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PATENTS, RESTORATION OF LAPSED PATENTS AND RECENT DEVELOPMENTS

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2.RATIONALE OF PATENT SYSTEM-When we talk about the rationale of patent system, then it can be a well observed fact that the invention can be carried out wherein the patentee has to describe in the patent application, before a patent is granted, then in that case with such clarity as well as the completeness of all the technical details in relation to a person having an ordinary skill in the art should by merely reading the description. Further, it can also be observed that with regards to finding the solutions to technical problems which can be entailed, then in that case invention disclosure provides useful information to the citizens of the country hence helping in avoiding wasteful duplication of effort as well as the multiplication of costs mainly aiming at the research work.

In the case of BISHWANATH PRASAD RADHEY SHYAM V HINDUSTAN METAL INDUSTRIES Justice Sarkaria basically observed that:-

With the aim of encouraging scientific research, this is the main objective of Patent Law afterwards new technology as well as industrial progress. Further it can be also observed that new inventions of commercial utility and hence the grant of exclusive privilege wherein it is done to own, use or mainly to sell the method or the product patented for a limited period and afterwards stimulating new inventions of commercial utility respectively. With regards to the passing into the public domain, then in that case the price of the grant of the monopoly will act as a disclosure of patent in relation to the invention at the Patent Office and hence finally passing off after the expiry of the fixed period of the monopoly.

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BAYER CORPORATION v. UNION OF INDIA – The Bombay High Court in this case basically held that with the aim of encouraging scientific research, new technology as well as the industrial progress, the patent law was being enacted and afterwards new invention of commercial utility was the basic aim of granting of a patent. In order to prevent all others from manufacturing and giving guarantee to the holder of the patent, patent law basically encouraged research as well as the invention and more importantly it also prevented the usage and/or selling of invention of goods i.e. patented product mainly related to the particular number of years to the exclusion of all others. With the adequate knowledge of the invention as well as with regards to the consideration of the above rights, an inventor had to make available/disclose his society in order to exploit the same mainly after the patent term was over and afterwards an inherent objective while granting of a patent was the main obligation of the patent holder in order to utilize the invention as well as to meet the needs of the society. With regards to the availability to society, the invented product was not to be kept in the attic but mainly to use and also to form the basis wherein it can be henceforth observed that it will act as the basis for further research and development. With regards to the improvement of technological advancement, these will all lead to the betterment of human existence on planet earth.

3.AYYANGAR's REPORT AND PATENTS ACT, 1970 – Since the enactment of 1911 Act, there has been substantial changes mainly in the political as well as economic conditions of the country. In order to review the working of the patents law in India, then in that case in the year 1948, the Government henceforth appointed Patents Enquiry Committee in order to review it. In the year 1950, its final report was being submitted by the Committee. And then in the year 1953, it was observed that the Patents Bill was introduced in Lok Sabha respectively and also the Bill was largely based on the U.K. Patents Act 1949. With regards to recommendations of the Committee, it was also incorporated but at the same time the Bill could not become an Act as it lapsed on the dissolution of First Lok Sabha. It was observed by Justice Ayyangar with regards to different technological as well as the economic development that "the same patent law would henceforth be operating differently in industrial countries as well as the under-developed countries and at the same time he also agreed upon the views of the Patents Enquiry Committee that "the Indian Patent System henceforth failed in its main purpose, namely to stipulate invention with the encouragement of the development as well as

exploitation of new inventions among Indians in relation to Industrial Purposes in the country in order for the security of the benefits thereof to the largest section of the public." (Interim Report)

With regards to the submission of a comprehensive report mainly on Patents Law Revision in September 1959 by Justice Ayyangar, it became the basis for the Patents Bills 1965 and afterwards with reference to patents for food, drugs as well as medicines the Bill also incorporated a few more changes and henceforth was introduced in the year 1965. The adaptation of a number of amendments was made and also the careful consideration was made in the matter when the Bill was referred to a Joint Committee of Parliament and afterwards in the year 1966 the Amended Bill was moved in the Lok Sabha. Finally in the year 1970, the Patents Bill was again introduced in the Parliament and hence was passed by both the Houses of the Parliament and then it came into force on April 20, 1972.

