

Subject: Library and Information Science

Production of Courseware

 -Content for Post Graduate Courses



Paper No: 01 Knowledge Society

Module :10 Intellectual Property Rights: Patents



Development Team

Principal Investigator
&
Subject Coordinator

Dr. Jagdish Arora, Director
INFLIBNET Centre, Gandhinagar

Paper Coordinator

Prof K S Raghavan
Visiting Scientist, Centre for Knowledge Analytics
and Ontological Engineering (KAnOE), PES Institute

Content Writer

Dr Sanjeevi Amba
Retd Scientist, Central Leather Research Institute

Content Reviewer

Prof K S Raghavan
Visiting Scientist, Centre for Knowledge Analytics
and Ontological Engineering (KAnOE), PES

Module 10: Intellectual Property Rights: Patents

I. Objectives

- To provide the students with an understanding of
- The laws relating to what is patentable
- The roles libraries & information centers should play in patenting
- The range of databases available

II. Learning Outcome

On completion of this module, you are expected to have a clear understanding of the evolution of patent system, its objectives and what is patentable and what is not. You should also have an understanding of the role libraries and information centres in R & D institutions should play in serving their parent organizations with regard to patenting their inventions and innovations

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1. Introduction

Patents are one of the oldest forms of intellectual property. It is the exclusive right given to an inventor for a specified period of time protecting an invention – a “product” or the “process” of manufacturing that product. It grants the inventor the right to make sell or use the product or process and exclude others from doing so. Granting a patent is based on two fundamental ideas – i) human effort should be rewarded and that one is entitled to the fruit of one’s labors; and ii) the product invented/process developed should not be the sole possession of the inventor in perpetuity. It should be for the ‘public good’ i.e. knowledge should be in the ‘public domain’. Hence, even though a patent is granted for exclusive use, the time for such use is limited by law. The document which describes the invention is called a patent specification. The legal rights in a patent are based on the disclosures made in the specification. The international organisation concerned with various aspects of intellectual property including patents is the WIPO. TRIPS which is an international treaty on Intellectual Property has also been described earlier. As is the case with copyright, there are international treaties for patents also.

2. What can be patented?

A patent can be granted for an invention of any process or product. The word “Invention” has been defined in the Patents Act 1970 as “a new product or process involving an inventive step and capable of industrial application”. “New invention” is defined as any invention or technology which has not been described earlier in any document or which has been used in the country or elsewhere in the world before the date of filing of patent application i.e. the subject matter is not in the public domain or that it does not form part of the state of the art. “Capable of industrial application” means that the invention is capable of being made or used in an industry

As mentioned earlier, an application cannot be filed for an invention which has been either published or which has been publicly displayed. However, the Patents Act also states:

“Under certain conditions, there is grace period of 12 months for filing application even after publication. The Patents Act provides a grace period of 12 months for filing of patent application from the date of its publication in a journal or its public display in an exhibition organized by the Government or disclosure before any learned society”

The details and conditions are provided under Chapter VI of the Act (Section 29-34) (ipindia.nic.in/ipr/patent/faq_patent.htm).

3. Ever greening of Patents

Ever greening of a patent is a strategy allegedly adopted by some to renew their patents by bringing in some minor changes when the patent is about to expire. A patent on the new form would then give them monopoly for a further period of 20 years. This term is generally discussed in the context of pharmaceutical companies. The theory is that by adding new mixtures or formulations to an existing drug, pharma companies can patent the “new” drug and sell it at a higher cost. Indian patent law

prevents the ever-greening of a patent. Indian Supreme Court on April 1, 2013 denied a patent for the Novartis breakthrough drug Glivec (Imatinibmesylate). [1]

4. Criteria for Patenting

Three criteria have to be fulfilled for an invention to be patented. These are:

- Novelty – the invention must be new or novel.
- Non-obviousness – an inventive step should be involved
- Utility – it must be capable of industrial application.

To obtain a patent, a patent specification, which is a written description of the invention, is submitted to the designated patent office. It discloses the details of the invention for which the patent protection is sought. The legal rights in a patent are based on the disclosures made in the specification.

