the Indian Patent Act, prepare a brief on the best strategies available to protect the invention of this client.

Answer: On the facts presented, Ms. Sumathy has already obtained a patent in December 2007 for her anti-snoring device in which the snoring noise is transmitted from a mask to a box placed beneath the bed. In July 2010 she developed a further improvement wherein the transmitted snoring sound is converted into soothing background music through a small electronic device with a keyboard. Under the Indian Patents Act, 1970, such an improvement may be protected by filing a patent of addition under Sections 54-56, provided that the new idea constitutes an improvement or modification of the main patented invention and is capable of industrial application. A patent of addition offers two advantages: (i) it does not require independent novelty over the main invention but only novelty over the prior art, and (ii) no separate renewal fees are payable under Section 55(2), as its protection term continues till the parent patent under Section 55(1).

Alternatively, if the improvement is sufficiently distinct, inventive, and capable of independent commercial exploitation, Ms. Sumathy may file a separate patent application under Section 6. She may also file a provisional specification under Section 9(1) to secure an early priority date for the improved concept while providing time to refine or develop the complete specification. In either approach, she must ensure that the disclosure supports the new technical advancement of converting snoring noise into soothing music, which is not obvious from the original invention.

Therefore, the most suitable and efficient strategy is to file a patent of addition to her granted 2007 patent, as the improvement is directly based on the core concept of the earlier device and appears to be a modification enhancing user comfort without changing the essential functional principle of noise transmission.

Question 3

Raja and Radha did their PhD together in Indian Institute of Science Bangalore in the field of Biotechnology. After completing their doctoral programme they planned to set up their own lab with a loan from a bank. They started working on a novel dermal application which will heal severe burn wounds and will grow the skin back in a short time and no such dermal application was known in the prior art.

In the course of their working together they also came to the view based on their compatibility in professional interest and other issues they will get married. They jointly filed for patent and also received the patent in December 2009.

Raja orally promised her that if they license the patent, Radha can take 75% of the profit as he cared for her and it is a pre-marriage gift to her in a private meeting with her. They have an offer for a licence for this patent from a company for a hefty amount.

In the course of next few months they developed differences in their relationship and eventually decided not to marry. After some time they bitterly quarreled and decided to part ways.

Radha approaches you and complaints that Raja is retracting from his earlier promise to give her the 75% as promised and says that he will give only 50% of the amount. Further she states that Raja also wants it to be licensed to another friend of his who is offering a lesser licence fee which is not acceptable to her. She approaches you for a consultation on the above issues.

You are required to give an advice based on the relevant sections of the Patents Act and any remedy you can get by approaching the Controller.

Answer: Raja and Radha are joint patentees of a dermal application granted in December 2009, and their rights and obligations are governed by Sections 50 and 51 of the Patents Act, 1970, which deal with joint ownership of patents. Under Section 50(1), in the absence of an agreement to the contrary, each joint patentee is entitled to an equal undivided share in the patent, and under Section 50(2) neither of them can grant a licence or assign their share in the patent without the consent of the other. Therefore, Raja cannot compel Radha to license the patent to his preferred party, nor can he execute such a licence unilaterally. ith respect to the oral promise of giving Radha 75% of future profits, the Patents Act does not recognise or enforce private verbal arrangements unless they constitute a valid contract enforceable under general contract law. Since there is no written agreement modifying the rights under Section 50, the statutory presumption of equal entitlement to profits applies and Radha is legally entitled only to her 50% share. However, to resolve the dispute regarding licensing, Radha may seek the Controller's intervention under Section 51, which allows the Controller to decide the manner in which joint owners may exercise their rights if they are unable to arrive at an agreement. Further, if Raja's conduct amounts to obstructing reasonable exploitation of the patent, Radha may request appropriate directions from the Controller to ensure fair and commercially reasonable licensing terms. In conclusion, while Radha cannot legally enforce the oral promise of 75% profit share, she can insist on equal entitlement under Section 50 and may approach the Controller under Section 51 to prevent Raja from forcing an unfavorable licensing arrangement and to obtain a fair determination of how the jointly owned patent is to be licensed.

Question 4

Brahma is a retired naval officer in Chennai. After his retirement he set up his own lab for research and development. He developed an ultrasonic device which can identify dolphins. This device if attached to the large fishing nets can identify if a dolphin is entrapped and the same can be released by the fishing vessels by a release mechanism in the net. As dolphins are also a protected species, this invention has a great potential for commercial interest. He applied for a patent and received it in 40 countries in January 2009.

In December 2009 he came to know that a fishing vessel from Lemuria was fishing in Indian territorial waters and was confiscated by the Indian Navy and brought to Chennai port.

The captain of the vessel pleaded that they lost their way due to failure of their navigation direction software and thus entered the territorial water. The Lemurian embassy at Delhi had taken up their case. He also learnt that they used fishing nets which contained his patented ultrasonic device made in country Lemuria. Lemuria is a new nation state does not have any patent laws and are in the process of preparing one.

Brahma approaches you to consult whether he can file a suit of infringement on the company owning the vessel for infringing the patent. Based on the above facts you are required to prepare a consultation note to your client based on the relevant provisions of the Indian Patent Act.

Answer: Brahma, as the patentee of an ultrasonic dolphin-identification device, enjoys exclusive rights under Section 48(a) and 48(b) of the Patents Act, 1970, which confer upon the patentee the sole right to make, use, offer for sale, sell, or import the patented product within India. These rights are territorial in nature, meaning they apply strictly within the boundaries of India, irrespective of the legal regime of foreign countries such as Lemuria. Although Lemuria has no patent laws and therefore cannot provide him protection there, this fact does not diminish or restrict the enforceability of his Indian patent within Indian territory, including Indian territorial waters as per international maritime law and Indian sovereign jurisdiction. The fishing vessel was apprehended within Indian territorial waters, and the nets on board contained and used his patented device, such unauthorized use constitutes direct infringement under Section 48, because using a patented device in India without permission satisfies the act of infringement.

Further, the act also constitutes infringement by importation, as using products incorporating a patented invention that are imported into India without consent violates the patentee's rights under Section 48(b), even if the manufacturing took place in a country with no patent system.

Proceedings for infringement can be initiated only by way of a civil suit, as mandated under Section 104, which provides that no infringement action can be brought before any authority other than a court not inferior to a District Court. Remedies available to Brahma include injunction, damages, or accounts of profits as detailed under Section 108.

Non-Applicability of Section 49 (Use on Foreign Vessels Temporarily or Accidentally in India): Section 49(1) of the Patents Act provides that the use of a patented invention on board a foreign vessel that enters Indian territorial waters temporarily or accidentally does not constitute infringement, provided such use is for the actual needs of the vessel and the foreign country grants reciprocity by offering the same privilege to Indian vessels. In this case, the Lemurian vessel's explanation of entering Indian waters due to navigational failure satisfies the requirement of accidental or temporary presence, and the dolphin-release device forms part of its fishing equipment, thereby falling within the scope of "actual needs." However, the exemption under Section 49 cannot apply because Lemuria has no patent laws and consequently cannot extend reciprocal protection to Indian vessels. The absence of reciprocity renders the Section 49 immunity unavailable, and therefore the vessel cannot claim protection under this provision.

Even though the manufacture may have occurred in Lemuria, the use of the device within India constitutes infringement because infringement under Indian law is triggered by the location of the use, not the location of manufacture. Thus, the company owning the vessel, as well as possibly the captain or master of the ship, are liable for infringement as “persons using” the patented invention under Section 48. The absence of patent protection in Lemuria is irrelevant to enforcement within India, and therefore Brahma can proceed with a suit for infringement against the company owning the vessel.

RAS Intellect Pvt Ltd

2013: PAPER 2 (SOLVED)

PATENT AGENT EXAMINATION, 2013
(Under Section 126 of the Patents Act, 1970)
4th May 2013
PAPER II

Total Marks: 100
Time: 2.30 p.m. to 5.30 p.m.
Three hours

Instructions:
1. This paper consists of 2 parts - Part A (40 marks) & Part B (60 marks).
2. ALL questions in Part A are compulsory.
3. Part A consists of 4 questions of 10 marks each.
4. Part B comprises two sections - Part B1 and B2, of 30 marks each. Part B1consists of 2 questions and you are required to answer any 1 of them. Part B2 also consists of 2 questions and you are required to answer any 1 of them. In case a candidate answers more questions than required, the first attempted question will be evaluated.
5. Candidates should read the questions very carefully before answering.
6. No clarification will be provided during the course of the examination.
7. There is no negative marking.

PART A

4 x 10 =40 marks

1. Rupa, a textile designer with a 'Design House' in Mumbai having branch offices in various parts of the world, wishes to obtain patent protection in 50 different countries for smart textiles invented by her. Foreign buyers prefer to deal with inventor/applicants who have filed their patent applications in Europe as basic applications i.e. the first application to be filed on the subject matter. She also wishes to file a set of patent applications in Europe with varying priority dates. Rupa has approached you as her Patent Agent in India to help her in her mission. Provide a note to her outlining the strategy she ought to follow along with information on various processes / routes involved and the time-lines involved. How would you also deal with the multiple priorities?

Solution: Rupa, a textile designer based in Mumbai, wishes to obtain patent protection for her smart textile inventions in 50 countries. She also wants Europe to be the basic filing country, as foreign buyers prefer European first filings, and intends to file multiple applications with different priority dates. As her Patent Agent, an international filing strategy must be formulated that complies both with the Indian Patents Act, 1970 and global patent filing systems.

1. Compliance with Section 39 – Mandatory for Indian Residents
Since Rupa is a resident of India, Section 39 requires that she must not file her first patent application outside India without prior permission from the Controller of Patents. Violation can lead to abandonment or even prosecution under Section 118. Therefore, before filing in Europe, she must either:
Opt for Foreign Filing Permission Route (Section 39, Patents Act)
Indian residents must not file their first patent application outside India unless they either:

1. File an Indian application first and wait for six weeks; after this period, provided no secrecy direction under Section 35 is issued, the applicant may file a patent application abroad. OR
2. Obtain Foreign Filing Permission (FFP) from the Controller.

This rule protects national security and ensures compliance with Section 39. Violation may lead to abandonment (Section 40) and penalties (Section 118).

Strategy

- Rupa should first prepare the complete specification of her smart textile invention.
- She must file Form 25 requesting FFP along with a copy of the specification intended for Europe. The Controller may grant permission within 21 days if no secrecy directions are necessary.
- Wait for the Controller's decision before filing anywhere abroad.
- Once FFP is granted, Rupa is free to file her European basic application, which will then act as the priority application for all future filings.

This ensures that Rupa legally complies with Indian law while meeting her commercial goal of having Europe as the first filing jurisdiction.

Timeline

- Preparation and filing of Form 25: Immediate
- Grant of FFP: 2–4 weeks
- Filing EP basic application: Immediately after FFP approval

European Patent (EP) as Basic Filing Route

The European Patent Convention (EPC) allows a single filing to cover up to 39 European countries. Filing in Europe first provides strong commercial credibility. The EP application becomes the priority application, which can be used to claim priority internationally under the Paris Convention (12-month window) or in the PCT system.

Strategy

- After receiving FFP, file a European Patent Application as the very first filing.
- This application will act as the earliest priority document for all international filings.
- Ensure the specification is complete and clear, as this filing will define the invention's earliest date.

Her EP application becomes the foundation for subsequent protection in 50 countries via Paris or PCT routes.

Timeline

- Filing EP application: Day 0 (Priority Date)
- EP Search Report: 6–9 months (not essential for priority or PCT filing)

Paris Convention Route

Under Article 4 of the Paris Convention, applicants can file patent applications in member countries within 12 months of the first filing (here, the EP application) and claim the same priority date.

Strategy

- After EP filing, select specific countries and file their individual patent applications within 12 months.
- Use the EP filing date as the priority date.
- This route is best for a limited number of important markets.

Timeline

- Paris Convention filings must be completed within 12 months of the EP priority date.
-

Patent Cooperation Treaty (PCT) Route (Recommended for 50 Countries)

The PCT system streamlines international patent filing. A single PCT application covers over 158 countries and delays the costly national filings to 30/31 months, giving the applicant more time for investment, marketing, and refinement.

Strategy

- File the PCT application within 12 months of the European priority filing.
- Claim priority from the EP application.
- Receive an International Search Report and Written Opinion, which help in assessing patentability globally.
- At the national phase (30/31 months), enter the 50 chosen jurisdictions.

Timeline

- 0 months: EP basic filing (priority)
- 12 months: PCT filing deadline
- 16 months: International Search Report
- 22 months: Optional International Preliminary Examination
- 30/31 months: Enter national phase in 50 countries

Multiple Priority Route (For Different Improvement Stages)

Smart textile inventions often evolve in stages. Rupa may file a series of European patent applications at different stages of development to secure multiple priority dates, which is expressly permitted under Article 4F of the Paris Convention and Article 88(2) and 88(3) EPC.

Strategy

- File separate Indian applications for each improvement or version of the textile.
- Obtain FFP for each new invention (if filing abroad first).
- File multiple EP applications, each claiming the appropriate priority.
- EPC also allows split priority within a single application, meaning individual claims can have different priority dates.

This ensures protection for each improvement.

Timeline

- Each improvement's priority lasts 12 months for foreign filings.
- Multiple EP filings must be made within their respective 12-month windows.

2. Korobi Sen in Kolkata has worked on the development of special sweet compositions for diabetic patients. These compositions also contain some herb extracts. The sweets developed by her have very special properties in that the blood sugar levels do not rise when these sweets are consumed. She has filed a patent application in the Patent Office, Kolkata claiming the compositions for her sweets and the method of making them. The Controller issued an examination report objecting to the grant of the patent by citing Sections 3(e), 3(i) and 3(p) of the Indian Patents Act. Korobi has approached you to respond to the first examination report (FER) and also to attend a hearing at the Patent Office in due course. Draft a response to the objections raised in the FER.

Solution: Reply to First Examination Report is drafted as under:

Applicant: Korobi Sen
Application Title: Sweet Compositions for Diabetic Patients
Application No.: _____
Patent Office: Kolkata
Controller: _____
Date: _____

Dear Sir,
Reference is made to the First Examination Report issued in respect of the above-identified application. We respectfully submit the following detailed response addressing each objection raised by the learned Controller.

At the outset, it is humbly submitted that the claims have been amended, without prejudice, to clarify the technical features of the sweet composition and the method of preparation, and to comply with the objections raised in the FER.

I. SUMMARY OF OBJECTIONS & DETAILED RESPONSE

NON-PATENTABILITY UNDER SECTION 3(e)

The learned Controller has objected that the claimed sweet composition is a "mere admixture" falling under Section 3(e).

Applicant's Submissions:

It is respectfully submitted that the present composition is not a mere admixture but exhibits a synergistic technical effect. The combination of defined herbal extracts with sugar substitutes in specific ratios produces a non-obvious, unexpected functional property, namely: no post-consumption rise in blood glucose levels.

1. The herbal extracts individually do not exhibit such glycemic-stabilizing properties.
2. Only the claimed ratio and controlled method of extraction (as disclosed in the specification) generate the observed synergistic effect.
3. A functional food composition producing a new property through synergy does not fall under Section 3(e), as established in pharmaceutical and food composition jurisprudence.

Accordingly, the objection under Section 3(e) may kindly be waived.

NON-PATENTABILITY UNDER SECTION 3(i)

The Controller has objected that the invention relates to a "method of treatment of humans."

Applicant's Submissions:

It is humbly submitted that the claims do not cover any therapeutic method, medical procedure, or treatment protocol. They relate solely to:

- A food composition, and
- A method of preparing the food composition.

Indian law allows claims directed to nutraceuticals, functional foods, and food products with physiological benefits, provided no therapeutic method is claimed.

Any reference in the description to physiological effects is merely explanatory and does not convert the claims into a method of treatment under Section 3(i). Thus, the objection is respectfully not applicable.

NON-PATENTABILITY UNDER SECTION 3(p)

The Controller has objected that the claimed composition may relate to "traditional knowledge."

Applicant's Submissions:

The invention is not anticipated in any Ayurvedic, Siddha, Unani, or traditional texts. The specific compositions, ratios, extraction methods, and processing parameters claimed are novel and not part of traditional practice.

1. No traditional formulation discloses a sweet composition designed to maintain stable blood glucose levels.
2. The invention uses standardized extracts, analytical markers, and modern food engineering techniques, none of which form part of traditional knowledge.
3. Section 3(p) applies only where the invention is wholly or substantially traditional; this is not the case here.

Therefore, the objection under Section 3(p) may kindly be withdrawn.

SUFFICIENCY OF DISCLOSURE (SECTION 10(4))

It is respectfully submitted that the complete specification provides:

- Full details of extraction processes
- Characterisation of herbal constituents
- Manufacturing parameters
- Examples demonstrating glycemic stability

Thus, the invention is fully enabled. The objection may kindly be waived.

CLARITY AND DEFINITIVENESS
The amended claims now clearly define:

- The composition,
- The specific herbal extract ratios, and
- The preparation steps.

Accordingly, the claims are definite, clear, and supported by the description, and the objection may kindly be set aside.

OTHER REQUIREMENTS
Any clerical or formal deficiencies identified have been addressed. Amended claims, revised Form 1/2, and supporting documents are enclosed.

REQUEST FOR A HEARING
In accordance with the provision for natural justice and as permitted under the Act and Rules, the Applicant respectfully requests an opportunity to be heard before any adverse order is passed.

