

# Patent Rights in Indian Legal System

Chandrashekhar, Assistant Professor

College of Law, Teerthanker Mahaveer University, Moradabad, Uttar Pradesh, India

Email id- chandrashekhar792@gmail.com

**ABSTRACT:** *A legal privilege given to the creator to safeguard their creation is the intellectual property right. To enjoy their property without causing any inconvenience to others, the owner has the legal right to restrict others from using or duplicating their creations, inventions, symbols, designs, and other intellectual property for a certain period. Revised or innovative ideas about industrial property laws in several countries have fueled the recent interest in patents. Hence in this paper author focuses on the patent right in Indian legal which provided rights to Patent Exploitation, License Grant, and Revocation. It concluded that to make recommendations for ways to ensure effective visibility for the patent system including patent literature, particularly concerning patents issued by Indian inventors. In the future, to provide a broad report on any changes that the Committee deems appropriate to suggest to make the Indian Patent System more favorable to the country's interests by promoting the creation and commercial development, and utilization of inventions.*

**KEYWORDS:** *Copyright, Intellectual Property, Government, Patent Right, Legal System.*

## 1. INTRODUCTION

An innovation's patent is an exclusive right given by the government to the creator to prevent others from using, producing, and selling the invention for a set amount of time. Additionally, a patent is allowed for enhancements to their prior invention. By giving inventors exclusive rights over their innovations, the major goal of patent law is to motivate them to make greater contributions to their fields. Modern terminology often refers to the patent as the right given to an inventor on his invention of any novel, practical, non-obvious procedure, machine, manufactured goods, or material composition. The Latin verb "pattered," which means "to lay open", or "to make available for public sight," is where the word "patent" first appeared. Any innovation must pass three requirements to be patentable. First and foremost, the innovation must be original, which implies that it cannot already be in use [1].

Second, the innovation must not be apparent, which means that it must significantly improve on the prior invention; a simple shift in technique will not grant the inventor the right to a patent. Thirdly, the innovation must be really helpful, which means that it cannot only be applied to unlawful activities and must be extremely beneficial to everyone. An invention is deemed to be novel if, as of the petition filing date, it has never before been published orally, in writing, or in any other way. Anything that is already in the public domain is not considered to be creative. The patent has a finite lifespan of 20 years, beginning on the day the patent application was submitted. The geographical right of a patent. As a result, it can only be used in the nation in which it was given. The geographical right of a patent. As a result, it can only be used in the nation in which it was given. As a result, only in that nation may legal action be taken to prevent infringement or violation of patent rights [2].

Each nation must submit a patent application to receive patent protection in other nations. The Patent Cooperation Treaty (PCT) offers a method of submitting an international patent application via which a patent may be submitted in a large number of nations using a single patent application. The PCT of a patent, however, is still up to the particular patent office's judgment once the application has been submitted. Only novel and beneficial inventions are eligible for patent protection under Indian law. The machine, item, or material created by a manufacturer, or the

method of making an item, must be related to the innovation. A patent might also be sought for an invention of a product or a manufacturing method. When it comes to drugs, medicines, and some kinds of chemicals, the substance itself does not receive a patent, even if it is novel, but the manufacturing technique is. The first inventor, or perhaps the person who has acquired title from him, must make the application for a patent, and the right to do so must be assignable [3].

Not all innovations are patentable. Methods of medical treatment and diagnosis, novel plant or animal types, and other items are on the list of non-patentable subject material under the European Patent Convention (EPC) law. A patent attorney may provide further details on these subjects. There won't be many patents awarded for ideas whose commercialization would be against morals or public order (obvious examples being land mines or letter bombs). The following are not considered to be inventions, discoveries, or innovations: scientific theories as well as mathematical methods; aesthetic creations like literary or artistic works; plans, rules, and techniques for conducting mental acts; business presentations; computer software; and displays of information [4].

