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REFORMING INDIA'S PATENT SYSTEM: A LEGAL PERSPECTIVE ON INNOVATION AND ACCESS

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EVOLUTION OF PATENT LAWS IN INDIA

In India, it was difficult for the general populace to access the medicines needed for human treatment. These medications were primarily imported from other nations. Due to a shortage of natural medications and considerable demand, prices are quite expensive. The local law was impacted by the external law. India had some of the highest drug prices in the world.

Patent law is crucial because it encourages technological innovation. By defending the rights of the innovators, it promotes scientific investigation and progress. Regularization and assistance with patent registration are provided by patent law. The primary goal of the development of patent law was to guarantee that innovation is unrestricted and to encourage people to continually innovate by providing protection for their creations. As a result, patent law is crucial because it safeguards innovators' rights. The value of patents is acknowledged on a global scale.

Promoting new scientific discoveries, cutting-edge technologies, and industrial progress was the main objective of patents.[1865] Under patent law, an inventor has the exclusive right to use their patented products, however others may use them under certain conditions and for a charge.

In the past, the goal of patent protection was to encourage innovation and the transparent sharing of the details of new concepts. By providing a temporary monopoly on their use, patent protection encourages the sharing of ideas—something that inventors may be reluctant to do for fear that someone else would copy their creation. The innovation is fully disclosed in the application that is available to the public.

The inventor can recover the cost of inventing the innovation during the patent protection term by:

- Enforcing the patent to exclude competitors, monopolizing the market, and setting a high price
- Granting the invention to others under a licence in exchange for royalties.
- Filing a lawsuit for damages if a person or company violates the patent.
- Selling the invention to a third party

Patent protection is significantly more reliable than other types of intellectual property protection, such as copyright. Copyright just protects the method an idea is communicated; it does not prevent others from expressing the same idea in different ways.

Furthermore, using patents as a negotiating tool can be successful. If a Cooperation wishes to use a patent that is owned by another

[1865] **Dharun Lakshman**, *Understanding the Evolution of Patents Laws in India Through Amendments*, SSRN, 2024.

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company but also has patents that the company may use, it may be able to negotiate a zero-sum contract or a reduced licencing fee[1866].

One scientist's scientific discovery influence and inform those of other scientists. Industries would stall if discoveries were kept a secret, therefore promoting dissemination is advantageous for society and business as a whole.

A patent gives the inventor the authority to produce, use, market, sell, and import the invention for the predetermined time. In other words, the patent holder has the exclusive authority to forbid or halt anyone from making use of the protected invention for commercial purposes. Without the permission of the patent holder, the innovation cannot be made, utilised, disseminated, imported, or sold for a profit[1867]. It safeguards against patent infringement, meaning that the original inventor can take legal action against any products that attempt to copy their invention or infringe on a patent that has already been issued.

Science would undoubtedly advance slowly if everyone kept their discoveries a secret. So encouraging people to disclose their discoveries appears to be an effective method to advance science and useful arts. However, letting others benefit from your discovery by sharing it with them is an excellent method to do so.

CASE:- **Issue of Basmati rice patent[1868]**

India's most popular cereal, basmati rice, is renowned for its aromatic flavor. This rice has a fragrant flavor and is cultivated in the Basmati region of India. Although Indian farmers had been cultivating this rice for hundreds of years, a Texan corporation was granted a patent for a cross-breed that included American long-grain rice. Based on the firm's scent, cooking elongation of the grain, and chalkiness, the US awarded the corporation a patent. From that point on, the company has the right to penalise farmers for growing rice and prevent them from sowing the seeds for the crop the next year. This made India to realize and file a petition with scientific evidence in the United States Patents and Trademarks Office saying that most varieties of Basmati possess these qualities. The USPTO accepted the petition.

The Patents Act 1970

On April 20, 1972, the Indian Patents and Designs Act 1911 was replaced by the Patents Act 1970 and the Patents Rules 1972. The recommendations of the report of the Ayyangar Committee, which was led by Justice N. Rajagopala Ayyangar, formed the bulk of the Patents Act. One of the suggestions was to only permit process patents for inventions pertaining to chemistry, pharmaceuticals, and other life sciences.

