



**FACULTY OF AGRICULTURE SCIENCES AND  
ALLIED INDUSTRIES**

**(Intellectual Property Rights)**

**For**

**B.Sc. Ag (Third Year)**



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## **Patent**

Patent is a right of a particular design or formula used for the manufacture of a given product. For example, the formula used for Chyawanprash by Dabur company with a specific constitution of ingredients can be called a patent. Similarly the electronic design of a motherboard supplied by Intel company is also a patent. Even the computer based system of Windows sold by Microsoft company is a patent. In fact, patent gives the right to produce and deploy a certain design commercially in the market. Even food products can have a patent.

It protects inventions that are novel, non-obvious with respect to the prior art and useful. The invention must be disclosed in a specified

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format in a patent specification. A granted patent has a specific 'term' (generally 20 years, in some countries it is 14 years and in some others 5/7 years under special circumstances) and must be periodically renewed upto the end of the term to retain the rights from it. If not renewed periodically as required by the statute a patent becomes public property that can be used by anyone without fear of infringement.

### **The Patents Act, 1970**

Regarding the origin and development of all intellectual property rights, including patents, England has origin and a prime place in the world history of trade marks. It has set the mould for patent rights internationally. It was the coincidence that First industrial Revolution took place in the middle of the eighteenth century. The Patents played an important role in the industrial revolution in England and subsequently in other western countries.

Before the industrial revolution, in the medieval times also, Great Britain had seedlings of patent laws. Letters Patent were issued by the King's Great Seal on the bottom granting rights, often to foreign weavers and other craftsmen, allowing them to practice their trade and overcoming guild regulations which suppressed competition. The first such letters patent were granted in 1311 to John Kempe, a Flemish weaver, who wanted to practice his trade in England, one of the earliest recorded instances of the patents.

Letters Patent were granted for inventions, for example, a patent was granted to John of Utyman in 1449 for his new method of making stained glass.

Darcy vs. Allin (1602 Co, Rep. 84b) was an example of an early patent case which involved a monopoly for the making, importation and selling of playing cards. In that case, patent was held invalid as being

inter alia, a common law monopoly. Later in Clothworkers of Ipswich Case (1614 Godboit 252), patent right was recognised.

Section 6 of The Statute of Monopolies, 1623 gave recognition to patents as an exception to the general rule against monopolies. This Section gave 14 years in which the inventor could exploit his invention to the exclusion of others.

All these patent laws were overhauled by the Patent Law Amendment Act 1852. This saw the beginnings of the Patent Office and the opening of the Patent Office Library soon followed. Between 1853 and 1857, about 1671 Patents were granted by Letters Patent in England.

In 1883 the Patents, Designs and Trade Marks Act, 1883 was enacted incorporating the provisions of the Paris Convention for the Protection of Industrial Property. 1883. In 1902, the Patents Act, 1902 was enacted. Consequently, further Acts enacted were the Patents Act, 1949, the Patents Act, 1977. The maximum term of a patent has been extended to 20 years by the Patents Act, 1977 in England.

### **Historical Overview of the Patents Law in India**

During the British reign, the then British rulers enacted the Patents Act, 1856 for India. The Act of 1856 was consolidated into the Patents and Designs Act, 1911. Thereafter there was no further development of patent laws in India, as this country was under the foreign rule. After independence, the Parliament appointed two expert Committees headed Rajagopal Iyengar and Justice Bakshi Tek Chand. These two Committees found that the foreign multinational corporations misused the patent laws of India, and they registered about 90 per cent of patents registered in India. This led a thorough debate in Parliament and outside.

## **Statement of Objects & Reasons**

While the Patents Bill, 1970 was introduced in the Parliament, the Select Committee expressed the statement of objects and reasons of the Bill as follows—

“The existing The Indian Patents and Designs Act was enacted in 1911 and since then there have been substantial changes in the political and economic conditions of the country. The need for a comprehensive law so as to ensure more effectively that patent rights are not worked to the detriment of the consumer or to the prejudice of trade or the industrial development of the country was felt as early as 1948 and in that year the Government appointed the Patents Enquiry Committee to review the working of the patents law in India. The Committee submitted its final report in 1950. The Patents Bill 1953, based largely on the United Kingdom Patents Act, 1949 and incorporating some of the recommendations of the Committee was introduced in the Lok Sabha on 7th December, 1953. The Bill, 1953 was lapsed on the dissolution of the First Lok Sabha.