### *1.1. History of Patent:*

The Act VI of 1856, which was India's first patent law, was later abolished by Act IX of 1857 since it was passed without the British Crown's consent. Another piece of law for the granting of "exclusive privilege" was introduced in 1859. The act in question is referred to as Act XV of 1859. The previous law is modified in a few ways by this legislation, including the restriction of exclusive privileges to valuable discoveries, the expansion of the priority period from six to twelve months, and the exclusion of importers from the category of investors. The Act of 1859 was combined in 1872 to offer protection for designs. Act XIII of 1872 changed the name of the law to The Patterns and Designs Protection Act, and it was later revised in 1883. This law was changed once more in 1888 after being in effect for 30 years. All of the earlier legislation was abolished by the Indian Patent as well as the Design Act of 1911. In 1972, the current Patent Act, of 1970, which further amended and combined the prior law dealing with patents in India, went into effect. By both the Patents (Amendment) Act of 2005, this law was once again revised, and product patents were now applicable to all or any domains of technology, including food, pharmaceuticals, chemicals, and microorganisms. Provisions about Exclusive Marketing Rights (EMRs) were deleted by this modification, but a new clause authorizing the award of compulsory licenses and allowing for pre-grant and post-grant objections was also established [5].

## **2. DISCUSSION**

### *2.1. Rights of a patentee:*

#### *2.1.1. Right to exploit patent:*

In India, a patentee has full rights to use, exercise, sell, or redistribute the patented composition of matter; or, if the patent belongs to a person, to use or exercise the system or method. The patentee or one or more of his representatives may exercise this privilege. Only after a patent is in place may the patentee's rights be used.

#### *2.1.2. Right to grant license:*

The patentee has the authority to grant rights or entitlement licenses or to enter into other contracts in exchange for money. To be licit and legitimate, a license or initiative must be in writing and recorded with the Controller of Patents. The patent assignment paperwork is not regarded as an

affirmation of title until it is completed, and this applies to the person to whom the patent is assigned, not to whom the kit is assigned [6], [7].

### 2.1.3. Right to Surrender:

A patent holder has the option to surrender his or her patent, but before doing so, the person whose name is on the register must get the notification that the patent has been turned over since that person may have a stake in how the invention functions, if at all. To enable interested parties to object, the letter of surrender is also printed in the Official Gazette [8].

## 2.2. Types of Patents:

The innovation of the innovator and novel, nonobvious findings are protected by patents. There are three different kinds of patents, and each category covers a particular innovation. However, more than one kind of patent may be available for the same innovation. These three types of patents are explained are:

### 2.2.1. Utility Patents:

This kind of patent protects novel and beneficial techniques, material compositions, tools, and manufacturers. The majority of individuals look for patents of this kind. Additionally, new methods, material compositions, equipment, and manufacturers can all benefit from it. One can apply for a utility patent as an Indian inventor in nations like Australia, the United Arab Emirates, China, German, Italy, and several other nations in the European Union [9].

### 2.2.2. Design Patents:

The "surface decoration" of an object is what is referred to as a "design patent," but it may also refer to an object's form or arrangement. Only in cases where the design and the objects are the same may this kind of patent be obtained. Only the outside of the thing is protected by this kind of patent. A utility patent must also be applied if a person wants to safeguard an object's structure or functioning aspects.

### 2.2.3. Plant Patents:

To protect novel and unusual plants, plant patents are frequently sought. The plant must be able to reproduce asexually, not be a tuber-reproduced plant (such as an Irish potato), and cannot be located in an uncultivated condition to qualify for this sort of patent. Asexual reproduction occurs when a plant is reproduced through cutting, grafting, or any method other than seed. Similar to utility patents, plant patents are currently unavailable in India, while they are available in Australia, America, and some European nations [10].

