**Protection of Patent**

**5.1 Patent:**

It has already discussed that invention is protected by patent. It is a document issued, upon application, by the Department of Patents and Designs acting under the Ministry of Industry of Bangladesh. It explains the concerned invention and establishes the exclusive rights of the person to whom the patent is granted. Besides the acquisition of patent by following the procedure laid down in the Patents and Designs Act, 1911, the Government has a prerogative rights to grant letters of patent under section 79 of the same Act. By the grant of letters of patent Government allows the proprietor monopolies over his creation. The person to whom the patent is granted is called patentee.

The object of patent law is to encourage scientific research, new technology and industrial progress. Grant of exclusive privilege to own, use or sell the method or the product patented for a limited period stimulates mew inventions of commercial utility. The price of the grant of monopoly is the disclosure of the invention at the Patent office, which after expiry of the fixed period of monopoly, passes into the public domain, it is generally accepted that the opportunity of acquiring monopoly rights in an invention stimulates technical progress in at least four ways. First it encourage research and invention; secondly, it induces an inventor to disclose his discoveries instead of keeping them a secret; thirdly, it offers a reward for the expense of developing inventions to the state at which they are commercially practical and; fourthly, it provides an inducement to invest capital in new lines of production which might not appear profitable if many competing producers embark on them simultaneously.

**5.2 Criteria of patentability:**

An invention means any manner of new manufacture and includes an improvement and an alleged invention. The Act defines the term in very simple language and basically, it does not clarify conditions for patentability. The definition remains unchanged after the adoption of the Act. It does no lay down any specific criteria of patentability and the boundaries which can invalidate the patentability of an invention. Therefore, the term needs crystal clarification and here it may be clarified on the basis of guidelines given by the WIPO and on the basis of foreign case laws.

Ordinarily, invention may relate to any product or process. An invention in order to be protected by the grant patent must fulfill three conditions (i.e. it is new novel, involves an inventive step, industrial applicability). The invention must be new one that is to say, it grasps for the first time. It is required to involve an inventive step, which means the creative idea of the inventor is a significant and noticeable one. And lastly it must posses the quality of industrial applicability.

**5.2.1 Novelty:**

To be a new invention it must involves a technical advance as compared to the existing knowledge. In Blakey and co.v. Lathem and co, it was held that, to be new in the patent sense, the novelty must be shown in the invention. It is not enough that the purpose is new or that there is novelty in the application so that the article produced is in that sense new. There must be novelty in the mode of application.

**5.2.2 Inventive steps:**

What constitutes an inventive step is a question of fact. To justify this test, following paragraph of Halsbury`s laws of England may be referred-

` was it for practical purposes obvious to the skilled worker, in the field concerned, in the state of knowledge existing at the date of the patent to be found in the literature then available to him, that he should or would make the invention the subject of the claim concerned.

**5.2.3 Industrial applicability:**

The product or process must have industrial application and it must be industrially producible i.e. it is capable of being made and used in an industry.

There is a negative criterion of patent which implies the registration of patent may be denied on the ground that it is against contrary to the morality or law. The Registrar may refuse to grant a patent for an invention or to register a design of which the use would, in his opinion, be contrary to law or morality. Any person aggrieved by such an order of the Registrar may prefer an appeal to the Government within 3 months.

**5.3 Who may apply?**

An application for patent may be made by any person whether he is a citizen of Bangladesh or not, whether alone or jointly with other person. A person who is the author or to whom a patent is granted for invention is called patentee. A parson who applies at the first instance will be entitled to the grant of patent. A prior inventor of the invention no applies subsequently will not be granted the patent as against the first applicant. A person who has simply given practical shape to the idea and has helped in developing the invention cannot claim to be the first and true inventor; but such a person may apply as assignee apply for the grant of patent on the death of a true inventor devolves to his legal representatives. Section 3 deals with the details of the patent application.