Later, India signed on to a number of international agreements in an effort to enhance its patent system and catch up to the rest of the world. Joining the Trade Related Intellectual Property Rights (TRIPS) system was one of the important stages towards accomplishing this goal. Significantly, India also became signatory of the Paris Convention and the Patent Cooperation Treaty on 7th December 1998[1869] and thereafter signed the Budapest Treaty on 17th December 2001.[1870]

The present Indian position in respect of patent law is governed by the provisions of the Patents Act, 1970 as amended by the Patents (Amendment) Act, 2005 (hereinafter referred to as the Act) and Patents Acts Rules, 2006 (hereinafter referred to as the Rules). [1871]

The Head Patent Office is located at Kolkata and its branch offices are located at Delhi, Mumbai and Chennai. Patent system in India is

[1866] **Dharun Lakshman**, "*Understanding the Evolution of Patents Laws in India Through Amendments*" (24 July 2024) *SSRN*

[1867] **Rosa B. Alberts & John T. Scholz**, "*The Enforcement of Norms: A Social Influence Model*" (2011) *40(5) Technological Forecasting and Social Change*

[1868] "G. Krishna Tulasi and B. Subba Rao, *A Detailed Study of Patent System for Protection of Inventions*, published date-2008 Sep-Oct, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3038276/"

[1869] Patent Cooperation Treaty on 7th December 1998

[1870] Budapest Treaty on 17th December 2001

[1871] "Jaya Bhatnagar and Vidisha Garg, *India, Patent Law in India*, publishing date- 13 December 2007,https://www.mondaq.com/india/patent/54494/patent-law-in-india,"

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administered by the Controller General of Patents, Designs, Trademarks and Geographical Indications. Each office has its own territorial jurisdiction for receiving patent applications and is empowered to deal with all sections of Patent Act.[1872]

The Patents Act, 1970's provisions gave Indian residents the chance to create new methods. India's economy grew significantly as a result of this. Bulk drug producers took advantage of the possibility to produce medications in large quantities and sell them for less money.

The Patents (Amendment) Act, 2005 revised the Patents Act, 1970 to expand product patents to all technological fields, including food, medicine, chemicals, and microorganisms. The modification has resulted in the deletion of clauses relating to exclusive marketing rights (EMR) and the introduction of a provision that permits the issuance of forced licences. Additionally, pre-grant and anti-post protest-related provisions have been included.

TRIPS COMPLIANCE AND AMENDMENTS

The most extensive international agreement on intellectual property to date is the TRIPS Agreement, which went into effect on January 1, 1995[1873]. The areas of intellectual property that it covers include: copyright and related rights (i.e. the rights of performers, producers of sound recordings, and broadcasting organisations)[1874]; trademarks, including service marks; geographical indications, including appellations of origin; industrial designs; patents, including the protection of new varieties of plants; layout designs of integrated circuits; and undisclosed information, including trade secrets and test data.

The Agreement has three primary components:

1. Standards The TRIPS Agreement establishes the basic standards of protection that each Member must offer in relation to the principal categories of intellectual property that are covered by the Agreement. The basic components of protection are defined as follows: the subject matter that is to be protected, the rights that are to be granted, the exceptions to those rights that are allowed, and the minimum amount of time that protection should last. The Agreement establishes these standards by mandating that the most recent versions of the substantive obligations of the main conventions of the WIPO, which include the Paris Convention for the Protection of Industrial Property (Paris Convention) and the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention), must be adhered to. All of the principal substantive articles of these agreements are incorporated by reference and thereby become duties under the TRIPS Agreement between TRIPS Member nations, with the exception of the provisions of the Berne Convention on moral rights. Articles 2.1 and 9.1 of the TRIPS Agreement include the relevant clauses. These articles are related to the Paris Convention and the Berne Convention, respectively. Secondly, the TRIPS Agreement imposes a significant number of extra requirements in situations where the pre-existing agreements were either silent or considered insufficient. For this reason, the TRIPS deal is occasionally referred to as a Berne and Paris-plus deal.
2. Enforcement The second primary set of provisions addresses domestic procedures and remedies for the enforcement of intellectual property rights. The Agreement establishes a number of general rules that apply to all methods for enforcing intellectual property rights (IPR). Additionally, it includes provisions regarding civil and

