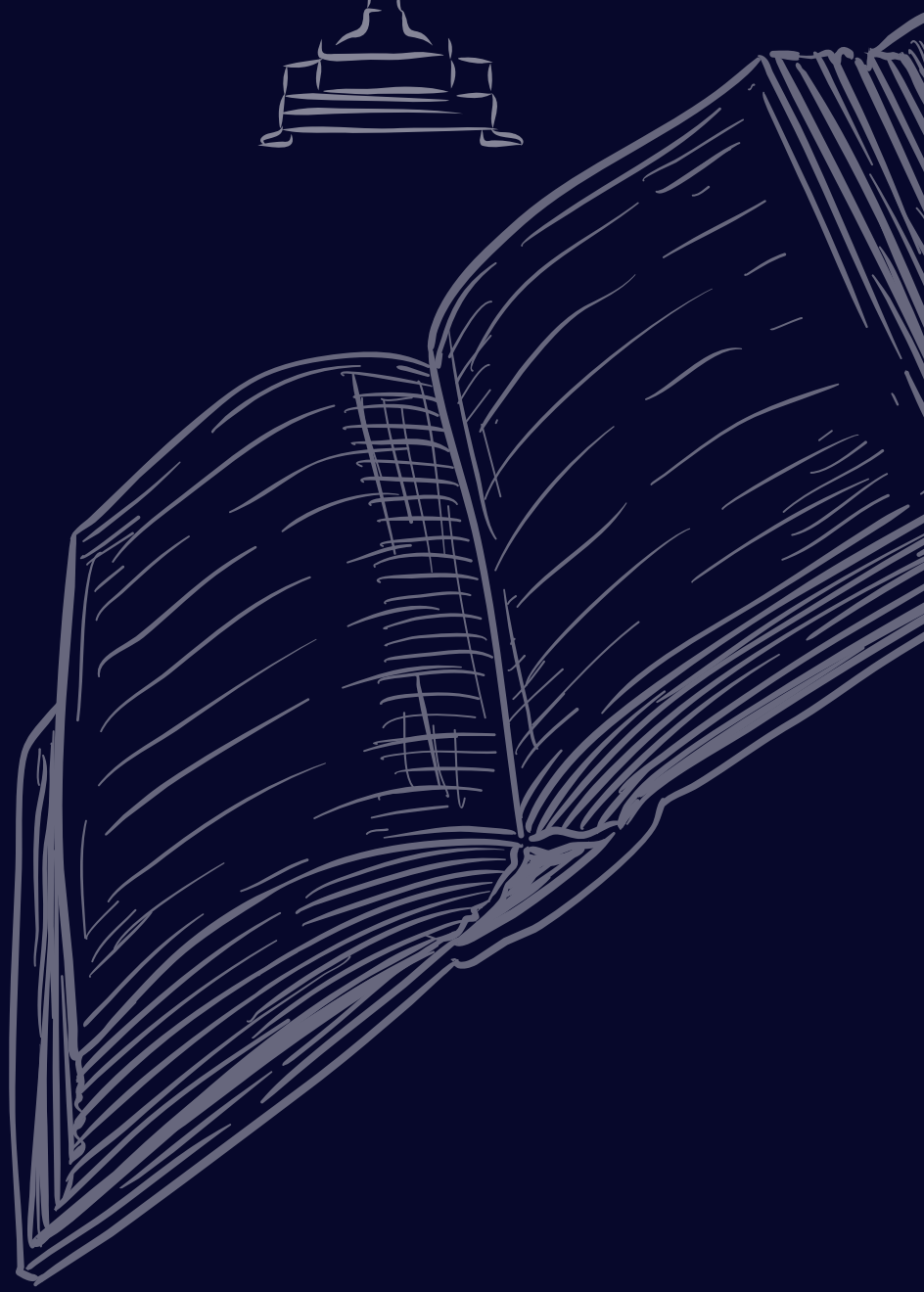
EDITION ONE

RASPREP

Module 2

THE PATENTS ACT, 1970 (No. 39 of 1970)

Part I



Section-wise Analysis of the Indian Patents Act, 1970 (Sections 1–53)

PREFACE

The Patents Act, 1970 (No. 39 of 1970), along with its subsequent amendments, governs the law relating to the grant, protection, and enforcement of patents in India.

This book provides a comprehensive explanation of the various sections of the Act. It is intended to assist students, legal practitioners, patent professionals, researchers and innovators in understanding the statutory provisions, their scope and practical applications.

Each section is explained in detail, supported by illustrative examples and interpretations where necessary. Special attention is given to patentability criteria, rights conferred by patents, procedures for filing, opposition, and remedies for infringement.

By focusing on Sections 1 to 53, this book provides a concise yet comprehensive understanding of the key provisions of the Indian Patents Act, making it accessible and practically useful for both academic and professional purposes.

REFERENCE

The explanations and commentary in this book are based on the Indian Patents Act, 1970 (No. 39 of 1970), including all subsequent amendments. Sections cited in this book are reproduced from the Indian Patents Act, 1970, while the explanations and commentary are original, provided for clarity and understanding.

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About Us

At RAS Intellect, we specialize in patents, trademarks, copyrights, and everything that protects your brainchild. From solo inventors to growing startups and global enterprises, we empower creators to secure, protect, and profit from their innovation. Our team of skilled professionals is dedicated to guiding organizations through the complexities of IP processes, ensuring that valuable assets are effectively protected and leveraged for maximum benefit. We operate across multiple verticals to cater to the unique challenges faced by organizations in promoting innovation while ensuring effective protection and management of intellectual assets. We also offer end-to-end support for research paper writing and publication, enabling impactful dissemination of innovative ideas in reputed journals.

Vision

Our vision is to become a leading innovation and intellectual property enabler across India by empowering startups, universities, researchers, and enterprises with technology-driven IP, research, and commercialization solutions that transform ideas into impactful innovations.

Mission

To empower innovators and creators by protecting and maximizing the value of their intellectual property through strategic, tailored solutions, while advancing research excellence by enabling high-quality publications in globally recognized and reputed journals.

Charting the Course to Success

Our services are focused on strengthening measurable research, innovation, IPR, publication, and documentation outcomes for NIRF, NAAC and IIC.

1. IPR and Patent Filing Support

- Patentability assessment of faculty/student research
- Prior art searching and patent landscape reports
- Provisional and complete patent specification drafting
- Patent filing
- Early publication request support
- Request for examination filing support
- FER response drafting and prosecution assistance
- Patent grant tracking and reporting
- Design registration filing
- Copyright filing for software, manuals, literary works, lab content and academic material
- Trademark support for university innovation cells, incubation centres and institutional brands

2.NIRF Research Parameter Support

- Annual NIRF research data audit
- Patent published/granted tracking
- Research publication tracking
- Scopus publication mapping
- Citation and H-index monitoring
- Faculty-wise research output mapping
- Department-wise research performance reports

3. NAAC Criterion III Support

- Criterion III gap analysis
- Research policy drafting
- IPR policy drafting or revision
- Innovation and startup policy drafting
- Seed money policy documentation
- Research promotion mechanism documentation
- Faculty research incentive policy support
- Patent and publication evidence compilation
- MoU and collaboration evidence structuring
- Extension activity documentation
- Innovation ecosystem documentation

4. IIC and Innovation Cell Support

- IIC annual activity calendar planning
- Innovation and IP awareness sessions
- Patent search workshops
- Idea-to-IP mentoring
- Student innovation screening
- Hackathon planning and execution
- Prototype documentation support
- Startup mentoring sessions
- Entrepreneurship and commercialization workshops.

5. Research Paper and Publication Support

- Research topic selection support
- Literature review guidance
- Research paper structuring
- Journal selection guidance
- Scopus-indexed journal identification
- Plagiarism and AI-similarity reduction guidance
- Manuscript formatting as per journal guidelines
- Citation and referencing support
- Response to reviewer comments

6. Faculty Development and Student Training Programs

- Patent drafting workshop
- Patent search workshop
- Research methodology workshop
- Scopus publication workshop
- Copyright and design registration workshop
- Innovation-to-commercialization workshop
- Technology transfer and licensing session
- Startup and entrepreneurship bootcamp
- Patent Agent career awareness session
- IP for faculty research advancement
- IP for Ph.D. scholars and research supervisors

7. University IP Cell Setup and Management

- IP Cell formation support
- IP Cell SOP drafting
- Invention disclosure form preparation
- Patent review committee formation support
- IP ownership and revenue-sharing policy
- Faculty/student disclosure workflow
- Patent filing calendar
- IP awareness schedule
- Department-wise IP coordinators' training

8. Incubation and Commercialization Support

- Technology readiness assessment
- Commercial potential assessment
- Startup idea screening
- IP-based startup mentoring
- Licensing strategy
- Technology transfer documentation
- MoU drafting support
- Pitch deck preparation
- Innovation portfolio preparation

RASPREP University Training Programs

RAS Intellect offers structured IP training and internship programs for universities through 1-week, 6-week, and 6-month formats. These programs cover IP fundamentals, patent searching, patent drafting, legal understanding, innovation awareness, and career readiness in the intellectual property domain. The modules can be delivered in virtual, hybrid, or offline mode and may also be customized as credit-based, vocational, or skill-development programs for students and faculty. This initiative supports universities in strengthening innovation culture, student employability, academic enrichment, and evidence-based contribution towards NAAC, NIRF and IIC-related research and innovation parameters.

How this supports Universities

- NAAC Criterion III: research, innovation, extension, skill development, and institutional innovation ecosystem.
- IIC activities: IP awareness, innovation training, patent search workshops, idea-to-IP mentoring, and entrepreneurship-linked activities.
- NIRF support areas: research culture, professional practice, IPR awareness, patent filing pipeline, and student/faculty innovation outcomes.
- Employability and academic enrichment: by creating technically trained students for IP, patent drafting, research analysis, and innovation-based career roles.

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.

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.

Chapter 1
PRELIMINARY

1

Short title, extent and commencement:

((1) This Act may be called the Patents Act, 1970.
(2) It extends to the whole of India.
(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:
Provided that different dates may be appointed for different provisions of this Act, and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Explanation:
The Patents Act 1970 is a territorial act which extents to the whole of India and not beyond that. Each country has their own patents act.

2

Definitions and Interpretation:

(1) In this Act, unless the context otherwise requires, —
Clause (a) omitted by Act 33 of 2021, s. 13 (w.e.f.4-4-2021).
(ab) "assignee" includes an assignee of the assignee and the legal representative of a deceased assignee and references to the assignee of any person include references to the assignee of the legal representative or assignee of that person;
(aba) "Budapest Treaty" means the Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the purposes of Patent Procedure done at Budapest on 28th day of April, 1977, as amended and modified from time to time;
(ac) "capable of industrial application", in relation to an invention, means that the invention is capable of being made or used in an industry;
(b) "Controller" means the Controller General of Patents, Designs and Trade Marks referred to in section 73;
(c) "convention application" means an application for a patent made by virtue of section 135;
(d) "convention country" means a country or a country which is member of a group of countries or a union of countries or an Intergovernmental organization referred to as a convention country in section 133;
(e) "district court" has the meaning assigned to that expression by the Code of Civil Procedure, 1908 (5 of 1908);
(f) "exclusive licence" means a licence from a patentee which confers on the licensee, or on the licensee and persons authorised by him, to the exclusion of all other persons (including the patentee), any right in respect of the patented invention, and exclusive licensee shall be construed accordingly;
(g) [Omitted]

