
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

LEGAL PERSPECTIVE OF PATENT SYSTEM IN INDIA

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EVOLUTION OF INDIAN PATENT LAWS**PATENT ACT, 1856**

In the 1300s, the first person to uncover resources in the Alps created property rights for mining, logging, and water. This discovery was particularly significant. Throughout the course of the competition, distinctive advantages were bestowed onto those who produced anything of value. In the year 1409, a German was awarded the first patent for the construction of a model industrial mill. The British were told that they could not have a monopoly on the sale of playing cards since it was evident. The first English patent for the production of stained glass was granted to John of Utynam, and it was valid for a term of twenty years. It was around this period that the French made improvements to the system by registering and testing it. An invention known as a "hopper boy" for a grain elevator was granted a patent in the United States to Oliver Evans.

The United Kingdom Act of 1852 served as the basis for the first piece of patent-related law in India, which was enacted in 1856 and was known as Act VI. This piece of legislation was enacted with the intention of encouraging the invention of novel and practical items, as well as convincing inventors to reveal the trade secrets concealed within their creations. The Act was ultimately repealed by Act IX of 1857 due to the fact that it had been enacted without the approval of the British Crown. In the year 1859, a new piece of law known as Act XV of 1859 was presented to the public in order to give "exclusive privileges." The previous legislation was amended by this act, which expanded the priority period from six months to twelve months and restricted the issuance of exclusive privileges to inventions that were of

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significant value. In order to fulfil the requirements of this Act, importers were not regarded to be inventors.

THE PATTERNS AND DESIGNS PROTECTION ACT, 1872²

The Act of 1859 was consolidated in 1872 to offer protection for designs. Act XIII of 1872 changed its name to "The Patterns and Designs Protection Act."

The Act of 1872 was further revised in 1883 (XVI of 1883) to provide a provision to protect the uniqueness of inventions that were previously disclosed in the Exhibition of India and before making an application for their protection. After the date of the inauguration of the Exhibition, a grace period of six months was given for submitting such applications.

This Act remained in effect for roughly 30 years without any changes, but in 1883, after changes were made to the patent law in the United Kingdom, it was decided that the Indian legislation should likewise incorporate those changes.

Therefore, in order to align the law of invention and designs with the changes made to the U.K. law, an Act was introduced in 1888.

THE INDIAN PATENTS AND DESIGNS ACT, 1911³

When the Indian Patents and Designs Act, 1911 (Act II of 1911) was passed into law, all of the acts that had come before it were ruled invalid and unenforceable. In 1920, an additional amendment was made to this Act in order to form reciprocal agreements with the United Kingdom and other nations for the purpose of assuring priority protection. This was done in order to ensure that priority protection was provided. During the year 1930, additional modifications were implemented. These modifications included, among other things, clauses that dealt with secret patent grants, additional patents, the government's use of inventions, and the ability of the Controller to repair errors in the patent register, and an increase in the length of the patent from 14 to 16 years. A modification was made in 1945 that required the submission of the entire specification as well as the filing of the provisional specification within a period of nine months. This was a requirement that was necessitated by the revision.

² ACT 013 OF 1872 : PATTERNS AND DESIGNS PROTECTION ACT, 1872 [REPEALED], <https://www.casemine.com/act/in/5f5f12cb9fca195c05ccfa6f>, (last visited 10th April 2024)

³ "THE PATENTS AND DESIGNS ACT, 1911 (ACT NO. II OF 1911) <https://ecajmer.ac.in/facultylogin/announcements/upload/Indian%20Patent%20and%20Design%20Act,%201911.pdf>"

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After the country gained its independence, it was believed that the Indian Patents and Designs Act of 1911 was not fulfilling its intended purpose. It was determined that a comprehensive patent legislation would be desirable in light of the considerable changes that have occurred in the political and economic reality of the country. In 1949, the Government of India established a committee with Justice (Dr.) Bakshi Tek Chand, a former judge of the Lahore High Court, as its head. The purpose of this group was to guarantee that the patent system is beneficial to the interests of the country. The conditions of reference were:⁴

