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A General Look at Patent Rights with Special Reference to the Indian Patent Cases

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ABSTRACT

The article focuses upon the right of patent. It talks about brief history and emergence of the legislations related to patents in India. It also focuses upon the objective behind the patent laws. The article inquires the legitimacy of rights and compares its application in different countries through WIPO & Patent Cooperation Treaty. Patent not being an absolute right, has some criteria for the patentability of the product or process which is also discussed in the article. For clarity in the subject, special reference is given to the important cases through which India realized more about its traditional knowledge and intellectual property.

Keywords: *Intellectual Property, patent, product, process.*

I. INTRODUCTION TO PATENT

Intellectual Property means any property which is a result of the intellect and intellectual property rights are the legal rights that are granted to the person to protect the creation of his/her intellect. Patent is one of such rights.

The term Patent means *open*. It is short for '*Letters Patent*' which has been derived from a Latin word *'Literae patentes'* meaning *open letters.* Patent refers to a document that the government issues to the inventor of any new product or process which have some industrial use and have been made with some inventive steps. Through this statutory right, the inventor is granted some exclusive rights for a particular time (generally, 20 years from filing date), which includes – to use, make, sell that particular product or process and also prevent any third party to manufacture, use, offer for sale, import, distribute or license the product or process. The difference between a monopoly and patent is that, in monopoly, the inventor is not under a compulsion to disclose the invention, whereas, in patents, the inventor is to disclose the product or process.

Section 2(1)(m) of the Indian Patents Act, 1970 provides that patent means a patent for any invention granted under this section.

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Patents are exclusive territorial right applicable in the country where the patent has been granted. Countries have their own patent laws with their own requirements. So, when an inventor is granted patent for his invention in any country, his product or process is protected in that particular country. If he wishes to protect his invention in other countries, he will have to apply for that in those particular countries in according to the requirements of their laws.

PCT - The International Patent System*[3]*:

The Patent Cooperation Treaty (PCT) is a system for applying for patents internationally. WIPO is responsible for its formation. The applicants, through this Treaty, can seek patent protection for their inventions in a large number of countries. A single patent application under PCT is applicable for all of the 153[4] contracting states.

II. WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

WIPO, established in 1967 through The WIPO Convention, 'is the global forum for intellectual property (IP) services, policy, information and cooperation. It is a self-funding agency of the United Nations, with 193 member states'[5].

The main aim of this specialized agency is development of international Intellectual Property System which enables innovation and creativity for the benefit for all contracting states. It promotes international cooperation by protecting the works of human mind, their creation, use and dissemination. It takes up normative measures and provide technical assistance to the mention states.

Passing of The Patents Act, 1970[6]

The Act of 1970 evolved from a number of prior legislations. For India, the Act VI[7] of 1856 is said to be the first legislation related to patent which was followed by a number of amendments, in 1857, 1859, 1872, 1883, which were all replaced by the Indian Patents & Designs Act, 1911. In 1920 & 1930, further amendments were made.

After Independence, another amendment was made in the Act of 1911, in 1950. In 1957, the Justice N. Rajagopala Ayyangar Committee was appointed by the Government of India, in

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[3] "PCT – The International Patent System", World Intellectual Property Organization (IP Services), accessed October 26, 2020, https://www.wipo.int/pct/en/

[4] "The PCT now has 153 Contracting States", World Intellectual Property Organization (PCT System), accessed October 26, 2020. https://www.wipo.int/pct/en/pct_contracting_states.html

[5] "What is WIPO?", About WIPO, World Intellectual Property Organization, accessed October 26, 2020, https://www.wipo.int/about-wipo/en/

[6] G. Krishna Tulasi & B. Subba Rao, "A Detailed Study of Patent System for Protection of Inventions", Indian Journal of Pharmaceutical Sciences, (2008): 547

[7] History of Patent System, India: Intellectual Property India, Ministry of Commerce and Industry, GOI; [Page Last Updated on – 20/12/2019]. Available from - http://www.ipindia.nic.in/history-of-indian-patent-system.htm

order to suggest the government for the revision of Patent Laws, because the prices of medicines were sky-high in India. The Committee, in its report suggested for process patenting so that medicines could reach even to the poor sections of the Indian society. As a result, the patent act was passed in 1970, which made the medicines available at a lower price and hence, making a revolutionary change in the Indian economy. After passing of the Act, Indian citizens were now able to develop process and got the opportunity to manufacture medicinal drugs which were then sold at cheap prices. This Act repealed the Act of 1911, however, it continued to be applicable for the purpose of designs.

Object of Patent Laws

Patent is seen as an important source of scientific and technical literature and avoids duplications. It was observed by *Justice Sarkaria*[8] that the object of patent laws is to encourage scientific research and develop new technology. Granting patent rights, encourages problem solving by using resources. The Bombay High Court, in Bayer Corporation v. Union of India & Ors[9] also observed that the object of patent laws is to encourage scientific research, new technology and industrial progress.

III. CRITERIA FOR PATENTIBILITY

If the invention does not fall under the Section 3 or 4 of the Patents Act, 1970 and is also not excluded by the patent act as not patentable, still the product or process needs to meet three basic criteria for patentability. Those substantive requirements include - Novelty, Inventive Step and Industrial Applicability.