**5.4 Where to apply:**

An application for the registration of patent shall be filed to the patents and designs wing of the Department of patent, design and Trademark as established under section 55 of the part 3 of this Act. For the purposes of this Act and Trade Marks Act, 1940 there shall be established a department called the Department of Patents, Designs and Trade Marks. The Head office of the department of patents , designs and Trade marks shall be in Dhaka; and there may be established branch office or offices at such other subsection of section 55 provides that, the Department of patents, designs and trade marks shall consist of two wings. Namely:

1. The Patents and Designs wing to deal with natters related to the Patents and Designs Act and
2. The Trade Marks Registry wing to deal with natters related to the Patents and Designs Act.

There shall be a common seal of the department of patents, designs and trade marks as well as separate seals to indicate the separate entities of the patents and designs wing and the trade marks registry wing.

The Government may, by notification in the official Gazette, appoint a person, for the purposes of this Act and trade marks Act 1940, to be known as Registrar of Patents, Designs and trade marks. The Government may, in addition to the registrar, appoint such other officers and employees in the department of patents, designs and trade marks, as it may think necessary. The registrar may, subject to the approval of the Government, delegate such office functions of him to any other officer or officers of the department of patents, designs and trade marks, as may be deemed necessary.

**5.5 How to apply:**

An application must be made in the prescribed form and must be left at the department of patents, designs and trademarks in the prescribed manner. An application must contain to the declaration to the effect that the applicant is in the possession of an invention and must be accompanied by either a provisional or by complete specification and with the prescribed fees. An application for the grant of patent must be singed and verified by the person making the application. Section 4 and 4A deal with the details of patent specification.

However, an application for patent should contain the following particular namely:

1. Name of the inventor ( applicant),
2. Address and nationality of the inventors
3. Two sets of specification and one set of drawing on tracing paper
4. One set Legalized Deed of Assignment
5. Power of Attorney
6. Certified copy of the foreign patent (in case of claiming priority).

**5.6 Specification:**

A description of the invention is an essential part of a patent and constitutes the quid pro quo for the grant of patent monopoly. It describes the invention and the method by which it is to be performed fully and particularly. It sufficiently and specifically indicates the subject matter of invention that defines the scope of invention for which the protection is claimed. The claim must be clear and succinct and should be based fairly on the matter disclosed in the specification. It is the duty of a patentee to state clearly and distinctly either in direct words or by clear and distinct reference, the nature and limit of what he claims. If he uses fairly read, is avoidably obscure or ambiguous the patent is invalid, whether the defect be due to design, or to carelessness or to want of skill where the invention is difficult to explain due allowance will, of course, be made for any resulting difficulty in the language. But nothing can excuse the use of ambiguous language when simple language can easily be employed, and the only safe way is for the patentee in do his best clear and intelligible. The registrar may require suitable drawing to be supplied at any time before the acceptance of the application and such drawing shall form part of that specification. The registrar may also require a sample or model, which illustrate the invention or alleged to constitute the invention, to be supplied before the acceptance of the application in particular case. A patent specification is a technical as well as a legal document.

a patent specification may be of two types i.e. provisional and complete. A provisional specification must describe the nature of the invention. An applicant may file provisional specification that need not be full and specific. It demands a general description of the invention, its field for application and the anticipated results. It does not require containing the claim. It is filed with the purpose of fixing the priority date of the patent. Where a provisional specification is filed the applicant gets a maximum period of 10 months to file the complete specification. During this period he may develop or modify his invention, which can be incorporated into the complete specification.

A complete specification is demanded for the purpose of availing the concerned invention to the public after the protected period. It must commence with a title and end with a distinct statement of the invention claimed. The object of claim is to define clearly the monopoly claimed, so that the other may know their exact limit to interfere with. Besides this, it should contain a full and particular description of the invention and its operation or use and the method of performing the invention which is known to the applicant and for which he is entitled to claim protection; a claim or claims defining the scope of the for which the protection is sought.

A specification must be drafted with utmost care. All the statement in it must be accurate and include all possible variations of the invention to guard against infringement. The grant of patent is solely depends on the specification, which is complex types of document to draft. Therefore, it is better to be drafted by professionals having good skill in this field.

