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**AN OVERVIEW OF IPR LAWS- A STUDY RELATED TO PATENT
LAWS AND ITS ENFORCEMENT MEASURES**

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ABSTRACT

This article portrays a scenario in which the various developments through human intellect and the capacity to create new ideas in respect of any field leads to the commercial and technological advancements which further has a major contribution in a developing economy. The legislation was passed in relation to intellectual property in order to promote the ability of an individual to create and to apply its intellectual attribute for any invention which led to transformation in the obsolete technology.

After the advent of FDI (foreign direct investment) there will be a dire need of the versatile personality which will bring about a new sphere of advancement in relation to a technology, product or process which would ensure the overall growth of our economy and will help in maintaining a balance between inflow and outflow in respect of other countries. The invention which are considered as useful and new have the economic significance in respect of its application and the invention having industrial application.

This article includes various sub-topics to make a detailed study of the topic and it includes the introduction of intellectual property law and origin of patent law which can be illustrated by various instances and the legislation passed and amended with passage of time, as it was depicted as a dynamic concept which mandates stepping up old legislations regarding patent laws and how it will serve the purpose and its enforcement measures. As there is a prescribed process through which patents are granted and its related rights are insured to the patentee and when the situation exist as if there is any infringement of such rights then remedies are provided to the patentee under patent act.

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Lastly I have highlighted the point which is related to judicial aspect as pronouncement regarding such rights and the remedies provided to the patentee.

KEYWORDS- Intellectual Property Rights, Patent law, Patent of Haldi, Rights and Duties of patentee.

INTRODUCTION

Intellectual property law is a dynamic concept in which we have witnessed a drastic shift in the basic day to day working of corporations and companies, which include acquiring the shares or assets of the company to the protection of rights related to the intangible assets such as the site which is the byproduct of human intellect as in changing Eire the role of companies in field of IPR laws are becoming more advanced and it requires competent and dedicated employees to meet its demand as it is becoming an exponentially growing field and in recent developments India have witnessed a change in its economy as more start-ups and research and development centres are on its peak and it endeavors towards its growth and development as they are hiring the officials which are having an intellect towards numerous field in which they are fully acquainted with the course of work and expertise in that particular field. As it is the basic human tendency that for a particular work they will always contact a person who is having the professional expertise towards that particular work so that the work can be easily completed with perfection and serve the particular purpose for which it was done.

Mostly IPR laws serve as a shield provided to an individual for the discovery of any new thing or for a unique creation out of their intellect. The basic function of IPR laws to curb the unprofessional behavior and intellectual theft.

The term intellectual property can be explained as it is the creation of the mind and through human intellect there are many categorization which can be classified such as invention creation of any artistic work and literary work, designs and symbols, particular names or signs which can be used for advertisement of a particular product. The intellectual property law basically enables individuals to claim exclusive rights and the monetary benefits arising out of their inventions and new discoveries through their intellect as some of them gives a negative

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right and some give the positive rights and individual who is the original creator of any invention or work such as literary or artistic work.

Basic terminology used in this paper: -

- 1) Intellectual -intellect used for public domain and which is logical reasonable for public
- 2) Property –the term property can be described as something which can be owned or possessed in which legal right is created and tried to stop other person from misusing or using that property against the will of the owner of that property.
- 3) Right – when duty or restriction is imposed on any other person regarding that property.

Property can be classified into parts such as: -

- 1) Tangible- It includes both movable as well as immovable property it indicated by its term as there is physical existence of property.
- 2) Movable property means which can be shifted from one place to another as it has inherited qualities of easy mobility.

Immovable property can only be transferred through papers (documentation) by one party to the other party concerned with that property.

- 2) Intangible property with this is a quality in which it has no physical existence and this property can only be transferred or assign to any other person.

The concept of property can be explained as

Tangible– movable, immovable.

Intangible – patents, trademarks, designs, copyright, geographical indication.

