



FACULTY OF JURIDICAL SCIENCES

COURSE: BALLB/BBALLB/LLB

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NAME OF FACULTY: PANKHURI SRIVASTAVA

Lecture- 13



LECTURE 13: PATENT LAW: PATENTABLE AND NON PATENTABLE SUBJECT MATTER

❖ PATENTABLE SUBJECT MATTER

A patent is granted for an invention which may be related to any process or product. An invention is different from a discovery. Discovery is something that already existed but had not been found. Not all inventions are patentable. An invention must fulfill certain requirements known as conditions of patentability. The word “invention” under the Patents Act 1970 means “a new product or process involving an inventive step and capable of industrial application. (Section 2(1) (j)). The patent must be in respect of an invention and not a discovery.

The fundamental principle of Patent Law is that a patent is granted only for an invention which must be new and useful. Therefore, the conditions of Patentability are as follows:-

A. Novelty

A novel invention is one, which has not been disclosed, in the prior art where prior art means everything that has been published, presented or otherwise disclosed to the public on the date of patent. For an invention to be judged as novel, the disclosed information should not be available in the 'prior art'. This means that there should not be any prior disclosure of any information contained in the application for patent (anywhere in the public domain, either written or in any other form, or in any language) before the date on which the application is first filed i.e. the 'priority date'.

B. Inventive Step (Non-Obviousness):

Inventive step is a feature of an invention that involves technical advance as compared to existing knowledge or having economic significance or both, making the invention non obvious to a person skilled in art. Here definition of inventive step has been enlarged to include economic significance of the invention apart from already existing criteria for determining inventive step. An invention shall not be considered as involving an inventive step, if, having regard to the state of the art, it is obvious to a person skilled in the art. The term "obvious" means that which does not go beyond the normal progress of technology but merely follows plainly or logically from the prior art, i.e. something which does not involve the exercise of any skill or ability beyond that to be expected of the person skilled in the Art.

C. Industrial Applicability

An invention is capable of industrial application if it satisfies three conditions, cumulatively: • can be made; • can be used in at least one field of activity; • can be reproduced with the same characteristics

as many times as necessary.

❖ **Non-Patentable Subject-Matter**

An invention may satisfy the condition of novelty, inventiveness and usefulness but it may not qualify for a patent. The following are not inventions within the meaning of Section 3 of the Patents Act, 1970:

- It is frivolous or purports to go against the law of nature.
- It can be interpreted as being immoral, injurious or illegal in nature.
- It is a discovery of scientific principle or formulation of abstract theory.
- It is a new property or usage of a known substance that already exists. (new usage is patentable in USA)
- Inventions cannot be patented.
- It is a substance obtained by admixture of existing components.
- It is a mere rearrangement or duplication of known devices, in the old- wine – in - new – bottle mode.
- It is a testing method in industry.
- It is a process of medical, surgical, curative, prophylactic, or other treatment for humans, animals, plants to render them free of disease.
- It is an invention relating to Atomic Energy.