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A Legislative Landscape of Patent Rights and Its Application in India

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Abstract

Intellectual property rights are one of the innovative areas. The significance of IPR is tremendously increasing at international level as well as national level. For the purpose of protecting Intellectual property rights like trademark, copyrights as well as trademarks, certain statutory provisions has been prescribed by the legislature of India. In this perspective, patent law in India will be the key perspective of this paper in which it will be discussed the legal framework of Patent law with the help of statutory provisions under The Patent Act, 1970.

Introduction

At present era, the significance of Intellectual Property Rights isgrowing day by day.Patent law in India is governed by the Patent Act, 1970. The Act was enacted in the year of 1970 by the Indian legislative authority for the purpose of providing detail provision relating to protection of Patent as well as procedure for registration of patent in India. This Act is applicable throughout the territory of India. Under the ambit of Intellectual Property rights law, the Owners of Intellectual Property Rights are granted exclusive and complete ownership on which he can enjoy rights. It is said as intangible assets such as musical, literary and artistic works, discoveries, any inventions, phrases, symbol or any design. In this way, Authors are required to follow certain norms and standards as per the prescribed law relating to Intellectual Property Rights. When Owner of the IPR is enjoying such right, then he is having certain goodwill. Because it is his idea. He is economically benefited out of such enjoyment of Intellectual Property rights.

Types of Intellectual Property

Intellectual property protects an ideas and information which are having commercial value. Presently there is great deal for assert and strengthen the various types of protections for ideas.[1] There three central types of Intellectual Property rights which can be discussed with the help of following diagram. From National perspective, on every types of Intellectual Property is having prescribed rules and regulations. These laws provide specific procedure for availing intellectual property rights.

(Footnotes)

[1]Intellectual Property Patents, Copyright, Trademarks and Allied Rights, *Cornish, Llewelyn and Aplin*, Seventh Edition, Sweet & Maxwell, Sough Asian Edition, page no 6

What is Patent?

Under this Act, the word 'Patent' means a patent for any invention granted under this Act.[1] In broader language, the word 'Patent' is referred as a monopoly right over any invention. Here it would be fair to say that all inventions are not patentable as well as it would be inappropriate to say that it is required to protect inventions solely through patent.[2] Patent is one of the valuable form of intellectual property. Grant of Patent is an exclusive right granted to a person who has invented any new or useful article or any improvement on prevailing article. An objective of grant of Patent is to encourage and develop new advancement and technology. Ultimately, it will enable for the development of Nation. It can also form the significant contribution to the nation.

What are Inventions?

For the purpose of availing patent rights, an individual are required to make new inventions and new knowledge which will fulfill the prescribed norms given by contemporary law in India."New inventions means any invention or technology which has not been anticipated by publication in any document or used in the country or elsewhere in the world before the date of filing of patent application with complete specification, i.e. the subject matter has not fallen in public domain or that it does not form part of the state of the art."[3]After approval of invention, the person can claim for availing right under Patent Law. So from the perspective of Patent Law, Inventions is also having significant values.

What are not Inventions?

The provisions relating to "what are not Inventions" have been described under Chapter II of The Patent Act, 1970, which are to be discussed as follows.[4]

- an invention which is frivolous or which claims anything obviously contrary to well established natural laws
- an invention which is intended to use or commercial exploitation
- mere discovery of scientific principle

- Ø mere discovery of new form of known substance which does not result in the enhancement of known efficacy
- Ø those substance which has been obtained by a mere admixture resulting only in the aggregation of properties
- Ø a mere arrangement or rearrangement or duplication of known devices
- Ø a method of agriculture or horticulture
- Ø any such process for the medicinal, surgical, curative, prophylactic diagnostic, therapeutic or other treatment of human being or treatment of animal to render them free from disease or to increase their economic value
- Ø a mathematical or business method or a computer programme
- Ø only scheme or rule or method or performing mental act or method of playing game does not fall under the category of inventions
- Ø a presentation of any information also does not cover under the purview of inventions for the purpose of this section
- Ø An invention relating to tradition knowledge or duplication of known properties does not cover inventions.

New Invention :

New invention means any invention or technology which has not been anticipated by publication in any document or used in the country elsewhere in the world before the date of filling of patent application with complete specification i.e. the subject matter has not fallen in public domain or that it does not form part of the state of the art.[5]

Legal framework of Patent Law :

Thenature of Intellectual Property Rights is intangible and invisible. Intellectual property is a category of property that includes intangible creations of human intellect. In this way, there are many types of intellectual property. Copyrights, trademarks and patents are designated as most well-known types of intellectual property.[6] The notion of Intellectual Property Laws provides an idea and economic circumstances.

Who can file for Patent Application :

Every application can be made by Person in prescribed format and can file it in Patent office. The person who is having good faith, he can make an application for grant of Patent. An application for a patent can be made by any of the following persons either in individual capacity or jointly-[7]

1) True and First Investor- trues and first investor of Intellectual property are entitled to file for Patent Application.
2) His/her legal assignee- his or her legal assignee are having right to file for Patent Application

3) Legal representative of deceased inventor or assignee- at third level, legal representative of deceased inventor can file for Patent Application

Grant of Patent :

Where an application for a patent has been found to be correct in order for grant of patent, the Patent shall be granted as expeditiously as possible to the application. After grant of patent, the Controller shall publish the fact the patent has been granted and thereupon the application.[8] In case of infringement of Patent Rights, Remedies are available in Civil Actions. The remedies can be availed in the form of Injunction either interim or final injunction, damages.

Conclusion :

The main purpose of Patent system is to encourage innovations which result into technological development. Existence of Patent rights provides various benefits to the owner. It provides exclusive rights. Authors are having strong market position. He is getting higher returns on their investments. Therefore, it enable for economic development. Authors are also getting an opportunity to License or sell the invention as well as he is having good image from right thinking members of the society.

(Footnotes)

[1]Section 2 (1) (m) of The Patent Act, 1970

[2]https://www.vakilno1.com/bareacts/laws/the-basics-of-patent-law-in-india.html visited on 07/01/2020

[3]Section 2 (1) (j) of The Patent Act, 1970

[4]Section 3 of The Patent Act, 1970

[5]Section 2 (1) (i) of The Patent Act, 1970

[6]https://en.wikipedia.org/wiki/Intellectual_property

[7]Section 6 of the Patent Act, 1970

[8]Law of Intellectual Property, by Dr. S.R. Myneni, Asia Law House, Hyderabad, page at 457