[1872] "Jaya Bhatnagar and Vidisha Garg, *India,Patent Law in India*,publishing date- 13 December 2007,https://www.mondaq.com/india/patent/54494/patent-law-in-india"
[1873] https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm
[1874] R. Tiwari, G. Tiwari, A.K. Rai, and B. Srivastawa, "*Management of intellectual property rights in India: An updated review*," 2 Journal of Natural Science, Biology, and Medicine 2-12 (2011).

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administrative procedures and remedies, provisional measures, and special requirements related to border measures and criminal procedures. These provisions specify, in a certain amount of detail, the procedures and remedies that must be available in order for right holders to effectively enforce their rights.

3. Resolving disputes. The Agreement makes it so that disputes between WTO Members over the compliance of the TRIPS commitments are subject to the WTO's dispute settlement processes.

Furthermore, the Agreement establishes several fundamental principles, such as national treatment and most-favored-nation treatment, as well as some general regulations to ensure that procedural challenges in gaining or retaining intellectual property rights do not negate the substantive gains that should result from the Agreement. All Member nations will be subject to the requirements outlined in the Agreement, but developing countries will have a longer amount of time to implement them. In the case that a developing country does not currently offer product patent protection for pharmaceuticals, special transition provisions are in place.

The TRIPS Agreement is an agreement that establishes minimum standards, but it also empowers members to give more extensive protection of intellectual property if they choose to. Members are free to decide how to implement the terms of the Agreement in their own legal system and practice.

The system of intellectual property rights in India has undergone significant changes, beginning with the British colonial period and continuing until India's accession to the TRIPS Agreement in 1995. The intellectual property rights regulations that have been addressed have been in the context of the changing era of globalisation. The primary emphasis of IPR was the introduction of patent law and the well-known case of ***Novartis v. UOI***, in which India's existing patent law was modified in accordance with the TRIPS Agreement. When it comes to the worldwide situation, Indian intellectual property rights (IPR) regulations are quite important. The Indian laws are nearly equal to the international intellectual property rights system.

In 1994, India and a number of other developing nations signed the TRIPs agreement, which required them to change their domestic intellectual property rights legislation within ten years. For a large part of the 1990s, the signing of the TRIPs agreement was a contentious issue in India, even as the country proceeded to slowly change its patent system in order to meet the more stringent intellectual property rights (IPR) standards that were outlined in the pact. India became fully compliant with the Trade-Related Aspects of Intellectual Property Rights (TRIPs) agreement on January 1, 2005, when it implemented its most critical requirement: enforcing product patents across all disciplines of technology. Because there are so many theoretically legitimate conjectures on both sides of the TRIPs debate, empirical research on its actual repercussions in India would provide valuable insight into the importance of enhanced IPR protection for developing countries.

India has just lately experienced changes in the field of intellectual property rights (IPR), which is a fairly broad area of law. Although the Indian legislators passed these laws about a decade ago, their progress has only recently been observed[1875]. Despite the fact that intellectual property rights (IPR) rules are not a new idea, they are still not well-known among the general public. The primary approach to addressing these problems will be to investigate ways to inform or educate the general public.

India's position on the TRIPS agreement might be used as an example of how the coordinates of India's WTO stance may have shifted, but the underlying neorealist policy paradigm has not changed. India's strong opposition to TRIPS prior

[1875] Ray, Shovon Amit, Saha, Sabyasachi, *Inida's stage at the WTO: Shifting Coordinates, Unaltered Paradigm, Centre for International Trade and Development*, January 2009, p-12 available at http://www.jnu.ac.in/SIS/CITD/DiscussionPapers/WTO.pdf

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to 1989 is completely understandable when you consider the interests of its pharmaceutical industry. At that time, the industry was still in its early stages of technological development and needed a weak patent regime in order to thrive and grow. India's unexpected change of heart about TRIPS in 1989 has frequently been associated with economic pressures from the United States. India may have adjusted its course of action to accommodate the interests of the United States, which is an economic superpower, in order to secure favours in other areas that are in India's best interest. This would support our contention that India has consistently chosen a neorealist position[1876].

