



IPR-I

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MEANING OF PATENT

The word “patent” is referred from a Latin term “patere” which means “to open,” i.e. to make available for public inspection.

According Section 2(m) of the Patent Act 1970 defines “Patent” means a patent for any invention granted under this Act.

A patent is an exclusive right granted by the Government to the inventor to exclude others to use, make and sell an invention is a specific period of time. A patent is also available for improvement in their previous Invention. The main motto to enact patent law is to encourage inventors to contribute more in their field by awarding them exclusive rights for their inventions.

PATENTABLE INVENTION

Elements of patentability

The conditions of Patentability are:-

Novelty

**Inventive step
(Non-obvious)**

**Industrial
Application
(Utility)**

NOVELTY:

Novelty is an essential requirement and an undisputed state of patentability. A novel invention is one which has not been disclosed in the prior art where 'prior art' means everything that has been published, presented or otherwise disclosed to the public on the date of Patent (The 'Prior Art' includes documents in foreign languages disclosed in any format in any country of the world). For an invention to be judged as novel, the disclosed information should not be available in the 'Prior Art'. This means that there should not be any prior disclosure of any information contained in the application for Patent (anywhere in the public domain, either written or in any other form, or in any language) before the date on which the application is first filed i.e. the 'priority date'.

In the case of **Ganendro Nath Banerji v. Dhanpal Das Gupta, AIR 1945 Oudh 6**, it was held that no general rule can be laid down as to what does or does not constitute an invention. The general criterion seems to be whether that which is claimed lies within the limits of development of some existing trade, in the sense that it is such a development as an ordinary person skilled in that trade could, if he wishes so to do, naturally, make without any inventive step. But novelty need only be established in the process of manufacturing, not in the article produced. Novel combination of two known ideas may be sufficient to establish novelty of subject matter in this respect.

INVENTIVE STEP (NON-OBVIOUS)

'Inventive step' is a feature of an invention that involves technical advancement as compared to existing knowledge or having economic significance or both, making the invention non-obvious to a person skilled in that art. Here definition of 'inventive step' has been enlarged to include economic significance of the invention apart from already existing criteria for determining the inventive step. An invention shall not be considered as involving an inventive step, if, having regard to the state of the art, it is obvious to a person skilled in the art. The term 'obvious' means that something which does not go beyond the normal progress of technology but merely follows plainly or logically from the prior art, i.e., something which does not involve the exercise of any skill or ability beyond that to be expected of the person skilled in the art. For this purpose a 'person skilled in the art' should be presumed to be an ordinary practitioner aware of what was

general common knowledge in the relevant art at the relevant date. In some cases the person skilled in the art may be thought of as a group or team of persons rather than as a single person.

INDUSTRIAL APPLICATION (UTILITY)

Industrial application must relate to commercialization of patented product for Public and society purpose. However, it need not mean commercial utility alone and could imply non-commercial or social benefit. Section 2(ac) of the Patents Act provides that an invention is capable of 'industrial application' if it is capable of being made or used in an industry.

An invention to be Patentable must be useful. If the subject matter is devoid of utility it does not satisfy the requirement of invention. For the purpose of utility, the element of commercial or pecuniary success has no relation to the question of utility in Patent law. 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.

Questions:

Write a short note on 'Patentable inventions'.

Or

Discuss the conditions of patentability of an invention.

Or

What are the basic requirements for obtaining a patent?