

THE PATENTS ACT, 1970

(Act No. 39 of 1970, dt. 19-9-1970)

[As amended by the Jan Vishwas (Amendment of Provisions) Act, 2026 (No. 8 of 2026), dt. 7-4-2026, w.e.f. 1-6-2026 vide SO 2846(E), dt. 1-6-2026 and by the Sustainable Harnessing and Advancement of Nuclear Energy for Transforming India Act, 2025 (Act 39 of 2025), dt. 20-12-2025]

An Act to amend and consolidate the law relating to patents.

Be it enacted by Parliament in the Twenty-first Year of the Republic of India as follows:—

CHAPTER I PRELIMINARY

1. Short title, extent and commencement

(1) This Act may be called the Patents Act, 1970.

(2) It extends to the whole of India.

(3) It shall come into force on such date¹ as the Central Government may, by notification in the Official Gazette, appoint:

PROVIDED that different dates may be appointed for different provisions of this Act, and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. Definitions and interpretation

(1) In this Act, unless the context otherwise requires,—

²[xxx]

³(ab) “assignee” includes an assignee of the assignee and the legal representative of a deceased assignee and references to the assignee of any person include references to the assignee of the legal representative or assignee of that person;]

⁴[(aba) “Budapest Treaty” means the Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the purposes of Patent Procedure done at Budapest on 28th day of April, 1977, as amended and modified from time to time;]

³[(ac) “capable of industrial application”, in relation to an invention, means that the invention is capable of being made or used in an industry;]

(b) “Controller” means the Controller-General of Patents, Designs and Trade Marks referred to in section 73;

(c) “convention application” means an application for a patent made by virtue of section 135;

³[(d) “convention country” means a country or a country which is member of a group of countries or a union of countries or an Inter-governmental organisation ⁵[referred to as a convention country in section 133];]

1 Enforced w.e.f. 20-4-1972 vide SO 300(E), dt. 20-4-1972 except provisions of sections 12(2), 13(2), 28, 68 and 125 to 132 which came into force w.e.f. 1-4-1978 vide SO 799, dt. 10-3-1978.

2 Omitted by the Tribunals Reforms Act, 2021 (33 of 2021), dt. 13-8-2021, w.e.f. 4-4-2021. Prior to omission, clause (a) read as under:

“(a) “Appellate Board” means the Appellate Board referred to in section 116;”

3 Substituted by Patents (Amdt.) Act, 2002, w.e.f. 20-5-2003 vide S.O. 561(E), dt. 20-5-2003.

4 Inserted by the Patents (Amdt.) Act, 2005 (15 of 2005), dt. 4-4-2005, w.r.e.f. 1-1-2005.

5 Substituted for “notified as such under sub-section (1) of section 133” by the Patents (Amdt.) Act, 2005 (15 of 2005), dt. 4-4-2005, w.r.e.f. 1-1-2005.

- (e) "district court" has the meaning assigned to that expression by the CPC, 1908 (5 of 1908);
- (f) "exclusive licence" means a licence from a patentee which confers on the licensee, or on the licensee and persons authorised by him, to the exclusion of all other persons (including the patentee), any right in respect of the patented invention, and "exclusive licensee" shall be construed accordingly;
- (g) [Clause (g) omitted by the Patents (Amdt.) Act, 2005, w.r.e.f. 1-1-2005]
- (h) "government undertaking" means any industrial undertaking carried on—
- (i) by a department of the government; or
 - (ii) by a corporation established by a Central, Provincial or State Act, which is owned or controlled by the government; or
 - (iii) by a government company as defined in section 617 of the Companies Act, 1956 (1 of 1956)¹ ²[; or]
 - ²[(iv) by an institution wholly or substantially financed by the Government;]
- ³[xxx]
- ⁴[(i) "High Court", in relation to a State or Union territory, means the High Court having territorial jurisdiction in that State or Union territory, as the case may be;]
- ⁵[(ia) "international application" means an application for patent made in accordance with the Patent Cooperation Treaty;]
- ⁶[(j) "invention" means a new product or process involving an inventive step and capable of industrial application;]
- ⁴[(ja) "inventive step" means a feature of an invention that involves technical advance as compared to the existing knowledge or having economic significance or both and that makes the invention not obvious to a person skilled in the art;]
- (k) "legal representative" means a person who in law represents the estate of a deceased person;
- ⁴[(l) "new invention" 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;
- (la) "Opposition Board" means an Opposition Board constituted under sub-section (4) of section 25;]
- (m) "patent" means a patent for any invention granted under this Act;]
- (n) "patent agent" means a person for the time being registered under this Act as a patent agent;
- (o) "patented article" and "patented process" mean respectively an article or process in respect of which a patent is in force;
- ⁵[(oa) "Patent Cooperation Treaty" means the Patent Cooperation Treaty done at Washington on the 19th day of June, 1970 as amended and modified from time to time;]

1 Erstwhile Act. Now refer section 2(45) of Companies Act, 2013 (18 of 2013).

2 Inserted by Patents (Amdt.) Act, 2005 (15 of 2005), dt. 4-4-2005, w.r.e.f. 1-1-2005.

3 Words "and includes the Council of Scientific and Industrial Research and any other institution which is financed wholly or for the major part of the said Council;" omitted by Patents (Amdt.) Act, 2005 (15 of 2005), dt. 4-4-2005, w.r.e.f. 1-1-2005.

4 Substituted by Patents (Amdt.) Act, 2005 (15 of 2005), dt. 4-4-2005, w.r.e.f. 1-1-2005.

5 Inserted by Patents (Amdt.) Act, 2002 (38 of 2002), w.e.f. 20-5-2003 vide SO 561(E), dt. 20-5-2003.

6 Substituted by Patents (Amdt.) Act, 2002 (38 of 2002), w.e.f. 20-5-2003 vide SO 561(E), dt. 20-5-2003.

- (p) "patentee" means the person for the time being entered on the register as the grantee or proprietor of the patent;
- (q) "patent of addition" means a patent granted in accordance with section 54;
- (r) "patent office" means the patent office referred to in section 74;
- (s) "person" includes the government;
- (t) "person interested" includes a person engaged in, or in promoting, research in the same field as that to which the invention relates;
- ¹[(ta) "pharmaceutical substance" means any new entity involving one or more inventive steps;]
- ²[(u) "prescribed" means,—
- (A) in relation to proceedings before a High Court, prescribed by rules made by the High Court;
- ³[xxx]
- (C) in other cases, prescribed by rules made under this Act;]
- (v) "prescribed manner" includes the payment of the prescribed fee;
- (w) "priority date" has the meaning assigned to it by section 11;
- (x) "register" means the register of patents referred to in section 67;
- (y) "true and first inventor" does not include either the first importer of an invention into India, or a person to whom an invention is first communicated from outside India.
- (2) In this Act, unless the context otherwise requires, any reference—
- (a) to the Controller shall be construed as including a reference to any officer discharging the functions of the Controller in pursuance of section 73;
- (b) to the patent office shall be construed as including a reference to any branch office of the patent office.

