



Intellectual Property

INDIAN CONTEXT

Areas Covered

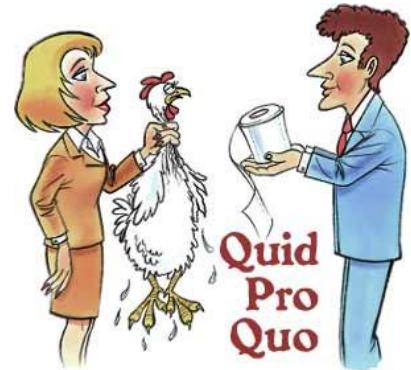
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What is a Patent?

- Patent
 - is an exclusive and monopoly right
 - to use the patented invention
 - for a limited area and time (20 Years)
 - by stopping others
 - from making, using, importing or selling.
- Patents are territorial rights,
 - so an Indian patent will only give the owner rights
 - within India and
 - rights to stop others from importing products into India
- No concept of International Patents
- When a patent is granted,
 - the applicant becomes the owner of the patent.
 - Like any other form of property, a patent can be bought, sold, licensed or mortgaged.



Quid Pro Quo*



- The applicant must disclose how his invention works in sufficient detail in order to get a patent.
- Disclosure to the public of the invention and the manner of its working so that on the expiry of the life of the patent the public are enabled to work the inventions themselves and in competition with each other

* An equal exchange or substitution

What is the need for Patents?

- To enjoy monopoly of the invention through exclusive rights
 - Right to manufacture
 - Right to sell
 - Right to import, etc.
- inventions should be encouraged for public interest
- encourage the disclosure of inventions in preference to their use in secret



General Benefits Of Patents

- Reducing the number of competitors in the market
- Revenue Generation
 - Licensing,
 - Assignment,
 - Technology Transfer,
 - Merger and Acquisition,
 - IP Auction, etc.
- Confidence for venture capitalists or other investors
- Increase the value of the company
- Company can sell the IP portfolio separately
- Continued monopoly of the Patent results in establishing goodwill

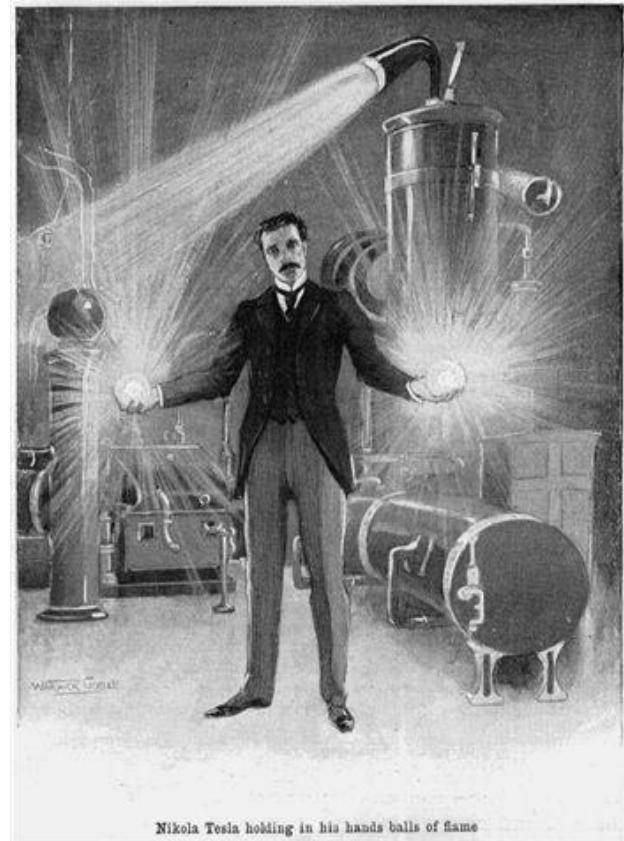


Invention

- An Invention means
 - A new product or process;
 - Involving an inventive step;
 - Capable of industrial application

Essential Ingredients of Patents

- Novelty
- Inventive Step
- Lack of Obviousness,
- Sufficiency of description.

