BLOGS

Patent in Intellectual Property Rights

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WHAT IS PATENT?

Section 2(m) of the Indian Patent Act, 1970 provides the definition of the term patent in Intellectual Property Rights as "a patent which is granted for any invention under the provisions of this Act." However, this definition does not clearly explain the meaning of a patent.

To provide a more comprehensive definition, a patent can be understood as an exclusive monopoly right granted to the creator or sole inventor of an invention. This right is awarded to the sole inventor as a recognition of their hard work, investment, and innovative contribution to the creation of the invention.

The purpose of a patent is to protect the invention from competitors in the market by prohibiting them from selling, manufacturing, using, or distributing the patented technology or inventions.

TYPES OF PATENTS IN INTELLECTUAL PROPERTY RIGHTS

There are three categories of patents: **utility patents, design patents, and plant patents.**

- Utility patents safeguard the functional aspects of an invention, granting inventors control over its usage, purpose, and timing. They cover machines, processes, or chemical compositions that offer innovative solutions to everyday problems.
- Design patents protect the unique appearance and ornamental features of a device, rather than its functionality. They allow inventors to control the visual aspects of their product without infringing on copyrights or trademarks associated with logos or artwork.
- Plant patents are obtained through the USPTO and are meant to protect new plant varieties. However, they only apply to plants that reproduce asexually, excluding seeds and cuttings. The

term of protection for plant and utility patents is 20 years, while design patents are valid for 14 to 15 years.

WHAT IS PATENTABLE UNDER IPR?

An invention, whether it pertains to a product or process, can be eligible for a patent if it meets certain criteria. These criteria include being **new, involving an inventive step, and being capable of industrial application.**

However, it is important to note that there are certain categories of inventions that are deemed non-patentable according to sections 3 and 4 of the relevant Act. In other words, inventions falling within those categories cannot be granted a patent.

An invention is patentable subject matter if it meets the following criteria –

i) It should be novel

ii) It should have inventive step or it must be non-obvious

iii) It should be capable of Industrial application

iv) It should not attract the provisions of section 3 and 4 of the Patents Act 1970

WHEN SHOULD A PATENT BE FILED?

It is advisable to file a patent application as early as possible without delay. By filing an application with a provisional specification that discloses the core essence of the invention, the priority of the invention can be established.

Delay in filing may involve certain risks, including the possibility that another inventor might file a patent application for the same invention or that the invention may be inadvertently published by the inventor or independently by others.

The information relating to the patent application is published in the Patent office Journal issued every Friday. This is also available in electronic form on the website of the Patent Office, www.ipindia.gov.in.

SIGNIFICANCE OF PATENTS IN IPR

Patents serve as valuable assets, offering numerous benefits to patent holders. They create a competitive advantage by providing a barrier to entry for competitors, allowing inventors to capitalize on their inventions and recover their investment in research and development.

Patents can also attract investors and potential business partners, as they demonstrate the inventors' commitment to innovation and their ability to bring unique and marketable products or processes to the table.

Furthermore, patents foster innovation by promoting the disclosure of inventions. Inventors are encouraged to share their knowledge and technical details in the patent application, contributing to the body of prior art and facilitating further research and development. This exchange of information benefits society as a whole, driving progress and technological advancement.

Understanding the patent landscape is crucial to navigate the complexities of intellectual property protection. Conducting a comprehensive prior art search before filing a patent application is essential to ensure the novelty and inventiveness of the invention.

It is important to note that patents are jurisdiction-specific, and inventors should consider filing patents in the countries where they plan to market or manufacture their inventions. Additionally, patents have limited terms, typically lasting 20 years from the date of filing, after which the invention enters the public domain.

CONCLUSION

In conclusion, understanding patents is essential for individuals and businesses looking to protect their innovative ideas and inventions. Patents provide legal protection and exclusive rights for a limited period, granting inventors the ability to control and monetize their creations. By obtaining a patent, inventors can prevent others from making, using, or selling their invention without permission.