PRAYER
In view of the foregoing submissions, clarifications, and amendments, the Applicant humbly prays that all objections raised in the FER be set aside as they have been duly complied with, and that the present application be taken on record as fully meeting the requirements of the Patents Act, 1970 and the Patent Rules, 2003, including those under Sections 2(1)(j), 2(1)(ja), 3, 10 and 21. The Applicant further prays that the application be allowed to proceed to grant under Section 21 and respectfully requests that any further requirements deemed necessary by the Learned Controller be communicated, so that the same may be complied with expeditiously.
The Applicant submits this response with utmost respect and requests favourable consideration.

Yours faithfully
(Patent Agent name)

Enclosures:
– Amended set of claims
– Revised Form 2 (if applicable)
– Supporting data (if applicable)

3. Anjan has been involved in the development of drainage systems. He thought it necessary to conduct tests in the compound of his large housing society to assess the scalability of his newly developed drainage system on 30th March 2009. On 1st September 2009, Anjan applied for a patent in the Mumbai Patent Office. Anjan was very confident that there was no prior art that could come in way of the grant of his patent application. Praful who lives in the same housing society and had seen the testing of the invention in their society, came to know about the patent application when it was published in the Journal of the Patent Office and opposed the patent application on the ground that he had witnessed the use of the invention in a public place in India before the patent application was filed. Please draft the statement in reply that is required to be submitted to the Patent Office.
Solution:
In the matter of: Pre-grant Opposition under Section 25(1)

Opponent: Praful
Applicant: Anjan
Application No.: _____
Title: Drainage System
Patent Office: Mumbai

STATEMENT IN REPLY TO PRE-GRANT OPPOSITION

The Applicant respectfully submits the following Statement in Reply to the opposition filed by Praful under Section 25(1), alleging that the invention was used in a public place prior to the filing of the patent application.

1. The testing carried out on 30 March 2009 was an experimental trial and is protected under the Patents Act

The use cited by the Opponent was conducted solely for the purpose of experimentation required to evaluate the scalability and functional performance of the drainage system.

Under Section 29(2b) of the Indian Patents Act, public use for the purpose of reasonable trial or experiment before the priority date shall not be deemed anticipation.

The trial was conducted to test:

- flow efficiency,
- pressure tolerances,
- ground load behaviour, and
- installation practicality.

Such testing is necessary for perfecting the invention and cannot be treated as public disclosure. Therefore, the alleged public use does not amount to prior publication or prior use under the Act.

2. There was no "public" use- the testing was controlled, limited, and non-enabling

The so-called "public use" cited by the Opponent was merely visual observation of an installation within a private housing society compound. The Opponent neither had:

- access to the internal structure,
- access to the design parameters,
- knowledge of the technical configuration, nor
- any enabling disclosure that would allow a skilled person to reproduce the invention.

As per established Indian and international practice, non-enabling visibility does not destroy novelty.

Casual observation of an experiment does not constitute a prior public disclosure.

3. The invention was not made available to the public

The invention must be made available to the public to constitute anticipation. Merely testing a drainage system underground, in the compound of a private housing society, does not place the technical details in the public domain.

The public could only see external elements, not the invention itself. Thus, the invention remained confidential and undisclosed before filing.

4. The trial falls under "reasonable trial" exception (Section 31 & Section 32 principles)

The Patents Act distinguishes between:

- public disclosure, which defeats novelty, and
- experimental use, which is protected.

The trial in this case was:

- carried out by the inventor himself,
- for bona fide experimental purposes,
- to test performance prior to filing, and
- not for commercial use or demonstration.

Such trials are explicitly protected, and do not prejudice patentability.

5. No prior art is created by experimental testing

The Opponent claims that he "saw the testing." Seeing an experiment is not equivalent to disclosure.

The Opponent claims that he "saw the testing." Seeing an experiment is not equivalent to disclosure.

The Opponent did not receive:

- drawings,
- specifications,

- working details,
- structural parameters,
- or any enabling information.

Therefore, the Opponent cannot rely on a non-enabling observation to challenge novelty.

6. Applicant's filing was timely and in good faith

The application was filed on 1 September 2009, well within reasonable time after the experimental testing, and before the invention was disclosed to any third party with enabling detail.

The Applicant acted in good faith and followed standard R&D practice requiring on-site evaluation before filing.

7. Prayer

In view of the above submissions, it is humbly prayed that:

1. The objection under Section 25(1)(b) relating to prior public use be dismissed, as the alleged use was protected experimental activity and non-enabling in nature;
2. The invention is novel and was never made publicly available before filing;
3. The patent application be allowed to proceed toward grant.

Submitted by:

(Patent Agent for the Applicant, Anjan)
Date: _____
Place: Mumbai

4. A ship named 'Voyager' registered in Panama and operated by 'White Waterlines' from Brunei accidentally entered the territorial waters of India in the Bay of Bengal. The Indian Coast Guard confiscated the ship and brought it to the Chennai Port. Upon inspection, it was found that Voyager had an 'Under Water Exploration Robot Arm' for its actual needs. The said equipment contains many features that are claimed in a patent granted to the Indian Maritime University (IMU). IMU files an infringement case against the owners of the vessel. White Waterlines approaches you for advice. Draft a note for your client suitably advising them in accordance with the provisions of the Patents Act, 1970?

Solution: The ship Voyager, registered in Panama and operated from Brunei, accidentally entered Indian territorial waters in the Bay of Bengal and was seized. Upon inspection, it was found that the ship carries an Underwater Exploration Robot Arm, which allegedly includes features covered by a patent granted to the Indian Maritime University (IMU). IMU has now filed an infringement suit. I shall give the following advise:

Section 49 of the Patents Act, 1970: Section 49 specifically deals with use of patented inventions on foreign vessels, aircraft, or land vehicles that enter the territory of India temporarily or accidentally.

Under Section 49(1)(a):

A foreign vessel entering India temporarily or accidentally, carrying an invention used exclusively for the needs of the vessel, does NOT constitute patent infringement, provided the invention is used:

- on board the vessel,
- in its body, machinery, tackle, apparatus, or other accessories,
- and only for actual needs of the vessel.

This protection applies even if the patented invention is ordinarily prohibited without license in India. The purpose of Section 49 is to protect international navigation and prevent penalization of foreign vessels merely passing through Indian waters.

Section 49 applies to this Case as under;

(i) Voyager is a foreign vessel

The ship is registered in Panama and operated from Brunei. Therefore, it qualifies as a foreign vessel under Section 49.

(ii) Entry into India was accidental, not intentional

Facts indicate that the vessel inadvertently entered Indian territorial waters.

Section 49 protection applies when the entry is:

- accidental, or
- for temporary purposes such as repairs, rescue, emergency, or navigational error.

Thus, Voyager satisfies the "temporary/accidental entry" requirement.

(iii) The invention is used only for the actual needs of the vessel

The Underwater Exploration Robot Arm is equipment used for the vessel's operational needs- exploration, underwater maintenance or navigation support.

Section 49 expressly states that use of a patented invention on a foreign vessel for its actual operational needs is not infringement.

(iv) The invention was not used within India for commercial purposes

The invention was only present on board the ship; it was not used in India, not sold, not commercially exploited, and not demonstrated to Indian customers.

Mere presence of patented equipment on a foreign vessel in Indian waters does not amount to patent infringement.

Defence Strategy for White Waterlines:

A. Assert Statutory Exemption under Section 49

File an affidavit stating:

1. Voyager is a foreign vessel.
2. Entry into Indian waters was temporary/accidental.
3. The robot arm is part of the ship's essential operational equipment.
4. There was no commercial or unauthorized use of the invention in India.

B. Move for Dismissal of Infringement Claim

File an application requesting dismissal of the suit on the ground that the action is barred under Section 49(1).

C. Humble Request for Release of Vessel

Since no infringement has occurred, humbly requested Indian authorities to release the vessel immediately upon completion of formalities.

LRAS Intellect Pvt Ltd

2016: PAPER 2 (SOLVED)

PATENT AGENT EXAMINATION, 2016
(Under Section 126 of the Patents Act, 1970)
PAPER II
Total Marks: 100
Time: 2.30 p.m. to 5.30 p.m.
Three hours

Instructions:
1. This paper consists of 3 parts~ Part A (20 marks), Part B (30 Marks) & Part C (50 marks).
2. ALL questions in Part A and B are compulsory.
3. Part C comprises Part C1 (20 Marks) and C2 (30Marks). Part C1 consists of 2 questions and the candidate is required to answer any 1 of them. Part C2 also consists of 2 questions and the candidate is required to answer any 1of them.
4. In case a candidate answers more questions than required, the first attempted question will be evaluated.
5. Candidates should read the questions very carefully before answering.
6. No clarification will be provided during the course of the examination.
7. There is no negative marking.

PART A
4 x 5 M =20 marks (4 questions)

Q.l A and B are co-inventors of a tracking device. Later A files an application for a patent in his own name. B comes to know about this fact from the Journal of the Patent office. What action B can take to redress this injustice inflicted upon him by A?

Solution: In Indian patent law, inventorship is a matter of substantive right. If A and B are true co-inventors, A cannot lawfully exclude B from being named in the application. The Patents Act provides B with a remedy under Section 28 (Mention of Inventor) and section 20 (Powers of Controller to substitute applicants).

Section 28 of the Patents Act, 1970 provides for mention of inventor:

B can apply to the Controller of Patents to have his name entered in the patent application as a co-inventor. This ensures proper recognition of his contribution.

Procedure:

B must file a request before the Controller, supported by evidence showing his role in the invention. The Controller will notify A and give both parties an opportunity to be heard before deciding.

Outcome:

If the Controller is satisfied that B is indeed a co-inventor, B's name will be added to the application/patent. This does not affect ownership rights (which depend on assignment or employment contracts), but it secures B's moral right to be recognized as an inventor.

Section 20 - Powers of Controller to substitute applicants:

Since A and B are co-inventors, both are entitled to apply jointly for the patent. However, A filed the application only in his own name, excluding B. This deprives B of his rightful interest in the invention. Under Section 20 (Powers of Controller to substitute applicants), B can take the following action:
B may file a claim before the Controller in the prescribed manner (using Form-6), stating that:

- He is a true co-inventor and co-owner of the invention, and
- By virtue of his contribution, he is entitled to be added as a joint applicant in the pending patent application.

He must provide supporting evidence such as documents, lab records, design notes, or any agreement showing joint inventorship.
Power of the Controller: If the Controller is satisfied that B is indeed entitled to be a joint applicant, the Controller may direct that the application should proceed in the joint names of A and B, thereby correcting the injustice. This remedy is available any time before the patent is granted.

Q.2 Y owns an Indian Patent. X requests for a licence under the patent from Y.Y imposes certain conditions such that X cannot acquire such articles which are not covered by the Patent from any person other than Y. Y also imposes a condition of exclusive grant back in the licence. As an agent do you think these conditions are appropriate? Please give your answer vis-a-vis the relevant provisions of the Patents Act.
Solution: X has requested a licence under Y's Indian patent. Y has agreed to licence but has imposed two conditions:

1. X must purchase even non-patented articles only from Y, and
2. X must grant an exclusive grant-back licence to Y for any future improvements.

As a Patent Agent, I will say these conditions are not appropriate, as they violate Section 140 of the Patents Act, 1970, which specifically prohibits certain restrictive conditions in patent licensing agreements.
Condition requiring X to purchase non-patented articles only from Y is void (Section 140(1)(iii))
Section 140(1)(iii)(b) declares void any licence condition that prevents the licensee from acquiring non-patented materials, articles, or equipment from any person other than the licensor. This is considered an anti-competitive restraint because a patent monopoly must remain limited to the patented invention alone. A patentee cannot extend his monopoly over goods or materials not covered by the patent.
Thus, Y's condition prohibiting X from purchasing non-patented articles from others is illegal and unenforceable.
Condition requiring "exclusive grant-back" is also void (Section 140(1)(iii)(d))
Section 140(1)(d) specifically prohibits a condition requiring that: the licensee must exclusively assign or exclusively grant back to the patentee any future improvements made by the licensee relating to the patented invention. An exclusive grant-back restricts the licensee's ability to commercialize or patent his own improvements and is considered an abuse of the patentee's position.
Thus, Y's condition requiring exclusive grant-back of improvements to X's inventions is statutorily void.

Q.3 An inventor/applicant has filed an application for patent in India and approaches you, immediately thereafter for filing international application under PCT with specific questions on following:
a) Whether he can claim priority of his application filed in India and within what time.
b) When he can file a national phase application from PCT route.
c) After filing of national phase application, what would be fate of his previous application?
Please advise him as per provisions of PCT and Indian Patents Act.
Solution: An inventor who has already filed a patent application in India may subsequently file an International Application under the PCT. The following clarifications address his specific questions:

(a) *Whether he can claim priority from the Indian application and within what time:*
Yes. The inventor can claim priority from his Indian application under:
• Article 8 of the PCT: Allows an international application to claim priority from an earlier national application.
• Article 4 of the Paris Convention: Provides a 12-month priority period for patent applications.
• Section 135 of the Indian Patents Act: Recognizes convention applications and the right to claim priority based on earlier applications filed in convention countries or PCT filings.
Time Limit: The PCT application must be filed within 12 months from the Indian filing date to successfully claim priority.
(b) When he can file a national phase application from PCT route.
After filing the PCT application, the inventor may enter the **Indian national phase** under:
• *Section 7(1A) of the Patents Act:* States that an international application designating India shall be deemed to be an application under the Act if filed in accordance with the PCT.
• *Rule 20 of the Patents Rules, 2003:* Specifies the time limits and procedural requirements for national phase entry. Under Rule 20(4)(i), the applicant must enter the national phase within 31 months from the priority date.
Thus, the national phase application in India may be filed any time before the expiry of 31 months from the priority date.
(c) After filing of national phase application, what would be fate of his previous application?
After the inventor files the national phase application in India, the fate of his earlier Indian patent application is governed by Section 135(3). This section provides that where an Indian application and a PCT national phase application relate to the same invention, both cannot proceed concurrently, and a request for examination under Section 11B must be made only for one of the Indian applications, i.e. both a national application and a PCT national phase application exist in India for the same invention, the applicant must choose only one for examination. This prevents duplicate examination and ensures procedural efficiency.
If applicant choose to file Request for Examination (RFE) for PCT national phase application in India, then practically for earlier Indian patent application, withdrawal is effected through Section 11B, by simply not filing the Request for Examination (RFE), which then becomes deemed withdrawn under Section 11B(4).
Thus, the national phase application continues as the effective application in India.

Q.4 Write a short note on the benefits provided for startups and small entities under the Patents Rules.
Solution: The Patents Rules provide several procedural and financial benefits to startups and small entities to promote innovation and reduce the cost and time involved in patenting.
A Startup is an entity recognized by DPIIT, less than 10 years old, turnover ≤ ₹100 crore, and engaged in innovation.
A Small Entity is an enterprise classified as “small” under MSME norms (investment-based thresholds) and supported by Form 28 + MSME certificate.
Key benefits provided to startups and small entity include:
1. Reduced Fees (Rule 7 & First Schedule)
Startups and small entities enjoy significantly lower government fees typically 80% reduction compared to large entities for patent filing, examination fee, early publication fee and other statutory forms. This reduces the financial burden of patenting and makes IP protection affordable for early-stage innovators.

2. Expedited Examination (Rule 24C)

Startups are eligible to request **expedited examination** through Form 18A, ensuring that their applications are examined much faster than normal queue cases. Faster examination leads to earlier grant, helping them commercialize and attract investment sooner.

3. Relaxed Requirements for Filing Form 28

Startups and small entities may submit Form 28 (proof of entity status) at the time of filing or later, providing administrative flexibility. Startups can simply provide DPIIT recognition, and small entities may show MSME/Udyam registration to claim benefits. This ensures that entity discounts are not denied due to initial documentation delays.

4. SIPP (Startup Intellectual Property Protection) Scheme Support

Under the Government's SIPP scheme, startups get free professional assistance from registered facilitators for drafting, filing, and prosecuting patent applications. The Government bears facilitator fees, reducing the financial and technical barriers.

1. **Faster Disposal of Applications**

Under recent amendments, the Government mandates shortened timelines for various procedures. Priority handling of applications from startups in line with "Startup India" initiatives. This encourages smoother prosecution and supports rapid tech growth.

1. **Reduced Renewal Fee Burden**

Renewal fees from 3rd to 20th year are charged at substantially lower rates for both categories. This helps IP-intensive startups maintain patents through early, non-revenue-generating years.

Part B

3 X IO M=30 Marks (3 questions)

Q.5 Section 3(d) of Indian Patents Act, 1970 was amended which includes an explanation as follows:

"For the purposes of this clause, salts, esters, ethers, polymorphs, metabolites, pure form, particle size, isomers, mixtures of isomers, complexes, combinations and other derivatives of known substance shall be considered to be the same substance, unless they differ significantly in properties with regard to efficacy;

Explain the term "efficacy" in the light of the judgment of Supreme Court and other relevant orders by different courts in the matter of Novartis vs Union of India involving an anti-cancer compound.

Solution: Section 3(d) of the Indian Patents Act, 1970, as amended in 2005, was introduced with the clear intention of preventing the practice of **evergreening**, where pharmaceutical companies attempt to prolong monopoly by seeking patents for minor modifications of known substances without demonstrating real therapeutic advancement. The Explanation to Section 3(d) states that salts, esters, ethers, polymorphs, metabolites, pure forms, particle sizes, isomers, mixtures of isomers, complexes, combinations, and other derivatives of a known substance shall be considered the same substance unless they differ significantly in properties with regard to efficacy.