4.MEANING OF PATENT, INVENTION, NEW INVENTION AND MEANING OF NEW OR NOVEL-

Invention-For a limited period which can be henceforth be conferred by Patent Office on an inventor in order to exploit his invention is called a patent which is basically a monopoly right. "Patent" means a patent for any invention which is mainly granted under the given act under Section 2(1) (m).

As per Section 2(1) (j) of the Patents Act, 1970 with an inventive step as well as the capability of industrial application, "New Invention" means a new product or process and in the given case of DHANPAT SETH v. NIL KAMAL PLASTICS CRATES LTD. 2008 (36) PTC (HP) (DB) at p.127 it was observed a process which involves an inventive step which is an invention within the meaning of the Act and hence given under a bare perusal of the definition of invention and also it was observed that it is therefore not necessary that the development of the product be a totally new product and also even if a product is substantially mainly by an inventive step, then in that case it would be hence termed as an invention.

New Invention- Any invention or basically the technology wherein publication does not anticipate it in any document or henceforth in relation to its usage in the country or basically elsewhere in the world is termed as "New Invention" and at the same time it is related to the date of filing of patent application with complete specification. With regards

to the Section 2(1)(j) it has been basically clarified in the case of F. HOFFMAN-LA ROCHE LTD. V. CIPLA LTD. "new invention" term has been stated by the court but at the same time has not been used anywhere in the Act, however we should keep in mind that the relevance of the provision lies in the fact that it henceforth gives a flavour in relation to the intention of the Legislature respectively and then it has also been clarified by the Section as well and at the same time Section 2(1)(l) basically laid that the invention or mainly the technology must not have been previously made or India, it should not have been used.

Recent Reports and Patent Characteristics- The success of surety and steady patent rise can be basically attributed to Education Sector in India wherein in the Fiscal Year 2023, there was a lead in filing applications in India which led to the surge in patent filings as well as educational institutes which included universities and henceforth it arose from 11 per cent in Financial Year 2021-22 (FY 22) to 23 per cent in FY 23. But in the month of January 2024, it was observed by Delhi High Court that with regards to prohibition of Patent Infringement, sale of generic versions of cancer drug stopped as it was observed that across the country, affordable therapy regarding patients access had been denied and also stoppage of the sale of generic versions of cancer medication Ibrutinib which was mainly used for the treatment of leukaemia and order regarding the issue was passed on the grounds of the infringement of the drug's patent and along with it the High Court of Delhi passed an injunction against six domestic companies which were as follows- Natco Pharma, Hetero, BDR Pharma, Shilpa Medicare, Alkem and finally Laurus Labs from marketing generic versions respectively. Also in the year 2023, it was observed that Rupees 2 Crore fine was imposed upon the Private Company as per the High Court of Delhi ordered in relation to Triveni Chemicals and also it was also observed that the reason was that there were damages to pharmaceutical company Pfizer with regards to patent infringement by the Private Company and a suit was being filed by Pfizer Inc. and its group companies in the court against Triveni Interchem Private Limited and the reason was that there was an infringement of their patent (IN 218291) for the compound known as Palbociclib. [2]

[2]WIPO, Background Reading Material on Intellectual Property (Geneva, 1988) p.375
Novartis AG v. CIPLA Ltd., 2015 (61) PTC 363 (Del) p.397
Bajaj Auto Ltd. v. TVS Motor Ltd., 2008 (36) PTC 417 (Mad.) at p.439
F.Hoffmann-la Roche Ltd. v. Cipla Limited, 2008 (37) PTC 71 (Del.)