## 2.3. Court system:

The District Court serves as the court of the first instance for claims of patent litigation under the Patents Act of 1970. The case must be referred to the High Court if the defendant tries to contest the patent's validity during an infringement lawsuit. However, following the applicable regulations, the High Courts of Delhi, Mumbai, Calcutta, and Madras exercise constitutional authority for trademark infringement suits that fall outside their pecuniary jurisdiction. As long as

the necessary financial requirements are met, an infringement action may be launched immediately before these High Courts. Despite this being hotly disputed, there are presently no specialist courts to hear and adjudicate patent infringement cases. Recent legislation created the Commercial Courts, Commercial Division, and Commercial Appellate Separation of High Courts Act. According to the Act, the High Courts (like the Delhi High Court) have formed a distinct Commercial Division to handle commercial cases, including IP disputes, and particular processes will be implemented for these matters. In addition to rigorous deadlines and severe consequences for non-compliance, these unique processes. Most patent infringement cases have been brought before the Delhi High Court. As a result, its judges are learning more about and becoming knowledgeable about patent law. Broadly generally, the same principles for civil court litigation apply to patent enforcement proceedings. Only civil courts have the authority to hear and rule on cases involving patent infringement. On concerns of patent invalidity, however, the Patent Office, as well as the Intellectual Property Appellate Board (a specialized statutory entity designed to handle IP disputes), have authority.

#### 2.4. Trademark:

A trademark is a distinctive image that distinguishes one brand from another and is thought to be crucial for preventing unauthorized imitations of the brand. The TRIPS agreement again for the protection of trademarks includes provisions for distinctive mark protection, recognition for service marks, perpetual periodical renewal of registration, elimination of trademark licensing requirements, and more. The Indian Trade and Merchandise Marks Act, of 1958 was repealed to make room for the Trade Marks Act, of 1999, which was enacted in light of the newly created legislation. The recently implemented regulating legislation is constructed in compliance with the global frameworks and standards required by the TRIPS agreement. Following the Trademarks Act of 1999, service marks may be registered, multiclass applications may be submitted, the duration of a trademark registration may be extended up to ten years, the notion of well-known marks may be recognized, etc. The protection for domain names has been expanded by the Indian legal system. The new laws have changed the infringement provisions to encompass the unlawful use of identical or confusingly comparable marks, whereas the prior regulations only covered goods and services used to register. Less space for defaults is provided by these revisions. Any infringement-related materials may now be seized by the police without a warrant being presented. If a trademark is violated, the violator may be sentenced to at least six months and up to three years in jail. Along with this, there would be a fine of at least RS. 50,000 and maybe as much as RS. 2,000,000.

#### 2.5. Copyright:

The Copyright Act is one of those Acts in India that has survived the test of time. The Act was created in 1957 and has undergone several revisions following the global standards outlined in TRIPS. Painting, sculpture, drawing, engravings, photography, creative handicraft, theatrical works, literary works, musical compositions, sound recordings, and cinematography are among the artistic undertakings that the Act retains the right to. And it reflects both the Universal Copyright Convention as well as the Berne Convention for the Protection of Literary as well as Artistic Works, both of which were established in 1886. In addition to these two accords, the nation

is a signatory to the Geneva Protocol for the Protection of Producers' Rights in Audiovisual Works. The nation actively participates in both the United Nations Educational, Scientific, and Cultural Organization (UNESCO) and the World Intellectual Property Organization (WIPO) (UNESCO). Some of the Act's unique provisions include the following: The Act does not specify that work must be of a high caliber since any unique effort that performs other duties is acceptable for this purpose. Lifelong copyright for the work is granted to the author, and it will remain in effect for just 60 years after her passing. The creator has the right to safeguard his works against alteration in addition to the right of authorship. The Act was amended to encompass programming skills in 1984. The Copyright Act offers the following civil remedies in the event of any omissions: a lifetime prohibition. Account for losses or gains delivering illegal content for destruction. Making provisions for the defendant's legal expenses from two years to six months in jail.

### 3. CONCLUSION

When it comes to the investment made in the development of new technology, patents may offer both people and businesses significant value and higher profits. The search for how, where, and when to patent should be done with an informed strategy that balances commercial interests in using the technique with a wide variety of possibilities. For instance, a business might save a lot of money and enhance the rights obtained through patents by focusing on global issues and local laws in certain nations. The patent act's passage aided in securing innovations, which led to a rise in trade and technology in India. The Patent Act of 1970 also gave patent holders several rights to advertise and defend their innovations. By giving them exclusive rights to their discoveries, this law assists in inspiring individuals to develop novel ideas in their respective fields. A person must follow a certain process that is outlined in the act if they wish to patent their innovation.

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