

Patent

A patent is a government granted right for a fixed time period to exclude others from making, selling, using, and importing an invention, product, process or design, or improvements on such items. These exclusive, monopoly rights are powerful, and in return the inventor is required to describe the invention in writing.

The end result is a written description, accompanied by diagrams and drawings, that explains the invention. The public benefits because anyone can read the details of the invention and improve upon it. Importantly, the patent not only allows the public to gain an understanding of the invention, but also defines its limits. Once the patent term expires (generally 20 years from the application filing date), the technology covered by the patent becomes a part of the public domain and is essentially free to use by the public.

What is a patent?

A patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem. To get a patent, technical information about the invention must be disclosed to the public in a patent application.

- The history of Patent law in India starts from 1911 when the Indian Patents and Designs Act, 1911 was enacted.
- The Patents Act, 1970 is the legislation that till date governs patents in India. It first came into force in 1972.
- The Office of the Controller General of Patents, Designs and Trade Marks or CGPDTM is the body responsible for the Indian Patent Act.
- The Patent Office has its headquarters in Calcutta and has branches in New Delhi, Chennai and Mumbai. The office of the CGPDTM is based in Mumbai. Nagpur hosts the office of the Patent Information System and also the National Institute for Intellectual Property Management.
- The Controller General supervises the Act's administration and also offers advice to the government on related matters.
- The Patents Act has been repeatedly amended in 1999, 2002, 2005, 2006 respectively. These amendments were required to make the Patents Act TRIPS compliant. TRIPS stands for Trade-Related Aspects of Intellectual Property Rights.
- The major amendment in the Patent Act was in 2005, when product patents were extended to all fields of technology like food, drugs, chemicals and microorganisms. The Rules under Patent Act were also amended in 2012, 2013, 2014

Types of Patents

Generally, there are two main types of patents: utility patents and design patents (a third type, plant patents, is not discussed here).



1. **Utility Patent.** When most people think of patents, they are referring mainly to utility patents. A utility patent is a patent that covers inventions, whether it's an innovative software process, a new product that is distinct from prior art, or an improvement to a car engine. A utility patent can be granted for any new, useful, and non-obvious process or product.
2. **Design Patent.** A design patent covers a new and original ornamental design of a product. In other words, a design patent protects the look of a product. Examples of products protected by design patents include jewelry and watches, electronic devices, computer icons, and beverage containers. A design patent consists of numerous drawings that show a product from various angles and contains very little written description, if any.

Applying for a Patent

In the United States, only the Federal government can grant a patent. To apply for a United States patent, an applicant must file a patent application with the United States Patent and Trademark Office (USPTO). The USPTO will assign a patent examiner—generally, a USPTO employee with a science or engineering undergraduate degree—to examine the patent application. The patent examiner has several tasks, including ensuring the application abides by the patent laws and determining whether the disclosed invention is indeed new and non-obvious.

It is important to note that a patent granted in the U.S. gives a patent owner rights within the U.S. only. For patent protection in a country other than the U.S., an inventor is required to file a patent application in that country and abide by its patent laws. Fortunately, the Patent Cooperation Treaty—signed by 140 countries, including the United States—allows for a streamlined process by allowing an applicant to file a single application (called a PCT application) and decide at a later date which countries to pursue patent protection. A PCT application, however, does not ever become a patent; rather, it consolidates some up-front costs and delays the decision to choose the countries in which to file.

Why do Patent Rights matter?

- Provide incentive towards various creative endeavors of the mind by offering protections;
- Give such creators official recognition;
- Create repositories of vital information;
- Facilitate the growth of both domestic industry and
- Promote international trade, through the treaties offering multi-lateral protection.

REQUIREMENTS OF PATENTABILITY SUBSTANTIVE REQUIREMENTS •

SUBJECT MATTER • NOVELTY • NON-OBVIOUSNESS • UTILITY PROCEDURAL REQUIREMENTS • ENABLEMENT • DEFINITENESS • BEST MODE IDEAS/CONCEPTS CANNOT BE PATENTED SUBJECT MATTER • MANUFACTURE • MACHINE • COMPOSITION OF MATTER • PROCESS e.g. GENETICALLY MODIFIED BACTERIA HUMAN ENGINEERED MICE UTILITY MINIMUM DEMONSTRATION NOVELTY NOT ANTICIPATED IN "PRIOR ART" "PRIOR ART"- ANYTHING PREVIOUSLY PUBLISHED,PATENTED,KNOWN,USED,SOLD REQUIREMENTS OF PATENTABILITY OBVIOUSNESS KNOWLEDGE AT THE TIME OF INVENTION MUST NOT BE OBVIOUS TO ONE OF ORDINARY SKILL IN THAT AREA DETERMINED BY SCOPE / CONTENT OF PRIOR ART AS LEVEL OF ORDINARY SKILL IN TECHNOLOGY INCREASES, SO DOES THE OBVIOUSNESS OF ADVANCES REQUIREMENTS