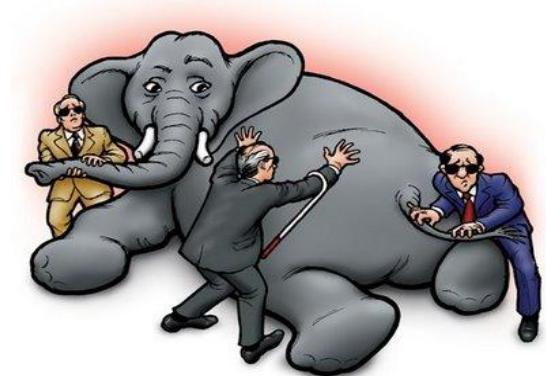


What Cannot be Patented in India?

- Mere Idea/Discovery
- Contrary to Natural laws
- Contrary to Public Morality or Order
- Mere Admixture/Arrangement/Rearrangement
- New use/property of a known material
- Method of Agriculture/Horticulture
- Plants and Animals except Micro-organisms
- Mathematical or Business Method
- Computer Program *per se*



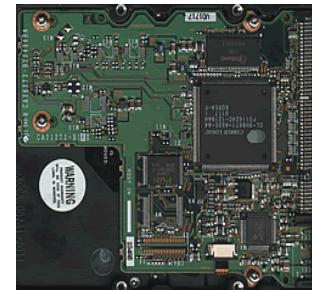
$$k = \lambda / 2\pi$$
$$\alpha_{hh} = \frac{\epsilon - 1}{\left(\cos \theta + \sqrt{\epsilon - \sin^2 \theta} \right)^2}$$
$$\alpha_{vv} = \frac{(\epsilon - 1)(\epsilon + \epsilon \sin^2 \theta - \sin^2 \theta)}{\left(\epsilon \cos \theta + \sqrt{\epsilon - \sin^2 \theta} \right)^2}$$



Contd..

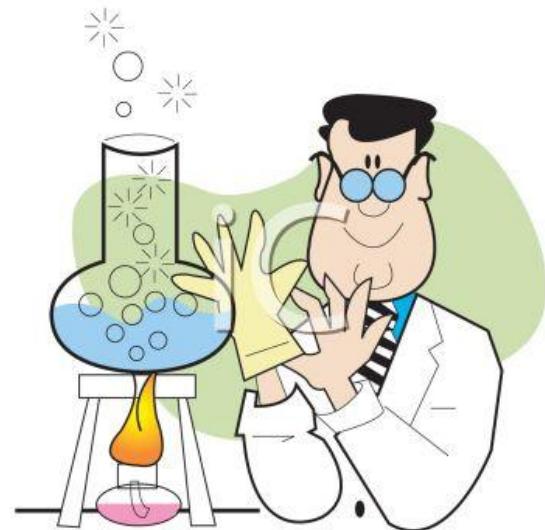
What Cannot be Patented in India?

- Process of treating human beings or animals
- Atomic energy
- Traditional Knowledge
- Topography of Integrated Circuits
- Presentation of Information
- Mere Scheme/Rule/Method of performing mental act or playing game
- Literary, dramatic, musical or artistic work



