Patent 101: Basics of patent and the laws concerned as per India

by

Anindo Chatterjee

Abstract

The following article has been written with an intent to give a brief overview of the wide topic that is patent and laws related to it in India. It starts with an introduction of the topic that tells us about the significance of patents in today's society and why it is needed. Then we learn about the general definition of patents. Yes, it can be defined in a number of ways but what can be the crux of those definitions has been discussed along with the definition as mentioned in the Patents Act, 1970. Then we move to the very crucial topic that is the criteria of patentability which discusses what all are the essential criteria for patentability in India. Going forward to avoid confusion we deal with some of the differences between the other IPRs and Patents. But to know anything well enough we need to know the practical process behind obtaining a patent followed by the non-patentable items and rights of the person being granted a patent. Finally, we progress into the conclusion that ends on the note that this article will open broader perspectives about patents for the newfound IPR enthusiasts and students alike.

Keywords- Patents, IPR – Intellectual Property Rights, Patentability.

Introduction

In the industrial world that we live in patents are a serious affair merely due to the commercial value and recognition one can get from getting a patent in their name. Patents are one of the most potent IPR that is Intellectual property rights tool that is available to the current generation of human kind. But patents are not all about money, it also includes the well-being and advancement of the society. The logic is very simple more patents a society has the more it can be considered as an advanced society. Let's say society X which gets more patents it would be advanced to a higher degree for instance the better general lifestyle of the common people compared to a society that is Y which gets less patents. But here a very obvious and must ask question for an inquisitive mind is that why patents? Isn't everything better when free?? That is a very legit question without a doubt but the simple answer to that is the humans are more inclined to research and work harder when supported by an incentive. Let me ask you would you be inclined to do a tough mathematics question (assuming you could do it) or a series of such questions? At first maybe you would be doing for the fun of it but soon enough you would be yearning for an incentive to work any further. Just the mere incentive can further make the new doer to push further and achieve even beyond what he or she thought was possible by their capabilities. That is the very reason why patents are important, instead of freely distributing everything which may seem great from the public point of view, but is not so economically feasible for the inventor. Patents put a value to the hard work of person or an organisation and thus they can reap the rewards for a long time that is 20 years in relation to a single patent. Now let us further look into the basics of patent and the Indian laws in relation to the same.

Definition

Going through several definitions we can infer that Patents are exclusive rights that are granted by the Indian government or any government for that matter over the inventions that have an industrial applicability or industrial usefulness. Getting a patent also means that it protects our invention against any unauthorized use such as selling license, making copies of your invention and more without our proper permission for the ethical and paid use of the same. If we go according to the Patent Act, 1970 then patent is defined in the section 2(m)[1] means patent for any invention granted by this particular act.[2]

Criteria for Patentability

If we talk about the criterion for patentability of invention then, we can discuss the general criteria first then we can also discuss the same in parlance with the Patents Act, 1970. First criteria that is considered is novelty or newness, that in simple words means that it should not

[1] The Patents Act, 1970. 2(m).

[2] Bhandari, A., 2021. *Overview of Patent Law in India*. [online] B&B Associates LLP. Available at: <https://bnblegal.com/article/overview-of-patent-law-in-india/> [Accessed 9 November 2021].

have been published or even used anywhere else in the world till the application for the patent is filed. Yes, filing of the application is the date that is considered not the grant date it is also called the priority date. According to the Patents act 1970 it is covered under section 2 (l) of the act.[3]

Then comes the part of including an inventive step which means that if the current technology is X, then new technology is at the minimum X+1 or the new technology must include an improvement over the current technology. The section 2 (ja)[4] of the said act talks about it, it also mentions that the certain improvement should not be obvious at all to a person with decent skill in that field and not just a layman. This can be lucidly understood by the example let us say that a well experienced electrical engineer gets a patent in his field of a transformer with some improvement regarding an oil, but that improvement should not be already known and obvious to a similarly experienced electrical engineer, if this criterion is fulfilled (including other criteria) nothing would stop this engineer from becoming rich and renowned in his field at least.

Then the third criterion is the industrial application of the said invention that is the patent should be workable in any industry and not just a show piece. Section 2(ac)[5] of the said act talks about this criterion and tells that a certain patent cannot be just a concept and has to be workable. For instance, Jim wants to get a patent for an Ironman type of suit (marvel enthusiasts can relate) he has all the blue prints available but he needs immense technology that still doesn't exist and not likely to exist in near future, he unfortunately won't get a patent due to lack of its workability.

