

IPRT

Unit - II

Patent :- Patent is a legal document that gives the holder exclusive rights to an invention, product, or process for a set period of time.

→ No one can use the invention without prior permission or payment of fees.

→ This means that the patent holder can prevent others from making, using, selling or importing the invention without their permission.

Importance of grant of Patent :-

→ The importance of grant of Patent is to encourage scientific research industrial progress and innovation.

Requirements of for grant of Patent :-

→ The person applying for patent shall be true and first inventor of the invention.

→ The applicant shall also define the scope of invention.

→ The invention must be capable of industrial application

→ The Patent application can be made jointly

Scope of Patent Rights :-

① Geographical Scope :- As soon as your patent is granted, you have the right to utilize your invention issue licenses and prohibit others from using your invention.

→ The invention is protected in countries in which the patent is valid.

eg:- A German patent does not get protection in the US Market.

② Content related scope:- The scope of the patent content has strong protection as compared to geographical scope.

→ First and foremost, this can be deduced from patent claims specified in your application filing documents.

→ The more far-reaching your claims, the protection of your intellectual property will be stronger.

→ The number of claims and the phrasing of claims is very important.

Licensing & Transfer of Technology:-

→ Patent licensing is an agreement where the patent owner grants permission to another party to use the patented invention under agreed terms. Licensing can be:

1. Exclusive License:- Grants rights to only one licensee, excluding even the patent owner from using invention.
2. Non-Exclusive License:- Allows multiple licensees to use the invention.
3. Cross-License:- An exchange of licenses between parties, often used in industries with overlapping patents.
4. Compulsory License:- Issued by a government allowing others to use the invention without the patent owner's consent, usually for public interest.

Benefits of Licensing:-

- Provides revenue streams to the patent owner.
- Encourages collaboration and commercial application of inventions.
- Reduces litigation risks through mutual agreements.

Transfer of Technology:-

→ Technology transfer involves the process of transferring knowledge, methods, and innovations from one entity to another, it can include.

1. Assignment of Patent Rights:- The patent owner permanently transfers ownership to another party. The assignee gains all rights to the patent.
2. Know-How Transfer:- Sharing technical knowledge that may not be explicitly covered in patents but is critical to implementing the technology.
3. Joint Ventures:- Collaboration b/w entities to develop or commercialize technology.
4. Spin-offs:- Creating new companies to commercialize specific technologies.

Factors Affecting Technology Transfer:-

- Valuation:- Determining the market value of the patent or technology.
- Legal framework:- Ensuring compliance with international and national regulations.
- Market Readiness:- Assessing whether the technology is commercially viable.

Patent Information:- Patent Information refers to the details disclosed in a patent document, including:

1. Bibliographic Data:- Title, inventor(s), assignee(s), filing date, and application number.
2. Technical Description:- A detailed explanation of the invention, often including diagrams or drawings.
3. Claims:- specific legal boundaries of the invention's protection.
4. Legal Status:- Current state of the patent (eg. granted, expired, abandoned).
5. Patent family:- Group of related patents filed in different countries for the same invention.

Why use Patent Information:-

- Avoiding Infringement:- Check for existing patents before developing new products.
- Identifying Trends:- Analyze technological advancements and innovation patterns.
- Competitor Analysis:- Understand competitors' innovations and strategies.
- Licensing Opportunities:- Find technologies available for licensing.
- Patent Landscaping:- Evaluate the IP environment in a specific field.

How to use Patent Databases:-

1. Keyword Search:- Use relevant terms related to the invention or technology.

2. Classification Search:- International Patent Classification (IPC) or cooperative Patent Classification (CPC) systems categorize patents by technical areas.
3. Patent Number Search:- Directly retrieve documents using the specific patent/application number.
4. Advanced Search:- combine fields like inventor name, assignee, filing date, and keywords.

Features of Patent Databases:-

1. Patent Analytics:- Visualizations and reports to understand trends, legal status, and geographic distribution.
2. Legal of Patent Databases:- Monitor active, expired, or pending patents.
3. Patent Family Information:- Find equivalent patents in different jurisdictions.
4. Export options:- Download patent data for research and analysis.

Challenges in Patent Information:-

1. Language Barriers:- Patent documents are often written in technical and legal language and translations may be required.
2. Complexity of Claims:- Interpreting claims to determine the exact scope of protection requires expertise.
3. Inconsistencies Across Databases:- Some databases may not include updated legal status or newly filed patents.

Geographical Indications:- (GIs)

→ A geographical indication is a distinctive sign or name used on products that have a specific geographical origin and possess qualities, reputation, or characteristics essentially attributable to that place of origin.