(h) "Government undertaking" means any industrial undertaking carried on—
(i) by a department of the Government, or
(ii) by a corporation established by a Central, Provincial or State Act, which is owned or controlled by the Government, or
(iii) by a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956), or
(iv) by an institution wholly or substantially financed by the Government;
(i) "High Court", in relation to a State or Union territory, means the High Court having territorial jurisdiction in that State or Union territory, as the case may be;
(ia) "international application" means an application for patent made in accordance with the Patent Cooperation Treaty;
(j) "invention" means a new product or process involving an inventive step and capable of industrial application;
(ja) "inventive step" means a feature of an invention that involves technical advance as compared to the existing knowledge or having economic significance or both and that makes the invention not obvious to a person skilled in the art;
(k) "legal representative" means a person who in law represents the estate of a deceased person;
(l) "new invention" means any invention or technology which has not been anticipated by publication in any document or used in the country or elsewhere in the world before the date of filing of patent application with complete specification, i.e.,the subject matter has not fallen in public domain or that it does not form part of the state of the art;
(la) "Opposition Board" means an Opposition Board constituted under sub-section (3) of section 25;
(m) "patent" means a patent for any invention granted under this Act;
(n) "patent agent" means a person for the time being registered under this Act as a patent agent;
(o) "patented article" and "patented process" means respectively an article or process in respect of which a patent is in force;
(oa) "Patent Cooperation Treaty" means the Patent Cooperation Treaty done at Washington on the 19th day of June, 1970 as amended and modified from time to time;
(p) "patentee" means the person for the time being entered on the register as the grantee or proprietor of the patent;
(q) "patent of addition" means a patent granted in accordance with section 54;
(r) "patent office" means the patent office referred to in section 74;
(s) "person" includes the Government;
(t) "person interested" includes a person engaged in, or in promoting, research in the same field as that to which the invention relates;
(ta) "pharmaceutical substance" means any new entity involving one or more inventive steps;
(u) "prescribed" means,—
(A) in relation to proceedings before a High Court, prescribed by rules made by the High Court;
(B) in relation to proceedings before the Appellate Board, prescribed by rules made by the Appellate Board; and
(C) in other cases, prescribed by rules made under this Act;
(v) "prescribed manner" includes the payment of the prescribed fee;
(w) "priority date" has the meaning assigned to it by section 11;
(x) "register" means the register of patents referred to in section 67;

(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.
(2) In this Act, unless the context otherwise requires, any reference—
(a) to the Controller shall be construed as including a reference to any officer discharging the functions of the Controller in pursuance of section 73;
(b) to the patent office shall be construed as including a reference to any branch office of the patent office.

Explanation:
In section 2, different terms which are used in the Patents Act 1970 are explained. In this section, “assignee,” “capable of industrial application,” “Controller,” “convention country,” “exclusive license,” “Government undertaking,” “international application,” “invention,” “inventive step,” “legal representative,” “new invention,” “patented article,” “patented process,” “patentee,” “person interested” are clearly defined.

Section 2 has mentioned the Patent Cooperation Treaty (PCT) which was signed at Washington on 19/06/1970, and the Budapest Treaty which was signed on the International Recognition of the Deposit of Micro-organisms at Budapest on 28/04/1977, essential for the purpose of completion of biological invention related Patent Procedure. Some of the terms, like “district court” and “High Court,” described in section 2 are well-known and don’t need any further explanation. The terms like “Opposition Board,” “patent agent,” “patent of addition,” “patent office,” “priority date,” and “register” which are mentioned in Section 2 of the Patents Act, 1970, are linked to further individual sections. For clear and complete understanding of these terms one needs to be aware of the connected sections which will be disclosed in the later sections of this module.

Section 2 further contains the definition of the term “patent,” which simply means a legal right granted by the government, giving the owner exclusive rights to use, produce and sell their intellectual property for a period of 20 years, and to exclude others from making, using, or selling the invention during this time, under the act. Furthermore, according to the section 2 of the Patents Act 1970, the first importer of an invention into India, or an Indian to whom an invention is first communicated from outside India can not claim the status of a “true and first inventor” of an invention in India.

Chapter 2
INVENTIONS NOT PATENTABLE

3

What are not inventions:

The following are not inventions within the meaning of this Act,—

(a) an invention which is frivolous or which claims anything obviously contrary to well established natural laws;

(b) an invention the primary or intended use or commercial exploitation of which could be contrary to public order or morality or which causes serious prejudice to human, animal or plant life or health or to the environment;

(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;

(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.

Explanation.—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;

(e) 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;

(f) the mere arrangement or re-arrangement or duplication of known devices each functioning independently of one another in a known way;

(g)..(omitted)

(h) a method of agriculture or horticulture;

(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.

(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;

(k) a mathematical or business method or a computer programme per se or algorithms;

(l) a literary, dramatic, musical or artistic work or any other aesthetic creation whatsoever including cinematographic works and television productions;

(m) a mere scheme or rule or method of performing mental act or method of playing game;

(n) a presentation of information;

(o) topography of integrated circuits;

(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.

Explanation:

In section 3, a list of inventions is given which are not patentable according to the Patents Act, 1970. According to this section, any frivolous invention which claims contrary statements to well established natural laws, such as a perpetual motion machine, is not patentable as it contradicts with the well-known law of conservation of energy.

The invention which is contrary to public order or morality and can cause harm to human, animal or plant life or health or to the environment, is not patentable.

An abstract theory, scientific principle or discovery of any living or non-living substance occurring in nature is also not patentable.

A discovery of a new form, or any new property or new use of a known substance is not patentable unless it does not have an enhanced efficacy compared to that existent for the same category. Similarly, mere use of a known process, machine, or apparatus is not patentable unless such known process results in a new product or employs at least one new reactant.

Additionally, a product or process related invention describing a mere admixture showing only the aggregation of the properties of the components in the resultant substance is non-patentable.

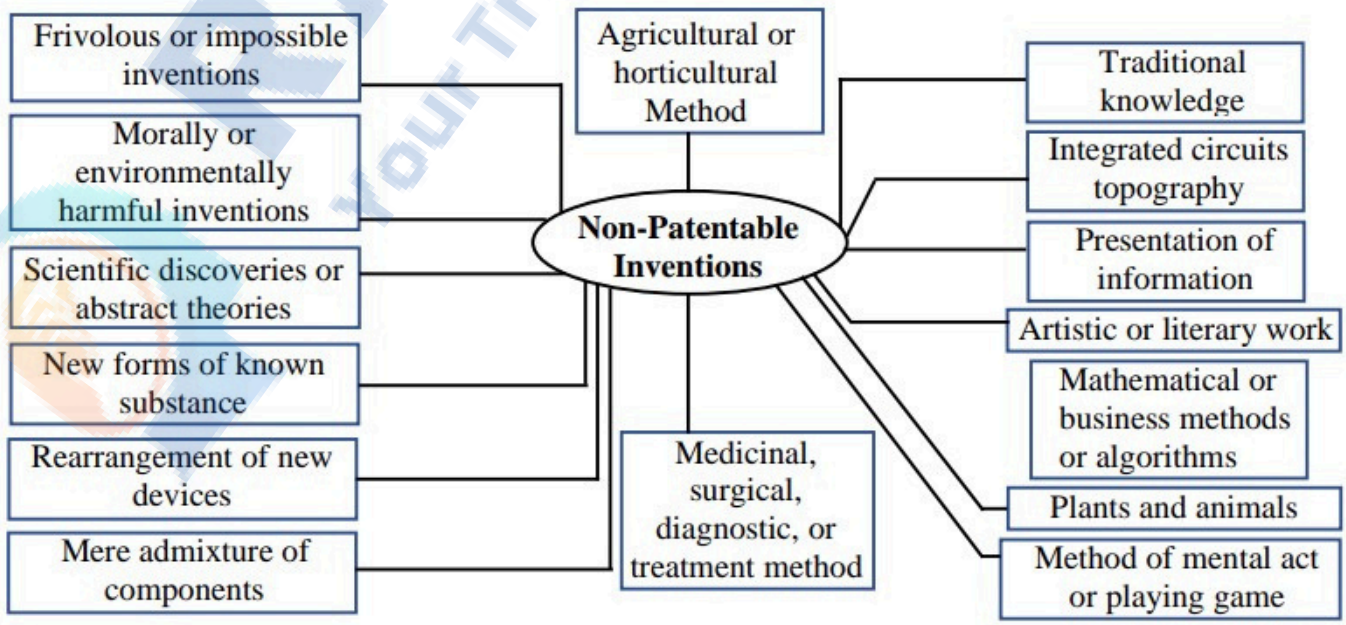
Furthermore, inventions focusing on mere arrangement or re-arrangement or duplication of known independent functioning devices are not patentable.

Agricultural or horticultural methods are also not patentable.

Medicinal, surgical, diagnostic, therapeutic, or other treatment methods of human beings and of animals are also in the same list.

Few other non-patentable types of inventions include inventions related to plants and animals other than micro-organisms; mathematical or business method or a computer programme per se or algorithms; literary, dramatic, musical or artistic work or any other aesthetic creation; method of performing mental act or method of playing game; presentation of information; integrated circuits topography; and inventions duplicating known properties of traditionally known components.

The types of non-patentable inventions are shown in the following visual representation:



4

Inventions relating to atomic energy not patentable:

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 (33 of 1962).

Explanation:

Atomic energy related inventions are not patentable.

Here it should be noted that during patentability checking of an invention, one needs to check not only the three criteria of patentability – Novelty, Inventiveness and Industrial Applicability – but also needs to check whether the invention falls under sections 3 and 4. Once all three criteria of patentability are satisfied and the invention is out of the scope of sections 3 and 4, the invention can be called a "patentable invention."

5

[Omitted]

[Inventions where only methods or processes of manufacture patentable.] Omitted by the Patents (Amendment) Act, 2005 (15 of 2005), s. 4 (w.e.f. 1-1-2005).

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Chapter 3
APPLICATIONS FOR PATENTS

6

Persons entitled to apply for patents:

(1) Subject to the provisions contained in section 134, an application for a patent for an invention may be made by any of the following persons, that is to say,—

(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.

Explanation:

A true and first inventor of the invention, an assignee of the true and first inventor, and a legal representative of any deceased person claiming to be the true and first inventor of the invention are entitled to apply for patents, either alone or jointly with any other person.

7

Form of application:

(1) 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.

(1A) Every international application under the Patent Cooperation Treaty for a patent, as may be filed designating India shall be deemed to be an application under this Act, if a corresponding application has also been filed before the Controller in India.

(1B) The filing date of an application referred to in sub-section (1A) and its complete specification processed by the patent office as designated office or elected office shall be the international filing date accorded under the Patent Cooperation Treaty.

(2) Where the application is made by virtue of an assignment of the right to apply for a patent for the invention, there shall be furnished with the application, or within such period as may be prescribed after the filing of the application, proof of the right to make the application.

(3) Every application under this section shall state that the applicant is in possession of the invention and shall name the person claiming to be the true and first inventor; and where the person so claiming is not the applicant or one of the applicants, the application shall contain a declaration that the applicant believes the person so named to be the true and first inventor.

(4) Every such application (not being a convention application or an application filed under the Patent Cooperation Treaty designating India) shall be accompanied by a provisional or a complete specification.

Explanation:
This section informs that each patent application should be for one invention only and must be submitted in the prescribed form along with the prescribed fees to the Indian Patent Office (IPO).
Further the section 7 declares that a patent application filed at IPO, under the Patent Cooperation Treaty (PCT) designating India will be treated as an Indian application provided a corresponding application has been filed before the Controller, where the international filing date accorded under the PCT will be the filing date.
The patent application should contain a proof of the right to make the application, a declaration that the applicant is in possession of the invention along with the name of the true and first inventor (s), and a provisional or a complete specification (except convention or PCT applications).

8

Information and undertaking regarding foreign applications:

(1) Where an applicant for a patent under this Act is prosecuting either alone or jointly with any other person an application for a patent in any country outside India in respect of the same or substantially the same invention, or where to his knowledge such an application is being prosecuted by some person through whom he claims or by some person deriving title from him, he shall file along with his application or subsequently within the prescribed period as the Controller may allow—
(a) a statement setting out detailed particulars of such application; and
(b) an undertaking that, up to the date of grant of patent in India, he would keep the Controller informed in writing, from time to time, of detailed particulars as required under clause (a) in respect of every other application relating to the same or substantially the same invention, if any, filed in any country outside India subsequently to the filing of the statement referred to in the aforesaid clause, within the prescribed time.
(2) At any time after an application for patent is filed in India and till the grant of a patent or refusal to grant of a patent made thereon, the Controller may also require the applicant to furnish details, as may be prescribed, relating to the processing of the application in a country outside India, and in that event the applicant shall furnish to the Controller information available to him within such period as may be prescribed.