- “To conduct a survey and report on the functioning of the patent system in India; to investigate the existing patent legislation in India and to make suggestions for its improvement, particularly with regard to the provisions that are concerned with the prevention of abuse of patent rights;
- to consider whether any special restrictions should be imposed on patents pertaining to food and medicine; and to report on the findings of the survey and report.
- To make recommendations for the implementation of measures that will ensure effective publicity to the patent system and to patent literature, with a particular focus on patents obtained by Indian inventors;
- To investigate the necessity and practicability of establishing a National Patents Trust;
- To investigate whether or not it would be desirable to regulate the profession of patent agents.
- For the purpose of enabling the Indian Patent System to be more conducive to national interest by encouraging invention as well as the commercial development and use of inventions, the Committee will:
 - To examine the functioning of the Patent Office and the services that it provides to the general public, and to make appropriate recommendations for improvement; and
 - To report generally on any improvement that the Committee believes it is appropriate to recommend”.

The committee's interim report was released on August 4, 1949. It included ideas for changing sections 22, 23, and 23A of the Patents and Designs Act, 1911, in order to bring

⁴ “Department for promotion of industry and internal trade, (last visited 23-9-2022), <https://ipindia.gov.in/history-of-indian-patent-system.htm>,” Last visited 9th April 2024.

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them in line with the UK Acts of 1919 and 1949. Additionally, the committee made recommendations for preventing the misuse or abuse of patent rights in India. A further point that was brought up by the committee was that the Patents Act ought to make it abundantly apparent that things like food, medication, and surgical and curative devices ought to be made accessible to the general people at the most affordable prices feasible, while at the same time giving the patentee with sufficient compensation.

Based on the above recommendation of the Committee, the 1911 Act was amended in 1950 (Act XXXII of 1950) regarding the working of inventions and forced licensing/revocation based on the Committee's advice. Other clauses connected to the patent's endorsement with the phrase "licence of right" on a government application so that the Controller might issue licences, with the following amendments in 1952 and a measure was proposed in the Parliament in 1953 based on the Committee's recommendations (Bill No.59 of 1953). However, because the government did not push for the bill's consideration, it was allowed to expire.

“The Government of India established the Justice N. RajagopalaAyyangar Committee in 1957 to investigate the possibility of revising the Patent Law and provide recommendations”. Two parts made up the Committee's report, which was delivered in September 1959⁵. The first section addressed general issues of the Patent Law, and the second section included in-depth notes on several provisions of the 1953 failed measures. The first section also discussed the drawbacks of the patent system and offered suggestions for improvement in terms of the law. Despite its flaws, the committee advised keeping the Patent System in place. This report called for significant legal reforms, which served as the inspiration for the Patents Bill of 1965. On September 21, 1965, this measure was introduced in the Lok Sabha, but it was never passed”.

THE PATENTS ACT, 1970⁶

Following the presentation of a revised draught in 1967, the Joint Parliamentary Committee's final proposal was the impetus for the passage of the Patents Act of 1970 when it was presented. Specifically, this Act repealed and replaced the 1911 Act, which was a statute

⁵ Report on the Revision of the Patent Law, Rajagopal Ayyangar Committee, September 1959.

⁶Legislative department, ,(last visited 10th April 2024),<https://legislative.gov.in/actsofparliamentfromtheyear/patents-act-1970>,

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pertaining to patents. On the other hand, the 1911 Act continued to take into account designs. The majority of the provisions of the 1970 Act became operational on April 20, 1972, when the Patent Rules, 1972 were made available to the public.

This Act remained in operation for more than twenty-four years, until December 1994, without any modifications being made to it. With the adoption of an ordinance on December 31, 1994, several changes were made to the Act; however, the ordinance was only in effect for a period of six months. Additionally, in the year 1999, a new ordinance was published. This ordinance was eventually superseded by *the Patents (Amendment) Act, 1999*, which went into effect retrospectively on January 1, 1995. In spite of the fact that such patents were not allowed, the updated Act made it possible for applications to be submitted for product patents in the areas of pharmaceuticals, agrochemicals, and medications. However, following the 31st of December in 2004, these applications were nothing more than going to be evaluated.