The final criterion is the invention should not fall in categories that are not patentable such as inventions against public safety, morality etc. it is again a very expected condition. For instance, Raj makes a Bomb that explodes so loud that can puncture ear drums of people in 1 kilometre radius, in spite of this amazing technological marvel by Raj he wouldn't get a patent.

How do Copyright, Trademark differ from Patent

Sometimes it can be a confusion among the new found intellectual property enthusiasts as to what is the difference between Copyright and Patent, trademark is relatively less confused because it takes a different approach by including signs, symbols. On the other hand, someone may feel that what actually is the difference in terms of the things covered under copy right and patent, that is what is the subject matter covered in both these intellectual property rights, for the convenience of the readers and the new found Intellectual property enthusiasts let us discuss the differences among the three IPRs as below-

1. Difference in terms of Subject matter- In terms of subject matter there is a very fundamental difference between copyright and patent in the sense that while copyright provides protection to an expression of the idea not the idea itself in the sense that an original literary work, computer software, original music etc. can be protected however only the expression, a person can re-use the idea and create a different literary work,

[3] The Patents Act, 1970. 2(l).
[4] The Patents Act, 1970. 2(ja).
[5] The Patents Act, 1970. 2(ac)

computer software etc. and there will be no infringement however that cannot be said to be entirely true for a patent even the idea that brought the certain improvement in an invention cannot be used without paying license royalties to the original patent owner also that improvement should have an industrial applicability. By this we can also conclude that copyrights are available on non-industrial things while patent is available on industrial things. Industry here means the mass production of a thing. Trademarks on the other hand are symbols, marks, pictures, name, shape etc. that separate one brand from other.

2. Difference in duration and area of effect – a copyright protection has a duration of 60 years after the death of the author in other words copyright is protected while the author is alive (irrespective of his/her life span) for instance Olu writes an original novel at the age of 35 and dies at the age of 70 years, for him the copy right will last 60 years even after his death. Coming to patent it has a much smaller duration of 20 years that too from the date of filing on the other hand trademarks theoretically have the smallest duration of 10 years but that again can be renewed after 10 years so it could potentially have the longest duration just that you have to renew. In terms of area of effect copyright protection is available almost in every country around the world, patent is available primarily for a country in normal cases and same is the case with trademarks it is also regionally available per country.
3. Existence of the said right - when it comes to copyright the right comes into existence as soon as it is put into expression, in trademark the right can be claimed as soon as it is registered, registration can take from a year to 18 months of time, patent right comes into existence as soon as the application is filed, hence there is no need to wait for the completion of registration of a patent.
4. Scope for provisional application - In none of these IPRs there exists a scope of provisional application except patents, patents allow up to 12 months after the provisional application to file the complete application however the priority date will be the date of filing of the provisional application and not the complete application. It is understandable since there is no possible tentativeness in copyrights and trademarks, it either exists or it does not but the same cannot be said for an invention since it requires a lot of technical knowledge and loads of research, capital.[6]
5. Symbols used – Trademark uses two symbols ™ for the ones that have applied for trademark and ® for the trademarks that have been already registered. Now coming to copyright, symbol allotted is ©. There is no mark as such for patents in India.[7]

Now in order to learn more about patents we need to first understand the procedure responsible for patents

[6] Jhaveri, K., 2021. *Difference Between Copyright, Patent & Trademark | LegalWiz.in*. [online] LegalWiz.in. Available at: <https://www.legalwiz.in/blog/difference-between-trademark-copyright-patent-ipr-in-india> [Accessed 9 November 2021].

[7] Indiafilings. 2021. [online] Available at: <https://www.indiafilings.com/learn/trademark-tm-r-c-symbol/> [Accessed 9 November 2021].

Procedure related to Patents

Stage 1: Write about innovations (thought or idea) with every single detail.

Gather all data about your Invention, for example,

- Field of Invention
- What does the Invention depict?
- How can it work
- Advantages of Invention

If for instance you chipped away at the Invention and during the inventive work stage, you ought to have some call lab records which are appropriately endorsed with the date by you and the concerned position.

Stage 2: It should include a graph, drawing and sketch clarifies the Invention

Drawings and drawings ought to be planned so the visual work can be better clarified with the development work. They assume a significant part in patent applications.

Stage 3: To check if the Invention is patentable subject.

Not everything innovated can be patentable, according to the Indian Patent Act there are a few creations which have not been proclaimed patentable (certain inventions are not patentable).

Stage 4: Patent Discovery

The following stage will be to see whether your Invention meets all patent standards according to the Indian Patent Act-

- The creation should be novel.
- The Invention should be non-self-evident.
- The Invention should have modern applications.