We can also observe in the Bombay High Court Judgment in WYNK LTD. and ORs. v. TIPS INDUSTRIES LTD that with regards to Copyright Act of Section 31D, there was a scheme that had been provided in relation to statutory licensing and at the same time internet broadcasting within its scope was not being included in it and stating that Section 31D specifically deals only with Radio as well as Television Broadcasting services which was being extensively relied upon by the rationale of the Single Judge's order.

With regards to unduly prevention or making it difficult, the objective of competition policy was mainly been made so that fair functioning of the market is ensured and at the same time, with wide ranging activities in relation to abusive exclusionary conduct basically by a dominant company anti-competitive practices have been included and then there is a refusal on looking at the market conditions in relation to provide certain goods or mainly to grant the services as well as charging excessive prices, then having the vertical arrangements mainly between the suppliers as well as the distributors and among firms it is related to the other agreements henceforth leading to the distortion of competition on the market respectively.

To understand the Patent in depth, then in that case we can take the help of the case law of NOVARTIS AG v. UNION OF INDIA wherein "new product in chemicals and especially pharmaceuticals may not necessarily mean something which can be regarded something new or as the case may be completely unfamiliar or as we can observe as strange or as if it never existed before" as per the Supreme Court's statement. As per the observation, it can note that the real meaning of it will be "in addition to another or in relation to others of the same kind". There must be passing of the subject product which is in addition to clauses (j) as well as (ja) of Section 2(1) of Patents Act respectively which is related to the case of chemicals and especially pharmaceuticals if the condition is that protected patent which is claimed is a new form of a known substance with regards to the known efficacy.

Inventive Step- As we further look into the topic, then it can well observed that with regards to the technical advancement in comparison to the existing knowledge or mainly having the significance of economy, inventive step basically means the a feature which can be taken in terms of an invention and it also involves technical advances making the invention which is not obvious to a person skilled in the art respectively. (Section 2(1)(ja)

Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries, (1979) 2 SCC 511 at p.517
Bayer Corporation v. Union of India, Writ Petition No. 1323 of 2013 decided on 15 July 2014

of the Patents Act, 1970). With regards to granting a patent on the sole basis of economic significance alone, then in that case there is a compromise as well as dilution by this fact that patent can only be granted on this sole basis only and more importantly it is in relation to the technical advancement. In the year 2002, by the amendment, a person who is not skilled in the art, an inventive step was hence defined basically as a step that makes a person not obvious and then there was further in the year 2005, which defined inventive step which meant "a feature of an invention that basically involves technical advancement in comparison to the existing knowledge or having economic significance as a whole or which includes both and afterwards it makes the invention not obvious to a person who is mainly skilled in the art."

We can take an example of the case law of CTR MANUFACTURING INDUSTRIES LIMITED v. SERGI TRANSFORMER EXPLOSION PREVENTION TECNOLOGIES PVT LTD. where the irrelevancy was proved regarding the degree of inventiveness as per the observation of the court. There will be very great ingenuity, if in the case there are slight alterations or mainly the improvements yielding dramatically important results.

Again in the case of DHANPAT SETH v. NIL KAMAL PLASTIC CRATES LTD. the Division Bench held:

Instead of bamboo, as per the mere fact that the device is made of polymeric material will not make it a true fact that it is not an inventive step which basically involves any novelty and further regarding the process of manufacturing the Traditional Kilta which is made up of natural material, there is nothing which can be proved before the court and also there virtual copies of the ropes which are taken into consideration while making nylon straps now added and the ropes in the Kilta can henceforth be adjusted mainly by the user which is kept in view while using the Kilta and these determinations can be related to the height as well as the weight of the person and finally the mere introduction of buckles would then not amount to a new device which can be called as an invention or an inventive step.

If we talk about the topic which is in relation to the Software Patent, then in that case software cannot be patented and more importantly as per the European Patent Office (EPO), it is often difficult to square when it comes to the patents which are being granted by the office as well as offices around the World and at the same time there arises a question why misconception arises when it comes to software patents as well as commonly

granted in Europe. Then we have to find the answer regarding the same and it goes like this as per the Convention regarding European Patent stating that- "With regards to susceptible of Industrial Application, European Patents henceforth shall be patented for any invention which includes the field of technology, provided that they are new as well as involves steps".