THE PATENTS (AMENDMENT) ACT, 2002⁷

“The Patents (Revision) Act of 2002 made the second amendment to the 1970 Act (Act 38 of 2002). The older Patents Rules, 1972 were replaced by the new Patent Rules, 2003, which went into effect on May 20, 2003”.

THE PATENTS (AMENDMENT) ACT, 2005

“The Patents (Amendment) Ordinance, 2004 went into effect on January 1, 2005, and it introduced the third amendment to the Patents Act 1970. The Patents (Amendment) Act 2005 (Act 15 of 2005), which went into effect on January 1, 2005, later took the place of this Ordinance. It was passed on April 4, 2005”.

TRIPS COMPLIANCE AND AMENDMENTS

The Uruguay Round of GATT trade negotiations ended on December 15, 1993. “Marrakech enforced the World Trade Organization (“WTO Agreement”) on April 15, 1994. For the first time, GATT negotiations covered international trade intellectual property rights. An

⁷ Legislative department, ,(last visited 23-9-2022),<https://legislative.gov.in/actsofparliamentfromtheyear/patents-act-1970>,

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Annexure of the WTO Agreement contained the Trade-Related Aspects of Intellectual Property Rights Agreement” (the “TRIPS Agreement”).

On January 1, 1995, the “WTO Agreement went into effect, together with the TRIPS Agreement (which is binding on all WTO Members).⁸ The prior accord, the World Trade Organization, which went into effect on January 1, 1995, created a new organization. Prior to being required to implement the TRIPS Agreement, Member States of the WTO were given a predetermined amount of time following the enforcement of the agreement establishing the WTO. The most comprehensive and significant international agreement on intellectual property rights is known as Trade-Related Aspects of Intellectual Property Rights (TRIPS). The agreement is automatically enforceable against all WTO members. The agreement consists of most of the forms of intellectual property like patents, copyright, trademarks, trade secrets, geographical indications, industrial designs, and exclusionary rights over new plant varieties”.

One of the key agreements for advancing intellectual property on a global scale has proven to be TRIPS. TRIPS provided a global minimum standard for the enforcement and protection of all types of IP, however it omitted to include a global minimum standard for patents. The major goal of intellectual property's trade-related element is to encourage effective and adequate protection of intellectual property rights and to ensure that the policies and practices used to uphold such rights do not inadvertently obstruct lawful trade.

Issues covered by the TRIPS⁹

- The manner in which the fundamental laws of the trading system and other international agreements pertaining to intellectual property ought to be applied.
- What are the most effective ways to defend intellectual property rights?
- How governments should properly execute those rights on their own turf.
- How to handle member-to-member intellectual property problems.
- In the period that the new system is being deployed, there should be specific transitional measures in place.

⁸ Convention Establishing the World Intellectual Property Organization (WIPO), University of Solo, (last visited 10th April 2024), <https://www.jus.uio.no/english/services/library/treaties/14/14-01/wipo.xml>

⁹ Supra note 24

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Features of the TRIPS¹⁰

The TRIPS agreement encompasses three primary features, which are as follows:

1. The standard- The primary objective of the trade-related part of intellectual property is to safeguard the subject content.
2. Implementation and compliance- The second element pertains to the enforcement of domestic procedures and remedies, particularly in relation to provisional measures and border measures.
3. Resolution of disputes- The agreement stipulates that any disputes between members of the World Trade Organisation over trade-related aspects of intellectual property obligations will be subject to the dispute settlement mechanism of the World Trade Organisation.

Obligations under TRIPS Agreement¹¹

The TRIPS agreement outlines several important intellectual property principles that are relevant to business. Member States are required to adhere to the Paris Agreement, the Berne Convention, and other WTO agreements, as well as their own criteria for awarding temporary monopolies on intellectual property. The regulations encompass the essential prerequisites for bestowing monopolies on all forms of intellectual property (IP), together with limitations on duration, provisions for enforcement, and protocols for resolving disputes related to IP. Upon the implementation of the TRIPS agreement on January 1st, 1995, all developed countries were granted a one-year period to comply with its provisions. Until the year 2000, developing nations and changing economies were granted a five-year prolongation. As of 2006, the Least Developed Countries (LDCs) were given a period of 11 years to fulfil their obligations. Some nations believe that the long-term goal should be accomplished. The deadline for pharmaceutical patents in some Least Developed Countries (LDCs) has been extended until 2016.

