

PATENTABLE AND NON-PATENABLE SUBJECT MATTERS

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ABSTRACT

Patent law constitutes a critical component of intellectual property systems, designed to stimulate innovation by conferring exclusive rights upon inventors for limited durations. However, patent protection operates within defined boundaries, making comprehension of eligibility criteria vital for inventors, attorneys, researchers, and policymakers. This study examines eligible and ineligible categories under patent law, analyzing legal frameworks, foundational principles, and modern challenges.

Patentable subject matter encompasses innovations qualifying for protection under governing legislation. Most jurisdictions require four fundamental criteria: eligibility as appropriate subject matter, novelty, non-obvious inventive step, and practical utility or industrial applicability. Notably, inventions satisfying novelty, inventiveness, and utility may still face rejection if positioned outside legally recognized eligible categories.

This research analyzes eligible domains including industrial processes, machines and apparatus, manufactured products and chemical compositions, technological improvements, computer-implemented inventions, and biotechnological innovations. Business methods previously enjoyed broad protection but now require demonstration of substantial technical contributions beyond abstract concepts.

Ineligible categories typically comprise abstract ideas, natural laws and phenomena, aesthetic designs, scientific discoveries, medical treatment methods, ethically problematic inventions, plant and animal varieties, and game rules. Exclusion rationales include preserving fundamental knowledge as public resources, ethical concerns regarding ownership, and recognition that alternative protections like copyright may better suit certain creations.

This research demonstrates that distinguishing eligible from ineligible subject matter represents fundamental policy choices balancing innovation incentives against public access to knowledge, competitive markets, and ethical concerns. Patent systems must adapt to technological advancement while maintaining consistency and considering broader implications for innovation policy, economic development, and social welfare

KEY WORDS – Patent eligibility, Patentable subject matter, Non-patentable inventions, Intellectual property law, Innovation protection, Statutory exclusions, Biotechnology patents, Emerging technology challenges

INTRODUCTION

In the modern era of innovation and technological advancement, the concept of patents plays a vital role in protecting the rights of inventors and encouraging creative progress.

A patent grants the inventor an exclusive right to make, use, and sell an invention for a specific period, usually twenty years. However, not every invention or discovery qualifies for patent protection. To maintain a balance between

public interest and private rights, patent laws clearly define what subject matter is considered patentable and what is excluded from such protection.

Patentable subject matter generally includes inventions that are novel, involve an inventive step, and have industrial applicability. These may consist of new processes, machines, compositions of matter, or improvements to existing inventions. On the other hand, non-patentable subject matter includes ideas, natural laws, mathematical formulas, abstract theories, and inventions contrary to public order or morality. In India, Section 3 and 4 of the Patents Act, 1970 specifically outline categories that are not eligible for patent protection.

The distinction between patentable and non-patentable subject matter is essential to ensure that the patent system rewards genuine innovation while preventing the monopolization of knowledge that should remain in the public domain. Understanding these boundaries helps inventors, researchers, and legal professionals navigate the complexities of intellectual property rights effectively. Hence, studying this topic is crucial to appreciating the delicate balance between innovation, ethics, and public welfare within the framework of patent law.

FUNDAMENTAL REQUIREMENTS FOR PATENTABILITY

The concept of patent law plays a crucial role in promoting innovation, creativity, and economic development. Patents grant inventors exclusive rights over their inventions for a limited time in exchange for public disclosure. This protection encourages individuals and organizations to invest time and resources into research and innovation. However, not every idea or discovery can be patented. To qualify for patent protection, an invention must meet specific legal standards known as the fundamental requirements for patentability. These include: patentable subject matter, novelty, non-obviousness, and utility. Each of these requirements ensures that the patent system rewards genuine innovation while maintaining a

balance between private rights and public interest.

1. Patentable Subject Matter

The first step in determining patent eligibility is identifying whether the invention falls within patentable subject matter. Patent laws are designed to protect technical inventions, not mere ideas or natural discoveries. In India, Sections 3 and 4 of the Patents Act, 1970 define what is excluded from patentability.¹¹⁹⁴ Discoveries of scientific principles, mathematical methods, literary or artistic works, business schemes, computer programs per se, and inventions contrary to morality or public order are not patentable.