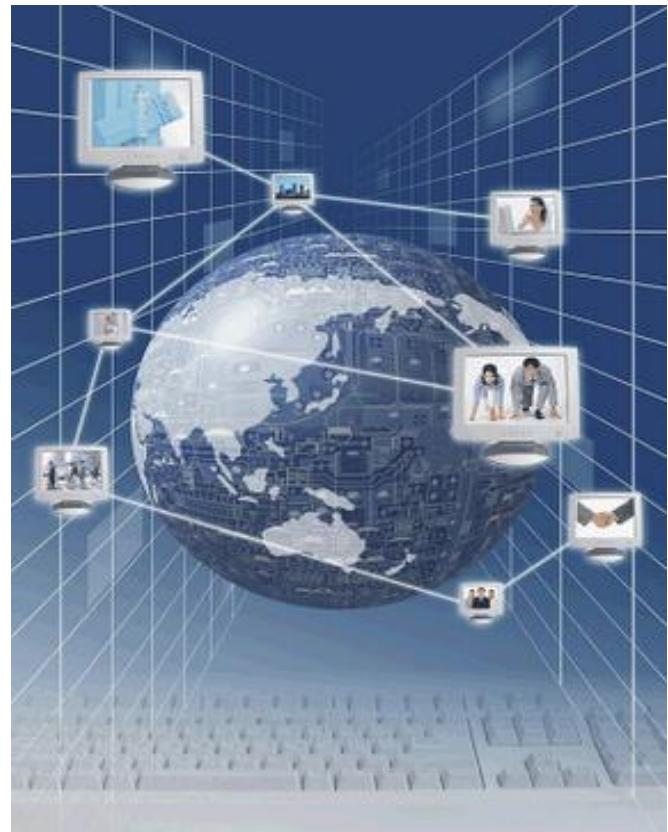
Who Can Apply for Patent

- Any person whether a citizen of India or not
- True and First Inventor of the Invention
- His assignee
- His Legal Representative
- Either Alone or jointly with another person



Types of Patent Application

- Ordinary patent application
- Patent of addition
- Divisional Patent Application
- International application
 - by PCT route or
 - by Conventional route.



Patent of Addition

- A patent application
 - for any improvement or
 - modification of an invention
 - described in complete specification
 - of the main patent application filed.
- Term of Patent of Addition expires with the expiration of the Parent Patent.
- No extra fee required for renewal.

Divisional Patent Application

- One patent application only for one invention.
- Specification relate to more then one invention
 - the application is divided or split,
- The date of application of the divisional application will be the date of main patent application.
- No new subject matter in substance shall be present.



International Application

- PCT Application under Patent Cooperation Treaty
- Convention Application



Patent Filing Requirements In India

- Two copies of application for grant of patent (Form 1);
- Two copies of the complete patent specification (Form 2);
- Two sets of the drawing figures, if any, one set of which should be in thick A-4 size white sheets;
- Duly stamped power of attorney authorizing the agent (Form 26);
- Declaration of the Inventorship signed by the applicant (Form 5);
- Priority documents, if any; if not in English, English translation thereof
- The Statement and Undertaking regarding corresponding foreign filings (Form 3);