The Indian government did not begin to construct its patent legislation until the first phase of industrialisation was completed, which was at the beginning of 1960. The Paris Convention of 1883 was the oldest international intellectual property rights convention at the time, and most countries adhered to it until the middle of the 20th century. India was in the same situation. In 1970, the Indian government altered its patent rules as part of a policy experiment to determine if this change will encourage private investment in areas that are knowledge-intensive and driven by the market. The pharmaceutical sector was greatly affected by the IPR policy experiment. The Indian legislators made their patent rules so restrictive that pharmaceutical companies were able to create important medications, such as antibiotics, at a far lower cost.

PATENT LAW IN INDIA

Liberalization and globalization are characteristics of the modern world. As a result, several nations, including India, which must compete with other nations on the global market, have enacted economic reforms. A nation's development is greatly influenced by patent legislation. More so now that India must compete with wealthy nations like the United States in the World Trade Organization.

A patent is a legally binding document granted by the government to the inventor, granting them the sole authority to sell, produce, utilize, and import the invention for a specified duration after the concept is published. Patents are legally mandated to protect innovators by imposing restrictions on the individuals authorized to market their products on their behalf. The origins of the term "patent" can be traced back to ancient French, Latin, and English. The term "patentem" and "patente" originated in the late 13th century, denoting the concept of an open letter. The phrase acquired its present connotation during the 1580s when it was elucidated as a governmental authorization for the production and commercialization of a certain commodity.

In business, a patent is used to create, market, and sell a product. Patents are used for many of the things that consumers buy. A patent is typically valid for 20 years from the application date once it has been granted by the government. The document that grants a person or company the exclusive right to sell a product is an official government letter patent. Once the patent application has been filed and approved, the patent applicant or vendor may begin collecting royalties for their products.

A royalty is a sum of money given to a product's creator in exchange for the right to use it; it is intended to pay them for their labour.[1877]

A producer of a television advertisement might do this by paying a songwriter royalties for the use of their music in the ad. Patents and royalties are often kept private by businesses using strong agreements and trade secrets, at least until the product is introduced to the market.

Regardless of whether a provisional or complete specification is included in the patent application, the term of all Indian patents is

[1876] Ramani, Shyama V and others, *The Biotech Segment of the Indian Pharmaceutical Industry in the Brave New Post-TRIPs World, Veena, IPR Protection and TRIPS Compliance, Issues and Implications*, p-181

[1877] "What is Patent, *available at:* https://blog.ipleaders.in/patent-law-2/"

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twenty years, beginning on the date of filing. This means that the term begins on the date of filing. On the other hand, the twenty-year period commences on the date of the international filing (PCT) for applications that are submitted in accordance with the Patent Cooperation Treaty.

In principle, the owner of the patent has the sole right to prevent or hinder others from commercially exploiting the invention that has been patented. In other words, the protection afforded by a patent ensures that the invention cannot be manufactured, utilized, disseminated, imported, or sold by third parties without the permission of the registered owner of the patent.

By giving innovators exclusive rights to profit from their ideas, the patent system hopes to inspire them to progress technology. Books, films, and works of art cannot be patented, but copyright law offers protection for these types of works.

Novelty and inventive step are fundamental concepts in patent law (or lack of obviousness). They grant the right to forbid anyone from using the innovation for the life of the patent from doing so, including independent creators of the same concept as well as copycats[1878]. Therefore, a patent has the unique ability to be utilized to forbid others from using any kind of invention in their goods and services. Thus, a patent creates significant challenges for its rivals. This is why only industrial advances that are deemed to qualify as patentable inventions are granted patents, rather than all industrial improvements.