Novelty: However, the Act does not define the term novelty, but in general term it means that the product or process must be a new invention. *Section 2 (1) (l)* defines *'new invention'* as any invention or technology which has not been anticipated by publication in any document or used 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.[10] If the product or process was already in use or knowledge of the general public or was published anywhere, then patent is not granted.

Inventive Step: Section 2 (1) (ja) defines 'inventive step' as a feature an invention that involves technical advances as compared to the existing knowledge or having economic

[8] In Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industrial (1979)2 SCC 571
[9] FAO (OS) (COMM) 169/2017
[10] Section 2 (1) (l) of the Patents Act, 1970

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significance or both and that makes the invention not obvious to a person skilled in art.[11]

Industrial Application: Section 2 (1) (ac) defines the phrase 'capable of industrial application'. It means that the invention is capable of being made or used in any kind of industry.[12]

If any invention is granted patent rights without compliance of these requirements, then the patent may be cancelled by the court of law.

IV. Some important cases of patent in India

Issue of Patent on Turmeric[13]:

Turmeric – a tropical herb, is mostly grown as a food ingredient, a medicine, a dye and for many other purposes. However, the herb is grown in East-India, but in 1995, the patent on turmeric was awarded to the University of Mississippi Medical Centre, by the United States Patent Trademark Office (USPTO) for its surgical wounds & ulcer healing capacity & medicinal use and the exclusive rights were given to it for selling & distribution of turmeric. In 1997, the India's Council of Scientific and Industrial Research (CSIR), challenged the patent given to University on the ground that in India, the use of turmeric is very common and known to every household since time immemorial. However, it was difficult to find any written evidence for the same, but still, around 32 references (in Hindi, Urdu and Sanskrit) were given by CSIR to the USPTO. As a result, USPTO revoked the patent for turmeric granted to the University of Mississippi agreeing to the fact that in India, turmeric was being used since ages, as wound healing medicine. This is how the traditional knowledge of India, regarding turmeric was safeguarded.

Issue of Patent on Basmati Rice[14]:

Rice is the staple food of people in almost all the parts of Asia. Asian farmers cultivate and nurture over a hundred thousand distinct varieties of rice. Basmati specie of rice is one of the most famous of all and is known for its fragrant taste. Indian farmers have being cultivating this rice for over hundreds of years in the Basmati region of India. In 1997, 'RiceTec' - a Texan company was granted the patent by US Patent Office, for a cross breed of rice with

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[11] Section 2 (1) (ja) of the Patents Act, 1970

[12] Section 2 (2) (ac) of the Patents Act, 1970

[13] Slack A. Ted Case Studies, Turmeric. Washington. Trade and Environment Data base; c2005 [cited 2005 Jan 19] Available from: http://www.american.edu/ted/turmeric.htm

[14] Balasubramanian Saipriya, "*India: Traditional Knowledge and Patent Issues: An Overview of Turmeric, Basmati, Neem Cases*". Welcome to Mondaq, Singh & Singh Associates. [Published: 18th April, 2017]. Available from: https://www.mondaq.com/india/patent/586384/traditional-knowledge-and-patent-issues-an-overview-of-turmeric-basmati-neem-cases

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American long-grain rice. It claimed that the new rice had good aroma and the feature of elongation of the grain on cooking and chalkiness. Hence, the company started to charge all the farmers to grow the new rice and also, the planting of this crop was prohibited for anyone else except for the ones authorized by the company. India challenged 3 claims out of 20 claims made in original patent application by the company and filed a petition in United States Patents and Trademarks Office claiming that all the features which were there in the rice by company, was already there in the Basmati rice which were being cultivated in India for centuries. The 3 challenged claims were for the starch index, aroma and grain dimensions, which were the characteristics of Basmati rice. In this case, RiceTec was allowed patent protection as the company altered the grain by crossing it with the Western strain of grain. The company claimed it as its invention and named it as 'Superior Basmati Rice'.

Issue of Patent on Neem[15]:

Neem trees are known for a number of its uses. Also every part of the trees, starting from its seeds, leaves, flowers, bark, oil, juice etc. has incredible qualities and are used for treating a number of diseases related to heart, skin disorders, diabetes, ulcers, tooth or problems, liver problems and the list goes on.

For the first time, patent on neem for controlling fungi on plants, was filed in European Patent Office by W.R. Grace & the Department of Agriculture, USA. They had treated fungi on plants by contacting the fungi with a Neem oil formulation. In India, the New Delhi-based Research Foundation for Science, Technology and Ecology (RFSTE), in co-operation with the International Federation of Organic Agriculture Movements (IFOAM) and Magda Aelvoet, former green Member of the European Parliament (MEP)[16] challenged this grant of patent on the ground that neem was being used in India for ages to cure dermatological diseases in humans and also to protect plants from fungal infections, the evidences from which was taken from ancient Indian ayurvedic texts. As a result, European Patent Office revoked the patent stating that there was lack of novelty and inventive step and also the act of controlling fungi on plants was from a relevant prior act which was a traditional Indian knowledge.

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[15] Id.

[16] Patent Act: Biopiracy of Traditional Indian Products – An Overview. Accessed October 21, 2020. Available from: https://www.countercurrents.org/bhargava140709.htm

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