5. Terminology Associated with Patents

Prior Art

Prior Art is all the information that has been disclosed to the public in any form about an invention before a given date. Knowledge of prior art is necessary while patenting to confirm novelty and non-obviousness.

What is a “priority date”?

Priority date is generally the date of first filing allotted by the patent office to an application. More than one person might be working on a problem (product or process) at the same time and achieve the same result. But only one person can be granted a patent for the invention. In such a case, the first-to-file the application gets the priority in granting the patent. Such a rule is useful when a patent is being applied for in several countries as Priority Date is the filing date of the first application in any of the countries under the treaties mentioned earlier. Though the date of filing is generally accepted as priority date it is not always so in all countries. In USA, for instance, it is the date when the invention was done.

Inventor vs. Applicant

The inventor need not necessarily be the applicant i.e. the one who applies for the patent. Patents are property. Generally, a patent is owned by the inventor. However, the inventor and the owner of the patent may be different. The rights to the property can be assigned to others by the inventor. For instance, in a government funded research institute or an academic institution, the inventor assigns the patent to the institute or a university. The USA, however, requires a patent application to be in the name of the inventor. A company cannot be the inventive entity.

Term of Patent

Currently, the term for patents in India is 20 years from the date of filing of the application for the patent whether it is a provisional or complete specification. The patent can be renewed every year on payment of a fee to the Patent Office and it is the

responsibility of the patentee to keep the patent alive by paying the requisite annual fee.

After the 20 year term the invention claimed in the patent falls into the public domain. In case of applications filed under PCT the term of 20 years begins from International filing date.

Infringement

Infringement of a patent is the violation of the exclusive rights of the patentee.

6. Procedure in Patenting

Filing of an application at the designated Patent Office is the first step in the patenting process. Once a patent is filed it is checked for the correctness of all documents required to be submitted with the application. It is then examined against the criteria mentioned earlier for patentability. Prior art search is also done by the Examiner at the Patent Office. Objections may be raised if criteria are not satisfied and the applicant can resubmit the application after carrying out the necessary changes. Once the criteria are satisfied it is published in the Official Journal of the Patent Office, after 18 months from the date of filing.

It is now open for opposition by third party which can be done within a period of one year from the date of advertising. If there is no opposition then the patent is sealed or granted. It is then published in the Patent Journal. A granted patent gives the inventor/assignee the exclusive right to make or sell the patented product or process and to exclude others from doing so. However, the government has the right to make use of the patent if it deems it necessary. It can also be used by others for experimental or educational and research purposes.

Indian patent law allows both pre-grant opposition and post-grant opposition. Pre-grant opposition can be anytime after the publication of the patent until its grant. It is granted only if it overcomes pre-grant opposition. Post-grant opposition decides whether the patent should be maintained or not.

7. Types of Patent Applications

- **Ordinary Application:** An application filed without reference to any other application made earlier.
- **Convention Application:** In this application priority date is claimed on an application made earlier in a convention country. The application is submitted along with the priority document.
- **PCT International Application:** An application made according to PCT. The applicant gets an international filing date in all the designated countries.

Application for Patent of Addition: If the applicant feels that he can do a slight modification to what he has already invented and for which a patent has been applied for, he can apply for an Application for Addition. This is because there is no inventive step involved.

Provisional Specification: A provisional specification does not disclose the complete description of the invention as time might be required to develop it further. The provisional specification is filed to claim the priority date of an invention. Immediately on receiving the provisional specification the patent office accords a filing date for the application. A period up to twelve months is provided to the applicant for filing the complete specification.

Complete Specification: The document, containing the detailed description of invention along with the drawings and claims is called as the complete specification. The description regarding prior art is included in the complete specification. The disclosure of the invention in a complete specification must be such that a person skilled in the art may be able to perform the invention. It is mandatory on the part of an applicant to disclose fully the various features constituting the invention along with experimental results and drawings, etc. essential for understanding the invention. The complete specification contains the patent number, the title of the invention, the field to which the invention belongs, prior art, the name, address and nationality of each of the applicants. Every complete specification is accompanied by an abstract to provide technical information on the invention. The Claims section in a specification defines the scope of legal protection. The Claims define the monopoly rights that the applicant is trying to obtain for the invention.