ADVOCACY IN THIS PARTICULAR LAW²

This law becomes interesting when there is a fusion of a genius mind and mortal unpredictability as for a professional who is having an expertise in this field will go through the various new laws in respect of various inventions and unique creation to safeguard these creations from the expected or unexpected threat of any theft of that unique creation by any individual come. As in this era of globalization there is an unpredictable evolution of IPR laws as an individual who is well acquainted with his rights which are ensured to him by these legislations. We cannot limit these rights to any particular extent as there is a diversification of various unique ideas which are result of the human intellect as in every work such as starting from household work to the well-developed industries. There is an application of

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mind for doing any specific work and during the process of application of mind various new ideas in creation will be the result of such application. In such process various invention or discovery is can be drawn out and applied to certain areas in which it is fruitful. There are various legal rights granted to intellectual property holders and their “rights include³ “Trade secrets, utility models, patents, trademarks, geographical indications, industrial design and Layout design of integrated circuits, copyright and new varieties of plants”.

With the advent of technological advancement the scope for IPR laws is increasing day by day as it provides a proper protection in respect of various aspects which are there in creating such unique inventions and discoveries which demands various attributes for its completion such a time, money and efforts of the creator of the intellectual property or the inventor.

IPR laws can be studied in respect of pharmaceuticals, food items and fashion houses present in India. Thus, this law provides a vast scope for the professional legal experts to have a career and which advances the opportunities In respect of various aspects of Protection for the intellectual property.

MEANING AND DEFINITION OF INTELLECTUAL PROPERTY⁴

The term intellectual property can be defined as the creation of human intellect in the form of inventions, new discoveries and it includes various works such as artistic work, Picture presentation, Specific signs, Names used for commercial advancement in companies which denotes its uniqueness and can be easily identifiable by the general public and it reduces the contradictions if the right are properly given on the basis of applications registered for such rights.

The main objective is to inculcate the habit of innovations and creation of new ideas among individual and it supports an idea which is unique and was introduced for the first time by the creator of the inventor of that particular idea it gives the benefit in the form of goodwill, scientific advancement in particular area and in terms of monetary structure as well.

“World intellectual property organization is an organization which centrally works for the protection of intellectual property laws and it provides its expertise in form of organization of the UN.”

“According to article 2 of WIPO ⁵(World intellectual property organization) intellectual property shall include the rights relating to literary, artistic and scientific Works, invention in

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all fields of human Endeavour, scientific discoveries, industrial designs, trademarks, service marks and commercial names and designations, protection against unfair competition and all the other rights resulting from intellectual activity in the industrial, scientific library and scientific fields”

Various intellectual properties are as follows Copyright, Patent, trademark, geographical indication, industrial design and Plant variety.

CONCEPT OF PATENT LAWS

According to the Indian Patents and Design Act, 1911 the term patent is provided and it is the right provided to an individual for his innovation or invention in form of technology. The act named Indian patent design act 1911 was first introduced by Britishers and after independence in India there was a new legislation which was passed named patent act, 1970 which was made to protect our archaeological or other designs. In this when an individual does any invention or innovation in form of technology through their intellect and shows ability to create new ideas for any particular thing and to make something useful and new out of their intellect and for this innovation or invention. They seek privilege or authority over that invention or innovation. By the sanctioned authority which develops an environment of creating new opportunities for individual who are willing to do new inventions and can contribute towards the commercial advancement which leads to a well developed economy after having the optimum use of resources by that individual.

According to amendment act 2005 of pattern provides the definition of invention under section 2(m) as any invention which can be patented under this act.

According to article 27(1) of the trips agreement Potential ⁶be available for any invention, whether product or process in all fields of technology provided that as it is an inevitable truth that when it comes to any write it always come with the condition there of

- Firstly the invention or innovation must have its utility usefulness and in short it should be useful for the society and not only for personal use.
- Secondly it should be new.

⁵ Article on Intellectual property and its origin by Shubhangi Sharma.

⁶ www.thegiga.com

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- Thirdly monetary value should be there.
- Fourthly the invention or innovation must be capable of industrial application product or procedure giving benefits to any industry or economy.
- Fifthly it must be commercially useful.