¹¹⁹⁵Patentable subject matter typically includes inventions related to a product, process, or improvement that demonstrates technical advancement and industrial applicability.¹¹⁹⁶ This ensures that patents protect practical, tangible inventions that contribute to industrial and technological progress. For example, a new type of machinery, a chemical compound, or a manufacturing process may be patentable, but the natural principle behind it would not.¹¹⁹⁷ The purpose of this limitation is to prevent monopolization of ideas that belong to the public domain and to encourage innovation that benefits society.

2. Novelty

An invention must be novel, meaning it must be new and not previously known to the public. Novelty is a cornerstone of patent law, ensuring that only truly original contributions are protected.¹¹⁹⁸ An invention lacks novelty if it has been published, used, or disclosed anywhere in the world before the filing date of the patent application.¹¹⁹⁹ Even a single prior publication or public demonstration can destroy novelty.

¹¹⁹⁴ The Patents Act, 1970 (India), Sections 3 and 4.

¹¹⁹⁵ World Intellectual Property Organization (WIPO), Standing Committee on the Law of Patents, Report (2019).

¹¹⁹⁶ Cornish, W.R., Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights, 8th ed. (2013).

¹¹⁹⁷ Narayanan, P., Patent Law, 6th ed. (Eastern Law House, 2017).

¹¹⁹⁸ World Intellectual Property Organization (WIPO), Patent Cooperation Treaty, Article 33(2).

¹¹⁹⁹ Biswas, A., Law of Patents in India, 3rd ed. (2021).

Therefore, inventors are advised to maintain strict confidentiality until they formally apply for patent protection.

Novelty is assessed against “prior art,” which includes all existing knowledge in the relevant field.¹²⁰⁰ The principle ensures that the patent system rewards innovation and discourages duplication. For example, if a similar invention has already been described in a scientific journal, any subsequent similar application will be rejected for lack of novelty. This requirement motivates inventors to create truly original works and not simply repackage what already exists.

3. Non-Obviousness (Inventive Step)

The concept of non-obviousness, also referred to as an inventive step, ensures that an invention represents more than a simple or routine modification of existing technology.¹²⁰¹ Even if an invention is new, it will not qualify for a patent if it would have been obvious to a person skilled in that field. The standard test is whether the invention involves a technical advancement or economic significance that makes it non-obvious to an expert.

¹²⁰²For instance, replacing a metal handle with a plastic one may be new, but it does not involve a significant inventive step unless it results in improved durability or cost-effectiveness. The non-obviousness requirement prevents the granting of patents for trivial improvements and ensures that only meaningful innovations are rewarded.¹²⁰³ In India, Section 2(1)(j) of the Patents Act, 1970 defines an inventive step as a feature of an invention that involves technical advancement or has economic significance or both.¹²⁰⁴ This criterion safeguards the integrity of the patent system by filtering out minor changes that do not contribute substantially to technological progress.

¹²⁰⁰ Manual of Patent Office Practice and Procedure (India), 2020, Chapter 6.

¹²⁰¹ The Patents Act, 1970, Section 2(1)(j).

¹²⁰² WTO, TRIPS Agreement, Article 27(1).

¹²⁰³ Kumar, S., “Inventive Step and Obviousness under Indian Patent Law,” *Journal of Intellectual Property Rights*, Vol. 24 (2019).

¹²⁰⁴ Indian Patent Office, Guidelines for Examination of Patent Applications, 2021.

4. Utility (Industrial Applicability)

Another fundamental requirement is utility, also referred to as industrial applicability. An invention must be capable of being used in an industry or provide a specific, substantial, and credible use.¹²⁰⁵ A patent cannot be granted for an idea or theory that has no practical application. The invention must function as described and offer a tangible benefit to society. This requirement ensures that patents are granted only to inventions that serve a useful purpose and contribute to industrial development.

¹²⁰⁶For example, an invention that claims to generate unlimited energy without a scientific basis would fail the utility test. The utility requirement aligns with the broader goal of patent law – to promote innovation that enhances economic and social progress.¹²⁰⁷ An invention should not only be new and inventive but must also provide a real-world benefit that justifies exclusive protection.