Key features of GIs

1. **Geographical Origin** :- A GI links a product to a specific location, such as a country, region, or town.
2. **Quality and Characteristics** :- The product's quality, reputation, or other characteristics must be inherently tied to its place of origin.
3. **Cultural and Economic Value** :- GIs protect traditional knowledge and techniques, fostering economic growth for the region.

Examples of GIs :-

- **Agricultural Products** :- Darjeeling Tea (India), Champagne (France), Parmigiano - Reggiano cheese (Italy), Basmati Rice (India/Pakistan)
- **Handicrafts** :- Kashmiri Shawls (India), Murano Glass (Italy), Delftware (Netherlands).
- **Wines and Spirit** :- Scotch Whisky (Scotland), Tequila (Mexico), Cognac (France).

Protection and Enforcement:-

1. **Registration** :- GIs can be registered to provide exclusive rights to producers from the defined geographical area.

2. Misuse Prevention:- Prevents unauthorized use or misrepresentation (eg; labeling a product "Champagne" when it is not from the champagne region).
3. Validity:- GI protection continues indefinitely as long as the link between the product and its geographical origin exists.

Challenges in GIs:-

1. Disputes:- Conflict over the use of GIs b/w countries, such as the Basmati Rice dispute b/w India & Pakistan.
2. Enforcement issues:- Difficulties in preventing misuse, especially in international markets.
3. Cost of Registration:- The process of obtaining and GI status can be expensive and time-consuming.

Benefits of GIs:-

1. Economic Development:- Increases marketability and demand for GI-tagged products, boosting income for local producers.
2. Cultural Preservation:- Protect traditional practices and cultural heritage.
3. Consumer Trust:- Ensures authenticity and quality for consumers.

unit - I

Intellectual Property :- Intellectual Property (IP) refers to creations of mind, such as inventions, literary and artistic marks, designs, and symbols, names and images used in commerce.

→ IP is protected in law by, for example, patent, copyright and trademarks. which enable people to earn recognition or financial benefit from what they invent or create.

Intellectual Property Rights :-

→ Intellectual Property Rights are the rights given to persons over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time.

Types of Intellectual property :-

① Copyright :-

→ Copyright is the right to "not copy"

→ Grants legal rights to creators for their original works like writing, photograph, audio recordings, video, sculptures, architectural works, computer software, and other creative works like literary and artistic work.

The rights include

- right to copy (reproduce a work).

- right to create derivative works based upon it,
- right to distribute copies of the work to the public,
- and right to publicly display or perform the work.

It prevents others from copying, using or selling the work which is protected under copyright:-

Literary work:- Pamphlets, Brochures, Novels, Books, Poems, Song Lyrics, Computer programme.

Artistic work:- Drawings, Paintings, Sculpture, Architectural Drawings, Technical Drawings, Maps, logos

Dramatic work:- Including Dance or Mime, Screenplay, Musical work, Sound Recording, Cinematographic films.

Copyright:-

- The Copyright Act, 1957 (the 'Act') came into effect from January 1958.
- The Act has been amended five times since then, i.e., in 1983, 1984, 1992, 1994, 1999 and 2012.

② Trade Mark:-

- Once brand name and brand mark is registered and legalized it becomes a trade mark.
- A brand which is registered under "Trade and Merchandise Marks Act, 1958" treated as a trade mark.
- A trade mark is a brand or part of a brand that is given legal protection.

→ TM or ® represents that brand is duly registered.

→ Protect seller's exclusive rights to use brand name or mark.

→ All brand name or mark cannot be termed as trademark.

- A trademark is any word, name, or symbol (or their combination) that lets us identify the goods made by an individual, company, organization, etc.

→ A trademark helps in distinguishing similar product in the market from its competitors.

The registration of trademark is not mandatory under the trademark Act 1999,

- but registration of trademark helps establish exclusive rights over the mark.

Trademark may be categorized as conventional and Non conventional trademark —

(i) Conventional Trademark:- words, colour combination, label, logo, packaging, shape of goods, etc.

(ii) Non-conventional Trademark:- i.e, sound mark, dynamic mark, etc. Besides these, smell and taste are also considered for protection as trademarks, in some parts of the world.

③ Patent:-

- usually granted for inventions
- protects the scientific inventions (product and or process).
- The government provides the exclusive 'right to exclude' all others and prevent them from making, using, offering for sale,

● , selling or imitating the invention,

● → Newton saw the apple fall & discovered gravity which is considered to be a discovery.