In 1957, the Government of India appointed Shri Justice N. Rajagopala Ayyangar to examine afresh and review the Patents Law in India and advice the Government on the necessary changes. The Judge submitted a comprehensive Report on Patents Law Revision in September, 1959. The Patents Bill, 1965, based mainly on the recommendations contained in his detailed Report and incorporating a few more changes in .the light of further examination made particularly with reference to patents for food, drugs and medicines, was introduced in the Lok Sabha on 21st September, 1965, The Bill was framed on 25th November, 1965 to a Joint Committee of Parliament. The Joint Committee, after a careful consideration of the matter, adopted a number of amendments to the Bill. The Report of the Joint Committee with the

amended Bill, was presented to the Lok Sabha on 1st November, 1966. The Patents B\*H, 1965, as reported by the Joint Committee was formally moved in the Lok Sabha on 5th December, 1966, but could not be proceeded with for want of time and eventually lapsed with the dissolution of the Third Lok Sabha on 3rd March, 1967.

The present Bill contains comprehensive provisions to amend and consolidate the existing law and also contains amendments/recommendations by the Joint Committee referred to above. The notes on clauses explain the provisions of the Bill, wherever necessary.”

As a result, the Patents Act, 1970 has been separately enacted separating from the Patents and Designs Act, 1911. The Patents Act, 1970 has incorporated several new provisions preventing misuse of patents. This Act came into force w.e.f. 20-4-1972.

### **Scheme of the Patents Act, 1970**

This Act contains 163 Sections housed in 23 Chapters. Chapter-1 (Ss. 1&2) narrates about “Preliminary” Provisions. Chapter-II (Ss. 3-5) narrates about “Inventions not patentable”. Chapter-III (Ss. 6-11) states about “Application for Patents”. Chapter-IV (Ss. 11-A to 21) states about “Publication and Examination of Applications”. Chapter-V (Ss. 25-28) deals with “Opposition Proceedings to Grant of Patents”. Chapter-VI (Ss. 29-42) enunciates about “Anticipation”. Chapter-VII (Ss. 35-42) narrates about “Provisions for Secrecy of Certain Inventions”. Chapter-VIII (Ss. 43-53) states about “Grant of Patents and Rights Conferred thereby”. Chapter-IX (Ss. 54-56) narrates about “Patents of Addition”. Chapter-X (Ss. 57-59) states about “Amendment of Applications and Specifications”. Chapter-XI (Ss. 60-62) narrates about “Restoration of Lapsed Patents”. Chapter-XII (Ss. 63-66) narrates about “Surrender and Revocation of Patents”. Chapter-XIII (Ss. 67-72) contains the provisions

about “Register of Patents” Chapter-XIV (Ss. 73-76) states about “Patent Office and its Establishment”. Chapter-XV (Ss. 77-81) narrates about “Powers of Controller Generally”. Chapter-XVI (Ss. 82-94) states about “Working of Patents, Compulsory Licences and Revocation”. Chapter-XVII (Ss. 99-103) narrates about “Use of Inventions for purposes of Government and Acquisition of Inventions by Central Government”. Chapter-XVIII (Ss. 104-115) contains the provisions about “Suits Concerning Infringement of Patents”. Chapter-XIX (Ss. 116-117-H) narrates about “Appeals to the Appellate Board”. Chapter-XX (Ss. 118-124) contains the provisions about “Penalties”. Chapter-XXI (Ss. 125-132) contains the provisions about “Patent Agents”. Chapter-XXII (Ss. 133-139) contains the provisions about “International Arrangements”. Chapter-XXIII (Ss. 140-162) contains the provisions about “Miscellaneous”. There is only one Schedule containing the “Amendments to the Indian Patents and Designs Act, 1911”

The Central Government enacted The Patents Rules, 2003, which came into effect from 2<sup>nd</sup> May, 2003.