At present, there are 30 Least Developed Countries (LDCs) that are under the governance of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and are also

¹⁰ Supra note 24

¹¹ Supra note 24

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members of the World Trade Organisation (WTO). Additionally, another 10 LDCs are now in the process of becoming members. The principle of Most Favoured Nation (MFN) is now incorporated into the TRIPS Agreement, marking its inclusion in the global discourse on intellectual property rights. According to this ideology, any advantage, kindness, special right, or exemption granted to inhabitants of any other nation must be immediately and unconditionally offered to all other individuals (regardless of membership status), with one specified exclusion. The procedures described in the multilateral agreements signed under the auspices of WIPO regarding the obtaining or preservation of intellectual property rights are exempt from this regulation, similar to how they are for domestic remedies.

These agreements fulfilled both the purpose of the IPR and the goal of setting a minimum standard for its safeguarding. These agreements define a minimum threshold for enforcing intellectual property rights (IPR), allowing right holders to protect their legitimate interests through legal proceedings in civil court or administrative procedures.

New Dimensions and Issues for Resolution¹²

In the upcoming decades, as technology continues to advance and explore new possibilities, intellectual property rights (IPR) will take on favorable forms to promote innovation and the exchange of knowledge in a highly competitive network. The complex matters in intellectual property rights (IPR), such as

- The first topic concerns the legal ownership of internet domain names and trademarks, particularly in relation to copyright laws in the online environment.
- The second topic relates to the legal rights connected with traditional knowledge, previous art, material transfer agreements, and bio-prospecting.
- Software applications and patents.
- The convergence of biotechnological progress, ethical dilemmas, and patent issues.
- Compulsory licensing options, border limitations, parallel imports, and erosion of intellectual property rights.
- Regulation of technology exports by the government

¹²Ganguli P. Intellectual Property Rights. Imperatives for the knowledge industry. World Patent Information, 2000; 22: 167

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PATENT LAW IN INDIA

Liberalization and globalization are characteristics of the modern world. As a result, several nations, including India, which must compete with other nations on the global market, have enacted economic reforms. A nation's development is greatly influenced by patent legislation. More so now that India must compete with wealthy nations like the United States in the World Trade Organization.

A patent is a legally binding document granted by the government to the inventor, granting them the sole authority to sell, produce, utilize, and import the invention for a specified duration after the concept is published. Patents are legally mandated to protect innovators by imposing restrictions on the individuals authorized to market their products on their behalf. The origins of the term "patent" can be traced back to ancient French, Latin, and English. The term "patentem" and "patente" originated in the late 13th century, denoting the concept of an open letter. The phrase acquired its present connotation during the 1580s when it was elucidated as a governmental authorization for the production and commercialization of a certain commodity.

In business, a patent is used to create, market, and sell a product. Patents are used for many of the things that consumers buy. A patent is typically valid for 20 years from the application date once it has been granted by the government. The document that grants a person or company the exclusive right to sell a product is an official government letter patent. Once the patent application has been filed and approved, the patent applicant or vendor may begin collecting royalties for their products.

A royalty is a sum of money given to a product's creator in exchange for the right to use it; it is intended to pay them for their labour.¹³

A producer of a television advertisement might do this by paying a songwriter royalties for the use of their music in the ad. Patents and royalties are often kept private by businesses using strong agreements and trade secrets, at least until the product is introduced to the market.

¹³ What is Patent, <https://blog.ipleaders.in/patent-law-2/> (last visited, 2:33pm 9th April)

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Regardless of whether a provisional or complete specification is included in the patent application, the term of all Indian patents is twenty years, beginning on the date of filing. This means that the term begins on the date of filing. On the other hand, the twenty-year period commences on the date of the international filing (PCT) for applications that are submitted in accordance with the Patent Cooperation Treaty.

In principle, the owner of the patent has the sole right to prevent or hinder others from commercially exploiting the invention that has been patented. In other words, the protection afforded by a patent ensures that the invention cannot be manufactured, utilized, disseminated, imported, or sold by third parties without the permission of the registered owner of the patent.