There were several obstacles that the general population of India had to overcome in order to obtain the necessary drugs for human treatment. In the majority of cases, these pharmaceuticals were brought in from other countries. In light of the fact that there is a lack of natural drugs and a significant demand for them, prices are fairly high. External laws had an effect on the local laws that were in place. Some of the most expensive pharmaceuticals in the world were sold in India. The law governing patents is essential because it fosters the development of new technologies. It does this by protecting the rights of those who introduce new ideas, which in turn encourages scientific research and advancement. Patent law is responsible for providing regularization as well as assistance with all aspects of patent registration. Patent law was developed with the primary purpose of ensuring that creativity is unlimited and encouraging people to continue innovating by providing protection for their works. This was the major driver behind the formation of patent law. As a consequence of this, patent law is essential since it functions to protect the rights of innovators. There is widespread recognition of the importance of patents on a global scale.

One of the primary objectives of patents was to encourage the development of new technologies, breakthrough scientific discoveries, and industrial advancements. The law about patents grants the inventor a monopoly on the use of their patented products, but it also allows others to use such products with the inventor's permission and for a price.

In the past, the purpose of patent protection was to encourage creative endeavors and the free disclosure of the particulars of ideas that were novel. A temporary monopoly on the use of an invention is granted by patent protection, which provides an incentive for the sharing of ideas. However, inventors may be reluctant to share their ideas because they are afraid that someone else will imitate their creation. Detailed information regarding the invention is included in the application that is available to the general public:

- By enforcing the patent to exclude competitors, monopolizing the market, and setting a high price, the inventor can recover the cost of inventing the idea during the period of time that the patent is for protection.

[1878] "Patents, *available at:* https://www.wipo.int/patents/en/,"

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- In exchange for royalties, granting the invention to other individuals under the terms of a licence.
- If a person or company breaches the patent, you have the option of filing a lawsuit to seek damages.
- Making the offer to sell the invention to a third party

The patent protection system is significantly more robust than other kinds of intellectual property protection, such as copyright. It is only the manner in which an idea is communicated that is protected by copyright; it does not prevent other people from expressing the same thought in different ways.

As an additional point of interest, patents are an efficient method of negotiation. It is possible for a Cooperation to negotiate a zero-sum contract or a lesser license payment if it wishes to make use of a patent that is owned by another company but also possesses patents that the other company may utilize.

The findings made by one scientist have an impact on and provide information to the discoveries made by other scientists. If discoveries were kept a secret, industries would come to a halt; hence, fostering distribution is beneficial for society as a whole as well as for business.

A patent grants the person who invented the invention the right to manufacture, use, market, sell, and import the innovation for a period of time that has been established in advance. To put it another way, the person who has the patent has the exclusive ability to prohibit or prevent anyone from making use of the innovation that is protected for commercial purposes. In the absence of authorization from the patent holder, the innovation cannot be manufactured, utilized, distributed, imported, or sold for a profit. It provides protection against patent infringement, which means that the original creator has the ability to pursue legal action against any items that attempt to imitate their innovation or infringe on a patent that has already been issued.

If every single person kept their findings a secret, there is no question that scientific progress would be sluggish. Therefore, it would appear that encouraging people to publish their discoveries is a successful strategy for advancing scientific research and the arts that are beneficial. On the other hand, one of the most effective ways to accomplish this is to share your finding with other people so that they can profit from it.

Features of Patent Act: [1879]

Not only Product but also "Process can be patented under act:

- Invention shall be useful, novel and something which is not obvious.
- Shall be capable of getting used in Industry, if not then it may amounts to revocation of patent.
- Invention shall be new and shall not form part of Section 3 and 4, which provide for exceptions of ideas which cannot be patented.
- Term of patent – 20 years (can be renewed) (in some case it may also be upto 7 years)
- Patent Examination can be conducted on request.
- Both pre-grant and post-grant opposition is enabled.
- Fast track mechanism shall prevail for disposal of appeals if any disparity exists.[1880]
- Values to protect integrity of Indian Constitution's various clause such as Article 51-A of fundamental Duties is also taken into consideration by nurturing and keeping nature and rich heritage of culture in mind. Hence Provision for protection of

[1879] "Sonu Arvind Chaturvedi,*Patent Law – Salient Features and Upgradation-Justice India* ,*Patent Law - Salient Features and Upgradation - E-Justice India (ejusticeindia.com)*"

[1880] "Patent Law in India,*available at:* https://www.mondaq.com/india/patent/54494/patent-law-in-india,."