### **Amendments of the Patent Act, 1970 & Their Effect**

The Patent Act, 1970, consequently provided an impetus for the growth of patents in all fields, especially in the pharmaceutical industry in India. The pharmaceutical industry picked up the developing innovative processes and methods standardization including bio-equivalence studies, for process development, manufacture, and marketing of generic equivalents which were therapeutically equivalent to the innovator products. During 25 years (1975-1995), the pharmaceutical industry grew 18%, and became nearly self-sufficient in manufacture of medicines and a substantially large manufacturer and exporter of bulk drugs/active ingredients. India became net exporter of pharmaceuticals occupying the



3rd largest position in terms of volumes and 14th largest in terms of values.

India is the signatory and member-State of GATT, WTO and TRIPS. After the emergence of GATT, WTO and TRIPS. On signing of TRIPS, it became obligatory on member countries to comply with the provisions of TRIPS Agreement by making amendments to the national laws, wherever necessary. Thus the Indian Parliament brought many new Acts and amendments in the Intellectual Laws. In place of The Trade and Merchandise Act, 1958, The Trade Marks Act, 1999 has been enacted. In place of The Designs Act, 1911, The Designs Act, 2000 has been enacted. Several new provisions have been incorporated in The Copyright Act 1957. Similarly, the Indian Parliament Brouaht amendment brought amendments –

- i) The Patents (Amendment) Act, 1999 (17 of 1999)
- ii) The Patents (Amendment) Act, 2002 (38 of 2002)
- iii) The Patents (Amendment) Act, 2005 (15 of 2005)

These new Acts and Amendments have been enacted in accordance with TRIPS Agreement. This has helped the Indian Pharmaceutical sector.

### **General Principles of the Patents [S. 83]**

**Section 83** (General Principles applicable to Working of Patented Inventions) explains the CONCEPT & GENERAL CONDITIONS of the Patents as follows: Without prejudice to the other provisions contained in this; Act, in exercising the powers conferred by this Chapter, regard shall be had to be following general considerations, namely;

- (a) That patents are granted to encourage inventions and to secure that the inventions are worked in India on a commercial scale and to the fullest extent that is reasonably practicable without undue delay;

- (b) That they are not granted merely to enable Patentees to enjoy a monopoly for the importation of the Patented Article;
- (c) That the protection and enforcement of Patent Rights contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations;
- (d) That Patents granted do not impede protection of public health and nutrition and should act as instrument to promote public interest specially in sectors of vital importance for socio-economic and technological development of India;
- (e) That Patents granted do not in any way prohibit Central Government in taking measures to protect public health;
- (f) That the Patent Right is not abused by the Patentee or person deriving title or interest on patent from the Patentee, and the Patentee or a person deriving title or interest on patent from the Patentee does not resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology; and
- (g) That Patents are granted to make the benefit of the Patented Invention available at reasonably affordable prices to the public.

### **Procedure for Obtaining Patent [Ss. 6-21]**

#### **Applications for Patents [Ss. 6-11]**

#### **Section 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.<sup>4</sup>

### **Section 7: Form of Application**

(1) Every Application for a patent shall be for one invention only and shall be made in the prescribed form (Form No. 1) and filed in the Patent Office.

(1-A) 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.

- (1) The filing date of an Application referred to in sub-section (1-A) 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

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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.

**Section 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.

### **Design Registration**

A registered design includes features of shape, configuration, pattern, ornament or composition of lines or colours, applied to any article either in two or three dimensional or in both forms by any industrial process which in the finished article appeal to and are judged solely by the eye. The industrial process or means can be manual, mechanical or chemical separate or combined.

The protection does not include -

- \* The mode or principle of construction
- \* Anything which is in substance a mere mechanical device
- \* Trademark or property mark

This registration has a specific term (initially 10 years and renewable for another term of 10 years.) If it is not periodically renewed as required by the statute the registered design becomes public property that can be freely used by anyone without fear of infringement.

Section 2 (d) of The Designs Act, 2000 defines: "Design" means only the features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article whether in two dimensional or three dimensional or in both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by

the eye; but does not include any mode or principle of construction or anything which is in substance a mere mechanical device, and does not include any trade mark as defined in clause (v) of sub-section (1) of Section 2 of the Trade and Merchandise Marks Act, 1958 (43 of 1958) or property mark as defined in section 479 of the Indian Penal Code (45 of 1860) or any artistic work as defined in clause (c) of section 2 of the Copyright Act, 1957 (14 of 1957).”