The invention related to these cannot be patented and these come in the exclusion clause of patent act under (section 3 & 4) it can be:

- 1) The invention or innovation which is harmful to public at large.
- 2) Any technological advancement in medical field surgery.
- 3) In agricultural Field any advancement in technology.
- 4) In atomic energy

THE DEFINITIONS WHICH ARE PROVIDED IN PATENT ACT ARE AS FOLLOWS :⁷

According to section 2(1) (J) invention is elaborated as new product or process involving inventive steps and which is capable of industrial application.

According to section 2(1) (ja) of the Patent Act 1970 inventive steps can be explained as existing knowledge or any information becomes technological advanced and more economical than invention can be patented.

New product/process/technology or more economical or commercial advantages or capable of industrial application.

The consequences which can be faced by an individual if he or she used patent without permission it will amount to infringement following remedies are available such as:

- 1) Interlocutory application/injunction.
- 2) Damages
- 3) Profit can be claimed.

These remedies are not available in case of any use by the government as there is no restriction against government to use the invention for public benefit.

PROCEDURE FOR APPLYING FOR PATENT

- 1) ⁷ <https://www.quickcompany.in/indiacode/the-patents-act-1970>.

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- 1) According to section 6 to 10 of Patent Act the application is to be filed by an applicant.
- 2) According to section 11 to 18 of patent act there is another procedure of publication and examination.
- 3) Objection/opposition to grant patent.
- 4) Grant of patent.
- 5) According to section 6 of patent act provides that who all are eligible to file an application for patent the list includes:
 - 1) The true/1st inventor.
 - 2) Assignee of true/1st inventor.
 - 3) Legal representative.
- 6) According to section 7 of patent act provides for domestic/international patent. the criteria involved in this is that for applying for patent there should be a treaty regarding it with other countries in respect of taking the right of patent internationally as the separate application to be filled for domestic and international patents by an Indian resident.
- 7) According to section 8 of patent act provides the provisions regarding the application by a resident of foreign country in this if that individual is acquainted with new invention or innovation which he seems to share with the other country (India) as those inventions. Industrial application is of more utility in India then that individual will file an application in India for patent.
- 8) According to section 9 and 10 of patent act provides for provisional/complete specifications if any individual is interested in applying for domestic patent then he is required to give the provisional specifications within the stipulated time period and then he is required to give the complete specification which is fixed as he can give those specifications within 12 months of filing an application for patent. the conditions will vary in case of the patent application filed internationally as the applicant must fulfill the criteria as he can only file an application for patent in the country with whom he we have signed a treaty and after fulfilling this criteria applicant is required to provide complete specification at the first stage of filing of an application for patent.

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- 9) According to section 10 of patents act provides what essentials are required (specifications) for filing an application for patent:

First of all the specification must include the abstract as in what all things are included in such invention or innovation for which the applicant is applying for patent.

Secondly the specifications must include the introduction it is basically a brief description about an incentive or innovation which is to be patented by the applicant.

Thirdly the Specification must include the objective as in it what all essentials are there in that invention or innovation which will serve the particular purpose and by which way it drives towards commercial advancement or technological advancement basically the aspect in which way it will serve the purpose.

Fourthly the specifications must include methodology in this the applicant will mention about what methods one have applied for that particular research and what all methods he applied for such invention.

Fifthly the specification must include the significance as in this applicant will give the usefulness of that particular invention among the public and for its industrial application and how that process or product will create a difference in relation to any other product or process which can be used as an effective tool for commercial advancement in the era of modernisation which leads to a transformation in our economy.

If the applicant is applying for international patent or domestic patent when there will be a need of complete specifications to be affixed with application of patent done along with the above mentioned specifications there is slight change in complete specifications. As it also contain one more point which can be named as a claim. The word claim means what all affirmations given by the applicant regarding that invention of process or product. The applicant will explain about such invention that how it will help the general public for its specific use.