The meaning of the term **"efficacy"** was examined in great depth by the Supreme Court of India in ***Novartis AG v. Union of India*, (2013) 6 SCC 1**, a landmark case concerning the β-crystalline form of Imatinib Mesylate, used in the treatment of chronic myeloid leukemia. Novartis claimed that this new form exhibited enhanced properties such as improved bioavailability (30% increase), greater stability, better flow characteristics, and better storage characteristics compared to the known substance.

However, the Supreme Court held that these improvements did not satisfy the requirement of "enhanced efficacy" under Section 3(d). The Court noted that Section 3(d) must be interpreted in the context of the field of invention in this case, pharmaceuticals, where the primary purpose of the drug is to treat disease. Therefore, "efficacy" must relate to the therapeutic efficacy, that is the ability of the drug to produce a therapeutic or curative effect in the body, not merely improved physicochemical properties.

The Court clarified that improvements in a drug's physical or chemical properties such as better stability, improved flow characteristics, higher bioavailability, increased purity, reduced particle size, or new crystalline forms- do not automatically amount to enhanced therapeutic efficacy. Such properties become relevant only if they directly translate into a better clinical outcome in the human body.

The Court emphasized that:

Only improvements that demonstrably enhance the therapeutic effect—such as better cure, improved control of the disease, increased survival, or stronger biological response—are considered relevant under Section 3(d).

Such enhancement must be proven through experimental or clinical data, not through theoretical assertions.

Although the β-crystalline form of Imatinib Mesylate showed improved physical properties, the Court held that:

- Increased bioavailability does not necessarily result in enhanced therapeutic effect.
- No clinical or pharmacodynamic evidence demonstrated superior efficacy in treating leukemia.
- Enhanced stability may aid storage or formulation but does not improve treatment outcomes.
- Improved flow properties or greater thermodynamic stability may assist in manufacturing but remain irrelevant to therapeutic efficacy.

Since Novartis failed to produce evidence showing that the β-crystalline form of Imatinib Mesylate exhibited significantly enhanced therapeutic efficacy over known Imatinib, the patent claim was rejected.

After *Novartis*, Indian courts and the Patent Office consistently interpret "efficacy" narrowly:

- Delhi High Court, in several decisions, reaffirmed that increased solubility, stability, or bioavailability does not by itself demonstrate improved therapeutic effect unless it translates into better clinical performance.
- IPO orders in pharmaceutical cases regularly refuse patents where applicants fail to prove therapeutic enhancement.

This strict interpretation ensures that only inventions with real medical benefit receive monopoly protection.

Q.6 A invents a medicine which is ~ combination of components A, B and C. Component C is a powder of herb which occurs in hilly terrain of Assam and adjoining areas. As a Patent agent advise him regarding the essential procedural and substantial aspects of patenting of such combinations.

Solution: A has invented a medicine composed of components A, B, and C, where Component C is an herbal powder obtained from a naturally occurring plant found in the hilly regions of Assam and adjoining areas. As his Patent Agent, the following procedural and substantive requirements must be carefully addressed before filing the patent application.

SUBSTANTIVE ASPECTS (Patentability Conditions)

1. Compliance with Section 3(c): Discovery of a Natural Substance Not Patentable

Component C, being a naturally occurring herb, cannot be patented in its natural form. However, the composition as a whole can be patented if the applicant demonstrates:

- A new combination that produces a synergistic or improved therapeutic effect,
- A novel ratio, formulation or extraction technique,
- A composition not disclosed in traditional knowledge.

Thus, only the formulation not the herb per se is patentable.

2. Compliance with Section 3(e): Not a Mere Admixture

A combination of components A, B, and C must not be a mere aggregation of known properties. To overcome Section 3(e), the inventor must show:

- A synergistic effect,
- Unexpected therapeutic enhancement,
- Comparative data demonstrating improvement over individual components.

Without synergy, the application is likely to be rejected.

3. Compliance with Section 3(p): Traditional Knowledge

Since Component C comes from an Indian herb, the examiner may cite Section 3(p).[Text Wrapping Break]To avoid rejection, the inventor must demonstrate:

- The specific formulation, extraction, processing, or delivery system is not known in traditional texts or TKDL,
- The invention is based on modern technical development, not merely traditional use.

4. Must Show Enhanced Efficacy if Variant of Known Drug (Section 3(d))

If the components are derivatives of known substances, the applicant must provide data demonstrating significantly improved therapeutic efficacy.

PROCEDURAL ASPECTS (Steps for Filing Application)

1. Filing of Patent Application (Section 6 & Section 7)

A must file a patent application in Form 1 along with a **Complete Specification** (Form 2). Since herbal components require precise disclosure, the specification must include detailed preparation steps, extraction method, proportions, stability, and test data demonstrating the special effect.

2. Adequate Disclosure under Section 10

The complete specification must clearly describe:

- The extraction or processing of Component C,
- The method of preparing the final medicinal composition,
- Experimental data showing improved or synergistic effect.
- disclose the source and geographical origin of the biological material in the specification, Full disclosure ensures compliance with **Section 10(4)** regarding sufficiency and enablement.

3. Filing of mandatory Forms (Form 3 & Form 5)

- **Form 3:** Disclosure of foreign applications (if any).
- **Form 5:** Declaration of inventorship identifying A as the true and first inventor. These forms must accompany the application or be filed within prescribed timelines.

4. Submission of NBA Approval (Biological Diversity Act, 2002)

- Since Component C originates from a biological resource from India, prior approval or notification to the National Biodiversity Authority (NBA) under the Biological Diversity Act, 2002 is essential for:

-Accessing the resource, and

-Obtaining IP rights on products derived from it.

The patent will not proceed to grant unless NBA obligations are fulfilled.

5. Responding to Examination (Form 18 / 18A)
After filing the request for examination:

- A must respond to any objections regarding Section 3(d), 3(e), or 3(p) by providing scientific data demonstrating novelty, synergy, and non-traditional nature.
- If eligible, A may apply for expedited examination under Form 18A.

6. Grant Formalities

- After compliance with all objections and submission of NBA approval, the Controller may proceed to grant the patent and the patent will be published in the Patent Office Journal.

Q.7 A patent was granted to X on a communication system. After getting the patent X serves a notice of infringement upon Y on the ground that he was infringing the patent granted to X. Y approaches you for suitable advice. Please explain to Y the remedies under the Patents Act.
Solution: When X, the patentee, issues a notice alleging infringement of his communication system patent, Y is not required to accept the allegation at face value. The Patents Act provides several statutory remedies and defensive mechanisms to protect Y's interests. These remedies are explained below:
1. Defence to Infringement – Section 107 (Using Revocation Grounds)
Y can defend himself in any infringement action by arguing that X's patent is invalid.Section 107 allows Y to use *all grounds of revocation under Section 64* as defence.These include:

- The invention lacks novelty or inventive step
- The invention is not patentable under Section 3
- The invention is not sufficiently disclosed
- Patent was obtained wrongfully

Y may independently challenge the patent by filing a revocation petition before the High Court. This does not require waiting for a lawsuit, Y can proactively attack the validity. If the patent is revoked, the infringement notice becomes meaningless.Revocation is useful when Y believes the patent should never have been granted or is blocking his business. If the patent itself is weak or invalid, Y cannot be held liable for infringement. This is the most common and powerful defence.
2. Post-Grant Opposition – Section 25(2)
If the patent was granted within the last 1 year, Y can file a post-grant opposition before the Controller. This is a simpler, faster and less expensive procedure than litigation. Y can cite grounds such as lack of novelty, obviousness, wrongful obtainment, and insufficient disclosure. If successful, the patent may be revoked or amended, which directly removes the infringement threat.
3. Declaration of Non-Infringement – Section 105
If Y believes his product or process does not fall within the scope of X's patent claims, he may seek a declaration of non-infringement from the court. Before doing this, Y must give notice to X asking for a clarification. If X fails to respond or refuses, Y can approach the court. This remedy provides legal clarity and prevents unnecessary infringement suits.
4. Action Against Groundless Threats – Section 106
If the infringement notice is unjustified, vague, or made in bad faith, Y can sue X for *groundless threats*. Y can request:

- A declaration that the threats are unjustified
- An order preventing X from making further threats
- Damages for business loss due to the threats This protects Y from harassment or pressure tactics used by patentees.

5. Use of Statutory Exceptions/Permitted Acts – Section 107A

Y may rely on activities that are *not considered infringement*. These include:

- Bolar Provision: Using the patented invention for regulatory submission, research or experimentation.
- Parallel Import: Importing a patented product legitimately sold abroad by the patentee. These statutory exemptions allow Y to operate without infringing the patent.

6. Compulsory Licence – Section 84

If Y actually wants to practice the invention, he may apply for a compulsory licence after 3 years from grant. Grounds include unmet public demand, high prices, or non-working of the patent in India.This is a lawful way to use the invention without infringing, though it is not a defence to infringement itself.

RAS Intellect Pvt Ltd

2018: PAPER 2 (SOLVED)

PATENT AGENT EXAMINATION, 2018
[Under Section 126 of Patent Act, 1970]
Paper II

Total Marks: 100
Time: 2.30 p.m. to 5.30 p.m. (Three Hours)

Instructions:
1. This paper consists of 3 parts-Part A (20 Marks), Part B (30 Marks) & Part C (50 Marks).
2. All questions in Part A and B are compulsory.
3. Part C comprises Part C1 of 20 Marks and C2 of 30 Mark. Part C1 consists of 2 questions and the candidate is required to answer any 1 of them, Part C2 consists of 2 questions and the candidate is required to answer any 1 of them.
4. In case a candidate answers more questions than required, the first attempted question shall be evaluated.
5. Candidates should rend the questions very carefully before answering.
6. No clarification shall be provided during the course of the examination.
7. There is no negative marking.

PART A

4x5 Marks = 20 Marks (4 questions)

Q.1 Write a short note on Non patentable inventions within the provision of The Patent Act, 1970.

Solution: Sections 3 and 4 of The Patents Act, 1970, lays down a comprehensive list of subject matter that cannot be patented in India, irrespective of novelty or inventiveness. These exclusions reflect public policy, ethical considerations, and fundamental limits of patentability.

Section 3 specifies various categories of non-patentable inventions. These include:

• inventions frivolous or contrary to natural laws (3(a))
• inventions against public order or morality (3(b))
• mere discovery of scientific principle or natural substances (3(c))
• new forms of known substances without enhanced efficacy (3(d))
• A substance that is only a simple mixture of its ingredients, where each component works just as it normally does and nothing new results,(3(e))
• Simply arranging, rearranging, or duplicating known devices,when each device works independently in the usual way (3(f))
• agriculture/horticulture methods (3(h))
• methods of treatment (3(i))
• plants, animals (whole or parts), except microorganisms (3(j))
• mathematical/business methods & computer programs per se (3(k))
•a literary, dramatic, musical or artistic work or any other aesthetic creation whatsoever including cinematographic works and television productions(3(l))
•a mere scheme or rule or method of performing mental act or method of playing game (3(m))
•a presentation of information; (3(n))
•topography of integrated circuits;(3(o))
•an invention which, in effect, is traditional knowledge or which is an aggregation or •duplication of known properties of traditionally known component or components (3(p))

Under Section 4, the atomic energy-related inventions are excluded.

These statutory exclusions ensure that only inventions with true technical contribution, industrial applicability, and compliance with public policy are granted patent protection in India.

Q.2 A psychiatrist of Mumbai develops a music therapy for his schizophrenic patients which has tremendous impact on them and helps them to get rid of many of the symptoms of schizophrenia. The doctor attended one awareness program for patent filing and being motivated approached you for advice. As a registered Patent agent what do you suggest him?
Solution: Under the Patents Act, 1970, the psychiatrist's "music therapy" for treating schizophrenia cannot be patented in India, because it falls under the express exclusions of Section 3(i). Section 3(i) prohibits the grant of patents for "any process for the medicinal, surgical, curative, prophylactic, diagnostic, therapeutic or other treatment of human beings." Music therapy is clearly a therapeutic method intended for treatment of a mental health condition, and therefore squarely falls within this non-patentable category.

As a registered patent agent, I would advise the psychiatrist that although the therapy itself is not patentable, he may explore alternate routes of protection. If he has developed any novel device, system, or hardware integrated software tool for delivering or monitoring music-based therapy, such technical solutions may potentially qualify for patent protection, provided they meet the criteria of novelty, inventive step, and industrial applicability under Section 2(1)(j). If the innovation relates to training modules, protocols, or counselling methods without any technical apparatus, these cannot be patented but may be protected via copyright or trade secrets.

Therefore, he should be guided to identify any technical component involved in the therapy that may be patentable, while clearly understanding that the therapeutic method itself is excluded from patent protection under Indian law. Further he is also advised to protect the software or musical notes under copyright law.

Q.3 One client 'A' has come to your office for seeking advice regarding assignment for a "solar cooktop" which 'B' has already patented. As a practicing Patent Agent brief him about the applicable issues as per the Patent Act and Rules to your client A?
Solution: As a practicing Patent Agent, the first step is to advise client A that any rights in a granted patent, such as ownership, share, licence, or interest, can be transferred only through a valid assignment, as governed by Sections 68–70 of the Patents Act, 1970 and corresponding Patent Rules.
Under Section 68, an assignment of a patent must be:

- In writing,
- Duly executed,
- Reduced to the form of a document, and
- Must clearly state the rights and obligations of the parties.

Oral assignments or informal understandings are legally invalid.
After execution of the assignment deed between A (assignee) and B (patentee), A must ensure registration of his title with the Patent Office. As per Section 69 read with Rule 90, A must:

- File Form 16,
- Submit the assignment deed,
- Provide necessary proof of title, and
- Pay the prescribed fee.

The Controller, upon satisfaction, will enter the details in the Register of Patents, and only then does the assignment take effect against third parties. Until registration, A may face difficulty enforcing his rights. It is also important to verify that:

- The patent is in force (renewal fees paid),
- There is no ongoing litigation, opposition, or encumbrance, and
- The extent of rights being assigned (full assignment or limited rights such as territorial or field-based) is clearly negotiated.

Thus, A must obtain a formal written assignment from B, file the appropriate documents with the Controller, and ensure compliance with statutory requirements to secure legally enforceable rights in the patented solar cooktop.

Q.4 The grant of Patent is based on certain conditions as stipulated in section 47 of The Patent Act. Briefly explain those conditions.
Solution: Section 47 of the Patents Act lays down mandatory conditions that apply automatically to every granted patent in India. These conditions ensure that patent rights remain subject to public interest safeguards.

1. Government's Right to Make or Import the Patented Article (Section 47(1))

Any patented machine, apparatus, article, or any article made by a patented process may be made or imported by or on behalf of the Government for the purpose merely of its own use. This ensures that Government departments can freely utilise patented technology for public functions.

2. Government's Right to Use a Patented Process (Section 47(2))
Any patented process may be used by or on behalf of the Government, again strictly for its own use. This enables the Government to carry out essential activities without needing authorization from the patentee.

3. Use of Patented Articles or Processes for Research and Instruction (Section 47(3))
Any patented article or article made using a patented process may be made or used, and any patented process may be used by any person, for the purpose of experiment, research, or imparting instruction to pupils. This provision protects academic institutions, students, and researchers from infringement liability.

4. Special Provision for Patented Medicines or Drugs (Section 47(4))
In the case of patented medicines or drugs, the Government may import the patented drug for the purpose merely of its own use or for distribution in Government hospitals, dispensaries, or specified medical institutions notified in the Official Gazette. This ensures access to essential medicines for public health institutions.
Together, these conditions ensure that although exclusive rights are granted to the patentee, public interest, Government use, and educational needs remain protected under Section 47.

PART B
3X10M-30Marks (3 questions)

Q.5 Explain briefly the different Provisions of The Patent Act for the following:
a. Role of a Patent Agent.
b. Criteria for disqualification of Patent Agent.

Solution: a. Role of a Patent Agent
Under the Patents Act, 1970, the role of a Patent Agent is defined through Section 127. A Patent Agent is a person registered under Section 126, authorized to practice before the Patent Office. Their principal roles of a Patent Agent as per section 127 include:

1. Drafting and Filing Patent Applications- A patent agent prepares provisional and complete specifications, claims, abstracts, and drawings, ensuring compliance with Sections 9–10.
2. Representation Before the Patent Office- Under Section 127, a patent agent may represent applicants during prosecution, respond to examination reports, attend hearings, handle oppositions, and make all procedural submissions.
3. Advising on Patent Law- Patent agents advise clients on patentability, prior art searches, inventorship, assignment, licensing, renewal, and enforcement strategies.
4. Handling Oppositions and Proceedings- They assist in filing pre-grant and post-grant oppositions under Section 25, revocation proceedings under Section 64, and restoration petitions under Section 60.
5. Maintaining and Managing Patent Rights- Patent agents file renewals, assignments (Form-16), working statements (Form-27), and attend to procedural requirements throughout the life cycle of a patent.

b. Criteria for disqualification of Patent Agent.
The grounds for disqualification and removal from the Register of Patent Agents are governed Section 130 of the Patents Act, 1970 and Rule 114 of the Patents Rule, 2003. The Controller may remove a Patent Agent's name from the register if, after giving an opportunity of hearing, he is satisfied that if

- the name was entered by error, misrepresentation, or suppression of material fact (Section 130(1)(i)), and
- the agent has been convicted of an offence and sentenced to imprisonment, or has been guilty of professional misconduct, rendering him unfit to remain on the register (Section 130(1)(ii)).

Section 130(2) further allows a removed agent to apply for restoration of his name upon showing sufficient cause.