Explanation:
To prevent the filing of multiple patent applications in India and/or in other countries covering the same or similar invention, the section 8 is written. According to section 8, the applicant should submit a statement bearing the information about the filing date, application number, and country name where the patent application is filed having the same or similar invention. The applicant must also keep the Controller informed about any new foreign patent filing related to the same/similar invention within 6 months of such new filing. The Controller may also request any additional details about the foreign filing at any time before the patent is granted/refused, and the applicant must respond to the request within 6 months.

9

Provisional and complete specifications:

(1) 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.

(2) Where two or more applications in the name of the same applicant are accompanied by provisional specifications in respect of inventions which are cognate or of which one is a modification of another and the Controller is of opinion that the whole of such inventions are such as to constitute a single invention and may properly be included in one patent, he may allow one complete specification to be filed in respect of all such provisional specifications.

Provided that the period of time specified under sub-section (1) shall be reckoned from the date of filing of the earliest provisional specification.

(3) 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 specification purporting to be a complete specification, the Controller may, if the applicant so requests at any time within twelve months from the date of filing of the application, direct that such specification shall be treated, for the purposes of this Act, as a provisional specification and proceed with the application accordingly.

(4) Where a complete specification has been filed in pursuance of an application for a patent accompanied by a provisional specification or by a specification treated by virtue of a direction under sub-section (3) as a provisional specification, the Controller may, if the applicant so requests at any time before grant of patent, cancel the provisional specification and post-date the application to the date of filing of the complete specification.

Explanation:

Section 9 of the Patents Act, 1970 is about the filing of provisional and complete specifications related with a patent application. This section states that an applicant is allowed to file a provisional specification and later the complete specification. Filing the provisional specification first before the complete specification gives the applicant a time period of 12 months, as a complete specification is allowed to be submitted within 12 months of provisional specification submission and the strategy also helps to secure a priority date even when the R&D process related to the invention is not completed and the complete specification is yet to be filed. The patent application is deemed to be abandoned if an applicant does not file complete specification within 12 months of filing the provisional specification. This section permits the consolidation of multiple provisional applications related to a cognate invention into a single complete specification. Furthermore, this section provides a provision of post-dating the patent application to the date of the complete specification if requested before the grant/refusal of the patent, within the prescribed time.

10

Contents of specifications:

(1) Every specification, whether provisional or complete, shall describe the invention and shall begin with a title sufficiently indicating the subject-matter to which the invention relates.

(2)Subject to any rules that may be made in this behalf under this Act, drawings may, and shall, if the Controller so requires, be supplied for the purposes of any specification, whether complete or provisional; and any drawings so supplied shall, unless the Controller otherwise directs be deemed to form part of the specification, and references in this Act to a specification shall be construed accordingly.

(3) If, in any particular case, the Controller considers that an application should be further supplemented by a model or sample of anything illustrating the invention or alleged to constitute an invention, such model or sample as he may require shall be furnished before the application is found in order for grant of a patent, but such model or sample shall not be deemed to form part of the specification.

(4)Every complete specification shall—

(a) fully and particularly describe the invention and its operation or use and the method by which it is to be performed;

(b) disclose the best method of performing the invention which is known to the applicant and for which he is entitled to claim protection; and

(c) end with a claim or claims defining the scope of the invention for which protection is claimed;

(d) be accompanied by an abstract to provide technical information on the invention:

Provided that—

(i) the Controller may amend the abstract for providing better information to third parties; and

(ii) if the applicant mentions a biological material in the specification which may not be described in such a way as to satisfy clauses (a) and (b), and if such material is not available to the public, the application shall be completed by depositing the material to an international depository authority under the Budapest Treaty and by fulfilling the following conditions, namely:—

(A) 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;

(B) 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;

(C) access to the material is available in the depository institution only after the date of the application of patent in India or if a priority is claimed after the date of the priority;

(D) disclose the source and geographical origin of the biological material in the specification, when used in an invention.

(4A) In case of an international application designating India, the title, description, drawings, abstract and claims filed with the application shall be taken as the complete specification for the purposes of this Act.

(5) 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.

(6) A declaration as to the inventorship of the invention shall, in such cases as may be prescribed, be furnished in the prescribed form with the complete specification or within such period as may be prescribed after the filing of that specification.

(7) Subject to the foregoing provisions of this section, a complete specification filed after a provisional specification may include claims in respect of developments of, or additions to, the invention which was described in the provisional specification, being developments or additions in respect of which the applicant would be entitled under the provisions of section 6 to make a separate application for a patent.

Explanation:
Section 10 of the Patents Act 1970 describes the Contents of a specification. Both provisional and complete specification shall begin with a title indicating the subject-matter of the invention. Drawings may, and shall, if the Controller so requires, be supplied as a part of any of the specifications – complete, or provisional. On request of the Controller, the applicant may have to submit a model or a sample of anything illustrating the invention or alleged to constitute an invention, before the grant/refusal of the patent, but such model or sample is not a mandatory part of the specification. According to this section every complete specification should have a description, fully and particularly describing the invention and its operation or use and the method by which it is to be performed, along with an abstract having the technical information of the invention and the information about the best method of performing the invention, known to the applicant and for which he is entitled to claim protection. The complete specification should end with a clear and succinct claim or a set of claims defining the scope of the invention, related to a single invention, or to a group of inventions linked so as to form a single inventive concept, fairly based on the matter disclosed in the specification. On the other hand, it is not mandatory to include any claim in the provisional specification. The applicant has to submit biological material to an international depository authority under the Budapest Treaty if he mentions any of it in the specification, provided the biological material is not publicly available. The deposit of the biological material shall be made not later than the date of filing the patent application in India and its reference shall be made in the specification within the prescribed period. The patent specification of a biological material related invention should have all the available identification characteristics of the biological material including the name, address of the depository institution and the date and number of the deposit of the material at the institution, the source and geographical origin of the biological material. For an international application designating India, the title, description, drawings, abstract and claims should be included in the complete specification for the purposes of this Act. Furthermore, this section mandates furnishing of a declaration of inventorship of the invention in the prescribed form with the complete specification or within such prescribed period after the filing of that specification.

11

Priority dates of claims of a complete specification:

(1) There shall be a priority date for each claim of a complete specification.
(2) Where a complete specification is filed in pursuance of a single application accompanied by—
(a)a provisional specification; or
(b)a specification which is treated by virtue of a direction under subsection (3) of section 9 as a provisional specification,
and the claim is fairly based on the matter disclosed in the specification referred to in clause (a) or clause (b), the priority date of that claim shall be the date of the filing of the relevant specification.
(3) Where the complete specification is filed or proceeded with in pursuance of two or more applications accompanied by such specifications as are mentioned in sub-section (2) and the claim is fairly based on the matter disclosed—
(a)in one of those specifications, the priority date of that claim shall be the date of the filing of the application accompanied by that specification;
(b)partly in one and partly in another, the priority date of that claim shall be the date of the filing of the application accompanied by the specification of the later date.

(3A) Where a complete specification based on a previously filed application in India has been filed within twelve months from the date of that application and the claim is fairly based on the matter disclosed in the previously filed application, the priority date of that claim shall be the date of the previously filed application in which the matter was first disclosed.
(4) Where the complete specification has been filed in pursuance of a further application made by virtue of sub-section (1) of section 16 and the claim is fairly based on the matter disclosed in any of the earlier specifications, provisional or complete, as the case may be, the priority date of that claim shall be the date of the filing of that specification in which the matter was first disclosed.
(5) Where, under the foregoing provisions of this section, any claim of a complete specification would, but for the provisions of this sub-section, have two or more priority dates, the priority date of that claim shall be the earlier or earliest of those dates.
(6) In any case to which sub-sections (2), (3), (3A), (4) and (5) do not apply, the priority date of a claim shall, subject to the provisions of section 137, be the date of filing of the complete specification.
(7) The reference to the date of the filing of the application or of the complete specification in this section shall, in cases where there has been a post-dating under section 9 or section 17 or, as the case may be, an ante-dating under section 16, be a reference to the date as so post-dated or ante-dated.
(8) A claim in a complete specification of a patent shall not be invalid by reason only of—
(a) the publication or use of the invention so far as claimed in that claim on or after the priority date of such claim; or
(b) the grant of another patent which claims the invention, so far as
claimed in the first mentioned claim, in a claim of the same or a later priority date.

Explanation:
The section 11 of the Patents Act 1970 states that each claim of a complete specification has a specific priority date, crucial for determining the novelty of the claim, thus the invention. In case of a complete specification filed after filing of a provisional specification, the priority date will be the date of filing of the provisional specification. In case of multiple related applications, the priority date will be determined by the earliest relevant filed application. In case of a complete specification filed based on a previously filed application in India, filed within 12 months from the date of that application the priority date of a claim shall be the date of the previously filed application in which the matter was first disclosed. In case of the claim of a complete specification, where the complete specification is submitted for the first time, the priority date will be the date of filing of that complete specification. In case of a claim of a complete specification having two or more priority dates, the priority date of that claim is the earlier or earliest of those dates.

Chapter 4
PUBLICATION AND EXAMINATION OF APPLICATIONS

11A

Publication of applications:

(1) Save as otherwise provided, no application for patent shall ordinarily be open to the public for such period as may be prescribed.

(2) The applicant may, in the prescribed manner, request the Controller to publish his application at any time before the expiry of the period prescribed under sub-section (1) and subject to the provisions of sub-section (3), the Controller shall publish such application as soon as possible.

(3) 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).

(4) In case a secrecy direction has been given in respect of an application under section 35, then it shall be published after the expiry of the period prescribed under sub-section (1) or when the secrecy direction has ceased to operate, whichever is later.

(5) The publication of every application under this section shall include the particulars of the date of application, number of application, name and address of the applicant identifying the application and an abstract.

(6) Upon publication of an application for a patent under this section—

(a) the depository institution shall make the biological material mentioned in the specification available to the public;

(b) the patent office may, on payment of such fee as may be prescribed, make the specification and drawings, if any, of such application available to the public.

(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:

Provided further that the rights of a patentee in respect of applications made under sub-section (2) of section 5 before the 1st day of January, 2005 shall accrue from the date of grant of the patent: Provided also that after a patent is granted in respect of applications made under sub-section (2) of section 5, the patent-holder shall only be entitled to receive reasonable royalty from such enterprises which have made significant investment and were producing and marketing the concerned product prior to the 1st day of January, 2005 and which continue to manufacture the product covered by the patent on the date of grant of the patent and no infringement proceedings shall be instituted against such enterprises.

Explanation:
Section 11A of the Patents Act 1970 deals with the publication of filed patent applications. According to this section no patent application shall be publicly available before the publication of the filed patent application. The applicant may, in the prescribed manner, request the Controller to publish his application at any time before the expiry of a prescribed period, the Controller shall publish such application as soon as possible. Every patent application shall be published on the expiry of the prescribed period except the cases where the application either falls under section 35 which deals with secrecy direction or has been abandoned under section 9(1) or has been withdrawn 3 months prior to the prescribed period. For a patent application falling under section 35, it shall be published after the expiry of the prescribed period or when the secrecy direction has ceased to operate, whichever is later. Every patent application publication shall include the information about the date of application, number of applications, name and address of the applicant identifying the application and an abstract. Upon publication of a patent application dealing with the biological material, the depository institution shall make the biological material mentioned in the specification available to the public. Furthermore, the patent application publication ensures the fact that the patent office may make the application, specification and drawings publicly available on payment of the prescribed fee. On and from the date of publication of the patent application and until the date of grant of the patent, the applicant will 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 will not be able to institute any infringement proceedings until the patent has been granted and the patent-holder shall be entitled to receive reasonable royalty only after a patent is granted from the enterprises which have made significant investment and were producing and marketing the concerned product and which continue to manufacture the product covered by the patent on the date of grant of the patent.