OF PATENTABILITY Contd... ENABLEMENT ABILITY TO USE THE INVENTION WITHOUT "UNDUE EXPERIMENTATION" (SPECIFICATION) DEFINITENESS INQUIRY UNDERSTANDING LIMITS OF INVENTION BASED ON CLAIM LANGUAGE BEST MODE BEST WAY KNOWN TO HIM/HER TO CARRY OUT THE CLAIMED INVENTION. DISCLOSURE MUST ALLOW A PERSON OF "ORDINARY SKILL IN THE ART" TO PRACTICE THE INVENTION. CONCEALMENT OF BEST MODE RESULTS IN REJECTION. REQUIREMENTS OF PATENTABILITY DEFINITIONS

• INVENTIONS • "Invention" means a new product or process involving an inventive step and capable of industrial application • INVENTIVE STEP • "Inventive step" means a feature that makes the inventions not obvious to a person skilled in the art • CAPABLE OF INDUSTRIAL APPLICATION • In relation to an invention means that the invention is capable of being used in an industry (Industry here does not mean manufacturing sector alone. It is an all encompassing definition for the purpose.

Right to Use and Enjoy Patent

The Patentee of the Patent has the exclusive right to exercise, make, utilize, convey or offer or the patented substance or article in India or to practice or utilize or the process or techniques associated with the invention

What are the Rights of a Patent Holder?

The owner of a patent is entitled to a number of benefits, including the ability to grant licences to third parties and allow them to market and produce the patented product. It is crucial to remember that these privileges do not exist in a vacuum and are subject to a number of restrictions and limits.

The most comprehensive international agreement on intellectual property is the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement, which went into force on January 1st, 1995. Its scope of intellectual property includes the following areas:

- Privileges associated with copywriting.
- [Trademarks](#) and service marks.
- Geographical information, such as origin-specific names
- Industrial concepts
- Protection of novel plant species through patents
- Designs for integrated circuit layouts
- Unreleased details, such as test results and trade secrets

According to Article 28 of the TRIPS Agreement, patent owners are guaranteed the following:

- When a commodity is the focus of a patent, it is illegal for third-party candidates to use, create, offer for sale, sell, or import the commodity without the patent holder's permission.
- When a procedure is the focus of a patent, it is illegal for third parties to use, offer for sale or sell the procedure without the owner's permission.
- Additionally, patent owners are entitled to licence agreements, patent assignments, and succession transfers.



Example

Bajaj Auto Ltd. vs TVS Motor Company Ltd.

In the case, TVS Motor Company applied for and used the proprietary Digital Twin Spark Ignition (DTSi) technology without authorisation (Defendant). The DTSi belonged to BAJAJ Auto Limited as its intellectual property (Plaintiff). Plaintiff submitted a patent application in 2002 and was given a patent in 2005 for the technology.

In the end, the Madras High Court ruled that the plaintiff had the DTSi technology patent and has been using it for five years.

Some of the rights enjoyed by the patentees are discussed here in detail:

1. Right to Exploit the Patent

The authority to use, market, produce, and distribute the protected goods is granted to the patent holder in India. If the innovation involves a manufacturing method, the patent holder retains the right to impart the method to a third party. Additionally, the patent holder's attorney has the authority to enforce this claim.

If a new innovation is a commodity, the patent holder is granted the only right to manufacture, market, and utilise the innovation in India for designated uses. On the other side, if the innovation relates to the production of a substance or an object, the right to exploit encompasses the exclusive right to use the production method or system within the boundaries of India.

The exclusive right of a patentee to pursue commercial gains from the innovation is taken into account by Indian patent law. It motivates creators to engage in their creative endeavours because they know that their ideas will be legally protected and that no one else will be able to copy them within a set length of time (mostly 20 years).

2. Right to Grant or Assign Licenses

The owner of a patent has the authority to delegate or give licences to third parties for the purpose of producing and distributing the protected goods. When there are several patent owners for a patented product, all patent owners must agree to issue the licence to a third party as a group. Only after the administrator has properly approved the request, the licence is deemed to be issued. The assignment or [licence](#) must thus be in written and filed with the Patent Authority in order to be valid and legitimate.

3. Right to Surrender the Patent

After properly requesting authorization from the controllers, the patent holder has the authority to abandon the patent. The Controller then publishes this surrendering in accordance with the Indian Patent Act's regulations. The parties looking to acquire patent ownership can speak with the Controller directly. The Controller then reviews the party's claims and assigns the ownership. Only if the holder is prepared to give up the patent does the transfer take place.