Equivalent Patent: A patent that relates to the same invention and shares the same priority application as a patent filed elsewhere.

Patent Family: A patent family consists of all the patents which relate to the same invention published by different patent offices in various countries. That is, it is the same invention patented in more than one country by the same inventor and having the same priority date.

8. Contents of Patent Document

A patent document is a techno-legal document and four categories of information can be found:

- Bibliographic
- Technical
- Legal
- Database and retrieval oriented

Every patent document must contain a description of the “prior art” in that area. That is, it describes the state of the art of technology in the field of invention and the various developments in the field in which the patent is being applied for and as such contains references to periodical articles, earlier patent specifications and other literature. Thus it contains useful research and technical information. There are two types of “prior art” references - those given by the applicant and those given by the Patent Examiner. As patent system is very old, LISP can help in tracing the history of specific fields of technology especially as such information may not be available in any other form of publication.

9. International Patent Laws

9.1 The Paris Convention

The Paris Convention for the Protection of Industrial Property, signed in Paris in 1883, was one of the first intellectual property treaties and is administered by WIPO. The Convention applies to all categories of industrial property such as patents, trade and service marks, industrial designs, utility models (a kind of “small patent” provided for by the laws of some countries), trade names and geographical indications. As of 2013, the Convention has 175 contracting member countries. India became a member of the Paris Convention in December 1998. The principal features are:

- A member country is obliged to give nationals of other member countries the same protection and advantages as it grants to its own nationals.
- Right of priority: The Convention provides for the right of priority in the case of patents, trade and service marks and industrial designs. This means that if an application is filed in one country and is subsequently filed within the specified time frame in another convention country, the latter application will be considered to be filed on the same day as the first application thus ensuring right of priority
- Common Rules: The Convention has also laid down some common rules for all the contracting states.

9.2 The European Patent Convention

European Patent Convention (EPC) signed in Munich in 1973 is a multilateral treaty instituting the European Patent Organisation (EPO) - an intergovernmental organization - for granting European patents.

9.3 Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (1977).

This treaty is administered by WIPO and India became a signatory in 2001. In any patent specification the invention should be described in sufficient detail so that it is possible for a person skilled in the art to perform the invention. When an invention involves microorganism, it is not possible to describe it in a manner by which others can perform the invention. Hence, in inventions involving microorganisms, a deposit of the biological material in a recognized institution is required. The Budapest Treaty ensures that if an applicant deposits the material in any one recognized institution it is not necessary to deposit it again in other countries when applying for a patent in those countries.

9.4. Patent Cooperation Treaty (PCT)

The Patent Cooperation Treaty (1970), an international patent law treaty provides a unified procedure for filing patent applications in each of its 148 Contracting States. By filing one international patent application under the PCT, applicants can seek protection and priority in any of the countries designated by them. India is a member of the PCT since December 1998.

9.5. Patent Laws in Other Countries

As has been mentioned earlier, patent laws are national in scope. To know more about the laws of various countries, WIPO has created the WIPO Lex which is an electronic database providing access to intellectual property (IP) laws and treaties of the Members of WIPO, the World Trade Organization (WTO) and the United Nations (UN).

National Laws on Patents can also be accessed from the Patent Lens web site. www.patentlens.net/daisy/patentlens/ip/around-the-world.html

10. Patent Laws in India

The Indian Patents and Designs Act 1911 came into force in 1912 replaced all earlier acts and brought patent administration under the management of Controller of Patents for the first time. The 1911 Act was amended in 1950. The Patents Act 1970 repealed and replaced the 1911 Act so far as the patents law was concerned. This Act permitted only process patents for five years, and no product patents for drugs and pharmaceuticals and certain classes of chemicals. The 1970 Act was again amended in 2005 to be in line with TRIPS.

11. Retrieval Tools

11.1 Indian Patent Classification System

The Indian Patent Classification System is more than sixty-year-old. As the classification system has not kept up with developments in technology, the classes are very broad. It is not in use.