PROCESS INVOLVED IN GETTING THE PATENT CAN BE EXPLAINED IN DIFFERENT POINTS:

When an applicant had filed an application for patent the specifications are to be attached along with the application as firstly the provisional specifications are to be attached and within 12 months of filing of an application for patent. The complete specifications are required to be produced by the applicant.

In case of international patents when the application is filed by an applicant then along with such application the claim will be mentioned in the initial stage only because the applicant is attaching the complete specification along with such application for patent.

The claim will be mentioned in the initial stage only because the applicant in attaching the complete specifications along with an application for patent, after that the application shall remain published for 18 months from the date of filing of application within the stipulated time period application is open for objection or opposition.

There is a provision regarding the priority date as the purpose behind this is that the applicant will opt for priority date due to the changes required in specifications, as if after filing an application; if the applicant finds any loopholes in the specification. he will get time to eradicate or will look into its specifications which is affixed by him in its application and to ensure that if applicant will not opt for priority date then there will be a possibility that some other person will file an application for patent. In order to avoid this situation the applicant will opt for the priority date and process which is involved in this is that the applicant is having a liberty to choose a date within six months from the date of filing of application. The application will remain published for 18 months from that fixed date such publication shall consist of the following particulars such as date, number of applications, name and address of applicant along with the abstract.

According to 2005 amendment in the act there is a provision regarding the safeguards provided to the applicant as if by applicants abstract any other person is gaining commercial benefit then the applicant is entitled to get the royalty for that, but there is no provision mentioned as of the filing of a suit for infringement by the applicant. Suit can be filed only after patent is granted.

WHAT ALL OBJECTIONS CAN BE RAISED BY THE OTHER PERSON REGARDING SUCH APPLICATION FOR PATENT?

At the time of application of patent is open for objection then various aspects to be considered are as follows the invention/innovation must not be subjected to all these points mentioned below:

- First -wrongfully obtained invention.
- Second -prior publication which means that invention must not be subjected to any prior knowledge of which third person is acquainted with.
- Third- prior claim means what is demanded or proved.

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- Fourth- when there are any incomplete specifications.
- Fifth - if the applicants have wrongfully mentioned geographical area which provides a chance to another person to raise objections regarding this.
- Sixth - if such invention is publicly known /used.
- Seventh - anticipated by the community in India or aboard which means a particular group of peoples are already acquainted with that process our product and with such an acquaintance. They are using them.
- Eighth - invention must be obvious and no inventive steps.
- Ninth - a person applying for an application fails to prove that he has filed an application in his own country.
- Tenth - if the invention of applicant falls under section 3 and 4 of the act(exclusion clause)
 - If the applicant who belongs to India wants to file an application for patent in patent cooperative treaty then such application shall be filed within 12 months from the date of filing of original application (application filed within his own country; India).

Controller shall convey the objections raised by any person to the applicant. The applicant shall reply within 15 months which may extend up to 18 months. If the reply is submitted within specified time period and the controller is satisfied with the reply, then the application is accepted.

If the reply is not satisfactory then hearing will take place and if in hearing also not able to satisfy and time given to amend the application and not able to reproduce it then the application is rejected.

If no objection raised (after publication) then the applicant will file an application for examination to the controller and patent officer for checking or examining his application of patent.

This application for examination is to be filed within 36 months from the date of patent application.

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Controller appoints an examiner to examine the application. Examiner will examine the application on the basis of

- 1) prior publication
- 2) prior claim

- Examiner need to submit the report to the controller within 1 to 3 months from the date of appointment of such examiner.
- Patent will remain valid for 20 years from date of filing of application for(both domestic and international patent).
- Earlier international patent was valid for 12 years only.
- According to 2005 amendment one can file for royalty on the back date.

Back date is the date of priority which applicant have mentioned in the application. In past scenario in respect of patent one cannot file a suit for infringement.

- After the amendment of 2005 suit for infringement can be filed on the back date also.

This situation can be understood by an illustration as;

The applicant got patent sealed in 2007 but his right was infringed in 2008 then the patentee (applicant) can file a suit for infringement on back date for example 2008 and can also claim Royalty. Suit is filed in 2011 and back date is 2008.