There are concerns regarding an order management as well as the method when we talk about the inventions in relation to European Patent Application which is done with regards to automatically order placing particularly for expendable supplies as well as the order based information input in relation to the user of the system which are collected from each department or the section in particular and finally expendable supplies or the parts such as a copy papers or toner cartridge mainly used in the office but the problem is with the lack of inventive step, the first-instance examining division had mainly refused the application and so the possible solution which arose in front of everyone as per EPO practices and case laws was that there must arise from basically the features as well as the aspects of the invention from which a technical solution to a technical problem can be inferred which is in accordance to the case law and practices of EPO and then further it should be inferred as well as should [3]be of a technical character (for example, the PBS-decision regarding (T 641/00- and then afterwards there should be two identities (COMVIK, OJ EO 2003, 352). There requires an examination for patentability as well as the analysis of the invention wherein it deals with cases of a mixed-type invention which includes non-technical aspects and then the construction of the claims regarding the determination of the technical content of the claims.

As per the Delhi High Court observation, it can be clearly observed that there should be Only Due to Algorithms & Computer-Executable Instructions and hence Invention Shouldn't be Deemed 'Computer Program Per Se' under Patents Act and reason that was cited here was because it involves algorithms as well as the computer-executable instructions and the viewpoint that arises here is that decision should be based on the technical advancements and at the same time while solving the real-world problems, there should be a practical application regarding the same.

[3]Interim Report p.165
Section 2(1)(j) of the Patents Act, 1970
Dhanpat Seth v. Nil Kamal Plastics Crates Ltd. 2008 (36) PTC 123 (HP) (DB) at p.127
Section 2(1)(1) of Patents Act, 1970
Hoffmann-La Roche Ltd. v. Cipla Ltd., (65) PTC 1 (Del) (DB) p.16

5.INVENTIONS NOT PATENTABLE- SECTIONS 3-4

The following inventions are not patentable: -

(a) An invention wherein which can be termed as frivolous or which basically claims anything obviously or contrary to well-established natural laws.

(b) An invention the primary or intended use of which would be contrary to law or morality or injurious to public health

(c) The mere discovery of a scientific principle or the formulation of an abstract theory or discovery of any living or non-living substances occurring in nature (e.g., the theory of relativity is not patentable)

(d) The mere discovery of any new form of a known substance which does not result in the enhancement of the known efficacy of that substance and more importantly the mere discovery of any new property or basically new use for a known substance as well as mere use of a known process, machine or apparatus unless such process results in a new product or accordingly employs at least one new reactant.

(e) Further we can observe that a substance obtained by a mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substance respectively

(f) The mere arrangement or rearrangement as we can observe or duplication of known services wherein each functioning independently or more importantly of one another in a known way

(g) A method of agriculture or horticulture

(h) Then further, a process for the medical, surgical, curative, prophylactic, diagnostic, therapeutic or other treatment of human beings or any process for a similar treatment basically of animals to render them free of disease or to increase their economic value or that of their products.

(i) Plants and animals in whole or any part thereof other than micro-organisms but more importantly includes seeds, varieties and species as well essentially biological processes for production or propagation which are related to plants and animals

(j) A mathematical or business basically relates to the method or a computer program per se or algorithms

(k) A literary, dramatic, musical or artistic work or any other aesthetic creation whatsoever as well as it includes cinematographic works and television productions respectively

(l) A mere scheme or rule or method of performing mental act as well as method of playing game

(m) A presentation of information

(n) Topography of integrated circuits

(o) An invention which in effect, which is a traditional knowledge or which basically is an aggregation or duplication of known properties of traditionally known component or basically which are components respectively

(p) An invention relating to atomic energy

6.CONVENTIONS, JUDGMENTS AND IMPORTANT PROVISIONS REGARDING PATENTS-

We can basically observe that Paris Convention is one of the most important Conventions when we are talking about the Patents and also it relates to Industrial Property Rights Protection which mainly includes patents, in particular providing national treatment then we have priority regarding rights as well as different common rules which is related to the field of substantive patent law with regards to the patents independence.