Patent Application



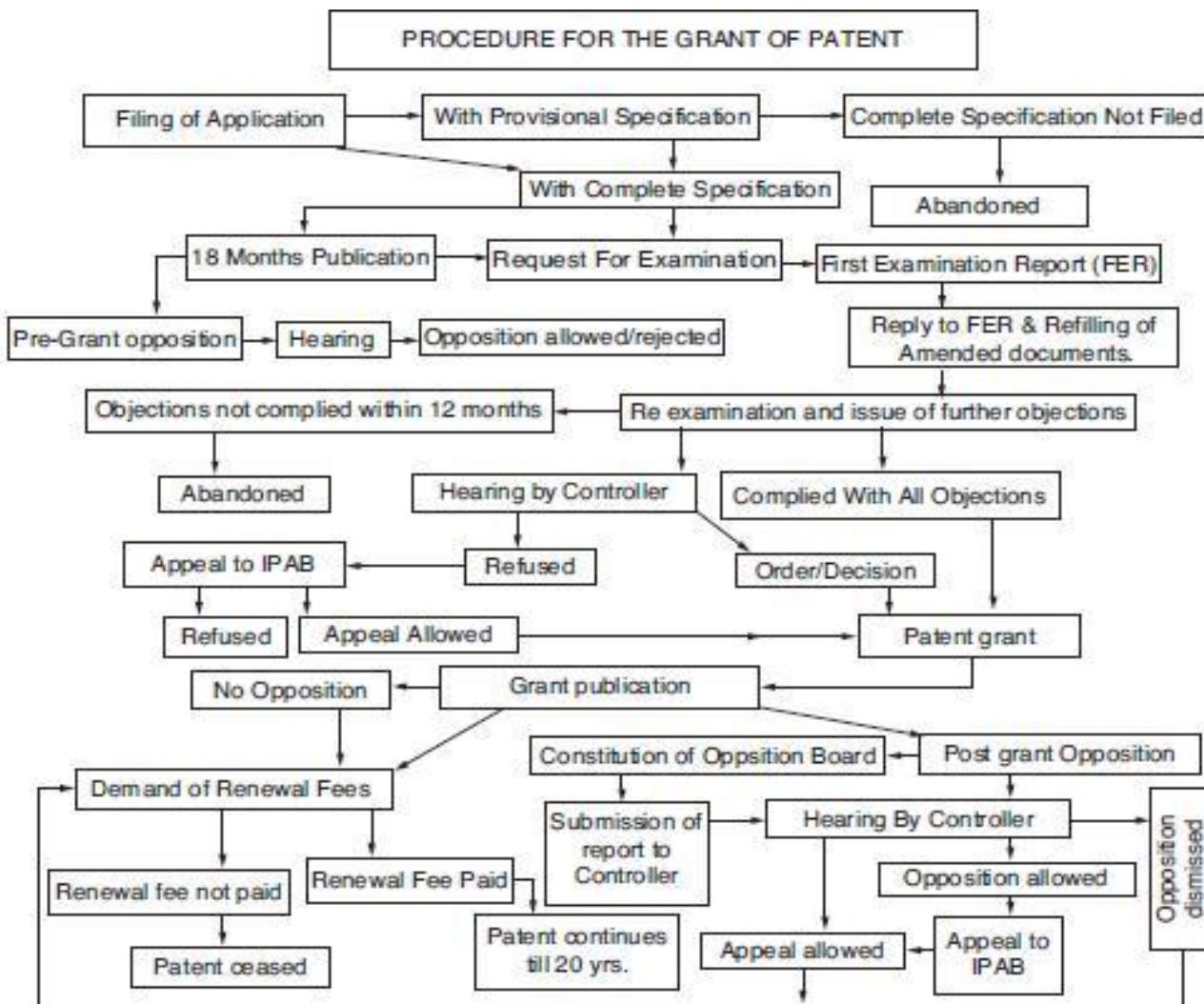
Bibliographic Information

- ⌚ Date of Filing & Publication
- ⌚ Name & Address of Applicant
- ⌚ Title, Classification, Abstract, Drawing, Formula etc.
- ⌚ Corresponding Priority Application /Patent

Technical Information

- ⌚ State of Art
- ⌚ Description
- ⌚ Drawings
- ⌚ Claim(s)

Patent Procedure



Term Of Patent

- The term of a patent is
 - 20 years from the date of priority
 - and is maintained by paying the renewal fees
 - every succeeding year as given in the table

Annuity	Patent Renewal Fee (INR) for Legal entity
3	INR 2 ,000
4	INR 2 ,000
5	INR 2 ,000
6	INR 2 ,000
7	INR 6 ,000
8	INR 6 ,000
9	INR 6 ,000
10	INR 6 ,000
11	INR 12 ,000
12	INR 12 ,000
13	INR 12 ,000
14	INR 12 ,000
15	INR 12 ,000
16	INR 20 ,000
17	INR 20 ,000
18	INR 20 ,000
19	INR 20 ,000
20	INR 20 ,000

Jurisdiction

- An Indian Applicant
 - Can file Application for patent
 - at the Appropriate Patent Office under whose jurisdiction
 - he normally resides or
 - has his domicile or
 - has a place of business or
 - the place from where the invention actually originated

Contd..