If no Priority date is mentioned no suit can be filed for any date before then from the date of filing of application.

RIGHTS AND DUTIES OF PATENTEE

- 1) To exploit
- 2) To assign
- 3) To license
- 4) To surrender
- 5) To sue

All these rights are against third-party.

DIFFERENCE BETWEEN ASSIGN AND LICENSE.

Transfer of interest

Assignee can further transfer his interest to some other person too and shall have right to all the benefits as that of the patentee.

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Licensee have limited interest for example only that much of interest which is mentioned in his license. He cannot transfer his interest further.

It is only a permission to do some particular work for a specified time period after the completion of work. The license will come back to the licensor.

Kinds of assignment (section 70)

- 1) Legal assignment – In this assignment the name of assignor and assignee was duly registered and it will be in writing. Assigner can become a licensor but licensee cannot become assigner.
- 2) Equitable assignment- name of assignee is not mentioned but assignee has knowledge that his interest lies. It is also duly registered and in writing.
- 3) Mortgage assignment- keeping of immovable property as security for securing any amount. Patent is kept as a security. Patent is attached to the interest of patentee so it is considered as immovable property and can be mortgaged and cannot be pledged.

KINDS OF LICENSE

1) Voluntary License

According to section 70 voluntary license is license which is given by mutual agreement between parties and it must be registered or in writing.

2) Compulsory License

According to section 84 compulsory licenses can be explained as there are conditions for taking back such license. If it does not fulfill these criteria as for industrial application, public domain after three years of granting of patent if and application is filed to the controller on the basis of;

- 1) Patent not being affordable or,
- 2) Not working in Indian Territory.
- 3) Not for public domain; for example not satisfying the public requirement.

Enquiry of application takes place and if it is proved that the patent is not justifying any of the above mentioned points then the controller will take back the patent and will keep it with itself or gives to any other person or assigned to government. Royalty and expenses incurred by patentee are given to him.

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- 1) Express or implied license- It is expressly mentioned for which purpose the patent is granted. The terms are written and in case of Implied license-when it is already known or can be understood for which purpose the patent is given and license shall be given for time not exceeding five years and can be renewed for another five years. License can be assigned for 20 years (5+5+5+5=20 years).
- 2) Extensive/limited license- The term extensive means the related things or act can be done related to such product or process for which patent is granted and license is given. The term Limited can be explained as it is mentioned that for which limit it can be used or a criteria is mentioned of such limitation for which license is given.

RIGHTS

The revocation or surrender section (157A of 2002 amendment)

After sealing of patent if it comes to the knowledge that such patent (product or process) is prejudice to the security of India and against public interest then revocation can be done by filing an application petition before the High Court under section 157.

Burden of proof lies on the petitioner. He is supposed to prove that under which category revocation can be done and objection lies in that category for revocation.

According to section 64, 65 and 66 provides points raised by opposition for revocation (same as that of objection which are discussed earlier).

Patent is granted for 20 years. It can be renewed for another 20 years and prescribed fees submitted for renewal. One can surrender the patent before time also if he feels that his patent is not able to fulfill all the conditions. Notice will be given to controller than, he publishes it to invite the opposition. The opposition can be done, if there is any license provided to the licensee and still the time period for license is remaining then he can point such objections regarding such surrender.

Suit for an infringement (patent infringement)

Right of patentee to file a suit against any other person, who infringes his right of patent and the Process provided in Civil Procedure Code, will apply for filing a suit.

GROUND WHEN THERE IS A PATENT INFRINGEMENT;

- 1) Colorable imitation- In this there is same essence as colourable legislation, Essence is same but there is a change in appearance only.

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- 2) Immaterial variation.
- 3) Taking the essential features of invention.
- 4) Only mechanical variation- In this different product having same significance and the process was new but the significance of product was same.

Suit for infringement is filed in the court not lower than district court. Where High Court has original jurisdiction then suit will be filed in the high court. Suit is to be filed within three years from the date of having knowledge about the infringement.