The procedures which are being put up before National/Regional Patent Offices are mainly included in Patent Law Treaty and it includes a general rule with the maximum requirements which includes matters of formality.

Then we have a Treaty regarding establishment of an International Patent Filing System and the name of the Treaty is Patent Cooperation Treaty and also at the same time with regards to the purposes of patent procedure, Budapest Treaty was mainly formed and the treaty is basically related to prescribing deposits of microorganisms at any international depositary authority and treaty gets its recognition under the purposes of patent procedure.

With regards to the retrieval of patent information, as well as for the classification of International System regarding patent applications which are in relation to the fields of technology and hence giving allowance to efficient searching, the name of the treaty is Strasbourg Agreement Concerning the International Patent Classification.

As per the Patent Rules in its Official Gazette on March 15 2024, it was mainly observed that the Indian Ministry of Commerce and Industry and under which Department for Promotion of Industry and Internal Trade is administered, basically published changes which were in [45]relation to the 2003 Patent Rules. For the determination of patentability with regards to the claimed invention, the basic purpose of the statement given by India in this case is related to notify the Controller/Examiner about the prior art that may be "material" and also at the same time, the amendments which were made in Indian Patents Rules mainly highlights the following rules- The updated information to be provided periodically and it is also a basic requirement according to the new laws which is related to Form-3 in relation to the corresponding patent applications and then at the same time it should be done within 6 months from the date of filing of the application. There has been an amendment in Rule 12(3) as it relates to the accessible and available databases usage by the Controller and at the same time it can be a helpful tool for the consideration of information which mainly relates to the applications filed in a country outside India and the positive point here is that there is no relying here upon the applicant for the same, hence giving the access of eliminating the requirement for the applicant in order to submit information relating to objection in respect of Novelty as well as the Patentability and then the claims of the application which is allowed in the foreign jurisdiction. Under Section 8(2) however, regarding some instances the Controller henceforth direct the applicant to furnish a fresh statement and then afterwards the procedure of Undertaking has to be done mainly on Form 3 within two months from the date of such communication mainly by the Controller [As per the newly added sub-rule 4 of Rule 12].

Also in any proceeding before the Appellate Court or the High Court mainly for the revocation of the patent, under Section 58 of Patents Act there may be allowance to the Patentee by the Appellate Board or the High Court regarding his amendment with complete

[4]Official website of Intellectusl Property https://www.ipindia.gov.in Indian Patent Office
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[5]Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries, (1979) 2 SCC 511
F.Hoffmann-La Roche Ltd. v. Cipla Ltd. 2016 (65) PTC 1 (Del) (DB) p.50
https://www.legalserviceindia.com Recent Developments in Patent Law in India- Legal Service India
World Intellectual Property Organization https://www.wipo.int Current and Emerging Issues Relating to Patents
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specification in such manner as well as the subject related to terms of costs, advertisement or otherwise as per the understanding of the Appellate Board or the High Court and afterwards wherein the Patent is termed as invalid, if it is related to the proceedings for revocation then in that case, the Appellate Court or the High Court may allow the specification to be amended instead of revoking the patent respectively. In the year 2022, there were record number of Patent Applications which were filed according to the statistics provided by World Intellectual Property Indicators which was nearly 3.46 million patent applications marking a third consecutive year of growth and the countries such as China, the US, Japan, Republic of Korea as well as Germany had the highest numbers of patent filings done in the year 2022, ultimately becoming the countries in terms highest numbers of patent filings. IP filing activity mostly occurred around Asia which was in relation to a continuation of longer-term trend from all origins. Asia was the largest contributor wherein it accounted for 67.9%, 67.8% as well as 70.3% as per the trademarks and industrial designs filing activity in the year 2022 respectively.