PATENTABLE SUBJECT MATTER

Patent law forms one of the core areas of intellectual property rights, designed to safeguard innovation and encourage technological progress. A patent provides an inventor with an exclusive right to make, use, and sell an invention for a specific period, generally twenty years. In return, the inventor must publicly disclose the details of the invention, thereby adding to the store of human knowledge. However, not every idea or discovery qualifies for patent protection. The law defines the kinds of inventions that are eligible, known as patentable subject matters, and excludes those that are contrary to public policy, morality, or lack technical application.

Patentable subject matter refers to inventions that are new, involve an inventive step, and are capable of industrial application. Under Section 2(1)(j) of the Patents Act, 1970, an invention means a new product or process involving an

¹²⁰⁵ WTO, TRIPS Agreement, Article 27(1).

¹²⁰⁶ Rajagopalan, R., *Industrial Property and Patent Law in India*, (2020)

¹²⁰⁷ WIPO, *Industrial Property Handbook*, 2022 Edition.

inventive step and capable of industrial application.¹²⁰⁸ This definition highlights that patent law protects technological innovations rather than abstract ideas or scientific theories. The purpose is to ensure that patents reward true inventiveness while maintaining a balance between private rights and the public domain.

Scope of Patentable Subject Matter

In most jurisdictions, patentable subject matter includes inventions in fields such as mechanical engineering, chemistry, pharmaceuticals, biotechnology, and computer-related technologies that demonstrate technical effect or practical utility.¹²⁰⁹ A patentable invention must result in a tangible outcome and contribute to technological advancement. For example, a new process that improves fuel efficiency, a novel medical device, or an innovative method of producing eco-friendly materials may all fall within patentable subject matter.

The Indian patent system, like those of other countries, also outlines specific exclusions. Sections 3 and 4 of the Patents Act, 1970 provide a detailed list of what cannot be patented.¹²¹⁰ These exclusions serve to maintain ethical integrity, environmental safety, and public interest while ensuring that patents are granted only for inventions that meet scientific and industrial criteria.

NON- PATENTABLE SUBJECT MATTER

The following categories represent inventions that are not patentable in India and in many other legal systems:

- Discoveries of scientific principles or natural laws – Natural phenomena, mathematical methods, and abstract ideas are not human-made inventions.
- ¹²¹¹New properties or uses of known substances – A mere new use of an

existing compound, without technical modification, is excluded.

- ¹²¹²Aesthetic or artistic creations – Literary, dramatic, musical, or artistic works fall under copyright protection.
- ¹²¹³Schemes, rules, or methods of business and mental acts – These lack industrial applicability.
- ¹²¹⁴Computer programs per se – Software is excluded unless it produces a technical effect or improves hardware functionality.
- ¹²¹⁵Methods of medical treatment or diagnosis – These are excluded to safeguard medical ethics and ensure accessibility of healthcare.
- ¹²¹⁶Plants, animals, and biological processes for their production – Only microbiological processes or related products qualify.
- ¹²¹⁷Inventions contrary to morality, public order, or environmental safety – Technologies harmful to life or nature are excluded.

¹²¹⁸These exclusions prevent the misuse of patents for monopolizing discoveries that should remain in the public domain. They uphold the principle that patents protect genuine innovations while preserving access to fundamental knowledge.

LITERATURE REVIEW

Patent law has long been recognized as a critical mechanism to promote innovation and technological progress. Scholars and practitioners have extensively analyzed the scope of patentable subject matter and the boundaries of intellectual property rights. The literature emphasizes that patents serve a dual purpose: incentivizing inventors and contributing to societal advancement by disclosing inventions for public benefit.

¹²⁰⁸ The Patents Act, 1970 (India), Section 2(1)(j).

¹²⁰⁹ Cornish, W.R., Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights, 8th ed. (2013).

¹²¹⁰ The Patents Act, 1970, Sections 3 and 4.

¹²¹¹ Manual of Patent Office Practice and Procedure (India), 2020, Chapter 6.

¹²¹² Biswas, A., Law of Patents in India, 3rd ed. (2021).