Disqualifications for Registration (under Rule 114): A person is not eligible to be registered as a Patent Agent if:

- He is declared to be of unsound mind by a competent court.
- He is an undischarged insolvent, or a discharged insolvent without a court certificate of good conduct.
- He has been convicted of an offence leading to imprisonment, unless pardoned or relieved by the Central Government.
- He is a legal practitioner who has been guilty of professional misconduct.
- He is a chartered accountant guilty of negligence or misconduct.

These provisions ensure that only persons of integrity, good professional conduct, and sound mental and financial standing may practice as Patent Agents.

Q.6 Explain the various provisions in the prevailing Patent Rules for 'Expedited Examination', 'Small entity' and 'Startup'.
Solution: Expedited Examination- Rule 24C

The mechanism of expedited examination is provided under Rule 24C, allowing certain eligible applicants to receive examination of their patent applications out of turn. A request for expedited examination must be filed in Form 18A, electronically, along with the prescribed fee.

Under Rule 24C(1), eligibility arises when the applicant falls into one of the notified categories, which include: applicants who have designated India as ISA or IPEA in a corresponding PCT application; Startups; Small Entities; applications filed by or including at least one female natural person; Government departments; institutions established under Central/State Acts and owned or controlled by the Government; Government companies; institutions wholly or substantially financed by Government; applicants filing applications in a notified sector; and applicants eligible under a Patent Prosecution Highway arrangement.

Rule 24C permits a normal request for examination filed under Rule 24B to be converted into expedited examination upon payment of the differential fee. If the application has not yet been published, a request for expedited examination must be accompanied by a request for early publication under Rule 24A. If eligibility conditions are not met, the request is automatically treated as a normal examination request.

Expedited examination also provides accelerated timelines. The examiner must submit the examination report within one month, extendable to two months, from the date of reference. The Controller must dispose of the examiner's report within one month thereafter, and the First Examination Report (FER) must be issued within fifteen days of such disposal. The time available to place the application in order for grant is the standard six months, extendable by three months on Form 4. The Controller must finally dispose of the application within three months of either receipt of the last reply to the FER or the expiry of the time for putting the application in order for grant. Rule 24C also allows the Controller to limit the total number of expedited requests in a year through notification.

Small Entity — Rule 2(fa) and Rule 7
A Small Entity is defined under Rule 2(fa), which incorporates Micro, Small, and Medium Enterprises (MSME) classification criteria relating to investment and turnover. A Small Entity must submit Form 28 along with supporting documentary proof of MSME registration. Small Entities enjoy reduced fees for filing, examination, and post-grant procedures under the First Schedule read with Rule 7.

Further, Small Entities are eligible for expedited examination under Rule 24C(1)(c) and therefore may access faster prosecution timelines. Importantly, the Rules provide that if a Small Entity later ceases to qualify as such due to turnover or duration changes, its expedited examination request remains valid, in line with the proviso under Rule 24C. However, under Rule 7(3), if ownership of the application is transferred to a large entity, the difference in fee becomes payable at the next procedural step.

Startup — Rule 2(fb) and Rule 7
A Startup is defined under Rule 2(fb), consistent with DPIIT recognition: not older than ten years and having turnover not exceeding ₹100 crore. To claim Startup status, the applicant must file Form 28 along with a valid Startup Recognition Certificate.

Startups form the lowest fee category under Rule 7, paying the same reduced fee schedule applicable to natural persons. They are specifically included in the expedited examination category under Rule 24C(1)(b), enabling significantly faster grant timelines. The proviso to Rule 24C protects a Startup's expedited request even if it subsequently loses its Startup status due to age or turnover. Similar to Small Entities, if a Startup transfers its application to a non-Startup, the fee differential must be paid pursuant to Rule 7(3).

Q.7 Mr. Dutta, a research scholar of an Indian University invented one watch which acts as an alarm for senior citizen and patients to respective call centers of registered hospitals for emergency support. In the meantime Mr. Dutta has approached Central government to approve a financial grant for his invention and had a discussion with concerned official of the said department. Mr. Dutta exhibited his invention in Industrial fair organized by Government in Pragati Maidan, Delhi on 15th February, 2015. One of his colleagues in the same laboratory published his invention in leading newspaper on 2nd March, 2015 without his consent. Meanwhile, he has attended one awareness program on Patent in Delhi on 5th March 2015. Immediately on 10th March, 2015 he has filed a Provisional Specification before The Patent Office, Delhi and subsequently filed Complete Specification on 10th December, 2015. Mr. Dutta is not sure whether the exhibition and publication in newspaper or communication with Govt. official would hamper his patent protection or not, hence he seeks your advice. Give the appropriate advice in writings to your client as a practicing Patent Agent quoting the relevant sections of Patent Act, 1970.

Solution: As a practicing Patent Agent, the first step is to analyse whether Mr. Dutta's disclosures, through exhibition, communication with a Government official, and newspaper publication, affect the novelty of his invention under the Indian Patents Act, 1970. Novelty is assessed under Section 2(1)(l), and loss of novelty typically results in rejection under Section 25(1)(b) and Section 64(1)(e). However, the Act also provides statutory grace periods in certain situations under Section 30 and Section 31.

1. Disclosure During Industrial or Government-Organised Exhibition: Protected under Section 31(a)
Mr. Dutta exhibited his invention at an Industrial Fair organized by the Government on 15 February 2015. Under Section 31(a) of the Patents Act, display of an invention at a Government-notified exhibition does not destroy novelty, provided the patent application is filed within 12 months of such exhibition. Here, Mr. Dutta filed his provisional specification on 10 March 2015, which is well within 12 months. Thus, the exhibition does not affect patentability.

2. Publication in Newspaper Without Consent –Protected under Section 31(b and c)
The invention was published by a colleague in a leading newspaper on 2 March 2015, without Mr. Dutta's consent. Under Section 31(b and c), any publication of the invention without the consent of the true and first inventor, if it occurred after a Government-notified exhibition, does not destroy novelty, provided the application is filed within 12 months from such exhibition/publication. Since, the exhibition took place on 15 February 2015, and the unauthorized newspaper publication occurred after the exhibition, and the provisional was filed on 10 March 2015, the publication is covered by the Section 31 grace period. Thus, the newspaper publication does not destroy novelty.

3. Communication to Government Official : Protected under Section 30
Mr. Dutta discussed his invention with a Government official while seeking financial grant. Under Section 30, communication of an invention to the Government or to a Government-authorized person does not amount to publication, provided this is done for obtaining approval, assistance, or financial support. Therefore, the communication to the Central Government is not a disclosure and does not affect patentability.

4. Filing of Provisional and Complete Specification :Within Permissible Timeline
Mr. Dutta filed Provisional specification on 10 March 2015 and Complete specification on 10 December 2015, which is within the 12-month period required by Section 9(1). Thus, the filing of application is compliant.

Based on the provisions of Section 30 and Section 31(a), (b) & (c) of the Patents Act:

None of the disclosures made prior to 10 March 2015 destroy the novelty of Mr. Dutta's invention. Therefore, Mr. Dutta's patent application remains valid, and the invention retains novelty under Indian patent law. Mr. Dutta may proceed confidently with prosecution of the application.

2022: PAPER 2 (SOLVED)

PATENT AGENT EXAMINATION, 2022
(Under Section 126 ofthe Patents Act, 1970) PAPER II

TIME: 02.30 p.m. to 05.30 p.m. (Three Hrs) **Total Marks: 100**

Instructions

- ***This paper consists of 3 parts - Part A (20 marks). Part B (30 marks) & Part C (50 Marks).***
- ***All questions in Part A and B are Compulsory.***
- ***Part C comprises Part CI of 20 marks and C2 of 30 marks. Part CI consists of 2 questions and the Candidate is required to answer anyone of them, Part C2 consists of 2 questions and the candidate is required to answer anyone of them.***
- ***Candidates should read the questions very carefully before answering.***
- ***In case a candidate answers more questions than required, the first attempted question shall be evaluated. No clarification will be provided during the course of the examination.***
- ***There is no negative marking.***
- ***All references to "Act" and "Rules" may be read as The Patents Act, 1970 and The Patent Rules. 2003 respectively, as amended until now and their related applications.***
- ***Candidate is expected to quote relevant sections and rules as well as prescribed fees and forms in the answer.***

PART A

4 Questions * 5 Marks= 20 Marks

Q1. Explain the importance of prior art search before filing of patent application and drafting of specification.

Ans 1 - Prior art search plays a crucial role in patent filing and specification drafting for several important reasons. Firstly, it helps determine whether the invention is novel and has an inventive step, which are fundamental requirements under Sections 2(1)(j) and 2(1)(ja) of the Patents Act, 1970. A comprehensive prior art search enables the inventor to identify existing technologies, publications, and patents that may affect the patentability of their invention. This knowledge allows for better claim drafting by clearly distinguishing the invention from existing prior art and highlighting its unique features.

Furthermore, prior art search aids in drafting a strong specification by helping identify the technical advancement over existing art, which must be clearly demonstrated under Section 10(4) of the Act. It enables the applicant to describe the background art accurately and explain how their invention overcomes
the limitations of existing solutions. This strengthens the patent application and reduces the likelihood of receiving objections during examination.

Additionally, conducting prior art search before filing helps avoid unnecessary expenditure on patent applications for inventions that may not meet patentability criteria. It also assists in determining the appropriate territorial scope for patent protection based on the existing art in different jurisdictions.

Q2. Suma is a home maker in rural Karnataka. She has a patent for a fish feed formulation. She has been selling the patented product through e-commerce platforms and has got very encouraging feedback from market. Suma has now realized that the addition of 10 % by weight of coconut oil into the formulation extends disintegration time for fish feed pellets in water. Suma knows that addition of coconut oil into the fish feed formulations to extent disintegration is well known in the art. Nevertheless, she approaches you seeking means to protect this improved/modified formulation. How would you advice her?

Ans 2 - I would advise Suma that seeking patent protection for the modified formulation would be challenging due to several legal considerations. Under Section 2(1)(ja) of the Patents Act, 1970, an invention must involve an inventive step that makes it non-obvious to a person skilled in the art. Since Suma acknowledges that the addition of coconut oil to extend disintegration time in fish feed formulations is well known in the art, this modification would lack the required inventive step.

However, I would suggest alternative approaches for Suma to protect her business interests:

1. She could focus on protecting her trade secrets related to the exact manufacturing process and any specific techniques used in incorporating the coconut oil.
2. She may consider applying for trademark protection for her brand name and product packaging under
the Trademarks Act, to build brand value and maintain market differentiation.
3. She could explore protecting specific aspects of her formulation that are not related to the coconut oil
addition, if any such novel features exist.

Q3. Mr.Gopi, an applicant from Madya Pradesh, filed a Patent application in his individual capacity alongwith the request for Examination. Patent office has issued First examination report (FER) whereinsome documents were cited to prove that invention lacks Novelty and Inventive step. Gopi nowrealized that many features of the invention were not disclosed in the specification at the time of theoriginal filing. Gopi asked you to incorporate the missing features in the original specification.

(a)Explain to Gopi the procedure to make voluntary amendments under the Patents Act. (b)Briefly discuss whether Gopi can make use of such provisions for voluntary amendments in above scenario

Ans 3 - In response to Gopi's situation, the following are the advice regarding both aspects of the question: (a) The procedure for voluntary amendments under the Patents Act: According to Section 59 of the Patents
Act, an applicant can file voluntary amendments of the application, specification or any related documents.

The procedure involves:

1. Filing Form 13 along with the prescribed fee under Rule 81 of the Patent Rules, 2003.
2. Submitting a detailed statement setting out the nature of the proposed amendment and reasons for it.
3. Providing a marked copy showing the proposed amendments in red ink.
4. Filing a clean copy incorporating the proposed amendments.

However, such amendments are subject to strict conditions under Section 59(1), which states that no amendment shall be allowed which would result in the specification claiming or describing matter not disclosed in substance in the specification before amendment.

(b) Regarding Gopi's specific scenario: In this case, Gopi cannot make use of the voluntary amendment provisions to incorporate new features that were not originally disclosed in the specification. This is because:

1. Section 59(1) explicitly prohibits the introduction of new matter through amendments that goes beyond the original disclosure.
2. Adding previously undisclosed features would amount to expansion of the scope of the invention, which is not permissible under the Act.
3. Such amendments would violate the fundamental principle that the specification should fully and particularly describe the invention at the time of filing.

Q4. An application was filed with a provisional specification (PS) by a MSME in Ladakh. Subsequently, the MSME made further developments to the invention disclosed in the PS contributed by Bikram, a citizen of Nepal, who joined the MSME after the provisional had been filed. The MSME seeks your advice - (a) whether improvements can be included in the complete specification? (b) if Bikram can be mentioned as Inventor while filing complete specification (CS)?

Ans 4 - Yes, the complete specification can incorporate new developments and refinements made to the invention. These improvements can be added as long as they do not extend beyond the scope of the original disclosure in the provisional specification provided, they are filed within 12 months from the filing date of the provisional specification, as per Section 9 of the Indian Patents Act, 1970.

However, if the improvements are substantial and introduce new matter not originally disclosed in the provisional specification, the MSME should consider filing a new provisional application or amend the existing one to reflect these changes, ensuring that the new matter is properly protected. Yes, Bikram can be mentioned as an inventor. Under Section 6 of the Indian Patents Act, 1970, the right to apply for a patent lies with the applicant. Bikram’s citizenship (Nepalese) does not affect his eligibility to be mentioned as an inventor. However, he cannot claim ownership of the patent unless assigned by the MSME.

PART B

Q5. (a) Ujjwal, an entrepreneur and owner of startup "UJWsolar", has developed a cheap solar-based battery. He wishes to have a patent for said invention at the earliest. Ujjwal came to know about expedited examination. Explain the same as per the provisions of the Patents Act and Rules.
(b) In another patent application Ujjwal has already filed a request for examination. The application has been awaiting examination for a long time. If he wants that application to be taken for examination immediately, what steps are required?

Ans – Under Section 11B and Rule 24C of the Patents Act and Rules, expedited examination offers a faster route for patent examination in India. Since Ujjwal owns a startup "UJWsolar," he qualifies as an eligible applicant under the startup category for expedited examination. To initiate this process, Ujjwal must file Form 18A along with the prescribed fee and documentary proof of startup status such as the DPIIT recognition certificate.

The Patent Office generally issues the First Examination Report (FER) within 1–2 months of this request, significantly faster than the regular 12–18 months. Ujjwal should also file a request for early publication under Section 11A to speed up the overall grant process and must respond promptly to all office actions.

(b) For the application already awaiting examination:

For the application where Ujjwal has already filed a request for examination but wishes to expedite the process, he has several options available under the Patents Act and Rules. First, he should file a petition to the Controller under Rule 24C(2) requesting early examination, clearly demonstrating special circumstances and urgency in his case. This petition should be accompanied by Form 18A (for expedited examination) and the requisite fee. In the petition, Ujjwal should provide compelling reasons for seeking expedited examination, such as potential commercial interests, risk of infringement, or public interest considerations. He may also submit evidence of existing or potential commercialization of his invention to strengthen his case. The Controller has discretionary power to accept such requests based on the merits of the circumstances presented. If accepted, his application would be taken up for examination.

Q6. Your schoolmate Gopika is now a final year student at an engineering college at Chennai. She has invented dust repellant coating composition for solar panels. Her engineering college has agreed to pursue a patent application for the said invention. How will you explain to her the most important aspects of prosecuting a patent application in India upto grant, with the relevant forms, fees and time limits?

Ans .The patent prosecution process in India involves several critical stages that must be carefully navigated to achieve successful grant.

1. **Application Filing Stage:**

• File application using Form 1 with complete specification including claims, abstract, and drawings
• Submit Form 5 (Declaration of Inventorship) identifying Gopika as inventor
• File Form 3 (Statement regarding foreign applications) if applicable
• Pay prescribed fees as per category (educational institution rates apply)
• Consider filing provisional application first if research is ongoing

2. Publication Phase:

• Application publishes automatically after 18 months from filing/priority date
• Early publication possible using Form 9 with additional fee
• Publication enables third-party observations under Section 11A

3. Examination Process:

• File examination request using Form 18 (mandatory within 31 months)
• Respond to First Examination Report within 6 months (extendable by 3 months)
• Address all objections comprehensively with supporting arguments/amendments
• Consider hearings if necessary to resolve outstanding issues
• File working statement Form 27 after grant

4. Post-Grant Procedures:

• Pay grant fees when indicated
• Maintain patent through timely renewal fee payments
• First renewal due after grant for previous years from 3rd year onwards

Q.7 CropPro is a pesticide manufacturing pesticide composition comprising ingredients company based in South Korea. CropPro developed a A and 8 to mitigate earworm infestation in tomato plants. Crop Pro identified that when A and B are used in a ratio of 25-30% and 75-70% respectively, the pesticide composition not only mitigated worms but also improved the flowering rate. Patent application was filed with a single claim 1. A pesticide composition comprising A and B: Patent office has cited a prior publication in the first statement of objections (FER) which discloses a pesticide composition comprising 5- 55 wt% A and 95-45 wt% B for mitigating earworm infestation in tomato fields.
(a) How will you respond to this FER'?
(b) If the complete specification did not have any examples evidencing increase in flowering rate. how can Crop Pro provide further evidence.
Ans. For CropPro's pesticide composition:
(a) Response to FER: The examiner has raised a novelty/inventive step objection based on prior art showing overlapping ranges (5-55% A and 95-45% B) with CropPro's composition. To overcome this objection effectively, the following comprehensive response strategy should be implemented:

1. Claim Amendment Strategy:
• Amend the main claim to specifically define the critical range (25-30% A and 75-70% B)
• Add dependent claims capturing the flowering rate improvement feature
• Ensure proper support for amendments in the original specification

2. Technical Arguments:
• Demonstrate that the claimed narrow range provides unexpected advantages
• Present comparative data showing superior results within the claimed range
• Argue that the prior art does not specifically teach or suggest the critical ratio
• Highlight the dual benefits (earworm control and flowering improvement) as unexpected

3. Legal Arguments:
• Argue that the claimed range represents a careful selection providing special technical effect
• Establish that the selection is not arbitrary but based on extensive research
• Demonstrate that prior art teaches broadly without focusing on critical range

4. Supporting Documentation:
• Submit technical declarations from experts if available
• Include market success evidence if applicable
• Provide comparative test results properly verified by laboratory

(b) Providing evidence for flowering rate:
Since the complete specification lacks examples evidencing increased flowering rate, CropPro can take the following steps to strengthen their case:

1. Additional Evidence Submission:
• Prepare comprehensive test reports showing flowering rate improvement
• Conduct controlled experiments comparing claimed composition with prior art
• Document methodology and results meticulously
• Include statistical analysis of data

2. Legal Requirements:
• File evidence using Form 13 as additional evidence
• Submit detailed affidavit/declaration under Rule 132
• Ensure experiments are conducted by qualified experts
• Provide clear nexus between results and claimed features

3. Comparative Testing:
• Test compositions within and outside claimed range
• Compare results with commercially available products
• Document long-term effects on plant health
• Include photographs and statistical data

All responses should be prepared keeping in mind the six-month deadline from FER issuance, with possibility of three-month extension if needed.