COMMENTS

Under section 2(1)(j) "invention" means a new product or process involving an inventive step and capable of industrial application.—*Enercon India Ltd. v. Aloys Wobben 2011 (46) PTC 558 (IPAB)*

The definition of "invention" clearly shows that even a process involving an inventive step is an invention within the meaning of the Act.—*Dhanpat Seth v. Nil Kamal Plastic Crates Ltd. 2008 (36) PTC 123 (H.P.)*

In *Ajay Industrial Corporation v. Shiro Kanao of Ibaraki City AIR 1983 Delhi 496 : 1983(3) PTC 245 (Delhi DB)* held that, "person interested" must be a person who has a direct, present and tangible commercial interest which was injured or affected by the continuance of the patent on the register.—*Enercon India Ltd. v. Aloys Wobben 2011 (46) PTC 558 (IPAB)*

Under section 2(1)(ja) "inventive step" means a feature of an invention that involves technical advance as compared to the existing knowledge or having economic significance or both and that makes the invention not obvious to a person skilled in the art.—*Enercon India Ltd. v. Aloys Wobben 2011 (46) PTC 558 (IPAB)*

The definition of "inventive step" provides that when technical advances as compared to existing knowledge take place in an existing product or there is improved economic significance in

¹ Inserted by Patents (Amdt.) Act, 2005 (15 of 2005), dt. 4-4-2005, w.r.e.f. 1-1-2005.

² Substituted by Patents (Amdt.) Act, 2002 (38 of 2002), w.e.f. 20-5-2003 vide SO 561(E), dt. 20-5-2003 except sub-clause B which is enforceable w.e.f. 2-4-2007.

³ Omitted by the Tribunals Reforms Act, 2021 (33 of 2021), dt. 13-8-2021, w.e.f. 4-4-2021. Prior to omission, sub-clause (B) read as under:
 "(B) in relation to proceedings before the Appellate Board, prescribed by rules made by the Appellate Board; and"

the development of the already existing device and the invention is not obvious to people skilled in the art, it would amount to an inventive step.—*Dhanpat Seth v. Nil Kamal Plastic Crates Ltd.* 2008 (36) PTC 123 (H.P.)

Appellate Board

Section 116 of the Act provides that the Appellate Board established under section 83 of the Trade Marks Act, 1999 shall be the Appellate Board for the purposes of the Act and the said Appellate Board shall exercise the jurisdiction, power and authority conferred on it by or under the Act. Section 83 of the Trade Marks Act, 1999 provides that the Central Government shall, by notification in the Official Gazette, establish an Appellate Board to be known as the Intellectual Property Appellate Board to exercise the jurisdiction, powers and authority conferred on it by or under that Act. The provisions for composition of the said Board are contained in section 84 of the said Act.

Assignee

Assignment is the act of transferring to another all or part of one's property, interest or rights. It is a transfer or making over to another of the whole of any property, real or personal, in possession or in action, or of any estate or right therein. It includes transfers of all kinds of property, including negotiable instruments. In other words, it is the transfer by a party of all the rights to some kind of property, usually intangible property such as rights in a lease, mortgage, agreement of sale or a partnership. Tangible property is more often transferred by possession and by instruments conveying title such as a deed or a bill of sale.—*Black's Law Dictionary*. "Assignment" means the transfer of the claim, right or property to another.—*The Commissioner of Gift Tax, Madras v. N.S. Getty Chettiar*, AIR 1971 SC 2410

An "assignee" is a person to whom an assignment is made; grantee. Assignee in fact is one to whom an assignment has been made in fact by the party having the right; and assignee in law is one in whom the law vests the right, as an executor or administrator.

Assignee means a person appointed by another to do any act or perform any business; also a person who takes some right, title or interest in things by an assignment from an assignor. They are divided into—(1) assignees by deed, as and when a lessee of a term sells or assigns it to another, and (2) assignees by law, as and when property devolves upon an executor without any specific appointment, the executor is assignee in law to the testator.—*Wharton's Law Lexicon*

Capable of industrial application

An invention, in order to be patentable, must be capable of being made or used in some kind of industry. In this context, "industry" should be understood in its broadest sense as including any useful, practical activity as distinct from purely intellectual or aesthetic activity, and does not necessarily imply the use of a machine or the manufacture of an article. An "invention" within the meaning of the Act is an invention for a manner of new manufacture that is in some way associated with trade and commerce; meaning traffic in goods, i.e., exchange of commodities for money or other commodities—*Sri Gajalakshmi Ginning Factory Ltd. v. CIT (1952) 22 ITR 502 (Mad)*. Trade or commerce is carried with profit motive. The expression "invention" has, therefore, been defined in the Patents Act, 1970 to mean manner of manufacture; machine; substance produced by manufacture. The invention relates to the skill (art), series of action (process) or the particular way (method) or the way (manner) of making a product or thing. It also relates to machine or apparatus by which a thing is made and also the product which is the result of act of making. All these are associated with "manufacture", which word:

- denotes either a thing made which is useful for its own sake and vendible as such; or
- means an engine or instrument to be employed either in the making of some previously known article or in some useful purpose or extending to new process to be carried on by known implements or elements acting upon known substances and ultimately producing some other known substance, but producing it in a cheaper or more expeditious manner, or of a better or more useful kind. [See *R. v. Wheeler*

(1819) 2B & Ald 345, quoted with approval in *Bombay Agarwal Co. v. Ramchand AIR 1953 Nag. 154*. The focus is on "manufacture".

Controller

Under section 3(1) of the Trade Marks Act, 1999, the Central Government may, by Notification in the Official Gazette, appoint a person to be known as the Controller-General of Patents, Designs and Trade Marks, who shall be the Registrar of Trade Marks for the purposes of that Act. The said officer shall be the Controller for the purposes of the Patents Act also.

Convention application

Convention is an agreement or compact; especially, international agreement; e.g. Geneva Convention. It is an assembly or meeting of members or representatives of political, legislative, fraternal, etc. organisations.

Under section 135 of the Patents Act, where a person has made an application for a patent in respect of an invention in a convention country and that person or the legal representative or assignee of that person makes an application under the Act for a patent within 12 months after the date on which the basic application was made, the priority date of a claim of the complete specification being a claim based on matter disclosed in the basic application, is the date of the basic application.

Convention country

With regard to international arrangements in respect of patents, with a view to the fulfilment of a treaty, convention or arrangement with any country outside India which affords to applicants for patents in India or to citizens of India similar privileges as are granted to its own citizens in respect of the grant of patents and protection of patent rights, the Central Government may declare such country to be a convention country for the purposes of the Act, vide section 133.

District Court

Section 2(4) of the Code of Civil Procedure, 1908 says that, "district" means the local limits of the jurisdiction of a Principal Civil Court of original jurisdiction (called a "District Court") and includes the local limits of the ordinary original civil jurisdiction of a High Court.

