

A Review of Conditions for the Grant of Patent in Engineering

Pramod Kumar¹, Ravindra Kumar Verma² and Manvandra Kumar Singh^{3*}

¹Amity Law School, Amity University Madhya Pradesh, Maharajpura Dang, Gwalior (MP) 474005, pkumar@gwa.amity.edu

²Department of Computer Application, Mewar University, Chittorgarh, Rajasthan, 312901, rverma@mewaruniversity.co.in, ravindra.bhumca08@gmail.com

^{3*}Department of Mechanical Engineering, Amity School of Engineering and Technology, Amity University Madhya Pradesh, Maharajpura Dang, Gwalior (MP) 474005, mksingh@gwa.amity.edu, mksingh.rs.mec13@itbhu.ac.in

Abstract-Patent is an exclusive right granted for an invention in the field of engineering and others. It may be for product or process, which gives new way of preparing and providing solution to a problem. It protects novel inventions and manufacturing process for the period of 20 years. The nature of patent is territorial and can be sold or licensed. The invention must be: New/Novel, involve an inventive step and be capable of industrial or engineering applicability.

Keywords- Patent, Novel, Invention, Engineering applicability

I. INTRODUCTION

The property which comes from Intellectual skill and labour is known as Intellectual Property. It is Intangible Property. Patent is also covered under the Intellectual Property regime. Patent is granted for new scientific innovation or development. In India, the Patent Act, 1970 provides the conditions for the grant of patent and procedure of the grant of patent [1]. This research paper deals with the conditions for the grant of patent as well as procedure for the grant of patent in details. Therefore, this paper is divided into two parts, in which first part deals with the conditions for the grants of patent and second part deals with the procedure of the grant of patent.

II. PATENTABILITY CONDITIONS

Any kind of inventions which fulfill the patentability criteria of patent can have the Patent under the Patent Act, 1970. The patentability criteria of the invention are as follows [1].

Novelty –It is defined as the new invention which is not revealed to the public who is residing anywhere in the world in any manner or medium. *Non-obviousness/Inventive step* –there should not be obvious invention to a person skilled in the relevant field of technology. It necessitates inventive characteristics which is unique from the available inventions revealed in the same area.

Industrial application –The capability of the new process or product should be in such way that can be used in an industry. It should play a good role in economic significance.

III. PATENTABILITY LIMITS

According to the section 3 and 4 of the patents act 1970, the following inventions are not considered and patentable:

- The invention, which asserts anything evidently antithetical to well-accepted natural laws;
- The invention whose principal or deliberate use or commercial misuse is antithetical to public order or ethics or which causes significant damage to the environment and health etc.
- The trifling discovery of a scientific concept or the development of an abstract proposition.
- Discovery of a living/non-living matter transpire in nature;
- The trifling discovery of a new design of a known matter which does not improve the known potency of the same matter, the trifling discovery

of a new characteristics or new application for a known matter or the bare utilization of a known process, machine/apparatus unless the known technique results in a new outcome or engage at least one new reactant.

- The matter which is produced by a bare admixture resulting only in the accumulation of the characteristics of the components thereof or a technique for developing such matter.
- The meager positioning, repositioning or replication of known apparatus which work independently of one another in a known method.
- A technique of horticulture or agriculture.
- Any method for the prophylactic, diagnostic, medicinal, surgical, curative, therapeutic or other care of human beings, or any technique for a similar care of animals to make them free of disease or to raise their economic value or that of their products;
- Animals and Plants in whole or any part thereof other than microorganisms, including varieties, seeds and species and primarily biological routes for development or growth of animals and plants.
- A dramatic, literary, musical or artistic task or any other aesthetic developments, together with television productions and cinematographic tasks.
- A bare rule, scheme or technique of playing a game or doing a mental act.
- The information presentation or the topography of integrated circuits.
- The invention which, in effect, is conventional knowledge or a collection or replication of known characteristics of conventionally known parts/components.
- The atomic energy related invention.

IV. PATENTABILITY OF SOFTWARE INVENTIONS

The Criteria for software inventions to be patented in India can be easily acknowledge in light of Patents Act 1970's Section 3(k) and the recommendation for inspection of inventions related to computer

published by the office of the patents' controller general, designs and trademarks.

Recent patent grants to inventions related to computers by the patent office of India signals that inventions of software may be patentable if:

- There is technical improvement in the invention over the available previous designs.
- The invention gives a technical answer to a technical question by giving a practical use or an enhanced technical impact of the rudimentary software.

Further, the recent recommendation says that while investigating an invention related to computer, the patent investigator would concentrate on the rudimentary matter of the invention and not the specific design in which it is submitted.

V. PATENTABILITY OF BUSINESS METHODS

As per the Patents Act 1970's Section 3(k), the methods of business are not patentable. In addition, in India the Manual of POPP suggests that the methods of business submitted in any design/form are not patentable matter of subject. In addition, the manual focuses on the exclusion applies to all the methods of business; so, even if the methods of business are submitted by the side of technical characteristics such as the networks, internet, telecoms, and satellites, they do not certify as matter of subject of patentability and may come under the amplitude of the Patents Act 1970's Section 3(k).

VI. PATENTABILITY OF STEM CELLS

As per the Patents Act 1970's Section 3(j), it suggests that animals and plants in complete or partial and other than organisms in micron size but including species, seeds and varieties and importantly biological operations for development or growth of animals and plants are not inventions [2].

Here, Stem cells are falling under this category of plants so these are out of patentability scope.

However, in vitro methods of culturing, purifying/isolating and differentiating of stem cells may certify as matter of subject of patentability which suggests that it is novel method, contains a step of invention and application in industries.

Moreover, the inventions which are concerned to stem cells may also out of the scope of patentability which comes under Section 3(b) of the Act.

An invention that causes in tense harm to animal, human, plant life or environment that is also out of scope of patentability [2].

VII. CONCLUSION

Consequently, from the above analysis it can be said that the subject matter which are covered under the section 3 and 4 of the Act, 1970 cannot be patentable. To get patent of any invention, it must be fall within the patentability criteria of the invention such as Novelty, Inventive step/Non Obviousness and Industrial Applicability.

REFERENCE

- [1] The Patent Act, 1970
<https://www.lexology.com/library/detail.aspx?g=8726deaa-ab1c-479e-8340-332f2f4aee70>.
- [2] V. Ravi, "Manual of Patent Practice & Procedure", Patents, Designs & Trade Marks, India, *Third Edition – 2008*