Under section 4B the patentee will have provisional protection of the invention for using and publishing it during the period between the dates of an application for a patent therefore and the date of dealing of a patent on that application.

**5.7 procedure after filing application:**

On receiving the complete application, the registrar shall refer to an examiner in respect of which a complete specification has been filed and if he is not satisfied with the report of the examiner may refuse to accept the application or require that the application, specification or drawing be amended before he proceeds with the application, and in the later case the application shall, if the registrar so directs, bear the date as from the time when the requirement is complied with. The grounds upon which the registrar may refuse to accept an application are stated in section 5(1) of the patents and designs Act, 1911.

On the acceptance of the application the registrar shall give notice thereof to the applicant and shall advertise the acceptance; and the application, specification and the drawing shall be open to the public inspection. After the acceptance of an application and until the date of sealing a patent in respect thereof , or the expiration for the time for sealing, the applicant shall have the like privileges and the rights as if a patent for had been sealed on the date of the acceptance of the application. But in such a case the patentee will not be entitled to any proceeding for infringement until the patent has been sealed.

**5.8 Opposition to the grant of Patent:**

Section 9 states that, any person may , on payment of the prescribed fees, at any times within four months from the date of the advertisement of the acceptance of an application, give notice at the Department of patents, design and trademarks of opposition to the grant of the patent on certain specified ground. The grounds are as follows-

1. that the applicant obtained the invention from him, or from a person of whom he is the legal representative or assign; or
2. that the invention has been claimed in any specification filed in Bangladesh which is or will be of prior date to the patent the grant of which is opposed;
3. that the nature of the invention or the manner in which it is to be performed is not sufficiently or fairly described and ascertained in the specifications; or
4. that the invention has been publicly used in any part of Bangladesh or has been made publicly known in any part of Bangladesh; or
5. that the complete specification describes or claims an invention other than that described in the provisional specification and that such other invention either forms the subject of an application made by the opponent for a patent which if granted would bear a date in the interval between the date of the application and the leaving of the complete specification or has been made available to the public by publication in any document published in Bangladesh in that interval;

The notice for opposition must be filed only on the above mentioned grounds and no other grounds can be attached with the notice for claiming opposition.

Where such notice is given, the Registrar shall give notice of the opposition to the applicant, and shall, on the expiration of those four months, after hearing the applicant and the opponent, if desirous of being heard decide on the case. The decision of the Registrar shall be subject to appeal to the Government.

**5.9 Grant and sealing of patent:**

If there is no opposition, the determination is in favor of the grant of patent, a patent shall, on payment of the prescribed fees, be granted, subject to such conditions as the Government think expedient, to the applicant or in case of a joint application to the applicants jointly, and the Registrar shall cause the patent to be sealed with seal of the department of patents, designs and trademarks.

**5.10 Rights of a patentee:**

A patent is a bundle of rights, which may be divided and assigned or retained in whole or in part. A patent sealed with the seal of the department of patents, designs and trademarks shall, subject the other provisions of the Act, confer on the patentee exclusive privileges of making, selling and using the invention throughout Bangladesh and of authorizing others so to do. Statutory grants of patent confer certain monopoly rights on the grantee for defined period, subject to certain statutory conditions. The owner of a patent enjoys exclusive rights to exclude others from exploiting the patented invention. The exclusive rights has two main application in practice i.e. protection right in part or in whole. A patent right may, which relates to any products, be exploited as follows:-

1. To make the product,
2. To use the product,
3. To sell the product,
4. To authorize other to do the above acts in whole or in part.

Where an invention is patented which contain process, the owner enjoys the following rights-

1. To use the product directly obtained through the process.
2. To make the product directly obtained through the process.
3. To sell the product directly obtained through the process.
4. To authorize other to do the above acts in whole or in part.

However, according to the Act, the rights of a patentee can be circumscribed as follows-

1. Right to exploit patent: A patentee has exclusive rights to make use, make, sell or distribute the patented substance or article or to use or exercise the method or process throughout the Bangladesh.
2. Right to assign and license: A patentee has the right to assign, grant licenses under, or otherwise deal with the patent for any consideration.
3. Right to surrender: The patentee has the right to surrender his patent on serving notice to the person interested in the patent and hearing the claim of the person interested in it.
4. Rights before sealing: The applicant for patent can exercise all the privileges and rights of a patentee except the filling of suit of infringement before the date of sealing of patent.