11.2 The International Patent Classification (IPC)

The Strasbourg Agreement (of 1971) provides for a common classification for patents including published patent applications, utility models and utility certificates. The IPC is a hierarchical system in which the whole area of technology is divided into sections, classes, subclasses and groups. The IPC contains about 70,000 groups. The hierarchy is as follows:

- Section
- Sub-section
- Class
- Sub-class
- Main Group
- Sub-group

More than one classification number can be assigned to a patent document so as to indicate the various facets of the information contained.

11.3 INID Codes

Since patents can be in different languages there may be differences in terminology to describe the data elements. To overcome this, the INID code was developed as a

common code for identifying the different data elements. INID stands for internationally agreed Numbers for the Identification of (bibliographic) Data. The INID codes can be utilized by the information professional to retrieve patents in different languages or when creating an in-house database of patents.

12. Sources of Information

Activities relating to patents have their own terminology. The OECD's 'Glossary of Patent Terminology' is a very useful tool to understand the various terms used in Patenting and Patent Searching. (<http://www.oecd.org/sti/sci-tech/37569498.pdf>)

Indian Patent Information Retrieval System, (IPAIRS) is a free search portal launched by the Indian Patent Office. Version 2.0 was released in April 2012. It includes full specifications of Indian patents.

12.1 Official Journal of the Patent Office

A requirement of the 2005 amendment to the Patent Act 1970 was the publication of an Official Journal of the Patent Office. It is a weekly uploaded every Friday and is available on the patent office website.

(<http://ipindia.nic.in/ipr/patent/patents.htm>).

12.2 WIPO Patent Information Services (WPIS)

To offer technical assistance to developing countries, WIPO has set-up the WIPO Patent Information Services (WPIS) for handling individual requests for patent information. The WIPO Patent Information Services are offered free of charge to developing countries.

(http://www.wipo.int/patentscope/en/data/developing_countries.html).

The WIPO Guide to using PATENT INFORMATION is useful in understanding the structure of a patent document and tips for searching them. http://www.wipo.int/edocs/pubdocs/en/patents/434/wipo_pub_1434_03.pdf

12.3 Guide to Technology Databases

WIPO has brought out the "Guide to Technology Databases" to assist the users in identifying and using publicly available online patent databases. The Guide describes the scope of each of the databases and evaluates them. (www.wipo.int/freepublications/en/patents/.../wipo_pub_1434_11.pdf)

12.4 Patent Lens

Patent Lens is a worldwide, open-access, free full-text patent database. It covers over 8 million patents and applications – those of WIPO, USPTO, and EPO. It also integrates the INPADOC legal status feature and patent family information. A useful feature is the searching of DNA and protein sequences disclosed in patents. Another feature of interest is the "Technology Landscape" which deals with technologies relevant to life scientists and are 'interpretation maps' of specific topics and which analyze patent data relating to particular topics.

12.5 Google Patents

Launched on December 14, 2006 and originally confined to patents and patent applications of the United States Patent and Trademark Office (USPTO), includes European patent documents, China patents, German patents, Canada patents, and WIPO Patent details.

(<https://support.google.com/faqs/answer/2539193?hl=en>.)

12.6 Patent scope

Patent scope is a database administered by the WIPO and provides access to regional and national patents as well as International Patent Cooperation Treaty (PCT) applications in full text format on the day of publication. Being an international organisation, the WIPO has provided a search interface in 9 languages. Cross-Lingual Information Retrieval (CLIR) is a tool that proposes synonyms for search keywords and automatically translates the keywords for retrieval.

(http://www.wipo.int/export/sites/www/freepublications/en/patents/434/wipo_pub_14_34_08.pdf)

12.7 Espacenet

Espacenet developed by the European Patent Office (EPO) offers free access to more than 70 million patent documents worldwide. The coverage goes as far back as 1836. The European Patent Office (EPO)'s machine translation service Patent Translate service offers on-the-fly-translation of patent documents for all 28 official languages of the EPO's 38 member states, plus Chinese, Japanese, Korean and Russian. It is also possible to ascertain the legal status of the patent through links with the European Patent Register (www.epo.org/register).

INPADOC, which stands for International Patent Documentation Center, is an international patent database produced and maintained by the EPO. The database provides information about patent families and also information concerning the legal status of patent applications. The database is the most comprehensive one for performing worldwide patent family searches.