● → On the other hand, the father of telephone Alexander Graham Bell invented telephone.

● For an invention to be patentable:-

● It must be new (invention):- i.e. it should not already exist (discovery) in the current knowledge anywhere in the world.

● It must be non-obvious:- to any person who is skilled in the relevant field of technology. That is, the standard is a person reasonably skilled in such field of study (inventive step).

● It must be capable of industrial application, i.e., capable of being used or manufactured in the industry.

● What cannot be patented:-

● → Scientific principles, method of agriculture or horticulture, method of treatment, traditional knowledge, incremental inventions without increase in efficacy and inventions related to atomic energy are some of the inventions not patentable under sections 3 and 4 of the Patents Act, 1970.

● → A patent grants exclusive rights to the inventor for a period of 20 years.

International cooperation on Intellectual Property:-

→ International cooperation on intellectual property (IT) aims to harmonize laws, encourage innovation, and ensure fair trade across borders.

Here's an overview of the current scenario:-

1. Key International Organizations:-

→ World Intellectual Property Organization (WIPO):-

→ WIPO, a specialized agency of the United Nations, is the central body for IP cooperation.

→ World Trade Organization (WTO):-

→ The WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is a cornerstone of international IP law, linking IP protection to global trade.

→ Regional IP Organizations:- Organizations such as the European Patent Office (EPO) and the African Regional Intellectual Property Organization (ARIPO) work on regional IP frameworks to streamline processes and foster cooperation.

2. Key International Treaties:-

- Paris Convention (1883):- for the protection of industrial property, allowing equal treatment of foreign and domestic patent applications.
- Berne Convention (1886):- focuses on copyright protection for literary and artistic works.
- Madrid System:- facilitates international trademark registration.

3. Challenges in International Cooperation

- Diverging National Laws:- Differences in enforcement, duration of protection, and scope across countries create hurdles.
- Digital and technological Advancements:- New issues like artificial, blockchain, and digital privacy challenge existing frameworks.
- Balancing Interests:- Developed countries often advocate for ~~strict~~ stricter IP protections, while developing countries push for more flexibility to address public health and socio-economic needs.

4. Recent Trends:-

- Focus on Trade and IP Linkages:- Bilateral and ~~logi~~ regional trade agreements increasingly include IP chapters, setting higher standards than TRIPS.
- Public health and Access to Medicines:- Efforts like the TRIPS flexibilities and initiatives such as the medicines patent pool aim to balance IP rights with public health needs.

5. Future Directions:-

- Global Harmonization:- Efforts to standardize IP laws and procedures are ongoing to reduce complexity & costs for innovators.
- Capacity Building:- Strengthening IP systems in developing countries through technical assistance and training.
- Sustainability and IP:- Addressing how IP can promote sustainable development and green technologies.

Procedure for grants of patents:- The procedure for granting a patent in India generally includes the following steps.

- Declaration of Invention:- Make sure all individuals who contributed to the innovation are recognized as inventors.
- Filing patent application:- file the application
- Request for examination (RFE):- Request an examination of the application in form 18. The earlier the request, the earlier the application will be examined.
- Examination of application:- The application will be examined by an examiner.
- Response to objections or first Examination Report:-
- Respond to any objections or receive the first examination report.
- Grant of Patent:- The patent will be granted.

Advantages & disadvantages of Patenting under PCT:-

Advantages:-

1. Global Reach with one Application:- A single PCT application allows you to seek patent protection in 157 member countries, providing broad international coverage.
2. Cost Deferral:- You can defer substantial costs by up to 30-31 months from ~~the~~ the priority date.

3. Simplified Application Process:- Filing a PCT application eliminates the need to prepare and file separate applications in multiple countries.
4. flexibility in Market Selection:- The extended timeline allows inventors to identify and focus on key markets before committing resources for national phase entry.
5. Standardized Format:- The PCT process follows a uniform application format and procedures, making it more predictable and user-friendly across different jurisdictions.

Disadvantages:-

1. No International Patent:- The PCT system does not grant a 'global patent'.
2. High Initial Filing Cost:- Although costs are deferred, the initial filing fees for the PCT application, including search and examination fees, can be significant.
3. Extended Process:- The PCT process adds time to the overall patenting timeline, as you need to wait for the international phase before proceeding to national examinations and grants.
4. National Phase Complexity:- Once in the national phase, you must comply with the specific requirements of each patent office, including language translations, legal representatives, and local fees.
5. Varying Patentability Standards:- Even with the ISR and IPR, the patent office in each country has the discretion to conduct its own examination and may arrive at different decisions regarding grant.