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A Study On Patent Act With A Reference Of Non-Patentable Inventions

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ABSTRACT

Patents are some type of rights which are made in order to prevent others from stealing one's precious ideas. After the process of granting, the inventor is considered as the patent owner. A certain time period is specified for a particular patent and after that period if the patent is not allowed to renew by the owner then that invention becomes available to the public and any person can access that invention.

There is one more highlighting point regarding the patent act is that if the owners of the inventions want to sell their ownership to others then they can do this legally. In India, the patent for a particular invention is allowed if that invention is novel and it should be capable of being used or made at the industrial level. The current paper highlights the patent act and non-patentable inventions.

KEYWORDS:

Patent, Invention, Industrial, Patentable

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INTRODUCTION

An invention can't be issued for patent if during testing it is observed that this invention can be harmful for the people or animals or plants or any other living organism. Also, the discovery related to any living thing or non-living thing substance which already exists in the nature can't be regarded as the patentable invention.

All the scientific theories can also not be termed as the patentable inventions i.e. all these kinds of theories are non-patentable legally because a product or process in not resulted out of these theories. On the other hand, if any scientific theory leads to the process of manufacturing at the industrial level then it becomes eligible to be regarded as the patentable invention.

If a substance is modified and its efficacy does not improve on further processing then it can also not be taken as patentable invention. The passing of the inventing step is compulsory in order to make an invention patentable. For a modification or improvement to be patentable, it is essential that it must generate a novel output which must be better than the previous one as compared to the quality factors.

Also, any work related to the music, movies or entertainment can't be considered as an invention.

Any process for the medicinal, surgical, curative, prophylactic, diagnostic, therapeutic or other treatment of human beings or any

process for a similar treatment of animals to render them free of disease or to increase their economic value or that of their products is not a patentable invention. However, patent maybe obtained for surgical, therapeutic or diagnostic instrument or apparatus. Also the manufacture of prostheses or artificial limbs are patentable.

All writings, music works of fine arts, paintings, sculptures, computer programmes, electronic databases, books, pamphlets, lectures, addresses, sermons, dramatic-musical works, choreographic works, cinematographic works, drawings, architecture, engravings, lithography, photographic works, applied art, illustrations, maps, plans, sketches, three-dimensional works relating to geography, topography, translations, adaptations, arrangements of music, multimedia productions, etc. are not patentable. However, literary, dramatic, musical or artistic work can be copyrighted.

The fundamental principle of Patent Law is that a patent is granted only for an invention which is new and useful. That is to say, it must have novelty and utility. It is essential for the validity of a patent that it must be the inventor's own discovery as opposed to mere verification of what was, already known before the date of the patent. In this article the author, is going to analyze the inventions that are not patentable under the Patent Act, 1970.

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PATENT ACT WITH A REFERENCE OF NON-PATENTABLE INVENTIONS

An invention claiming a mere juxtaposition of known devices in which each device functions independently is not considered patentable. Merely placing side-by-side old integers so that each performs its own function independently of the others is not a patentable combination. e.g., an umbrella with fan, bucket fitted with torch, clock and transistor in a single cabinet. These are not patentable, since they are nothing but mere arrangement and rearrangement of items without having any working interrelationship between them and are devices capable of functioning independently of each other.

India is a country that has understood the importance of strong patent systems for the growth of industry and commerce to bring it at par with the modern world. With the promulgation of the Indian patent act, there is an increase in the number of patent filing. Section 3 and 4 of this act (consisting of inventions that cannot be patented) has been a filter that decides what falls in the ambit of inventions. Only inventions that are new and useful are patented. Innovators and inventors are highly intrigued in protecting their intellectual property.

Section 5 was omitted by the Patents (Amendment) Act 2005 with retrospective effect from 1 January 2005.With the omission of section 5, such distinction is of limited relevance.

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An invention is understood based on how the three of its subjective constituents , ie, novelty, inventive step, and industrial application are understood. The subject matter should involve an invention over what is old. Anything that is in the knowledge of the public or is disclosed to the public cannot be regarded as an invention under the Act. An invention need not be a complicated advancement in technology. Even a simple invention, so long as it is novel or new, would be an invention. An improvement can also be an invention.

While considering the definition of invention, it is also necessary to consider the meaning given to the term “Article” under Rule (2) (c) of the Rules. The term “article” includes any substance or method and any plant, machinery or apparatus whether fixed to land or not. Under the above said provisions, patentable inventions under the Act, as applied to process, method, art or manner of manufacture should be regarded as an artificial process or operation of an industrial nature wherein certain starting materials has been subjected to the process or operation to convert the starting material in such a manner to produce a new and useful article or substance which is tangible. If the starting material remains unaltered by the process and said product also remains the same as the starting material, then, the process may not constitute an invention for the purposes of patentability.

The invention which is patentable is not a concept or idea. The original concept or idea has to be converted to a practical shape, which forms an invention and such an invention should also satisfy the above mentioned three essential criteria to make it patentable. But such a concept or idea can be made the subject matter of a patent application by filing an application accompanied with a provisional specification disclosing the nature of the invention (idea/concept). In that event the complete working details of the concept/idea has to be practically developed at least in the laboratory scale, within a period of say 10 months and file the complete specification before the expiry of 12 months period from the date of filing the application accompanied with a provisional specification.

If such a complete specification cannot be filed within the stipulated period, namely within the normal period of 12 months, the invention (the idea/concept) is not patentable, and the application filed accompanied with a provisional specification will be treated as abandoned. No further action can be taken on such an abandoned application. If the complete details of the invention (namely conversion of the concept/idea into a practical shape) has been developed after the above mentioned period, a fresh application accompanied with a complete specification describing the complete details can be filed. This is, of course, subject to the condition that in the meantime the information has not been made public.

DISCUSSION

In India for the purpose of the test of patentability of an application, the inventive step is also considered to be one of the requirements under Section 25(e) of Indian Patents Act, 1970.An invention which is the subject of patent must be new. It must be something which is not known to the public or used by others. In other words, the general test of novelty is that an invention is new if it does not form part of the state of art. The test of the state of art is different from country to country, in some countries it is confined to the territory of state while others applied the test of worldwide novelty. For the purpose of adjudging the novelty of an invention as to the prior art, only international publications regarding the subject is important. It is also important for an invention to be patented that its novelty must have not been destroyed by facts occurring prior to the application for a patent. Such facts may be a public use or sale by the inventor, an exhibition to the public, a description of the invention by printing or otherwise made available to the public or the like. In India, the test of novelty is stricter than in most countries in the cases where the inventions are related to the process patent.

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Under the Patents Act, an invention to be patentable must be a new and useful method or manner of manufacture and secondly, it is new and useful. In order to entitle an inventor to a grant of a patent both these conditions must be present. Manufacture in its ordinary parlance generally conveys the idea of making tangible goods by hand or by machine.

If the words "new and useful manner of manufacture" were limited to the production of new articles without reference to the process of manufacture involving patent and improved method, the inducement which law intended to give to the inventor would be encompassed within very narrow rules. The word manufacture includes improvements in manufacture and changes in the method by which an article is manufactured. The word manufacture would also extend to a new process to be carried on by known implements.

CONCLUSION

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