Exclusive licence

The expression "exclusive" is explicit and significant when the expression is explicit, it is conclusive, alike in what it says and in what it does not say. This is corroborated by the use of the expression "claim" for all purposes—*Charan Lal Sahu v. Union of India AIR 1990 SC 1480* (In the context of Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985)

Exclusive licence is the exclusive right granted by patent holder to licensee to use, manufacture, and sell patented article. It is the permission to do a thing and contract not to give leave to any one else to do the same thing—*Overman Cushion Tire Co. v. Goodyear Tire and Rubber Co. C.C.A. N.Y. 59 F. 2d 998, 999*. It is a licence which binds the licensor not to enlarge thereafter the scope of other licences already granted, or increase the number of licences, is an exclusive licence—*Mechanical Ice Tray Corporation v. General Motors Corporation, C.C.A.N.Y. 144 F. 2d 720, 275*

An "exclusive licensee" is one granted exclusive right and licence to use, manufacture, and sell patented article; one having exclusive right to use patented method and apparatus in designated territory.—*Deitel v. Chisholm, C.C.A.N.Y. 42 F. 2d 172, 173; Paul E. Hawkinson Co. v. Carnell, C.C.A. Pa. 119 F. 2d 396, 398*

Food

Food is a nutritive material absorbed or taken into the body of an organism which serves for purposes of growth, work or repair and for the maintenance of the vital processes.—*Webster's International Dictionary*

Under section 2(v) of the Prevention of Food Adulteration Act, 1954, "Food" means any article used as food or drink for human consumption other than drugs and water and includes—

- (a) any article which ordinarily enters into, or is used in the composition or preparation of human food, and
- (b) any flavouring matter or condiments.

Within the meaning of the Prevention of Food Adulteration Rules, 1955, "food" means the composite preparations which normally go to constitute a meal.—*Collector of Central Excise v. Parle Exports (Pvt.) Ltd. AIR 1989 SC 644*

The expression 'food' has generally been understood to mean nutritive material absorbed or taken into the body of an organism which serves for purposes of growth, work or repair and for the maintenance of the vital process. What human beings consume is styled as food and what animals consume is described as animal feed. This distinction has to be borne in mind. Expression 'food-stuffs' is made of two expressions, 'food' plus 'stuff'. In other words, the stuff which is used as food would be foodstuff. Therefore, foodstuff is that which is taken into the system to maintain life and growth and to supply waste of tissue. If the raw foodstuff with a view to making it consumable by human beings undergoes a change of its conditions by the process of cooking, the derivative is none the less foodstuff.—*Welcome Hotel v. State of Andhra Pradesh AIR 1983 SC 1015*

Food means an article which normally a man eats or drinks to nourish his body and also an article which normally is not considered food but which normally enters into or is used in the composition or preparation of human food.—*Khedar Lal v. State of U.P. 1981 FAJ 192 (All)*

Government undertaking

Undertaking means business, project or works undertaken; something undertaken; a promise, a pledge. Under section 2(v) of the Monopolies and Restrictive Trade Practices Act, 1969, "undertaking" means an undertaking which is engaged in the production, supply, distribution or control of goods of any description or the provision of service of any kind.

Undertaking means the entire organization. A company whether it has a plant or whether it has an organization is considered as one whole unit, and the entire business of the going concern is embraced within the word 'undertaking'.—*Rustom Cavasjee Cooper v Union of India AIR 1970 SC 564: (1970) 1 SCJ 564: (1970)2 SCA 37*

The term "undertaking" must be defined as any business or any work or project resulting in material goods or material services and which one engages in or attempts as an enterprise analogous to business or trade.—*Secretary, Madras Gymkhana Club Employees' Union v. Management of the Gymkhana Club AIR 1968 SC 554*

The word "undertaking" as used in Section 25-FFF of the Industrial Disputes Act used its ordinary sense, connoting thereby any work, enterprise, project or business undertaking. It is not intended to cover the entire industry or business of the employer.—*Workmen of the Straw Board Manufacturing Co. Ltd. v. Straw Board Manufacturing Co. Ltd. AIR 1974 SC 1132*

According to its dictionary meaning as given by Webster, "undertaking" means anything undertaken; any business, work or project which one engages in or attempts; an enterprise.—*The Workmen of Indian Standards Institution v. The Management of Indian Standards Institution AIR 1976 SC 145*

Invention

Invention is the act or operation of finding out something new; the process of contriving and producing something not previously known or existing, by the exercise of independent investigation and experiment. Also the article or contrivance or composition so invented.—*Smith v. Nichols, 88 U.S. (21 Wall.) 112, 22 LEd. 566; Hollister v. Mfg. Co., 113 U.S. 59, 5 S.Ct. 717, 28 LEd. 901*

Invention is a concept; a thing involved in the mind; it is not a revelation of something which exists and was unknown, but is creation of something which did not exist before, possessing

elements of novelty and utility in kind and measure different from and greater than what the art might expect from skilled workers—*Pursche v. Atlas Scraper & Engineering Co. C.A. Cal.*, 300 F.2d 467, 472. The finding out—The contriving, the creating of something which did not exist, and was not known before, and which can be made useful and advantageous in the pursuits of life, or which can add to the enjoyment of mankind. Not every improvement is invention; but to entitle a thing to protection it must be the product of some exercise of the inventive faculties and it must involve something more than what is obvious to persons skilled in the art to which it relates. Mere adaptation of known process to clearly analogous use is not invention.—*Firestone Tire and Rubber Co. v. U.S. Rubber Co., C.C.A. Ohio*, 79 F.2d 948, 952, 953

Inventive skill has been defined as that intuitive faculty of the mind put forth in the search for new results, or new methods, creating what had not before existed, or bringing to light what lay hidden from vision; it differs from a suggestion of that common experience which arose spontaneously and by a necessity of human reasoning in the minds of those who had become acquainted with the circumstances with which they had to deal.—*Hollister v. Mfg. Co.*, 113 U.S. 59, 5 S.Ct. 717, 28 L.Ed. 901. Invention, in the nature of improvements, is the double mental act of discerning, in existing machines, processes or articles, some deficiency, and pointing out the means of overcoming it.

Under section 2(8) of the Patents and Designs Act, 1911, "invention" means any manner of new manufacture and includes an improvement and an allied invention. Unlike the Patents Act, 1970, the 1911 Act does not specify the requirement of being useful in the definition of "invention". But courts have always taken the view that a patentable invention, apart from being a new manufacture, must also be useful. The foundation for this judicial interpretation is to be found in the fact that section 26(1)(f) of the 1911 Act recognises lack of utility as one of the grounds on which a patent can be revoked.—*Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries AIR 1982 SC 1444*

Legal representative

The term "legal representative" in its broadest sense means one who stands in place of, and represents the interests, of another. He is a person who oversees the legal affairs of another.

A "legal representative" ordinarily means a person who in law represents the estate of a deceased person or a person on whom the estate devolves on the death of an individual.—*Gujarat State Road Transport Corporation v. Ramanbhai Prabhat Bhai, AIR 1987 SC 1690*. "Legal representatives" include heirs as well as persons who represent the state even without title either as executors or administrators in possession of the estate of the deceased.—*Custodian of Branches of BANCO National Ultramarino v. Nalini Bai Naique, AIR 1989 SC 1589*

Legal representative is a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character, the person on whom the estate devolves on the death of the party so suing or sued.—*Civil Procedure Code 1908, s. 2(11); Arbitration Act 1940, s. 2(d); Gift-Tax Act 1958, s. 2(xvi) (b)*

The term conceives of two distinct categories. Firstly, the heirs or persons, who in law represent the estate of the deceased person. However, at par with them and in a class by itself is any person who intermeddles with the estate of the deceased. Such a person is equally a legal representative.—*Sudama Devi v Jogendra Choudhury AIR 1987 Pat 239*

Medicine or drug

Drug includes all medicines for internal or external use of human beings or animals and all substances intended to be used for or in the diagnosis, treatment, mitigation or prevention of disease in human beings or animals.—*Sk. Amir v. State of Maharashtra AIR 1974 SC 469*

Under section 3(b) of the Drugs and Cosmetics Act, 1940, "drug" includes—

- (i) all medicines for internal or external use of human beings or animals and all substances intended to be used for or in the diagnosis, treatment, mitigation or prevention of disease in human beings or animals; and
- (ii) such substances (other than food) intended to affect the structure or any function of the human body or intended to be used for the destruction of vermins or insects which cause disease in human beings or animals, as may be specified from time to time by the Central Government by notification in the Official Gazette.