According to Rule 13(3) of the Patents Rules it has been stated that there will be an inclusion of a reference to the main patent or the application as the case may be with regards to each patent in addition and henceforth it provides a definitive statement that is basically invention is an improvement or as we can say modification of the invention which is being claimed so that complete specification of the main application is done. Then Section 63, 62, Section 50(3), Section 48, and Section 46 are some of the important sections wherein important provisions of Patent have been discussed and also done for the welfare of the society at large.

As we further look deeply into the domain of Patent then we can clearly observe that there are different rights that have been provided to Patentee under the Patents Act which are as follows- The Right to mark the Patented Invention, Sue for Infringement, Duplicate Patent, Convention Application, the Right to Assign the Patent, the Right to License the Patent, the Right to file for a Patent Extension and finally the Right to Challenge the Validity of the Patent respectively. In the case of AVERY CORPORATION v CONTROLLER vide order 4 November 2022 which was related to aspect of Inventive Step, can be observed that there were discussions done by the Court regarding structured tests basically used in other jurisdictions such as Graham Factual Inquiry/KSR in United States of America as well as the Pozzoli five-step in the United Kingdom or in Europe Problem-Solution

Approach Usage might be applied to assess inventive step or non-obviousness. But there is a mandatory requirement regarding "Invention which should involve non-obvious technical advancement" under the provisions of Indian Statutory requirements and further observations tells us that age of the prior art, long-felt, want, etc. are some of the other factors which were mainly cited by the Court in order to complement the existing test of inventiveness .

Then we have the cases relating to NOVARTIS v. NATCO and ASTRAZENECA v. INTAS in the year 9 January 2023 and 20 July 2021, wherein under these cases it was observed that substitution selection regarding mere cherry –picking basically for substitute selection out of the myriad as provided in Markush formula which is related to the prior art as per the compound claim was not permissible and more importantly there was a rejection regarding appellant's contentions by the Division Bench of the Court on the grounds that generally in genus patent there was a disclosure of the claimed compounds, and at the same time protection of one patent could only be granted in the case of one invention.

7.CONCLUSION AND POSSIBLE SUGGESTIONS-

While developing new technology, patents can provide great value and increased returns and more importantly it is quite beneficial for the individuals as well as the companies on the investment made in developing new technology and more importantly patenting should be done with an intelligent strategy that aligns business in order to ensure or implement the technology with a wide range of options in the search for how, where and when to patent and further we can take example say like with a focus on international considerations and regulations in specific countries, it is possible mainly for the company to achieve significant savings as well as it can also be concluded that significant savings can be achieved and improvement in rights using patents can be done respectively. In order to protect them from any kind infringement, Patent Law in India can be well said that it has acted as a boon for the country and with the recent amendment in Patent Laws, it has become lot more easier for the citizens in order to understand the procedures regarding the functioning of Patent Laws in the country and at the same time rather than just profiteering focus should be on the welfare of the public rights in the country, with the aim of encouraging innovations there should be legislative as well as systematic changes and hence they be inculcated with proper changes and finally the procedures regarding how to obtain Patent should be the main aim of the process of registering patents. Novelty in Patent has been properly

discussed in the case of RICKMANN v. THIERRY as well as in the case of NOVARTIS AG v UNION of INDIA about what is new or which should not form a part of the state of the art respectively

As we are concluding the entire thing about the patent, it is important for us to know that patent is one of the most important tools in the field of law which is basically done and as we all know that a patent document fives the holder an exclusive intellectual property rights over a specific invention, patents which are an important element in encouraging innovation as well as for the protection purposes. There should be stricter implementations of Patent Laws in the country so that no infringement takes place, it should encourage the promotion of education sectors, new technologies, should collaborate with SMEs as well as AI Sector in order to boost it further and finally curriculum regarding patent should so that everyone should be aware that what basically is a Patent from school education itself.

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