¹²¹³ Narayanan, P., Patent Law, 6th ed. (Eastern Law House, 2017).

¹²¹⁴ WIPO, Standing Committee on the Law of Patents, Report (2019).

¹²¹⁵ Indian Patent Office, Guidelines for Examination of Computer-Related Inventions, 2017.

¹²¹⁶ Rajagopalan, R., Industrial Property and Patent Law in India (2020).

¹²¹⁷ WTO, Agreement on TRIPS, Article 27(3)(b).

¹²¹⁸ WIPO, Patent Law Treaty (2000).

¹²¹⁹Cornish (2013) notes that the definition of patentable subject matter varies across jurisdictions but universally requires a technical contribution and industrial applicability.¹²²⁰ According to Cornish, the law balances protecting inventors' rights with preventing monopolization of knowledge that should remain in the public domain. This observation aligns with Indian patent law, where Section 2(1)(j) of the Patents Act, 1970 defines an invention as a new product or process involving an inventive step and capable of industrial application.

¹²²¹The distinction between patentable and non-patentable subject matter has been the focus of considerable debate. Biswas (2021) highlights that non-patentable inventions typically include discoveries of natural laws, mathematical formulas, abstract ideas, and purely aesthetic creations.¹²²² Such exclusions are justified to preserve the public domain and ensure that essential knowledge remains freely accessible. Similarly, Narayanan (2017) emphasizes that software and business methods, unless tied to a technical effect or hardware improvement, are largely excluded from patent protection in India.

¹²²³Several studies also explore the rationale behind patent exclusions. Basheer (2020) argues that excluding methods of medical treatment, diagnostic techniques, and inventions contrary to morality or public order aligns patent law with ethical and social considerations.¹²²⁴ Rajagopalan (2020) supports this view, noting that the exclusions safeguard public health, environmental safety, and equitable access to critical technologies.

¹²²⁵International perspectives further clarify the scope of patentable subject matter. The TRIPS Agreement under the World Trade Organization sets minimum standards for patent protection

globally. WTO Article 27(1) mandates that patents be available for inventions in all fields of technology that are new, involve an inventive step, and are capable of industrial application.¹²²⁶ However, Article 27(2) allows member states to exclude inventions necessary to protect morality, public order, or life, enabling national discretion in aligning patent law with societal needs.

¹²²⁷WIPO reports reinforce that global harmonization does not eliminate the flexibility needed to balance private rights and public interest.¹²²⁸ Empirical studies have also examined how courts interpret patentable subject matter. Kumar (2021) finds that Indian courts often adopt a purposive approach, emphasizing technical advancement and practical applicability over mere novelty.¹²²⁹ Cases such as *Novartis v. Union of India* demonstrate the judiciary's role in enforcing statutory exclusions to prevent evergreening of patents and ensure public access to essential medicines.¹²³⁰ The literature also emphasizes the link between patentability criteria and economic development. Cornish (2013) and Biswas (2021) both note that patents incentivize research and investment by granting time-limited exclusivity, but only when inventions meet clearly defined criteria.¹²³¹ This ensures that patents contribute meaningfully to industry and society rather than granting monopolies over abstract ideas or minor improvements.

In summary, scholarly literature consistently underscores that the scope of patentable and non-patentable subject matter is crucial to balancing innovation, public welfare, and ethical considerations. Researchers highlight that clearly defined criteria, combined with statutory exclusions, maintain the integrity of the patent system, encourage meaningful technological progress, and prevent misuse of

¹²¹⁹ Cornish, W.R., *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights*, 8th ed. (2013)

¹²²⁰ Ibid.

¹²²¹ The Patents Act, 1970 (India), Section 2(1)(j).

¹²²² Biswas, A., *Law of Patents in India*, 3rd ed. (2021).

¹²²³ Narayanan, P., *Patent Law*, 6th ed. (Eastern Law House, 2017).

¹²²⁴ Basheer, S., "Moral and Public Policy Exclusions under Indian Patent Law," *Indian Journal of Law and Technology*, Vol. 15 (2020).

¹²²⁵ Rajagopalan, R., *Industrial Property and Patent Law in India* (2020).