**5.11 Term of Patent:**

The term limited in every patent for duration thereof shall, save as expressly provided by this Act, be 16 years from its date. A patent shall be dated and sealed from the date of its application. Not with standing anything contained therein or in this Act, a patent shall cease if the patentee fails to pay the prescribed fees within prescribed times.

Section 15 states the extension of the term of patent. A patentee may, present petition to the Government praying that his patent may be extended for a future term; but such petition must be left at the department of patents, designs and trademarks at least 6 months before the limited for expiration of the patent and must be accompanied by prescribed fees and must be advertised by the patentee within the prescribed timer and in the prescribed manner. Any person may give notice to the Registrar of the objection to the extension. The Government may dispose the petition for extension itself or refer it to the High Court Division for its disposal. The High Court division, after considering the nature on the patent and to all circumstances of the cade, if it appears the patent has not been sufficiently remunerative, it may by order extend the term or grant a new patent. The term extended for a further period shall not exceed 5 years or in exceptional cases 10 years. The Government or the High Court Division may by order grant the new patent for such term not exceeding 10 years on such restriction and condition as it thinks fit.

Where any patent has ceased owing to the failure of the patentee to pay any prescribed fees within the prescribed time, the patentee may apply to the Registrar in the prescribed manner for an order for the restoration of the patent.

**5.12 Transfer of patent rights:**

Property in patent is purely a creation of the statute. The rules of transfer of patent are therefore determined by the statute. Section 12 confers exclusive rights to the patentee that he may make, use, sell or authorize others so to do. Where a patent is granted to the two or more persons each of these persons shall be, in absence to a contract to the contrary, entitled to the equal rights in the patent, but none of them shall be entitled to assign or license his share in the patent without the consent of the other co-owner.

A patent may be transferred from the original patentee to the other person by assignment, or by license, or by mortgage, or by operation of law. A patent may also be transferred to the Government. Sometimes the transfer of the may occur compulsorily.

**5.12.1 Assignment:**

A patentee may assign his whole or any part of his patent. An assignment may be of two types either legal or equitable. A legal assignment or an agreement to assign of an existing patent is a legal assignment. An assignee, by the Register book of patent under section 63.

On the other hand, any document by which a patentee gives another person a certain defined share of the patent with immediate effect is called equitable assignment. Such assignment affects the proprietorship of the patent, but does not alter the proprietorship. An equitable assignee cannot get his name entered in the register book, until he obtains legal assignment.

**5.12.2 Mortgage:**

A mortgage is document transferring the patents rights, wholly or partly, to the mortgagee with a view to secure the payment of a sum of money. On the repayment of money the mortgagor become entitled to have the patent transferred to him, A mortgagee is not entitled to have his name entered in the registered as the proprietor but may apply to the Registrar to his title under section 63(2).

**5.12.3 License:**

A patentee may by license, authorize others to make, use, or exercise the invention, which would otherwise be illegal for them person to do. A deed of license must be writing in order to be valid. An application for registration of the document, containing terms of license, must be filed to the Registrar by the licensee under section 63(2) in the prescribed manner. The nature of license depends upon the terms and condition of the agreement to grant license. Where there is an agreement to take license from the patentee, the patentee may obtain an order for specific performance of the agreement.

**5.12.4 Operation of Law:**

A patent may be transferred by the operation of law if the patentee dies, or become insolvent, or in case of juristic person when it dissolves. Such transfer is called transmission of patent. Section 63(1) recognizes that the transfer by operation to be registered in the prescribed manner. If the patentee dies the property in patent passes to his legal representative like other property. In case of insolvency or dissolution of company, the devolution of the property will be taken place as like as any other property.