'Drug' includes—

- (i) all medicines for internal or external use of human beings or animals and all substances intended to be used for or in the treatment, mitigation or prevention of disease in human beings or animals other than medicines and substances exclusively used or prepared for use in accordance with the Ayurvedic or Unani systems of medicine; and
- (ii) such substance (other than food) intended to affect the structure or any function of the human body or intended to be used for the destruction of vermins or insects which cause disease in human beings or animals, as may be specified from time to time by the Central Government by notification in the Official Gazette—Drugs Act, 1940, s. 3(b).

'Drug' includes—

- (i) a medicine for the internal or external use of human beings or animals;
- (ii) any substance intended to be used for or in the diagnosis, cure, mitigation, treatment or prevention of disease in human beings or animals;
- (iii) any article, other than food, intended to affect or influence in any way the structure or any organic function of the body of human beings or animals;
- (iv) any article intended for use as a component of any medicine, substance or article, referred to in sub-clauses (i), (ii) and (iii). Drugs and Magic Remedies (Objectional Advertisements) Act, 1954, s. 2(b).

'Drug' means any drug as defined in clause (b) of section 3 of the Drugs Act, 1940 (XXIII of 1940), in respect of which a declaration has been made under s. 3.—Drugs (Control) Act 1950.

Patent

Patent is a grant or right to exclude others from making, using or selling one's invention and includes right to license others to make, use or sell it.

It is an official document conferring a right or privilege, letters patent; writing securing to an inventor for a term of years the exclusive right to make, use and sell his invention; the monopoly or right so granted.—*Webster's Ninth New Collegiate Dictionary*

The effect of the grant of patent is *quid pro quo*, *quid* is the knowledge disclosed to the public and *quo* is the monopoly granted for the term of the patent. Section 12, Patents and Designs Act sets out that a Patent once granted confers upon the patentee the exclusive privilege of making, selling and using the invention throughout India and of authorising others so to do. This is *quo*. The *quid* is compliance with the various provisions resulting in the grant of patent.—*Raj Parkash v. Mangat Ram Choudhary AIR 1978 Del 1*

Patentee

"Patentee" is he to whom a patent has been granted. The term is usually applied to one who has obtained letters patent for a new invention.

Patentee includes assignee of patent whose name is entered into the register of patents.—*Luxmi Dutta v. Nankaus AIR 1964 All 27*

Person

In general usage, a human being (i.e. natural person), though by statute term may include

labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

'Person' shall include any company or association or body of individuals, whether incorporated or not.—*General Clauses Act, 1897, s. 3(42); Indian Penal Code, 1860, s. 11*. The definition of the term in the General Clauses Act is not exhaustive. It is hardly a definition. It only indicates the intention of legislature to treat artificial persons as persons.—*Jabbar v State of U.P. AIR 1966 All 590*

Section 11, I.P.C. defining a person includes within its ambit a company or association or body of persons whether incorporated or not. It may seem prima facie that a corporate body or a body of unincorporated persons is punishable as an ordinary individual. But, the clause "unless there is anything repugnant to the subject or context" must always be understood to exist in the context of the definition given in Penal Code. So a corporate body or a company shall not be indictable for offences which can be committed only by a human individual (e.g., rape, bigamy etc.) or for offences which must be punished by imprisonment (e.g. cheating).—*State of Maharashtra v Syndicate Bank AIR 1964 Bom 95: (1964) 2 Cr LJ 276*

In general, a corporation is in the same position in relation to criminal liability as a natural person and may be convicted of common law and statutory offences including those requiring *mens rea*. There are, however, crimes which a corporation is incapable of committing or of which a corporation cannot be found guilty as principal; nor can a corporation be convicted of a crime for which death or imprisonment are the only punishments.

Criminal liability of a corporation arises where an offence is committed in the course of corporation's business by a person in control of its affairs to such a degree that it may fairly be said to think and act through him so that his actions and intent are the actions and intent of the corporation.—*Halsbury's Laws of England, 4th Ed. Vol. 11, para 34, p. 30*

Under section 2(31) of the Income Tax Act, 1961 "person" includes—

- (i) an individual,
- (ii) a Hindu undivided family,
- (iii) a company,
- (iv) a firm,
- (v) an association of persons or a body of individuals, whether incorporated or not,
- (vi) a local authority, and
- (vii) every artificial juridical person, not falling within any of the preceding sub-clauses..

In Order 30, Rule 10, Code of Civil Procedure 1908, the word 'person' does not include a company, because such a construction will be repugnant to the context.—*Modi Vanaspati v Khaitan Jute Mills AIR 1969 Cal 496*

The General Clauses Act, 1897 defines that "person" shall include any company, or association or body of individuals whether incorporated or not". The word "person" in section 4 of the Indian Partnership Act which has replaced section 239 of the Indian Contract Act contemplates only natural or artificial, that is, legal persons and therefore a firm, is not a person and as such is not entitled to enter into Partnership with another firm or Hindu undivided family or individual.—*Dulichand Laxminarayan v. Commissioner of Income Tax, Nagpur, AIR 1956 SC 354*

CHAPTER II

INVENTIONS NOT PATENTABLE

3. What are not inventions

The following are not inventions within the meaning of this Act,—

- (a) an invention which is frivolous or which claims anything obviously contrary to well established natural laws;

- ¹[(b) an invention the primary or intended use or commercial exploitation of which could be contrary to public order or morality or which causes serious prejudice to human, animal or plant life or health or to the environment;]
 (c) the mere discovery of a scientific principle or the formulation of an abstract theory ²[or discovery of any living thing or non-living substances occurring in nature];
³[(d) the mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance or the mere discovery of any new property or new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant.

Explanation : For the purposes of this clause, salts, esters, ethers, polymorphs, metabolites, pure form, particle size, isomers, mixtures of isomers, complexes, combinations and other derivatives of known substance shall be considered to be the same substance, unless they differ significantly in properties with regard to efficacy;]

- (e) 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;
 (f) the mere arrangement or re-arrangement or duplication of known devices each functioning independently of one another in a known way;
 (g) [Omitted by Patents (Amdt.) Act, 2002 vide S.O. 561(E), dt. 20-5-2003, w.e.f. 20-5-2003]
 (h) a method of agriculture or horticulture;
 (i) any process for the medicinal, surgical, curative, prophylactic ²[diagnostic, therapeutic] or other treatment of human beings or any process for a similar treatment of animals ⁴[xxx] to render them free of disease or to increase their economic value or that of their products.
²[(j) plants and animals in whole or any part thereof other than micro-organisms but including seeds, varieties and species and essentially biological processes for production or propagation of plants and animals;
 (k) a mathematical or business method or a computer program *per se* or algorithms;
 (l) a literary, dramatic, musical or artistic work or any other aesthetic creation whatsoever including cinematographic works and television productions;
 (m) a mere scheme or rule or method of performing mental act or method of playing game;
 (n) a presentation of information;
 (o) topography of integrated circuits;
 (p) an invention which, in effect, is traditional knowledge or which is an aggregation or duplication of known properties of traditionally known component or components.]