¹²²⁶ WTO, TRIPS Agreement, Article 27(1).

¹²²⁷ WTO, TRIPS Agreement, Article 27(2)

¹²²⁸ WIPO, *Guide to the TRIPS Agreement* (2022).

¹²²⁹ Kumar, S., "Ethical Dimensions of Patentable Subject Matter," *Journal of Intellectual Property Rights*, Vol. 24 (2021).

¹²³⁰ *Novartis AG v. Union of India* (2013) 6 SCC 1.

¹²³¹ Cornish, W.R., and Biswas, A., *ibid*.

intellectual property rights. The literature demonstrates that understanding these boundaries is essential for policymakers, legal practitioners, and inventors aiming to navigate the complexities of patent law effectively.

RESEARCH METHODOLOGY

Research methodology is a systematic framework that guides scholars and practitioners in conducting research. It defines the processes, tools, and techniques used to collect, analyze, and interpret data to achieve the objectives of a study.¹²³² A well-structured methodology ensures that research is conducted in a logical, transparent, and reproducible manner, enhancing the credibility and reliability of findings. In legal research, methodology plays a crucial role in analyzing statutes, case laws, and scholarly literature to arrive at reasoned conclusions.

¹²³³In the context of intellectual property law, and specifically the study of patentable and non-patentable subject matters, research methodology helps in evaluating statutory provisions, judicial interpretations, and comparative legal frameworks.¹²³⁴ It provides a structured approach for examining both theoretical and practical aspects of patent law, ensuring that the research addresses the objectives comprehensively.

Research methodology generally involves several key components:

1. Research Design: This is the overall plan or strategy for conducting the study. In legal research, it may be doctrinal (library-based) or non-doctrinal (empirical or field-based). Doctrinal research focuses on statutes, case law, and secondary sources to interpret legal principles, while non-doctrinal research may involve surveys, interviews, or case studies to analyze real-world application.

2.¹²³⁵Data Collection Methods: Depending on the research design, data can be collected from primary sources such as statutes, judicial decisions, treaties, and official reports, or from secondary sources such as scholarly articles, books, and commentaries.¹²³⁶ In the study of patent law, primary sources provide insight into legislative intent and judicial reasoning, while secondary sources offer critical analysis and comparative perspectives.

3.Data Analysis: Legal research involves critical evaluation and synthesis of information collected. In doctrinal research, this entails analyzing statutory provisions, interpreting judicial pronouncements, and identifying trends and inconsistencies. Non-doctrinal research may employ qualitative or quantitative techniques to assess patterns and evaluate the effectiveness of legal frameworks.

4.¹²³⁷ Validation and Reliability: Ensuring the accuracy and authenticity of data is essential. This may involve cross-referencing multiple sources, verifying case law citations, and consulting authoritative texts. Rigorous methodology enhances the reliability of conclusions and ensures that the research can withstand academic and professional scrutiny.

5. ¹²³⁸Presentation of Findings: A structured methodology facilitates clear presentation of results, enabling readers to understand the research process, reasoning, and conclusions. In legal research, this often includes well-organized chapters, footnotes, tables, and diagrams to illustrate complex concepts

DISCUSSION / ANALYSIS

The discussion and analysis section in research serves as the core component where collected data, findings, and observations are critically examined to draw meaningful conclusions.¹²³⁹ In

¹²³² Kothari, C.R., *Research Methodology: Methods and Techniques*, 2nd ed. (New Age International, 2004).

¹²³³ Goel, S.L., *Legal Research Methodology*, 3rd ed. (Deep & Deep Publications, 2010).

¹²³⁴ Singh, J.P., *Intellectual Property Law Research Methods*, 1st ed. (Eastern Book Company, 2018).

¹²³⁵ Mandal, B., *Research Methods in Law*, 2nd ed. (LexisNexis, 2015).

¹²³⁶ Bryman, A., *Social Research Methods*, 5th ed. (Oxford University Press, 2016).

¹²³⁷ Banakar, R., *Methodology of Legal Research*, 1st ed. (Oxford India, 2012).

¹²³⁸ Tripathi, R., *Legal Research: Methods and Techniques*, 2nd ed. (Central Law Publications, 2017).