RAS Intellect Pvt Ltd

2023: PAPER 2 (SOLVED)

PART A

4 Questions * 5 Marks= 20 Marks

Q1. State the factors that need to be considered for deciding the date of filing of the request for examination, after filing an application for patent?

Ans 1 – After filing a patent application, the applicant must file a Request for Examination (Form-18/18A) to initiate examination. The timing of filing the RFE is important and depends on several strategic and legal factors. The key considerations are:

1. A request for examination under section 11B shall be made in Form 18 within thirty-one months from the date of priority of the application or from the date of filing of the application, whichever is earlier;
2. The period within which the request for examination under sub-section (3) of section 11B to be made shall be thirty-one months from the date of priority if applicable, or thirty-one months from the date of filing of the application;
3. The request for examination under sub-section (4) of section 11B shall be made within thirty-one months from the date of priority or from the date of filing of the application, or within six months from the date of revocation of the secrecy direction, whichever is later;
4. The request for examination of application as filed according to the under sub-section (3) of section 16 shall be made within thirty-one months from the date of filing of the application or from the date of priority of the first mentioned application or within six months from the date of filing of the further application, whichever is later;
5. The period for making request for examination under section 11B of the applications filed before the 1st day of January, 2005 shall be the period specified under the section 11B before the' commencement of the Patents (Amendment) Act, 2005 or the period specified under these rules, whichever expires later;

Q2. Raju is a creative person who is engaged in the business of printing wherein he mixed paints with some fluorescent chemicals in a particular ratio so that the amalgamated painting material while using appears visible during night even without any kind of light source. He has applied for patent for the amalgamated painting material and also sought copyright protection for the painting he made using this material. In both the applications he did not disclose the composition of the amalgamated painting material. What will be the effect of such a nondisclosure on the protection of his IP rights?

Ans 2 - Effect on Patent Protection - Requirement of Full Disclosure:

Under Section 10(4) of the Indian Patent Act, 1970, a patent application must disclose the invention in a manner that a person skilled in the art can replicate it without undue experimentation. This is known as sufficiency of disclosure. The omission of the composition of the amalgamated painting material violates this requirement, as the invention cannot be replicated or fully understood by others.

Consequences of Nondisclosure:

1. Rejection of the Patent Application: During the patent examination, the examiner may raise objections under Section 25(1)(g) (insufficient disclosure). The application may be rejected on the grounds that the invention is not described adequately.

2. Invalidation of Granted Patent: If the patent is granted without sufficient disclosure, it can later be challenged and invalidated under Section 64 for failing to meet the disclosure requirements.

Effect on Copyright Protection Eligibility for Copyright:
Copyright protection is granted under the Copyright Act, 1957 for original works of authorship, including artistic works such as paintings. The painting created by Raju qualifies for copyright protection regardless of the nondisclosure of the material composition.
Impact of Nondisclosure:
No Impact on Copyright Protection: Copyright law does not require the disclosure of materials or methods used in creating an artistic work. The originality of the painting is sufficient for obtaining copyright protection. Raju's painting remains protected, and he can prevent unauthorized reproduction or distribution of the work.

Q3. Karan, an Indian citizen, owns a shipping company in Visakhapatnam. He got a call from his friend John, a US citizen who also owns a shipping company registered in USA, informing that John's Ship "Discovery" developed some technical snag while passing through Indian coast and needed urgent repairs. He requested Karan to get it repaired at his dock in Visakhapatnam. On inspection of the ship Karan realized that technical snag can be repaired using technology that is patented by SHIPREP, an Indian company. The SHIPREP's patented technology can repair such damages in few hours as compared to conventional process of repair which takes weeks. Karan used that technology to repair "Discovery" at the Indian coast without the permission from SHIPREP. After few months one of the ships owned by Karan also developed the same problem and Karan got it repaired using the same patented technology of SHIPREP without permission. SHIPREP came to know about such uses of their patented technology by Karan and approaches you for your expert guidance, what is your advice to SHIPREP.
Ans 3 - This is a clear case of infringement as per section 49(2). SHIPREP can file a suit for patent infringement in a court having jurisdiction (e.g., a district court or the High Court with jurisdiction over Visakhapatnam).
Remedies may include:

- Injunction: A court order restraining Karan from further using the patented technology without SHIPREP's permission.
- Damages or Account of Profits: Compensation for the unauthorized use of the technology, including profits Karan earned through infringement.
- Delivery or Destruction of Infringing Goods: If any infringing products or materials exist, SHIPREP can request their destruction.

4. Explain about the Start-ups Intellectual Property Protection (SIPP) scheme and the roles of the IP facilitator and compare the benefits offered under the scheme in the years 2020 and 2023.
Ans 4 - SIPP is a Government of India scheme under Startup India, implemented through CGPDTM/DPIIT, created to help DPIIT-recognised start-ups secure patents, trademarks and industrial designs at low cost by giving them access to an empanelled panel of IP professionals called IP facilitators. Startups pay only the official fees, while the Government bears the professional fees.

Objectives

- Promote IP awareness and adoption among start-ups.
- Provide high-quality, end-to-end support for filing and prosecution of IP.
- Help start-ups commercialise and leverage their IP.

Roles of an IP Facilitator under SIPP
Empanelled IP facilitators are patent agents/trademark agents/advocates or notified government institutions act as IP facilitator by accepting pro-bono cases for the startup (they cannot charge the startup; they claim fees from CGPDTM). Their key roles include

1. Initial advisory and strategy
2. Drafting and filing
3. Prosecution and representation
4. Compliance and coordination

Comparison of benefits: 2020 vs 2023
SIPP ran as a pilot from 2016 and was extended up to 31 March 2023.A revised SIPP with higher facilitator remuneration became applicable from 2 Nov 2022, and this revised benefit structure is what start-ups experienced through 2023 and onward. The scheme is further extended beyond 1 Apr 2023 for three more years.

Aspect	Benefits as in/around 2020 (old scheme)	Benefits as in/around 2023 (revised scheme)
Facilitator professional fees	**Govt paid facilitators; startup paid only statutory fees. Facilitator fee schedule was lower (2016 rates).**	**Same core benefit (startup pays only statutory fees), but facilitator fees increased by 100% to improve quality & coverage.**
Facilitator fee amounts (Patents)	**Filing stage ₹10,000; final disposal without opposition ₹10,000; with opposition ₹15,000.**	**Filing stage ₹15,000; final disposal without opposition ₹25,000; with opposition ₹35,000.**
Facilitator fee amounts (TM/Design)	**Filing ₹2,000; disposal w/o opposition ₹2,000; w opposition ₹4,000.**	**Filing ₹3,000; disposal w/o opposition ₹5,000; w opposition ₹10,000.**
Statutory fee rebates to startups	**80% rebate on patent official fees; 50% rebate on trademark official fee.**	**80% rebates on patents, 50% on trademarks, 75% on designs for startups/small entities.**
Speed/fast-tracking	**Startups eligible for expedited examination (Form-18A), reducing pendency.**	**Fast-tracking continues; revised SIPP emphasises quicker, quality prosecution.**
Scope of facilitator services	**End-to-end filing to disposal for patents, trademarks, designs.**	**Same end-to-end scope, with explicit stress on quality services and international filing support.**

PART B

3 Questions * 10 Marks= 30 Marks

5. What would be the reasons for advising your client to file a request for early publication? What are the advantages of waiting till 18 months for publication? Discuss citing the appropriate provisions under the Patent Act 1970 (as amended).

Answer: Under Section 11A(2) & Rule 24A, an applicant may request early publication by filing Form-9, except in cases where secrecy directions (Section 35) are in force.

1. Filing early publication allows the applicant to immediately file Request for Examination (RFE) under Rule 24B, which significantly reduces the overall prosecution time and leads to faster examination, grant, and enforceability.
2. Under Section 11A(7), after the patent is granted, the patentee can claim damages or account of profits from the date of publication. Early publication therefore gives a stronger case strategy against infringers.
3. Publication makes the invention public prior art worldwide, prevents others from obtaining patents on similar technologies. It also blocks competitors from claiming overlapping subject matter.
4. Early Publication facilitates Licensing, Fund-Raising, and Technology Transfer. Publication creates public disclosure, which attract investors.
5. If the applicant wants to launch the product quickly, early publication ensures that competitors cannot later claim independent inventor defence and market position is secured earlier.

Advantages of waiting Publication at 18 Months
1. If publication is delayed till 18 months as per Section 11A(1), the competitors are unaware about the invention, about business direction and the commercial strategy
This protects the invention disclosure in early stages.
2. The applicant gets time to finalise the claims which serve as the most important part of protecting your invention.
3. The applicant can withdraw the application under Section 11A(3) to prevent publication.
4. The applicants gets time to devise better patent strategy.
5. 18-month publication period allows the applicant to delay RFE filing comfortably within the 31-month limit (Rule 24B).
6. The applicant gets more time to generate experimental data before the prosecution formally begins.

6.PS Polymers Ltd designed an attractive paper cup with corrugated design and got the design registered in India. An inventor Raghu made a patent application for a corrugated paper cup which includes a cup body, a cup bottom and a cup sleeve having horizontally and vertically corrugated stripes on which there are many grooves which provides a grip to the user of the said cup. Designer team of PS polymers Ltd. finds this application in the patent office journal and while checking the drawings of patent application, the designer team found that the claimed cup in the patent application is substantially similar to the corrugated design registered in the name of PS polymers Ltd. During search on the above said application by PS Polymers Ltd, they also found one patent document IN123456 where corrugated shape of different pattern was patented which appears to be for the same purpose. Further they also found out that Raghu had not explained the process of making the cup in the description. PS polymers Ltd. approaches you to file representation against the grant of patent to Raghu. Prepare a representation under the provisions of the Act and Rules.
Answer:
Opponent: PS Polymers Ltd.
Applicant: Raghu
Title: Corrugated Paper Cup
PS Polymers Ltd., being the registered proprietor of a corrugated paper-cup design and therefore a person interested, submits this representation under Section 25(1) read with Rule 55 against the grant of the above patent application.

Grounds of Opposition
1. Lack of Novelty – Section 25(1)(b)
The claimed corrugated cup is substantially similar to the Opponent's registered design. Further, prior patent document IN123456 discloses corrugated cup patterns for grip and insulation. Hence, the invention is fully anticipated under Sections 2(1)(j) and 13(1).

2. Lack of Inventive Step – Section 25(1)(e)
The combination of:
(i) Opponent's registered corrugated design, and
(ii) IN123456 teaching corrugated grip structures,
renders the claimed invention obvious to a person skilled in the art. No technical advancement is shown as required under Section 2(1)(ja).

3. Prior Claiming – Section 25(1)(c)
IN123456 claims a corrugated paper cup with similar structural features. Hence the present application relates to prior application/art.

4. Non-Patentable Subject Matter – Section 25(1)(f) read with Section 3(f)
The alleged invention relates merely to a shape, pattern, and arrangement of known elements, which constitutes a design-related aesthetic feature, not a patentable technical invention. Hence under Section 3(f), this is a non-patentable subject matter.

5. Insufficient Disclosure – Section 25(1)(g)
The applicant has not disclosed any process or method of making the corrugated cup, such as formation of grooves, bonding of sleeve, or corrugation technique. The description does not enable a skilled person to perform the invention, violating Section 10(4).

6.Prayer
In view of the above grounds under Section 25(1)(b), (c), (e), (f), (g), the Opponent respectfully requests the Controller to refuse the grant of patent to the application filed by Raghu and to grant a hearing under Rule 55(6).

Verification
I, _____, authorised representative of PS Polymers Ltd., hereby verify that the statements made herein are true to my knowledge and belief.
Date:
Place:
Signature:
Name:
Designation:
Address:

7. Ramashankar a farmer whose farm is subject to periods of drought, has developed a new process of manufacturing solar power operated pumps that improves the water obtained from the pump by 75%. There is no other technology in the market that gives the same results in terms of water flow. Further, Gopika, who is daughter of Ramashankar, an engineering student, has developed a system comprising of a logic Controller with electronic modules to keep track of water yield from any type of pumps used in a farm. This system could display the exact output of water from each pump. Ramashankar and his daughter together own an agro start-up company named RAGO Solutions. They wish to protect their invention(s) in India. Gopika attended "NIPAM", the IP awareness program of the Indian Patent Office where she came to know about expedited examination. Advise them how to protect the inventions in India at the earliest.
Answer: Ramashankar's new process for manufacturing solar-powered pumps with 75% improved water delivery and Gopika's logic-controller-based water-yield monitoring system constitute two distinct inventions, both inventors should file separate applications (or one combined if unity exists)
If both inventions are technically interlinked, they may file a single application with distinct claims.
RAGO Solutions qualifies as a Start-up under DPIIT guidelines. Therefore, RAGO Solutions
is eligible for:
(a) Expedited Examination – Rule 24C by filing Form-18A, ensures faster examination compared to normal Form-18.
(b) To accelerate the process further, they should file Form-9 requesting Early Publication
This publishes the application within 1 month, allowing them to file RFE/Expedited RFE immediately and enter examination queue without waiting for 18 months.
(c) Ramakrishna & Gopika should ensure proper drafting according to the subject matter. The claims should be properly prepared covering all the aspects of invention.
(d) Ramakrishna & Gopika should file provisional specification immediately (optional) to secure priority under Section 9(1), followed by complete specification within 12 months.

2024: PAPER 2 (SOLVED)

PATENT AGENT EXAMINATION, 2024 (Under Section 126 of the Patents Act, 1970)
PAPER II
Part A (4 Questions * 5 Marks=20 Marks)

1. "When it comes to delimiting the area of monopoly claimed, the patentees were as usual between Scylla and Charybdis; if they stated their claim too widely the invention would sink in the sea of prior art knowledge. If they stated it too narrowly, it would be lost to pirates" - Salmon L J Explain the above statement vis-à-vis best practices with regard to drafting of claims for application for grant of patent.

This metaphor refers to a tightrope balance a patentee must maintain when drafting claims. Scylla and Charybdis are two sea monsters from Greek mythology, positioned on either side of a narrow strait. Sailors had to steer carefully between them, if they steered too close to one side, they risked destruction by the other. In the same way, a patent drafter must navigate between two dangers:

1. Claims that are too broad or too widely stated may be invalidated because they cover what is already known or obviou .
2. Claims that are too narrow may give insufficient protection, allowing competitors to easily design around the patent.

Therefore, effective patent protection depends on balanced claim drafting. The claims should be broad enough to cover the true inventive contribution, yet narrow enough to remain novel and inventive over prior art.

2. Aryabhata Aerospace Limited designed a new and inventive airplane wing and filed an application for the grant of patent wherein angle of attack of the wings claimed was in between 50-60 degree. However, during the prosecution of the said application, further research established that the best/optimum results were obtained with an angle of attack of the wing between 70-73 degrees, keeping all other design parameters same. What would be possible ways to protect the optimum angle of attack found later on? Discuss with relevant provisions of the Act and Rules.

Let's discuss all the relevant provisions of the Act and Rules and check the applicability in this case.

1. Amendment of Claims under Section 57 — Not Permissible in This Case

As per Section 57, amendments to the application, specification, or claims are permissible only if:

- The amendment does not add new matter (i.e., does not introduce subject matter not originally disclosed), and
- The amended specification is fairly based on the original disclosure.

In this case, the new angle (70–73°) was *not disclosed or suggested* in the original specification. Thus, introducing it via amendment would constitute added matter — prohibited by Section 59, which restricts amendments to those that "by way of disclaimer, correction or explanation" do not add new subject matter.

2. Filing a Patent of Addition (Section 54–56) : This is the most relevant and appropriate remedy for the applicant

- When an invention is an improvement or modification of an earlier patented invention (main invention), the applicant can file a patent of addition.
- The same applicant (Aryabhata Aerospace Limited) must be the patentee or applicant of the main patent.

