

## Review Article

### Intellectual Property Rights: Part-I' Patents: A Bird's Eye View Analysis

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#### ABSTRACT

The term intellectual property is generally used for different types the intellectual creations i.e., creations of human mind. The most important feature of intellectual property is that the owner of this creation has the freedom to use it as he or she wishes, without violation of laws and also he can prevent others from using it without his prior permission. The inventor gets some exclusive rights over the property i.e. his invention which is a result of his intellect. The basic objective of all the protections of intellectual property to allow creators of intellectual property to generate financial rewards by exercise of their rights. The intellectual property is dealt with under the following headings *viz*: copyright, patents, industrial designs, trademark, unfair competition, trade secrets etc. Patent is the most hyped intellectual property and is exploited the most globally. Patenting an invention not only ensures economic benefit to the inventor but also encourages further research work pertaining to the field. Governments also emphasizing on the research whose outcomes are patentable. To produce income the owners of the right must exploit them financially by commercial agreements thus converting them into intellectual capital. Unfortunately the generation of intellectual capital is still not satisfactory because many inventors are still ignorant about how to use their owned right to their advantage. To obtain patent right in multiple countries the Patent cooperation treaty is used which has 152 countries as members.

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## INTRODUCTION (1-8):

Intellectual properties are the creations of human intellect. Intellectual property right deals with providing certain exclusive rights to the creator, as a reward for the efforts he had put into for that invention. Although the concept of intellectual property started first in England in 17<sup>th</sup> and 18<sup>th</sup> century but the term “intellectual property” was used for the first time in 19<sup>th</sup> century. The legal presence of intellectual property and its associated rights came into picture on a wide scale in 20<sup>th</sup> century. (1-4)

The main purpose of intellectual property right is to encourage inventors to invent

large number of intellectual goods. Intellectual property right provides the inventor a specific time limit exclusively to reap economic benefit out of his invention to compensate the time and money invested to create that intellectual property. This type of economic incentives motivates the inventors to invent more and their economic rights are also taken care of by the intellectual property rights. The domain of Intellectual property rights include copyright, patents, industrial design rights, trademarks, plant variety rights, geographical indications, trade secrets etc. (5-8)



**Figure-1 Different Types of Intellectual Property Rights (IPR)**

### **NEED FOR IPR<sup>(5)</sup>:**

1. The innovator must be rewarded for his time and effort.
2. Encouragement for new innovations and creativity possible.
3. Plays vital role in boosting economy of the country.
4. Protects the interests and rights of innovators.
5. Motivates innovators to innovate more.
6. Prevents duplication of work thus saves time and money(reinventing the wheel)
7. Helps in income generation through licensing the patent.
8. Prevents infringements which reduce litigations.

### **PATENTS<sup>(5, 8-13)</sup>**

The government grants an exclusive right by to an innovator or their successor which is called as Patent. Patent confers the legal right to the owner to prevent others from exploiting the patented innovation like making, using, selling, offering to sell, and importing an invention for a limited period of time. The Patent rights can be withdrawn by the Government under special situations even if the patent is sold or licensed or marketed. The patent right have territorial limitations which compels the inventors to file separate applications and pay prescribed fees in countries in which they want their patent to be in force.

The Indian Patent Act governs the patents in our country. First patent laws were formulated in the year 1856. After independence the Indian Patent Act 1970 was made. The act is suitably modified time to time to corroborate with international patent laws<sup>(5-7)</sup>.

### **WHAT DOES A PATENT OFFER<sup>(5, 8)</sup>**

1. Provides legal protection of your invention for 20 years
2. Prevent others from manufacturing the product
3. You can earn royalty income
4. You can check your competitors with an advantage of 20 years of exclusive right.

### **CRITERIA OF PATENTABILITY<sup>(5, 14-18)</sup>:**

The decision of patentability of certain invention is based on the following three basic criteria like

- 1) **Novelty:** The creation must be pertinent to the current times and never been published or shared elsewhere in any form, so novelty is decided taking into consideration the global scenario. If the inventor feels that there is a healthy chance of patenting the invention, then the right way is to file a patent application before publication of the paper in scientific Journals.
- 2) **Non-obviousness/Inventiveness:** The proposed invention must not be

obvious to a person expert in the subject matter of the patent application. The invention for which patent is sought must have an inventive step and complexity and simplicity of inventive step does not have any bearing on the probability of grant of the patent.

- 3) **Industrial applicability:** For grant of a patent the invention must be useful and have industrial applicability. The invention must have utility disclosed in the patent application otherwise the patent may be denied.