By giving innovators exclusive rights to profit from their ideas, the patent system hopes to inspire them to progress technology. Books, films, and works of art cannot be patented, but copyright law offers protection for these types of works.

Novelty and inventive step are fundamental concepts in patent law (or lack of obviousness). They grant the right to forbid anyone from using the innovation for the life of the patent from doing so, including independent creators of the same concept as well as copycats¹⁴. Therefore, a patent has the unique ability to be utilized to forbid others from using any kind of invention in their goods and services. Thus, a patent creates significant challenges for its rivals. This is why only industrial advances that are deemed to qualify as patentable inventions are granted patents, rather than all industrial improvements.

There were several obstacles that the general population of India had to overcome in order to obtain the necessary drugs for human treatment. In the majority of cases, these pharmaceuticals were brought in from other countries. In light of the fact that there is a lack of natural drugs and a significant demand for them, prices are fairly high. External laws had an effect on the local laws that were in place. Some of the most expensive pharmaceuticals in the world were sold in India.

The law governing patents is essential because it fosters the development of new technologies. It does this by protecting the rights of those who introduce new ideas, which in

¹⁴ Patents, <https://www.wipo.int/patents/en/>, (Last visited, 8:40pm 6th April)

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turn encourages scientific research and advancement. Patent law is responsible for providing regularization as well as assistance with all aspects of patent registration. Patent law was developed with the primary purpose of ensuring that creativity is unlimited and encouraging people to continue innovating by providing protection for their works. This was the major driver behind the formation of patent law. As a consequence of this, patent law is essential since it functions to protect the rights of innovators. There is widespread recognition of the importance of patents on a global scale.

One of the primary objectives of patents was to encourage the development of new technologies, breakthrough scientific discoveries, and industrial advancements. The law about patents grants the inventor a monopoly on the use of their patented products, but it also allows others to use such products with the inventor's permission and for a price.

In the past, the purpose of patent protection was to encourage creative endeavors and the free disclosure of the particulars of ideas that were novel. A temporary monopoly on the use of an invention is granted by patent protection, which provides an incentive for the sharing of ideas. However, inventors may be reluctant to share their ideas because they are afraid that someone else will imitate their creation. Detailed information regarding the invention is included in the application that is available to the general public:

- By enforcing the patent to exclude competitors, monopolizing the market, and setting a high price, the inventor can recover the cost of inventing the idea during the period of time that the patent is for protection.
- In exchange for royalties, granting the invention to other individuals under the terms of a licence.
- If a person or company breaches the patent, you have the option of filing a lawsuit to seek damages.
- Making the offer to sell the invention to a third party

The patent protection system is significantly more robust than other kinds of intellectual property protection, such as copyright. It is only the manner in which an idea is communicated that is protected by copyright; it does not prevent other people from expressing the same thought in different ways.

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As an additional point of interest, patents are an efficient method of negotiation. It is possible for a Cooperation to negotiate a zero-sum contract or a lesser license payment if it wishes to make use of a patent that is owned by another company but also possesses patents that the other company may utilize.

The findings made by one scientist have an impact on and provide information to the discoveries made by other scientists. If discoveries were kept a secret, industries would come to a halt; hence, fostering distribution is beneficial for society as a whole as well as for business.

A patent grants the person who invented the invention the right to manufacture, use, market, sell, and import the innovation for a period of time that has been established in advance. To put it another way, the person who has the patent has the exclusive ability to prohibit or prevent anyone from making use of the innovation that is protected for commercial purposes. In the absence of authorization from the patent holder, the innovation cannot be manufactured, utilized, distributed, imported, or sold for a profit. It provides protection against patent infringement, which means that the original creator has the ability to pursue legal action against any items that attempt to imitate their innovation or infringe on a patent that has already been issued.

If every single person kept their findings a secret, there is no question that scientific progress would be sluggish. Therefore, it would appear that encouraging people to publish their discoveries is a successful strategy for advancing scientific research and the arts that are beneficial. On the other hand, one of the most effective ways to accomplish this is to share your finding with other people so that they can profit from it.

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