REMEDIES FOR PATENT INFRINGEMENT

1. Injunction (interim/permanent).
2. Damages (loss suffered because of infringement).
3. Accounts of profit (profit gain by other person).

Damages and accounts of profit cannot be claimed together. Only one to be claimed.

LIMITATION TO THE RIGHT OF PATENTEE (SECTION 47, 99 and 100)

The central government or state government without any permission can use the patent and no royalty can be demanded for such use. Patent can be used without permission as for defense purposes.

Section 47 read with section 99 provides the situations when government can use patent without permission and not liable to give Royalty.

Firstly –Particularly for any medicine or drugs.

Secondly- when application was filed with specifications and government uses such specifications for its own purpose before the publication of such application then no remedy available to the applicant.

Thirdly for any process for which application for the patent is filed and government uses it then no royalty to be given.

Fourthly for any product for which application is filed and government uses it.

DUTIES OF PATENTEE

- 1) Fair monopoly

Monopoly is prohibited under competition law but it is allowed into patent law.

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- 2) If document are not given on time to authorities then fine can be imposed which may extend to 10 lakhs rupees.

CASE STUDY RELATED TO TURMERIC PATENT ⁸

Facts-

In this particular case there were two US based Indians and in 1995 they were granted a US patents which depicts an idea of those two individuals who have propounded the use of turmeric powder as a remedial product for the wound healing which was popularly known as the turmeric patent which was assigned to the University of Mississippi Medical Center, US.

In this process of taking the patent the claim which was made consist of the following remedial steps such as the use of turmeric will help a patient recovering from the wounds and major injuries which are inflicted by any dangerous substance on a particular body part by applying the turmeric it can become cured and the patient will get the relief by such administering of the turmeric and the claims also contain a point in which it was mentioned that by applying the turmeric powder the body ulcers can also be cured and it will give relief to the patient.

As in India turmeric powder is considered as an old age remedy which was discovered by our ancestors through their intellect and skills of understanding and finding a proper purpose and methods for an administering such thing and to develop various ideas regarding using of such precious thing which is associated with various uses such as turmeric powder is used for healing the wounds it will give the relief and it can be used in kitchen as a spice which adds colour as well as taste to food which was prepared by an individual.

According to the prevalent customs it is used for applying to brides during her marriage ceremony and has great significance according to the customary tradition. Traditionally, it can be used as a medicine for curing the common cold and considered as a best home remedy for the purification of blood. If in case there is any skin infection it is used as an ointment for curing it. The main issue which arose in this case was that as the product was commonly known then how the patent will be granted. It was a shocker that how could anyone gets an exclusive right to sell and distribute.

Then in mid-1996 the Council of ⁹scientific and industrial research of India, an autonomous institution under the Department of science and technology, government of India decided to

⁸ Article on revocation of haldi Patent by Ms.Gunjan Chauhan

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file for re-examination of the patent at the USPTO and to revoke the patent the contentions placed was that the turmeric powder is commonly used product and used in India for healing of wounds and used in every house for cooking. Indian scientist through their researching skills find out the contentions made in the claim and specifications at the time of granting of patents were as follows:

Firstly the method involves the administering of turmeric powder on the wounds for its healing in an appropriate amount. Secondly according to the claim the method which was mentioned was to administer the turmeric powder orally to the patient. Thirdly the powder is topically administered.

Fourthly the turmeric powder is administered in both ways. Fifthly the classification of wound is that it must be a surgical wound. Sixthly the said wound is a body ulcer. The invention deals with the use of turmeric in healing process of chronic and acute wounds. The basic ingredients has to be considered in the process of healing of chronic ulcers can be explained by three factors which was observed as infection, oxygenation and oedema.

If the invention can be studied in the view of science or the medical terms then the process of healing wounds deals with capillaries which consist of pericytes and endothelial cells.

The inventor of such have proved his invention by showing such invention through the form of experiment which was done on patients who are cured from such process as the turmeric causes endothelial cells to proliferate. These indicate that the molecules present in it can heal the wounds.