#### **NON PATENTABLE INVENTIONS <sup>(16)</sup>:**

- 1) Creations which are trivial in nature and are against the established natural laws of nature.
- 2) Any creation whose purposed use would cause serious harm to human beings, animals and plants including our environment.
- 3) The meager discovery of a scientific principle or formulation of a non figurative theory.
- 4) The mere discovery of a new form of an already known substance that does not have any significantly improved effectiveness over the existing efficacy of that substance. Just discovering a new property of a known substance.
- 5) The substance obtained by a simple admixture bringing about the total of the properties.

6) Inventions which are based and related to atomic energy.

7) Mere discovery of any living and non-living substance already existing in the nature.

8) A method of agriculture or horticulture

9) Any discovery relating to the process which can be very useful in the process of medical, surgical, curative, prophylactic, diagnostic, therapeutic treatment of human being and animals which can render them disease free.

10) Business methods and mathematical method and computer programs.

11) Plants and animals in whole or any part apart from microorganisms.

#### **VALIDITY OF PATENT <sup>(19)</sup>:**

The patent will be valid for 20 years from the date of filing for all types of inventions.

#### **WHAT ARE PATENT RIGHTS <sup>(20)</sup>:**

Patent right confers exclusive right to the owner by which he can prohibit others from Making or Manufacturing, Using, Offering for sale, Selling, Importing, Distributing and Licensing without authorization.

#### **THE PATENT FILING PROCEDURE IN INDIA <sup>(5, 21-23)</sup>:**

The office of controller general of patents Designs and trademarks which comes

under Departments of Industrial Policy and Advancement, Ministry of Commerce and Industry, looks after the patent registration process.

**Step-1: Filing of Patent Application:-**

Across India there are four patent offices viz Chennai, Mumbai, New Delhi and Kolkata. Kolkata is the Head Office. Patent documents can be filed in the patent office either through online mode (e-filing) accessing

[www.ipindiaonline.gov.in/online](http://www.ipindiaonline.gov.in/online) or by sending the patent application through post or can be submitted by hand. The inventor needs to document patent application in proper format with all data, claim, drawings etc. The applicant can either file the complete application or provisional application but if he has filed a provisional application first, he must file the complete application within 12 months from the date of filing of provisional application.

**Table 1: Territorial Jurisdiction of Appropriate Office for the Applicants**

OFFICE	TERRITORIAL JURISDICTION
Patent Office Branch, Mumbai	The States of Chhattisgarh, Goa, Gujarat, Maharashtra, Madhya Pradesh, and the Union Territories of Daman and Diu & Dadra and Nagar Haveli
Patent Office Branch, Chennai	The States of Karnataka, Andhra Pradesh, Kerala, Tamil Nadu, Telangana and the Union Territories of Pondicherry and Lakshadweep
Patent Office Branch, New Delhi	The States of Haryana, Himachal Pradesh, Punjab, Rajasthan, Uttar Pradesh, Uttarakhand, Delhi and the Union Territory of Chandigarh, Jammu and Kashmir and Ladakh.
Patent Office, Kolkata (H.Q)	The rest of India.

**Step-2:-Publication of Application:**

Indian patent office will publish patent applications automatically after 18 months without any request by the applicant. However, if the applicant desires to get his application published earlier, he can make a request for early publication in **Form 9**

and his application will get published within 1 month of the request after paying extra fees. As the applicants privileges and rights start from the date of publication so the date of publication is important to the applicant.

There are few circumstances under which a patent application may not be published and kept as a secret:

- If it fall under the Secrecy provisions under the patent act. If the invention is against the interest of the nation.
- If the applicant fails to file a complete application within 12 months from the date of filing of the provisional application.
- If the applicant has made a request for withdrawal 3 months prior to publication.

#### **Step-3:-Pre grant opposition of Patent:**

Any opposition to the patent may be registered within three months of patent publication

#### **Step-4:-Request for Examination:**

The examination process doesn't occur automatically like that of publication of patent application. The applicant has to make a request for examination of his patent application on **Form 18**; this is called Request for Examination (RFE). On receipt of RFE the application will be queued for examination. So, it is advisable to make the RFE request at earliest to start examination of the Patent Application.

Based on the urgency the applicant can bypass the queue for the examination by filing an expedited examination on **Form 18A**.

The applicants need to apply for patent examination inside four years of recording

the patent application by paying the expenses.