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bio-diversity and traditional knowledge is specified in act.

- Publication of applications after Eighteen months with facility for early publication enable getting patented rights as if it was registered from day if reasonableness of time is observed".

Types of patents [1881]

To protect various types of inventions, various forms of patents are available. Competent innovators can use the various patent application types to obtain the legal protection they require for their discoveries:

1. **Utility patent**

   Most people typically associate inventions covered by utility patents with the term "patent." A utility patent is a type of powerful form of protection that is a technical document that provides a detailed description of how a new device, method, or system works. This patent has protected a wide range of inventions, such as computers, pharmaceuticals, business processes, and brooms. The utility patent has a 20-year term.

   Utility patent applications are the most frequent forms of patent requests received by patent offices worldwide. Such a patent covers a range of unique and generally useful techniques, devices, material compositions, and manufactured goods. These utility patent elements are described as follows: [1882]

Processes: Processes are defined as any method or act of doing something, typically involving technical or industrial processes.[1883]

Compositions of matter: A composition of matter utility patent type refers to the chemical compositions, including a mixture of ingredients and substances or new chemical compounds.

Manufactures: A manufacture is any product that requires undergoing a manufacturing process.

Machine: A machines utility patent includes anything that is primarily regarded as a machine – for instance, computers, refrigerators, air conditioners, etc.

A utility patent can be obtained for a new invention, but it can also be applied for in the event that an existing technique, equipment, materials, composition, or production is being improved in a novel and practical way.

2. **Design patent**

   The ornamentation of a useful object is protected by this patent. For example, a design patent can protect a shoe's or a bottle's appearance. The illustrations or sketches that show the practical item's design make up the majority of the real paper. A design patent is infamously difficult to find since it has so few words. Recently, software companies have taken advantage of design patents to protect touchscreen device designs and other user interface elements. The invention's design needs to be both original and useful. The design patent duration is 15 years. The design of the product must be inseparable from the object in order to qualify for design patent protection. [1884]The design patent is only given for, and hence only covers, the appearance of the object, even though the object and design should match. The original Coca-Cola bottle design is an illustration of this kind of patent.

3. **Plant patent**

[1881]"Daisy Jain, *What is a patent*, August 16, 2022, *available at*: https://blog.ipleaders.in/patent-law-2/"

[1882] Daisy Jain, What is a patent, August 16, 2022, *available at:* https://blog.ipleaders.in/patent-law-2/

[1883] What Are The Different Types Of Patents? ,IPTSE, last seen,23-9-2022 ,https://iptse.com/what-are-the-different-types-of-patents/

[1884] What Are The Different Types Of Patents? ,IPTSE, last seen,23-9-2022 ,https://iptse.com/what-are-the-different-types-of-patents/

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A plant patent covers novel varieties of plants developed through cuttings or other non-sexual methods, as the name implies. Genetically modified species are typically excluded from the scope of plant patents, which instead emphasize traditional gardening. Plant patents mostly concentrate on non-traditional horticulture. Similar to utility patents, plant patents are currently not allowed in India, yet you can file for one in Australia, the USA, and several other European nations. The plant patent duration is 20 years.

Pre-requisites of getting a Patent

"Patents shall be granted for any inventions which are susceptible of industrial application (utility), which are new and which involve an inventive step (non-obvious)"- Art. 52(1) EPC[1885]

Discovering out about or revealing the existence of something that was previously unknown or unacknowledged is known as discovery. An invention is the making or constructing of something that did not previously exist.

An innovation will only be qualified for a patent award in India if it satisfies the requirements for patentability. To be deemed patentable, an innovation must satisfy all requirements that assess its eligibility for a patent grant from a variety of perspectives. While some of them are simpler to achieve than others, they are all equally important for assessing patentability. The prerequisites for patentability criteria are as follows:

1) **Novelty** [1886]

A product or method will only be considered an invention under the Patents Act if it is both inventive and innovative. Simply put, novelty refers to anything that is novel in comparison to the state it was in at the time the patent application's priority date. An innovation will be considered distinctive if it differs from the "prior art," which is what currently existing. For novelty analysis, previous art references are never combined; rather, uniqueness is always assessed in light of one specific prior art reference at a time. Even though it isn't stated expressly in the reference, general knowledge of the art may be included in a prior art citation. Numerous parts pertaining to inspection, anticipation, objection, and revocation involve novelty.