Relevant Provisions:

- Section 54(1): Invention must be an improvement or modification of an earlier invention.
- Section 55(1): Term of patent of addition tied to the main patent.
- Rule 13(3): Form and content of a patent of addition application — must include a reference to the main application.

3. Filing a new Patent Application

The company can file a new independent patent application for the improved wing design, though this remedy carries risk of self-collision unless managed carefully.

4. Divisional Application (Section 16) — Not Applicable

A divisional application can be filed only when the original application claims more than one invention (i.e., lacks unity of invention).

3.Mr. Chandra was doing his Master's thesis at Ramanujam University of Science and Technology. He along with his guide Prof. Chanakya made an invention. Having no IPR policy in place, a patent application was filed (and granted) with Mr. Chandra as applicant, and Mr. Chandra and Prof. Chanakya as inventor. Later on, the University took your help as Patent Agent in forming their IPR policy and realized that the patents generated in the University campus, even in past, should be on their name as Applicant. What is the prescribed procedure and documents required for bringing the name of University as an applicant in Mr. Chandra's granted patent. Mention the corresponding section(s), rule(s), form(s).

As per Section 67, any assignment or transmission of a patent or of a share in a patent, or of any interest therein, shall not be valid unless it is in writing, duly executed, and the agreement between the parties is reduced to writing and signed by them (or their legal representatives).

Mr. Chandra must execute a Deed of Assignment in favour of the University, transferring ownership rights.

As per Section 69(1), where any person becomes entitled by assignment, transmission or operation of law to a patent, he shall apply to the Controller to register his title. The University, being the assignee, must make an application to the Controller (through Form 16) for registration of its title in the Register of Patents.

Rule 90 specifies the procedure for such Registration of Title and Interest

- The application (Form 16) must be accompanied by documentary proof of the transfer (e.g., Deed of Assignment).
- A fee is prescribed under the First Schedule.
- The Controller may call for further proof or evidence if necessary.

4.Ms. Gargi is an inventor who filed an application for the grant of patent along with a provisional specification as an applicant with the patent office on January 11, 2023. Afterwards, Ms. Apala joined Gargi's research project and assisted her in finishing it. Once they finished it, on January 8, 2024, she plans to file the complete specification, wherein

a) She wants to include Apala's name as an inventor. Which form(s) she need to submit to the patent office for this change? Also provide the relevant section(s) and rule(s).

b) Ms. Apala would also like to have her name mentioned in the letter of Patent, which procedure, form(s), section(s), rule(s) would be relevant for the desired change.

1. Prepare the Complete Specification (due on or before 11 January 2024)

- When filing the complete specification under Section 9(1), Ms. Gargi can include both inventors (Gargi and Apala) in Form 1 (Application for grant of patent), updating the inventor details.
- Rule 13(6) allows details of all inventors to be furnished at this stage if they were not included earlier.

2. If the patent office record already shows only one inventor (Gargi), and the application was previously filed, then a formal request to add another inventor must be made. This is done by filing Form 8 under Section 28(2)–(3) and Rule 67–69, which provides for "mention of inventor as such".
3. Documents to be Filed:

- Form 8 – Request to include the name of inventor under Section 28(3).
- Supporting Declaration signed by Ms. Gargi and Ms. Apala, stating that Ms. Apala has contributed to the inventive concept.
- Proof of consent from existing applicant(s)/inventor(s).

Part B

3 Questions * 10 Marks= 30 Marks

5. Recently, The Jan Vishwas (Amendment of Provisions) Act, 2023 (No. 18 of 2023) was passed. Discuss the provisions of the Patents Act, 1970 amended through the Jan Vishwas Act, 2023 by referring to particular sections and rules? What are the objectives for such amendments?

After the Jan Vishwas (Amendment of Provisions) Act, 2023, was passed, the Patents Act, 1970 has been amended by:

(i) substituting criminal fines with civil penalties under Sections 120, 122 and 123 and revising their quantum;

(ii) omitting Section 121;

(iii) inserting a new adjudication and appeal mechanism under Sections 124A and 124B; and

(iv) corresponding insertion of Chapter XIV-A (Rules 107A–107D etc.) in the Patents Rules, 2003.

Objective: The objective is to decriminalise minor or technical IP offences, rationalise penalties , introduce efficient administrative adjudication, and promote trust-based governance and ease of doing business while maintaining effective deterrence against misuse of the patent system.

Section-wise amendments to the Patents Act, 1970

(a) Section 120 – Unauthorised claim of patent rights

Pre-Jan Vishwas Act

False representation that an article is “patented in India” or is the subject of an Indian patent application was punishable with a *fine up to ₹1,00,000*.

After Jan Vishwas Act:

- Nature of consequence: “Punishable with fine” is replaced by “liable to penalty”, i.e. *civil* monetary penalty (no criminal prosecution for this offence).
- Quantum: Penalty may extend to ₹10,00,000.
- Continuing contravention: Additional penalty of ₹1,000 per day for every day the false claim continues.

(b) Section 121 has been completely omitted from the Patents Act after Jan-Vishwas Act

(c) Section 122 – Refusal or failure to supply information / false information

Section 122 deals primarily with:

- Section 122(1) – failure/refusal to supply information to Central Government (s.100(5)) or Controller- fine up to ₹10,00,000, and
- Section 122(2) – *knowingly* furnishing false information- imprisonment up to 6 months, or fine, or both for knowingly giving false information.

After Jan Vishwas Act:

1. Section 122(1) – failure/refusal to furnish information

- Converted from *fine* to penalty,
- Penalty up to ₹1,00,000,
- For continuing failure, additional penalty of ₹1,000 per day during which the failure continues.

2. Section 122(2) – knowingly furnishing false information

- Imprisonment removed.
- Replaced with turnover-linked monetary penalty:
- 0.5% of total sales/turnover or gross receipts as per audited accounts, or
- ₹5 crore, whichever is lower.

(d) Section 123 – Practice by non-registered patent agents

Earlier:

Fine up to ₹1,00,000 for first offence and ₹5,00,000 for subsequent offence.

After Jan Vishwas Act:

- Recast as civil penalty instead of criminal fine.
- Penalty may extend to ₹5,00,000.
- In case of a continuing default, additional ₹1,000 per day.

(e) New Sections 124A & 124B – Adjudication of penalties and appeals

1. Section 124A – Adjudication of penalties

- Empowers the Central Government to appoint an Adjudicating Officer (AO) for determining penalties under sections 120, 122 and 123.
- AO can conduct an inquiry, summon persons, call for documents, and then impose penalties by a reasoned written order.

2. Section 124B – Appeal

- Provides a statutory appeal mechanism against the AO's order before a designated Appellate Authority.
- Appeal must be filed within the prescribed time and manner; the Appellate Authority can confirm, modify or set aside the AO's order.

3. Section 159(2) – Rule-making power

Two additional clauses added to enable the Central Government to make rules on:

- manner of holding inquiry and imposing penalty under s.124A;
- form and manner of appeal under s.124B(2).

6. Mr. Sudama filed an application for the grant of patent for his invention Cycle Dynamo on 19/05/2012, which was granted and recorded in the register of patent on 19/02/2016. Due to engagement in some personal emergency, he missed the payment of renewal fee timeline of three months. Sudama approaches you for professional advice. Advise him the available options and procedure as prescribed under the Act in the following three scenarios, also mention the relevant section(s), rule(s) and form(s):

a) Scenario 1: Sudama missed the timeline for payment of renewal fee by 5 months.

b) Scenario 2: Sudama missed the timeline for payment of renewal fee by 14 months.

c) Scenario 3: Sudama missed the timeline for payment of renewal fee by 25 months.

What repercussions might an applicant face due to nonpayment of a renewal fee concerning their patent application?

Scenario 1: Sudama missed the timeline for payment of renewal fee by 5 months
As per Section 53(2), a renewal fee must be paid for each year following the third year of the patent's filing date. If the renewal fee is not paid on time, the patent will cease to have effect from the end of the period for which the fee was due. There is an option to extend the payment period by six months, but this requires a specific request and payment of an additional fee. Since the delay is within 6 months, Sudama can still pay the renewal fee along with the prescribed additional fee.
As a patent agent, I will file Form 4 requesting an extension (up to 6 months) on behalf of Sudama, pay the renewal fee along with the additional fee as per Schedule I. The Controller, upon satisfaction, records the payment and the patent continues in force.

Scenario 2: Sudama missed the timeline for payment of renewal fee by 14 months.
Sudama can apply for restoration of lapsed patent(Section 60) by filing Form 15, including a statement explaining reasons for failure (unintentional lapse).The Controller may require evidence supporting the explanation. If satisfied that the failure was unintentional, the Controller shall allow restoration (may publish the application in the Patent Journal for opposition before allowing). Upon approval, pay all unpaid renewal fees and additional fees (Rule 86).

Scenario 3: Sudama missed the timeline for payment of renewal fee by 25 months: The maximum period allowed for restoration is 18 months from the date on which the patent ceased to have effect (Sec. 60). Since 25 months have elapsed, no legal remedy is available.
Repercussions of Nonpayment of Renewal Fee:

- Patent ceases to have effect (Sec. 53(2)) — the exclusive rights of the patentee end.
- The invention enters the public domain, and anyone may use it freely.
- No enforcement rights (no right to sue for infringement) from the date the patent ceased.

7. Dr. Ranjit developed an innovation based on green algal technology intercalated between sheets of glass. This technology has application in purifying air and increasing oxygen content in nature. The glass so developed finds application in many areas, few to name such as a glazed window, architectural glass etc.. Dr. Ranjit was granted a patent for this invention which caused immense interest in the market. Considering the public health hazard situation due to poor air quality, Government of India would like to acquire his patented invention. What are the provisions and procedure required to be followed by the Central Government under the Patents Act, 1970? What are the options available to Dr. Ranjit under provisions of the Act if he is not in agreement with the terms proposed by the Government for such acquisition by the Central Government?
Section 102 empowers the Central Government to acquire any invention or patent if it appears necessary in the public interest (e.g., for environmental protection, public health, or safety). If it appears to the Central Government that an invention or patent should be acquired for public purposes, it may publish a notification in the Official Gazette to that effect. Once such a notification is published, the patent or the rights in the invention vest in the Central Government (as per Section 102(2)). From that date, the Government becomes the owner of the patent or invention, with full rights to use, license, or manufacture it.
Under Section 102(3), Dr. Ranjit is entitled to receive compensation from the Government. The amount and terms of compensation are to be mutually agreed upon between the Government and the patentee.
If Dr. Ranjit and the Government fail to reach an agreement on the compensation amount or its terms, the matter shall be referred to the High Court for determination. The High Court will determine the amount of compensation payable.

In making its decision, the Court shall consider:

- The expenditure incurred by the patentee in making and developing the invention,
- The patent's usefulness,
- The profit which the patentee might have made had the patent not been acquired.

RAS Intellect Pvt Ltd

2025: PAPER 2 (SOLVED)

PATENT AGENT EXAMINATION, 2025
(Under Section 126 of the Patents Act, 1970)

PAPER II
TIME: 02.00 p.m. to 05.00 p.m. (Three Hrs) Total Marks: 100

Instructions:

1. This paper consists of 4 parts - Part A (20 Marks), Part B (20 Marks), Part C (20 Marks) & Part D (40 Marks).
2. All questions in Part A, B and C are Compulsory.
3. Part D comprises two parts - Part D1 is of 10 marks and D2 of 30 marks. Part D1 consists of 2 questions and the Candidate is required to answer any ONE of them; and Part D2 consists of 4 questions and the candidate is required to answer any ONE of them.
4. Candidates should read the questions very carefully before answering.
5. In case a candidate answers more questions than required, the first attempted question shall be evaluated.
6. No clarification will be provided during the course of the examination.
7. Wherever date is mentioned, it shall be treated to be in dd/mm/yyyy format.
8. There is no negative marking.
9. All references to "Act" and "Rules" may be read as The Patents Act, 1970 and The Patents Rules, 2003 respectively, as amended until now and their related applications, except when it is specifically referred to The Designs Act, 2000 and The Designs Rules 2001, as amended.
10. Candidate is expected to quote relevant sections and rules as well as prescribed forms in the answer.
11. No candidate should leave or will be allowed to leave the Examination Hall (i) till the completion of the half of the time for the examination; (ii) without signing the Attendance Sheet; and (iii) without properly handing over her/his OMR sheet / Answer Booklet to the Invigilator.
12. In case any candidate wants to leave the examination hall before completion of the prescribed time of the examination then she/he can do so by surrendering the question paper.

Part A

1. **Recently, the Patents (Amendment) Rules, 2024 has relaxed some burden on the applicant in terms of fulfillment of the requirements for filing information and undertaking regarding corresponding foreign applications with an objective to improve 'ease of doing business' in this aspect. Discuss the amendments in the provisions mentioning relevant section, rules and form(s).**

(5 marks)

- **Solution:** The Patents (Amendment) Rules, 2024 have substantially relaxed the compliance burden on applicants with respect to filing information and undertakings regarding corresponding foreign patent applications under Section 8 of the Patents Act, 1970.

Under Section 8; Rule 12(2) & 12(5)

First Form 3 (No Change): The applicant must file the first Form 3 within 6 months from the filing date of Indian patent application. This requirement is mandatory and remain unchanged under the amended rules.

Second / Next Form 3 (New Requirement under Rule 12(2):

After issuance of the First Statement of Objections (FER / Office Action), the applicant must file the updated Form 3 within 3 months. This applies to both normal and expedited examinations. The earlier requirement to keep updating Form 3 every 6 months is now removed.

Extension of Time (Rule 12(5)):

If Form 3 cannot be filed within the prescribed period, the applicant may seek an extension by filing Form 4 within the allowed period.

- Extension allowed: Up to 3 months
- Fee: Rs. 2000 per month (for individual, start up, small entity, Educational Institute).
  Rs. 10,000/- per month (for large entity)

Effect of the Amendment:

This amendment reduces the repetitive burden on applicants, as they now need to file Form 3 only twice-

- once within 6 months of Indian filing, and
- once within 3 months of the first examination report,

(with condonable delay through Form 4, if required).

2. **Mr. Hariharan is the owner of a small tech start-up company that has recently developed an innovative tool for managing customer relationships. Mr. Hariharan has been working hard to gain traction in the market. One day, he receives a letter from a large company, Macrocust Corporation, which claims that Mr. Hariharan's product infringes on their patent for a similar tool. The letter demands that he should stop selling his product immediately or face a lawsuit for patent infringement. The letter neither provided any information about the patent nor any clear evidence or legal grounds for the threat, but insists that they will take legal action if Mr. Hariharan does not comply. Distressed by the threat, Mr. Hariharan decides to consult you as a person well versed in the patent law. What would be your suggestions to Mr. Hariharan with regard to the following:**

a. **Mention the legal actions under the Patents Act that Mr. Hariharan may take in response to Macrocust Corp's threatening letter along with the possible relief sought?**
(3 marks)

b. **In such a proceeding, under what conditions the court may grant the relief sought?**
(2 marks)

Solution: a) Under the Patents Act, a person who receives an unjustified or groundless threat of patent infringement is protected by Section 106, which provides a statutory remedy against such threats. Since the letter from Macrocust Corporation contains a threat of infringement proceedings without disclosing patent details or legal grounds, the threat is prima facie unjustified.

1. Remedy Under Section 106 – Remedy for Groundless Threats

Mr. Hariharan may institute a suit in a District Court or High Court under Section 106 seeking reliefs against Macrocust Corporation. To succeed, he must show that:

- The threat of infringement action was made,
- The threat caused him harm or business loss, and
- The threat was unjustifiable because no infringement exists, or the patent is invalid, or the threat lacked basis.

2. Possible Reliefs Under Section 106

Mr. Hariharan may seek the following remedies:

(i) Declaration that the Threat is Unjustified
The court may declare that Macrocust's threat is groundless, meaning there is no reasonable basis for alleging infringement.

(ii) Injunction to Restrain Further Threats
The court can grant an injunction restraining Macrocust from issuing further threats to Mr. Hariharan, customers, distributors, or business partners.

(iii) Claim for Damages
If Mr. Hariharan has suffered loss of sales, loss of market reputation, business disruption, he may claim damages from Macrocust Corporation for issuing wrongful threats.

b) In a suit filed under Section 106 of the Patents Act, 1970, the court may grant the reliefs sought by Mr. Hariharan only if the following conditions are satisfied:

i.) Proof that a threat of infringement proceeding was made

Mr. Hariharan must demonstrate that Macrocust Corporation issued a threat of patent infringement and the threat was communicated explicitly or implicitly (e.g., letter demanding cessation). A written notice demanding cessation of sales is sufficient to constitute a threat.

ii.) The threat is unjustifiable

The court will grant relief if Macrocust cannot prove that a valid patent exists, and that Mr. Hariharan's product actually infringes that patent. If Macrocust fails to show either validity or infringement, the threat is considered groundless.

iii.) The threat has caused harm or likely to cause harm

The court may grant relief when the threat damages the business reputation, causes loss of customers or sales, or creates commercial uncertainty.

3. **A textile machine manufacturer invented a weaving machine with very high productivity as compared to state of the art machines. A patent application for the same was granted on 30/12/2024. What is the deadline for filing statement regarding the working of the patented invention on commercial scale in India by the applicant in this scenario? Further, considering the various provisions of extension provided under the Patents Rules, calculate the extended dates till when the statement regarding the working of the patented invention on commercial scale in India may be filed.**

(5 marks)

Solution: This question is governed by Section 146(2) of the Patents Act, 1970, read with Rule 131(1) of the Patents Rules, 2003, as substantially amended by the Patents (Amendment) Rules, 2024. The 2024 Amendments significantly changed the frequency and deadlines for filing the Statement of Working (Form 27).
The deadline is calculated based on the date of patent grant and the Indian Financial Year (FY), which runs from April 1st to March 31st.