In this case, it was observed that the applicant has only stated the relevant use for healing wounds and curing ulcers but he had omitted the other aspects which include the use of turmeric for traditional purposes. It was difficult for the patent examiners to go through the bulk of applications for all the details of its novelty, incentive steps and usefulness. Later when it was found in historical books in the language of Sanskrit, Hindi and Urdu stating the use of turmeric from the primitive period and was known to every Indian and then patents was revoked on the ground that it was commonly known.

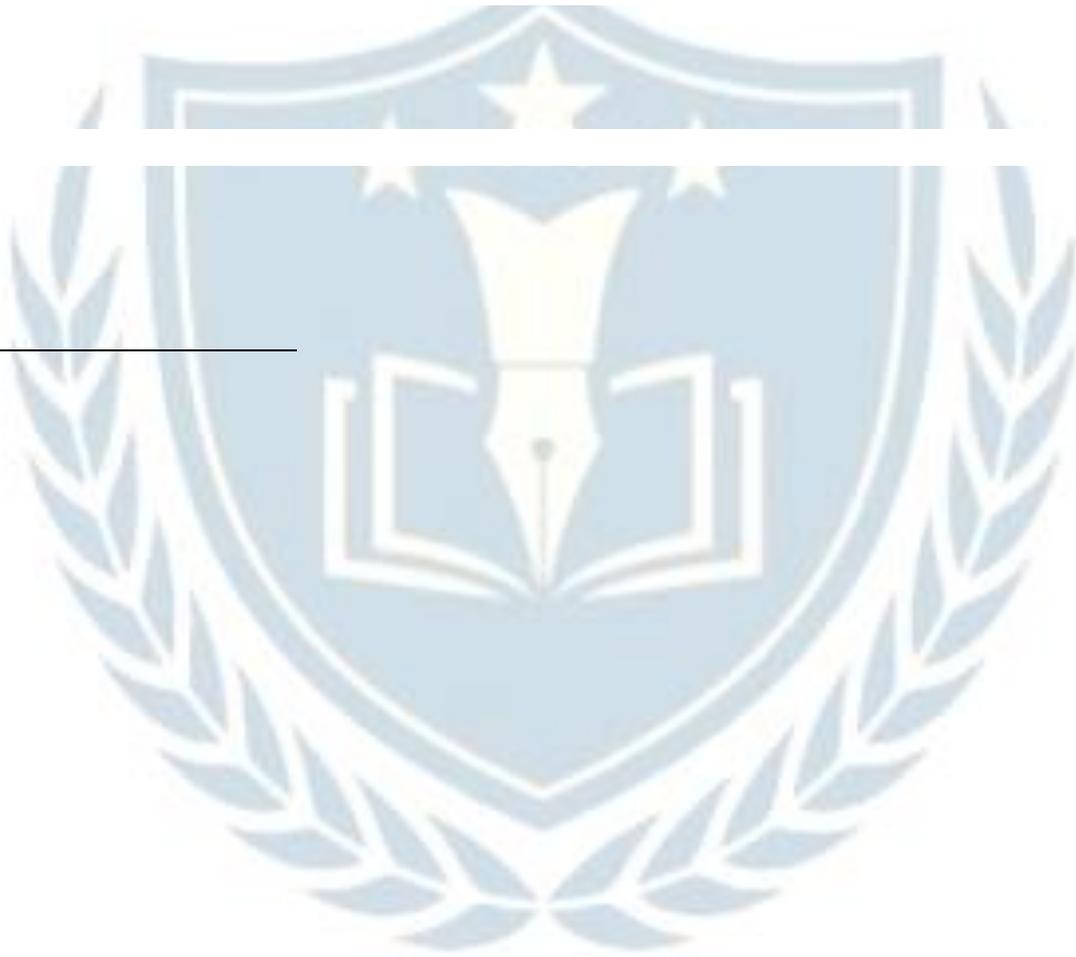
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⁹ Article on revocation of haldi Patent by Ms.Gunjan Chauhan

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