In patent law, the concept of novelty is a "manifestation of the principle that patent protection should be granted to only those inventions that are actually new. The phrase "novelty" refers to something that is "new in comparison to prior art." It is a condition that in order for an invention to be patentable, it must be in some way distinct from all published papers, known procedures, and goods that are currently on the market. To be eligible for a patent, the innovation in question must not have been made accessible to the general public prior to the submission of the application for the patent. Discovering something that has not been discovered by other people is the definition of an invention. Patents are a form of "quid pro quo" agreements. Therefore, the patentee is granted a monopoly over his invention as a result of this".

A definition that is assigned under section 2(1)(l) of the Indian Patents Act 1970 (hence referred to as "the Act") is used in India to determine whether or not an invention is a "new invention" (possesses novelty). This definition is used to determine whether or not an invention is considered to be novel. A "new invention is defined as any invention or technique that has not been predicted by publishing in any document or used in the country or elsewhere in the globe previous to the date of the filing of the application with complete specification. This definition is based on the fact that the term "new invention" was first used in the United States. To put it another way, the subject matter has not been in the jurisdiction of the public or

[1885] Art. 52(1) EPC

[1886] Novelty: An Indian Perspective, by Pankaj Musyuni (28 March 2025).

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been incorporated into the current state of the art".

Because of a lack of novelty or anticipation, the patent system does not grant patents to innovations that were revealed prior to the time that an application was submitted to the Patent Office. This is the reason why patents are not issued. The regime stipulates that a patent can only be awarded for an invention that is either novel or novel in nature. This is one of the conditions attached to the system. The term "anticipation" refers to the absence of anything new.[1887]

2) **Inventive step**

"Is the approach obvious, and if it is not, what is the depth of the inventive steps taken by the inventor?" is the second question that arises when determining if a product or a technique is innovative. The obviousness of a solution is established by determining whether or not a person with average skills in the subject would have invented a similar innovation for the technical issue under identical conditions without being offered the solution.

In comparison to the other requirements for patentability, the need of an innovative step is the one that is the most difficult to describe and the most difficult to express consistently. According to the Indian Patents Act, the non-obviousness of creative steps and the technical advancement or economic value of the step are two considerations that are considered while judging creative steps. Subsection 2(ja) of the Patents Act provides a definition of creative steps. "the characteristic of an invention that involves technological advancement or is of economic importance or both, as compared to existing knowledge, and invention that is not obvious to a person skilled in the art," is the definition of an innovative step that can be found in Section 2(ja) of the Patents Act.

It is essential that the creation reflects the originality of the innovator. The thing in question must be something that a skilled craftsperson would not anticipate. Imagine for a moment that an inventor designs a device with the purpose of resolving a technological issue. Another expert in the same field delivers the same answer by making use of his existing knowledge or by acquiring new information. Due to the fact that it was merely an idea or motivation, the technological solution that the inventor came up with will not be considered original in that particular scenario. In the case of *Biswanath Prasad Radhey Shyam*[1888], which took place in 1978, the Supreme Court assigned a definition to the word "inventive step," and this definition is still utilised for inventive step analysis today.

One of the most important terms to use when discussing the creative step is "obvious." In addition, the creative step is frequently referred to as the "non-obviousness clause." According to the European Patent Office (EPO), this is defined as going beyond the expectations of technology rather than just taking the next natural step.

For the purposes of the Act, a patent that was obtained in any other nation would not be considered "prior art to the invention."[1889]

[1887] "Indian Patent Act, 1970, Section 29(1)(l) https://www.hkindia.com/news_letter/article/1/Patent%20artile-1.html#:~:text=The%20concept%20of%20novelty%20in%20patent%20law%20embodies%20the%20principle,known%20techniques%2C%20and%20marketed%20products,"

[1888] AIR 1982 SUPREME COURT 1444

[1889] "A patent granted in US would not be a bar to a patent in India for the same invention."