Stage 5: File Patent Application

In case you are at a beginning phase in innovative work for your Invention, then, at that point, you can go for a temporary application. It offers the accompanying advantages:

- Recording date (earlier priority date)

- a year time for recording full detail.
- Lesser expense.

Subsequent to recording a temporary application, you secure the documenting date, which is vital in the patent world. You get a year to think of the total detail; your patent application will be eliminated toward the finish of a year.

At the point when you have finished the necessary records and your exploration work is at a level where you can have models and exploratory outcomes to demonstrate your innovative move; you can document the total determination with the patent application.

Documenting the temporary application is a discretionary advance in case you are in the stage where you have total information about your Invention you can go directly to the full application.

Stage 6: Publication of the application

After recording the total detail alongside the application for the patent, the application is distributed year and a half after the primary documenting.

On the off chance that you don't wish to delay until the termination of year and a half from the documenting date to distribute your patent application, an underlying distribution solicitation might be made with the recommended charge. The patent application is typically distributed ahead of schedule as a one-month structure demand.

Stage 7: Request for Examination

The patent application is investigated solely after getting a solicitation for a Request for examination assessment. In the wake of getting this solicitation, the Controller gives your patent application to a patent inspector who analyses the patent application like the different patent qualification rules:

- Patent subject
- Originality
- Absence of clearness
- Inventive steps involved
- Modern application

The analyst makes the primary assessment report of the patent application upon a survey for the above conditions. This is called patent indictment. All that occurs for a patent application before the award of a patent is generally called patent arraignment.

The primary assessment report submitted to the Controller by the analyst for the most part incorporates earlier workmanship (existing records before the documenting date) that are like the asserted innovation and is additionally answered to the patent candidate.

Stage 8: Answer the complaints

Most patent candidates will get some kind of complaints dependent on the assessment report. The best thing is to investigate the assessment report with the patent proficient (patent specialist) and respond to the complaints in the assessment report.

This is a chance for a financial backer to impart his curiosity over the earlier workmanship in assessment reports. Creators and patent specialists make and send a test reaction that attempts to demonstrate that their Invention is to be sure patentable and meets every single patent measure.

Stage 9: leeway of complaints

The Controller and the patent candidate are associated for guaranteeing that all complaints raised in regards to the innovation or application is settled and the innovator has a reasonable opportunity to make his statement and build up oddity and creative strides on other existing expressions.

After getting a patent application all together for award, it is the principal award for a patent candidate.

Stage 10:

When all patent prerequisites are met, the application will be set for the award. The award of a patent is advised in the Patent Journal, which is issued regularly.[8]

Not patentable according to the law

As per the Patents Act,1970 not all categories of inventions are patentable in fact there are certain categories that are not patentable. Section 3[9] of this act deals with such inventions. It is a detailed list but if we want to give a gist of the categories of inventions that are excluded then that would be any invention that is against the laws or any inventions that cause a harm to the

[8] Karhad, P., 2021. *Procedure for patent registration in india : Patent in india platform*. [online] Patent in india platform. Available at: <https://patentinindia.com/procedure-patent-registration-india/> [Accessed 9 November 2021].

[9] The Patents Act, 1970. 3

society, beings etc. moreover any kind of discoveries are also excluded plus mere addition of components. Patents act also excludes all biological materials except microorganisms, any mathematical, business or any kind of method., most copyrightable subject matters are not patentable, any kind of traditional knowledge or a based product on it is also excluded.

Rights of the person/individual being granted a patent

Section 48[10] of the act talks about the rights of a patentee; the rights are as follow-

1. To license or assign the patent to any corporation/company or individual. An assignment or license should be in writing and properly registered with patents controller, without this formality license or assignment wouldn't be considered valid.
2. To make full commercial use of the patent and earn profits.
3. To take legal action against anyone that infringes their patent.
4. A patentee also has the right to surrender his patent under section 63[11] of the act, he/she can do so by providing notice to the controller of patents in a certain manner.[12]

Conclusion

With the information mentioned above in the article one can be expected to gain sufficient knowledge and spark in the field of Patents in India in order to quest him/herself to further read and learn on the topic in order to have even clearer understanding of the topics involved. Patents is a potentially huge market and field that is growing by the day hence it can be only beneficial to look into this domain. Patents as a right can bring enormous economic benefit as well as social benefit. Also, the differences stated between the three primary intellectual properties help us identify what all is patentable and what not.

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[10] The Patents Act, 1970. 48

[11] The Patents Act, 1970. 63

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