### **Characteristics of Design**

In *Bharat Glass Tube Ltd. v. Gopal Glass Works Ltd.*, 2008 (10) SCC 657: 2008 (7) SCR 397, the Supreme Court explained that “Design” means that a feature or a pattern which is registered with the registering authority for being produced on a particular article by any industrial process whether manual, mechanical or chemical or by any other means which appears in a finished article and which can be judged solely by eye appeal.

Analysation of Section 2 (d) of The Designs Act 2000:— “Design” means only the features of shape, configuration, pattern, ornament or composition of lines or colours applied to, any article whether in two dimensional or three dimensional or in both forms by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article, appeal to and are judged solely by the eye; but does not include any mode or principle of construction or anything which is in substance a mere mechanical device and does not include any trade mark as defined in clause (v) of sub-section (1) of Section 2 of the Trade and Merchandise Marks Act, 1958 (43 of 1958) (now the Trade Marks Act, 1999); or property mark as defined in Section 479 of the Indian Penal Code (45 of 1860); or any artistic work a&

defined in clause (c) of Section 2 of the Copyright Act, 1957 (14 of 1957).”

### **Section 3: Controller and other Officers**

- (1) The Controller-General of Patents, Designs and trade Marks appointed under sub-section (1) of Section 4 of the Trade and Merchandise Marks Act, 1958 (43 of 1958) (now The Trade Marks Act, 1999) shall be the Controller of Designs for the purposes of this Act.
- (2) For the purposes of this Act, the Central Government may appoint as many Examiners and other Officers with such designations as it thinks fit.
- (3) Subject to the provisions of this Act, the Officers appointed under sub-section.
- (2) Shall discharge under the superintendence and directions of the Controller such functions of the Controller under this Act as he may, from time to time, by general or special order in writing, authorise them to discharge.
- (4) Without prejudice to the generality of the provisions of sub-section
- (3) The Controller may, by order in writing and for reasons to be recorded therein, withdraw any matter pending before an officer appointed under sub-section (2) and deal with such matter Himself either de novo or from the stage it was so withdrawn or transfer the same to another officer appointed under sub-section (2) who may; subject to special directions in the order of transfer, proceed with the matter either de novo or from the stage it was so transferred.

#### **Section 4: Prohibition of Registration of Certain Designs**

A design which,

- (a) is not new or original; or
- (b) has been disclosed to the public anywhere in India or in any other country by publication in tangible form or by use or in any other way prior to the filing date, or where applicable, the priority date of the application for registration; or
- (c) is not significantly distinguishable from known designs or combination of known designs; or
- (d) comprises or contains scandalous or obscene matter, shall not be registered.

#### **Problem:**

A Central Government Organization constructed a building for its office. Its design is similar to the architectural design of the famous Charminar. Can anyone challenge the action of the Central Government? If so, under which I PR Law and on what grounds?

#### **Solution:**

According to Section 4 of the Trade Marks Act, 1999, the action of the Central Government Organization is prohibited. Hence anyone challenge the action of the Central Government under Section 4 of the Trade Marks Act, 1999.

#### **Section 5: Application for Registration of Design**

- (1) The Controller may, on the application X/of any person claiming to be the proprietor of any new or original design not previously published in any country and which is not contrary to public order or morality, register the design under this Act.



Provided that the Controller shall before such-registration refer the application for examination, by an Examiner appointed under sub-section (2) of Section 3, as to whether such design capable of being registered under this Act and the rules made there under and consider the report of the examiner on such reference.

- (2) Every application under sub-section (I) shall be in the prescribed form and shall be filed in the Patent Office in the prescribed manner and shall be accompanied by the prescribed fee.
- (3) A design may be registered in not more than one class, and, in case of doubt as to the class in which a design ought to be registered, the Controller may decide the question.
- (4) The Controller may, if he thinks fit, refuse to register any design presented to him for registration; but any person aggrieved by any such refusal may appeal to the High Court.
- (5) An application which, owing to any default or neglect on the part of the applicant, has not been completed so as to enable registration to be effected within the prescribed time shall be deemed to be abandoned.
- (6) A design when registered shall be registered as of the date of the application for registration.<sup>5</sup>