¹²³⁹ Kothari, C.R., *Research Methodology: Methods and Techniques*, 2nd ed. (New Age International, 2004).

legal research, particularly in the study of patentable and non-patentable subject matters, this section focuses on evaluating statutory provisions, judicial interpretations, and scholarly opinions to assess how patent law operates in practice. The purpose of analysis is not merely descriptive; it involves a critical appraisal of existing legal frameworks, identification of gaps, and exploration of implications for policy and practice.¹²⁴⁰ One key aspect of discussion in patent law research is the examination of statutory provisions under the Patents Act, 1970. Sections defining patentable inventions and statutory exclusions are analyzed to understand the boundaries of legal protection.¹²⁴¹ Scholars emphasize that understanding these boundaries is essential to prevent the misuse of patents while encouraging genuine innovation.¹²⁴² Comparative analysis with international standards, such as the TRIPS Agreement, is also undertaken to evaluate how Indian law aligns with global practices and to identify areas for potential reform.¹²⁴³ Another important element is the evaluation of judicial pronouncements. Courts play a significant role in interpreting statutory provisions, resolving ambiguities, and establishing precedents.¹²⁴⁴ Analysis of landmark cases provides insights into the practical application of legal principles and illustrates how the judiciary balances inventors' rights with public interest. This includes assessing how exclusions for morality, public order, or environmental concerns are enforced in practice.

¹²⁴⁵The discussion further involves a critical review of scholarly literature. It synthesizes diverse perspectives on patentability, inventive step, novelty, and industrial applicability.¹²⁴⁶ By contrasting doctrinal interpretations and

empirical observations, the researcher can identify patterns, trends, and unresolved issues. For instance, debates regarding software patents, medical methods, and biotechnological inventions are explored to highlight areas where legislative clarity or judicial guidance may be required.

CONCLUSION

Patent law is a vital mechanism for promoting innovation, protecting inventors' rights, and fostering technological and industrial development. The distinction between patentable and non-patentable subject matters serves as the foundation of this legal framework, ensuring that only inventions that are new, involve an inventive step, and possess industrial applicability receive protection. By clearly defining the scope of patentable subject matter, the law encourages genuine innovation while preventing the monopolization of ideas, discoveries, and knowledge that rightfully belong to the public domain.

The research highlights that statutory provisions, judicial interpretations, and international standards collectively shape the boundaries of patentability. Sections 3 and 4 of the Patents Act, 1970 exemplify India's approach, balancing the need for protecting inventors with ethical, social, and environmental considerations. Judicial pronouncements further clarify the application of these provisions, resolving ambiguities and setting precedents that influence innovation practices and policy implementation.

Furthermore, the study underscores the importance of non-patentable subject matter, including natural phenomena, abstract ideas, medical methods, and inventions contrary to public morality or safety. These exclusions are essential for preserving public access, promoting ethical compliance, and maintaining fairness in the patent system. Comparative analysis with global frameworks, such as the TRIPS Agreement, demonstrates the alignment of national law with international standards

¹²⁴⁰ Goel, S.L., *Legal Research Methodology*, 3rd ed. (Deep & Deep Publications, 2010).

¹²⁴¹ The Patents Act, 1970 (India), Sections 2(1)(j), 3, and 4.

¹²⁴² Biswas, A., *Law of Patents in India*, 3rd ed. (2021).

¹²⁴³ WTO, TRIPS Agreement, Articles 27(1)–27(3).

¹²⁴⁴ Narayanan, P., *Patent Law*, 6th ed. (Eastern Law House, 2017).

¹²⁴⁵ Basheer, S., "Moral and Public Policy Exclusions under Indian Patent Law," *Indian Journal of Law and Technology*, Vol. 15 (2020).

¹²⁴⁶ Cornish, W.R., *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights*, 8th ed. (2013).

while allowing flexibility for contextual adaptation.

In conclusion, a clear understanding of patentable and non-patentable subject matters is essential for inventors, legal practitioners, policymakers, and scholars. It ensures that patent law fulfills its dual purpose: incentivizing innovation and safeguarding the public interest, thereby contributing to technological progress, economic growth, and societal well-being.

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