11B

Request for examination:
(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.
(2) (Omitted)
(3) In case of an application in respect of a claim for a patent filed under sub-section (2) of section 5 before the 1st day of January, 2005 a request for its examination shall be made in the prescribed manner and within the prescribed period by the applicant or any other interested person.
(4) In case the applicant or any other interested person does not make a request for examination of the application for a patent within the period as specified under sub-section (1) or sub-section (3), the application shall be treated as withdrawn by the applicant:
Provided that—
(i) the applicant may, at any time after filing the application but before the grant of a patent, withdraw the application by making a request in the prescribed manner; and
(ii) in a case where secrecy direction has been issued under section 35, the request for examination may be made within the prescribed period from the date of revocation of the secrecy direction.

Explanation:
According to the section 11B of the Patents Act 1970, no patent application should be examined unless the applicant or any other interested person makes a request for the same in the prescribed manner within the prescribed period. In case no such request has been made, the patent application will be treated as withdrawn by the applicant, provided the applicant withdraw the application by making a request in the prescribed manner at any time after filing the patent application but before the grant/refusal of the patent application or the patent application relates to an invention which aligns with the secrecy direction under section 35 of the Patents Act 1970 where the request for examination should be made within the prescribed period from the date of revocation of the secrecy direction.

12

Examination of application:

(1) When a request for examination has been made in respect of an application for a patent in the prescribed manner under sub-section (1) or sub-section (3) of section 11B, the application and specification and other documents related thereto shall be referred at the earliest by the Controller to an examiner for making a report to him in respect of the following matters, namely:—
(a) whether the application and the specification and other documents relating thereto are in accordance with the requirements of this Act and of any rules made thereunder;
(b) whether there is any lawful ground of objection to the grant of the patent under this Act in pursuance of the application;
(c)the result of investigations made under section 13; and
(d)any other matter which may be prescribed.
(2) The examiner to whom the application and the specification and other documents relating thereto are referred under sub-section (1) shall ordinarily make the report to the Controller within such period as may be prescribed.

Explanation:
The section 12 of the Patents Act 1970 states that upon submitting a formal request for examination, a patent application with specification and other related documents is sent to an examiner by the Controller at the earliest. The examiner has to prepare a report and send the same to the Controller within a prescribed time period bearing the information whether the application, the specification and the other related documents are in accordance with the requirements of this Act and of related rules, whether there is any lawful ground of objection to the grant of the patent under this Act, and whether the invention of the specification is anticipated by any previous publication or any prior claim.

13

Search for anticipation by previous publication and by prior claim:

(1) The examiner to whom an application for a patent is referred under section 12 shall make investigation for the purpose of ascertaining whether the invention so far as claimed in any claim of the complete specification—

(a) has been anticipated by publication before the date of filing of the applicant's complete specification in any specification filed in pursuance of an application for a patent made in India and dated on or after the 1st day of January, 1912;
(b) is claimed in any claim of any other complete specification published on or after the date of filing of the applicant's complete specification, being a specification filed in pursuance of an application for a patent made in India and dated before or claiming the priority date earlier than that date.
(2) The examiner shall, in addition, make such investigation for the purpose of ascertaining whether the invention, so far as claimed in any claim of the complete specification, has been anticipated by publication in India or elsewhere in any document other than those mentioned in sub-section (1) before the date of filing of the applicant's complete specification.
(3)Where a complete specification is amended under the provisions of this Act before the grant of patent, the amended specification shall be examined and investigated in like manner as the original specification.
(4)The examination and investigations required under section 12 and this section shall not be deemed in any way to warrant the validity of any patent, and no liability shall be incurred by the Central Government or any officer thereof by reason of, or in connection with, any such examination or investigation or any report or other proceedings consequent thereon.

Explanation:
Section 13 of the Patents Act, 1970, is about the process of search, an examiner follows, for anticipation by previous publication or prior claim. When an examiner examines an application, the examiner should investigate whether the invention of the application has already been disclosed publicly or is claimed in any another complete specification with an earlier priority date and whether any prior publication anticipating the invention. This kind of examination is also valid for examining an amended version of a specification. Moreover, this section clarifies that this type of examination by the examiner don't confirm the patent's validify.

14

Consideration of report of examiner by Controller:
Where, in respect of an application for a patent, the report of the examiner received by the Controller is adverse to the applicant or requires any amendment of the application, the specification or other documents to ensure compliance with the provisions of this Act or of the rules made thereunder, the Controller, before proceeding to dispose of the application in accordance with the provisions hereinafter appearing, shall communicate as expeditiously as possible the gist of the objections to the applicant and shall, if so required by the applicant within the prescribed period, give him an opportunity of being heard.

Explanation:
According to the section 14 of the Patents Act 1970, upon receipt of the report from the examiner, which is adverse to the applicant or requires any amendment of the application, the specification, or other related documents to ensure compliance with the Act and its rules, by the Controller, the Controller should promptly communicate the gist of the objections to the applicant. The Controller must give an opportunity to be heard upon the request of the applicant placed within the prescribed period.

15

Power of Controller to refuse or require amended applications, etc., in certain cases:
Where the Controller is satisfied that the application or any specification or any other document filed in pursuance thereof does not comply with the requirements of this Act or of any rules made thereunder, the Controller may refuse the application or may require the application, specification or the other documents, as the case may be, to be amended to his satisfaction before he proceeds with the application and refuse the application on failure to do so.

Explanation:
According to the section 15 of the Patents Act 1970, the Controller has the power to refuse or to ask for amendments of a patent application to his satisfaction, if he is not satisfied with the application or the specification or any other document filed in pursuance thereof does not comply with the requirements of this Act or of any rules made thereunder, before proceeding with the application and/or refusing the application on failure to do so.

16

Power of Controller to make orders respecting division of application:
(1) A person who has made an application for a patent under this Act may, at any time before the grant of the patent, if he so desires, or with a view to remedy the objection raised by the Controller on the ground that the claims of the complete specification relate to more than one invention, file a further application in respect of an invention disclosed in the provisional or complete specification already filed in respect of the first mentioned application.
(2). The further application under sub-section (1) shall be accompanied by a complete specification, but such complete specification shall not include any matter not in substance disclosed in the complete specification filed in pursuance of the first mentioned application.
(3). 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.
Explanation.—For the purposes of this Act, the further application and the complete specification accompanying it shall be deemed to have been filed on the date on which the first mentioned application had been filed, and the further application shall be proceeded with as a substantive application and be examined when the request for examination is filed within the prescribed period.

Explanation:
Section 16 of the Patents Act, 1970 empowers the Controller to make order the division of a patent application when the claims of a complete specification are found to be related to more than one invention. The applicant, in this case, may voluntarily choose to file divisional applications or file a further application in respect of an invention disclosed in the previously filed provisional or complete specification to remedy the objection raised by the Controller on the ground that the claims of the complete specification relate to more than one invention, at any time before the grant of the patent. The complete specification related to the divisional application shall not include any new subject matter, rather it should be based on the matter disclosed in the previously filed complete specification.

The Controller may require amendments to ensure that the original and the divisional applications aligns with a particular subject matter. Furthermore, according to this section, the divisional application is treated as having been filed on the same date as the previously filed patent application and must undergo a separate examination process.

17

Power of Controller to make orders respecting dating of application:

(1) Subject to the provisions of section 9, at any time after the filing of an application and before the grant of the patent under this Act, the Controller may, at the request of the applicant made in the prescribed manner, direct that the application shall be post-dated to such date as may be specified in the request, and proceed with the application accordingly:

Provided that no application shall be post-dated under this sub-section to a date later than six months from the date on which it was actually made or would, but for the provisions of this sub-section, be deemed to have been made.

(2) Where an application or specification (including drawings) or any other document is required to be amended under section 15, the application or specification or other document shall, if the Controller so directs, be deemed to have been made on the date on which the requirement is complied with or where the application or specification or other document is returned to the applicant on the date on which it is re-filed after complying with the requirement.

Explanation:

According to the section 17 of the Patents Act 1970, the Controller may, upon a request made by the applicant in the prescribed manner, at any time after the filing of an application and before the grant/refusal of the patent, approve post-dating of the application to such date as may be specified in the request, provided the new date is not later than six months from the original filing date, and may proceed with the application accordingly. Furthermore, if a specification, including drawing, or any other documents requires amendments, the specification or other document shall be filed upon the Controller's direction, on the date the amendment was completed or the document was refiled.

18

Power of Controller in cases of anticipation:

(1) Where it appears to the Controller that the invention so far as claimed in any claim of the complete specification has been anticipated in the manner referred to in clause (a) of sub-section (1) or sub-section (2) of section 13, he may refuse the application unless the applicant —

(a) shows to the satisfaction of the Controller that the priority date of the claim of his complete specification is not later than the date on which the relevant document was published; or

(b)amends his complete specification to the satisfaction of the Controller.

(2) If it appears to the Controller that the invention is claimed in a claim of any other complete specification referred to in clause (b) of sub-section (1) of section 13, he may, subject to the provisions hereinafter contained, direct that a

reference to that other specification shall be inserted by way of notice to the public in the applicant's complete specification unless within such time as may be prescribed,—

(a) the applicant shows to the satisfaction of the Controller that the priority date of his claim is not later than the priority date of the claim of the said other specification; or
(b) the complete specification is amended to the satisfaction of the Controller.
(3) If it appears to the Controller, as a result of an investigation under section 13 or otherwise, —
(a) that the invention so far as claimed in any claim of the applicant's complete specification has been claimed in any other complete specification referred to in clause (a) of sub-section (1) of section 13; and
(b) that such other complete specification was published on or after the priority date of the applicant's claim,
then, unless it is shown to the satisfaction of the Controller that the priority date of the applicant's claim is not later than the priority date of the claim of that specification, the provisions of sub-section (2) shall apply thereto in the same manner as they apply to a specification published on or after the date of filing of the applicant's complete specification.
(4) [Omitted]

Explanation:
According to the section 18 of the Patents Act 1970, the controller has the power to refuse an application or to ask for an amendment of the application if the invention as claimed in any claim of the specification has been anticipated. In this case, the applicant has to either show the priority date of the claim of his complete specification is not later than the date on which the relevant document was published or he has to amend his complete specification to the satisfaction of the Controller, substantially or by adding a reference to that other specification and further a notice about this amendment should also be given to the public.

19

Powers of Controller in case of potential infringement:
(1) If, in consequence of the investigations required under this Act, it appears to the Controller that an invention in respect of which an application for a patent has been made cannot be performed without substantial risk of infringement of a claim of any other patent, he may direct that a reference to that other patent shall be inserted in the applicant's complete specification by way of notice to the public, unless within such time as may be prescribed—
(a) the applicant shows to the satisfaction of the Controller that there are reasonable grounds for contesting the validity of the said claim of the other patent; or
(b)the complete specification is amended to the satisfaction of the Controller.
(2) Where, after a reference to another patent has been inserted in a complete specification in pursuance of a direction under sub-section (1)—
(a) that other patent is revoked or otherwise ceases to be in force; or
(b) the specification of that other patent is amended by the deletion of the relevant claim; or
(c) it is found, in proceedings before the court or the Controller, that the relevant claim of that other patent is invalid or is not infringed by any working of the applicant's invention,
the Controller may, on the application of the applicant, delete the reference to that other patent.
*"*under this Act*" *replaces earlier wording "by the foregoing provisions of this Act or of proceedings under section 25"(w.e.f. 1-1-2005)*

Explanation:
Section 19 safeguards the interests of existing patent holders by ensuring that newly granted patents do not obscure potential overlaps. If such an overlap is identified, the Controller may direct that a reference to the earlier patent be added in the new specification as a notice to the public.

But if the overlap issue disappears later, that reference can also be removed. For example, if an applicant files a patent for a new drug delivery system and during examination the Controller finds that the main mechanism of this invention is already covered by an earlier granted Indian patent, then working the new invention may result in infringement of that earlier patent. In such a situation, the Controller may direct the applicant to insert a reference to the earlier Indian patent in the complete specification. This serves as a public notice in the patent record.

The applicant can avoid this requirement if he/she demonstrates to the satisfaction of the Controller that the other patent's claim is invalid, or amends the specification by narrowing the scope of claims so that no overlap remains. Furthermore, the law allows deletion of such a reference later if:

- The earlier patent is revoked (through opposition, revocation proceedings or non-payment of renewal fees),
- The overlapping claim is deleted through amendment, or
- It is held by the Controller or a Court that the earlier patent's claim is invalid or is not infringed by the present invention.