(www.epo.org/searching/essentials/patent-families/inpadoc.html)

The Global Patent Index (GPI) is an advanced tool for searching the EPO's worldwide patent data. The GPI is based on the EPO's DocDB worldwide patent database collection and INPADOC worldwide legal status database (www.epo.org/gpi)

12.8 National/Regional Patent Offices

Patents of specific national and regional Patent Office's can be identified by searching the website of these Offices. For example, the US Patent and Trademark Office for US Patents and Patent Applications (www.uspto.gov).

12.9 Historical Information

For those interested in historical searches, some of the references which would be of help are given below:

- Gazette of India
- Patents for Inventions
- Patent Office Journal(POJ)
- Indexes by the Indian Patent Office
- Journal of the Patent Office Technical Society
- Patented Inventions of the CSIR
- INPAT Database
- Ekaswa Databases
- Institutional Sources
- National Institute for Intellectual Property Management (NIIPM)
- Patent Information System (PIS)

13. Institutional Sources

The website of the Controller General of Patents, Designs and Trademarks provides information on all patents, designs, trademarks, geographical indications. <http://www.ipindia.nic.in/>

13.1 National Institute for Intellectual Property Management (NIIPM)

The Rajiv Gandhi National Institute for Intellectual Property Management under the Ministry of Commerce & Industry is engaged in conducting training and awareness programs relating to Intellectual Property Rights such as Patents, Designs, Trademarks and Geographical Indications. (<http://www.ipindia.nic.in/NIIPM/>)

13.2 Patent Information System (PIS)

PIS were established in 1980 at Nagpur by Ministry of Commerce and Industry, with the following objectives:

- To obtain and maintain a comprehensive collection of patent specification and patent related literature on a world-wide basis.
- To provide technological information contained in patents through search services and patent copy supply service;

The PIS has many international databases and full texts of patents the list of which is given in its website. The PIS also provides search services including state-of-art-search, bibliographic search and family patent search.

(<http://ipindia.nic.in/Niipm/pis.htm>)

13.3 Traditional Knowledge

Patents have been applied for and granted in many instances on the basis of the traditional knowledge of a community or society and though this knowledge is in the public domain it is not available in any document. This is because such knowledge is generally passed down from one generation to the next by word of mouth, and for the

most part is not documented. This is a major cause of concern to governments as it leads to economic losses and is prejudicial to the interests of the community and to the nation at large.

Biopiracy refers to the appropriation, generally by means of patents, of indigenous biomedical knowledge by foreign entities (including corporations, universities and governments) without compensatory payment.

IPR regimes have been permitting only formal systems of knowledge. India has strong and worthy informal systems of knowledge. This knowledge has to be codified so that information contained in them can be documented to prevent biopiracy. India is one of the 193 odd nations that are a party to the international treaty - Convention on Biological Diversity which came into force on 29/12/1993. India has passed the Biological Diversity Act 2002 under which every local body shall constitute a Biodiversity Management Committee and maintain a People's Biodiversity Register which shall contain comprehensive information on availability and knowledge of local biological resources, their medicinal or any other use or any other traditional knowledge associated with it. The library professional especially those in public libraries in rural areas can get involved in such endeavors.

13.4 Traditional Knowledge Digital Library

Another immense effort to combat biopiracy is the Traditional Knowledge Digital Library (TKDL) Project of the NISCAIR, a CSIR institution. The examiners of patents involving neem, turmeric, etc. contended that they could not search relevant traditional knowledge as prior art. The reason for this non-accessibility were that a) such information was not compiled and arranged in an orderly fashion b) the prior art was confined to texts which were not in the English language. The TKDL project was established in 2001 to overcome this. At the time the TKDL was established, it was estimated that nearly 2000 patents relating to Indian Medicinal Systems had been granted. The TKDL database makes available the information from various sources. TKDL gives modern names to plants/diseases/processes mentioned in literature relating to Indian systems of medicine. TKDL is a database containing information from Indian Systems of Medicine including Ayurveda, Siddha, Unani and Yoga to be used as prior art. It contains scanned images of medicinal formulations from original books. TKDL has since its inception prevented many patents being granted. The information professional thus has an important or even vital role to play in participating in the documenting of knowledge/dissemination of such knowledge.