1. Determining the Relevant Financial Year (FY)
Patent Granted Date: 30/12/2024
FY of Grant: The patent was granted on December 30, 2024, which falls within the Financial Year 2024-2025 (i.e., April 1, 2024, to March 31, 2025).
Commencement of Working Period: Rule 131(2) states that the statement must be furnished once in respect of every period of three financial years, commencing from the financial year right after the financial year in which the patent has been granted.
FY right after the grant FY (2024-2025) is 2025-2026. Accordingly, the first reporting period for filing working statement comprises the three financial years: 2025–2026, 2026–2027, and 2027–2028.

2. Statutory Deadline

- Rule 131(2) stipulates that the statement must be furnished within six months from the expiry of such period of three financial years.

- End of the statement Reporting Period: 30 September, 2028 (End of FY 2027-2028).

Calculation of Extended Deadlines
The Patents Rules, 2003, provide provisions for extending the time limit upto three months for performing an act under Rule 131(2) for filing Form 27.
Extension under Rule 131(2)
Provision: Rule 131(2) allows for an extension of the time limit for filing Form 27 by up to three months upon a request made in Form 4.

4. **Mr. Ghanshyam develops an improved process for preparing free-flowing particles by using a booster charge in a tubular detonator. Upon filing for a patent, the government imposes secrecy directions due to the potential military application of the technology. What are the potential consequences of these secrecy directions? Discuss the process and provisions for reconsideration of the secrecy direction and the circumstances under which they may be revoked. Mention the relevant sections and rules.**

(5 marks)

Solution: The imposition of secrecy directions by the government on Mr. Ghanshyam's patent application carries several significant consequences, primarily delaying the grant process and potentially leading to compensation.
When the Central Government believes the invention relates to defense or is useful for military purposes, it may issue secrecy directions under Section 35 of the Patents Act, 1970.

Potential consequences of secrecy directions:
The potential consequences for Mr. Ghanshyam are severe, mainly revolving around the freezing of the application process:

- Non-Publication (Section 35(1)): The application, including the specification, will not be published in the Official Journal. This prevents public knowledge of the invention, which is the usual trade-off for patent protection.

- Non-Grant (Section 37): The Controller cannot grant a patent for the invention while the secrecy directions are in force.

- Restricted Use (Section 39): The inventor (Mr. Ghanshyam) is prohibited from communicating or publishing the invention and from applying for a patent for the same invention outside India without the Controller's written consent. Breach of this is an offense punishable with imprisonment or fine (Section 118).

- Compensation: The inventor becomes potentially eligible for compensation from the Central Government for the loss or damage caused by the restrictions.

- Compensation for Govt. Use (Section 37): If the government makes any actual use of the invention during the secrecy period, Mr. Ghanshyam is entitled to compensation.

- Compensation for Restriction (Section 37): If the directions result in hardship or loss, the applicant may apply for compensation from the date the directions took effect.

Process and provisions for reconsideration of the secrecy direction under section 36:
The Act provides mechanisms for the government to review and potentially lift the secrecy directions when the circumstances that necessitated them change. The Central Government (or the Controller acting on behalf of the government) is mandated to review the directions periodically:

- Review by Controller (Section 36(1)): The Controller must, at intervals of six months, reconsider whether the secrecy directions should remain in force.

- Application by Applicant (Rule 72): Mr. Ghanshyam can proactively request the Controller or the Central Government to reconsider the directions. Under Rule 72 The Controller must inform the patent applicant of the result of the reconsideration within 15 days of receiving the notice.

Circumstances for Revocation (Section 38):
Secrecy directions shall be revoked when the Government or the Controller determines that the reasons for imposing secrecy no longer exist.
Effect of Revocation:
Once secrecy directions are revoked, the patent application proceeds normally. It is treated as though no secrecy directions were ever imposed meaning the application will be published and may continue toward grant.
When directions under Section 35 are revoked, the Controller may extend the time for completing any required act or procedural step, even if the original deadline expired during the period of secrecy. Such extensions may be granted subject to any conditions the Controller considers appropriate.
The revocation restores the applicant’s full procedural rights, allowing the application to move forward without disadvantage caused by the period under secrecy directions.

Part B

5. **In September 2024, Company BioHealth Ltd. (Applicant) filed a patent application in India for a new herbal composition called HerboMedix, which is claimed to treat a wide range of skin infections. The application was published, and a competitor company in the herbal medicines industry SecureHealth Ltd., noticed the following:**

Company SecureHealth Ltd. noted that BioHealth Ltd. obtained the core formula for HerboMedix by improper means from one of its researchers. According to Company SecureHealth Ltd., the researcher was previously employed at Company SecureHealth Ltd. and was involved in an internal research project titled HerbRestore. The project included a formula almost identical to HerboMedix, and the researcher had access to confidential information and proprietary studies related to the formula. Upon leaving Company SecureHealth Ltd., the researcher joined BioHealth Ltd., and shortly thereafter, BioHealth Ltd. filed a patent application for a product that closely resembled the previously undisclosed HerbRestore formula.

Company SecureHealth Ltd. further noted that BioHealth Ltd. has made materially incorrect disclosures in its patent specification. In the patent application for HerboMedix, BioHealth Ltd. states that the formula was developed internally through unique R&D efforts. However, Company SecureHealth Ltd. possesses evidence of published research papers, internal reports and records showing that the formula was actually derived from the research carried out by Company SecureHealth Ltd.'s team, suggesting that the disclosure of the development process was incorrect and intentionally misleading.

Company SecureHealth Ltd. has evidence that parts of the formulation for HerboMedix were disclosed in a publicly available research paper authored by Company SecureHealth Ltd.'s research team. The paper was published six months before the priority date claimed by BioHealth Ltd. in their patent application. The research paper details the extraction techniques and chemical combinations, which BioHealth Ltd. subsequently included in the specification of HerboMedix without substantial modification.
In view of the above, answer the following by mentioning the relevant sections and rules made therein along with prescribed forms:

a. **What are the options available under the Patents Act for Company SecureHealth Ltd. to challenge the patent application filed by BioHealth Ltd. for HerboMedix, and which specific grounds would be the most effective in supporting their cause in the above given scenario?**
(5 marks)

b. **Once the above challenge from Company SecureHealth Ltd. is received, what would be the procedural sequence for dealing with the matter, under the Patents Act and Rules made therein?**
(5 marks)

Solution:
a) As per the situation mentioned in the question, the application was published but not yet granted, the most immediate and relevant option currently available to SecureHealth Ltd. is Pre-Grant Opposition (under Section 25(1)).

1. Options Available to SecureHealth Ltd

Option	Governing Section & Rule	Form	Stage of Application
Pre-Grant Opposition	Section 25(1) read with Rule 55	Form7A	Available after publication and before the patent is granted. (The application has been published.)

2. Specific Grounds and Effectiveness

SecureHealth Ltd.'s claims provide strong evidence to support three specific grounds under Section 25(1). The most effective grounds are those relating to fraud/derivation and prior publication.

Most Effective Grounds:

Ground	Basis in Scenario	Section 25(1) Clause	Effectiveness
Obtained Wrongfully/ Derivation	BioHealth Ltd. obtained the core formula through improper means from the former SecureHealth researcher, who had access to the confidential HerbRestore project.	Clause (a): That the applicant or the person under or through whom he claims, wrongfully obtained the invention or any part thereof.	Highly Effective. This directly challenges the entitlement of BioHealth Ltd. to be the applicant and strikes at the root of the application based on proprietary information theft.
Prior Publication/ Lack of Novelty	Parts of the HerboMedix formulation were disclosed in a public research paper authored by SecureHealth Ltd. six months before BioHealth Ltd.'s priority date.	Clause (b): That the invention has been published before the date of filing of the application.	Highly Effective. A successful novelty attack based on the prior art document published six months earlier would invalidate the claims under Section 13 read with Section 2(1)(l) (defining novelty).

b) The procedural sequence for dealing with the Pre-Grant Opposition filed by SecureHealth Ltd. (the opponent) against BioHealth Ltd.'s application (the applicant) is governed by Section 25(1) of the Patents Act, 1970, and detailed in Rule 55 of the Patents Rules, 2003.

Procedural Sequence for Pre-Grant Opposition (Rule 55)

The procedure for dealing with the Pre-Grant Opposition filed by SecureHealth Ltd. (Opponent) against BioHealth Ltd.'s application is governed by Rule 55 of the Patents Rules, 2003. SecureHealth Ltd. must file the opposition in Form 7A, including a statement of grounds, supporting evidence, and optionally a request for a hearing (Rule 55(1)).

The Controller will only consider this opposition if the Applicant has already filed a Request for Examination (Rule 55(2)).

The Controller first conducts a prima facie assessment: if no case is made out, the Opponent is notified, and the representation is refused, possibly after a hearing requested by the Opponent (Rule 55(3)(a)). If a prima facie case is made out, the Controller records the reasons and notifies the Applicant within one month (Rule 55(3)(b)).

The Applicant (BioHealth Ltd.) then has two months from receiving this notice to file their counter-statement and evidence with the Controller, sending a copy to the Opponent (Rule 55(4)).
Finally, the Controller reviews all documents and may hold a hearing (Rule 55(5) read with Rule 55(5A)). Following the proceedings, the Controller issues a speaking order within approximately one month, where they can either reject the opposition (allowing the patent to proceed), require amendment of the specification, or refuse to grant the patent if the opposition grounds are established (Rule 55(5)).

6. **InnoTech Solutions, a Bangaluru-based startup, has developed a revolutionary eco-friendly water filtration system to improve water purification in rural areas. The startup wants to file a patent application to protect their novel filtration system, which they believe will have a significant impact in both urban and rural markets. However, the company is operating on a limited budget and needs to navigate the patent filing process efficiently. In this context, InnoTech Solutions approaches you for answers to the following questions:**

1. **What are the specific benefits available to startups under the Patents Act, 1970 (as amended) and Rules made therein? (4 marks)**
2. **Which rules and forms apply to InnoTech Solutions in terms of filing a patent application and accessing these benefits? (3 marks)**
3. **What are the supporting documents required to avail such benefits? (3 marks)**

Solution:
a. The benefits available to a startup like InnoTech Solutions under the Patents Act, 1970, and Rules primarily focus on cost reduction and expedited processing, which are crucial for budget-conscious entities.

A. Substantial Fee Reduction (Cost Benefit)
80% Fee Rebate: Startups are eligible for an 80% reduction in the statutory (official government) fees payable for filing, examination, and maintenance (renewal) of a patent application. This makes the official fees payable by a startup equivalent to those payable by a natural person.

Example: The official fee for filing a Complete Application (Form 1) for a large entity is ₹8,000 (e-filing), whereas for a Startup, it is only ₹1,600.

B. Expedited Examination (Time Benefit)
Fast-Track Processing (Rule 24C): Startups are one of the categories eligible to request Expedited Examination of their patent application by filing Form 18A. This mandates the Controller to issue the First Examination Report (FER) much quicker than the standard process, After receipt of the expedited examination request, the Controller refers the application to an examiner, who must ordinarily submit the examination report within one month and not later than two months. The Controller then disposes of the examiner's report within one month of receiving it. Within fifteen days thereafter, the Controller issues the first statement of objections along with any required documents to the applicant. In expedited cases, replies to the first and subsequent objections are processed in the order in which they are received. The applicant is given six months from the date of the first statement of objections to put the application in order for grant under Section 21.

C. Facilitation under SIPP (Professional Support)
Free Facilitation: Under the Scheme for Facilitating Startups Intellectual Property Protection (SIPP), the Central Government bears the professional fee of the empanelled facilitators (patent agents/attorneys) for drafting and filing the patent application. InnoTech Solutions would only have to pay the discounted official statutory fees, saving substantial costs on professional charges.

b. To file the patent application and access the startup benefits, the following rules and forms apply to InnoTech Solutions:

Purpose	Relevant Section / Rule	Prescribed Form	Detail
Patent Application Filing	Section 7 & 10, Rule 13	Form 1	Application for Grant of Patent.
Declaration of Inventorship	Rule 13(6)	Form 5	Mandatory declaration identifying the inventor(s).
Claiming Startup Status & Fee Reduction	Rule 2(fb), First Schedule, Rule 7	Form 28	Declaration of Startup status to avail the reduced fees.
Request for Examination (Standard Procedure)	Section 11B, Rule 24B	Form 18	Mandatory request to start the examination process (must be filed within 31 months).
Request for Expedited Examination	Rule 24C	Form 18A	Optional request to fast-track the examination process (available specifically to Startups).

c. To successfully avail the fee reduction and expedited examination benefits, InnoTech Solutions must submit documents proving its status as a recognized Startup.
The primary requirement for an Indian company is:

- Declaration of Status (Form 28): The duly filled and signed Form 28 must be filed along with the patent application (Form 1) or at the time of paying any reduced fee.
- Proof of Startup Recognition: The most important supporting document is a copy of the Certificate of Recognition issued by the Department for Promotion of Industry and Internal Trade (DPIIT) under the Startup India initiative.

PART – C

7. What are the key objectives of the recently concluded Riyadh Design Law Treaty? Suggest at least two changes in Indian Design Law to implement provisions of the Treaty. **(3 marks)**

Solution: The Riyadh Design Law Treaty (RDLT), adopted in November, 2024 by WIPO members, is a landmark agreement focused to harmonize the procedural frameworks for industrial design protection, improving the efficiency and accessibility of registration processes across multiple jurisdictions. By standardizing procedural requirements, the RDLT reduces administrative burdens, thereby promoting global creativity in design.
Its goal is to ensure that the benefits of streamlined design protection are accessible to all stakeholders, with particular emphasis on small and medium-sized enterprises (SMEs), startups, and independent designers.

1. Streamlining and Harmonization: To establish a modern, dynamic, and uniform international legal framework by creating a closed list of maximum requirements for filing applications, renewals, and other procedural steps. This reduces administrative burdens.
2. Facilitating Protection (Grace Period): To mandate a minimum 12-month grace period following the first public disclosure of a design, during which the disclosure will not destroy the novelty of the design for registration purposes.
3. Procedural Flexibility: To introduce relief measures for applicants who miss a time limit or deadline due to unintentional error, allowing for the reinstatement or correction of rights (e.g., correction of priority claims).
4. Cost and Time Efficiency: To allow applicants to include several designs in a single application (under certain conditions), thereby reducing filing costs and paperwork.
5. Control over Publication: To allow applicants to request the deferment of publication of their design for at least six months after securing a filing date, enabling them to control the market release timing.

India's current law, the Designs Act, 2000, is not fully compliant with the procedural requirements of the RDLT. To implement the treaty's provisions, the following two changes are essential:

1. Mandatory 12-Month Grace Period (Designs Act, 2000, Section 4 & 6)
Current Law: India provides a limited grace period of six months only if the prior disclosure was made in a specific manner (e.g., exhibited in a public exhibition notified by the Central Government, Section 21). This is much narrower than the RDLT's requirement.
Suggested Change: Amend Section 4 (Prohibition of Registration) and Section 6 (Application Requirements) of the Designs Act, 2000, to introduce a mandatory 12-month grace period from the date of first public disclosure by the applicant or predecessor-in-title, which does not prejudice the novelty or originality of the design.

2. Provision for Filing Multiple Designs in a Single Application (Designs Act, 2000, Section 5)
Current Law: The Designs Act, 2000, currently mandates that an application must relate to only one design. While multiple articles belonging to the same class can be filed under one application (Rule 10), the single design limitation remains rigid.
Suggested Change: Amend Section 5 (Application for Registration) to explicitly permit the filing of multiple, distinct designs in a single application, provided they are related (e.g., belong to the same Locarno class or are variants of the same design concept), in line with the RDLT's aim to simplify filing and reduce costs.

8. A start-up company Indesign Inc. has developed a unique design for a soft drink bottle and eagerly looking for revenue generation. The Government of India is also promoting the startup ecosystem in the country and creating platforms to bring the start-ups and financial organizations together so that the startups get required funding. In one of such notified exhibition by the Govt. of India, Indesign Inc. displayed their product and distributed leaflets describing their design product to the probable financers. Now, while preparing for design registration, will the display and description of the design product during the exhibition be an impediment? If yes, what are the options provided in the Designs Act, 2000 to avoid such impediments.
(5 marks)

Solution: The fundamental requirement for a design to be registered in India is that it must be new or original and must not have been previously published in India or elsewhere.
Section 4 of the Designs Act, 2000, states that a design is not registrable if it has been disclosed to the public anywhere in India or in any other country by publication in tangible form or by use or in any other way, before the date of filing the application for registration.
Hence the display and description would ordinarily destroy novelty but will NOT be an impediment if:

- The exhibition is officially notified by the Government of India, and
- The design application is filed within 6 months of the exhibition, with proper intimation to the Controller.

Thus, Indesign Inc. can still successfully file for design registration by using the exhibition grace period under Section 21.

1. Exception under Section 21: Exhibition Disclosure

Section 21 (Provisions as to the exhibition of designs) is the only option available to Indesign Inc. to save their design from the impediment of prior publication based on the following conditions:
Condition 1: Nature of Exhibition (Section 21(a)): The exhibition must be one that has been notified by the Central Government in the Official Gazette.
Since the exhibition was one of such notified exhibitions by the Govt. of India, this condition is satisfied.
Condition 2: Time Limit (Section 21(b)): The application for registration of the design must be filed within six months from the date of the first exhibition or publication of the design.