**5.12.5 Assignment or License to the Government:**

Subject to the other provisions of this section, a patent shall have to all intents the like effect as against the Government as it has against any person. Section 21 laid down the detail provisions respecting the assignment and license of a patent to the Government. Section 21A states that the inventor of any improvement in instruments or munitions of war may assign to the Government all benefit of the invention; and the Government may be a party to the assignment. This procedure has been laid down in detail in section 21A.

**5.12.6 Compulsory license:**

Section 22 describes the detail provisions regarding the compulsory license. When any concerned authority has made a mandatory order to grant license to the patentee, such license is called compulsory license. Where it is found that the demand of a patented article in Bangladesh has not been met to an adequate extent and on reasonable terms, any interested person may file petition for a compulsory license. Such application may be filed by any interested person and it must be made to the Government. The Government may either dispose such a petition itself or may refer it to the High Court Division for its disposal. Subsection 5 of section 22 give directions to determine the adequate extent and on reasonable terms of the patented article. Subsection 5 of section states that, for the purposes of this section the demand for a patented article shall not be deemed to have been met to an adequate extent and on reasonable terms-

1. if by reason of the default of the patentee to manufacture to an adequate extent and supply on reasonable terms the patented article, or any parts thereof which are necessary for its efficient working , or to carry on the patented process to an adequate extent or to grant licenses on reasonable terms, any existing trade or industry or the establishment of any new trade or industry in Bangladesh is unfairly prejudiced; or
2. if any trade or industry in Bangladesh in unfairly prejudiced by the conditions attached by the patentee to the purchase, hire or use of the patented article or to the using or working of the patented process.

http://biplobd.com/patents/

**PATENTS**

**REGISTRATION OF PATENT IN BANGLADESH**

**PATENTS AND DESIGNS ACT, 1911**

**Application:**

An application for a patent may be made by any person alone or jointly with any other person. The application must be made in the prescribed form, and must be filed at the Patent Office in the prescribed manner. The application must contain a declaration to the effect that the applicant is in possession of an invention, whereof he, or in the case of a joint application one at least of the applicants, claims to be the true and first inventor or the legal representative or assign of such inventor and for which he desires to obtain a patent, and must be accompanied by complete specification.

**Specifications:**

A complete specification must particularly describe and ascertain the nature of the invention and the manner in which the same is to be performed. The specification must commence with the title, and in the case of a complete specification must end with a distinct statement of the invention claimed. The drawings can be supplied at any time before the acceptance of the application, but we suggest to file drawings at the time of application printed on tracing papers.

PCT Application in Bangladesh: In case of claiming priority based on any application filed in any PCT countries the applicant must supply the information of PCT application at the time of filing the national application and submit certified copy of the specification of the foreign patent application within 90 days’ time from the date of filing application in Bangladesh.

**Filing Requirement:**

To file a Patent Application we need the followings:

(a) Name of the inventor (applicant),

(b) Address(s) and nationality of the inventors,

(c) Two sets of specification and one set of drawing on tracing paper (transparent),

(d) Legalized Deed of Assignment (if any),

(e) Power of Attorney [Form - 31], you can download the authorization

From this web by clicking download forms.

(g) Certified copy of the foreign patent (in case of claiming priority)

**Advertisement on acceptance of application:**

On the acceptance of an application the Controller shall give notice thereof to the applicant and shall advertise the acceptance and with the drawings (if any) shall be open to public inspection.

Opposition: Any person at any time within four months from the date of the advertisement of the acceptance of an application give notice at the Patent Office of opposition to the grant of the patent. The opponent must state the grounds of his opposition.

**Grant and sealing of Patent:**

If there is no opposition a patent shall be granted, subject to such conditions as the authority thinks expedient, to the applicant, or in the case of a joint application to the applicants jointly, and the Controller shall cause the Patent to be sealed with the seal of the Patent Office.

**Term of Patent:**

The term limited in every patent for the duration thereof is sixteen years from its date of application or the date of priority application. Renewal is required for fifth year before expiry of fourth year up to the 15 years. Grace period is 90 days with late fees. In case of priority, the commencement of four years shall start from the date of priority application.