14. The Role of LISP vis-à-vis Patents

Novelty had been mentioned as being one of the criteria for patenting. Novelty means that the information contained in the patent should not have been published earlier or in use. An extensive and exhaustive search of literature and patent publications is necessary to determine novelty. The LISP can thus help the patentee in several ways:

- before filing of the patent to ascertain if information is already available in published form or if it is already put into use;
- by creating awareness in the applicants for the need for novelty and advising them in filing a patent before the matter is submitted as a dissertation or as a paper.

- by checking for novelty in patents relating to the field of interest of the parent organization so as to aid in the opposition process.

15. Trademarks

A trademark is basically a visual symbol which is used to label goods or services so as to distinguish the goods or services offered by one undertaking from those offered by another. It can be a name, word, symbol, slogan or even a combination of the above and identifies a given product. The main characteristics of a trademark are that:

- it should be distinctive i.e. be able to distinguish the goods and services of another
- It should not be deceptive

A service mark is the same as a trademark. However, it identifies a service and not a product. Service marks are used to create a brand image. They are extensively used in the hospitality, advertising, telecommunication industries to name a few and for medical services, education etc.

15.1 Trademark Protection in India

Trademarks are administered by the Trademarks Registry under the Controller General of Patents, Trademarks and Designs. It administers the Trade Marks Act, 1999 and subsequent rules. Service Marks were not available earlier but have been introduced under this Act and subsequent rules. Registration of a trade mark is not compulsory; however, registration would be useful in dealing with cases of infringement. The term of a trademark registration is for a period of ten years is renewable indefinitely by the user.

15.2 International Trademark Protection

International protection for trademark is through the Madrid system and is governed by two treaties – the Madrid Agreement and the Madrid Protocol. Of interest to LISP are two databases of WIPO. These are the MADRID EXPRESS, which permits the searching of international trademark registrations, and ROMARIN for details of international marks.

16. Industrial Design (ID)

“Industrial Designs” relates to the ornamental or aesthetic aspect of a useful product. It is concerned with shape, texture, color, configuration and pattern etc. or the combination thereof of any object that could be consumer or industry oriented. It may be three-dimensional or two dimensional. It protects the appearance of a product. As Designs are considered to be intellectual property, protection is given to them under law. The purpose of design registration is, therefore, to ensure that creators of designs are not deprived of the economic benefits due to them by others applying it to their goods. In India, the Indian Design Act, 1911 has been replaced by the New Designs Act, 2000. Novelty is a criterion here also as in the case of patents.

<http://ipindiaservices.gov.in/designapplicationstatus/designstatus.aspx>

16.1 International ID Legislation

Under the Hague System for the international registration of industrial designs, it is possible to obtain protection in several countries through filing one single international application.

17. Geographical Indications (GI)

A Geographical Indication is a notice stating that a given product has its origin in a given geographical area. This implies that the product (either natural or crafted) has a certain unique quality. It is thus used to identify goods having special characteristics originating from a definite Geographical Territory. The product derives its qualities and reputation from that place. That is, there is a connection between the product and the place and the customer is assured of the quality of the product when such a tag is used. It could apply to both agricultural produce as well as handicrafts and manufactures associated with a region. The registration of GI gives the party registering the GI and authorized users the legal right to make exclusive use of the GI. India, as a member of WTO, enacted the Geographical Indications of Goods (Registration & Protection) Act, 1999. The Geographical Indications Registry is located at Chennai. Darjeeling tea became the first GI tagged product in India. GI registrations have been given for many items in India such as:

- Mysore Silk
- Muga Silk of Assam
- Dharwad Peda
- Malabar Pepper
- Salem fabric
- E.I. Leather
- BhavaniJamakalam
- TirupathiLaddu etc.

18. Summary

The above sections deal briefly with various features of patents, patenting in India, information sources and patent search and retrieval. It is confined to free databases and resources and does not describe commercial databases. The module also discusses about trademark, industrial design, geographical indication, etc.

19. References

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3. <http://ipindia.nic.in/ipr/patent/patents.htm>
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15. <http://ipindiaservices.gov.in/designapplicationstatus/designstatus.aspx>