20

Powers of Controller to make orders regarding substitution of applicants, etc:

(1) If the Controller is satisfied, on a claim made in the prescribed manner at any time before a patent has been granted, that by virtue of any assignment or agreement in writing made by the applicant or one of the applicants for the patent or by operation of law, the claimant would, if the patent were then granted, be entitled thereto or to the interest of the applicant therein, or to an undivided share of the patent or of that interest, the Controller may, subject to the provisions of this section, direct that the application shall proceed in the name of the claimant or in the names of the claimants and the applicant or the other joint applicant or applicants, accordingly as the case may require.

(2) No such direction as aforesaid shall be given by virtue of any assignment or agreement made by one of two or more joint applicants for a patent except with the consent of the other joint applicant or applicants.

(3) No such direction as aforesaid shall be given by virtue of any assignment or agreement for the assignment of the benefit of an invention unless—

(a) the invention is identified therein by reference to the number of the application for the patent; or

(b) there is produced to the Controller an acknowledgement by the person by whom the assignment or agreement was made that the assignment or agreement relates to the invention in respect of which that application is made; or

(c) the rights of the claimant in respect of the invention have been finally established by the decision of a court; or

(d) the Controller gives directions for enabling the application to proceed or for regulating the manner in which it should be proceeded with under sub-section (5).

(4)Where one of two or more joint applicants for a patent dies at any time before the patent has been granted, the Controller may, upon a request in that behalf made by the survivor or survivors, and with the consent of the legal representative of the deceased, direct that the application shall proceed in the name of the survivor or survivors alone.

(5)If any dispute arises between joint applicants for a patent whether or in what manner the application should be proceeded with, the Controller may, upon application made to him in the prescribed manner by any of the parties, and after giving to all parties concerned an opportunity to be heard, give such directions as he thinks fit for enabling the application to proceed in the name of one or more of the parties alone or for regulating the manner in which it should be proceeded with, or for both those purposes, as the case may require.

Explanation:
Section 20 gives the Controller power to decide right applicant(s) before a patent is granted.
1. If a patent hasn't been granted yet and someone else proves they have a legal right (through an agreement, assignment or by law), the Controller can allow the patent application to continue in that new person's name (either alone or jointly).
2. If there are two or more applicants, one applicant cannot just transfer their rights to someone else without the consent of the other joint applicants.
3. To recognize such a transfer, the Controller needs clear proof. This can be in the assignment/agreement specifically mentions the application number, OR the original applicant acknowledges that the agreement relates to this invention, OR a court order establishes the claimant's rights, OR the Controller himself gives directions to allow the application to proceed.
4. If a joint applicant dies before the patent is granted, the surviving applicant(s), with consent from the legal heirs of the deceased, can request the Controller to let the application proceed in their name alone.
5. If joint applicants have dispute over how to continue the application (or whether it should continue at all), any of them can ask the Controller to step in. The Controller can step in, hear all parties, and decide:

- Whether the application should proceed in the name of one or more applicants only, or
- How it should proceed (with suitable conditions)

21

Time for putting application in order for grant:

(1) An application for a patent shall be deemed to have been abandoned unless, Within such period as may be prescribed, the applicant has complied with all the requirements imposed on him by or under this Act, whether in connection with the complete specification or otherwise in relation to the application from the date on which the first statement of objections to the application or complete specification or other documents related thereto is forwarded to the applicant by the Controller.
Explanation.—Where the application for a patent or any specification or, in the case of a convention application or an application filed under the Patent Cooperation Treaty designating India any document filed as part of the application has been returned to the applicant by the Controller in the course of the proceedings, the applicant shall not be deemed to have complied with such requirements unless and until he has re-filed it or the applicant proves to the satisfaction of the Controller that for the reasons beyond his control such document could not be re-filed.
(2) If at the expiration of the period as prescribed under sub section (1),
(a) an appeal to the High Court is pending in respect of the application for the patent for the main invention; or

(b) in the case of an application for a patent of addition, an appeal to the High Court is pending in respect of either that application or the application for the main invention, the time within which the requirements of the Controller shall be complied with shall, on an application made by the applicant before the expiration of the period as prescribed under sub-section (1), be extended until such date as the High Court may determine.
(3) If the time within which the appeal mentioned in sub-section (2) may be instituted has not expired, the Controller may extend the period as prescribed under sub-section (1), to such further period as he may determine:
Provided that if an appeal has been filed during the said further period, and the High Court has granted any extension of time for complying with the requirements of the Controller, then the requirements may be complied with within the time granted by the Court.

Explanation:
Section 21 prescribes strict timelines for placing a patent application in order for grant, while permitting limited flexibility in exceptional circumstances, such as the pendency of appeals
1. When the Patent Office examines a patent application, it sends a First Examination Report (FER) indicating objections (both formal & technical objections if any) to the applicant. The applicant must comply with all requirements (reply to objections, amend specification, file missing documents, etc.) within the prescribed time (currently 6 months from FER, extendable by 3 months i.e maximum 9 months). If applicant does not comply with the requirements the patent application is deemed abandoned. For example, if the Controller returns a document for correction (e.g., defective drawings/specification), the applicant must re-file it properly. Only then an applicant will be considered compliant.
2. The applicant has the legal right to appeal Controller's refusal in the High Court within the prescribed time (i.e. 3 months from the date of refusal order). If patent application is under appeal before the High Court (e.g., challenging Controller's refusal), the deadline to comply with requirements for patent application can be extended. The High Court decides how much extra time can be given to applicant.
3. If the time limit for filing an appeal is still open, the Controller may grant the applicant extra time to keep the patent application active until it is clear whether an appeal will be filed. If, during this extra time, the applicant files an appeal and the High Court grants a further extension, the applicant may comply within the time fixed by the Court.

22

Acceptance of complete specification.- [Omitted by the Patents (Amendment) Act, 2005]

23

Advertisement of acceptance of complete specification.- [Omitted by the Patents (Amendment) Act, 2005

24

Effect of acceptance of complete specification.- [Omitted by the Patents (Amendment) Act, 2005

Chapter 4A (Omitted)

EXCLUSIVE MARKETING RIGHTS

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Chapter 5
OPPOSITION PROCEEDINGS TO GRANT OF PATENTS

25

Opposition to the patent:

(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—

(a) that the applicant for the patent 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;

(b) that the invention so far as claimed in any claim of the complete specification has been published before the priority date of the claim—

(i) in any specification filed in pursuance of an application for a patent made in India on or after the 1st day of January, 1912; or

(ii) in India or elsewhere, in any other document:

Provided that the ground specified in sub-clause (ii) shall not be available where such publication does not constitute an anticipation of the invention by virtue of sub-section (2) or subsection (3) of section 29;

(c) that the invention so far as claimed in any claim of the complete specification is claimed in a claim of a complete specification published on or after priority date of the applicant's claim and filed in pursuance of an application for a patent in India, being a claim of which the priority date is earlier than that of the applicant's claim;

(d) that the invention so far as claimed in any claim of the complete specification was publicly known or publicly used in India before the priority date of that claim.

Explanation.—For the purposes of this clause, an invention relating to a process for which a patent is claimed shall be deemed to have been publicly known or publicly used in India before the priority date of the claim if a product made by that process had already been imported into India before that date except where such importation has been for the purpose of reasonable trial or experiment only;

(e) that the invention so far as claimed in any claim of the complete specification is obvious and clearly does not involve any inventive step, having regard to the matter published as mentioned in clause (b) or having regard to what was used in India before the priority date of the applicant's claim;

(f) that the subject of any claim of the complete specification is not an invention within the meaning of this Act, or is not patentable under this Act;

(g) that the complete specification does not sufficiently and clearly describe the invention or the method by which it is to be performed;

(h) 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;

(i) that in the case of a convention application, the application was not made within twelve months from the date of the first application for protection for the invention made in a convention country by the applicant or a person from whom he derives title;

(j) that the complete specification does not disclose or wrongly mentions the source or geographical origin of biological material used for the invention;
(k) 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,
but on no other ground, and the Controller shall, if requested by such person for being heard, hear him and dispose of such representation in such manner and within such period as may be prescribed.
(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:—
(a) 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;
(b) that the invention so far as claimed in any claim of the complete specification has been published before the priority date of the claim—
(i) in any specification filed in pursuance of an application for a patent made in India on or after the 1st day of January, 1912; or
(ii) in India or elsewhere, in any other document:Provided that the ground specified in sub-clause (ii) shall not be available where such publication does not constitute an anticipation of the invention by virtue of sub-section (2) or sub-section (3) of section 29;
(c) that the invention so far as claimed in any claim of the complete specification is claimed in a claim of a complete specification published on or after the priority date of the claim of the patentee and filed in pursuance of an application for a patent in India, being a claim of which the priority date is earlier than that of the claim of the patentee;
(d) that the invention so far as claimed in any claim of the complete specification was publicly known or publicly used in India before the priority date of that claim.
Explanation.—For the purposes of this clause, an invention relating to a process for which a patent is granted shall be deemed to have been publicly known or publicly used in India before the priority date of the claim if a product made by that process had already been imported into India before that date except where such importation has been for the purpose of reasonable trial or experiment only;
(e) that the invention so far as claimed in any claim of the complete specification is obvious and clearly does not involve any inventive step, having regard to the matter published as mentioned in clause (b) or having regard to what was used in India before the priority date of the claim;
(f) that the subject of any claim of the complete specification is not an invention within the meaning of this Act, or is not patentable under this Act;
(g) that the complete specification does not sufficiently and clearly describe the invention or the method by which it is to be performed;
(h) that the patentee 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;
(i) that in the case of a patent granted on a convention application, the application for patent was not made within twelve months from the date of the first application for protection for the invention made in a convention country or in India by the patentee or a person from whom he derives title;
(j) that the complete specification does not disclose or wrongly mentions the source and geographical origin of biological material used for the invention;

(k) that the invention so far as claimed in any claim of the complete specification was anticipated having regard to the knowledge, oral or otherwise, available within any local or indigenous community in India or elsewhere, but on no other ground.
(3) (a) Where any such notice of opposition is duly given under sub- section (2), the Controller shall notify the patentee.
(b) On receipt of such notice of opposition, the Controller shall, by order in writing, constitute a Board to be known as the Opposition Board consisting of such officers as he may determine and refer such notice of opposition along with the documents to that Board for examination and submission of its recommendations to the Controller.
(c) Every Opposition Board constituted under clause (b) shall conduct the examination in accordance with such procedure as may be prescribed.
(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) While passing an order under sub-section (4) in respect of the ground mentioned in clause (d) or clause (e) of sub-section (2), the Controller shall not take into account any personal document or secret trial or secret use.
(6) In case the Controller issues an order under sub-section (4) that the patent shall be maintained subject to amendment of the specification or any other document, the patent shall stand amended accordingly.

Explanation:
Section 25 provides for opposition to patents, allowing people to oppose a patent, either before it is granted or after grant, if it does not meet the legal requirements under the Patent Act.