- For
 - Non-Resident Applicant
 - Non-Domicile Applicant
 - Applicant having no place of business in India
 - The Address for service in India or
 - place of business of his patent agent

Opposition to Patents

- Pre Grant Opposition [Sec 25(1)];
 - Can be filed by any person;
 - after the publication of the patent application;
 - 11 grounds for representation (Pre Grant Opposition) ;
 - For example
 - Wrongfully obtained the invention
 - Invention is anticipated
 - Application does not disclose the source or geographical origin
 - Application does not disclose the inventive step



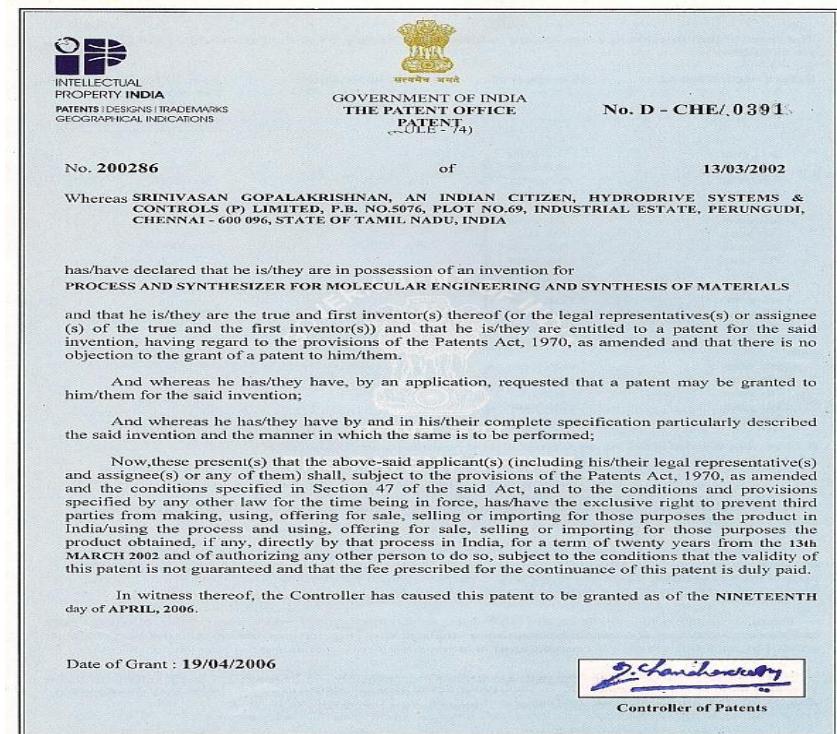
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- Post Grant Opposition [Sec 25(2)]
 - Should be filed within 12 months from the grant of patent;
 - Only by Person Interested;
 - 11 ground for post grant opposition.
 - For example
 - Wrongfully obtained the invention
 - Invention is anticipated
 - Application does not disclose the source or geographical origin of biological material
 - Application does not disclose the inventive step



Grant of Patent

- A temporary exclusive right given by the authorized body for a limited time period (20 years) to prevent unauthorized use of the technology as claimed in the patent application.
- A Patent has to be granted for it to be effective and enforceable against infringement.



Revocation of Patents



- Petition before Appellate Board by Person Interested/Central Govt.;
- Or by the High Court on a counter claim in a suit for infringement;
 - Grounds for revocation
 - Person not entitled to obtain a Patent
 - Subject is not an invention
 - invention not useful
 - Invention is anticipated
 - Application does not disclose the source or geographical origin of biological material

Infringement Of Patent

- Remedies
 - Injunction/temporary injunction
 - Damages/Account of Profits
 - Seizure
 - Destruction/Delivery up



The Patent Edge

- Patents can be used
 - offensively,
 - defensively,
 - or simply to build company image.
- Revenue generation
 - IP Auction
 - Licensing
 - Assignment
 - Technology Transfer
- A key component in a robust business strategy.
- Allows the company to operate from a position of strength in licensing and settlement negotiations.
- Other IP's, including trademarks, copyrights, and trade secrets, may also be used in conjunction with patent to protect valuable company assets.