By submitting notification in a certain way, the patentee has the ability to surrender a patent at any time and at their own discretion. This involves placing advertising in the publication with a request to give up the patent.



4. Right before Selling

A patent is protected from the date of the notification for approval to the date of the notification's adoption, in accordance with Section 24 of the Indian Patents Act. Following the presentation of the notice for acceptance, the patentee's entitlement is applicable.

5. Right to Apply for the Patent of Addition

This provision is included in the Patents Act of 1970, sections 54 to 56. The clause permits alterations to the current invention. In these situations, as soon as the notification of approval is made public, the patent holder is given the right to the improved innovation. The owner is given the same rights as that of the prior patent upon the presentation of the notification.

6. Right to Sue in Case of Infringement

Patent infringement is the word used to describe any violation of a patent holder's privileges. A patentee may file a complaint with either a lower court or a high court to have any rights violations addressed. In the event that the defendant is convicted of infringing, the court may decide to give compensation or a long-term order.

Once the patent and associated rights are issued, patentees also have responsibilities to perform. We will go over all of the requirements that each and every patent holder in India must meet in the next section.

What are the Obligations of Patentees?

1. Duty to Disclose the Patent:

The petitioner must reveal the innovation to society, according to Section 8 of the Patent Act of 1970. At the time of applying for a patent or within 6 months of submitting applications, the patentee is unequivocally required to disclose all necessary information regarding the faraway application of an identical or nearly identical innovation that has been documented, according to Section 8(1) of the [Patent Act](#) of 1970. The patent holder must also include all of the mentioned parameters in the applications. Additionally, the patentee should make an effort to disclose any relevant points in any upcoming application that may be recorded. According to Section 8(2) of the Patent Act, the patentee must provide all the information required by the Controllers on the innovation within six months after making the request.

2. Duty to Request for Examination:

The patent registration procedure does not provide for any type of scheduled assessment for the issuance of a patent application, in contrast to other intellectual property rights. According to Section 11(B) of the Patents Act, it is the patentee's responsibility to ask the Controllers to look at how the patent has developed or grown.

3. Duty to Respond to Objections:

The Patent Controller sends the inspection demand to an investigator, who evaluates the development before sending the First Examination Report (FER) back to the Patent Director.



In some cases, the First Examination Report will mention some complaints. Responding to such reports of objection is required of patentees. They must also communicate within a year after the FER's issue. The patentee's claim will automatically be forfeited if this is not done.

4. Duty to Clear all Objections:

The holder of a patent is required to respond to any criticism and refute any claims made against their innovation. A meeting can also be necessary if the Patent Administrator has not performed their role. The Patent Controllers have the authority to transfer the patent claims to any opposing party if the petitioner doesn't respond to the complaints.

5. Duty to Pay Statutory Fees:

The patentees must also pay all statutory costs associated with the registration procedure in order to be granted a patent. The patent will not be taken into consideration for the grant if the payment is not made. The payment of appropriate charges and the consequences of not paying

Conclusion:

A patentee's rights are explicitly stated in the Patents Act of 1970. However, there are many instances of patent infringement. A patentee's entitlements can only be cleared when proper regulations are in place and evolve over time to reflect changing circumstances. In the event of an infringement of their patent rights, patentees are entitled to file a lawsuit in court. A patentee, however, must use his or her rights within the legal restrictions imposed by the law. Understanding and defending your rights is essential for getting the most out of them. A patentee must also be aware of the restrictions on these rights, as well as the commitments that must be made.

Q: How are patents protected in India?

Ans:

Only a civil lawsuit may be brought in a court of law in accordance with the (Indian) Patents Act, 1970. A lawsuit for violation may also be refuted on a number of grounds, including those that prevent India from granting patents, and on the basis of such a refutation, the patent may be revoked.

Q: What is the difference between copyright and patent?

Ans:

While original pieces of literature, music, art, technology, and dance are all protected by copyright, innovations of new procedures are protected by patents, with the exception of design patents.

Q: How long is a patent valid in India?

Ans:

A restricted time frame, usually 20 years from the application's filing date, is given for the granting of patent protection.



Q: What are the rights of a patentee under section 48 of the Patents Act?

Ans:

The rights of the patentee under the legislation are outlined in Section 48 of the Indian Patents Act. If the content of the patent is a product, the clause grants the patentee an exclusive authority to prohibit anyone from creating, utilizing, selling, and importing that product into the market.

Geographical Indications

What is a geographical indication?

A geographical indication (GI) is a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin. In order to function as a GI, a sign must identify a product as originating in a given place.

In addition, the qualities, characteristics or reputation of the product should be essentially due to the place of origin. Since the qualities depend on the geographical place of production, there is a clear link between the product and its original place of production.