#### **Step-5:-Examination and clarification of raised complaints, if any:**

On receipt of the RFE the patent application is assigned to the examiner pertaining to the technology background of the invention. The examiner will scrutinize the application to ensure that the application is in compliant with the patent act and rules. The examiner also carries out search to understand similar technologies to be sure that if the invention satisfies the criteria of patentability.

After thorough review of the patent application, the examiner will issue First Examination Report (FER) to the applicant, stating the grounds for objections.

Once, the FER is issued, the patent applicant must submit satisfactory reply to the raised objections and may also appear for hearing if required to satisfy the examiner for the grant of the patent. The total time needed for the grant is 6 months from the date on which the FER is issued to the applicant. But, this 6 month period can be extended by a period of 3 months by the applicant by filing a request for an extension of time on **Form 4**.

#### **Step-6:-Grant of Patent:**

The patent is granted to the applicant by controller of patents after nullifying the protests brought up in the examination

process. After grant of patents also post grant oppositions can also be received.

**Step-7:-Renewal:-**Based on the Patent Amendment Act 2002 the patent awardees need to pay reestablishment charge annually to keep patent in effect. A patent

in India is valid till 20 years from the date of first filling of patent application. When a patent lapses then it enters into public domain which can be accessed by anybody.



**Figure 2: Patent Application and Grant process in India**

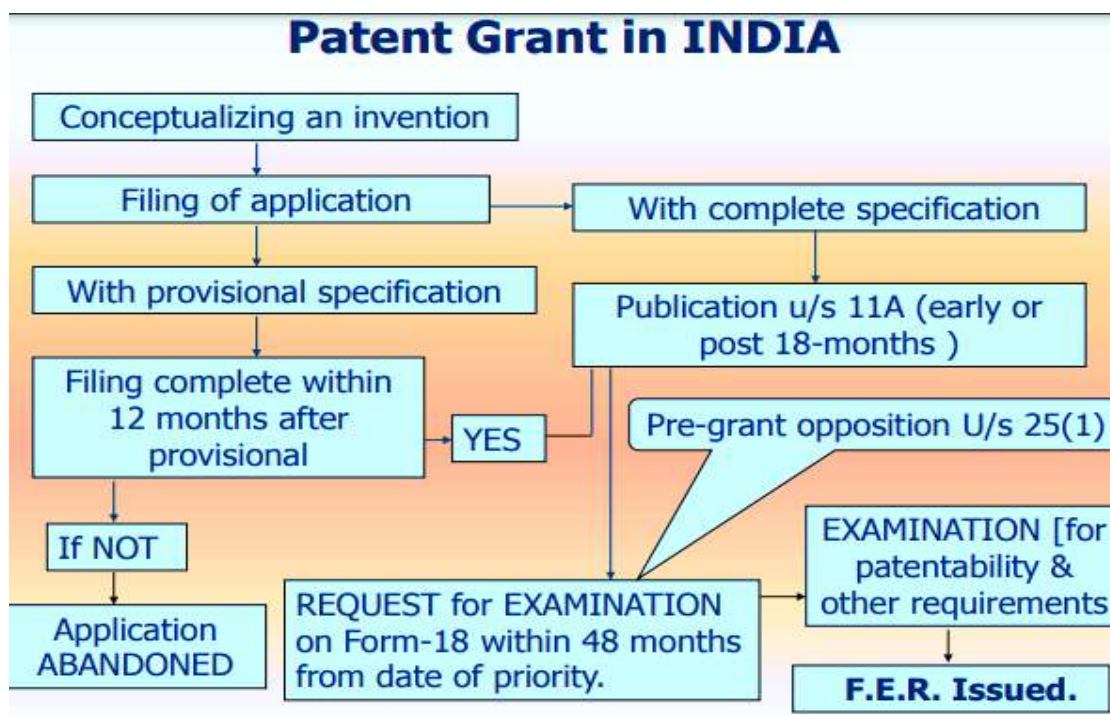


Figure-3 Details of Patent Application and Grant Process till FER is issued

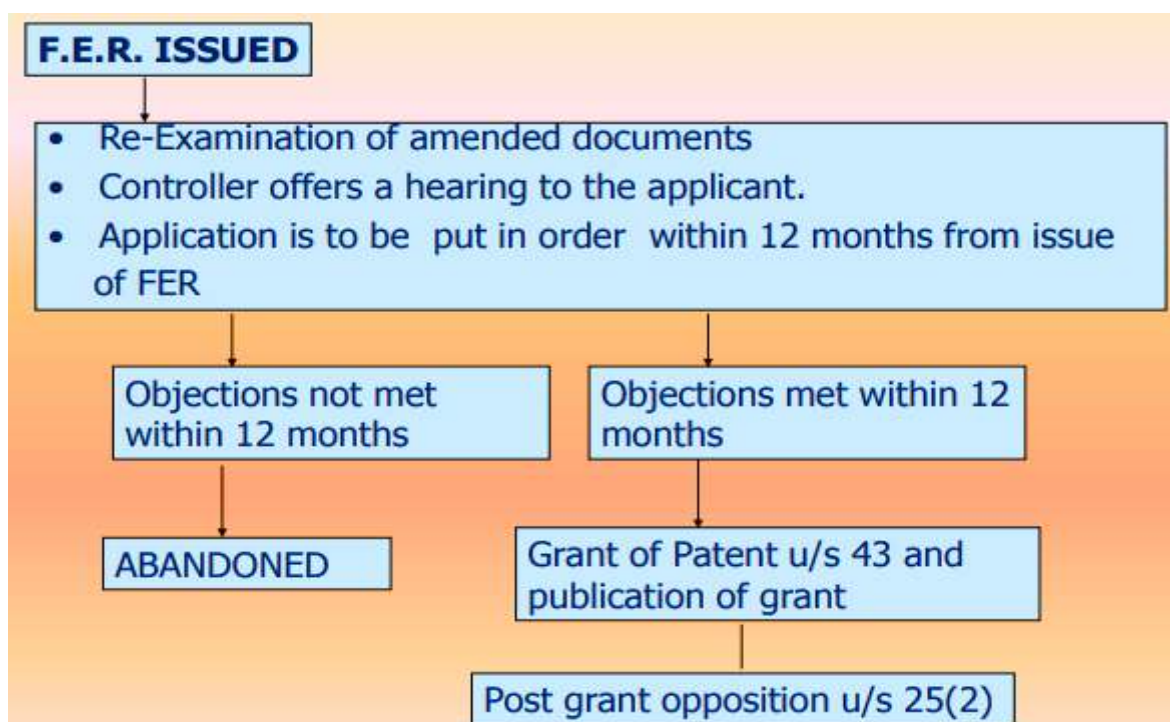


Figure-4 Details of Patent Grant Process after FER is issued



### **COMPULSORY LICENCES<sup>(22-24)</sup>:**

Although the Patent Act provides monopoly to the innovator to extract financial benefits for 20 years but as per section 92 of the patent Act 1970, in case of emergency government can issue compulsory licenses to third party for non commercial use of public. If the authorized patent owner is not able to exploit the patent for commercial use by willingly or due to lack of negotiations in case of products like drugs, food, vaccine, medical equipment, life saving equipment etc government can allow another person to produce the patented product by issuing compulsory license for large interest of the public. Here governments have to pay fair justifiable financial benefits to the patent owner.