Particulars	Pre-Grant Opposition	Post-Grant Opposition
Who can file	Any person (not limited to competitors)	Any "person interested" (e.g., competitors, stakeholders)
When	After publication of application but before grant	After grant, within 1 year from grant publication
Grounds of opposition	Ground of opposition: • Applicant stole the invention (wrongful obtaining). • Invention was already published in India or abroad. • Invention was already known/used publicly in India. • Invention is obvious, lacks inventive step. • Not patentable under law (e.g., excluded subject matter). • Specification not clear or complete.	Section 25(2) : same grounds as pre-grant

Particulars	Pre-Grant Opposition	Post-Grant Opposition
Procedure	• Representation in writing. • Controller examines representation, may seek applicant's reply. • Controller directly examines grounds and replies. • Controller may hear both sides before decision.	• Notice of opposition in prescribed form. • Notifies patentee and constitutes Opposition Board • Opposition Board reviews and submits recommendations. • Controller hears both sides after Board's report. • Patent may be maintained, amended or revoked.
Fee (as per amended 2024 Rules)	₹4,000 (Natural Person/Startup/Small Entity) / ₹20,000 (Others)	₹2,400 (Natural Person/Startup/Small Entity) / ₹12,000 (Others)
Outcome	Controller may refuse, amend, or grant the application	Controller may maintain, amend, or revoke the patent

NOTE: *EARLIER, FILING A PRE-GRANT OPPOSITION DID NOT REQUIRE ANY FEE, WHICH RESULTED IN NUMEROUS FRIVOLOUS OR REPETITIVE FILINGS THAT SLOWED DOWN THE PATENT EXAMINATION PROCESS. TO CURB SUCH MISUSE AND ENCOURAGE ONLY GENUINE, WELL-FOUNDED OPPOSITIONS, THE 2024 AMENDMENT INTRODUCED A FEE FOR PRE-GRANT OPPOSITION.*

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In cases of "obtaining" Controller may treat the patent as the patent of opponent:

(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 from the opponent in the manner set out in clause (a) of sub-section (2) of section 25 and revokes the patent on that ground, he may, on request by such opponent made in the prescribed manner, direct that the patent shall stand amended in the name of the opponent;

(b) a part of an invention described in the complete specification was so obtained from the opponent, he may pass an order requiring that the specification be amended by the exclusion of that part of the invention.

(2) Where an opponent has, before the date of the order of the Controller requiring the amendment of a complete specification referred to in clause (b) of sub-section (1), filed an application for a patent for an invention which includes the whole or a part of the invention held to have been obtained from him and such application is pending, the Controller may treat such application and specification in so far as they relate to the invention held to have been obtained from him, as having been filed, for the purposes of this Act relating to the priority dates of claims of the complete specification, on the date on which the corresponding document was or was deemed to have been filed by the patentee in the earlier application but for all other purposes the application of the opponent shall be proceeded with as an application for a patent under this Act.

Explanation:
Section 26 protects the true inventor. It deals with cases where the Controller finds that a granted patent (or part of it) was wrongly obtained from the opponent (for example, stolen idea or misappropriated invention).
If the Controller finds that the entire invention has been wrongfully obtained from the opponent, he may revoke the patent and, on the opponent's request, transfer the patent in the opponent's name.
Where only a part of the invention has been obtained, the Controller can direct amendment of the patent specification to exclude that part.
Further, if the opponent has already filed his own patent application for the same invention before the Controller's order, the Controller may adjust the filing or priority dates to safeguard the opponent's rights, ensuring that the true inventor does not lose recognition.

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Refusal to patent without opposition [Omitted by the Patents (Amendment) Act, 2005]

28

Mention of inventor as such in patent:

(1) If the Controller is satisfied, upon a request or claim made in accordance with the provisions of this section,
(a) that the person in respect of or by whom the request or claim is made is the inventor of an invention in respect of which application for a patent has been made, or of a substantial part of that invention; and
(b) that the application for the patent is a direct consequence of his being the inventor, the Controller shall, subject to the provisions of this section, cause him to be mentioned as inventor in any patent granted in pursuance of the application in the complete specification and in the register of patents: Provided that the mention of any person as inventor under this section shall not confer or derogate from any rights under the patent.
(2) A request that any person shall be mentioned as aforesaid may be made in the prescribed manner by the applicant for the patent or (where the person alleged to be the inventor is not the applicant or one of the applicants) by the applicant and that person.
(3) If any person other than a person in respect of whom a request in relation to the application in question has been made under sub-section (2) desires to be mentioned as aforesaid, he may make a claim in the prescribed manner in that behalf.

(4) A request or claim under the foregoing provisions of this section shall be made before the grant of patent.
(5) [Omitted by the Patents (Amendment) Act, 2005]
(6) Where a claim is made under sub-section (3), the Controller shall give notice of the claim to every applicant for the patent (not being the claimant) and to any other person whom the Controller may consider to be interested; and before deciding upon any request or claim made under sub-section (2), or subsection (3), the Controller shall, if required, hear the person in respect of or by whom the request or claim is made, and, in the case of a claim under sub-section (3), any person to whom notice of the claim has been given as aforesaid.
(7) Where any person has been mentioned as inventor in pursuance of this section, any other person who alleges that he ought not to have been so mentioned may at any time apply to the Controller for a certificate to that effect, and the Controller may, after hearing, if required, any person whom he may consider to be interested, issue such a certificate, and if he does so, he shall rectify the specification and the register accordingly.

Explanation:
Section 28 gives credit to the actual inventor in patent records, but this credit is honorary and does not affect patent ownership. This section ensures that the true inventor of an invention is properly acknowledged in the patent documents. If the Controller is satisfied that a person is indeed the inventor (of the whole or substantial part of the invention), and the application is a direct result of his work, the inventor's name must be mentioned in the complete specification and the patent register. However, this mention is only recognition and does not give the inventor ownership or rights over the patent.

A request to mention the inventor can be made either by the applicant himself or jointly with the inventor, before the grant of the patent. If someone else claims to be the inventor, he may also file such a claim, in which case the Controller gives notice to the applicant and other concerned parties and decides the matter after hearing them if needed.

Even after a person's name has been included as inventor, if anyone later believes that the mention was wrong, they can apply to the Controller for correction. If satisfied, the Controller may issue a certificate and amend the register and the specification accordingly.

Chapter 6

ANTICIPATION

29

Anticipation by previous publication:

(1) An invention claimed in a complete specification shall not be deemed to have been anticipated by reason only that the invention was published in a specification filed in pursuance of an application for a patent made in India and dated before the 1st day of January, 1912.

(2) Subject as hereinafter provided, an invention claimed in a complete specification shall not be deemed to have been anticipated by reason only that the invention was published before the priority date of the relevant claim of the specification, if the patentee or the applicant for the patent proves:

(a) that the matter published was obtained from him, or (where he is not himself the true and first inventor) from any person from whom he derives title, and was published without his consent or the consent of any such person; and

(b) where the patentee or the applicant for the patent or any person from whom he derives title learned of the publication before the date of the application for the patent, or, in the case of a convention application, before the date of the application for protection in a convention country, that the application or the application in the convention country, as the case may be, was made as soon as reasonably practicable thereafter:

Provided that this sub-section shall not apply if the invention was before the priority date of the claim commercially worked in India, otherwise than for the purpose of reasonable trial, either by the patentee or the applicant for the patent or any person from whom he derives title or by any other person with the consent of the patentee or the applicant for the patent or any person from whom he derives title.

(3) Where a complete specification is filed in pursuance of an application for a patent made by a person being the true and first inventor or deriving title from him, an invention claimed in that specification shall not be deemed to have been anticipated by reason only of any other application for a patent in respect of the same invention made in contravention of the rights of that person, or by reason only that after the date of filing of that other application the invention was used or published, without the consent of that person, by the applicant in respect of that other application, or by any other person in consequence of any disclosure of any invention by that applicant.

Explanation:

India follows the principle of absolute novelty, meaning any disclosure anywhere in the world before the priority date destroys novelty. However section 29 provides exceptions to the general rule of absolute novelty under the Patent Act. Normally, any publication before the priority date destroys novelty, but this section protects inventors in certain situations mentioned as under;

Old Indian filings before 1912: Patent applications filed in India before 1 January 1912 are not treated as prior art. Because the Indian Patents and Designs Act, 1911 came into effect only from 1 January 1912. Patent filings before this date were under a different regime, and Parliament excluded them to avoid unfair invalidation of later patents. In practice, this clause is only of historical significance today, as those applications are more than a century old.

Wrongful publication without consent: If someone else publishes the invention without the inventor's consent, such publication will not count as anticipation, provided the inventor files his application as soon as reasonably practicable thereafter. However, this protection is lost if the invention was commercially worked in India before the filing date.

Contravention of inventor's rights: If another person files a patent application without the true inventor's authority (i.e., in contravention of rights), that filing or any disclosure by such unauthorized applicant will not be treated as prior art against the true inventor.

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Anticipation by previous communication to Government:

An invention claimed in a complete specification shall not be deemed to have been anticipated by reason only of the communication of the invention to the Government or to any person authorized by the Government to investigate the invention or its merits, or of anything done, in consequence of such a communication, for the purpose of the investigation.

Explanation:

This section provides a specific safeguard for inventors when they share their invention with the Government. The inventor's rights remain intact, provided the disclosure was only for this limited official purpose.

If an inventor communicates his/her invention to the Government, or to a person authorized by the Government (for example, an expert committee or a research body) for the purpose of investigating the invention or assessing its merits, such communication will not destroy the novelty of the invention.

Similarly, if any work, testing, or action is done as a consequence of this communication (e.g., government laboratory trials, evaluation reports or technical assessments), it also does not count as prior publication or use.

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Anticipation by public display, etc:

An invention claimed in a complete specification shall not be deemed to have been anticipated by reason only of:

(a) the display of the invention 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 this section have been extended by the Central Government by notification in the Official Gazette, or the use thereof with his consent for the purpose of such an exhibition in the place where it is held; or

(b) the publication of any description of the invention in consequence of the display or use of the invention at any such exhibition as aforesaid; or
(c) the use of the invention, after it has been displayed or used at any such exhibition as aforesaid and during the period of the exhibition, by any person without the consent of the true and first inventor or a person deriving title from him; or
(d) 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, if the application for the patent is made by the true and first inventor or a person deriving title from him not later than twelve months after the opening of the exhibition or the reading or publication of the paper, as the case may be.

Explanation:
Normally, if an invention is displayed, published or used publicly before the filing of a patent application, it would destroy its novelty and make the invention non patentable. However Section 31 protects inventors from losing patent rights if their invention is temporarily disclosed in good faith at government-notified exhibitions or in academic forums, provided they file the patent application within one year of such disclosure.

Display at notified exhibitions: If the invention is displayed with the consent of the true and first inventor (or his legal successor) at an industrial or other exhibition that has been officially notified by the Central Government in the Gazette. Even use of the invention at the exhibition with the inventor's consent is protected.

Publication due to exhibition display: If a description of the invention is published because it was displayed or used at such an exhibition, it does not count as anticipation.

Unauthorized use during exhibition: If someone else, without the inventor's consent, uses the invention during the exhibition, that too will not affect novelty.

Disclosure in learned society papers: If the true and first inventor presents the invention in a paper before a learned society, or the paper is published with his consent in the society's transactions, it will not amount to anticipation.

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Anticipation by public working:
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:
(a) by the patentee or applicant for the patent or any person from whom he derives title; or
(b) by any other person with the consent of the patentee or applicant for the patent or any person from whom he derives title, if the working was effected for the purpose of reasonable trial only and if it was reasonably necessary, having regard to the nature of the invention, that the working for that purpose should be effected in public.

Explanation:
Usually, if an invention is publicly worked (used or demonstrated in public) before filing a patent, it loses novelty. But Section 32 provides an exception for situations where such public working happens only for testing purposes within a limited time. An invention shall not be deemed anticipated under following conditions if;

Public working is done by the inventor or with his consent : The invention was worked publicly in India within one year before the priority date and such working was done either by the inventor/patent applicant or someone deriving title from him, or another person working with the inventor/applicant's consent.

Purpose is only for reasonable trial/testing: The working must be solely for trial or testing the invention, not for commercial exploitation.

Necessity of public working: If it was reasonably necessary to test it publicly (for example, large machines, vehicles or public infrastructure) considering the nature of the invention, then such working will not count as anticipation provided the trials were genuinely for testing purposes and not for commercial use.

33

Anticipation by use and publication after provisional Specification:

(1) Where a complete specification is filed or proceeded with in pursuance of an application which was accompanied by a provisional specification or where a complete specification filed along with an application is treated by virtue of a direction under sub-section (3) of section 9 as a provisional specification, then, notwithstanding anything contained in this Act, the Controller shall not refuse to grant the patent, and the patent shall not be revoked or invalidated, by reason only that any matter described in the provisional specification or in the specification treated as aforesaid as a provisional specification was used in India or published in India or elsewhere at any time after the date of the filing of that specification.

