



Indian Patent System and an Overview of Rights and obligations of the patentee

Anita

Research Scholar

Department of Law, MDU Rohtak

anitaghanghas166@gmail.com

Abstract

Intellectual property rights (IPR) are intangible and provide exclusive rights to the author or inventor of a valued item. In the current globalisation environment, IPR is the focus point in global commercial practises and living. In contrast, lack of understanding and inadequate application of IPR may impede the nation's economic, technological, and social progress. Any nation's need for IPR understanding and execution is paramount. The article discusses IPR terminology including patents, trademarks, industrial designs, and geographic indications, copyright, etc., their laws and regulations, as well as their importance and relevance in the Indian context. Also, the state of India's engagement in global IPR operations has been briefly reviewed.

Keywords: Intellectual property rights, patents, trademarks, copyright

Introduction:

It is a trademark, concept, design, or other kind of creation that a person or business has legal rights over (IP). Almost every business has software. IP is a kind of intellectual property that may be used as a corporate asset.

Copyright –This protects written or published works, such as books, music, films, online material and creative works; it is also known as intellectual property.

Patents - The patent system protects commercial innovations, such as a new company product or procedure, from being copied or imitated.

Designs - designs such as drawings or computer models are protected under this provision.

Trade marks - they are signs, symbols, logos, phrases, or sounds that differentiate your goods and services from those of your rivals and are protected under the law of intellectual property.



For a certain amount of time, a patent gives the government exclusive rights to restrict anyone from using, producing, or selling an invention. A patent may also be obtained for improvements to an earlier invention. Patent legislation's primary purpose is to encourage inventors to contribute more to their areas by granting them exclusive rights to their inventions. In modern terms, a patent is a licence granted to an inventor for the creation of any innovative, useful, non-obvious technique, machine, manufacturing product, or composition of matter. Any innovation must pass three fundamental requirements in order to be patentable:

- First, the invention must be new, which means it must not already exist.
- Second, the invention must be non-obvious, which means it must be a significant improvement over the previous one; a change in technology alone will not grant the inventor the right to a patent.
- Third, the invention must be useful in a bonafide manner, which means it must not be solely used in illegal work and is useful to the world in some way.

