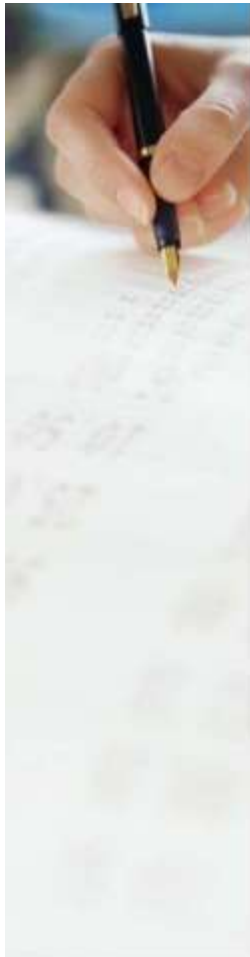




## FACULTY OF ENGINEERING & TECHNOLOGY

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## THE INDIAN PATENT ACT

- In India the grant of patents is governed by the patent Act 1970 and Rules 1972.
- The patents granted under the act are operative in the whole of India.

## HISTORY

- ❖ The Patent Law of 1856
- ❖ The Patent and Designs Act, 1911.
- ❖ The Patents Act, 1970 and Rules 1972
- ❖ The Patent amendment act 2005

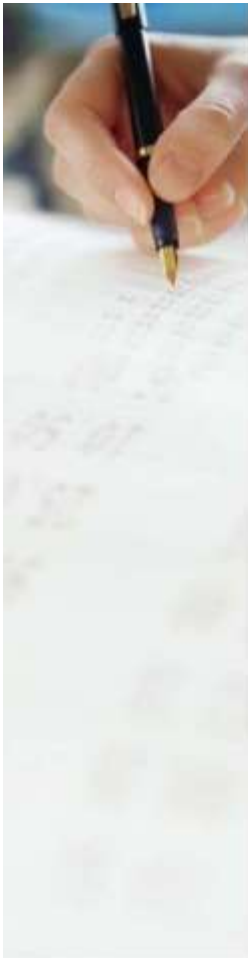
# Patent legislation

- ▶ Patents Act, 1970-Amended in 1999 , 2002 , 2005
- ▶ Patents Rules,1972,-Amended in 2003,2005 , 05-05-2006
- **From 1.1.1995**
  - ◆ Mail-Box for pharmaceutical and agrochemicals products
  - ◆ Exclusive Marketing Rights
- **From 1.1.2000**
  - ◆ Patent term increased to 20 years
  - ◆ Definition of invention – inclusion of inventive step
  - ◆ Mandatory compulsory license provision for food, drugs and chemicals removed
  - ◆ Right of patentee (importation also included)
- **From 1.1.2005**
  - ◆ Product patents for food, chemical and pharmaceutical



## What is a patent ?

- A patent is a grant from the government which confers on the guarantee for a limited period of time the exclusive privilege of making, selling and using the invention for which a patent has been granted



## Purpose of getting a patent.....

- To enjoy the exclusive rights over the invention.
- The patent is to ensure commercial returns to the inventor for the time and money spend in generating a new product.



## What can be patented?

- In order to be patentable , an invention must pass four tests;
  1. The invention must fall into one of the five “statutory classes’: Processes, Machines , Manufactures  
Compositions of matter, and New uses of any of the above
  2. The invention must be “useful”
  3. The invention must be “novel”
  4. The invention must be “nonobvious”



## Patent Law - Salient Features

- Both product and process patent provided
- Term of patent – 20 years
- Examination on request
- Both pre-grant and post-grant opposition
- Fast track mechanism for disposal of appeals
- Provision for protection of bio-diversity and traditional knowledge
- Publication of applications after 18 months with facility for early publication
- Substantially reduced time-lines



## Types Of Patents

- Three types of patent are granted under the provisions of the act, namely:

1. An Ordinary Patent

2. A Patent Of Addition

3. A Patent Of Convention

- A second type of classification of patent is:

1. Product Patent

2. Process Patent

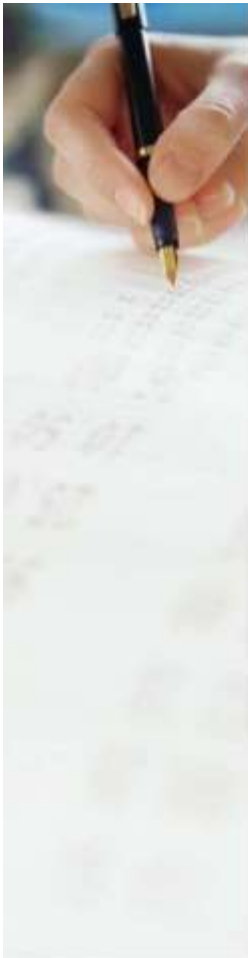




## Patentable Inventions

### Invention must

- ◆ Relates to a **process** or **product** or both
- ◆ Be new (**novel**)
- ◆ Involves an **inventive step**
- ◆ Be capable of **industrial application**
- ◆ Not fall under **section 3 and 4**



**“NEW” MEANS.....**

**Invention must not be**

- Published in India or elsewhere
- In prior public knowledge or prior public use with in India
- Claimed before in any specification in India



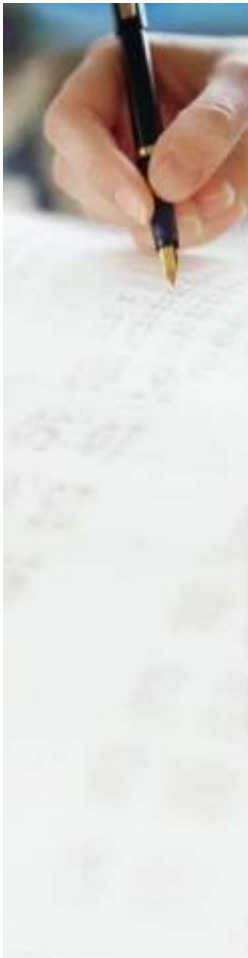
## Inventive step means...

A **feature of an invention** that

- Involves technical advance as compared to the existing knowledge..

## Industrial application means...

- Invention is capable of being made or used in any kind of industry.



## Section 3 exclusions

### **Section 3(a)**

- Inventions contrary to well established natural laws

### **Examples**

- Machine that gives more than 100% performance
- Perpetual machine



### **Section 3(b)**

**Commercial exploitation or primary use of inventions, which is**

- **Contrary to**
  - public order or
  - Morality

#### **Examples**

- Gambling machine,
- Device for house-breaking ,



### **Section 3(b)**

**Commercial exploitation or primary use of inventions , which**

➤ **Causes serious Prejudice to**

- health or
- human, animal, plant life or
- to the environment

### **Examples**

- Biological warfare material or device, weapons of mass destruction
- Terminator gene technology,
- Embryonic stem cell



## **Non Patentable Inventions**

- **Inventions falling within Section 20(1) of the Atomic Energy Act, 1962 are not patentable**

**Eg: Inventions relating to compounds of Uranium, Beryllium, Thorium, Plutonium, Radium, Graphite, Lithium and more as notified by Central Govt. from time to time.**



## **The Term Of Patent :**

- ✓ In respect of a invention claiming process of manufacture of a substance intended to be used as food or medicine ---- 5 yrs from the date of sealing or 7 yrs from the date of patent whichever is shorter.
  
- ✓ In case of any other invention ---- 14 yrs from the date of patent.





## Expiry Of A Patent

- A patent can expire in the following ways:
  1. The patent has lived its full term.
  2. The patentee has failed to pay the renewal fee.
  3. The validity of the patent has been successfully challenged by an opponent by filing an opposition either with the patent office or with the courts.
  4. As soon as the patent expires, it pass to the general public domain and now anybody can use it without the permission of the original inventor