(2) Where a complete specification is filed in pursuance of a convention application, then, notwithstanding anything contained in this Act, the Controller shall not refuse to grant the patent and the patent shall not be revoked or invalidated, by reason only that any matter disclosed in any application for protection in a convention country upon which the convention application is rounded was used in India or published in India or elsewhere at any time after the date of that application for protection.

Explanation:

Section 33 protects an invention from loss of novelty if it is used or published after filing a provisional application in India or after filing a convention application in India claiming priority from a foreign application. Such subsequent disclosures will not be treated as anticipation.

Provisional Specification cases: If an applicant first files a provisional specification (or a complete specification treated as provisional under Sec. 9(3)) and later files the corresponding complete specification, the patent will not be refused, revoked or invalidated just because the invention described in the provisional was used in India or published anywhere after the filing date of the provisional.

Convention application cases: If a convention application is filed in India based on a first filing in a convention country, the patent cannot be refused, revoked or invalidated merely because the invention disclosed in the foreign (priority) application was used in India or published anywhere after the priority date.

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No anticipation if circumstances are only as described in sections 29, 30, 31 and 32: Notwithstanding anything contained in this Act, the Controller shall not refuse to grant a patent, and a patent shall not be revoked or invalidated by reason only of any circumstances which, by virtue of section 29 or section 30 or section 31 or section 32, do not constitute an anticipation of the invention claimed in the specification.

Explanation:
Section 34 provides that if any disclosure or use of an invention falls within the specific exceptions laid down in sections 29, 30, 31 or 32 such circumstances shall not be treated as anticipation. Accordingly, the Controller cannot refuse the grant of a patent nor can a granted patent be revoked or invalidated, merely because of those disclosures.

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Chapter 7
PROVISIONS FOR SECRECY OF CERTAIN INVENTIONS

35

Secrecy directions relating to inventions relevant for defence purposes:

(1) Where, in respect of an application made before or after the commencement of this Act for a patent, it appears to the Controller that the invention is one of a class notified to him by the Central Government as relevant for defence purposes, or, where otherwise the invention appears to him to be so relevant, he may give directions for prohibiting or restricting the publication of information with respect to the invention or the communication of such information.

(2) Where the Controller gives any such directions as are referred to in subsection (1), he shall give notice of the application and of the directions to the Central Government, and the Central Government shall, upon receipt of such notice, consider whether the publication of the invention would be prejudicial to the defence of India, and if upon such consideration, it appears to it that the publication of the invention would not so prejudice, give notice to the Controller to that effect, who shall thereupon revoke the directions and notify the applicant accordingly.

(3) Without prejudice to the provisions contained in sub-section **(1)**, where the Central Government is of opinion that an invention in respect of which the Controller has not given any directions under sub-section **(1),** is relevant for defence purposes, it may at any time before grant of patent notify the Controller to that effect, and thereupon the provisions of that sub-section shall apply as if the invention where one of the class notified by the Central Government, and accordingly the Controller shall give notice to the Central Government of the directions issued by him.

Explanation:

1. **Role of a Controller in case of inventions relevant to defence purposes :**

If a person applies for a patent and the invention seems to be relevant for defence, the Controller can order that information about the invention is to be kept secret. This means the inventor cannot publish or share details of the invention.

2. **The Government's Review:**

When the Controller issues this secrecy order, it must be informed to the Central Government by the Controller. The government then reviews the invention to see if making it public would truly harm national defence.

- If the government decides that publishing the invention is not harmful, then the invention is published.
- The Controller then cancels the secrecy order and the applicant is informed that the invention will be published.

3. **The Government's Initiative:**

The Central Government can also act on its own. Even if the Controller hasn't issued a secrecy order, the government can step in at any time before the patent is granted and tell the Controller that the invention is relevant to defence. Once this happens, the Controller must then issue a secrecy order as described above.

36

Secrecy directions to be periodically reviewed:

(1) The question whether an invention in respect of which directions have been given under section 35 continues to be relevant for defence purposes shall be reconsidered by the Central Government at intervals of six months or on a request made by the applicant which is found to be reasonable by the Controller and if, on such reconsideration it appears to the Central Government that the publication of the invention would no longer be prejudicial to the defence of India or in case of an application filed by a foreign applicant it is found that the invention is published outside India it shall forthwith give notice to the Controller to revoke the direction and the Controllers shall thereupon revoke the directions previously given by him.

(2) The result of every re-consideration under sub-section (1), shall be communicated to the applicant within such time and in such manner as may be prescribed.

Explanation:

- The Central government must review secrecy directions on a patent application related to defence purposes after every 6 months.
- The applicant can also ask for a review; if the Controller finds the request reasonable.
- If, after review, the government decides that publishing the invention is no longer harmful to India's defence or, for a foreign applicant, if the invention has already been published outside India—the government will give notice to the Controller to revoke the secrecy direction.
- The outcome of each review must be communicated to the applicant within the time and in the manner set by the rules.

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Consequences of secrecy directions:

(1) So long as any directions under section 35 are in force in respect of an application

a. The Controller shall not pass an order refusing to grant the same; and

b. Notwithstanding anything contained in this Act, no appeal shall lie from any order of the Controller passed in respect thereof: Provided that the application may, subject to the directions, proceed up to the stage of grant of the patent, but the application and the specification found to be in order for grant of the patent shall not be published, and no patent shall be granted in pursuance of that application.

(2) Where a complete specification filed in pursuance of an application for a patent for an invention in respect of which directions have been given under section 35 is found to be in order for grant of the patent during the continuance in force of the directions, then :

1. if, during the continuance in force of the directions, any use of the invention is made by or on behalf of, or to the order of the Government, the provisions of sections 100,101 and 103 shall apply in relation to that use as if the patent had been granted for the invention; and
2. if it appears to the Central Government that the applicant for the patent has suffered hardship by reason of the continuance in force of the directions, the Central Government may make to him such payment (if any) by way of solatium as appears to the Central Government to be reasonable having regard to the novelty and utility of the invention and the purpose for which it is designed, and to any other relevant circumstances.

(3) Where a patent is granted in pursuance of an application in respect of which directions have been given under section 35, no renewal fee shall be payable in respect of any period during which those directions were in force.

Explanation:
This section deals with the implications of secrecy directions issued under section 35 of the Patents Act regarding patent applications.

1. No refusal/appeal to the Patent application as long as the secrecy direction is in effect:
   - While the secrecy directions are in effect, the Controller cannot refuse to grant the patent application.
   - No appeals can be made against the Controller's orders related to these applications.
2. The application can advance towards the patent grant stage, but:
   - The application and its specifications will not be published.
   - No patent will be granted based on that application until the secrecy directions are lifted.
3. Government Use of Invention:
   - If a complete specification is found suitable for patenting while secrecy directions are in force:
   - If the government uses the invention, it will be treated as if the patent has been granted, applying specific sections of the Act relating to government use.
   - If the applicant experiences hardship due to the secrecy directions, the Central Government may provide reasonable compensation considering the invention's novelty and utility.
4. Renewal Fees: If a patent is granted based on an application under secrecy directions, no renewal fees is required for the duration of the secrecy period.

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Revocation of secrecy directions and extension of time:

When any direction given under section 35 is revoked by the Controller, then, notwithstanding any provision of this Act specifying the time within which any step should be taken or any act done in connection with an application for the patent, the Controller may, subject to such conditions, if any, as he thinks fit to impose, extend the time for doing anything required or authorised to be done by or under this Act in connection with the application whether or not that time has previously expired.

Explanation:
If the Controller cancels a previous order given under section 35, the Controller can allow for more time to take any necessary action related to a patent application. This is possible even if the original deadline has passed. Additionally, the Controller can set certain conditions for this extension.

39

Residents not to apply for patents outside India without prior permission

(1) 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 unless—

1. an application for a patent for the same invention has been made in India, not less than six weeks before the application outside India; and
2. either no direction has been given under sub-section (1) of section 35 in relation to the application in India, or all such directions have been revoked.

(2) The Controller shall dispose of every such application within such period as may be prescribed: Provided that if the invention is relevant for defence purpose or atomic energy, the Controller shall not grant permit without the prior consent of the Central Government.
(3) This section shall not apply in relation to an invention for which an application for protection has first been filed in a country outside India by a person resident outside India.

Explanation:
If you are living in India and want to apply for a patent in another country, the following rules are required to be followed:

- A written permission is required from the Controller in India before you apply for a patent filing in another country.
- The applicant must have already applied for a patent in India at least six weeks before applying in another country.
- The applicant can file a patent in another country outside India only if the Indian authorities haven't restricted the Indian patent application, or if any restrictions have been revoked.
- The Controller must make a decision on applicant's request to apply to country outside India within a specific time.
- If the invention is related to defence or atomic energy, the Controller shall not grant the permission without the prior consent of Central Government.
- This rule does not apply if someone living outside India has already filed a patent application for the invention in another country.

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Liability for contravention of section 35 or section 39 :
Without prejudice to the provisions contained in Chapter XX, if in respect of an application for a patent any person contravenes any direction as to secrecy given by the Controller under section 35 or makes or causes to be made an application for grant of a patent outside India in contravention of section 39, the following consequences shall ensue:

1. the application for patent under this Act shall be deemed to have been abandoned; and
2. the patent granted, if any, shall be liable to be revoked under section 64.

Explanation:
In simpler terms, if any person does not follow the rules about keeping certain patent information secret as required by the Controller under section 35, or if someone applies for a patent in another country without following the rules of section 39, then:

1. The patent application in India will be abandoned; and
2. If a patent has been granted, it shall be revoked under the rules of section 64.

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Finality of orders of Controller and Central Government:
All orders of the Controller giving directions as to secrecy as well as all orders of the Central Government under this Chapter shall be final and shall not be called in question in any court on any ground whatsoever.

Explanation:
Decisions made by the Controller about keeping patent information secret, and any decisions made by the Central Government related to this section of the law, are final. Moreover, these decisions cannot be challenged or questioned in court for any reason.

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Savings respecting disclosure to Government:

Nothing in this Act shall be held to prevent the disclosure by the Controller of information concerning an application for a patent or a specification filed in pursuance thereof to the Central Government for the purpose of the application or specification being examined for considering whether an order under this Chapter should be made or whether an order so made should be revoked.

Explanation:

The law does not stop or prevent the Controller from sharing details about a patent application or its related documents with the Central Government. This sharing is allowed so that the government can check if they need to issue an order related to that patent, or if the Central Government should cancel an order, which they've already made.

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Chapter 8

GRANT OF PATENTS AND RIGHTS CONFERRED THEREBY

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Grant of patents

(1) Where an application for a patent has been found to be in order for grant of the patent and either

1. the application has not been refused by the Controller by virtue of any power vested in him by this Act; or
2. the application has not been found to be in contravention of any of the provisions of this Act, the patent shall be granted as expeditiously as possible to the applicant or, in the case of a joint application, to the applicants jointly, with the seal of the patent office and the date on which the patent is granted shall be entered in the register.

(2) On the grant of patent, the Controller shall publish the fact that the patent has been granted and thereupon the application, specification and other documents related thereto shall be open for public inspection.

Explanation:

If a patent application is ready for approval, and it has not been:

- Rejected by the Controller or
- The application is in accordance with the patent act and rules,

then the patent will be issued as quickly as possible to the person who filed, or to all the people who applied together if the patent application is applied by a team. The patent will have the official stamp from the patent office, and the date it was issued will be recorded.

After the patent is approved/given(includes publication, examination), the Controller will announce that the patent has been granted. After this announcement, the application, the detailed description of the invention (specification), and other related documents will be open for the public inspection.

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Amendment of patent granted to deceased applicant

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.

Explanation:

If the person (or company) who was given a patent had actually passed away or no longer existed before the patent was officially granted, and the Controller is satisfied that the patent should have been granted to the deceased legal heir, then, as per Section 44 of The Patents Act, 1970, the Controller can amend the patent by substituting the original applicant name with legal heir name. Once this change is made, it's as if the patent was always in the name of the substituted applicant from the beginning.