GIs can enable SMEs to:

Enhance the reputation of their goods

GIs enhance the reputation and value of local products and support local businesses. All producers operating in a geographical area covered by a GI and that comply with the GI's standards of production (as established by producers within the region) can benefit from a registered GI. Since these goods enjoy an enhanced reputation of quality, producers, many of which are SMEs, can sell them for a higher price. On average, GI-protected products sell for more than twice the price of comparable products that do not bear a GI label.

Build consumer confidence

Today, we consumers pay close attention to the origin and quality of the goods we buy. GIs provide us with detailed information on where (the physical location) and how (the methods of production) goods that carry a GI label are produced. A GI label offers a guarantee of origin and specific characteristics. It gives us a better idea of the quality, characteristics and origin of the products we buy and tells us how the goods are produced. It also gives us a taste of the local traditions surrounding them. That's why we are often willing to pay a higher price for GI-certified goods. With a GI, the SMEs that produce GI-certified products can build consumer confidence and secure a good return on their investment.



Communicate their commitment to social responsibility

GI-certified products provide consumers with information about their origin and method of production and also enable GI certified producers to demonstrate their commitment to broader societal issues, for example, by adopting environmental, health, and labor- friendly policies. Often, the strong link between the products and their geographical origin focuses attention on the need to preserve local natural resources without which long-term production would be impossible. That's why producers of origin-based products are particularly motivated to adopt environmentally sustainable production methods. SMEs that decide to use the GI to promote sustainability are rewarded when informed and conscious consumers choose their sustainable GI-certified products over others in the market.

Support regional economic development

The marketing and promotion of GI-certified products creates a positive image of the product in the minds of the consumers and often boosts the economic development of the whole region of origin. Thanks to the collective action that the management and promotion of GIs requires, SMEs enjoy greater opportunities to market their local products abroad. This raises the region's international profile and boosts tourism. People who buy GI-certified products are often interested in visiting the places they come from.

Prevent fraudulent uses of IP rights

In addition to increasing the value of local products, GIs also prevent fraudulent uses of GI-denominated products. As IP rights, GIs provide protection against acts of misappropriation and unfair competition. Producers have an exclusive right to use the GI and to prevent its use by third parties whose products do not originate from the same geographical area or do not conform to the certified standards of production.

The patent War: Apple vs Samsung Harvard Case Solution & Analysis

The patent War: Apple vs Samsung Case Study Solution

The case illustrates the scenario of patent war between the two giants of the market, Apple and Samsung. Over the period of time, with the development of technology and innovation in market, Apple has succeeded in developing strong market position and brand image through unique product features and designs. It partnered with Samsung for the posturing job of some of its operational activities. However, in 2011, the apple alleged Samsung for using some of its features and designs of the phone which are patent under the law. However, Samsung counteract he allegation by proving the difference between the products. The main concept represented in the case is patent authorization. There are three type of patents namely utility design and Trademarks. These three categories define the different patent cause under which Apple and Samsung fight with each other in the courtroom. However, though the technology has advanced and the law has improved, there are certain loop holes or areas in the law which differs county to country and hence offers a shield to



Samsung to pursue the same strategy uniformly in the market.

Keywords: Innovation, Samsung, Apple, Patent War.

Introduction

Apple and Samsung both are operating in the same [market](#) for nearly decades. The apple has developed the market leadership by maintaining and establishing a unique product offerings and designs and patented it so to secure the intellectual property. On the other hand, Samsung, the biggest competitor of Apple has developed the strong and extensive market share by instructing android phones in the market, which though didn't capture or conflict Apple market share but intensified the competition and made the market saturated. In the initial period, Apple and Samsung formed the partnership on the basis of outsourcing relationship and which accounted 4% of the total Samsung revenue. Till this time, the patent infringement events didn't occur in the market till in 2011. When Apple alleged Samsung for copying its design and utility patents in its new Galaxy S series phone. Though the legal body of apple filed for 2.5 Billion lawsuit, Samsung only paid USD 1 billion against it. It is the technology is and innovation is complicated to patent in the tech aggressive market. And since it is complicated to patent the product features and other things, Samsung remain to take the advantage from the apple's Expertise in market.

However, with the pursuance of this case, Samsung also counter fit Apple's more to patent all of the designs logos, names, description and technology as the constraint to excel in technology and smart phone market. This may harm the innovation base and Silicon Valley, while on other hand, made it difficult for brands to meet the customer demand and by pursuing certain strategy which may be covered by Apple Patents. Samsung pursued the same strategy to file the lawsuit in 9 countries which resulted in mixed results. It is because the legal system and outlaw of each region differs from each other, Samsung has been successful in winning the lawsuit in Korean and made Apple pay for the lawsuit however, and it failed in Germany due to difference in legal and law structure.