¹ Substituted by Patents (Amdt.) Act, 2002 (38 of 2002), w.e.f. 20-5-2003 vide S.O. 561(E), dt. 20-5-2003.

² Inserted by Patents (Amdt.) Act, 2002 (38 of 2002), w.e.f. 20-5-2003 vide S.O. 561(E), dt. 20-5-2003.

³ Substituted by the Patents (Amdt.) Act, 2005 (15 of 2005), dt. 4-4-2005, w.r.e.f. 1-1-2005.

⁴ Words "or plants" omitted by Patents (Amdt.) Act, 2002 (38 of 2002), w.e.f. 20-5-2003 vide S.O. 561(E), dt. 20-5-2003.

¹**4. Inventions relating to nuclear energy**

The patents may be granted for inventions relating to nuclear energy subject to the provisions of this Act and section 38 of the Sustainable Harnessing and Advancement of Nuclear Energy for Transforming India Act, 2025.]

5. [Repealed by the Patents (Amdt.) Act, 2005 (15 of 2005), dt. 4-4-2005, w.r.e.f. 1-1-2005]

CHAPTER III**APPLICATIONS FOR PATENTS****6. Persons entitled to apply for patents**

(1) Subject to the provisions contained in section 134, an application for a patent for an invention may be made by any of the following persons, that is to say,—

- (a) by any person claiming to be the true and first inventor of the invention;
- (b) by any person being the assignee of the person claiming to be the true and first inventor in respect of the right to make such an application;
- (c) by the legal representative of any deceased person who immediately before his death was entitled to make such an application.

(2) An application under sub-section (1) may be made by any of the persons referred to therein either alone or jointly with any other person.

7. Form of application

(1) Every application for a patent shall be for one invention only and shall be made in the prescribed form and filed in the patent office.

²[(1A) Every international application under the Patent Cooperation Treaty for a patent, as may be filed designating India shall be deemed to be an application under this Act, if a corresponding application has also been filed before the Controller in India.]

³[(1B) The filing date of an application referred to in sub-section (1A) and its complete specification processed by the patent office as designated office or elected office shall be the international filing date accorded under the Patent Cooperation Treaty.]

(2) Where the application is made by virtue of an assignment of the right to apply for a patent for the invention, there shall be furnished with the application, or within such period as may be prescribed after the filing of the application, proof of the right to make the application.

(3) Every application under this section shall state that the applicant is in possession of the invention and shall name the ⁴[person] claiming to be the true and first inventor; and where the person so claiming is not the applicant or one of the applicants, the application shall contain a declaration that the applicant believes the person so named to be the true and first inventor.

⁵[(4) Every such application (not being a convention application or an application filed under the Patent Cooperation Treaty designating India) shall be accompanied by a provisional or a complete specification.]

COMMENT

Section 7(1) shows that a patent is for a single invention only.—*Enercon India Ltd. v. Aloys Wobben 2011 (46) PTC 558 (IPAB)*

1 Substituted by the Sustainable Harnessing and Advancement of Nuclear Energy for Transforming India Act, 2025 (39 of 2025), dt. 20-12-2025. Prior to substitution, section 4 read as under:

"4. Inventions relating to atomic energy not patentable

No patent shall be granted in respect of an invention relating to atomic energy falling within sub-section (1) of section 20 of the Atomic Energy Act, 1962 (33 of 1962)."

2 Inserted by Patents (Amdt.) Act, 2002 (38 of 2002), w.e.f. 20-5-2003, vide SO 561(E), dt. 20-5-2003.

3 Inserted by the Patents (Amdt.) Act, 2005 (15 of 2005), dt. 4-4-2005, w.r.e.f. 1-1-2005.

4 Substituted for "owner" by the Patents (Amdt.) Act, 2005 (15 of 2005), dt. 4-4-2005, w.r.e.f. 1-1-2005.

5 Substituted by the Patents (Amdt.) Act, 2005 (15 of 2005), dt. 4-4-2005, w.r.e.f. 1-1-2005.

8. Information and undertaking regarding foreign applications

(1) Where an applicant for a patent under this Act is prosecuting either alone or jointly with any other person an application for a patent in any country outside India in respect of the same or substantially the same invention, or where to his knowledge such an application is being prosecuted by some person through whom he claims or by some person deriving title from him, he shall file along with his application ¹[or subsequently ²[within the prescribed period as the Controller may allow]]—

- ³(a) a statement setting out detailed particulars or such application; and]
- (b) an undertaking that, ⁴[up to the date of grant of patent in India,] he would keep the Controller informed in writing, from time to time, of ⁵[detailed particulars as required under] clause (a) in respect of every other application relating to the same or substantially the same invention, if any, filed in any country outside India subsequently to the filing of the statement referred to in the aforesaid clause, within the prescribed time.

⁶(2) At any time after an application for patent is filed in India and till the grant of a patent or refusal to grant of a patent made thereon, the Controller may also require the applicant to furnish details, as may be prescribed, relating to the processing of the application in a country outside India, and in that event the applicant shall furnish to the Controller information available to him within such period as may be prescribed.]

9. Provisional and complete specifications

⁶(1) Where an application for a patent (not being a convention application or an application filed under the Patent Cooperation Treaty designating India) is accompanied by a provisional specification, a complete specification shall be filed within twelve months from the date of filing of the application, and if the complete specification is not so filed, the application shall be deemed to be abandoned.]

(2) Where two or more applications in the name of the same applicant are accompanied by provisional specifications in respect of inventions which are cognate or of which one is a modification of another and the Controller is of opinion that the whole of such inventions are such as to constitute a single invention and may properly be included in one patent, he may allow one complete specification to be filed in respect of all such provisional specifications:

⁷[PROVIDED that the period of time specified under sub-section (1) shall be reckoned from the date of filing of the earliest provisional specification.]

⁶(3) Where an application for a patent (not being a convention application or an application filed under the Patent Cooperation Treaty designating India) is accompanied by a specification purporting to be a complete specification, the Controller may, if the applicant so requests at any time within twelve months from the date of filing of the application, direct that such specification shall be treated, for the purposes of this Act, as a provisional specification and proceed with the application accordingly.]

1 Inserted by Patents (Amdt.) Act, 2002 (38 of 2002), w.e.f. 20-5-2003 vide S.O. 561(E), dt. 20-5-2003.

2 Substituted for "within such period as the Controller may, for good and sufficient reasons, allow" by the Patents (Amdt.) Act, 2005 (15 of 2005), dt. 4-4-2005, w.r.e.f. 1-1-2005.

3 Substituted by Patents (Amdt.) Act, 2002 (38 of 2002), w.e.f. 20-5-2003 vide S.O. 561(E), dt. 20-5-2003.

4 Substituted for "up to the date of the acceptance of his complete specification filed in India" by the Patents (Amdt.) Act, 2005 (15 of 2005), dt. 4-4-2005, w.r.e.f. 1-1-2005.

5 Substituted for "details of the nature referred to in" by Patents (Amdt.) Act, 2002 (38 of 2002), w.e.f. 20-5-2003 vide S.O. 561(E), dt. 20-5-2003.