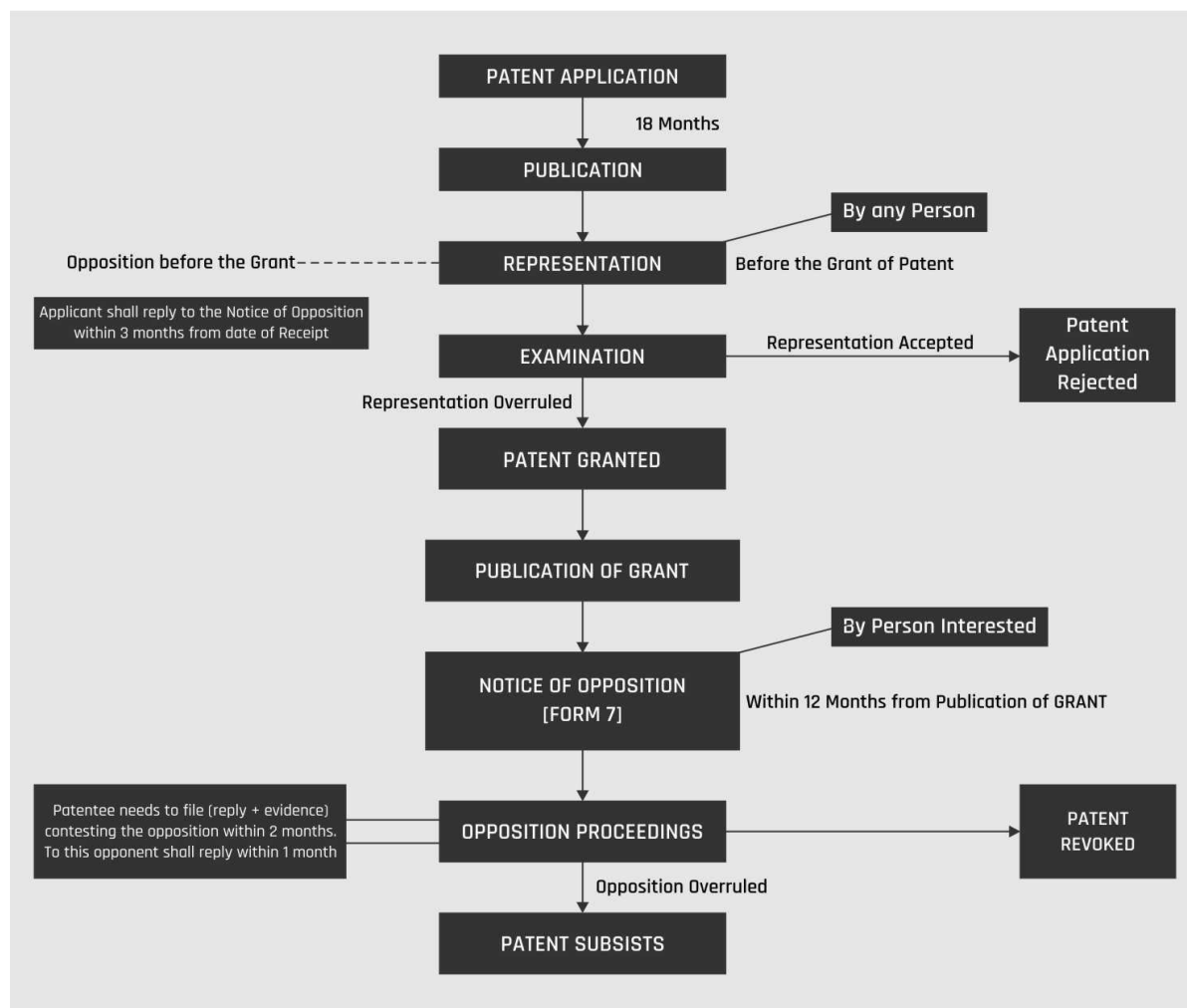
Brief about Indian Patent System

- Act VI of 1856 was India's first patent law. This law was enacted to stimulate new and valuable discoveries and to urge inventors to reveal their creations' secrets. Act IX of 1857 abolished the Act since "it was passed without the assent of the British Crown. Act XV of 1859 provided new laws for awarding 'exclusive privileges'. This law changed the former statute by limiting exclusive rights to valuable discoveries and extending the priority period from 6 to 12 months. This Act prohibited importers from inventor status. This Act differs from the UK Act of 1852 in permitting assignees to apply in India and considering previous public usage or publishing in India or the UK to determine uniqueness.
- The Act of 1859 was consolidated in 1872 to preserve designs. Act XIII of 1872 titled it The Patterns and Designs Protection Act. The Act of 1872 was revised in 1883" (XVI of 1883) to include a clause protecting inventions that were first shown at the Indian Exhibition. There was a 6-month grace period for submitting applications after the Exhibition opened. This Act remained unchanged for over 30 years until 1883, when changes in the UK patent law led to suggestions that similar changes be made in Indian



law. In 1888, a bill was submitted to unify and reform the legislation dealing to inventions and designs to match the UK law changes.

- This Act established the position of Controller of Patents. “This Act was revised in 1920 to include reciprocal agreements with the UK and other nations. In 1930, further revisions were made to include provisions” for secret patents, addition patents, government use of inventions, Controller's ability to correct patent registers, and extension of patent duration from 14 to 16 years. The tentative specification must be filed within nine months of the final specification.
- After Independence, the Indian Patents & Designs Act, 1911 was deemed ineffective. A comprehensive patent legislation was deemed necessary due to the country's changing political and economic situations. Thus, in 1949, the Indian Government established a “committee headed by retired Lahore High Court Judge Justice (Dr.) Bakshi Tek Chand to evaluate the Indian patent law and guarantee that it serves the national interest. The terms of reference included —



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Patents Rules

Section 159 of the Patents Act, 1970 empowers the Central Government to promulgate regulations implementing the Act and controlling patent administration. So the Patents Rules, 1972 were announced and came into effect on April 20, 1972. These Rules were updated until May 20, 2003, when the new Patents Rules, 2003 took effect, replacing the 1972” rules. The Patents (Amendment) Rules 2005 and 2006 changed these rules. The latest changes take effect on May 5, 2006.

Rights and obligations of the patentee



Rights of Patentee

- To use, exercise, sell, or distribute the patented product in India, or to use or exercise the patent technique or process, if it is for a person. The patentee, his agent, or licensees may exercise this privilege. The patentee's rights last just as long as the patent.
- Right to give licence: The patentee may transfer rights, issue licences, or engage into other agreements for a fee. A licence or transfer must be registered with the Controller of Patents to be legitimate. Until a patent is registered, the document assigning it is not valid evidence of ownership.
- Before accepting the surrender offer, the person whose name is on the patent registry is contacted and their objections are considered. The surrender application is also publicised for opposition..
- Patent infringement lawsuits may be filed in any District Court in the country.

Obligations of patentee

- To be clear, the Government may utilise or buy a patentable innovation for its own purpose solely, and may limit or ban its use in certain instances. If a medication or drug has a patent, the government may import it for its own use or for distribution in any government-run dispensary, hospital, or other medical facility. This use may be used without the patentee's approval or payment of royalties. Aside from that, the government may sell the patented product on royalties or need a patent on appropriate compensation.
- When a patent is not worked successfully to fulfil reasonable public demands, the Controller may award compulsory licences to any applicant who wishes to work the patent. Under the Indian Patent Act, the government may require a generic medication company to provide low-cost medicine in the public interest, even if the product is patentable. It is also possible to get compulsory licences for linked patents when one invention cannot be operated without the other.
- Revocation of patent: A patent may be cancelled if no work has been done or if the public's desire has not been met.
- Defence inventions: Publication of the invention may be limited or forbidden by the Controller. The applicant is banned from utilising the patented invention if the order



prohibits publishing or distribution of it, but the Central Government may use it if it pays royalties to the applicant.

- Restored Patents: A patent that has expired may be reinstated with limited restrictions. Infringement occurs between the date of infringement and the date of the announcement of the reinstatement application.

Conclusion:

Intellectual property rights (patents) may give significant value and higher returns to people and businesses that participate in the development of innovative technologies. A well-thought-out approach should be used to patent a technology, one that connects commercial interests with a broad variety of possibilities in the search for how, where, and when to patent the invention. By focusing on international concerns and rules in certain countries, it is feasible for a corporation to make large savings while also improving the rights earned via the use of intellectual property.

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