2. Procedural Requirements to avail grace period under section 21:

To take advantage of this exception, the applicant must follow the procedure as mentioned below:
To avail the 6-month grace period under Section 21 of the Designs Act, 2000, the applicant must file the design application (Form-1) within six months from the date the design was first displayed at a Government-notified exhibition.
It is standard practice to submit a written statement to the Controller along with the application, explaining that the design was shown at a notified exhibition and that the grace period under Section 21 is being claimed.
The applicant must also attach supporting evidence such as exhibition participation proof, brochures, photographs, or organizer letters. These documents are uploaded as additional attachments with Form-1, while the design representations and prescribed fee are filed in the usual manner.
A simple declaration with proof ensures that the exhibition disclosure does not destroy novelty.
If the design is accepted, the registration date will be deemed to be the date of filing the application.

9. **A company GrayLine Appliances Inc., which makes home appliances, registered a design for their new kitchen blender on 02/02/2012. On 04/01/2023, GrayLine Appliances Inc. found that a competitor company, Kings Appliances had launched a blender with similar design. It was noted by GrayLine Appliances Inc. that its rights in the registered design has lapsed and no application for extension of such rights was filed within the prescribed time. In such a scenario:**

a. **What are the steps that GrayLine Appliances Inc. must take to restore their lapsed design? Clearly mention the relevant section(s), rule(s), form(s), timelines prescribed for the same in the Designs Act. (4 marks)**

b. **What are the options available to Kings Appliances, if it wants to continue selling its blender? (3 marks)**

Solution:

a. GrayLine Appliances Inc.'s design registration for the blender was registered on 02/02/2012. The initial term of copyright in a registered design is ten years from the date of registration (Section 11(1)).

The design's initial term expired on 02/02/2022. Since the extension fee was not paid within this period, the design rights lapsed on this date (Section 11(2)).

GrayLine Appliances Inc. must pursue the following steps to restore their lapsed design:

- GrayLine Appliances Inc. must file an application in Form 4 with the Controller of Designs within the 12-months from the date the design ceased to have effect (02/02/2022). Fee for applying the application for restoration of lapsed design under Section 12(2) is Rs. 1000 (for natural person/start up/small entity) and Rs. 4000 (for others)

- The application must be accompanied by a statement, verified in the prescribed manner, fully setting out the circumstances which led to the failure to pay the extension fee. The statement must convincingly demonstrate that the failure was unintentional and that there was no undue delay in applying for restoration once the lapse was discovered (Section 12(2)).

- The Controller reviews the application and the statement. If satisfied, the Controller will publish the fact that the application for restoration has been allowed in the Official Journal.

- If the application is allowed, GrayLine Appliances Inc. must pay the unpaid extension fee (for the subsequent 5-year period) under Rule 25 along with the prescribed restoration fee and any requisite additional fee within a month from the date of the order of the Controller allowing the proprietor for restoration of the design.

- Upon payment of all prescribed fees, the lapsed design is restored, and the fact is entered into the Register of Designs and published in the Official Journal.

b. Kings Appliances, being a third party, has two key options to protect its position regarding its similar blender design after GrayLine's design has been restored.

1. Defence under Restoration Provisions (Section 14)

If GrayLine Appliances restores its lapsed design under Section 12 read with Section 14 of the Designs Act, Kings Appliances still has certain protections. The law recognizes that third parties may have begun using the design during the lapse period. Kings Appliances may rely on the following options:

1. Protected use during the lapse period (Section 14(2)): Kings Appliances cannot be sued for any acts of design piracy or infringement committed between the date the design lapsed and the date it is restored.
2. Continue using the design if use began during the lapse period (Section 14(1))

Under Section 14(1), the Controller may impose conditions on the restored proprietor (GrayLine) to protect third parties who:

- Began using the design during the lapse period, or
- Took “definite steps” (such as investment, tooling, manufacturing) to use the design.

Thus, Kings Appliances may request protection from the Controller to continue manufacturing and selling the blender, at least for:

- The quantities already planned or committed, or
- A reasonable period, depending on the Controller’s imposed conditions.

2. Petition for Cancellation (Section 19)

If the design is successfully restored, Kings Appliances can file a Petition for Cancellation of the registered design to remove the barrier permanently under Section 19 of the Designs Act, 2000 by filing Form 8.

Kings Appliances could potentially challenge the design on grounds that:

The design was not new or original at the time of its initial registration in 2012 (e.g., if any prior art existed that GrayLine was unaware of).

The design is not registrable under the Act (e.g., it is a mere mechanical device or principle of construction, which is excluded by Section 2(d)).

If successful, the design is removed from the register entirely, the restoration becomes irrelevant, and Kings Appliances is free to continue selling its product without any obligation or threat.

RAS Intellect Pvt Ltd

MOCK EXAMS

MOCK TEST (PAPER–I – PRACTICE SET)

Time: 2 Hours **Maximum Marks:** 100

Instructions

- *ALL questions are compulsory*
- *There is no negative marking*
- *Use Patents Act, 1970 and Patents Rules, 2003 (as amended) to answer the questions*
- *Wherever dates are given, treat as dd/mm/yyyy*
- *Choose the most appropriate answer*

PART A — Multiple Choice Questions
(30 questions × 2 marks = 60 marks)

1. Under the Patents Act, 1970, the term "invention" is defined as:
a) Any new idea
b) A new product or process involving inventive step and capable of industrial application
c) Any scientific principle
d) Any technical discovery

2. Which of the following is NOT patentable under Section 3?
a) A mechanical device
b) Business method per se
c) A pharmaceutical formulation
d) An industrial apparatus

3. Which Section deals with inventions relating to atomic energy?
a) Section 2
b) Section 3
c) Section 4
d) Section 5

4. Who among the following is entitled to apply for a patent?
a) True and first inventor
b) Assignee
c) Legal representative
d) All of the above

5. An application under the Patents Act shall be for:
a) Multiple inventions
b) One invention only
c) Any number of inventions
d) Related inventions only

6. The complete specification must be filed within:
a) 6 months
b) 12 months
c) 18 months
d) 24 months

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7. Failure to file complete specification in time results in:
a) Rejection
b) Refusal
c) Abandonment
d) Opposition

8. The abstract of a patent application is intended to:
a) Define claims
b) Provide technical information
c) Describe legal protection
d) Establish rights

9. The requirement of unity of invention is provided under:
a) Section 9
b) Section 10(5)
c) Section 11
d) Section 12

10. Priority date is dealt under:
a) Section 8
b) Section 9
c) Section 10
d) Section 11

11. Publication of applications is governed by:
a) Section 10
b) Section 11
c) Section 11A
d) Section 11B

12. Request for Examination must be filed under:
a) Section 11
b) Section 11A
c) Section 11B
d) Section 12

13. If no request for examination is made, the application is:
a) Refused
b) Withdrawn
c) Deemed withdrawn
d) Granted

14. Investigation for anticipation by prior publication is conducted under:
a) Section 12
b) Section 13
c) Section 14
d) Section 15

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15. Divisional application is filed under:
a) Section 15
b) Section 16
c) Section 17
d) Section 18

16. Maximum post-dating allowed is:
a) 3 months
b) 6 months
c) 9 months
d) 12 months

17. Opposition before grant is allowed under:
a) Section 24
b) Section 25(1)
c) Section 25(2)
d) Section 26

18. Opposition after grant must be filed within:
a) 6 months
b) 1 year
c) 2 years
d) 3 years

19. Patent term in India is:
a) 10 years
b) 15 years
c) 20 years
d) 25 years

20. A patent of addition is governed under:
a) Section 52
b) Section 53
c) Section 54
d) Section 55

21. Restoration of lapsed patents is covered under:
a) Section 59
b) Section 60
c) Section 61
d) Section 62

22. Compulsory license provisions start from:
a) Section 80
b) Section 82
c) Section 83
d) Section 84

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23. Government use of inventions is dealt under:
a) Chapter XV
b) Chapter XVI
c) Chapter XVII
d) Chapter XVIII

24. Burden of proof in process of patent infringement lies on:
a) Defendant
b) Plaintiff
c) Court
d) Controller

25. Section 107A relates to:
a) Infringement
b) Acts not be considered as infringement
c) Revocation
d) Opposition

26. Register of Patent Agents is maintained under:
a) Section 124
b) Section 125
c) Section 126
d) Section 127

27. Qualifications for Patent Agent registration are in:
a) Section 125
b) Section 126
c) Section 127
d) Section 128

28. Appeals against Controller's decision are directed to:
a) District Court
b) High Court
c) Supreme Court
d) Controller General

29. Convention applications are dealt under:
a) Chapter XIX
b) Chapter XX
c) Chapter XXI
d) Chapter XXII

30. "True and first inventor" does not include:
a) Indian researcher
b) Legal heir
c) First importer
d) Assignee

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PART B – Reasoning and True / False
(10 questions × 1 mark = 10 marks)
Assertion(A) & Reasoning(R) (31–35)
[R should be correct explanation of A]

Choose:
A. Both true & R explains A
B. Both true but R does not explain A
C. A true but R false
D. Both false

31) Assertion: An application for termination of compulsory licence under section 94(1) shall be made in Form 21 by the patentee or any other person deriving title or interest in the patent.
Reasoning: The application shall be accompanied by the evidence in support of the application.

32) Assertion: A notice of opposition under sub-section (2) of section 87 is to be given to the Controller.
Reasoning: The notice should be filed on Form 3 with 6 months from the date of publication.

33) Assertion: The request for making patent application outside India shall be made in Form 25.
Reasoning: The Controller shall dispose of the request for making patent application outside India within a period of twenty-one days from the date of filing of such request.

34) Assertion: A request to replace the name of the deceased applicant under sub-section (4) of section 20 shall be made in Form 6.
Reasoning: A request for expedited examination should be made on Form 12.

35) Assertion: Patent Facilitator scheme helps startups.
Reasoning: Fees paid to the facilitator differ by technology.

True/False (36–40)
Choose:
A. Statement1 is true, Statement 2 is false
B. Statement 1 is false, Statement 2 is true
C. Both statements are true
D. Both statements are false

36) Statement 1: At any time after the expiration of three years from the date of the grant of patent, any person interested may make an application to the Controller for grant of compulsory licence on patent
Statement 2: One of the reasons for making an application for the compulsory licence can be that the patented invention is not available to the public at a reasonably affordable price

37) Statement 1: An applicant gets a timeline of 6 months to prepare and submit the complete specification after filing the provisional specification.
Statement 2: The patent term starts from the date on which provisional specification is filed.

38) Statement 1: Patent term is always 20 years since 1972.
Statement 2: Uniformity for the patent term irrespective of the field was achieved post-1995.

39) Statement 1: No suit for a declaration under section 105 or for any relief under section 106 or for infringement of a patent shall be instituted in any court inferior to a district court.
Statement 2: A counter-claim for revocation of the patent is made by the defendant, the suit, along with the counter-claim, shall be transferred to the High Court for decision.

40) Statement 1: An invention which is frivolous or which claims anything obviously contrary to well established natural laws is not patentable
Statement 2: A method of agriculture or horticulture is patentable.

PART C – Multiple Correct Type
(10 questions × 3 marks = 30 marks)
(Each question has one best answer)

Q41: Which act is/are NOT considered as infringement?
i) using or importation of patented machine or apparatus
ii) Using a machine or apparatus for the research purposes
iii) Using a machine or apparatus for teaching a group of students
iv) importation of patented machine/apparatus by any person from a person who is duly authorised under the law to produce and sell or distribute the machine/apparatus
Options:
A) i, ii, iii B) ii, iii, iv C) i, iii, iv D) All

Q42: If any person contravenes the provisions of section 129, he shall be liable to:
1. penalty, which may extend to five lakh rupees,
2. In case of the continuing default, a further penalty of one thousand rupees for every day after the first during which such default continues
3. Imprisonment for six months
4. Revocation of licence

Options:
A) i & ii B) i, ii & iii C) ii & iii D) All

Q43: "Startup" means
(i) an entity in India recognised as a startup by the competent authority under Startup India initiative.
(ii) In case of a foreign entity, an entity fulfilling the criteria for turnover and period of incorporation/ registration as per Startup India Initiative and submitting declaration to that effect.
iii) a government owned company
iv) a team of students working on a project
Options:
A) i & iii B) ii only C) i & ii D) None

Q44: A person shall be qualified to have his name entered in the register of patent agents if he fulfils the following conditions:
(i) he is a citizen of India;
(ii) he has completed the age of 19 years
(iii) he has obtained a degree in science, engineering or technology from any University established under law for the time being in force in the territory of India or possesses such other equivalent qualifications as the Central Government may specify in this behalf, and, in addition
(iv) has appeared in the qualifying examination prescribed for the purpose.
Options:
A) i & iii B) ii only C) i & iv D) None

Q45: All documents and copies of the documents, except affidavits and drawings, filed with patent office, shall -

1. be typewritten or printed in Hindi or English
2. be on such paper which is flexible, strong, white, smooth, non-shiny and durable of size A3;
3. be numbered in consecutive Roman numerals in the centre of the bottom of the sheet; and
4. contain the numbering to every fifth line of each page of the description and each page of the claims at right half of the left margin.

Options:
A) i, iii B) i, ii C) iii, v D) i, iv

Q46: Form-27 is
i) Mandatory for patentee
ii) Optional for licensee
iii) Joint filing by multiple applicants is allowed
iv) Foreign patentees filing patent in India are exempted
Options:
A) i , iii B) i, ii C) i, ii, iii D) All

Q47: Match the following forms

Topic	**Form**
Application for Restoration of Patent	Form-31
Request for Publication	Form-24
Application for review/setting aside Controller's decision	Form-9
Grace Period	Form-15

Which is wrong?
i) Application for Restoration of Patent– Form 15
ii) Request for Publication – Form 9
iii) Application for review/setting aside Controller's decision –Form 31
iv) Grace Period –Form 24
Options:
A) iii, iv B) i, ii C) i, ii, iii D) All

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Q48: A person shall be qualified to have his name entered in the roll of scientific advisers, if he-

1. holds a degree in science, engineering or technology or equivalent
2. has at least ten years' technical, practical or research experience; and
3. he holds or has held a responsible post in a scientific or technical department of the Central or State Government or in any organisation.
4. Has been guilty of professional misconduct.

Options:

A) i, iii, iv B) ii, iv C) i, ii, iii D) iv

Q49: Request for withdrawal of application for a patent requires:

i) Form-29

ii) Form 14

iii) Approval by the Controller

iv) Publication in the newspaper

Options:

A) i, iii, iv B) i, iii C) i, ii, iii D) All

Q50: An applicant may file a request for expedited examination if:

(i) India has been indicated as the competent International Searching Authority or elected as an International Preliminary Examining Authority in the corresponding international application

(b) that the applicant is a startup

(c) that the applicant is a small entity

(d) that if the applicant is a natural person or in the case of joint applicants, all the applicants are natural persons, then the applicant or at least one of the applicants is a female

Options:

A) i & iii B) ii & iv C) iii only D) All

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PATENT AGENT EXAMINATION – MOCK TEST (PAPER–II)
Time: 02:00 PM – 05:00 PM (3 Hours)
Maximum Marks: 50 (Part A + Part B only)

PART A
(4 Questions × 5 Marks = 20 Marks)
All Questions are Compulsory

Q1. "Claim drafting is a careful balance between breadth and enforceability. A claim drafted too narrowly loses commercial value, while one drafted too broadly invites invalidation."
Explain this statement with respect to patent claim drafting practice. Discuss:

- **Purpose of claims**
- **Role of independent and dependent claims**
- **Danger of over-broad claims**
- **Relationship between disclosure and claim scope**
- **Best drafting practices**

Q2. A company files a patent application claiming an AI-based fraud detection system. During examination, the Controller objects that the claims relate to a computer programme per se.
Advise the applicant on:

- **How to overcome Section 3(k)**
- **What hardware or system limitations can be introduced**
- **Claim structuring strategies**
- **Examples of patent-eligible AI implementations**

Q3. Dr. Raman invents a medical device. The company employing him files the patent as applicant but forgets to take assignment from him.
Explain:

- **Legal requirement of proof of right**
- **Relevant sections and rules**
- **Procedural steps to fix the defect**
- **Consequence if proof is not submitted**

Q4. An applicant files a patent using a biological material isolated from coastal India.
Explain:

- **Deposit requirement**
- **Source disclosure**
- **Role of National Biodiversity Authority (NBA)**
- **Legal consequences of non-compliance**

PART B
(3 Questions × 10 Marks = 30 Marks)
All Questions are Compulsory

Q5. Describe Sections 6, 7, and 8 of the Patents Act, 1970 in detail. Your answer should include:

- **Who can apply**
- **Rights of inventors and assignees**
- **Statement & undertaking requirements**
- **Filing deadlines**
- **Consequences of non-compliance**
- **(Mention sections, rules, and relevant forms)**

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Q6. A patent was granted on 15-03-2018. The patentee failed to pay renewal fees. Explain the procedure if renewal is missed by:
a) 4 months
b) 13 months
c) 30 months
Mention:

- **Grace period**
- **Restoration**
- **Forms and fees**
- **Legal consequences**

Q7. The Government of India decides to use a patented water purification technology during a national emergency.
Explain:

- **The conditions for government use**
- **Relevant sections**
- **Rights of patentee**
- **Compensation to the patentee**
- **Remedies available**

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