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Date of patent

(1) Subject to the other provisions contained in this Act, every patent shall be dated as of the date on which the application for patent was filed.
(2) The date of every patent shall be entered in the register.
(3) Notwithstanding anything contained in this section, no suit or other proceeding shall be commenced or prosecuted in respect of an infringement committed before the date of publication of the application.

Explanation:

- The official date on a patent will be the same as the date when the patent application was submitted.
- The official date of the patent must be recorded in the official records.
- A legal action for someone using your invention without permission cannot be taken before the patent application is made public.

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Form, extent and effect of patent

(1) Every patent shall be in the prescribed form and shall have effect throughout India.
(2) A patent shall be granted for one invention only: Provided that it shall not be competent for any person in a suit or other proceeding to take any objection to a patent on the ground that it has been granted for more than one invention.

Explanation:

- According to section 46(1) of The Patents Act, 1970, once granted, the patent would be effective throughout the entire country of India
- A patent is given for just one idea or invention. However, nobody could challenge the validity of patent on the grounds that it covers more than one invention.

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Grant of patents to be subject to certain conditions

(The grant of a patent under this Act shall be subject to the condition that:
(1) any machine, apparatus or other article in respect of which the patent is granted or any article made by using a process in respect of which the patent is granted, may be imported or made by or on behalf of the Government for the purpose merely of its own use;
(2) any process in respect of which the patent is granted may be used by or on behalf of the Government for the purpose merely of its own use;

(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; and

(4) in the case of a patent in respect of any medicine or drug, the medicine or drug may be imported by the Government for the purpose merely of its own use or for distribution in any dispensary, hospital or other medical institution maintained by or on behalf of the Government or any other dispensary, hospital or other medical institution which the Central Government may, having regard to the public service that such dispensary, hospital or medical institution renders, specify in this behalf by notification in the Official Gazette.

Explanation:

- The Government, for its own use, can import or manufacture the patented apparatus/device/article without infringing applicants rights.
- The Government can also use the process of making the device for its own use.
- Any person can make or use the device/apparatus, or use the process of making it, for the purpose of experiment or research. For instance, a university can use this device in their laboratory for teaching or research purposes without infringing the patent.
- If the invention was a medicine or drug, the Government could import it for its own use or for distribution in any government hospital or any other specified medical institution. For example, the Government might import this drug to distribute it in a government hospital during an epidemic.

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Rights of patentees

Subject to the other provisions contained in this Act and the conditions specified in section 47, a patent granted under this Act shall confer upon the patentee:

(a) where the subject matter of the patent is a product, the exclusive right to prevent third parties, who do not have his consent, from the act of making, using, offering for sale, selling or importing for those purposes that product in India;

(b) where the subject matter of the patent is a process, the exclusive right to prevent third parties, who do not have his consent, from the act of using that process, and from the act of using, offering for sale, selling or importing for those purposes the product obtained directly by that process in India.

Explanation:

- According to Section 48(a) of the Act, the applicant has the exclusive right to prevent any third party from making, using, selling or importing his product in India without his consent
- According to Section 48(b) of the Act, the applicant has the exclusive right to prevent any third party from using his patented process or from selling or importing any product that is directly obtained from this process, without his consent.

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Patent rights not infringed when used on foreign vessels etc., temporarily or accidentally in India

(1) Where a vessel or aircraft registered in a foreign country or a land vehicle owned by a person ordinarily resident in such country comes into India (including the territorial waters thereof) temporarily or accidentally only, the rights conferred by a patent for an invention shall not be deemed to be infringed by the use of the invention:

1. in the body of the vessel or in the machinery, tackle, apparatus or other accessories thereof, so far as the invention is used on board the vessel and for its actual needs only; or
2. in the construction or working of the aircraft or land vehicle or of the accessories thereof, as the case may be.

(2) This section shall not extend to vessels, aircrafts or land vehicles owned by persons ordinarily resident in a foreign country the laws of which do not confer corresponding rights with respect to the use of inventions in vessels, aircraft or land vehicles owned by persons ordinarily resident in India while in the ports or within the territorial waters of that foreign country or otherwise within the jurisdiction of its courts.

Explanation:

1. **Safe use for temporary entry**: If a foreign ship, airplane or vehicle comes into India temporarily or accidentally, using a patented invention inside or as part of that vehicle won't count as patent infringement. Examples:

- A patented navigation system installed in a foreign ship.
- A patented engine part in a foreign aircraft.
- A patented braking system in a truck.

The condition is that the use is limited to the immediate needs of the ship/aircraft/vehicle (not for commercial exploitation in India).

2. **Reciprocity condition :** This exemption only applies if the foreign country offers the same privilege to Indian vehicles entering their territory.

If the foreign country doesn't allow Indian ships, planes, or vehicles to use patented inventions in the same way, then India won't extend this exemption to theirs.

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Rights of co-owners of patents

(1) 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.

(2) Subject to the provisions contained in this section and in section 51, where two or more persons are registered as grantee or proprietor of a patent, then, unless an agreement to the contrary is in force, each of those persons shall be entitled, by himself or his agents, to rights conferred by section 48 for his own benefit without accounting to the other person or persons.

(3) Subject to the provisions contained in this section and in section 51 and to any agreement for the time being in force, where two or more persons are registered as grantee or proprietor of a patent, then, a licence under the patent shall not be granted and share in the patent shall not be assigned by one of such persons except with the consent of the other person or persons.

(4) Where a patented article is sold by one of two or more persons registered as grantee or proprietor of a patent, the purchaser and any person claiming through him shall be entitled to deal with the article in the same manner as if the article had been sold by a sole patentee.

(5) Subject to the provisions contained in this section, the rules of law applicable to the ownership and devolution of movable property generally shall apply in relation to patents; and nothing contained in sub-section (1) or subsection (2) shall affect the mutual rights or obligations of trustees or of the legal representatives of a deceased person or their rights or obligations as such.

(6) Nothing in this section shall affect the rights of the assignees of a partial interest in a patent created before the commencement of this Act.

Explanation:

1. Equal ownership: If a patent has more than one owner, they all own it equally unless there is an agreement saying otherwise.
2. Unless there's an agreement saying otherwise, if multiple people are registered as the patent's owners, each can use the patent for their own benefit, without involving the others.
3. Licensing or selling needs mutual consent: A co-owner cannot grant licenses to third parties or sell/transfer their share without the consent of the other co-owners (unless there's an agreement or law allowing it). This ensures no co-owner bypasses the others for commercial exploitation.
4. Sale of patented products: If one co-owner sells a patented product, the buyer gets full rights to use that product, just like if it were sold by the patent owner directly.
5. Patents are treated like property, so the usual rules of property ownership, inheritance and trust management also apply.
6. If someone already had rights in a patent before this section came into effect, their rights are protected and not altered by this law.

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Power of Controller to give directions to co-owners

(1) Where two or more persons are registered as grantee or proprietor of a patent, the Controller may, upon application made to him in the prescribed manner by any of those persons, give such directions in accordance with the application as to the sale or lease of the patent or any interest therein, the grant of licenses under the patent, or the exercise of any right under section 50 in relation thereto, as he thinks fit.

(2) If any person registered as grantee or proprietor of a patent fails to execute any instrument or to do any other thing required for the carrying out of any direction given under this section within fourteen days after being requested in writing so to do by any of the other persons so registered, the Controller may, upon application made to him in the prescribed manner by any such other person, give directions empowering any person to execute that instrument or to do that thing in the name and on behalf of the person in default.

(3) Before giving any directions in pursuance of an application under this section, the Controller shall give an opportunity to be heard:

1. in the case of an application under sub-section (1) to the other person or persons registered as grantee or proprietor of the patent;

2. In the case of an application under sub-section (2), to the person in default.

(4) No direction shall be given under this section so as to affect the mutual rights or obligations of trustees or of the legal representatives of a deceased person or of their rights or obligations as such, or which is inconsistent with the terms of any agreement between persons registered as grantee or proprietor of the patent.

Explanation:

1. When a patent is owned by two or more people, any of them can ask the Controller to make decisions about selling or renting the patent, giving permission to others to use it (licensing), or managing any related rights. The Controller will make the decision based on the request.
2. If one of the co-owners doesn't follow through with actions needed to carry out the Controller's decisions, such as signing documents, within two weeks of being asked, another co-owner can ask the Controller to let someone else do it on behalf of the non-compliant co-owner.
3. The Controller must give a chance to the other co-owners or the non-compliant person to present their side before making any decisions based on these requests.
4. However, the Controller's decisions can't interfere with the rights and responsibilities between trustees, legal representatives of someone who has passed away, or go against any agreements made between the co-owners of the patent.

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Grant of patent to true and first inventor where it has been obtained by another in fraud of him

(1) Where the patent has been revoked under section 64 on the ground that the patent was obtained wrongfully and in contravention of the rights of the petitioner or any person under or through whom he claims, or, where in a petition for revocation, the Appellate Board or court, instead of revoking the patent, directs the complete specification to be amended by the exclusion of a claim or claims in consequence of a finding that the invention covered by such claim or claims had been obtained from the petitioner, the Appellate Board or court may, by order passed in the same proceeding, permit the grant to the petitioner of the whole or such part of the invention which the Appellate Board or court finds has been wrongfully obtained by the patentee, in lieu of the patent so revoked or is excluded by amendment.

(2) Where any such order is passed, the Controller shall, on request by the petitioner made in the prescribed manner grant to him—

(i) in cases where the Appellate Board or court permits the whole of the patent to be granted, a new patent bearing the same date and number as the patent revoked;

(ii) in cases where the Appellate Board or court permits a part only of the patent to be granted, a new patent for such part bearing the same date as the patent revoked and numbered in such manner as may be prescribed:

Provided that the Controller may, as a condition of such grant, require the petitioner to file a new and complete specification to the satisfaction of the Controller describing and claiming that part of the invention for which the patent is to be granted.

(4) No suit shall be brought for any infringement of a patent granted under this section committed before the actual date on which such patent was granted

Explanation:

1. A patent is revoked when :

- It is found to be wrongfully obtained or if it infringes someone else's rights (for example, it was applied by someone who wasn't the true inventor or rightful claimant), the court can revoke it.
- At the same time, the court can allow the wronged party (the true inventor or rightful claimant) to be granted a new patent — either for the whole invention or just the part wrongly claimed.

2. Conditions for re-grant :

- If the entire patent is transferred, the new patent will have the same date and same number as the revoked one.
- If only part of the patent is transferred, the new patent will have the same date as the revoked one, but it will be given a different number as per patent rules.
- The patent office may ask the new applicant to submit a fresh specification (detailed description) of the invention/part they are entitled to.

3. Rights before re-grant :

- The new patent holder cannot sue for past infringements.

In other words, they only get rights from the date of re-grant onwards, not for any unauthorized use that happened earlier.

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Term of patent

(1) Subject to the provisions of this Act, the term of every patent granted, after the commencement of the Patents (Amendment) Act, 2002, and the term of every patent which has not expired and has not ceased to have effect, on the date of such commencement, under this Act, shall be twenty years from the date of filing of the application for the patent.

Explanation: For the purposes of this sub-section, the term of patent in case of International applications filed under the Patent Cooperation Treaty designating India, shall be twenty years from the international filing date accorded under the Patent Cooperation Treaty.

(2) A patent shall cease to have effect notwithstanding anything therein or in this Act on the expiration of the period prescribed for the payment of any renewal fee, if that fee is not paid within the prescribed period or within such extended period as may be prescribed.

(3) [Omitted by the Patents (Amendment) Act, 2005]

(4) Notwithstanding anything contained in any other law for the time being in force, on cessation of the patent right due to non-payment of renewal fee or on expiry of the term of patent, the subject matter covered by the said patent shall not be entitled to any protection.

Explanation:

Duration of a Patent:

1. A patent lasts for 20 years from the date of filing of patent application.
2. For International patent filed under the Patent Cooperation Treaty designating India, the patent also lasts for 20 years, but starting from the international filing date.

Losing Patent Protection:

- If the required renewal fee is not paid for the patent on time, and if the extended deadline for payment is also missed, the patent will no longer be protected.
- Once the patent expires or is no longer protected on not paying the renewal fee, the invention is no longer legally protected and can be used freely by others.

Notes

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