#### **Section 6: Registration to be in respect of particular article**

- (1) A design may be registered in respect of any or all of the articles comprised in a prescribed class of articles.
  - (2) Any question arising as to the class within which any article falls shall be determined by the Controller whose decision in the matter shall be final.
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- (3) Where a design has been registered in respect of any article comprised in a class of article, the application of the proprietor of the design to register it in respect of some one or more other articles comprised in that class of articles shall not be refused, nor shall the registration thereof invalidated,—
- (a) On the ground of the design not being a new or original design, by reason only that it was so previously registered; or
  - (b) The ground of the design having been previously published in India or in any other country, by reason only that it has been applied to article ID respect of which it was previously registered:

Provided that such subsequent registration shall not extend the period of copyright in the design beyond that arising from previous registration. ,

- (4) Where any person makes an application for the registration of a design in respect of any article and either,—
- (a) that design has been previously registered by another person in respect of some other article; or
  - (b) the design to which the application relates consists-of a design previously registered by another person in respect of the same or some other article with modifications or variations not sufficient to alter the character or substantially to affect the identity thereof, then, if at any time while the application is pending the applicant becomes the registered proprietor of the design previously registered, the foregoing provisions of this Section shall apply as if at the time of making the application, the applicant had been the registered proprietor of that design:

## **Lay-out Designs for Integrated Circuits**

Substantive provisions of the Washington Treaty for protection of Layout Designs for integrated circuits must be respected. The scope of protection not only includes the protected chip but also the articles incorporating it. The term of protection is 10 years. An innocent infringer must be free from liability, but once he has received the notice of infringement, he is liable to pay a reasonable royalty.

## **Trade Secrets & Undisclosed Information**

This provides protection to persons/ institutions on information, which is lawfully under their control from being disclosed to, acquired by or used by others without their consent in a manner contrary to commercial practices so long as the information is secret and has commercial value because it is secret. It is expected that the person/institution has taken reasonable steps to keep the information secret. This also applies to test data whose generation requires considerable effort (e.g. for marketing approval/FDA clearances, etc.) and requires to be submitted to the government or governmental agencies for statutory clearances. This underlines the significance of institutions having a well established and operative 'information classification policy' and confidentiality clauses in service contracts with employees/ associates.

## **Geographical Indications**

This tool affords protection to goods that can be identified as originating or manufactured in the territory of a country, or a region or locality in that territory where as given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin. In the case where such goods are manufactured goods, one of the

activities of production or of processing or preparation of goods concerned takes place in such territory or locality as the case may be. The term is initially for a period of 10 years and can be renewed from time to time.<sup>6</sup>

### **Protection of New Plant Varieties**

Countries that exclude patent protection to plant varieties are required to provide protection to new plant varieties by an effective 'sui generis' or any combination of 'sui generis' and patents. The international conventions followed on this feature are UPOV 78 and UPOV91 and the 'Convention of Biodiversity' (CBD). There could be a variation in the adoption of these features in the National Laws of different countries.

### **Anti Competitive Practices in Contractual Licenses**

It is accepted that some licensing practices related to IPR, which restrain competition may have an adverse impact on trade and impede transfer of technology. Examples of such restrictive practices may include exclusive grant back conditions, conditions preventing challenges to validity and coercive package licensing, etc. Countries are encouraged to introduce legislations that discourage such restrictive practices in contractual licenses but remain consistent within the provisions of TRIPs. This generally links to the national anti-trust/anti-competition laws and 'compulsory licensing' that regulate 'monopolistic practices'. These are country specific and are guided by international principles.

From the above discussion it will be clear how protection of intellectual property is necessary from commercial point of view. It has been rightly observed by Prabuddha Ganguly, -

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<sup>6</sup> Siddharth Bawa (2008), Law of Intellectual Property, Allahbad Law Agency, Faridabad.

"The modern IPR tool kit provides a range of distinct legal platforms for protection of the fruits of human creativity that span from innovations in technical fields, products and services, literary/artworks, performances, computer programs etc. It should be appreciated that each of these instruments is governed by a set of laws with frameworks that offer varying degrees of protection, rights, obligations, enforcement procedures and reliefs."

Thus, in this chapter the researcher has introduced various concepts related with the history of intellectual property rights. The researcher has also discussed the concepts as they appear in the statute with reference to international understanding about these concepts.