

What are patents? What are the requirements of patentability?

Background:

A patent is a form of *industrial property* which may be broadly described as a monopoly right conferred by the state to an inventor to industrially and commercially exploit his invention at the cost of making a complete disclosure of the details of his invention. A patent is thus a *statutory privilege* granted by the Government to an inventor, and to other persons deriving their rights from the inventor, for a fixed period of years, to exclude other persons from manufacturing, using or selling a patented product, or from utilising a patented method or process. At the expiration of the period of the patent, the patented invention is available to the general public or as it is sometimes put, falls into the public domain.

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 new 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.'

Requirements of Patentability:

In light of the TRIPS Agreement, the Patent Act, 1970 prescribes that an invention must satisfy the **trinity requirements of novelty, innovativeness and usefulness** in order to receive a patent under the Act.

Therefore, the criteria for an invention to be patentable are,

- (1) novelty
- (2) inventive step
- (3) utility

1. Novelty:

The first ingredient for an invention is that it must be new product or a new process. Novelty means *what is new and original, never seen or done before*. In order to be patentable, the new subject must involve invention over what is old. It is not essential that the invention should be anything complex or complicated. It must merely be of such nature that it involves a *technical advance as compared to the existing knowledge*.

2. Inventive step (and non-obviousness):

An '*inventive step*' is one which makes the invention '*non-obvious to a person skilled in the art*'. In other words, if the invention is *obvious* to the person skilled in the art, it *cannot* be said to involve an *inventive step*. After the Amendment in 2005, the definition of *inventive step* has been enlarged to include *economic significance* of the invention as well.

In order to ascertain whether an invention subscribes to the requirements of an '*inventive step*', a two pronged approach may be adopted. Firstly, ascertaining what was the state of the art before the relevant date of the complete specification filed pursuant to an application for a patent, and secondly having regard to the state of the art, ascertaining whether the alleged inventive step would have been obvious to a person skilled in the art.

An invention is not considered 'new' if the claimed invention is publicly known or publicly used in India before the priority date. *Publicly known does not mean that it must be published in a document, although not found in a book, it may form a part of the common knowledge among the public concerned. It also does not mean that it should be widely used to the knowledge of the consumer. It is sufficient if it is known to persons who are engaged in the pursuit of knowledge of the patented product or process, either as men of science or men of commerce or as consumers.*

3. Utility:

It is pertinent to note that *utility* was not a requirement for patentability under the Patents and Designs Act, 1911. Later, the Supreme Court recognised utility as one of the grounds on which a patent can be revoked. The usefulness of an alleged invention depends not on whether by following the directions in the complete specification all the results not necessary for commercial success can be obtained, but on whether by such directions the effects that the application/patentee professed to produce could be obtained. The usefulness of the invention is to be judged, by the reference to the state of things at the date of filing of the patent application, if the invention was then useful, the fact that subsequent improvement have replaced the patented invention render it obsolete and commercially of no value, does not invalidate the patent.

Thus, novelty, non-obviousness, industrial applicability and utility form the essential requirements of patentability. These conditions have been universally accepted as the essential prerequisites of patentability.