### **PATENT COOPERATION TREATY (PCT)<sup>(24-27)</sup>:**

It is well known that patent rights are territorial, so if one wants his patent globally he has to apply with separate application and specified fees in each country of his interest. This process is expensive and tedious and time consuming. To address this concern of innovators seeking patent in multiple countries PCT came into force in 1978. PCT provides a facility to file a single international patent application to obtain patent in multiple countries. Through PCT the applicant can get the

priority date of first filing in 152 PCT member nations which is highly advantageous. The grant of Patent is solely under the national or regional patent authorities of various PCT member nations. All activities related to PCT are coordinated by the World Intellectual Property Organization (WIPO) situated in Geneva.

### **IMPORTANCE OF PATENTS<sup>(28-30)</sup>:**

1. It can act as an Important source of scientific and technical literature which prevents “Reinventing the Wheel”
2. Act as reference of scientific inventions
3. Helps us to avoid duplication
4. Provides foundation to further research pertaining to a specific field.
5. Helps in economic payback to the inventors.
6. Helps to enhance the research domain.
7. Helps in building and enriching intellectual capital.

### **CONCLUSIONS:**

Knowledge about intellectual property right is a must for the innovators and research organizations dedicated to research and development. IPR has a great role to play in the economic growth of the country and enhancing the intellectual capital of the country by encouraging

innovations. Knowledge of patent is very vital for economic benefit of the innovators and the organization employed in such fields. The current trend is not only to get large number of patents also to exploit them commercially to create resources to fund further research. A country's economic growth solely based on its intellectual growth which is properly promoted by IPR.

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