6 Substituted by the Patents (Amdt.) Act, 2005 (15 of 2005), dt. 4-4-2005, w.r.e.f. 1-1-2005.

7 Inserted by the Patents (Amdt.) Act, 2005 (15 of 2005), dt. 4-4-2005, w.r.e.f. 1-1-2005.

(4) Where a complete specification has been filed in pursuance of an application for a patent accompanied by a provisional specification or by a specification treated by virtue of a direction under sub-section (3) as a provisional specification, the Controller may, if the applicant so requests at any time before ¹[grant of patent] cancel the provisional specification and post-date the application to the date of filing of the complete specification.

COMMENTS

Mere arrangement or rearrangement or duplication of a known device cannot be patented.—
Standipack Pvt. Ltd. v. Oswal Trading Co. Ltd. 1999 (19) PTC 479 (Del)

10. Contents of specifications

(1) Every specification, whether provisional or complete, shall describe the invention and shall begin with a title sufficiently indicating the subject-matter to which the invention relates.

(2) Subject to any rules that may be made in this behalf under this Act, drawings may, and shall, if the Controller so requires, be supplied for the purposes of any specification, whether complete or provisional; and any drawings so supplied shall, unless the Controller otherwise directs, be deemed to form part of the specification, and references in this Act to a specification shall be construed accordingly.

(3) If, in any particular case, the Controller considers that an application should be further supplemented by a model or sample of anything illustrating the invention or alleged to constitute an invention, such model or sample as he may require shall be furnished ²[before the application is found in order for grant of a patent], but such model or sample shall not be deemed to form part of the specification.

(4) Every complete specification shall—

- (a) fully and particularly describe the invention and its operation or use and the method by which it is to be performed;
- (b) disclose the best method of performing the invention which is known to the applicant and for which he is entitled to claim protection; and
- (c) end with a claim or claims defining the scope of the invention for which protection is claimed.

³(d) be accompanied by an abstract to provide technical information on the invention:

PROVIDED that—

- (i) the Controller may amend the abstract for providing better information to third parties; and
- (ii) if the applicant mentions a biological material in the specification which may not be described in such a way as to satisfy clauses (a) and (b), and if such material is not available to the public, the application shall be completed by depositing ⁴[the material to an international depository authority under the Budapest Treaty] and by fulfilling the following conditions, namely:—

1 Substituted for "the acceptance of the complete specification" by the Patents (Amdt.) Act, 2005 (15 of 2005), dt. 4-4-2005, w.r.e.f. 1-1-2005.

2 Substituted for "before the acceptance of the application" by the Patents (Amdt.) Act, 2005 (15 of 2005), dt. 4-4-2005, w.r.e.f. 1-1-2005.

3 Inserted by Patents (Amdt.) Act, 2002 (38 of 2002), w.e.f. 20-5-2003 vide S.O. 561(E), dt. 20-5-2003.

4 Substituted for "the material to an authorised depository institution as may be notified by the Central Government in the Official Gazette" by the Patents (Amdt.) Act, 2005 (15 of 2005), dt. 4-4-2005, w.r.e.f. 1-1-2005.

- ¹[(A) the deposit of the material shall be made not later than the date of filing the patent application in India and a reference thereof shall be made in the specification within the prescribed period;]
- (B) all the available characteristics of the material required for it to be correctly identified or indicated are included in the specification including the name, address of the depository institution and the date and number of the deposit of the material at the institution;
- (C) access to the material is available in the depository institution only after the date of the application for patent in India or if a priority is claimed after the date of the priority;
- (D) disclose the source and geographical origin of the biological material in the specification, when used in an invention.]

¹[(4A) In case of an international application designating India, the title, description, drawings, abstract and claims filed with the application shall be taken as the complete specification for the purposes of this Act.]

²[(5) The claim or claims of a complete specification shall relate to a single invention, or to a group of inventions linked so as to form a single inventive concept, shall be clear and succinct and shall be fairly based on the matter disclosed in the specification.]

(6) A declaration as to the inventorship of the invention shall, in such cases as may be prescribed, be furnished in the prescribed form with the complete specification or within such period as may be prescribed after the filing of that specification.

(7) Subject to the foregoing provisions of this section, a complete specification filed after a provisional specification may include claims in respect of developments of, or additions to, the invention which was described in the provisional specification, being developments or additions in respect of which the applicant would be entitled under the provisions of section 6 to make a separate application for a patent.

COMMENTS

The claims and complete specification shall relate to a single inventive concept.—*Enercon India Ltd. v. Aloys Wobben 2011 (46) PTC 558 (IPAB)*

Where the invention has not been properly described and will not function in the way claimed by the applicants, the opponents succeed even when they fail to establish “prior publication” as well as “prior public knowledge” and, therefore, the application for grant of patent is liable to be rejected.—*Abid Kagalwala v. Edgar Haddley Co. (P) Ltd. 1984 PTC 234 (PO)*

Where the invention claimed by the plaintiff involves nothing which is outside the probable capability of skilled craftsman having regard to what was already known in the country and there being no new manner of manufacture or a distinctive improvement on the old contrivance involving novelty or inventive step, ex parte injunction granted is liable to be vacated.—*Surendra Lal Mahendra v. Jain Glazers 1981 PTC 112 (Del)*

It is incumbent under section 10(4) to fully and particularly describe the invention and its operation or use and the method by which it is to be performed and disclose the best method of performing the invention which is known to the applicant and for which he is entitled to claim protection ending with a claim or claims defining the scope of the invention for which protection is claimed.—*Ram Narain Kher v. Ambassador Industries PTC (Suppl.) (1) 180 (Del)*.

¹ Substituted by the Patents (Amdt.) Act, 2005 (15 of 2005), dt. 4-4-2005, w.r.e.f. 1-1-2005.

² Substituted by Patents (Amdt.) Act, 2002 (38 of 2002), w.e.f. 20-5-2003 vide S.O. 561(E), dt. 20-5-2003.

11. Priority dates of claims of a complete specification

(1) There shall be a priority date for each claim of a complete specification.

(2) Where a complete specification is filed in pursuance of a single application accompanied by—

- (a) a provisional specification; or
- (b) a specification which is treated by virtue of a direction under sub-section (3) of section 9 as a provisional specification,

and the claim is fairly based on the matter disclosed in the specification referred to in clause (a) or clause (b), the priority date of that claim shall be the date of the filing of the relevant specification.

(3) Where the complete specification is filed or proceeded with in pursuance of two or more applications accompanied by such specifications as are mentioned in sub-section (2) and the claim is fairly based on the matter disclosed—

- (a) in one of those specifications, the priority date of that claim shall be the date of filing of the application accompanied by that specification;
- (b) partly in one and partly in another, the priority date of that claim shall be the date of the filing of the application accompanied by the specification of the later date.

¹[(3A) Where a complete specification based on a previously filed application in India has been filed within twelve months from the date of that application and the claim is fairly based on the matter disclosed in the previously filed application, the priority date of that claim shall be the date of the previously filed application in which the matter was first disclosed.]

(4) Where the complete specification has been filed in pursuance of a further application made by virtue of sub-section (1) of section 16 and the claim is fairly based on the matter disclosed in any of the earlier specifications, provisional or complete, as the case may be, the priority date of that claim shall be the date of the filing of that specification in which the matter was first disclosed.

(5) Where, under the foregoing provisions of this section, any claim of a complete specification would, but for the provisions of that sub-section, have two or more priority dates, the priority date of that claim shall be the earlier or earliest of those dates.

(6) In any case to which sub-sections (2), (3), ¹[(3A)], (4) and (5) do not apply, the priority date of a claim shall, subject to the provisions of section 137, be the date of filing of the complete specification.

(7) The reference to the date of the filing of the application or of the complete specification in this section shall, in cases where there has been a post-dating under section 9 or section 17 or, as the case may be, an ante-dating under section 16, be a reference to the date as so post-dated or ante-dated.

(8) A claim in a complete specification of a patent shall not be invalid by reason only of—

- (a) the publication or use of the invention so far as claimed in that claim on or after the priority date of such claim; or

¹ Inserted by the Patents (Amdt.) Act, 2005 (15 of 2005), dt. 4-4-2005, w.r.e.f. 1-1-2005.

- (b) the grant of another patent which claims the invention, so far as claimed in the first mentioned claim, in a claim of the same or a later priority date.

CHAPTER IV

¹[PUBLICATION AND EXAMINATION OF APPLICATIONS]

²[11A. Publication of applications

³[(1) Save as otherwise provided, no application for patent shall ordinarily be open to the public for such period as may be prescribed.

(2) The applicant may, in the prescribed manner, request the Controller to publish his application at any time before the expiry of the period prescribed under sub-section (1) and subject to the provisions of sub-section (3), the Controller shall publish such application as soon as possible.

(3) Every application for a patent shall, on the expiry of the period specified under sub-section (1), be published, except in cases where the application—

- (a) in which secrecy direction is imposed under section 35; or
- (b) has been abandoned under sub-section (1) of section 9; or
- (c) has been withdrawn three months prior to the period specified under sub-section (1).]

(4) In case a secrecy direction has been given in respect of an application under section 35, then it shall be published after the expiry of the period ⁴[prescribed under sub-section (1)] or when the secrecy direction has ceased to operate, whichever is later.

(5) The publication of every application under this section shall include the particulars of the date of application, number of application, name and address of the applicant identifying the application and an abstract.

(6) Upon publication of an application for a patent under this section—

- (a) the depository institution shall make the biological material mentioned in the specification available to the public;
- (b) the patent office may, on payment of such fee as may be prescribed, make the specification and drawings, if any, of such application available to the public.

⁵[(7) On and from the date of publication of the application for patent and until the date of grant of a patent in respect of such application, the applicant shall have the like privileges and rights as if a patent for the invention had been granted on the date of publication of the application:

PROVIDED that the applicant shall not be entitled to institute any proceedings for infringement until the patent has been granted:

PROVIDED FURTHER that the rights of a patentee in respect of applications made under sub-section (2) of section 5 before the 1st day of January, 2005 shall accrue from the date of grant of the patent:

¹ Substituted for "EXAMINATION OF APPLICATIONS" by Patents (Amdt.) Act, 2002 (38 of 2002), w.e.f. 20-5-2003 vide S.O. 561(E), dt. 20-5-2003.

² Inserted by Patents (Amdt.) Act, 2002 (38 of 2002), w.e.f. 20-5-2003 vide S.O. 561(E), dt. 20-5-2003.

³ Substituted by the Patents (Amdt.) Act, 2005 (15 of 2005), dt. 4-4-2005, w.r.e.f. 1-1-2005.

⁴ Substituted for "of eighteen months" by the Patents (Amdt.) Act, 2005 (15 of 2005), dt. 4-4-2005, w.r.e.f. 1-1-2005.

⁵ Inserted by the Patents (Amdt.) Act, 2005 (15 of 2005), dt. 4-4-2005, w.r.e.f. 1-1-2005.

PROVIDED ALSO that after a patent is granted in respect of applications made under sub-section (2) of section 5, the patent-holder shall only be entitled to receive reasonable royalty from such enterprises which have made significant investment and were producing and marketing the concerned product prior to 1-1-2005 and which continue to manufacture the product covered by the patent on the date of grant of the patent and no infringement proceedings shall be instituted against such enterprises.]

11B. Request for examination

¹[(1) No application for a patent shall be examined unless the applicant or any other interested person makes a request in the prescribed manner for such examination within the prescribed period.]

²[x x x]

¹[(3) In case of an application in respect of a claim for a patent filed under sub-section (2) of section 5 before the 1st day of January, 2005 a request for its examination shall be made in the prescribed manner and within the prescribed period by the applicant or any other interested person.]

(4) In case the applicant or any other interested person does not make a request for examination of the application for a patent within the period as specified under sub-section (1) ³[x x x] or sub-section (3), the application shall be treated as withdrawn by the applicant:

¹[PROVIDED that—

- (i) the applicant may, at any time after filing the application but before the grant of a patent, withdraw the application by making a request in the prescribed manner; and
- (ii) in a case where secrecy direction has been issued under section 35, the request for examination may be made within the prescribed period from the date of revocation of the secrecy direction.]

12. Examination of application

(1) ⁴[When a request for examination has been made in respect of an application for a patent in the prescribed manner ⁵[under sub-section (1) or sub-section (3) of section 11B, the application and specification and other documents related thereto shall be referred at the earliest by the Controller]] to an examiner for making a report to him in respect of the following matters, namely:—

- (a) whether the application and the ⁶[specification and other documents relating thereto] are in accordance with the requirements of this Act and of any rules made thereunder;
- (b) whether there is any lawful ground of objection to the grant of the patent under this Act in pursuance of the application;
- (c) the result of investigations made under section 13; and
- (d) any other matter which may be prescribed.

1 Substituted by the Patents (Amdt.) Act, 2005 (15 of 2005), dt. 4-4-2005, w.r.e.f. 1-1-2005.

2 Sub-section (2) omitted by the Patents (Amdt.) Act, 2005 (15 of 2005), dt. 4-4-2005, w.r.e.f. 1-1-2005.

3 Words "or sub-section (2)" omitted by the Patents (Amdt.) Act, 2005 (15 of 2005), dt. 4-4-2005, w.r.e.f. 1-1-2005.

4 Substituted by the Patents (Amdt.) Act, 2002 (38 of 2002), w.e.f. 20-5-2003 vide SO 561(E), dt. 20-5-2003.

5 Substituted for "under sub-section (3) of section 11B, the application and specification and other documents relating thereto shall be referred by the Controller" by the Patent (Amdt.) Act, 2005 (15 of 2005), dt. 4-4-2005, w.r.e.f. 1-1-2005.

6 Substituted for "specification relating thereto" by the Patents (Amdt.) Act, 2002 (38 of 2002), w.e.f. 20-5-2003 vide SO 561(E), dt. 20-5-2003.

(2) The examiner to whom the application and the ¹[specification and other documents relating thereto] are referred under sub-section (1) shall ordinarily make the report to the Controller within ²[such period as may be prescribed].

13. Search for anticipation by previous publication and by prior claim

(1) The examiner to whom an application for a patent is referred under section 12 shall make investigation for the purpose of ascertaining whether the invention so far as claimed in any claim of the complete specification—

- (a) has been anticipated by publication before the date of filing of the applicant's complete specification in any specification filed in pursuance of an application for a patent made in India and dated on or after the 1st day of January, 1912;
- (b) is claimed in any claim of any other complete specification published on or after the date of filing of the applicant's complete specification, being a specification filed in pursuance of an application for a patent made in India and dated before or claiming the priority date earlier than that date.

(2) The examiner shall, in addition, make such investigation ³[x x x] for the purpose of ascertaining, whether the invention, so far as claimed in any claim of the complete specification, has been anticipated by publication in India or elsewhere in any document other than those mentioned in sub-section (1) before the date of filing of the applicant's complete specification.

(3) Where a complete specification is amended under the provisions of this Act before ⁴[the grant of a patent], the amended specification shall be examined and investigated in like manner as the original specification.

(4) The examination and investigations required under section 12 and this section shall not be deemed in any way to warrant the validity of any patent, and no liability shall be incurred by the Central Government or any officer thereof by reason of, or in connection with, any such examination or investigation or any report or other proceedings consequent thereon.

COMMENTS

Prior registration of patent in another country prima facie constitutes prior publication and is liable to be rejected.—*Lintech Electronics (P) Ltd. v. Marvel Engineering Co. 1995 (35) DRJ 11*

⁵14. Consideration of the report of examiner by Controller

Where, in respect of an application for a patent, the report of the examiner received by the Controller is adverse to the applicant or requires any amendment of the application, the specification or other documents to ensure compliance with the provisions of this Act or of the rules made thereunder, the Controller, before proceeding to dispose of the application in accordance with the provisions hereinafter appearing, shall communicate as expeditiously as possible the gist of the objections to the applicant and shall, if so required by the applicant within the prescribed period, give him an opportunity of being heard.

1 Substituted for "specification relating thereto" by Patents (Amdt.) Act, 2002 (38 of 2002), w.e.f. 20-5-2003 vide S.O. 561(E), dt. 20-5-2003.

2 Substituted for "a period of eighteen months from the date of such reference" by the Patents (Amdt.) Act, 2005 (15 of 2005), dt. 4-4-2005, w.r.e.f. 1-1-2005.

3 Words "as the Controller may direct" omitted by Patents (Amdt.) Act, 2002 (38 of 2002), w.e.f. 20-5-2003 vide S.O. 561(E), dt. 20-5-2003.

4 Substituted for "it has been accepted" by the Patents (Amdt.) Act, 2005 (15 of 2005), dt. 4-4-2005, w.r.e.f. 1-1-2005.

5 Substituted by the Patents (Amdt.) Act, 2005 (15 of 2005), dt. 4-4-2005, w.r.e.f. 1-1-2005.

15. Power of Controller to refuse or require amended applications, etc., in certain cases

Where the Controller is satisfied that the application or any specification or any other document filed in pursuance thereof does not comply with the requirements of this Act or of any rules made thereunder, the Controller may refuse the application or may require the application, specification or the other documents, as the case may be, to be amended to his satisfaction before he proceeds with the application and refuse the application on failure to do so.]

16. Power of Controller to make orders respecting division of application

(1) A person who has made an application for a patent under this Act may, at any time ¹[before the grant of the patent], if he so desires, or with a view to remedy the objection raised by the Controller on the ground that the claims of the complete specification relate to more than one invention, file a further application in respect of an invention disclosed in the provisional or complete specification already filed in respect of the first-mentioned application.

(2) The further application under sub-section (1) shall be accompanied by a complete specification but such complete specification shall not include any matter not in substance disclosed in the complete specification filed in pursuance of the first-mentioned application.

(3) The Controller may require such amendment of the complete specification filed in pursuance of either the original or the further application as may be necessary to ensure that neither of the said complete specification includes a claim for any matter claimed in the other.

²[*Explanation* : For the purposes of this Act, the further application and the complete specification accompanying it shall be deemed to have been filed on the date on which the first mentioned application had been filed, and the further application shall be proceeded with as a substantive application and be examined when the request for examination is filed within the prescribed period.]

17. Power of Controller to make orders respecting dating of application

(1) Subject to the provisions of section 9, at any time after the filing of an application and ¹[before the grant of the patent] under this Act, the Controller may, at the request of the applicant made in the prescribed manner, direct that the application shall be post-dated to such date as may be specified in the request, and proceed with the application accordingly:

PROVIDED that no application shall be post-dated under this sub-section to a date later than six months from the date on which it was actually made or would, but for the provisions of this sub-section, be deemed to have been made.

³[(2) Where an application or specification (including drawings) or any other document is required to be amended under section 15, the application or specification or other document shall, if the Controller so directs, be deemed to have been made on the date on which the requirement is complied with or where the application or specification or other document is returned to the applicant on the date on which it is re-filed after complying with the requirement.]

1 Substituted for "before the acceptance of the complete specification" by the Patents (Amdt.) Act, 2005 (15 of 2005), dt. 4-4-2005, w.r.e.f. 1-1-2005.

2 Substituted by the Patents (Amdt.) Act, 2005 (15 of 2005), dt. 4-4-2005, w.r.e.f. 1-1-2005.

3 Substituted by Patents (Amdt.) Act, 2002 (38 of 2002), w.e.f. 20-5-2003 vide S.O. 561(E), dt. 20-5-2003.

18. Powers of Controller in cases of anticipation

(1) Where it appears to the Controller that the invention so far as claimed in any claim of the complete specification has been anticipated in the manner referred to in clause (a) of sub-section (1) or sub-section (2) of section 13, he may refuse ¹[the application] unless the applicant—

- (a) shows to the satisfaction of the Controller that the priority date of the claim of his complete specification is not later than the date on which the relevant document was published; or
- (b) amends his complete specification to the satisfaction of the Controller.

(2) If it appears to the Controller that the invention is claimed in a claim of any other complete specification referred to in clause (b) of sub-section (1) of section 13, he may, subject to the provisions hereinafter contained, direct that a reference to that other specification shall be inserted by way of notice to the public in the applicant's complete specification unless within such time as may be prescribed,—

- (a) the applicant shows to the satisfaction of the Controller that the priority date of his claim is not later than the priority date of the claim of the said other specification; or
- (b) the complete specification is amended to the satisfaction of the Controller.

(3) If it appears to the Controller, as a result of an investigation under section 13 or otherwise—

- (a) that the invention so far as claimed in any claim of the applicant's complete specification has been claimed in any other complete specification referred to in clause (a) of sub-section (1) of section 13; and
- (b) that such other complete specification was published on or after the priority date of the applicant's claim,

then, unless it is shown to the satisfaction of the Controller that the priority date of the applicant's claim is not later than the priority date of the claim of that specification, the provisions of sub-section (2) shall apply thereto in the same manner as they apply to a specification published on or after the date of filing of the applicant's complete specification.

²[x x x]

19. Powers of Controller in case of potential infringement

(1) If, in consequence of the investigation required ³[under this Act], it appears to the Controller that an invention in respect of which an application for a patent has been made cannot be performed without substantial risk of infringement of a claim of any other patent, he may direct that a reference to that other patent shall be inserted in the applicant's complete specification by way of notice to the public, unless within such time as may be prescribed—

1 Substituted for "to accept the complete specification" by the Patents (Amdt.) Act, 2005 (15 of 2005), dt. 4-4-2005, w.r.e.f. 1-1-2005.

2 Sub-section (4) omitted by the Patents (Amdt.) Act, 2005 (15 of 2005), dt. 4-4-2005, w.r.e.f. 1-1-2005.

3 Substituted for "by the foregoing provisions of this Act or of proceedings under section 25" by the Patents (Amdt.) Act, 2005 (15 of 2005), dt. 4-4-2005, w.r.e.f. 1-1-2005.